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SEMINAR F SESSION REPORT

TRANSFER PRICING FOR SERVICES & FINANCIAL TRANSACTIONS

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Chair

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1. Introduction

Seminar F examined contemporary transfer pricing challenges for intra-group services, with a focus on accurate delineation, classification, benefit demonstration, pricing methodologies, simplifications and safe harbours, documentation, penalties, and the future of OECD guidance. Against the backdrop of rapid business model transformation—subscription-based offerings, connected devices, cloud-enabled analytics, and digitally integrated service delivery—the discussion emphasized that “cost-plus” is not a one-size-fits-all solution and that characterization and method selection must reflect substance, control of risk, and value contribution.

The panel highlighted that the topic is central to international tax debates because intra-group services often attract heightened scrutiny related to artificial profit shifting, non-recognition of benefits, and mispricing. Global divergence in safe harbour adoption, evolving domestic penalty regimes, and ongoing OECD work on Chapter VII amplify compliance complexity and dispute risk, making coherent, evidence-based policies indispensable for multinational enterprises (MNEs).

The main objectives of Seminar F were to discuss the raised issues amongst the business, tax authorities, practitioners and the academic community. It aims to clarify how services should be characterized and classified; explore robust approaches to the benefit test; compare traditional and advanced pricing methods; consider the role and limits of simplifications; identify pragmatic documentation and compliance practices; understand penalty exposures across jurisdictions; and preview the OECD’s forward agenda for intragroup services.

2. Main Topics Discussed

2.1. Topic 1: Characterizing Something as a Service – What Defines a Service?

The panel explored what qualifies as an intra-group service in complex, technology-enabled models where services often overlap with intellectual property, data, and product delivery. Accurate delineation begins with contractual terms but must be reconciled with conduct, risk control, and value drivers. Distinctions among services, royalties, and fees for technical services (FTS) are increasingly blurred in integrated offerings.

The panelists underscored that contracts are the starting point for delineation, yet tax authorities frequently challenge form where conduct diverges. Disentangling service elements from embedded intangibles, data assets, are product components is essential. For globally dispersed decision-making, simple bifurcations (e.g., high vs low value) are insufficient; substance, DEMPE functions, and real risk control determine characterization and remuneration.

It was highlighted that ambiguities arise in bundled payments for digitalized products and cloud-enabled functionalities. Payments associated with hosting, telemetry, and analytics—especially where servers and data reside cross-border—trigger questions on service fees versus royalties and potential virtual PE implications. In capability centers, the line between routine service provision and value-creating activities tied to intangibles is contested, with implications for method selection.

Two illustrative cases were discussed in the panel. First, a connected medical device model spanning multiple jurisdictions raised questions on software licensing versus services, server payments versus royalties, treatment of patient data as a potential intangible or service output, and price unbundling for customs. Second, global capability centers (GCCs) now function as innovation hubs, often performing DEMPE-adjacent activities; characterization must reflect value chain analysis, substance of personnel, a RACI-driven delineation, and control-over-risk beyond contractual labels.

2.2. Topic 2: Classification of Intra-Group Services

The panel surveyed categories ranging from high-value services (e.g., R&D, senior management) to low-value-adding services (LVA) such as IT support, HR, and accounting, as well as general support, manufacturing, and R&D support, distribution, and marketing services. The panel further queried whether a global consensus exists, noting diverse domestic interpretations and the risk of formulaic classification that overlooks substance.

The panel discussion noted that classification should inform the pricing approach but cannot substitute for accurate delineation. Tax authorities are increasingly challenging blanket cost-plus policies, instead advocating for ROI and valuation-driven approaches where services materially impact profitability or intangibles.

Furthermore, persistent concerns include proof of service, duplication, and creeping mark-ups for LVA services. Challenges also arise in mixed cost pools that combine chargeable and

non-chargeable activities, and in distinguishing stewardship activities from chargeable services.

Experience-based references highlighted the need to separate know-how transfer from routine services, interrogate whether local personnel are developing capabilities that shift value, and reconcile classification with overall profitability signals.

2.3. Topic 3: The Benefit Test vs. Willingness to Pay Test

The panel contrasted the benefit test against a “willingness to pay” lens and surveyed OECD, UN, and country-specific approaches. Emphasis was placed on ex-ante expectations of commercial value rather than ex-post savings, with proportionality and materiality guiding the evidentiary burden for high-volume, low-value services.

It was noted that from the taxpayer perspective, contemporaneous, specific evidence is critical: service catalogs, beneficiary lists, deliverables, SLAs, and allocation rationale. From the tax authority perspective, scrutiny concentrates on shareholder/stewardship charges, duplication, incidental benefits, pass-through markups, and mislabeling LVA services. Technology can enhance compliance via automated data capture, NLP-based classification, auditable allocation engines, and documentation generation.

As divergent country practices pose uncertainty, the panel referenced evolving interpretations, including recent European developments where parallel import contexts led to a reassessment of group benefit. Brazil's transition to an ALP-aligned framework codifies benefit-test guidance, interaction with withholding, and promotes trust and cooperation.

The panel further discussed practical “evidence packs” and risk-based sampling approaches. The Brazilian reform showed a move from rigid simplifications to case-by-case benefit evaluation aligned with the OECD Guidelines.

2.4. Topic 4: Methodologies for Pricing Intra-Group Services

Traditional cost-plus approaches were contrasted with Comparable Uncontrolled Price (“CUP”) and profit split methods, particularly for high-value services where decision-making and risk control sit with the service provider. The discussion emphasized the need for like-for-like alignment between cost base and mark-up and careful treatment of pass-through costs.

Where service providers perform core value-driving functions or control key risks, market-based CUPs or residual profit splits may be more appropriate than standard mark-ups. Authorities and taxpayers have both misapplied profit splits; adherence to the OECD risk control framework is essential.

Demonstrating transactional comparability for value-based models, ensuring that sales-based Net Profit Indicators are used only where warranted (e.g., sales agency arrangements), and avoiding mismatches between cost base definitions and applied mark-ups are recurring flashpoints.

In asset management, entities employing decision-makers often require CUPs or profit splits rather than cost-plus. In consumer-facing industries, high-value marketing contributions tied to brand intangibles may warrant residual profit splits following a DEMPE analysis, with split factors reflecting the value of marketing investment.

2.5. Topic 5: Simplifications/Safe Harbours and Standardized Approaches

The panel reviewed OECD, UN and EU Joint Transfer Pricing Forum (JTPF") simplifications for low-value-adding services and debated the reliability and scope of safe harbours. It addressed the similarities and differences amongst these policy bodies when it comes to safe harbour. The panel noted that safe harbours can provide meaningful relief for LVAs, but their accuracy and acceptance vary by jurisdiction. The notion of "safe" is not universal; misapplication, tainted thresholds, and inconsistent local adoption can erode certainty. Some jurisdictions provide deductibility mechanisms and other simplifications even in the absence of formal safe harbours.

The panel further highlighted that coverage gaps persist for non-LVA services, and taxpayers must still perform accurate delineation, recognition of the actual transaction, and selection and application of the most appropriate method. Amount B's adoption challenges and interaction with existing regimes were noted.

Comparative research from academic centers mapped differing national measures for LVAs and highlighted procedural steps—delineation, recognition, method selection, and application—that continue to apply irrespective of simplified returns.

2.6. Topic 6: Documentation & Compliance Challenges

The discussions revealed that compliance burdens are rising, with shorter deadlines, local language requirements, granular service evidence, and cross-checks across tax returns, e-invoicing, ITSM data, and TP files. Authorities increasingly expect detailed cost pool compositions, allocation rationales, and proof of performance or availability.

According to the panel discussions, common pressure points include providing service delivery at scale, segregating chargeable versus non-chargeable activities, justifying allocation keys, and aligning storylines across finance, operations, and tax documentation. Authorities also probe know-how transfer and whether service recipients develop capabilities, altering future pricing.

The panel noted that a practical framework integrating governance, process, people, technology, and assurance. Cooperative approaches—including early engagement, competent authority routes, MAPs, and bilateral APAs—can pre-empt local disallowances for service charges and mitigate disputes.

2.7. Topic 7: Penalties – Taxpayer Risks & Consequences

The panel noted that penalty regimes vary widely. Indian and Brazilian approaches were compared, highlighting overlapping provisions, subjectivity in “misreporting” and “reasonable cause,” and the importance of cooperative behavior.

The comparison showed that in India, penalties can be a percentage of transaction value for documentation failures and escalate to substantial percentages of tax on under-reported income for mispricing or non-reporting. Safeguards exist for bona fide explanations, full disclosure, and substantial compliance. In Brazil, penalties can be severe for mispricing or documentation lapses, with explicit mitigation where taxpayers adopt reasonable, consistent criteria and cooperate with the revenue authorities.

The panel addressed that the feasibility of a uniform approach is doubtful given domestic policy differences. Increased scrutiny of penalties tied to perceived mispricing underscores the need for robust contemporaneous documentation and transparent engagement.

2.8. Topic 8: The Future of Chapter VII – OECD TP Guidelines

It was noted that the OECD is reassessing Chapter VII to address delineation challenges, the benefits test, method application to services, cost base determination and allocation, and the interplay between services and intangibles. The process seeks to clarify the boundary between LVA and non-LVA services and provide practical guidance for complex, integrated service models. Ensuring that forthcoming guidance can accommodate digitalized delivery models, data-driven operations, and cross-functional global teams is critical. Harmonization without oversimplification remains the balancing act.

The panel addressed that a clearer articulation of benefit evidence, service-intangible overlaps, and method selection criteria is expected to enhance certainty. Stakeholder engagement and pragmatic timelines are central to achieving consensus.

3. Conclusions and Key Takeaways

The panel concluded that accurate delineation grounded in contract, conduct, and control of risk is the foundation for characterizing services and selecting methods. Cost-plus remains appropriate for genuinely routine, low-value services, but market-based CUPs and profit splits are often necessary where services drive value or involve DEMPE functions. Evidence should be contemporaneous, specific, and proportional, with technology serving as an enabler of transparency.

There is no universal “cost-plus” solution; classification informs but does not determine pricing. Safe harbours can help with LVAs, but are neither universally adopted nor universally reliable. Documentation must align across operational and financial systems and withstand granular testing. Cooperative engagement, including APAs and competent authority avenues, can mitigate disputes and penalties.

Discussions covered characterization and benefit testing, methodologies, simplifications, penalties, and the future of OECD Guidelines.

Overall, the panel identified a number of significant points as key takeaways, including:

- Characterization is more complex—traditional cost-plus approaches often fall short when services are integrated into products or provided through global value chains.

- Benefit testing is shifting toward evidence-based willingness to pay, with authorities scrutinizing non-recognition, duplication, and shareholder activities. Brazil's new TP law embodies this shift, adopting ALP and case-by-case benefit analysis while clarifying tax interactions. Contemporaneous, fact-rich narratives must demonstrate commercial value and expectations.
- Methodology selection should reflect real value creation—simple cost-plus may not suffice for high-value decisions in asset management or brand-building. Alternatives like CUPs or residual profit splits may better capture contributions, focusing on decision-making and risk control.
- Are safe harbours truly safe? If a country doesn't adopt locally the proposed simplifications, these mechanisms can't be relied upon. Standardization is inconsistent, emphasizing the need for multilateral dialogue to expand safe harbours and reduce compliance friction.
- Documentation and compliance are now continuous disciplines, with tax authorities expecting detailed cost allocations, clear pricing policies, and proof of services that align with operational KPIs. Integrating tax positions, operational systems, and governance frameworks is crucial for consistency across jurisdictions, minimizing mistrust and audit risk. Positive element – with automation, technology, and AI, taxpayers may achieve accurate compliance with a lighter burden—if the right strategies and infrastructure are implemented and pursued diligently.
- Penalty regimes are intensifying and diverging; India and Brazil illustrate different structures, with significant penalties for mispricing or insufficient documentation. Robust controls and transparency can materially reduce exposure.
- The future of services guidance is evolving, with the pending revision of Chapter VII of the OECD Transfer Pricing Guidelines targeting delineation, benefits tests, method application, cost base determination, and the intersection of intangibles and services—offering a crucial opportunity for convergence and clarity.

Finally, the panel noted for policymakers, refining Chapter VII to address benefit demonstration, method application, and service–intangible interactions is paramount. For practitioners, investing in governance, process, and data systems that generate robust, auditable evidence will be decisive in managing risk. Future work should focus on scalable documentation models for high-volume services, clearer demarcations between LVA and non-LVA activities, and pragmatic adoption pathways for standardized approaches such as Amount B.