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To,  
Ms. Manal Corwin, Director, Centre for Tax Policy and Administration  
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**Re: Public Consultation on Global Mobility of Individuals—Transfer Pricing Dimensions Beyond PE**

**1. Introduction**

We appreciate the Inclusive Framework's initiative to explore global mobility challenges through a phased, evidence-based approach as mandated at the April 2025 Plenary. While existing submissions address PE thresholds and compliance simplification, this response identifies certain points in the consultation document's treatment of transfer pricing issues extending beyond PE creation—particularly the interaction between global mobility and the OECD Transfer Pricing Guidelines' provisions on DEMPE functions, control of risk, and value creation.

This submission addresses three underexplored dimensions: (i) how employee mobility affects functional analysis and intangible-related returns under Chapter VI of the TPG; (ii) fragmentation of control functions across jurisdictions and implications for risk allocation under Section D.1.2.1 of Chapter I; and (iii) documentation and developing country implications warranting Inclusive Framework attention.

**2. Transfer Pricing Challenges Beyond PE Creation**

**2.1 DEMPE Function Mobility and Intangible Returns**

The consultation (paragraph 27) acknowledges that global mobility creates "complex transfer pricing considerations" but does not address how mobility affects intangible-related returns under Chapter VI. When employees who perform DEMPE functions work remotely or relocate across jurisdictions, fundamental questions arise about allocation of intangible returns. Under TPG paragraph 6.50, each MNE group member "should receive arm's length compensation for the functions it performs," including "functions related to the development, enhancement, maintenance, protection, and exploitation of intangibles." Critically, paragraph 6.56 identifies "important functions" that "usually make a significant contribution to intangible value," including "design and control of research and marketing programmes, direction of and establishing priorities for creative undertakings... control over strategic decisions regarding intangible development programmes, and management and control of budgets."

***Illustrative Scenario—The Virtual DEMPE Team:*** Consider an IP holding company in Country A that legally owns patents. The R&D director who controls research strategy (a paragraph 6.56

*function) relocates to Country B but continues managing the team remotely. Two senior scientists conducting core research work from Countries C and D. Under TPG paragraph 6.54, if the legal owner "neither controls nor performs" intangible development functions, it loses entitlement to returns from those functions. When the people doing valuable IP work are scattered across four countries, who gets the profits? The consultation doesn't address this. Paragraph 6.57 adds that dispersed important functions "may... necessitate transactional profit split methods"—a complex outcome that mobile employees could inadvertently trigger without clear guidance.*

## **2.2 Control Function Fragmentation and Risk Allocation**

The consultation (paragraph 27) identifies "dispersion of senior management roles across multiple jurisdictions" but doesn't engage with how the TPG analyses control over risk. Under paragraph 1.65, control requires both the capability and actual performance of decision-making—specifically, decisions to take on or decline risks, and decisions on how to respond to risks. When executives make these decisions through virtual meetings from different countries, paragraph 1.66 requires they "possess competence and experience" and "have access to relevant information." The consultation mentions "virtual board meetings" (paragraph 25) as a corporate residence concern but misses the transfer pricing angle: if risk control is exercised from multiple locations, paragraph 1.94 recognises that "more than one party... [may exercise] control over a specific risk. In such cases, paragraph 1.94 requires careful delineation and arm's-length remuneration of all control functions, while shared residual outcomes arise only where risks are jointly assumed and jointly controlled.

**Recommendation:** Develop supplementary guidance on determining a "functional centre of gravity" for risk control purposes when decision-making is exercised virtually, addressing (a) weighting factors for different control functions (strategic direction versus day-to-day mitigation); (b) documentation requirements; and (c) interaction with the AOA's significant people functions concept.

## **2.3 Profit Split Triggers and Safe Harbor Considerations**

Under TPG paragraph 2.130, contributions are "unique and valuable" when they are not comparable to what uncontrolled parties provide and represent a key source of economic benefits. When employees making such contributions become mobile, paragraph 2.119 suggests profit splits "can offer a solution." But the consultation doesn't distinguish routine work from value-creating work. A software engineer doing standard coding remotely shouldn't trigger the same complex analysis as a chief scientist directing breakthrough research. We recommend a safe harbor: where mobile employees perform routine functions (compensable through cost-plus or standard service fees), no incremental profit attribution or PE analysis should apply. This reserves complex DEMPE and profit-split analyses for genuinely high-value activities.

## **3. Comparability Analysis Complications**

Global mobility complicates the comparability analysis required under Chapter III of the TPG. Under paragraph 3.4, reliable comparability requires understanding the controlled transaction through functional analysis to select the tested party and most appropriate transfer pricing method. When employees performing functions for the tested party work across multiple jurisdictions, determining functional comparability with independent enterprises becomes problematic. The standard comparability process (paragraph 3.4) assumes stable functional profiles, yet mobile employees may alter the tested party's risk profile mid-year. Furthermore, paragraph 2.65 notes that one-sided methods are unreliable where parties make "unique and valuable contributions"—

a threshold that may be crossed inadvertently when key personnel relocate. The Inclusive Framework should clarify whether functional analysis should be performed at year-end, , or at the point of each material personnel change to ensure arm's length outcomes reflect actual contributions.

#### **4. Developing Country and Digital Nomad Considerations**

The consultation acknowledges regional variations (paragraph 6) but insufficiently addresses developing country concerns. When highly skilled employees work remotely from developing countries for OECD-headquartered MNEs, source country taxing rights may erode if value created is attributed to headquarters under residence-based frameworks. Second, proliferating digital nomad regimes (paragraph 19) risk a "race to the bottom" as jurisdictions compete for mobile workers, shifting tax base from developing countries that educated these workers. The April 2025 Inclusive Framework statement's reference to "interaction between tax, inequality and growth" is directly relevant. Brain drain is exacerbated when talent works remotely for developed-country employers without relocation, extracting human capital value while the tax base remains in residence jurisdictions offering nominal taxation. The UN Model's broader source taxation principles warrant consideration alongside the OECD Model.

#### **5. Concrete Recommendations**

- 1. DEMPE Function Mobility Guidance:** Issue supplementary guidance clarifying when employee mobility triggers reallocation of intangible-related returns under paragraphs 6.50-6.58, including threshold criteria for "important functions."
- 2. Control Function Framework:** Develop interpretive guidance on applying paragraph 1.65 control analysis when decision-making occurs virtually across jurisdictions, including a "functional centre of gravity" concept.
- 3. Routine Activity Safe Harbor:** Establish a safe harbor excluding routine remote activities from DEMPE analysis and profit-split considerations.
- 4. Article 7/Article 9 Hierarchy:** Clarify sequencing between PE profit attribution under AOA and separate-entity transfer pricing under Article 9 for home-office PE scenarios.
- 5. Documentation Modernization:** Update Master File and Local File requirements to accommodate dynamic workforce allocation with event-based disclosure triggers.
- 6. Developing Country Impact Assessment:** Require assessment of source taxation and brain drain implications before finalizing any framework.

We welcome participation in the January 2026 public consultation meeting.

Respectfully submitted,

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