Guidelines On Low Value Intra-Group Services

Part 35A-01-03

This document applies to chargeable periods commencing before 1 January 2020.

For chargeable periods commencing on or after 1 January 2020, please refer to section 8.7 of the Tax and Duty Manual Part 35A-01-01 – Transfer Pricing.

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Cáin agus Custaim na hÉireann
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The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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Low value intra-group services

1. Introduction

The purpose of this manual is to provide guidance to taxpayers regarding Revenue's simplified approach to low value intra-group services. In particular, the guidance outlines that in situations where a cost-based method is determined to be the most appropriate transfer pricing method for determining an arm's length price for low value intra-group services, Revenue is prepared to accept a mark-up of 5% of the relevant cost base without the need for a benchmarking study. The guidance also sets out the documentation requirements for the taxpayer in order to avail of this simplified approach for low value intra-group services.

This guidance applies equally to taxpayers who are in receipt of low value intra-group services from other group members of the same multinational enterprise ("MNE") and to taxpayers who are performing low value intra-group services for other group members of the same MNE.

This guidance may be updated from time to time.

2. What are low value intra-group services?

Low value intra-group services ("LVIGS") are services, performed by one or more entities within an MNE group for one or more recipient entities within the same MNE group, which typically exhibit the following features:

- LVIGS are of an administrative or routine nature, often consisting of "back-office" support-type services.
- LVIGS are supportive in nature and not part of the core business of the MNE group, i.e. the services are ancillary to the business of the MNE. The services provided may, however, be the principal activity of the entity providing the services, for example where the entity is a shared-services centre for the group.
- LVIGS do not use or create unique and valuable intangible assets. Where intra-group services use or generate such intangible assets, those services will not constitute LVIGS.
- LVIGS do not involve significant risk for the service provider.

This guidance is not applicable to services which would meet the definition of LVIGS but where such services are also provided to independent enterprises. This is on the basis that reliable internal comparables for determining an arm's length price for the LVIGS are likely to exist in such circumstances.

There is no definitive list of services which are LVIGS. The facts and circumstances in each case must be considered in determining whether the services are LVIGS. However, by way of example, services which are generally likely to constitute LVIGS include human resource, accounting, auditing, information technology support and legal services.

3. Transfer pricing considerations

Chapter VII of the **OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010** ("TPG 2010") provides guidance in relation to intra-group services. The two main issues to be considered in analysing intra-group services for transfer pricing purposes are;

A. Whether intra-group services have been rendered; and
B. What the charge for such intra-group services should be in accordance with the arm's length principle.

A. Determining whether an intra-group service has been rendered

Chapter VII of the TPG 2010, Section B.1 provides guidance for determining whether intra-group services have been rendered under the arm's length principle. The principles contained in Section B.1 also apply to LVIGS. In particular, for a service to be considered an LVIGS, the recipient of the service must receive an economic or commercial benefit to enhance its commercial position. This would be evaluated in terms of whether an independent party in comparable circumstances would have been willing to pay for the service if performed by an independent party or would have performed the service in-house for itself.

In applying the benefit test to LVIGS, Revenue is prepared to accept the taxpayer supporting the benefit by category of service rather than being required to specify individual activities performed that give rise to the costs charged. In the event that no benefit is provided to the recipient of the service, Revenue will not accept the charge as a deductible cost in computing taxable profits.

Where activities are performed by a member of an MNE group (typically the parent company) solely because of its ownership interest in one or more group members, this does not justify a charge to the recipient company. Costs arising in respect of such activities are often referred to as "shareholder costs". In addition, a charge would generally not be justified in respect of costs arising from activities which merely duplicate an existing service ("duplicate costs"). Further information on shareholder costs, duplicate costs and other relevant considerations is contained in Section B.1 of the TPG 2010. Shareholder costs and duplicate costs are explained further in the Appendix.

B. Determining an arm's length charge

Chapter VII of the TPG 2010, Section B.2 provides guidance for determining an arm's length charge for intra-group services. This section states that it may be possible to allocate costs to group members using a direct-charge method[1]. Where this is not possible, it may be necessary to use an indirect-charge method which involves allocating costs from a cost pool to the relevant group members of the MNE using an appropriate allocation key(s).

The appropriateness of the cost base is of particular importance in the context of any cost-based arrangement. The costs included in the LVIGS cost base must be wholly appropriate. The cost base may include the direct and indirect costs of the provision of LVIGS. The costs included must relate to the rendering of LVIGS which provided an economic or commercial benefit to the recipient of the service. As noted above, Revenue will not accept the inclusion of shareholder costs or duplicate costs. Costs incurred in respect of services performed solely for another member of the MNE group should be excluded from the cost base to be apportioned among members of the MNE group. Such costs should be charged directly to the recipient of the service. Pass-through costs (e.g. third party costs incurred for another member of the MNE group) should be specifically identified and excluded from the cost base to which a mark-up is applied (see below).

Where an allocation key is used to apportion costs among members of the MNE group, **"the allocation method chosen must lead to a result that is consistent with what comparable independent enterprises would have been prepared to accept"**[2]. Regard should be given to the specific facts and circumstances of the particular case in determining which allocation key(s) to use. The appropriateness of the allocation keys may depend on the nature and usage of the service[3]. Examples of allocation keys which may be appropriate include the following – for payroll services costs and human resource costs, the number of staff, for IT support costs, the number of computers, for accounting services, the turnover or size of the balance sheet. The appropriateness of the allocation key should be reviewed on a regular basis. Once chosen, an allocation key should be applied consistently unless there is a justified reason to change.

Generally, where a cost-based method is considered to be the most appropriate transfer pricing method, once the cost base for a particular service has been determined, consideration should be given to what mark-up should be applied to those costs. **For costs in respect of LVIGS, Revenue is prepared to accept a mark-up of 5% of the cost base without the need for a benchmarking study to be carried out by the taxpayer to support this rate.** The same mark-up may also be applied to

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[1] OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010, Chapter VII, Paragraph 7.21.

[2] Ibid, Paragraph 7.24.

[3] Ibid, Paragraph 7.25.

LVIGS performed solely for one group member. This approach by Revenue is contingent on the taxpayer preparing the relevant supporting documentation (see Section 4 below) and providing this, on request, to Revenue. As outlined above, no mark-up should be applied to pass-through costs.

4. Supporting Documentation

The supporting documentation required must clearly explain what services are being provided or received. In particular, the documentation must include the following information:

- a description of the LVIGS provided or received,
- the identity of the recipient or provider of the service,
- an explanation of why the services are considered to be LVIGS,
- the rationale for the provision or receipt of such services,
- a description of the benefits of each category of services,
- an explanation and justification of the allocation key(s) chosen,
- confirmation of the mark-up applied,
- written contracts, and any amendments to same, for the provision of services,
- calculations of the final LVIGS fee(s) charged showing the calculation of the cost base, the application of the allocation key(s) to that cost base and the application of the mark-up to the apportioned cost base,
- confirmation that shareholder costs and duplicate costs have been excluded from the cost base,
- confirmation that no mark-up has been applied to pass-through costs.

5. EU Guidelines

The EU has published guidelines on low value adding intra-group services[4]. Revenue accepts these guidelines as representing good practice. The guidelines focus on multiple low value services that will often be provided through a single contract and generally involving a cost pool and allocation keys.

Revenue's practice of accepting a mark-up of 5% of the cost-base without requiring a taxpayer to provide a benchmarking analysis is consistent with these EU guidelines, which specify that "**in cases where it is appropriate to use a mark up, this will normally be modest and experience shows that typically agreed mark ups fall within a range of 3-10%, often around 5%**."[5] The guidelines further indicate that performing a benchmarking analysis may be "**too resource intensive**"[6] for establishing a suitable mark-up for low value adding intra-group services.

[4] EU Joint Transfer Pricing Forum, JTPF Report: Guidelines on Low Value Adding Intra-Group Services, DOC: JTPF/020/REV3/2009EN, Brussels, February 2010.
[5] Ibid, Paragraph 63.
[6] Ibid, Paragraph 64.

Appendix

Shareholder costs

Where an activity is carried out by a shareholder solely because of its ownership interest in one or more group members, i.e. in its capacity as shareholder, no charge to the recipient(s) is justified[7]. Such costs are referred to as "shareholder costs". Shareholder costs are costs in respect of activities performed for a member of a group which that member does not require, or which that member would not be willing to pay for itself. Examples of shareholder costs may include regulatory compliance costs of the shareholder entity; costs relating to reporting requirements of the parent company e.g. preparing consolidated reports; costs incurred relating to meetings of the shareholders of the parent; costs relating to issuing shares in the parent company; and investor relations costs[8]. Further guidance on shareholder costs is contained in Chapter VII, Paragraph 7.9 and 7.10 of the TPG 2010.

Duplicate costs

Duplicate services arise where the same service is already being provided by another MNE group member or by a third party, or where the group member is already performing the service for itself. A charge would generally not be justified in respect of costs arising from activities which merely duplicate an existing service. Further guidance on duplication is contained in Chapter VII, Paragraph 7.11 of the TPG 2010.

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[7] OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010, Chapter VII, Paragraph 7.9.
[8] Ibid, Paragraph 7.10.