

Mexico City, May 29<sup>th</sup>, 2015

Via e-mail

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Mr. Andrew Hickman  
Head of Transfer Pricing Unit,  
Centre for Tax Policy and Administration  
OECD

Dear Mr. Hickman,

On behalf of IFA Grupo Mexicano, A.C. (Mexican Branch of the International Fiscal Association) kindly find below our general comments on the Public Discussion Draft on Action 8 of the BEPS Action Plan –“Revisions to Chapter VIII of the Transfer Pricing Guidelines on Cost Contribution Arrangements (CCAs)”.

## **BEPS Action 8: Revisions to Chapter VIII of the Transfer Pricing Guidelines on Cost Contribution Arrangements (CCAs)**

### **I. Overview**

The Discussion Draft focuses on the OECD’s intention to cover transfer pricing of intangible assets and requires the development of rules to prevent BEPS by moving intangible assets among group members.

This draft presents an analysis of the requirement under Action 8 to update the guidance on cost contribution arrangements (CCA) found in Chapter VIII of the Transfer Pricing Guidelines, and the text that could be added to this Chapter.

### **II. Comments**

#### **Contributions and risks assumed by the participants of a CCA – Determination of the benefit for the participants**

According to the Discussion Draft, a CCA is a contractual arrangement among business enterprises to share the contributions and risks involved expecting to create direct benefits for the business of each participant. To be considered as a participant of the CCA, it is necessary that each one of the participants make contributions and assume risks.

Based on the above, we consider necessary that the Discussion Draft strongly emphasizes that the functions, assets and risks that each participant carries in the CCA will be critical to determine the benefits that the participants expect and the value of their contributions.

## **Unsuccessful CCA**

The Discussion Draft describes the assumptions where the participants obtain a benefit derived from their participation in the CCA, but it is also true that in some cases the CCA cannot be successful such as it is noted briefly in the Discussion Draft.

The Discussion Draft includes five examples which assume that the CCA will be successful and each participant will obtain a benefit derived of its contributions and risks assumed, but none of the examples shows what would be the applicable treatment in case that a CCA becomes unsuccessful.

Considering the above, we believe it is necessary to include in the Discussion Draft the detailed treatment that would be applicable in case of an unsuccessful CCA, as well as an example that shows in detail such case.

## **Others Considerations**

### **Deduction of Prorated Expenses**

There is a specific regulation in Mexico that disallows the deduction of expenses made on a pro rata basis with companies that are not subject to tax in Mexico. In that sense, the contribution made to a CCA could be perceived as a prorated expense and the deduction could be challenged.

Thus, it would be advisable to point out that in general the contributions to CCAs are made among various countries and it would be convenient if they included specific rules that guarantee the deductibility of such contributions, given that these are arrangements entered into with the purpose or expectation of obtaining a future benefit and which therefore, contribute to increase the tax basis in the future.

We would also like to bring to your attention that CCAs are clearly defined in the OECD Guides in Chapter VIII for which special care should be taken regarding its interaction with Chapter VII in order to avoid confusing the figures with the rendering of intra-group services.

### **Intangibles, benefits and financial information**

In general terms, we would like to see an example of how to measure the economic benefits of a CCA in order to shed some light on this issue, which we find is not clear up to now.

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The participation of IFA Grupo Mexicano, A.C. is made on its own behalf exclusively as an IFA Branch, and in no case in the name or on behalf of Central IFA or IFA as a whole.

Should you have any questions or comments, please do not hesitate to contact us.

Sincerely,

IFA Grupo Mexicano, A.C.