Mexico City, September 5, 2016

Via e-mail

TransferPricing@oecd.org

Tax Treaties, Transfer Pricing
and Financial Transactions Division OECD/CTPA

Dear all,

On behalf of IFA Grupo Mexicano, A.C. (Mexican Branch of the International Fiscal Association), kindly find below the comments on the Public Discussion Draft –"*BEPS ACTIONS 8-10 – Revised Guidance on Profit Splits*" (the "Draft").

The discussion draft proposes to explore distinctions on the application of the transactional profit split method to either projected or actual profits. Detailed description of each method is included, but it is still confusing when is it proper to use one method over the other. The application of the projected profits, based on net present value concept, is commonly used to set a fixed price, based on the allocation of profits between profit generator assets and/or investments, with identifiable specific risks. It is not clear whether it can be used to allocate functions. No other use (besides very specific transactions in the financial industry), would be observable between unrelated parties. Hence, it is difficult to apply.

Under the Revised Guidance on Profit Splits, tax authorities might have an erroneous idea that regardless of contractual allocation of risks (assuming accurate delineation of the actual transaction), in presence of high level of integration of activities, including the assumptions of the associated risks, the use of an actual profit split method would always be more appropriate over other methods. The level of integration of activities should not be decisive of which method, projected or actual profits, should be applied. Rather than the level of integration, analyses of functions, assets and risks, contractual arrangements and data available should define the appropriateness of projected or actual profits applicability.

There should be detailed description of what documentation should be in place, in order to prove that the profit split method was used to set the price for a controlled transactions under an ex ante analysis. Further clarification is required to understand if the use of a profit split method would be respected for purposes of setting a price, and the validity to document its reasonability, regardless of the actual outcome of the transactions. For example, the use of anticipated profits for setting an arm's length price, versus the use of actual profits to test the arm's

length outcome. Both methods are applied under different facts and circumstances, and economically different circumstances. For example, setting a royalty as a fixed payment based on projected profits and testing the outcome based on actual profits.

In addition, under the value chain analysis, the discussion draft sets out that consideration should be put in where and how value is created, considering economically significant functions, assets and risks; and how those may create opportunities to capture profits in excess of what the market would otherwise allow. But it is important to highlight the absence of any discussion of market conditions or local market circumstances, detailed explanation of how to incorporate into the value chain analysis, market conditions or local market circumstances. Without any specific guidance, the presence of market imperfections, tax authorities could erroneously be driven to the conclusion that a profit split is appropriate. The discussion draft is confusing, and might lead to correlate value chain analysis with the application of profit splits.

In summary, the application of the transactional profit split method should be applied only when it is the most appropriate method, based on guidance under Chapter 1 of the OECD Transfer Pricing Guidelines.

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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.

We hope you find these comments interesting and useful. We remain yours for any questions or comments you may have.

Sincerely,

IFA Grupo Mexicano, A.C.