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COMMENTARY & ANALYSIS

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# Evaluating the Equivalence of Cost-Sharing Arrangements and Cost Contribution Arrangements

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In this article, Dijkman and Subramanian compare the U.S. cost-sharing arrangement rules and OECD cost contribution arrangement guidance, and they discuss the circumstances under which those can be considered equivalent.

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Cost-sharing arrangements (CSAs) have been popular with U.S. multinational enterprises for many years now. A CSA is a specific type of arrangement defined in U.S. reg. section 1.482-7 for the joint development of intangibles by related parties. The counterpart to a U.S. CSA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD guidelines) is a cost contribution arrangement (CCA), for which guidance is provided in Chapter VIII of the OECD guidelines.

If the arrangement (CSA or CCA) involves at least one U.S. participant, the arrangement will need to be evaluated under U.S. regulations. Historically, U.S. CSAs often involved related participants based in low- or zero-tax jurisdictions, which generally accepted an evaluation of the CSA under the U.S. regulations to be sufficient for establishing arm's-length pricing. Thus, from a practical perspective, U.S. MNEs typically assessed a CSA under the U.S. regulations only. In 2015 the OECD substantially revised its guidance on CCAs under actions 8-10 of the OECD's base erosion and profit-shifting initiative. Post-2015, U.S. CSAs generally include participants based in countries in Europe and Asia that are scrutinizing U.S. CSAs under the revised OECD guidance on CCAs. Thus, these CSAs need to be evaluated under both the U.S. regulations and the OECD guidelines to manage tax scrutiny to such arrangements.

This article compares the U.S. CSA rules and OECD CCA guidance, pointing out similarities and differences. It then goes on to discuss the circumstances under which a CSA and a CCA can be considered equivalent.

## Overview of CSA and CCA

### Cost-Sharing Arrangement

Under reg. section 1.482-7, a CSA is an arrangement by which controlled participants share the costs and risks of developing cost-shared intangibles in proportion to their reasonably anticipated benefit (RAB) shares.[1] For an

[1] Reg. section 1.482-7(b).



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arrangement to qualify as a CSA, it must meet substantive and administrative requirements.

The following are the substantive requirements for a CSA[2]:

- In each tax year, each controlled participant must assume a share of intangible development costs that is in proportion to its RAB share.
- Each controlled participant must make arm's-length payments to each other controlled participant that provides a platform contribution. A platform contribution is any resource, capability, or right that a controlled participant has developed, maintained, or acquired externally to the intangible development activity that is reasonably anticipated to contribute to developing cost-shared intangibles.
- Each controlled participant must receive a non-overlapping interest in the cost-shared intangibles without further obligation to compensate another controlled participant for that interest.[3]

In addition to the substantive requirements above, a CSA must satisfy administrative requirements, which include contractual, documentation, accounting, and reporting requirements.[4]

## Cost Contribution Arrangement

The OECD guidelines define a CCA as a contractual arrangement among business enterprises to share the contributions and risks involved in the joint development, production, or obtaining of intangibles, tangible assets, or services with the understanding that such intangibles, tangible assets, or services are expected to create benefits for the individual businesses of each of the participants.[5]

A CCA can cover many different types of activities. The OECD guidelines address two types of CCAs: those established for the joint development, production, or obtaining of intangibles or tangible assets (development CCAs), and those for obtaining services (services CCAs).[6] Because a development CCA for intangible assets is closest to a CSA, the remainder of this article focuses on development CCAs for intangible assets and does not discuss other types of CCAs. For ease of exposition, we will simply refer to a development CCA for intangible assets as a "development CCA" or "CCA."

According to the OECD guidelines, to satisfy the arm's-length principle, each participant's proportionate share of the overall contributions to a CCA must be consistent with its proportionate share of the overall expected benefits to be received under the arrangement.[7] If the value of a participant's share of overall contributions (whether of current or preexisting contributions) is not consistent with that participant's share of expected benefits under the CCA, an adjustment must be made to the contribution through a balancing payment.[8] The CCA contractually provides each participant an ownership interest in any intangibles resulting from the activity of the development CCA, or rights to use or exploit those intangibles without paying additional consideration (other than the contributions and balancing payments).

A party that is not capable of exploiting the output of the CCA in its own business in *any* manner would not be considered a CCA participant.[9] Exploitation of an intangible could take various forms, including the transfer of rights in the intangible through licenses to other parties or the use of the intangible in commercial operations. A controlled entity that is not considered a participant in the CCA should receive arm's-length compensation for its contributions external to the CCA.

A participant in a CCA must also exercise control over the specific risks it assumes under the CCA and have the financial capacity to assume

[2] Reg. section 1.482-7(b)(1).

[3] This does not apply to a qualified CSA that was already in existence on January 5, 2009, when the regulations were issued in final form.

[4] Reg. section 1.482-7(k).

[5] OECD, "Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations," para. 8.3 (2022).

[6] OECD guidelines, para. 8.10.

[7] OECD guidelines, para. 8.5.

[8] Although in valuing contributions and therefore determining balancing payments, there are distinctions to be drawn between contributions of preexisting value and current contributions.

[9] OECD guidelines, para. 8.14.



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those risks, or else it would not be considered a participant in the CCA and would not be entitled to the output of the CCA.[10] This requirement is consistent with the general principles on risk as set forth in Chapter I of the OECD guidelines, which also apply to CCAs. For an associated enterprise to assume risk, it must have the capability to make decisions to take on, lay off, or decline a risk-bearing opportunity, together with the actual performance of that decision-making function, and have the capability to make decisions on whether and how to respond to the risks associated with the opportunity, together with the actual performance of that decision-making function.[11] A participant does not have to perform the day-to-day mitigation of risks to have control of the risks. The day-to-day mitigation may be outsourced. If these day-to-day mitigation activities are outsourced, control of the risk would require capability to determine the objectives of the outsourced activities.[12]

It is not necessary for the CCA participants to perform all the CCA activities through their own personnel. In some cases, the participants in a CCA may decide to outsource specific functions. In those situations, the participants to the CCA should individually meet the requirements on exercising control over the specific risks they assume under the CCA. These requirements include exercising control over the outsourced functions by at least one of the CCA participants. In a development CCA, at least one of the participants to the CCA should also exercise control over the important development, enhancement, maintenance, protection, and exploitation (DEMPE) functions that are outsourced.[13] Members of the MNE group performing the outsourced functions related to the DEMPE of intangibles must be compensated according to the principles described in chapters I-III of the OECD guidelines.[14]

### Comparison of CSA and Development CCA

A CSA and a development CCA are broadly similar in concept. Both CSAs and development CCAs are contractual arrangements for jointly developing intangible property and sharing in the risks and benefits of that intangible property. While a CSA is more prescriptive in form, similarly to a CCA, it is meant to be consistent with the arm's-length standard.[15] Both a CSA and a CCA require platform contribution transaction (PCT) payments or balancing payments when one party contributes preexisting intangibles or intangibles acquired outside the CSA or CCA. Both also require balancing payments for ongoing or current contributions (whether measured at cost or value) such that each participant's contribution is proportionate to its expected benefit share. Both a CSA and a CCA contractually provide the participants to the CSA or CCA an ownership interest in any intangibles resulting from the intangible development activity, or rights to use or exploit those intangibles.

Changes in participation in a CSA or a CCA (such as entry or withdrawal of participants, realignment of interest in the intangibles, capability variation among participants, or termination) will generally trigger a reassessment of proportionate shares of participants' contributions and expected benefits, and an arm's-length charge to the extent there is a transfer of interest between participants. Finally, while the CSA rules under reg. section 1.482-7(k) are more prescriptive in their administrative requirements than the CCA rules, those administrative requirements are generally compatible with the recommendations for documenting CCAs in the OECD guidelines.

While a CSA and CCA are broadly similar in concept, they are not identical. Importantly, as noted above, both a CSA and CCA are meant to conform with the arm's-length principle despite

[10] OECD guidelines, para. 8.15.

[11] OECD guidelines, para. 1.61.

[12] OECD guidelines, para. 1.65.

[13] OECD guidelines, para. 8.17.

[14] OECD guidelines, para. 6.32.

[15] A key issue in the U.S. Tax Court case *Altera Corp. v. Commissioner*, 145 T.C. No. 3 (2015), was whether the rule in reg. section 1.482-7 requiring the inclusion of stock-based compensation expense in the cost-sharing pool was consistent with the arm's-length standard, highlighting the premise that a CSA is intended to be consistent with the arm's-length standard.



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any differences in form.[16] The U.S. CSA rules prescribe the form of the CSA, and assuming the CSA satisfies the U.S. CSA rules, it is considered consistent with the arm's-length standard. The OECD CCA guidance is less prescriptive on the form of the arrangement, allowing for the CCA to be structured in different ways as long as the pricing of the CCA is in accordance with the arm's-length principle. Following the development of the OECD CCA guidelines, a key question is whether a CSA meeting the requirements of the U.S. CSA rules also satisfies the arm's-length principle as described in the CCA guidance.

Particularly, we identify the following two areas of CCA guidance for further exploration when evaluating whether a CSA satisfies the arm's-length principle as evaluated under the CCA guidance:

- qualifying as a participant; and
- sharing of costs versus sharing of contributions.

We discuss the requirements for CSA and CCA on these two aspects in the next two sections. In the following section, we discuss circumstances under which a CSA would also qualify as a CCA given the requirements on these two aspects. Post-BEPS, this question has become increasingly important in situations in which a U.S. MNE decides to onshore intangible property from low-tax jurisdictions to countries in Europe and Asia that follow the OECD guidelines.

### Qualifying as a Participant

A participant in a CSA is defined as a controlled taxpayer that is a party to the contractual agreement and that reasonably anticipates that it will derive benefits from exploiting one or more cost-shared intangibles. Other than this requirement, the U.S. cost-sharing rules in reg. section 1.482-7 do not impose operational requirements on a controlled participant in terms of control over risks or important DEMPE functions.

In addition to the reg. section 1.482-7 rules specifically designed for CSAs, the general rules on economic substance in reg. section 1.482-1 also apply to CSAs. Under those rules, contractual allocations of risk are respected as long as they are consistent with the "economic substance" of the transaction.[17] In considering the economic substance of the transaction, the taxpayer's conduct — whether it has the financial capacity to fund losses and the extent to which it exercises managerial or operational control over the business activities that directly influence the amount of income or loss realized — are considered pertinent.[18]

As with a CSA participant, a CCA participant must make contributions to a CCA and have an expectation of benefits from the CCA. The OECD guidelines further describe necessary conditions for a related party to benefit from the output of a CCA relating to the assumption and control of risks. A party assuming risks under a CCA must control the specific risks it assumes under the CCA and must have the financial capacity to assume those risks.

A party is not considered a participant in a CCA if it does not exercise control over the specific risks it assumes under the CCA and does not have the financial capacity to assume these risks, as this party would not be entitled to a share in the output that is the objective of the CCA based on the functions it actually performs.[19] The OECD refers to the detailed guidance in Chapter I of the OECD guidelines for further explanation and interpretation of its control-over-risk requirements approach.

The risk frameworks in the U.S. CSA rules and the OECD guidelines could be considered broadly consistent, although the OECD guidelines have more prescriptive requirements on functional capabilities and activities in a CCA participant than the U.S. CSA rules for a CSA participant. Also, including provisions in a CSA that describe control procedures is not inconsistent with the reg. section 1.482-7 rules.

[16] The U.S. transfer pricing regulations refer to the arm's-length standard, which is similar to the arm's-length principle of the OECD guidelines.

[17] Reg. section 1.482-1(d)(3)(ii)(B).

[18] Reg. section 1.482-1(d)(3)(iii)(B).

[19] OECD guidelines, para. 8.15.



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A CSA participant not meeting the functional and financial requirements in the OECD guidelines for deriving benefits from exploiting the cost-shared intangible would not be entitled to returns from the intangible as a CCA participant. Notwithstanding the qualification of a controlled entity as a CCA participant or not, the controlled entity should still receive arm's-length compensation for any contributions it makes outside the CCA.

Many countries around the world have adopted the revised OECD guidelines published in 2017. One of those countries is the Netherlands. The Dutch state secretary of finance regularly issues updated decrees, which set forth the interpretation of the OECD guidelines by the tax authorities in the Netherlands. The most recent decree[20] explicitly requires participants in a CCA to perform the control functions for the risks that they assume with reference to the principles as set forth in chapters I and VI of the OECD guidelines, which is illustrated in the decree with some simplified examples.

In one of these examples,[21] related parties A and B contractually agreed to share all risks associated with the cost-shared research and development activities. Party A conducted initial R&D of a new product and is further engaged in the development, production, and sales of consumer products. Party B has a limited number of employees with a financial and administrative background. Party B compensates party A for 50 percent of the fair market value of the initial development and for 50 percent of the actual further development costs. Under the CCA, party A becomes the single (legal) owner of the developed intangibles, but both party A and party B are entitled to the respective benefits arising from the developed intangibles in their own markets.

On performing a functional analysis, it was found that under the CCA, party A coordinates and controls all development activities, from the decision-making of R&D activities to the actual conduct of R&D activities. Party A also assumes the financial capacity to bear all those risks. Because party B does not exercise control over the risks it assumes under the CCA, the decree considers the outcome of the CCA not to be at arm's length. The decree states that the risks and anticipated benefits resulting from the management and control of R&D activities should be solely allocated to party A and that compensation for party B should be adjusted accordingly. According to the decree and with reference to the OECD guidelines,[22] compensation for party B should consist of an arm's-length risk-adjusted return for funding the R&D activities undertaken by party A. If party B does not control the risks in relation to its funding, the decree concludes with reference to the OECD guidelines[23] that compensation of party B should not exceed a risk-free return.[24] Regarding control of funding, the example does not give further guidance that goes beyond the factual assumption that party B has a limited number of employees with a financial and administrative background.

In summary, the decree emphasizes the OECD's control-over-risk requirement as explained in Chapter I of the OECD guidelines, and the decree therefore requires CCA participants to be able to control the risks they contractually assume under the CCA.

Following the revised guidelines as published by the OECD, other countries in Europe and Asia have implemented similar requirements for CCAs, either by incorporating the OECD guidelines in local legislation or by merely referring to the OECD guidelines in local legislation.

## Sharing Costs vs. Sharing Contributions

Contributions of a participant to a CSA or CCA can be made in different forms. They may be in the form of contributions of tangible assets or intangible assets, the performance of activities, and/or the funding of the development of the intangible. Balancing payments may be made by participants to "top up" the value of the contributions when their proportionate

[20] Decree of the Dutch State Secretary of Finance, nr. 2022-0000139020 (June 14, 2022).

[21] *Id.* at Example O.

[22] OECD guidelines, para. 6.61.

[23] OECD guidelines, para. 1.103.

[24] Since the investment of party B is not risk-free, one could question whether a risk-free return on party B's investment is consistent with the arm's-length principle.



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contributions are lower than their proportionate expected benefits. These adjustments may be anticipated by the participants upon entering into the CCA or may be the result of periodic reevaluation of their share of the expected benefits and/or the value of their contributions.[25] In practice, it is quite common that contributions involve intangible assets developed or acquired by one or more of the participants before the CSA or CCA was concluded. Both the CSA rules and the CCA guidance distinguish between contributions of preexisting value and current contributions.

Contributions of preexisting value must be remunerated through a PCT payment under a CSA. Similarly, contributions of preexisting value must be remunerated through balancing payments in a CCA. While reg. section 1.482-7 specifies methods for PCT payments that are different from the methods specified in the OECD guidelines, any method that can be established as the most appropriate for determining pricing in accordance with the arm's-length principle should be acceptable for both CSAs and CCAs. Thus, contributions of preexisting value are treated similarly in CSAs and CCAs.

The treatment of current contributions — that is, the ongoing development activity for the jointly developed intangible — could be different under a CSA and a CCA. A CSA has a specific approach for measuring current contributions of the participants — that is, through the intangible development costs borne by those participants — which must be borne in proportion to the participants' RAB shares. The CCA guidance is broader and notes that the value of current contributions is based on the value of the functions performed, which should be determined by application of available transfer pricing methods in other sections of the OECD guidelines.[26] In particular, important DEMPE functions should be valued in accordance with the principles set out in Chapter VI of the OECD guidelines.[27]

However, the OECD guidelines also acknowledge that while all contributions should be measured at value, it may be more administrable for taxpayers to pay current contributions at cost. If this approach is adopted, the preexisting contributions should recover the opportunity cost of the ex ante commitment to contribute resources to the CCA. For example, a CCA that commits an existing R&D workforce to undertake work for the benefit of the CCA should reflect the opportunity cost of alternative R&D endeavors (for example, the present value of the arm's-length markup over R&D costs[28]) in the preexisting contributions, while contributing current activities at cost.[29] For development CCAs, apart from the above administrative guidance, the OECD guidelines note that measurement of current contributions at cost will generally not provide a reliable basis for the application of the arm's-length principle.[30] Examples in the OECD guidelines also refer to potential differences in the nature of the current contributions between the participants (mix of day-to-day research and leadership activities) and note that such contributions (and relative differences therein) should be separately analyzed and valued.[31]

### Reconciling CSA and Development CCA

In our experience, CSAs are most common when one participant has developed intangible property that is later further developed jointly by participants in a CSA. Our discussion will focus on such CSAs and discuss conditions under which they could also be considered CCAs.

One question is whether a CSA participant would be considered a CCA participant that shares the contributions and risks involved in the joint development of the intangible. As discussed above, the OECD guidelines have more prescriptive requirements on functional capabilities and activities in a CCA participant than the U.S. CSA rules. Therefore, to be

[25] OECD guidelines, para. 8.35.

[26] OECD guidelines, chapters I-III, VI, and VII.

[27] OECD guidelines, para. 8.31.

[28] However, as also stated above, para. 8.26 of the OECD guidelines notes that compensation based on cost plus a modest markup will not reflect the anticipated value of, or arm's-length price for, the contribution of the research team in all cases.

[29] OECD guidelines, para. 8.27.

[30] OECD guidelines, para. 8.28.

[31] *See* OECD guidelines, para. 8.33.



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consistent with the CCA guidance, the CSA participants must control the specific risks they assume under the CSA and have the financial capacity to assume these risks in accordance with the OECD guidance on risk to earn returns from the jointly developed intangible. Without the exercise of control or the financial capacity to assume risk as described in Chapter I of the OECD guidelines, a party would not be entitled to the output of the CCA and therefore would not be considered a CCA participant. Nevertheless, even if a party is not considered a CCA participant, it should still receive arm's-length compensation for any contributions it makes outside the CCA.

Another potential difference between CSA rules and the OECD's CCA guidance discussed above is the compensation of current contributions.

Under a CCA, the value of current contributions is based on the value of the functions performed as noted above. However, the CCA guidance allows for current contributions under a CCA to be compensated at cost if the value of preexisting contributions includes the ex ante incremental value of the current contributions above cost. In other words, current contributions may be compensated at cost if balancing payments for preexisting contributions also cover compensation for the incremental value over costs of an R&D team for its current contributions under a CCA. In the OECD's CCA guidance, this is illustrated with a simplified example in which current contributions are valued at cost and compensation for the additional value of those current contributions is provided as part of the preexisting contribution.[32]

A CSA aligns the current contributions of the participants with their expected benefits through cost-sharing payments between the participants. Under a CSA, balancing payments for preexisting contributions are made through PCT payments. PCT payments between controlled participants reflect the arm's-length price for resources, capabilities, or rights of the participants that are reasonably anticipated to contribute to developing cost-shared intangibles. To the extent the PCT payment captures the ex ante value of participants' current contributions in excess of intangible development cost (such as through the value of an R&D workforce contributed to the CSA), it may be viewed as including an arm's-length balancing payment for current contributions under the CCA framework.

It should be further noted that in a CSA in which each controlled participant exercises control over the specific risks it assumes under the CSA and has the financial capacity to assume those risks, each participant should be entitled to the returns from the assumption of those risks in its territory, and there should be no ongoing balancing payment required between the parties for contributions related to risk control.

To summarize, we identified potentially differing requirements for a CSA and a CCA on two fundamental aspects:

- requirements to qualify as CSA/CCA participants and share in the output of the CSA/CCA; and
- the sharing of costs in a CSA versus the sharing of contributions in a CCA.

Regarding the latter — that is, the sharing of costs versus the sharing of contributions — the OECD guidelines require that contributions under the CCA be measured at value and not at cost. The OECD guidelines, however, allow measuring current contributions at cost if the opportunity cost of the ex ante commitment to contribute resources to the CCA is reflected in preexisting contributions. Thus, if the PCT payments in a CSA include an ex ante return for a CSA participant's expected intangible development activity (for example, through the present value of arm's-length compensation for current contributions above costs), the sharing of costs in the CSA in proportion to RAB shares would be compatible with the requirement to share contributions in a CCA in proportion to expected benefits.

The ex ante return for the CCA participants' current contributions should be determined by reference to one of the OECD's transfer pricing methods as described in Chapter II of the OECD guidelines. This could be, for example, the present value of an arm's-length markup over R&D costs under the transactional net margin method, the present value of an arm's-length fee determined

[32] OECD guidelines, para. 8.27 and Example 1A in annex to Chapter VIII ("Examples on Cost Contribution Arrangements").



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based on the comparable uncontrolled price method, application of the transactional profit-split method, or another appropriate method depending on the relative value of functions performed and the availability of market data.

On the issue of qualifying as a CCA participant, the CCA rules impose specific requirements on CCA participants, namely the actual performance of functions and control of risks assumed under the CCA and the financial capacity to assume those risks. In accordance with the definition of control, a CCA participant requires both capability and functional performance to exercise control over the risks assumed under the CCA. Therefore, as long as the CSA participants perform the control functions under the CSA and have the financial capacity to assume those risks as explained in Chapter I of the OECD guidelines, the CSA could also qualify as a CCA, and the CSA participant could share in the benefits of the CCA as a CCA participant.

## Nonqualified CSA

We discussed above two key differences between CSA and CCA requirements. We discussed circumstances under which these differences will not be substantive and a CSA could be considered to meet the definition of a CCA.

The converse of the question we discussed above is whether a CCA could qualify as a CSA. As discussed earlier, an arrangement qualifies as a CSA under reg. section 1.482-7 only if it meets the substantive and administrative requirements for a CSA. While the reg. section 1.482-7 requirements for CSAs are detailed and prescriptive, the OECD guidelines are broader and less prescriptive for CCAs. Therefore, CCAs that do not substantially comply with the CSA requirements under reg. section 1.482-7 will not qualify as CSAs. However, controlled parties may still enter a contractual arrangement to jointly develop intangible property that does not qualify as a CSA under reg. section 1.482-7, which we refer to as a non-qualified CSA (NQCSA). An NQCSA satisfies the arm's-length standard if it satisfies the rules under reg. section 1.482 other than reg. section 1.482-7. Since CCAs also need to meet the arm's-length standard, CCAs that are not also CSAs under reg. section 1.482-7 are generally likely to be considered NQCSAs.

For example, the divisional interests in a CSA must be contractually specified, non-overlapping, and based on territory, field of use, or other bases that meet specific criteria. While the divisional interests in a CCA must also be contractually determined, taxpayers have greater flexibility in defining them. A CCA that does not meet the divisional interest requirement of a CSA may nevertheless be considered a NQCSA.

## Conclusion

This article compares the U.S. CSA rules and OECD CCA guidance, pointing out similarities and differences. A key question we address is whether a CSA could be considered to meet the definition of a CCA and satisfy the arm's-length principle under the OECD guidelines. We identify requirements for a CSA and a CCA on two fundamental aspects for further exploration — requirements to qualify as CSA/CCA participants that share in the output of the CSA/CCA and the sharing of costs in a CSA versus the sharing of contributions in a CCA. Regarding the sharing of costs versus the sharing of contributions, the OECD guidelines allow for the sharing of costs if the preexisting contributions recover the opportunity cost of the ex ante commitment to contribute resources to the CCA. Thus, if the PCT payments in a CSA include an ex ante return for a CSA participant's expected intangible development activity (for example, through the present value of arm's-length compensation for current contributions above costs), the sharing of costs in the CSA in proportion to RAB shares would be compatible with the requirement to share contributions in a CCA in proportion to expected benefits. On the issue of qualifying as a CCA participant, the CCA rules impose specific requirements on CCA participants, namely the control of risks assumed under the CCA and the financial capacity to assume those risks.

Therefore, as long as the CSA participants perform the control functions under the CSA and have the financial capacity to assume those risks as explained in Chapter I of the OECD guidelines, the CSA could qualify as a CCA, and the CSA participant could share in the benefits of the CCA as a CCA participant.



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The converse of the question we discussed above is whether a CCA could qualify as a CSA. While the reg. section 1.482-7 requirements for CSAs are detailed and prescriptive, the OECD guidelines are broader and less prescriptive for CCAs. Therefore, CCAs that do not substantially comply with the CSA requirements under reg. section 1.482-7 will not qualify as CSAs. However, since CCAs need to meet the arm's-length principle, such CCAs would still be permissible contractual arrangements to jointly develop intangible property under reg. section 1.482 even if they do not qualify as CSAs under reg. section 1.482-7.[33] ■

[33]The foregoing information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser. This article represents the views of the author(s) only and does not necessarily represent the views or professional advice of KPMG LLP.

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