

Transfer Pricing Luxembourg, a whole new ball game



2015 marks a milestone for transfer pricing legislation in Luxembourg.

The new rules, effective since 1 January 2015, formalise the framework of transfer pricing legislation by aligning the arm's length principle to the OECD and requiring transfer pricing documentation for Luxembourg taxpayers.

Asset managers, banks, insurance as well as commercial and industrial companies have to document their intercompany transactions to prove adherence to the "arm's length principle." Insufficient documentation can result in a reversal of burden of proof towards the tax payer.

International context

The commentary to the bill of the new general transfer pricing legislation of Luxembourg included a reference to the revised Chapter V of OECD TP Guidelines, providing the content of the documentation. The OECD Base Erosion and Profit Shift (BEPS) initiative covers 15 action points, which include increased documentation requirements to demonstrate the proper application of the at arm's length principle. It becomes increasingly important for companies to understand the potential implications of this initiative to their transfer pricing arrangements.

Transfer pricing regulations have globally increased over the last years and tax authorities around the world have become more sophisticated on these matters.

New rules in Luxembourg

As from 1 January 2015, the arm's length principle applies to all transactions between related entities, of which at least one is located in Luxembourg. The taxpayer has to apply at arm's length prices and resulting profit in its tax return. Whenever transfer prices do not reflect the arm's length principle, the Luxembourg Tax Authorities can apply income corrections.

We recommend performing a transfer pricing (TP) review before financial year end to understand the implications, and perform an annual update to determine whether your TP documentation should be amended to reflect any changes in your operational business model.

Transfer pricing impact on industries

You'll have to analyse and document their transfer pricing arrangement results in an allocation of the system wide profit in line with the arm's length standard. Here are examples of transactions you need to cover:

- Intercompany funding;
- Guarantees;
- Profit allocation to permanent establishments;
- Tangible goods transfers;
- Support and management services (including IT);
- Branding and IP licensing;
- Business restructuring.

TP rules apply to all fee arrangements and other transactions with foreign or Luxembourg related parties.

Documentation should include for example:

- Business overview;
- Functional analysis;
- Description of the intercompany transactions;
- Selection of the appropriate transfer pricing method; and
- Economic analysis.

Companies should therefore review their intercompany arrangements and have a solid foundation to defend their prices.

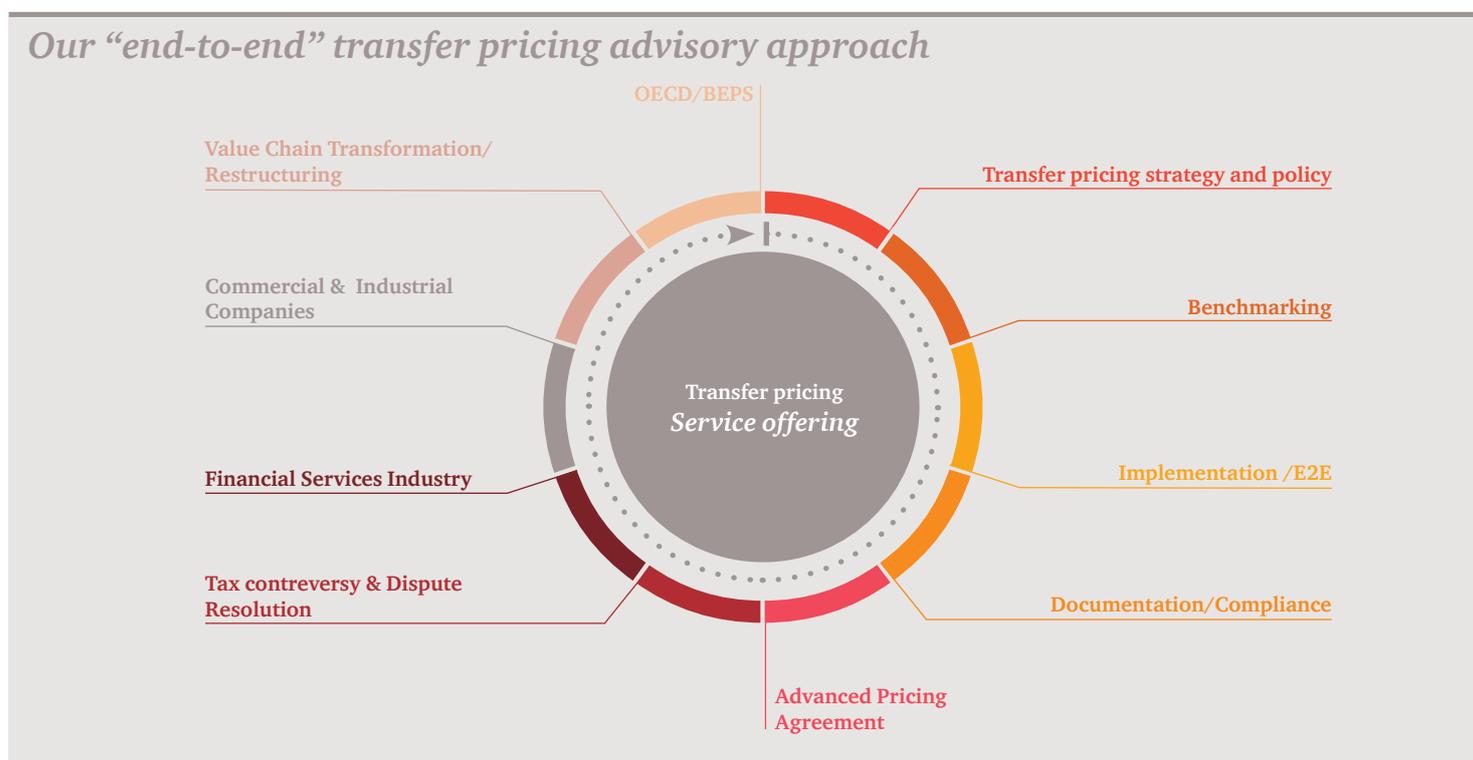
The proposed OECD guidelines require multinationals whose annual consolidated revenue exceeds EUR 750 million to submit a Country-by-Country (CbCr) report. Many countries have already implemented CbCr in their regulations. Luxembourg may follow.

Your challenges

- Stay tuned with the latest TP developments in Luxembourg, as well as on an OECD level;
- Understand how the new TP rules impact your business;
- Define and implement a sustainable TP policy;
- Understand the relative value contribution of the respective functions, assets and risks;
- Document continuous compliance with the at arm's length principle in line with the OECD:
 - Local file;
 - Master File;
 - Country-by-Country report.
- Transfer pricing risk management through unilateral and bilateral Advance Pricing Agreements (APA) or Mutual Agreement Procedures after tax audit corrections.

Our solutions

We can assist your company throughout the entire process of structuring your transfer pricing policy and also provide assistance during tax audits.



- **Transfer pricing strategy and policy**

We focus on industries to help you understand implications of any existing global transfer pricing policy or support to develop a sound transfer pricing policy that is coherent with your business model/operations.

- **Documentation and compliance**

We help you deal with requirements of multiple jurisdictions in an efficient and coordinated manner, using our Global Coordinated Documentation system to deliver OECD compliant documentation reports.

- **Transfer pricing process and End to End (E2E) implementation**

To ensure compliance with the transfer pricing, policy companies need to monitor the proper implementation and if operational developments require so, adapt the transfer pricing policy. This requires that the processes and responsibilities are clearly defined and agreed upon with the relevant corporate functions.

- **Tax Controversy and Dispute resolution**

PwC Luxembourg has a dedicated team to support you in case of disputes, tax audits or information request relating to transfer pricing. Even if you do not face an immediate dispute, we can assist by conducting a risk assessment to quantify and rate the risks of such challenges that can arise in the near future.

- **Financial Services Industry transfer pricing**

We provide you sector-specific, locally grounded advice and solutions, including APAs, adapted to the markets you are in.

- **Asset management transfer pricing**

We help you understand the latest legislative developments, such as AIFMD, MIFID, RDR, BEPS or local case law decisions on transfer pricing policies. We are specialised in developing and defending transfer pricing policies for asset managers, especially around the remuneration of management companies, distributors and investment advisors.

- **Banking, capital markets, insurance**

We can help - with sector-specific, locally grounded advice and solutions. We assist you in developing a consistent TP policy for all your intercompany transactions, including financial transactions (e.g. loans, cash pooling arrangement and guarantees).

- **Value Chain Transformation**

Business restructuring can be a complex process. For each business transformation, every facet of the organisation is involved, and the implications - operational, tax and legal - are wide in scope. Implementing an effective value chain management process that brings all these facets together is key.

Why PwC Luxembourg?

With three fully dedicated transfer pricing partners and over 30 specialists, PwC has the largest transfer pricing team in Luxembourg. Having gained international transfer pricing experience in over ten countries and in different industries, we can help advance your goals within the ever-shifting transfer pricing landscape.

We deal with transfer pricing aspects of all important Luxembourg industries and areas including asset management, banking, insurance, financial transactions and value chain transformation.

PwC was named “Luxembourg Transfer Pricing Firm of the Year 2015” by International Tax Review.

Senior tax buyers name PwC as their first choice provider for all transfer prices services globally.

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