SPECIAL REPORT

Luxembourg's New Transfer Pricing Rules for Finance Companies

by Oliver R. Hoor


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In this article, the author analyzes recent Luxembourg guidance on the tax treatment of companies carrying out intragroup financing activities.

On December 27, 2016, the Luxembourg tax authorities released a circular on the tax treatment of companies carrying out intragroup financing activities.[1] The circular applies from January 1, 2017, and replaces the previous transfer pricing regime applicable to finance companies.[2] This article analyzes the guidance in the circular and the tax treatment of financing activities in Luxembourg.

I. Introduction

Luxembourg is a prime holding location and a financial center that has traditionally been a preferred location for the structuring of intragroup financing activities. The main components of Luxembourg's attractiveness are its stable and flexible tax, legal, and regulatory environments; a qualified and multilingual workforce; its extensive tax treaty network; access to Luxembourg's established stock exchange; and the absence of Luxembourg withholding tax on interest payments.[3]

Finance companies must realize arm's-length remuneration on their intragroup financing transactions. That remuneration should be substantiated in a transfer pricing study consistent with the OECD transfer pricing guidelines.

The new circular follows an international trend for more comprehensive transfer pricing documentation, and provides for several changes from the previous regime. One of the key changes is that the equity at risk relative to the financing activities must be determined case by case. In the past, the so-called real risk requirement was deemed to be met when the equity (at risk) in relation to the financing activities amounted to at least 1 percent of the outstanding loan or €2 million.[4]

This article analyzes the scope of the circular (Section II), provides guidance on the application of the arm's-length principle in financing transactions (Section III), considers the importance of transfer pricing documentation (Section IV), and sets out the conditions for

[1] Circular L.I.R. No. 56/1-56-bis/1.

[2] Circular L.I.R. No. 164/2 (Jan. 28, 2011).

[3] Arm's-length interest payments made by Luxembourg companies are subject to withholding tax only if the recipient is a Luxembourg resident individual.

[4] For an analysis of the previous transfer pricing regime, see Oliver R. Hoor, "Luxembourg's New Transfer Pricing Circular on Intra-Group Financing Activities," *Tax Notes Int'l*, May 2, 2011, p. 413.

obtaining advance certainty on the arm's-length character of the remuneration realized by a finance company (Section V).

II. Covered Intragroup Financing Activities

It is common for international investors and multinational enterprises to use Luxembourg as a hub for structuring financing activities. The spectrum of those activities is diverse and could involve, for example, implementing a central treasury function in Luxembourg (for moving access cash around a multinational group),[5] issuing bonds on Luxembourg's stock exchange and the on-lending of funds to group companies, or financing alternative investments such as real estate assets by Luxembourg funds.

There are several good commercial reasons why intragroup debt financing can be preferable to a contribution of equity, which requires a direct shareholding relationship. Debt is easier to create and provides more flexibility in terms of cash repatriation — that is, repayment of the principal amount and payment of interest — than equity. Dividend distributions are subject to amount and timing limitations, and the repayment of capital is not a straightforward exercise and could trigger additional tax costs. Equity tends to be more formal and bureaucratic to issue and repay, resulting in higher administrative costs, and its funding is subject to shareholder approval. Another benefit of debt financing is that the cost of capital of debt is generally lower than that of equity.

In many circumstances, the split between equity and debt funding will be dictated by external factors. While debt generally ranks the same among creditors, equity always ranks below debt. Hence, the choice of equity or debt funding has a significant effect on the ranking between intragroup funding and external debt funding. In some countries, the decision regarding the mix of debt and equity will be dictated by foreign exchange controls or other local regulatory constraints, and in the absence of economic and political stability, there may be a strong preference for debt funding (to ease future cash repatriation). Finally, debt funding may be preferred when minority shareholders co-invest in a company to avoid changing the dynamics of an investment.

A. Scope of the Circular

The circular covers entities engaged in intragroup financing transactions. The term ''intragroup financing transaction'' is to be interpreted broadly, and includes any activity involving the granting of loans (or advancing of funds) to associated enterprises irrespective of whether those loans are financed by internal or external debt.

The new transfer pricing regime is broader than the old one: While the former circular referred to cross-border financing transactions between associated enterprises, the new circular refers to any financing transaction between related enterprises. Accordingly, mere domestic financing transactions between Luxembourg companies must comply with the requirements in the circular.

The new circular should, however, not apply when a Luxembourg company funded by associated enterprises (in whatever form) grants loans to third parties or invests the money otherwise — as long as the recipient is not an associated enterprise.[6] Likewise, when loans are financed by equity, the circular does not apply.

The term ''associated enterprises'' is defined in accordance with article 9(1) of the OECD convention, so enterprises are considered associated enterprises if:

- one of them participates directly or indirectly in the management, control, or capital of the other (for example, a parent company or a subsidiary of the finance company); or
- the same persons directly or indirectly participate in the management, control, or capital of the two enterprises (for example, sister companies).[7]

The following examples illustrate the scope of the circular.

1. Example 1: Real Estate Fund

A Luxembourg reserved alternative investment fund (RAIF) invests via a Luxembourg holding company (LuxCo) and Luxembourg or local property companies (Lux or Local PropCos) into pan-European real estate assets. To finance the acquisitions, RAIF finances LuxCo with a shareholder loan that uses the funds to grant loans to the property companies. The debt financing allows the efficient repatriation of cash to the RAIF over the lifetime of the fund. (See Figure 1.)

2. Example 2: Issuance of Bonds and On-Lending

A multinational group requires additional funding for the financing of its operations. Here, LuxCo issues bonds on Luxembourg's stock exchange and uses the funds to finance the operating subsidiaries (OpCos) in Luxembourg and abroad. (See Figure 2.)

3. Example 3: Cash Pooling

LuxCo, which performs cash pooling activities, receives loans from group companies with excess cash and grants loans to group companies, which require additional funding. Overall, the implementation of a

[5]If the treasury function is limited to short-term financing, the circular in principle should not apply. However, there would still be a need to determine arm's-length remuneration for the intragroup transactions performed by a Luxembourg treasury company.

[6]For example, when the funds received are invested in the money market.

[7]*See* Hoor, *The OECD Model Tax Convention: A Comprehensive Technical Analysis* 138 (2010).

Figure 1. Example 1: Real Estate Fund

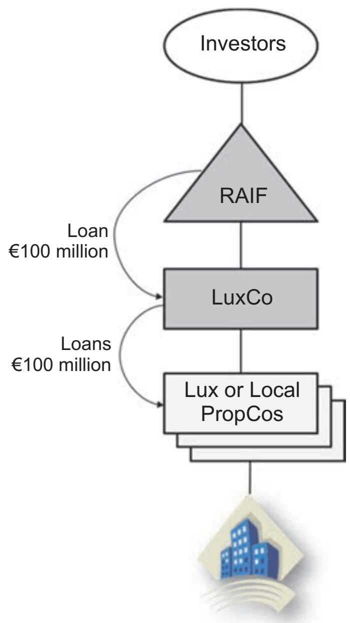
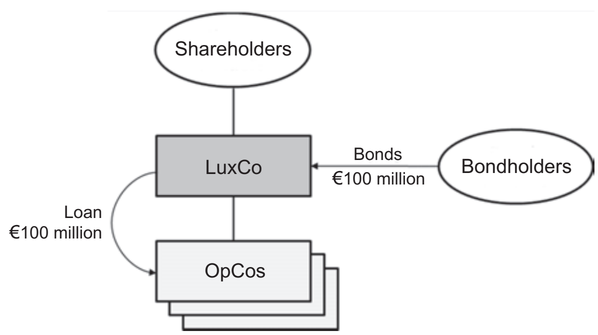


Figure 2. Example 2: Issuance of Bonds and On-Lending



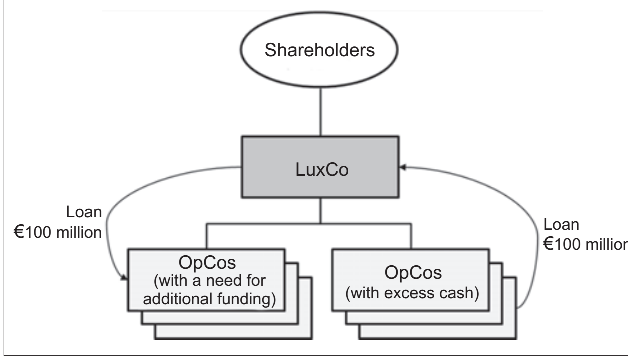
central treasury function at the level of LuxCo should optimize the use of cash in the group and reduce external funding costs. (See Figure 3.)

The circular does not provide any de minimis rule or safe haven (for example, a threshold for financing volume) that would exclude small finance companies from its scope. Accordingly, its guidance must be considered by every finance company, irrespective of the scale of its financing activities.

B. Substance Requirements

The circular requires companies engaged in intragroup financing activities to have a real presence in Luxembourg. A company will be considered to have sufficient substance in Luxembourg if:

Figure 3. Example 3: Cash Pooling



- A majority of the members of the board of directors with decision-making authority are either Luxembourg residents or nonresidents with a professional activity[8] in Luxembourg.[9] In the latter case, at least 50 percent of a nonresident's income from professional activities must be taxable in Luxembourg. If a legal entity has a seat on the board, it must have its statutory seat and central administration in Luxembourg to be considered a Luxembourg resident.

- Board members must have sufficient professional knowledge to exercise their functions.

- The board must have at least the capacity to act on behalf of the company and to ensure the proper execution of all transactions. Hence, Luxembourg-resident board members may not act as mere nominee directors and instead must have specific decision-making powers that go beyond day-to-day or administrative management of the company's activities. The full involvement of nonlocal board members is permitted, however.

- The company should have qualified personnel, who may be the company's own employees or

[8]The income deriving from the professional activity must fall under the scope of the income categories in article 10, nos. 1-4, of the Luxembourg Income Tax Law (LITL). Nonresidents may realize commercial income (article 14 LITL), income from agriculture or forestry (article 61 LITL), income from independent services (article 91 LITL), or income from dependent services (article 95 LITL).

[9]Considering the wording of the circular, it appears that the number of Luxembourg resident directors (or directors realizing more than 50 percent of their income in Luxembourg) must exceed that of nonresident directors by at least one (a majority). Thus, where one nonresident director should be appointed, a company should in principle have at least two Luxembourg resident directors being appointed to the board. The previous circular also required a majority of Luxembourg resident directors. However, Luxembourg's tax authorities have accepted at least 50 percent of the directors or managers being Luxembourg residents. That administrative practice is expected to continue.

outside staff (or directors taking over those functions), capable of executing and registering the transactions. Thus, the day-to-day management of the company may still be outsourced to well-established Luxembourg service providers, as long as the local directors have sufficient professional expertise and the decision-making powers of the local directors are not limited.[10] The company must also be capable of supervising the work performed by service providers.

- The key decisions regarding the management of the company must occur in Luxembourg, which suggests that board meetings involving important management decisions should be held in Luxembourg.[11] While it is possible to prepare for some board decisions outside Luxembourg, the board meetings should not merely be formalities to confirm decisions already made in other jurisdictions.[12] Instead, the board members must be sufficiently involved in the transactions and the management thereof.[13]
- Entities required by Company Law[14] to hold shareholder meetings must hold at least one annual meeting at the place indicated in the articles of incorporation.
- The entity must not be considered tax resident in another state.

Although the circular outlines those substance requirements, taxpayers still have some leeway in how to organize their affairs in Luxembourg. As a general principle, the substance of a finance company must be appropriate for the business activities performed and should be determined case by case.

While some taxpayers will prefer organizing substance through their own facilities and employees, others will want an outsourcing model that relies on qualified Luxembourg service providers supervised by the company's directors. Generally, the more significant the operations of a Luxembourg finance company are, the more likely it is that the substance will be organized through the company's own resources performing all relevant functions.[15]

The circular's substance requirements could be viewed as the qualified minimum substance that ensures Luxembourg tax residency in accordance with international standards. In practice, however, substance requirements are often determined by requirements defined under foreign tax laws (antiabuse provisions[16]) or the interpretations of foreign tax authorities. Therefore, it is imperative to investigate the substance requirements under the domestic tax laws of any jurisdictions affected by the financing transactions. That should ensure overall efficiency and avoid unexpected tax leakage or double taxation.

C. Equity-at-Risk Requirement

The circular stresses that a finance company must bear the risks in relation to its intragroup financing transactions. A finance company's equity at risk must be determined case by case, a key change from the former transfer pricing regime. Before, finance companies had to comply with the so-called real risk requirement, which was deemed satisfied when the company's equity at risk amounted to at least 1 percent of the outstanding loan or €2 million.[17] Under the new regime, the risks assumed by a finance company are generally not limited.

Regarding the determination of the equity at risk, finance companies with a profile comparable to regulated financial institutions[18] must respect the solvency criteria provided by relevant regulations (Basel III). Finance companies with a profile that differs significantly from that of a regulated financial institution should use other methods to determine the amount of equity at risk (for example, the expected loss method).

In practice, most Luxembourg finance companies should have a functional and risk profile that differs

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[10] The outsourced functions should not, however, have a significant effect on the control of the risk relative to the financing activities. Further, arrangements that require the involvement of several or specific directors for important decisions to be made would not compromise the capacity of Luxembourg directors to make decisions.

[11] That requirement is particularly important for evidencing that the company is effectively managed in Luxembourg. The members of the board of directors should physically meet in Luxembourg. In exceptional cases, it might be acceptable for directors to participate via a telephone or a video conference. If the company's substance in Luxembourg is unclear, the company should collect relevant documentation, such as directors' airline and hotel receipts.

[12] The local board members should be sufficiently involved in the process, but if the decisions prepared outside Luxembourg are merely formalized in Luxembourg, the requirement will likely not be fulfilled.

[13] The consent of at least one Luxembourg resident director should always be required.

[14] Law of Aug. 10, 1915, on commercial companies, as amended.

[15] For finance companies with large operations, the hiring of internal staff should be beneficial from a cost perspective. For finance companies with smaller operations, outsourcing functions should be more cost-efficient and create fewer labor law concerns.

[16] Antiabuse provisions might require stronger substance when a foreign finance company claims benefits under an applicable tax treaty or the domestic tax law of the jurisdiction where the borrower is resident.

[17] In practice, finance companies with a financing volume above €200 million complied with the real risk requirement when their equity at risk in relation to the financing activities amounted to €2 million.

[18] Entities governed by EU regulation 575/2013 on prudential requirements for credit institutions and investment firms.

significantly from that of regulated financial institutions. Hence, the equity at risk will not be determined in accordance with the solvency criteria relevant for banks. Rather, the equity at risk should be determined based on other economic methods appropriate to each case. The equity at risk could, for example, be calculated as the expected loss of the financing activity, considering the credit rating of the borrower.

The circular requires that finance companies be financed with an amount of equity sufficient to cover the expected loss, should it materialize. It does not define the term ''equity,'' which should at least include share capital, share premium, contributions to equity account 115,[19] reserves, and retained earnings. The equity can finance part of the loan portfolio or be invested in other assets. Considering that the equity should be available to absorb the risks assumed whenever they materialize, the equity should in principle be available at all times, and not only on implementation of the financing activity.

Finance companies must have control over the risk in relation to their financing activities. Thus, they should have the power to enter into risk-bearing financing transactions and make decisions to handle related risks. Further, given that the risks are generally not limited contractually, it is crucial for the directors of a finance company to monitor and manage the risks in relation to the financing transactions. An appropriate risk management policy should be developed that defines the process of risk management as well as the roles and responsibilities of the people involved.

Overall, eliminating the previous real risk requirement is positive. It takes away the only arbitrary element of the previous regime applicable to finance companies and improves the beneficial ownership position of Luxembourg finance companies that will have a more diverse risk profile under the new circular. That finance companies must perform risk management results in a more comprehensive functional profile that reinforces the strength of Luxembourg financing structures. Further, it was sometimes difficult to contractually limit the risk of the financing transactions and, thus, to comply with the real risk requirement (for example, when bonds were issued on the market or loans were obtained from banks to finance a group's operations — that is, third parties generally do not agree on a limited recourse clause and guarantees from other group companies might be difficult to put in place).

III. Applying the Arm's-Length Principle

Luxembourg finance companies should realize an arm's-length remuneration on their intragroup financing transactions, which should be determined based on the facts and circumstances of each case and included in the interest rate charged to the debtor.[20] The circular refers to the arm's-length principle as provided in article 9 of the OECD model tax convention and article 56 of the Luxembourg Income Tax Law (LITL).

The gross remuneration (minus deductible costs) is subject to Luxembourg corporate income tax and municipal business tax at an aggregate rate of 27.08 percent, which will be reduced to 26.01 percent in 2018 (in the municipality of Luxembourg).

A. Luxembourg Transfer Pricing Legislation

Transfer pricing and related documentation has become increasingly important in Luxembourg. On January 28, 2011, the Luxembourg tax authorities released the first circular on the tax treatment of Luxembourg companies performing financing activities.[21] On April 8, 2011, the Luxembourg tax authorities released a second circular, under which earlier tax rulings regarding the margins to be realized on financing activities would no longer be binding from 2012.[22]

On January 1, 2015, the Luxembourg legislature introduced transfer pricing legislation that formalized the application of the arm's-length principle and the requirement for specific transfer pricing documentation.[23] LITL article 56 provides a legal basis for transfer pricing adjustments if associated enterprises deviate from the arm's-length standard. While the arm's-length principle was already firmly ingrained in Luxembourg tax law, LITL article 56, as amended as of January 1, 2015, further elevated the importance of transfer pricing in Luxembourg.

On January 1, 2017, new LITL article 56-bis came into force. It complements article 56 and provides more guidance on the application of the arm's-length principle under Luxembourg tax law. It also formalizes the authoritative nature of the OECD transfer pricing guidelines and replicates some of the guiding principles in Chapter I of the guidelines.

Indeed, as a member of the OECD, Luxembourg adheres to the organization's transfer pricing guidelines, which reflect the consensus of OECD member countries on the application of the arm's-length principle as provided in article 9(1) of the OECD model tax convention. Several chapters of the OECD transfer

[19]Account 115 of the standard Luxembourg accounting plan is titled ''Equity Contributions Without the Issuance of Shares'' and is a flexible equity position comparable to the share premium.

[20]While the interest rate on the borrowings will sometimes be fixed, and the interest charged to the debtor will be increased by the arm's-length finance margin, in some cases it will be a given. Here, the interest rate charged to the Luxembourg finance company will correspond to the interest rate charged to the debtor minus the arm's-length margin.

[21]Circular L.I.R. No. 164/2.

[22]Circular L.I.R. No. 164/2-*bis*.

[23]Section 171(3) of the General Tax Code (Abgabenordnung).

pricing guidelines were substantially amended as part of the OECD base erosion and profit-shifting project.

Further, the concepts of hidden dividend distributions and hidden capital contributions are cornerstones of Luxembourg's transfer pricing rules and play a vital role in ensuring that associated companies adhere to the arm's-length principle.[24] Broadly speaking, the concepts above provide correcting measures when advantages are shifted in transactions between a company and its shareholders.

B. Comparability Analysis

The application of the arm's-length principle is based on a comparison of the conditions in a controlled transaction with the conditions that would have been made had the parties been independent and undertaking a comparable transaction under comparable circumstances. Therefore, the comparability analysis is at the heart of the application of the arm's-length principle.[25]

The comparability analysis is characterized by two key aspects:

- the identification of the commercial or financial relations between the associated enterprises and the conditions and economically relevant circumstances attached to those relations with a view toward accurately delineating the controlled transaction; and
- a comparison of the conditions and economically relevant circumstances of the controlled transaction (as accurately delineated) with the conditions and economically relevant circumstances of comparable transactions between independent enterprises.[26]

The circular provides guidance on both aspects of the comparability analysis.

1. Identifying Commercial and Financial Relations

The accurate delineation of the transactions between the associated enterprises requires an analysis of the transactions' economically relevant characteristics. The circular states that the transfer pricing analysis should include an overview of the structure and organization of the group and consider the role of each of the entities participating in the controlled transactions.

The circular further states that the economically relevant characteristics (or comparability factors) that must be identified are closely linked to the existing commercial relationships between the related entities and their economic strategies.[27] The extent to which the comparability factors are economically significant for a particular transaction depends on the extent to which they would be taken into consideration by independent entities assessing the terms of the same transaction.

Under the OECD guidelines, the comparability factors are used in two separate but related analytical phases. The first phase is the process of accurately delineating the controlled transaction, which involves establishing the characteristics of the transaction, including its terms, the functions performed, the assets used, and the risks assumed by the associated enterprises. The second phase is the process of making comparisons between the controlled transactions and uncontrolled transactions to determine an arm's-length price for the controlled transaction. When there are differences in the economically relevant characteristics between the controlled and uncontrolled transactions, adjustments might be necessary to achieve comparability.

The circular acknowledges that there are various commercial reasons for a finance company to grant loans or advances to related group companies, such as the financing of fixed and current assets, long-term strategic financing, and other types of financing. Indeed, there are numerous legitimate business reasons for providing funding within a group of companies.

2. Contractual Transaction Terms

The OECD guidelines define a transaction as the consequence or expression of the commercial or financial relations between the parties. For financing activities, loan agreements entered into by a finance company should generally be documented. When a transaction has been formalized by the related parties through written agreements, those agreements provide the starting point for delineating the controlled transaction. The terms of a transaction may also be found in other communications between the parties.

The circular states that if the actual conduct of the parties is inconsistent with the written contracts, the actual transaction must be taken into account when delineating the controlled transaction. That wording is consistent with relevant guidance in the OECD transfer pricing guidelines. However, financing activities are largely governed by contracts that govern the terms and conditions. Hence, there is less room for deviation from the contractual situation. Therefore, when it comes to financing transactions, the transfer pricing analysis should generally be based on the contractual

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[24]*See* Hoor, *Hidden Dividend Distributions and Hidden Capital Contributions* (2011).

[25]*See* Chapter I, No. 1.6 of the OECD transfer pricing guidelines.

[26]*See* Chapter I, No. 1.33 of the OECD transfer pricing guidelines.

[27]In financing activities, the most important comparability factors should be the contractual terms of the transactions; the functions performed by the parties to the transaction, taking into account assets used and risks assumed; and the economic circumstances of the parties and of the market in which they operate.

terms of the controlled transaction, and deviation from that principle should be limited to exceptional cases.

3. Functional Analysis

In transactions between two independent enterprises, compensation usually will reflect the functions that each enterprise performs (taking into account assets used and risks assumed). Therefore, in delineating the controlled transactions and determining comparability between controlled and uncontrolled transactions or entities, a functional analysis is necessary.[28]

The functional analysis seeks to identify the economically significant activities and responsibilities undertaken, assets used or contributed, and risks assumed by the parties to the transactions. The analysis focuses on what the parties actually do and the capabilities they provide, including decision-making regarding business strategy and risks.

According to the circular, the functions performed by a finance company in granting loans are in essence comparable to the functions performed by independent financial institutions that are subject to the supervision of Luxembourg Financial Sector Supervisory Commission (Commission de Surveillance du Secteur Financier). However, the circular notes that in financing transactions performed among related entities, the functions performed by a finance company may differ significantly from the functional profile of an independent financial institution that is subject to the commission's supervision.

a. Analysis of the Functions Performed. The functions performed by a finance company may be divided into those relating to the origination of the transaction and those relating to the management of the transaction.[29]

1. Origination of the transaction. The creation of a financial asset — that is, the loan — involves the following functions:

- *Sales/Marketing.* This function involves marketing financial services, finding potential clients, and creating client relationships. In intragroup financing activities, loans are granted exclusively to associated enterprises, making this function irrelevant for finance companies.
- *Sales/Trading.* This function involves the negotiation of contractual terms with the borrower and the lender, as well as the decision-making regarding whether funds should be transferred and on what terms. This function also involves the evaluation of transactional risks. The involvement of Luxembourg finance companies in this function may vary from one case to another.
- *Trading/Treasury.* This function involves raising funds and capital (on the most beneficial terms), taking deposits, and making the funds available. The purpose of a finance company is to centralize and coordinate the financing requirements of other group companies. Given that incoming financing is directly on-lent to other group companies, a finance company is not acting as an independent investor investing in capital markets. Hence, the involvement of a finance company in this function might be limited.
- *Sales/Support.* This function involves reviewing draft agreements, completing contractual formalities, resolving outstanding legal issues, checking any collateral offered before the signing of the loan agreements, recording the assets in a finance company's accounts, and disbursing the proceeds of financing contracts. Luxembourg finance companies should generally be fully involved in this function.

2. Managing the transaction. Loan management involves the following functions:

- *Finance contract support.* This function involves administering loan agreements, collecting and paying interest (and potentially other amounts due), and monitoring payments. A finance company should be fully involved in this functions.
- *Risk management.* This function involves monitoring and managing risks related to the financing transactions. Monitoring risk involves reviewing the creditworthiness of the borrower, monitoring interest rates and position risk, and analyzing the profitability of the loans and the return on the equity invested. Risk management includes decisions regarding whether and to what extent a finance company should continue bearing transactional risks or try to mitigate them.

  According to the OECD transfer pricing guidelines, risk management involves the ability to:

  — make decisions to take on, lay off, or decline a risk-bearing opportunity, together with the actual performance of that decision-making function;

  — make decisions regarding whether and how to respond to the risks associated with an opportunity, together with the actual performance of that decision-making function; and

  — mitigate risk — that is, the ability to take measures that affect risk outcomes — together with the actual performance of risk mitigation.

  In the past, the risk management function was less important because a finance company was generally bearing a limited credit risk relative to the financing activities. However, under the new regime, finance companies bear all the

[28]*See* para. 1.51 of the OECD transfer pricing guidelines.

[29]*See* OECD, ''2010 Report on the Attribution of Profits to Permanent Establishments'' (approved July 22, 2010), at Part II, Section B-1, i)-ii).

risks relative to their financing activities, so it is crucial that they monitor and manage that risk.

Finance companies should develop risk management policies that define the process of risk management and the roles and responsibilities of the people involved. The transfer pricing documentation should include supporting information that demonstrates the capacity of the people in charge of the risk management function.

From a practical perspective, regular review of the risks in relation to the financing activities may be performed by employees or directors of the finance companies, or it can be outsourced to other group companies or Luxembourg service providers. If outsourced, the directors of the Luxembourg finance company should supervise the day-to-day risk management. The directors must assess and respond to the risk, a process that should be properly documented in the board minutes.

The frequency and extent of those risk reviews should be appropriate for the specific financing activities performed by a finance company. Factors to be considered when developing a risk management policy include the scale of the financing activity, the number of loans managed, and the risk profile of the loans.

- *Treasury.* This function involves funding deficits or investing surpluses in the market, including the management of interest rate risk and liquidity risk exposures, and matching the duration of borrowings with lendings. The involvement of a Luxembourg finance company in this function may be limited at varying degrees.
- *Sales/Trading.* This function involves refinancing the loan, deciding on the sale or securitization of the loan agreements, negotiating the contractual terms of the sale, completing sales formalities, and deciding whether and on what terms to renew or extend the loan agreements. A finance company should generally be fully involved in this function.

b. Risk Analysis. The circular strongly emphasizes the analysis of risks, highlighting that a finance company would be expected to perform that kind of analysis before granting a loan. A risk analysis includes an examination of the annual accounts of the borrower to assess the financial risks of the contemplated transactions and to establish the borrower's credit rating.

For financing activities, the following risks can be distinguished:

- *Credit risk.* This is the risk that a borrower will be unable to pay the interest or to repay the principal amount of the loan in accordance with its terms and conditions.
- *Market risk.* This is the risk that market interest rates will deviate from the rates used when entering into the financing agreement. The value of the loan could decrease in value because of a change of the market risk factors such as interest rates or a maturity mismatch between loans and deposits.
- *Foreign exchange risk.* This is the risk that when the loan is made in a currency other than the domestic currency of the finance company (or the currency of the borrower), the exchange rate will deviate from the rate used when entering into the loan agreement.
- *Operational risk.* This is the risk of loss resulting from inadequate or failed internal processes, people, and systems, or from external events.

According to the OECD transfer pricing guidelines, the functional analysis in relation to risk provides information about how the associated enterprises operate in relation to the assumption and management of economically significant risks. It particularly shows which enterprise performs control and risk mitigation functions, which enterprise encounters upside or downside consequences of risk outcomes, and which enterprise has the financial capacity to assume the risk.

When performing the risk analysis, it is important to verify the existence of guarantees, the purpose and duration of the loan, and any other significant factors. In the open market, the assumption of increased risk would be compensated by an increase in the expected return, although the actual return may depend on the degree to which the risks materialize.[30]

According to both the circular and the OECD transfer pricing guidelines, the capacity to manage and bear the risk is an economically significant characteristic of the financing activities that must be examined as part of the functional analysis. A finance company is considered to assume the risk if it has the financial capacity to manage it and to bear its financial consequences if the risk occurs. The financial capacity to assume risk can be defined as access to funding to take on or lay off the risk, to pay for the risk mitigation functions, and to bear the consequences of the risk if it materializes.

A group finance company must have control over the risks linked to its financing transactions. Control over risk requires both capability and functional performance, and involves the first two elements of risk management.

Control over risk does not necessarily mean that the risk itself can be influenced or that the uncertainty can be nullified. Instead, control over risk should be understood as the ability and authority to decide to take on the risk and to decide whether and how to respond to

[30] *See* No. 17 of the circular and para. 1.56 of the OECD transfer pricing guidelines.

the risk. Control over a specific risk in a transaction focuses on the decision-making of the parties to the transaction.

Both the circular and the OECD transfer pricing guidelines acknowledge that it is not necessary for a party to perform the day-to-day mitigation to have control of the risks and that the party can outsource the functions as long as they are supervised by the directors or employees of the finance company.

The ability to perform decision-making functions and the actual performance of those functions require an understanding of the risk and an assessment of the foreseeable downside and upside risk outcomes of a decision. Therefore, the decision-makers of the finance company should have competence and experience in the area of financial transactions and the risks in relation thereto, have an understanding of the impact of their decision on the business, and have access to relevant information.

c. Analysis of the assets used. The assets used by a finance company in its financing activities include the assets under management, its office premises, and relevant equipment.

4. Transactions Without Commercial Rationale

LITL article 56-*bis* and the circular provide guidance on when an actual transaction may be disregarded for tax purposes. According to the circular, a transaction may be disregarded when financing transactions cannot be observed in the open market or the actual transaction lacks commercial rationality in a way that independent parties would not have agreed to under comparable economic circumstances.

Even so, the OECD transfer pricing guidelines state that a tax administrator should not disregard the actual transaction or substitute other transactions for it unless exceptional circumstances exist. Moreover, the OECD has acknowledged that nonrecognition can be contentious and a source of double taxation. Therefore, its transfer pricing guidelines emphasize that tax administrations should make every effort to determine the actual nature of the transaction and apply arm's-length pricing to the accurately delineated transaction. They also should avoid nonrecognition simply because determining an arm's-length price is difficult.

The OECD has also accepted that associated enterprises might be able to enter into a much greater variety of arrangements than independent enterprises and could conclude transactions that are not or are only rarely encountered between independent parties, and that those transactions may be concluded for sound business reasons. If the transaction's economically significant characteristics are inconsistent with the contract, the transaction is delineated in accordance with its characteristics as reflected by the conduct of the parties.[31]

[31] *See* para. 1.120 of the OECD transfer pricing guidelines.

The key question in the analysis is whether the actual transactions possess the commercial rationality of arrangements that would be agreed to between unrelated parties under comparable economic circumstances, not whether the same transaction can be observed between independent parties. The OECD transfer pricing guidelines clearly state that the nonrecognition of a transaction that possesses the commercial rationality of an arm's-length arrangement is not an appropriate application of the arm's-length principle.

However, in financing activities, the very fact that funding is provided to a group company evidences the need for funding that at the same time confirms the commercial rationality of the financing transaction. Further, financing activities are largely characterized by the terms and conditions of the loan agreements and potential guarantees granted between the parties with little room for deviation from the written contracts. Therefore, the nonrecognition of financing transactions because of a lack of commercial rationality should be limited to exceptional circumstances.

C. A Remuneration Model for Financing Activities

Luxembourg finance companies should be financed with an amount of equity sufficient to cover the risk relative to the financing activity, should it materialize. The amount of equity at risk should further be remunerated with an arm's-length return on equity.

The economic analysis first focuses on the determination of the equity at risk and then on the benchmarking of the arm's-length return on equity. The arm's-length (net) remuneration will then be increased by taxes and expenses incurred in the financing transactions to arrive at the gross remuneration to be earned by the finance company.

1. Determining the Equity at Risk

The method for determining the equity at risk depends on the functional and risk profiles of the Luxembourg finance company. The circular distinguishes between a finance company with a profile comparable to that of a regulated financial institution, and that with a profile that differs significantly from that of a regulated financial institution.

In practice, most Luxembourg finance companies should have functional and risk profiles that differ significantly from that of a regulated financial institution. Hence, the equity at risk will not be determined in accordance with the solvency criteria for banks. Instead, it should be determined using economic methods that are appropriate for that case. In general, the equity should at least cover the loss arising from a potential default of the borrower. While it is impossible to determine in advance the loss a finance company might suffer in a given year, it is possible to forecast the average level of credit loss that can reasonably be expected.

The expected loss (EL) on the financing activity is assumed to be equal to the probability that the borrower defaults in a given time frame (PD), multiplied by the loss given default rate — that is, the percentage of exposure that will not be recovered by the finance company in case of default (LGD) — and multiplied by the outstanding exposure at default (EAD).

Hence, the expected loss can be written:

$$EL = PD * LGD * EAD$$

PD is based on the borrower's credit rating grade, which is the average percentage of borrowers that default in that rating grade in a given time frame. Independent credit agencies (for example, Standard & Poor's) provide credit ratings for borrowers and specific debt instruments. The method used by those credit agencies relies on an analysis of both the qualitative and quantitative characteristics of the borrower. A rating reflects the opinion of credit rating agencies on the borrower's credit worthiness, capacity, and willingness to meet its obligations over the lifetime of a transaction.

A credit rating can change as a result of a borrower's financial performance, the current economic environment in which a borrower operates, and the future economic and financial outlook of the sector in which the borrower operates. Therefore, an in-depth analysis of the borrower's key performance indicators, industry, and geographical exposures are required to properly estimate the borrower's credit rating and subsequent probability of default.

LGD provides the percentage of exposure the finance company might lose if the borrower defaults and depends on the terms and conditions governing the financing activity — particularly the type and amount of collateral, seniority, and expected proceeds from the workout of the assets.

EAD is the amount outstanding at the time of default and mostly depends on the principal repayment characteristics and interest payment characteristics.

a. Example: Luxembourg real estate fund. A Luxembourg RAIF invests via a Luxembourg holding and financing company (LuxCo) and Luxembourg or local property companies (PropCos) into core real estate assets in prime locations throughout Europe. The PropCos are financed by a mixture of equity and debt. LuxCo finances the loan receivables with a loan granted by the RAIF and is performing financing activities. (See Figure 4.)

b. EL Calculation. Given that the real estate assets are prime assets, the PD is very low. As an assumption, the PD analysis provides a result of 0.1 percent.

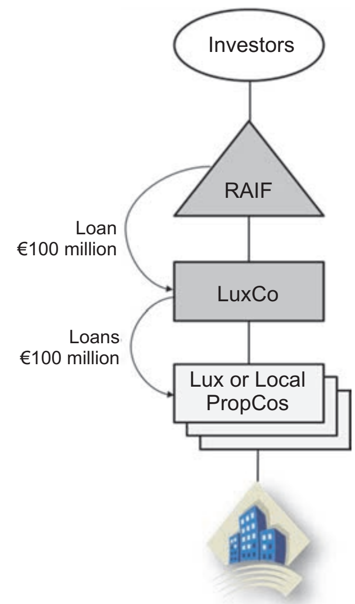
The LGD on the subordinated loans is assumed to be 70 percent.

Because LuxCo's risk has not been reduced contractually, the entire amount of the loan receivables would be the exposure at default (€100 million).

Thus, the EL would correspond to €0.7 million, and the equity at risk should at least amount to 0.7 percent of the financing volume.

$$EL = PD * LGD * EAD$$
$$EL = 0.1\% * 70\% * €100 \text{ million}$$
$$EL = €0.7 \text{ million}$$

Figure 4. Luxembourg Real Estate Fund



In some cases, it will be impossible to determine a credit rating based on actual investments and to apply the expected loss method.[32] In the absence of actual investments, a synthetic credit rating could be developed considering the investment strategy, the target jurisdictions, and other relevant factors.

2. Arm's-Length Return on Equity

The circular states that the determination of the arm's-length remuneration requires a comparison of the accurately delineated controlled transaction with a comparable transaction on the open market. The arm's-length remuneration is the remuneration that would have been agreed to under comparable circumstances on the open market. Therefore, it is important to identify comparable transactions. The process of finding and selecting comparable data must be properly documented and the selection criteria disclosed.

If the functional and risk profiles of a Luxembourg finance company were similar to those of a regulated financial institution, the circular states that a return on equity of 10 percent after-tax can be observed in the market and may be considered as reflecting arm's-length terms.[33]

However, when the profiles of a Luxembourg finance company differ significantly from those of a

[32]For example, at the beginning of the investment period of a real estate or private equity fund when investments are still to be implemented.

[33]The Luxembourg tax authorities will regularly review that percentage and adjust it if market conditions change.

regulated financial institution, a search for returns on equity realized by companies that perform comparable activities must be performed when benchmarking an arm's-length return on equity. As a principle, the assumption of risk should be compensated with an arm's-length return, including an appropriate remuneration for risk mitigation.

3. Arm's-Length Gross Remuneration

Because the return on equity is defined as the ratio of net profit to equity, the multiplication of the arm's-length return on equity and the finance company's equity at risk provides a net (after-tax) remuneration.

To determine an arm's-length gross remuneration (defined as the difference between interest income and interest expense), the net remuneration must be grossed-up by the applicable corporate tax rate and recurring operating expenses for the financing activity.

Hence, the gross remuneration can be expressed as:

$$\textit{Gross remuneration} = \frac{\textit{Net remuneration}}{(1 - \textit{corporate tax rate})} + \textit{operating expenses}$$

In the corporate tax returns, it should be tested whether the arm's-length net remuneration has been realized. Should the amount of net remuneration actually realized remain below the net remuneration determined in the transfer pricing analysis, an upward transfer pricing adjustment should be performed in the corporate tax returns in accordance with LITL article 56.

D. Simplification for Intermediaries

For many legitimate commercial reasons, funds may be routed via several Luxembourg companies that bear no risk and perform only limited functions in the on-lending of funds.

Luxembourg companies that on-lend funds to associated enterprises (financed by debt instruments) should in principle come within the scope of the circular. However, the circular provides a simplification measure for Luxembourg companies acting as mere intermediaries and on-lending funds received without bearing any significant risks: Transactions are deemed to comply with the arm's-length principle if the analyzed entity realizes a minimum return of 2 percent after-tax on the amount of the financing volume.[34]

The circular stresses that that minimum percentage cannot simply be used by financing companies without a sound transfer pricing analysis. However, because a 2 percent after-tax remuneration is rather high for the functional and risk profiles of an intermediary, taxpayers are not expected to rely on that percentage.

Taxpayers that want to apply the simplification measure must opt in on the relevant section of their corporate tax returns. Should a company opt in, a procedure for exchange of information will be launched based on the rules on administrative cooperation or in accordance with tax treaties.

The circular states that companies merely involved in the on-lending of funds will still be able to substantiate a lower arm's-length return in a transfer pricing study. It should make sense for most taxpayers to produce transfer pricing documentation in those circumstances.

For intermediaries that merely on-lend funds, the transfer pricing analysis should usually point to a cost-plus remuneration, compensating the functions performed. Given that intermediaries should not bear risks in the financing activities, there should be no remuneration.

IV. Transfer Pricing Documentation

Transfer pricing documentation has become a key element in tax risk management in an environment that relies less and less on tax rulings and advance pricing agreements. With the tax-heightened international focus on transparency and scrutiny, companies would be wise to take it one step further, integrating the documentation of transfer prices in their wider tax strategy. Transfer pricing documentation can be used to reflect the business rationale behind a corporate structure and intragroup transactions.

In financing transactions, the preparation of sound transfer pricing documentation allows taxpayers to substantiate the equity at risk and the arm's-length remuneration to be realized thereon based on the facts and circumstances. Otherwise, the circular provides for profitability levels that are deemed consistent with the arm's-length standard in the absence of transfer pricing documentation.[35]

The transfer pricing of a Luxembourg finance company can be reviewed at different times depending on whether a request for advance certainty is filed. When a request for advance certainty is filed, the arm's-length character of the remuneration is verified before Luxembourg's tax authorities confirm the tax treatment of the intragroup financing transaction.[36] When no advance certainty is requested, the transfer pricing is generally

[34]The Luxembourg tax authorities will regularly review that percentage and adjust it if market conditions change.

[35]According to the circular, a 10 percent return on equity for finance companies with a profile that corresponds to that of a regulated financial institution and a 2 percent after-tax return (applied on the financing volume) for mere intermediaries would be deemed consistent with the arm's-length principle.

[36]A Luxembourg finance company's request for advance certainty must be based on a transfer pricing study. That is in line with a trend by the Luxembourg tax authorities to ask for transfer pricing documentation substantiating the arm's-length nature of intragroup pricing.

reviewed by the tax authorities as part of the tax assessment procedure.[37] Alternatively, it may be reviewed during a tax audit spanning several fiscal years.[38]

The Luxembourg tax authorities must investigate all the facts and circumstances of a tax case, and taxpayers must cooperate with the tax authorities.[39] Those principles go hand-in-hand and complement each other.[40] The burden of proof that transfer prices do not comply with the arm's-length principle — that is, shifting advantages to affiliates — lies in principle with the Luxembourg tax authorities.

A. Taxpayer Cooperation

Under article 171 Abgabenordnung, taxpayers are under an obligation to provide facts and information if the evidence is available, reasonable for the taxpayer to have, and relevant for clarification purposes.[41] Thus, the taxpayer must obtain and provide existing documents, not prepare special transfer pricing documentation.

Article 17(3), which entered into force on January 1, 2015, extends that to obligation transactions between associated enterprises, although it does not discuss specific transfer pricing documentation requirements. While that provision is merely for clarification, it confirms that the Luxembourg authorities are relying more heavily on transfer pricing documentation.[42]

B. Burden of Proof

Under Luxembourg tax law, the burden of proof is generally split between the taxpayer and the tax authorities. For facts and circumstances resulting in an increase in the taxpayer's taxable income, the burden of proof is on the tax authorities, while the taxpayer must prove those facts and circumstances that support a reduction in its taxable income.[43] Thus, with regard to the burden of proof in case of transfer pricing adjustments, it has to be distinguished between upward and downward adjustments.[44]

The onus to prove that transactions do not adhere to the arm's-length principle is generally on the tax authorities. It is for the administration to verify whether transfer prices for goods and services transferred between group companies adhere to the arm's-length standard. If the tax authorities can prove that a transfer price is not within the range of arm's-length prices, a rebuttable presumption that the transaction does not comply with the arm's-length principle is raised. The Luxembourg tax authorities may look to public databases and data from comparable transactions in other cases (under some conditions). Overall, the threshold to prove the non-arm's-length character of intragroup transactions should be relatively low.[45]

Although the burden of proof is on the tax authorities, they may still reasonably require a Luxembourg company to provide consistent arguments about its transfer pricing.[46] A company must take into consideration that the voluntary production of documents can significantly improve the persuasiveness of its approach to transfer pricing.[47] If the taxpayer is unable to justify the arm's-length character of intragroup transactions, the tax authorities may rely on the concept of hidden dividend distributions or LITL article 56 to perform

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[37]Section 166(1) Abgabenordnung.

[38]Section 162(10) Abgabenordnung; *see* Hoor and Philippe Neefs, "TP Documentation in Luxembourg: What the Luxembourg Tax Authorities May Expect," *Tax Planning International Transfer Pricing* 25 (Dec. 2009).

[39]Sections 204(1), 171 Abgabenordnung; Tribunal Administratif, Decision of June 3, 2009, No. 24935; Tribunal Administratif, Decision of Sept. 10, 2008, No. 23544; and Bundesfinanzhof (BFH), Decision of Dec. 7, 1955, V z 183/54 S, BStBl. III 1855, p. 75.

[40]BFH, Decision of Mar. 25, 1955, III 81/54 U, BStBl. III 1955, p. 133; BFH, Decision of Dec. 7, 1955, V z 183/54 S, BStBl. III 1955, p. 75; BFH, Decision of Apr. 7, 1959, I 2/58 S, BStBl. III 1959, p. 233; BFH, Decision of Oct. 29, 1959, IV 579/56 S, BStBl. III 1960, p. 26; BFH, Decision of July 13, 1962, VI 100/61 U, BStBl. III 1962, p. 428; and BFH, Decision of Feb. 20, 1979, VII R 16/78, BStBl. II 1979, p. 268.

[41]BFH, Decision of Dec. 19, 1952, V z 66/53, BStBl III 1953, p. 63; BFH, Decision of Jan. 20, 1959, I 155/57, BStBl III 1959, p. 222; BFH, Decision of July 13, 1962, VI 100/61 U, BStBl 1962, p. 428; BFH, Decision of July 12, 1974, III R 116/72 BStBl II 1975, p. 25; and BFH, Decision of Apr. 16, 1980, I R 75/78, BStBl II 1981, p. 492. *See also* Hoor and Neefs, *supra* note 38.

[42]Article 171(1) already applied to Luxembourg companies that are part of a group of companies.

[43]Article 59 of the Law of June 21, 1999; BFH, Decision of June 24, 1976, IV R 101/75, BStBl II 1976, p. 562; and BFH, Decision of Apr. 11, 1984, I R 175/79, BStBl II 1984, p. 535.

[44]While the burden of proof for items that result in an increase of the taxpayer's tax liability is on the tax authorities, the burden of proof for items that result in a decrease of the taxpayer's tax liability is on the taxpayer.

[45]According to Luxembourg case law, the tax authorities need only to show that it is likely that an advantage has been shifted by the company (without having to determine a breach of the arm's-length principle) to reverse the burden of proof. *See* Tribunal Administratif, Decision of Nov. 27, 2006, No. 21033 (ID 675); Tribunal Administratif, Decision of Dec. 31, 2007, No. 22777 (ID 6149); Tribunal Administratif, Decision of June 9, 2008, No. 23324 (ID 7946); Cour Administratif, Decision of Feb. 12, 2009, No. 24642C (ID 9626); and Tribunal Administratif, Decision of Feb. 16, 2009, No. 24105 (ID 9414).

[46]The taxpayer must provide consistent arguments underpinning the arm's-length character of the transfer price representing at least a probable possibility. *See* RFH, Decision of Dec. 21, 1938, RStBl. 1939, at 307; and BFH, Decision of Apr. 7, 1959, I 2/58 S, BStBl. III 1959, at 233.

[47]When the arm's-length character of the transfer pricing is substantiated in a transfer pricing study, the burden of proof for the non-arm's-length character of intragroup transactions should be significantly higher. *See* Hoor and Neefs, *supra* note 38, at 26.

upward adjustments.[48] For financing activities, the adjustment of the financing margin should generally rely on LITL article 56.

C. Best Practice Recommendations

Transfer pricing inevitably pressures taxpayers to find a balance between security and cost. Luxembourg companies should screen their intragroup financing transactions to identify potential problems that could raise suspicion on the part of the Luxembourg tax authorities and assess the magnitude of related tax risks.[49]

When the tax authorities can reasonably show that the transfer pricing of a controlled transaction does not adhere to the arm's-length principle, the taxpayer must disprove that rebuttable presumption. That creates an incentive for Luxembourg finance companies to proactively produce sound transfer pricing documentation.

Transfer prices may be reviewed several years after a transaction takes place, and it is increasingly difficult to trace back relevant facts and circumstances, as well as data on comparable transactions. That puts pressure on Luxembourg companies to develop appropriate transfer pricing policies for risk mitigation in an international tax environment that elevates transparency in tax matters to a new level.

Transfer pricing documentation substantiating the arm's-length character of the remuneration realized by a Luxembourg finance company should typically include:

- an overview of the taxpayer and the group;
- an outline of the market conditions in the industry in which the company and group operates;
- a detailed description of the intragroup transactions under review;
- a description of the qualifications of any relevant employees and directors, as well as a description of their duties;
- a functional analysis delineating the transactions under review (examining the functions performed, assets used, and risks assumed), which should contribute to a full understanding of the financing transactions;[50]
- an economic analysis examining the equity at risk and benchmarking an arm's-length return on equity (including a list of comparables and a rejection matrix with rejected comparable transactions, together with justifications for the rejections and a final set of comparables; and
- an appendix.

The OECD transfer pricing guidelines should be used to find the most appropriate transfer pricing method for the intragroup financing transactions.[51] The application of that method must be detailed in the transfer pricing study and is to be completed with benchmarking to comparable uncontrolled transactions and a determination of an arm's-length remuneration.[52]

V. APAs

Luxembourg finance companies may obtain advance certainty from the Luxembourg tax authorities on the tax treatment of their intragroup financing activities, particularly on the arm's-length character of the remuneration.

However, the tax authorities will confirm the tax treatment in an APA only if the company has a real presence in Luxembourg as provided in the circular and the arm's-length remuneration is determined in a transfer pricing study that adheres to the OECD guidelines.

The circular states that at least the following information and documentation should be included in an APA request:

- specific information on the taxpayer filing the request (name, domicile, file number) and on the other entities or branches that are party to the financing transactions;
- a detailed description of the transactions and arrangements covered by the request, including an explanation of the legal position taken by the requestor;
- a description of the qualifications of the relevant employees, as well as a description of their duties;
- identification of the other states affected by the financing transactions;
- a presentation of the legal structure of the group, including information concerning the beneficial owner of the requestor's equity;
- the fiscal years to be covered by the request; and

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[48]AO section 217(1).

[49]According to the circular, a minimum remuneration of 2 percent of the assets financed (net of costs and tax) is deemed to be arm's length. Although it is unclear whether the Luxembourg tax authorities would systematically perform tax adjustments in the absence of transfer pricing documentation, the minimum remuneration provides a helpful indication when performing the risk assessment and the cost-benefit analysis regarding the preparation of transfer pricing documentation.

[50]The results of the functional analysis are the basis for the selection and application of the most appropriate transfer pricing method.

[51]That section of the study should also discuss the reasons for rejecting other transfer pricing methods.

[52]When the Dutch remuneration model is applied, the transfer pricing analysis should include a benchmark analysis of both the handling fee and the credit risk compensation fee for the equity at risk.

- a comprehensive transfer pricing study in line with the OECD transfer pricing guidelines.

The requestor must confirm that all statements made in the request are complete and truthful and pay a filing fee of €10,000 to the tax authorities.

An APA confirming the arm's-length character of the remuneration realized by a Luxembourg finance company is generally valid for a maximum of five years. Following the initial confirmation period, the finance company may file a new request for advance certainty (under the same conditions).

An APA will not have a binding effect on the Luxembourg tax authorities if the fact pattern does not properly reflect reality; the financing activities change over time and deviate from the facts and circumstances described in the APA; or the APA is no longer consistent with Luxembourg, EU, or international tax law.

Because the circular became effective on January 1, APAs that were granted under the former circular lost their binding effect at that time.

VI. Conclusion

Under the new transfer pricing regime, finance companies are required to have a real presence in Luxembourg, to determine the equity at risk for each individual case, and to report an arm's-length remuneration on their financing activities in conformity with the OECD transfer pricing guidelines. The new circular provides fundamental guidance regarding the application of the arm's-length principle.

The key change for Luxembourg finance companies is that the equity at risk must be determined case by case. Moreover, because the risk is generally not contractually limited, it must be monitored and managed. Accordingly, the functional and risk profiles of Luxembourg finance companies will be more comprehensive and diverse than under the former regime.

The new rules are stronger from an international tax and transfer pricing perspective and are consistent with all applicable post-BEPS OECD and EU standards. They will make Luxembourg financing structures immune to challenges by the EU commission or foreign tax authorities. Therefore, the new system should strengthen Luxembourg's position as an attractive location for the implementation of financing activities.

Companies performing financing activities should review their transfer pricing policies and related documentation to ensure they are in line with the new requirements. ◆