



Transfer pricing challenges for 2021

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I. AGENDA

- **I. TP implications of COVID 19**
- **II. TPG on financial transactions**
- **III. Other international developments**
- **Questions & Answers**

I. TP Implications of COVID 19

Covid-19 has caused major disruption to costs and revenues through:

Government restrictions, obligations and subsidies

Less demand for some products and routes to market and more for others

If market prices and margins change, then this should normally lead to TP changes

The speed and nature of the response (if any) could be limited by:

The terms and conditions of the related party agreements

How arrangements with and between independent parties have changed (if at all)

Specific business interests of the related parties in question

TP response to such a situation?

New OECD Guidance on the Transfer Pricing Implications of the COVID-19 Pandemic (published on 18 December 2020)

I. TP Implications of COVID 19

Focus on financial transactions

Existing loans

Inability to service a loan or repay a cash pool balance in the short term

Breaking of financial covenant ratios

Credit rating deterioration

of borrower, guarantor or cash pool leader

APAs

Analysis of whether a key condition of an APA has been broken

Consider if borrower eligible for local government-supported programs as a standalone entity and may obtain more favorable financing terms

Reassessment of loans' T&Cs

Special consideration for interest reassessment options, collateral and repayment options

New loans

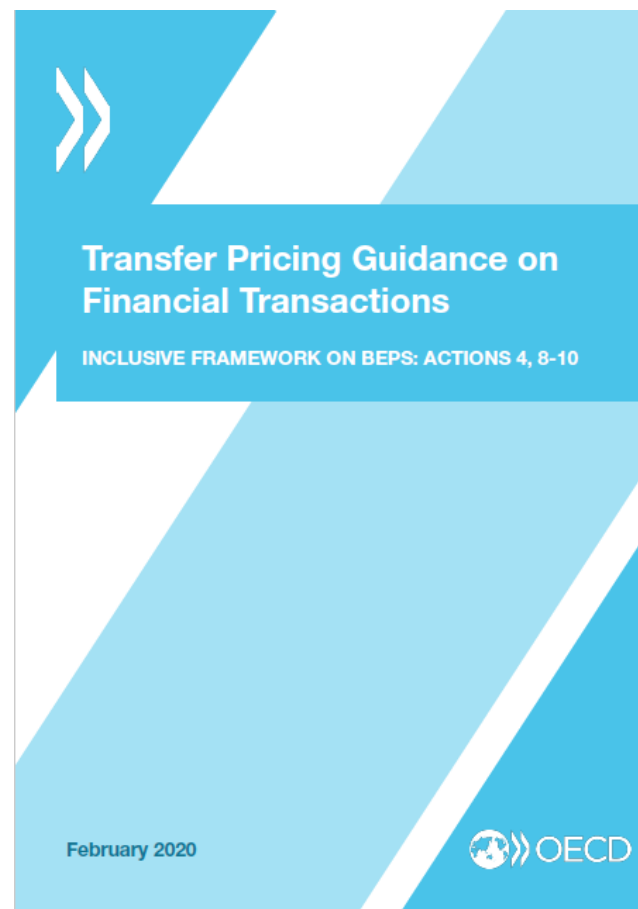
Debt capacity scrutiny re. ability to service the debt in the current context

Cash pool structures

Shift in decision-taking, assessing the ORAs vs centrally-automated decisions from cash pool leader

II. TPG on financial transactions

- Issued in February 2020
- Introduces the concept of an arm's length QUANTUM of debt
- Introduces KEY INDICATORS to classify purported debt into equity
- Requires consideration of both the perspective of the lender and the borrower (2-sided approach)



II. TPG on financial transactions

Application in time

- As a rule no retroactive application of Luxembourg tax regulations
- But: new TPG only provide further precisions on 2017 TPG (although whole new chapter)
 - ⇒ Circular letter on intragroup financing in line with 2020 TP guidance
 - ⇒ Other TP aspects: prudence/case-by-case analysis (e.g. remuneration of financial guarantees)

II. TPG on financial transactions

Key indicators/reclassification

- A single key indicator is generally not conclusive
- Have to be analyzed in a global context
- Seem to be used to tackle abusive/aggressive structures

II. TPG on financial transactions

	Economically relevant characteristics for debt qualification	Recommended approach for debt qualification
T&C	Fixed repayment date	Fixed repayment date (or bullet date) - No maturity upon demand, or perpetual maturity
	Obligation to pay interest	Interest must be payable and event of default clauses to be included in T&Cs – No (non-economically justified) waiver, no contingency
	Financial covenants and security	Financial covenants needed / security may be included (case-by-case analysis)
Context	Ability of borrower to obtain loans from unrelated lending institutions	Analysis of the other options realistically available for the borrower
	Lender profile / status	Comparability analysis with regular corporate creditors taking into consideration the non-regulated entity status and the strategy of the group in terms of lending
	Right to enforce payment of principal and interest	Ensure the lender may enforce its rights (in line with governing law of the contract) T&C: no limited recourse clause; no renunciation clause
	Source of interest payments / type of assets funded by the loan	Ensure flexibility of borrower to repatriate cash

II. TPG on financial transactions

Tax audits

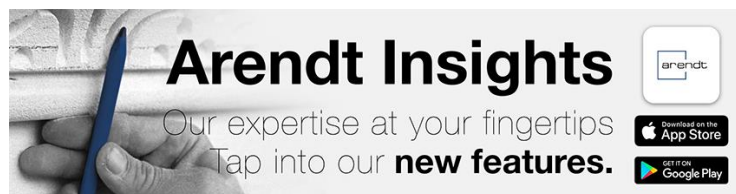
- Compliance with Circular letter on intragroup financing
- Economic rationale & aggressive tax structures
- Legal documentation not in line with TP documentation

III. Other international developments

- TP challenges of the digital economy
- Dispute resolution developments

Questions / Answers

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