



Meijburg & Co
Tax & Legal

Financial transactions in the new transfer pricing decree



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What has changed?

The biggest changes to the decree relate to the inclusion of the OECD's 2020 guidance on financial transactions (Chapter X).



- The emphasis is on control over risks and financial capacity.
- More detailed discussion for financial intermediaries ('DVLs').
- Specific comments on:
 - Intercompany loans;
 - Financial guarantees;
 - Cash pools;
 - Captive insurance.
- Following the OECD, the decree emphasizes that intercompany financing practices should follow the processes third-party lenders and borrowers go through.
- The decree raises questions on how a taxpayer can reasonably demonstrate this from a practical perspective.

What does it mean?

The decree implies earlier start point for the analysis



Commercial rationale

- What is the purpose?
- ORAs
- Return on investment
- How are decisions made



Financial capacity

- Can the borrower repay?
- Market depth
- Lending terms / covenants



Credit risk

- Default probability
- Implicit support
- Considerations for non-investment grade



Interest rate

- Only then perform traditional benchmarking analysis

What should taxpayers do?

It is clear that more aspects should be documented:

- Rationale/business purpose / ORAs
- Decision-making trail
- Financial projections and capacity
- Conditions in the markets
- Are post-loan monitoring activities now required?
- The decree emphasizes "control"
- Some activities are redundant among related parties
- We think at minimum monitoring should track covenant compliance
- Monitoring may also imply tracking the economic value of embedded options

How can we help?

- Review facts/help document support for options realistically available and commercial purpose
- Prepare financial/debt capacity studies
- Prepare market depth studies
- Review intercompany agreements and advise on agreement terms
- Overall diagnostic and gap analysis of intercompany finance practices
- Build governance processes and controls to help meet the new tax requirements

Contact

Would you like to receive more information about this topic? Or do you need advice to assess your financial transactions? Meijburg & Co would be happy to discuss with you. Feel free to contact one of our transfer pricing specialists.



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