



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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