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Tax & Legal

# Financial service providers (‘DVLS’)

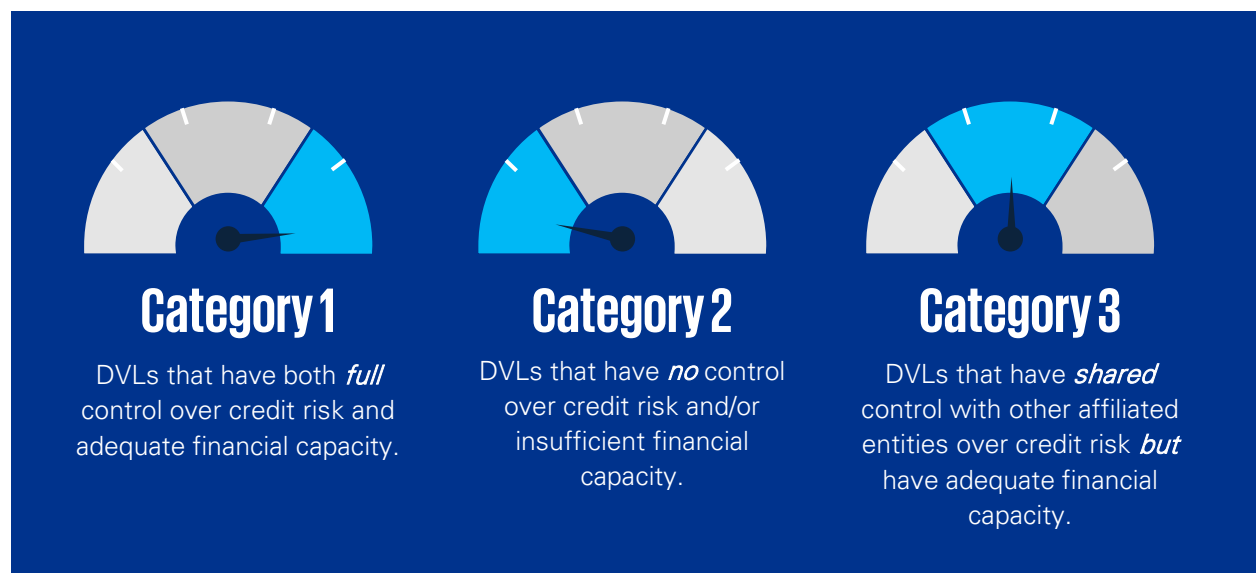
**New guidance in relation  
to financial service  
providers**

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# What

On 1 July 2022, the Dutch Ministry of Finance published a new transfer pricing decree, which includes a new section for entities mainly involved in activities, either directly or indirectly, of receipt and payment of (among others) interest, royalties, rental or lease instalments. These entities are classified as group financial service providers (in Dutch: 'dienstverleningslichaam' or 'DVL'). The decree sets out new guidance in relation to transactions of DVLs with affiliated entities. The decree makes a distinction between three types of DVLs, each leading to a different outcome from a transfer pricing perspective:



## Consequences?

**Based on the actual control over risk functions performed by the DVL and the financial capacity of the DVL, one of the above categories should be applicable. The transfer pricing decree further describes per category how the DVL should be remunerated from a transfer pricing perspective.**

### Category 1

Based on comparability studies the rates (i.e. interest or royalty) applied on the incoming and outgoing transactions should be substantiated on an individual basis. Hence, based on arm's length rates the DVL would in such case be entitled to a gross spread on the intermediary financing activities.

### Category 2

The entity is required to report a profit based on a cost-plus basis. It explicitly indicates that a remuneration based on the volume of intercompany transactions (e.g. a spread on the on-lending of loans) would not be appropriate. Under this category all residual profits in relation to the transactions (i.e. the remaining gross spread) should be attributed to the party that actually has control over risk.



### Category 3

Similar to category 1, comparability studies should determine whether the rates applied on the incoming and outgoing transactions are arm's length at an individual basis so that the DVL would receive an arm's length gross spread. However, since the DVL in this situation shares the control over risk functions with another group entity, part of the gross spread should be attributed to that other entity.

### Action required?

Depending on the facts and circumstances, adjustments of the transfer pricing policy applied to DVLs may be needed. As a result, additional discussions may be triggered by tax authorities. Such as questions on the beneficial ownership of the income and expenses, which income and expenses may be reported in the tax returns, will tax authorities initiate spontaneous exchange of information, are there any withholding taxes applicable, etc.

We recommend to perform a high level functional analysis on the financing functions performed within the Netherlands and affiliated (foreign) entities and to perform a financial capacity analysis at the level of the DVL. Also, additional tax risk assessments may be required as indicated above.



# Contact us

Would you like to receive more information about this topic? Or do you need advice to assess the current trends and manage their impact on your transfer pricing model? Meijburg & Co would be happy to discuss with you. Feel free to contact one of our transfer pricing specialists.



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