



Meijburg & Co  
Tax & Legal

# Transfer pricing en controversy

more than just a technical problem



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**Organizations are increasingly finding themselves involved in tax disputes with tax authorities. This is happening in the Netherlands, but also elsewhere.**

Companies that operate at the international level will automatically be confronted with transfer pricing. The rules on this are constantly expanding, while tax authorities have also become stricter in monitoring compliance. What should you do if you land up in a dispute about transfer pricing?

## *Something of value*

Jens Lamberg Karreman, Transfer Pricing and Controversy Partner at KPMG Meijburg & Co, sees that a lot of transfer pricing disputes arise when part of a business or, for example, IP is transferred. Such disputes may also end up in court. "We see that our clients are constantly reorganizing. There are all kinds of reasons for this, for example, to streamline cross-border processes or simply because company strategy has changed. The question is: will the reorganization involve the transfer of something with value that has to be paid for?"

The OECD Transfer Pricing Guidelines provide guidance on what to do in those situations. Jens Lamberg Karreman: "If something of value is transferred, you have to be compensated for this. The transfer could involve a specific asset, but it could just as easily involve a profitable activity or an entire undertaking, such as a business unit. What is that actually worth? And its value for the buyer could be different to the value it has for the seller."

## International network

How that value is determined is frequently a point of dispute with the tax authorities. Janneke Versantvoort, Transfer Pricing and Controversy Partner at Meijburg: “A reorganization often involves another country, with the opposing interest being located abroad. You know that the value will be disputed in the Netherlands, but at the same time you also have to expect the value to be disputed in that other country. At Meijburg we have an international network of transfer pricing specialists who we can call on to devise a joint approach. This means we can ensure that clients are also compliant with foreign law.” Read more about this in the [previous interview about our international network](#).

Janneke Versantvoort adds: “We are now also well-acquainted with the team at the Dutch tax authorities who deal with such matters. We know exactly what their positions are, which means we can build a good case.

## A multifaceted approach

In any transfer pricing dispute it is not only the technique that is decisive for determining how it will be resolved, but also the strategy. You need to think about this as soon as you start preparing your case. The position taken in the tax return is also important. Rian Waaijer, lawyer at Meijburg: “We’re already seeing a lot of case law on this.

If a transfer hasn’t been properly reported in the tax

return, this may result in a reversal of the burden of proof and that makes any discussion much more complicated and requires an entirely different approach. In transfer pricing disputes, technique and being well-versed in procedural law all come together to constitute a multifaceted approach. If you take this into consideration right from the start, then you’ll be well-prepared to bring any disputes to a successful conclusion.”

## Mutual Agreement Procedure (MAP) for dispute resolution

How does dispute resolution work in practice and how do you ensure that your approach aligns with the client’s wishes? One way to resolve disputes is in a Mutual Agreement Procedure (MAP), which is initiated between governments and tax authorities. Meijburg recently organized a client event where clients were asked about their experiences with MAPs. Rian Waaijer: “They actually all said the same thing: a MAP is a good instrument, because it’s taken out of your hands and the double taxation is resolved. But ultimately it involves more than that. You have to ensure that the MAP is an avenue actually available to you, and of course as organization you have your own preference for how you would like to see matters resolved. You want your transfer pricing model to be the same in all countries and not have other agreements apply in just one country as a result of the MAP.”







That's why it's so important that Meijburg has a good network of international colleagues who are also acquainted with this procedure. Rian Waaijer: "We try to provide them with as much information as possible so that the outcome of any MAP is as much as possible in line with the model used within the group."

## Case study: double taxation

Jens Lamberg Karreman also believes that the network is very important. This was apparent in a case involving double taxation after a transfer pricing audit in Belgium.

Jens Lamberg Karreman: "The client is active internationally, including in the Netherlands and Belgium. It had been operating in Belgium for 10 years, always incurring a small loss. When it first realized a profit in Belgium, the Belgian tax authorities argued that our client should have reported a small profit in Belgium for each of those 10 years. During the audit, the Belgian transfer pricing tax inspector therefore refused to

accept the losses. The Belgian tax inspector concluded that those losses actually belonged in the Netherlands. However, profit on this transaction had been reported in the Netherlands for all those years and any tax due had already been paid. You're then confronted with: what are you going to do now?"

You could start legal proceedings in Belgium. Jens Lamberg Karreman: "Together with the client we examined the transfer pricing and concluded that the Belgian tax authorities had good grounds for taking the position they had. That's why we decided to discuss whether we could still claim losses in the Netherlands and could reclaim the tax already paid. That was a far better solution for the client. If we were to transfer the losses for that 10-year period to the Netherlands, the client would be entitled to a considerable tax refund. Luckily, the Dutch tax authorities adopted a positive attitude in this matter."

# Strategic, legal, tax and economic advice under one roof

Jens Lamberg Karreman: "The tax authorities did ask our client to carefully document everything so that the file also painted a convincing picture for the Dutch tax authorities. The good thing about that was it was something we could do ourselves. We therefore first provided strategic advice and then started formal discussions. Lastly, we fully substantiated everything from an economic perspective. In the end, we were able to reclaim 10 years of tax paid, where this would otherwise have been subject to double taxation."

According to Jens Lamberg Karreman, working well together with the tax authorities and arriving at a mutual solution is thus certainly possible. "What makes our firm unique is that you can choose to litigate or to try and work things out together, which means you don't have to go to court. We can provide the complete substantiation and do all the economic work." Janneke Versantvoort adds: "We have everything we need in-house to resolve a dispute as efficiently as possible for our clients, whether it be strategic, legal, tax-technical or economic advice."

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# Contact Meijburg



## Jens Lamberg Karreman

Partner, Meijburg & Co  
[karreman.jens@kpmg.com](mailto:karreman.jens@kpmg.com)



## Rian Waaijer

Director, Meijburg & Co  
[waaijer.rian@kpmg.com](mailto:waaijer.rian@kpmg.com)



## Janneke Versantvoort

Partner, Meijburg & Co  
[versantvoort.janneke@kpmg.com](mailto:versantvoort.janneke@kpmg.com)