BEPS – TRANSFER PRICING

Speaking with our clients

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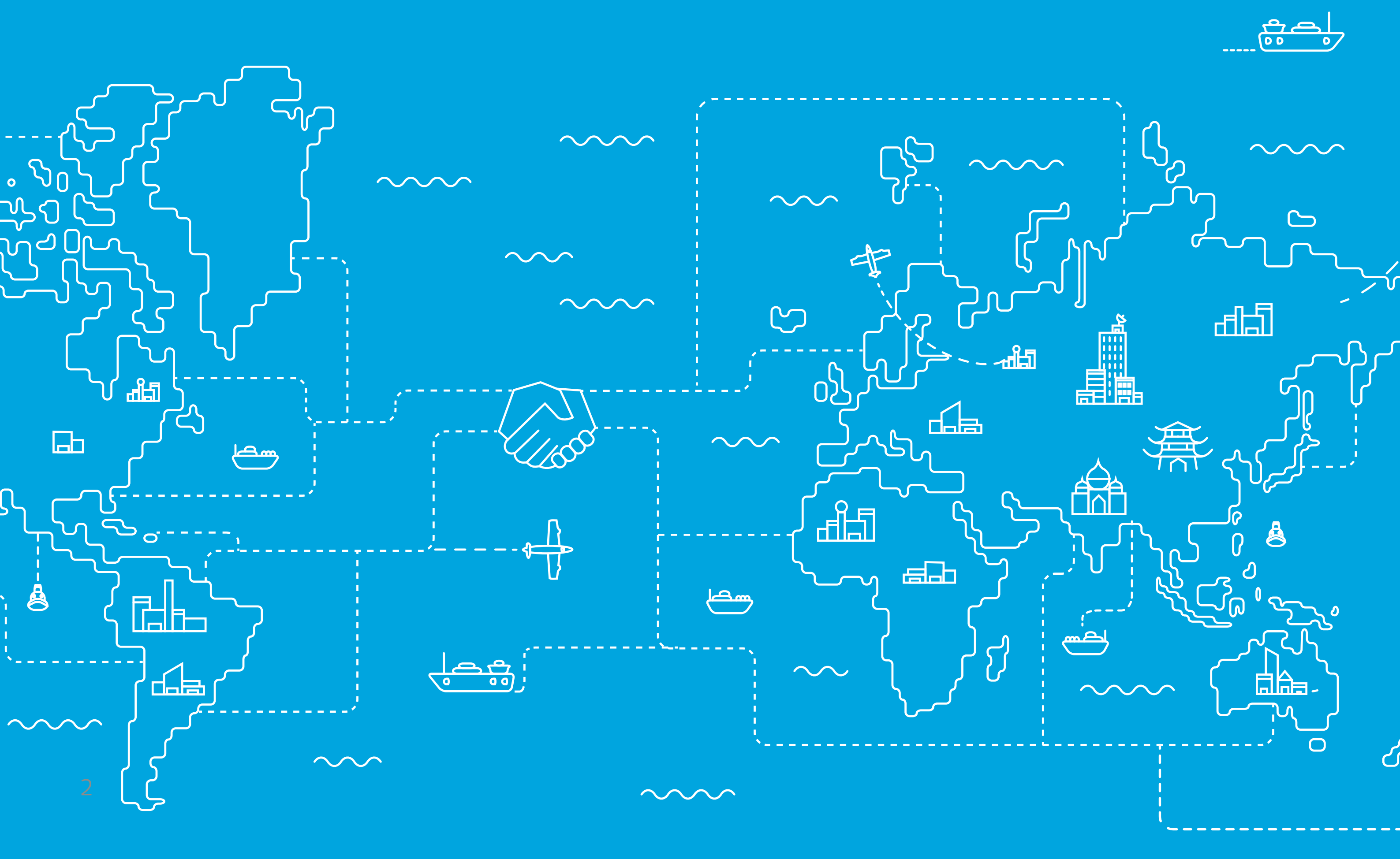
WHAT IS TRANSFER PRICING?

THE FACTS

OLD PRINCIPLE; NEW APPLICATION
MANAGE RISK; REALISE OPPORTUNITY

- Transfer pricing is about the pricing of related party transactions.
- The OECD examined transfer pricing as part of their Base Erosion and Profit Shifting (BEPS) project.
- The OECD decided to retain the arm's length principle – related parties should transact with each other as if they were not related.
- The new Dutch Transfer Pricing Decree no. 2018/6865 issued on May 11, 2018 by State Secretary of Finance ("Dutch TP Decree") retains the arm's length principle and provides practical information for its application.
- But the arm's length principle must work harder, to ensure profits are aligned with the value created through underlying economic activities.
- Examining transfer pricing methods can open opportunities to review the way profits arise in different entities. Sometimes, getting this right will result in tax savings.
- Robust transfer pricing isn't just about risk management and compliance. It is also about commercially-focussed planning and proactive tax management.



WHAT ARE THE NEW TRANSFER PRICING RULES?

The Netherlands imports the OECD guidelines into its domestic law. The post-BEPS OECD guidelines combined with the BEPS 2015 action plans should be considered to be the required approach

- The basic rule, the arm's length principle, is not new.
- BUT it needs to be applied in a BEPS-compliant way.
- The Dutch Transfer Pricing documentation requirements are 3-tiered (master file, local file and country-by-country reporting). These requirements are detailed and compulsory and are applicable for all fiscal years starting on or after January 1, 2016.
- Dutch taxpayers engaged in intercompany transactions are obliged to indicate in the corporate income tax return whether they have prepared Transfer Pricing documentation in compliance with the new the requirements.
- Global coherence is expected; it is no longer enough to just consider the impact in one country and not others.
- Public disclosure of international tax information is the subject of ongoing debate.
- Reputational damage is a concern for more RSM clients than you might think.

WHY SHOULD I PAY ATTENTION?

The BEPS Action Plan represents the most significant change to the international corporate tax landscape ever. It is an issue for all corporates that trade cross border and some that don't. Businesses need to identify where they are at risk and take appropriate action.

Our transfer pricing team in the Netherlands includes specialists fully focused on solving TP aspects for multinationals engaged in multiple sectors.

We provide all transfer pricing services such as:

- compliance and documentation;
- strategy advice;
- tax cost management;
- restructuring and value chain advice;
- advance agreement negotiation; and
- tax authority audit defence.

Current projects:

- Transfer pricing strategy reviews .
- BEPS documentation preparation and review.
- Tax cost management and documentation projects.
- Country by Country reporting advisory services.

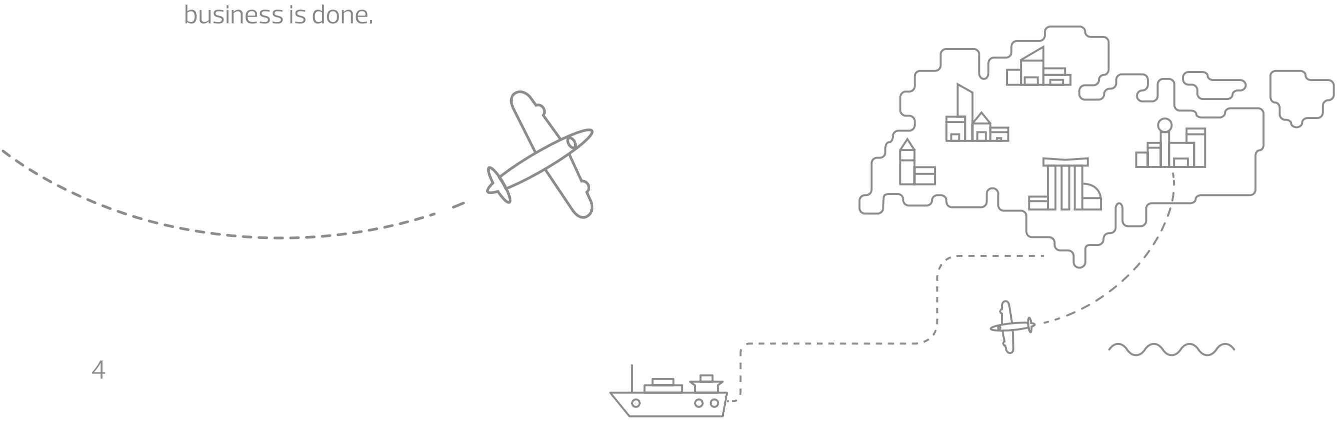
WHICH COMPANIES ARE IN SCOPE OF THE NEW TRANSFER PRICING RULES?

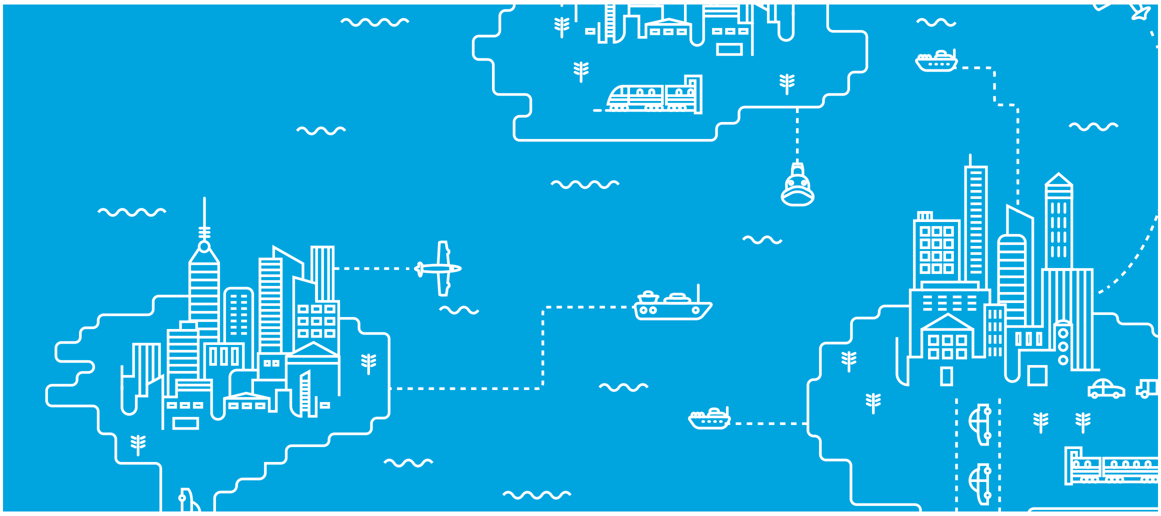
The basics

- Any business with overseas operations eg foreign head office, foreign subsidiary company, foreign branch, should be thinking about transfer pricing.
- There needs to be an element of common control. Control is defined differently depending on the territory.
- Transfer pricing can effect domestic transactions as well as cross border transactions.
- Small as well as medium and large sized taxpayers may be within the rules.

Typical transactions to look for

- Sales and purchases of raw materials or goods to and from a related party.
- Intercompany services to and from a related party, including management fees and head office charges (or the absence of them).
- Royalties and license fees (or the absence of them).
- Loans to or from related parties and interest charges (or the absence of them).
- Business restructures, so any changes to the way business is done.





CAN YOU ANSWER THESE SIX QUESTIONS?

Below we have listed our top 6 introductory questions to asses Transfer Pricing (TP) implication arising from the new rules.

1. Are you aware of the new TP rules already in effect?

2. Do you have transactions between group members or connected parties?

3. Have you taken steps to address new TP risks?

4. Are you aware of the risks exposures from not complying with the new TP rules?

5. Have you compiled your documentation in the new required format?

6. Do you know that management of tax costs is still available?

SPOTTING ISSUES

Do you have transactions between related parties?

Who does this affect?:
Generally medium and large sized groups but also smaller business in certain countries.

The issue
Transfer pricing documentation is required to support the pricing of these transactions. BEPS has introduced a radical overhaul of documentation requirements. A master file and local file will now be required. The master file will cover the whole group at a strategic level and will be capable of being shared between all relevant tax authorities. This increases compliance risks considerably. The local file will include more detail regarding the related party transactions affecting that particular jurisdiction. It is crucial that evidence of arm's length pricing is compiled. Simply stating that the group complies with the arm's length principle places the business, auditors and advisors at significant risk of challenge.

Action
Review transfer pricing strategy and documentation now to check compliance status.

Do you have intragroup service transactions?

Who does this affect?
All groups with related party service transactions.

The issue
Intra-group service charges are seen as a leading cause of BEPS by many tax authorities. New principles are being introduced for low value service charges. High value service charges require detailed transfer pricing analysis to justify the economic value provided by the service.

- Low-value eg management fees/head office charges
- High-value eg strategic direction and high value services

Action
Review all service fees to ensure the services provided are consistent with the service fee charged and new principles. Note that tax cost management is still possible providing that economic substance principles are recognised and adhered to.

Do you have intangible assets?

Who does this affect?
All groups with intangible assets whether or not they are shown on the balance sheet. (eg trademarks, patents, licenses, goodwill, brands, know-how)

The issue
Revised principles are being introduced regarding the allocation of profits from intangible assets. Registered ownership will be less important in allocating profit. Instead the creation of economic value and commercial substance should be rewarded appropriately. The valuation of intangibles being transferred between connected parties is also under the spotlight.

Action
Review intangible asset ownership structures. Identify jurisdictions where control and development of intangible assets occur.

Do you have to prepare country-by-country reports?

Who does this affect?

Groups with cross border related party transactions and global turnover in excess of €750m. Smaller groups may still have to prepare a master file and local files.

The issue

A completely new compliance concept introduced with the aim of increasing transparency so as to enable tax authorities to identify risk. Groups will need to submit specified financial and tax data to be shared across all countries in which they operate. The EU is seeking to implement legislation to force groups to publish this information on their websites. This may give rise to significant reputational and commercial risks in addition to tax exposures.

Actions

1. To review information required to comply with country-by-country reporting obligations, and to verify system capabilities to produce country-by-country reports.
2. To comply with country-by-country reporting notification obligations.

Do you have debt transactions?

Who does this affect?

Medium and large sized businesses that pay interest on debt from independent lenders or related parties.

The issue

The OECD's BEPS recommendations are that tax relief on debt should be restricted. The restriction should be based on a fixed percentage of a company's EBITDA. This could cause significant increases in tax liabilities especially for highly geared businesses. The recommendations include third party as well as connected party debt. These potential changes to thin capitalisation rules could have a significant impact on a corporate's tax liability.

Action

To review how the proposed changes will impact the ability to claim tax relief for interest. Restructuring may be appropriate.

FOR FURTHER INFORMATION

For more detailed information and questions, please contact your advisor within one of the RSM-offices:

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