

# TABLE OF CONTENTS

---

Acknowledgements.....	5
Table of contents.....	7
Foreword.....	21
Abbreviations.....	23

## I. Introduction

1. What is transfer pricing?.....	29
2. The importance of transfer pricing.....	29
3. Transfer pricing developments in Luxembourg.....	30
4. The OECD and its Transfer Pricing Guidelines.....	31

## II. Luxembourg Transfer Pricing Rules

1. Overview.....	37
2. Article 56 of the LITL (Arm’s length principle).....	37
2.1. Scope of Article 56 of the LITL.....	37
2.2. Tax adjustments under Article 56 of the LITL.....	37
2.3. Application of the arm’s length principle (Article 56bis of the LITL).....	39
3. The concept of hidden dividend distributions.....	43
3.1. Characteristics of hidden dividend distributions.....	43
3.2. Tax treatment of hidden dividend distributions.....	43
3.3. Triangular cases involving company groups.....	45
4. Hidden Capital contributions.....	48
4.1. Characteristics of hidden capital contributions.....	48
4.2. Tax treatment of hidden capital contributions.....	49
4.3. Triangular cases involving company groups.....	50

5. Hierarchy of norms .....	53
6. Restrictions under tax treaty law.....	55
6.1. Opening comments.....	55
6.2. Taxation of associated enterprises.....	55
6.3. Interest and royalties.....	55
6.4. Non-discrimination rules.....	55
6.5. The relation between tax treaty rules and domestic tax law.....	56
7. Dispute settlement.....	56
7.1. Domestic dispute settlement process.....	56
7.2. Double tax treaties.....	57
7.3. EU Arbitration Convention.....	58

### III. The arm's length principle

1. Overview.....	63
2. Identifying the commercial or financial relations .....	64
2.1. The concept of comparability.....	64
2.2. Factors determining comparability .....	65
2.2.1. Opening comments.....	65
2.2.2. Contractual terms .....	66
2.2.3. Functional analysis .....	67
2.2.3.1. General .....	67
2.2.3.2. Analysis of risks in commercial and financial relations.....	68
2.2.3.3. Step1: Identification of economically significant risks with specificity.....	69
2.2.3.4. Step 2: Contractual assumption of risk.....	71
2.2.3.5. Step 3: Functional analysis in relation to risk.....	72
2.2.3.5.1. Control over risk functions.....	72
2.2.3.5.2. Risk mitigation functions .....	73
2.2.3.5.3. Upside and downside consequences of risk outcomes and financial capacity to assume risk .....	73
2.2.3.6. Step 4: Interpretation of Steps 1 – 3 .....	74
2.2.3.7. Step 5: Allocation of risk .....	75
2.2.3.8. Step 6: Pricing of the transaction.....	75
2.2.3.9. Risk-free and risk-adjusted rates of return.....	76
2.2.3.9.1. Opening comments.....	76
2.2.3.9.2. Determining the risk-free rate of return.....	76
2.2.3.9.3. Determining a risk-adjusted rate of return.....	77
2.2.4. Characteristics of property or services.....	77
2.2.5. Economic circumstances .....	78
2.2.6. Business strategies .....	79

3. Recognition of the accurately delineated transaction .....	79
4. Losses .....	81
5. Other circumstances that may have an impact on arm's length pricing.....	82
6. Rejection of non-arm's length methods.....	83

#### IV. Comparability analysis

1. Overview .....	87
2. Performing a comparability analysis .....	87
<b>2.1. Opening comments</b> .....	87
<b>2.2. Typical process</b> .....	88
<b>2.3. Analysis of the taxpayer's circumstances</b> .....	90
<b>2.4. Review of the controlled transaction and choice         of the selected party</b> .....	90
2.4.1. Opening comments.....	90
2.4.2. Evaluation of a taxpayer's separate and combined transactions .....	90
2.4.3. Intentional set-offs .....	91
2.4.4. Choice of the tested party .....	91
2.4.5. Information on the controlled transaction.....	92
<b>2.5. Comparable uncontrolled transactions</b> .....	92
2.5.1. Opening comments.....	92
2.5.2. Internal comparables.....	93
2.5.3. External comparables and sources of information .....	93
2.5.4. Use of non-transactional third party data.....	94
2.5.5. Limitations in available comparables .....	94
<b>2.6. Selecting or rejecting potential comparables</b> .....	95
<b>2.7. Comparability adjustments</b> .....	95
<b>2.8. Arm's length range</b> .....	96
3. Timing issues in comparability.....	97
4. Compliance issues .....	98

#### V. Transfer pricing methods

1. Overview .....	101
2. Traditional transaction methods.....	101
<b>2.1. The comparable uncontrolled price (CUP) method</b> .....	101
2.1.1. Application of the CUP method.....	101
2.1.2. Comparability .....	104
2.1.3. Strength and weaknesses .....	105
<b>2.2. The resale price method</b> .....	106
2.2.1. Application of the resale price method.....	106

2.2.2. Comparability .....	109
2.2.3. Strength and weaknesses .....	111
<b>2.3. The cost plus method .....</b>	<b>112</b>
2.3.1. Application of the cost plus method.....	112
2.3.2. Comparability .....	116
2.3.3. Strength and weaknesses .....	118
<b>3. Transactional profit methods .....</b>	<b>118</b>
<b>3.1. Opening comments .....</b>	<b>118</b>
<b>3.2. The transactional net margin method (TNMM).....</b>	<b>119</b>
3.2.1. Application of the TNMM.....	119
3.2.1.1. In general .....	119
3.2.1.2. Tested party.....	120
3.2.1.3. Search for comparables.....	120
3.2.1.4. Profit level indicators .....	120
3.2.1.5. Mechanism of TNMM.....	123
3.2.1.5.1. Related party distributor .....	123
3.2.1.5.2. Related party manufacturer.....	125
3.2.1.7. Determination of an arm's length range .....	126
3.2.2. Comparability .....	127
3.2.3. Strength and weaknesses .....	128
<b>3.3. The transactional profit split method.....</b>	<b>128</b>
3.3.1. Application of the profit split method.....	128
3.3.1.1. In general .....	128
3.3.1.2. Methods to split the profits .....	129
3.3.1.2.1. Contribution analysis.....	129
3.3.1.2.2. Residual analysis.....	130
3.3.1.3. Determining the combined profits to be split.....	130
3.3.1.4. Split of the combined profits .....	131
3.3.2. Strength and weaknesses .....	131
<b>4. Selection of the most appropriate method .....</b>	<b>132</b>
<b>4.1. Opening comments .....</b>	<b>132</b>
<b>4.2. Selection process .....</b>	<b>133</b>
4.2.1. Traditional transaction methods .....	133
4.2.2. Transactional profit methods .....	136
<b>4.3. Use of more than one transfer pricing method .....</b>	<b>137</b>

## VI. Transfer pricing documentation

<b>1. Overview .....</b>	<b>141</b>
<b>2. Review of transfer pricing and the taxpayer's duty of cooperation .....</b>	<b>141</b>
<b>2.1. Opening comments .....</b>	<b>141</b>
<b>2.2. The taxpayer's duty of cooperation .....</b>	<b>142</b>

2.3. Burden of proof .....	143
2.4. The estimation of transfer prices .....	145
2.5. Country-by-Country Report.....	147
3. OECD guidance on transfer pricing documentation .....	149
3.1. Opening comments .....	149
3.2. Objectives of transfer pricing documentation requirements .....	149
3.3. Three tiers of documentation.....	151
3.3.1. Master file .....	151
3.3.2. Local file.....	153
3.3.3. Country-by-Country Report.....	154
3.4. Compliance issues .....	156
4. Best practice recommendations .....	159

## VII. Intangibles

1. Overview .....	163
2. Identifying intangibles.....	164
3. Ownership of intangibles and DEMPE functions .....	165
3.1. Analytical framework .....	165
3.2. Legal ownership and contractual arrangements .....	165
3.3. Functions, assets and risks related to intangibles .....	166
3.4. Remuneration under the revised guidance .....	167
3.5. Application of the Chapter VI principles in specific fact pattern.....	168
4. Transactions involving the use or transfer of intangibles .....	169
5. Supplemental guidance for determining arm's length conditions in cases involving intangibles.....	170
6. Impact of the new guidance on contemporary IP structures.....	170
7. Critical analysis of the new guidance.....	171

## VIII. Cost Contribution Arrangements

1. Overview .....	177
2. Concept of a CCA .....	177
3. Application of the arm's length principle.....	178
3.1. Opening comments .....	178
3.2. Determining participants.....	178
3.3. Expected benefits from the CCA .....	178
3.4. The value of each participant's contribution .....	179
3.5. Balancing payments.....	179

4. CCA entry, withdrawal or termination.....	179
5. Recommendations for structuring and documenting CCAs.....	180

## IX. Intra-group services

1. Overview.....	183
2. Determining whether intra-group services have been rendered.....	183
2.1. Opening comments.....	183
2.2. Beneficial and non-beneficial services.....	184
3. Determining an arm's length price for intra-group services.....	187
3.1. Opening comments.....	187
3.2. Methods for pricing intra-group services.....	187
3.3. Charge for intra-group services.....	188
4. Low value-adding services.....	189
4.1. Opening comments.....	189
4.2. Definition of low value-adding intra-group services.....	189
4.3. Simplified determination of arm's length charges.....	191
4.4. Documentation and reporting.....	191
4.5. Withholding tax.....	192

## X. Financing Activities

1. Overview.....	195
2. Intra-group financing activities covered by the Circular.....	196
2.1. Opening comments.....	196
2.2. Scope of the Circular.....	196
2.3. Substance requirements.....	200
2.4. Equity-at-risk requirement.....	202
2.5. Transfer pricing documentation.....	203
3. Application of the arm's length principle.....	204
3.1. Opening comments.....	204
3.2. Comparability analysis.....	205
3.2.1. Introductory comments.....	205
3.2.2. Identification of the commercial and financial relations.....	205
3.2.3. Contractual terms of the transaction.....	206
3.2.4. Functional analysis.....	206
3.2.4.1. General remarks.....	206
3.2.4.2. Analysis of the functions performed.....	207
3.2.4.3. Analysis of the risks in the financial relations.....	209
3.2.4.4. Analysis of the assets used.....	211
3.2.5. Transactions without commercial rationale.....	211

<b>3.3. A remuneration model for financing activities</b> .....	213
3.3.1. Introductory comments.....	213
3.3.2. Determination of the equity at risk.....	213
3.3.2.1. In general .....	213
3.3.2.2. Probability of default (PD) .....	214
3.3.2.3. Loss given default (LGD) .....	216
3.3.2.4. Exposure at default (EAD).....	216
3.3.2.5. Case study .....	216
3.3.3. Determination of the arm's length return on equity.....	218
3.3.4. Determination of the arm's length gross remuneration.....	219
<b>3.4. Simplification measure for intermediaries</b> .....	219
<b>4. Transfer pricing adjustments</b> .....	220
<b>4.1. Opening comments</b> .....	220
<b>4.2. Case study 1: The arm's length financing margin</b> .....	220
<b>4.3. Case study 2: Interest rates below the arm's length standard</b> .....	221
<b>4.4. Case study 3: Excessive interest rates</b> .....	222
<b>4.5. Case study 4: Downward adjustments</b> .....	223
<b>4.6. Case study 5: Interest-free debt</b> .....	224
<b>5. Advance pricing agreements</b> .....	226
<b>5.1. Opening comments</b> .....	226
<b>5.2. Request for an APA</b> .....	226
<b>5.3. Validity of the confirmation</b> .....	226

## XI. Financial transactions

<b>1. Overview</b> .....	231
<b>2. Interaction with the general guidance on the identification of commercial and financial relations (Section D.1 in Chapter I)</b> .....	231
<b>2.1. Determining whether a purported loan should be regarded as a loan</b> .....	231
<b>2.2. Accurate delineation of financial transactions</b> .....	232
<b>3. Treasury functions</b> .....	233
<b>4. Intra-group loans</b> .....	234
<b>4.1. General considerations</b> .....	234
4.1.1. Opening comments.....	234
4.1.2. Two-sided analysis.....	234
4.1.3. Use of credit ratings .....	235
4.1.4. Effect of group membership.....	236
4.1.5. Use of MNE group credit rating.....	237
4.1.6. Covenants.....	238
4.1.7. Guarantees .....	238

<b>4.2. Determining the arm's length interest rate of intra-group loans</b> .....	238
4.2.1. Comparable uncontrolled price ("CUP") method .....	238
4.2.2. Loan fees and charges .....	239
4.2.3. Cost of funds .....	239
4.2.4. Credit default swaps .....	239
4.2.5. Economic modelling .....	240
4.2.6. Bank opinions .....	240
<b>5. Cash pooling</b> .....	240
<b>5.1. Opening comments</b> .....	240
<b>5.2. Cash pool structures</b> .....	240
<b>5.3. Accurate delineation of cash pooling transactions</b> .....	241
<b>5.4. Determining the arm's length price of cash pooling transactions</b> .	242
<b>6. Hedging</b> .....	243
<b>7. Financial guarantees</b> .....	243
<b>7.1. Opening comments</b> .....	243
<b>7.2. Accurate delineation of financial guarantees</b> .....	244
<b>7.3. Determining the arm's length price of guarantees</b> .....	244
<b>8. Captive insurance</b> .....	245
<b>8.1. Opening comments</b> .....	245
<b>8.2. Accurate delineation of captive insurance and reinsurance</b> .....	246
<b>8.3. Determining the arm's length price of captive insurance and reinsurance</b> .....	247
8.3.1. Pricing of premiums .....	247
8.3.2. Combined ratio and return on capital .....	248
8.3.3. Group synergies .....	248
8.3.4. Agency sales .....	248

## XII. Attribution of profits to permanent establishments

<b>1. Overview</b> .....	251
<b>2. The concept of permanent establishment</b> .....	252
<b>2.1. PEs under Luxembourg tax law</b> .....	252
2.1.1. Opening comments .....	252
2.1.2. The general PE definition .....	253
2.1.3. PE examples listed in Section 16 (2) StAnpG .....	254
<b>2.2. PEs under tax treaty law</b> .....	255
2.2.1. Opening comments .....	255
2.2.2. Essential characteristics of PEs .....	256
2.2.3. Building sites, constructions and installation projects .....	257
2.2.4. Preparatory and auxiliary activities .....	258
2.2.4.1. Analysis of the 2010 version of the OECD Model .....	258

2.2.4.2. Analysis of the 2017 version of the OECD Model.....	259
2.2.5. Dependent and independent agents .....	260
2.2.5.1. Analysis of the 2010 version of the OECD Model.....	260
2.2.5.2. Analysis of the 2017 version of the OECD Model.....	262
<b>3. The attribution of profits to permanent establishments .....</b>	<b>263</b>
<b>3.1. Overview .....</b>	<b>263</b>
<b>3.2. The “functionally separate entity approach” .....</b>	<b>264</b>
<b>3.3. Article 7 (2) of the OECD Model Tax Convention         and the elimination of double taxation.....</b>	<b>266</b>
<b>3.4. Corresponding adjustments according to Article 7 (3)         of the OECD Model.....</b>	<b>266</b>
<b>3.5. Attribution of profits to new dependent agent PEs .....</b>	<b>267</b>
3.5.1. Opening comments.....	267
3.5.2. Activities of an intermediary.....	267
3.5.3. Relationship between Article 7 and 9 of the OECD Model.....	268
3.5.4. Functional analysis .....	268
3.5.5. Administrative approaches to enhance simplifications.....	269

### **XIII. Business restructuring**

<b>1. Overview .....</b>	<b>273</b>
<b>2. Business models .....</b>	<b>274</b>
<b>2.1. Opening comments .....</b>	<b>274</b>
<b>2.2. Principal entities .....</b>	<b>275</b>
<b>2.3. Manufacturing entities .....</b>	<b>275</b>
2.3.1. Full-fledged manufacturer .....	275
2.3.2. Contract manufacturer.....	276
2.3.3. Toll manufacturer .....	277
2.3.4. Transfer pricing considerations .....	277
<b>2.4. Distribution entities.....</b>	<b>278</b>
2.4.1. Full-fledged distributor.....	278
2.4.2. Limited-risk distributor .....	279
2.4.3. Commissionaire.....	280
2.4.4. Transfer pricing considerations .....	281
<b>2.5. Service providers .....</b>	<b>283</b>
<b>2.6. Intellectual Property (“IP”) companies.....</b>	<b>283</b>
<b>2.7. Procurement companies .....</b>	<b>285</b>
<b>3. Business restructurings.....</b>	<b>286</b>
<b>3.1. Opening comments.....</b>	<b>286</b>
<b>3.2. Traditional business model vs. supply chain business model.....</b>	<b>288</b>
<b>3.3. Business restructurings involving manufacturers .....</b>	<b>290</b>
<b>3.4. Business restructurings involving distributors .....</b>	<b>291</b>

<b>3.5. Business restructuring and Permanent Establishment (“PE”) risks</b> .....	292
<b>3.6. Supply chain management</b> .....	294
<b>4. Guidance provided in the OECD Guidelines</b> .....	296
<b>4.1. Opening comments</b> .....	296
<b>4.2. Part I: Arm’s length compensation for the restructuring itself</b> .....	297
4.2.1. Introductory remarks .....	297
4.2.2. Understanding the restructuring itself .....	298
4.2.2.1. In general .....	298
4.2.2.2. Accurate delineation of the transactions comprising the business restructuring .....	298
4.2.2.3. Understanding the business reasons for and the expected benefits from the restructuring .....	299
4.2.2.4. Other options realistically available to the parties .....	300
4.2.2.5. Transfer pricing documentation for business restructurings .....	300
4.2.3. Recognition of the accurately delineated transactions that comprise the business restructuring .....	301
4.2.4. Reallocation of profit potential as a result of a business restructuring .....	301
4.2.4.1. Profit potential .....	301
4.2.4.2. Reallocation of risks and profit potential .....	302
4.2.5. Transfer of something of value .....	302
4.2.5.1. Tangible assets .....	302
4.2.5.2. Intangible assets .....	302
4.2.5.3. Transfer of activity (going concern) .....	304
4.2.5.4. Outsourcing .....	304
4.2.6. Indemnification of the restructured entity for the termination or substantial renegotiation of existing arrangements .....	305
<b>4.3. Part II: Remuneration of post-restructuring controlled transactions</b> .....	305
4.3.1. Business restructurings versus “structuring” .....	305
4.3.2. Selection and application of a transfer pricing method for the post-restructuring controlled transactions .....	306
4.3.3. Relationship between compensation for the restructuring and post-restructuring remuneration .....	307
4.3.4. Comparing the pre- and post-restructuring situations .....	308
4.3.5. Location savings .....	309
<b>XIV. Fund management services</b>	
<b>1. Overview</b> .....	313
<b>2. Fund management services</b> .....	313
<b>3. When does the arm’s length principle apply?</b> .....	314
<b>4. How to establish arm’s length transfer prices?</b> .....	314

5. The importance of transfer pricing documentation .....	315
6. Selected case studies .....	317
6.1. Opening comments .....	317
6.2. Case study 1: The real estate fund .....	317
6.3. Case study 2: The real estate fund – Variation .....	319
6.4. Case study 3: The private equity fund .....	321
6.5. Case study 4: The infrastructure fund .....	322

## XV. Transfer pricing adjustments

1. Overview .....	327
2. Tax adjustments under Luxembourg domestic tax law .....	327
2.1. In general .....	327
2.2. Article 56 of the LITL .....	328
2.2.1. Scope of Article 56 of the LITL .....	328
2.2.2. Tax adjustments under Article 56 of the LITL .....	329
2.3. Hidden dividend distributions .....	330
2.3.1. Opening comments .....	330
2.3.2. Characteristics of hidden dividend distributions .....	331
2.3.2.1. Key issues .....	331
2.3.2.2. Decrease (or averted increase) in the company's net equity .....	332
2.3.2.3. Motivation by the shareholding relationship .....	336
2.3.2.3.1. Opening comments .....	336
2.3.2.3.2. Existence of a shareholding relationship .....	336
2.3.2.3.3. Causation and the shareholding relationship .....	337
2.3.2.3.4. Triangular cases involving company groups .....	339
2.3.2.3.5. Burden of proof .....	343
2.3.2.4. Reduction of the company's taxable income .....	344
2.3.2.5. No regular distribution .....	351
2.3.2.6. Checklist: Hidden dividend distributions .....	352
2.3.3. Tax treatment of hidden dividend distributions .....	353
2.3.3.1. Overview .....	353
2.3.3.2. Tax treatment at the level of the company .....	353
2.3.3.2.1. Tax adjustments relating to hidden dividend distributions .....	353
2.3.3.2.2. Municipal business tax considerations .....	356
2.3.3.2.3. Dividend withholding tax .....	356
2.3.3.3. Tax treatment at the level of the shareholder .....	358
2.3.3.3.1. Opening comments .....	358
2.3.3.3.2. Tax adjustments relating to hidden dividend distributions .....	358
2.3.3.3.3. Considerations with regard to corporate shareholders .....	361
2.3.3.3.4. Municipal business tax considerations .....	362
2.3.4. Cross-border situations .....	363

<b>2.4. Hidden capital contributions</b> .....	366
2.4.1. Overview .....	366
2.4.2. Characteristics of hidden capital contributions .....	367
2.4.2.1. Key issues .....	367
2.4.2.2. The object of the hidden capital contribution .....	368
2.4.2.2.1. Opening comments.....	368
2.4.2.2.2. Assets .....	368
2.4.2.2.3. Liabilities .....	370
2.4.2.2.4. Services granted without valuable consideration .....	372
2.4.2.2.4.1. Introductory remarks.....	372
2.4.2.2.4.2. Past services versus future services.....	373
2.4.2.2.4.3. The rationale behind.....	375
2.4.2.3. Motivation by the shareholding relationship .....	376
2.4.2.3.1. Opening comments.....	376
2.4.2.3.2. Existence of a shareholding relationship .....	376
2.4.2.3.3. Causation by the shareholding relationship.....	377
2.4.2.3.4. Triangular cases involving company groups.....	378
2.4.2.3.5. Burden of proof .....	381
2.4.2.4. Absence of compensation to the shareholder.....	382
2.4.2.5. Check-list: Hidden capital contribution .....	383
2.4.3. Luxembourg tax treatment of hidden capital contributions.....	384
2.4.3.1. Introductory remarks .....	384
2.4.3.2. Tax treatment of the company .....	384
2.4.3.2.1. Valuation of hidden capital contributions .....	384
2.4.3.2.2. Tax adjustments relating to hidden capital contributions.....	384
2.4.3.2.2.1. Opening comments.....	384
2.4.3.2.2.2. Tax adjustments when making the hidden capital contribution .....	384
2.4.3.2.2.3. Tax adjustments following the hidden capital contribution...	388
2.4.3.2.2.4. Municipal business tax treatment .....	389
2.4.3.3. Tax treatment at the level of the shareholder .....	389
2.4.3.3.1. Tax adjustments relating to hidden capital contributions.....	389
2.4.3.3.2. Write-down in value of the participation .....	393
2.4.4. Cross-border situations .....	394
<b>2.5. Hierarchy of norms</b> .....	394
<b>3. Tax adjustments under tax treaty law</b> .....	395
<b>3.1. In general</b> .....	395
<b>3.2. Article 9 of the OECD Model</b> .....	395
3.2.1. Opening comments .....	395
3.2.2. Scope of Article 9 of the OECD Model.....	397
3.2.3. Tax adjustments under Article 9 (1) of the OECD Model.....	398
3.2.4. Corresponding adjustments under Article 9 (2) of the OECD Model .....	400

3.3. Tax treatment of excessive interest payments (Article 11 (6) of the OECD Model) .....	401
3.4. Tax treatment of excessive royalty payments (Article 12 (4) of the OECD-Model) .....	402
3.5. Non-discrimination rules .....	403
3.6. The relation between tax treaty rules and domestic tax law .....	404
4. Dispute settlement .....	405
4.1. Domestic dispute settlement process .....	405
4.2. Double tax treaties .....	406
4.3. EU Arbitration Convention .....	407

## XVI. Managing the transfer pricing implications of the COVID-19 pandemic

1. Overview .....	411
2. Transfer pricing guidance on comparability analysis .....	411
2.1. Opening comments .....	411
2.2. Sources to be used to support the performance of a comparability analysis applicable for FY 2020 .....	412
2.3. Considering the use of budgeted financial information .....	413
2.4. Considering timing issues .....	413
2.5. Practical approaches regarding information deficiencies .....	413
2.6. Considering the use of data from other crises .....	414
2.7. Establishing the period of data used to evaluate arm's length pricing .....	414
2.8. Considering price adjustments mechanisms .....	414
2.9. Evaluating the set of comparable companies or transactions used .....	415
2.10. Considering the use of loss making comparables .....	415
3. Transfer pricing guidance on losses and allocation of specific costs ...	415
3.1. Opening comments .....	415
3.2. Losses in the context of limited risk arrangements .....	416
3.3. Considering the modification of arrangements .....	416
3.4. Allocating operational and exceptional costs arising from the lockdown measures .....	417
3.5. Exceptional costs arising from the lockdown measures in the comparability analysis .....	417
3.6. Force majeure and the allocation of losses caused by the lockdown measures .....	418
4. Transfer pricing guidance on government assistance programmes.....	418
4.1. Opening comments .....	418

<b>4.2. Government assistance as economically relevant characteristics</b> .....	419
<b>4.3. Government assistance and the allocation of risk in a controlled transaction</b> .....	419
<b>4.4. Government assistance and the comparability analysis</b> .....	420
<b>5. Advance pricing arrangements</b> .....	420

## APPENDIX

<b>Appendix 1: Circular L.I.R. n° 56/1 – 56bis/1 dated 27 Decembre 2016</b> .....	423
<b>1. Définitions</b> .....	423
<b>2. Généralités</b> .....	423
<b>3. L'application du principe de pleine concurrence aux transactions de financement intra-groupe</b> .....	424
3.1. L'analyse de comparabilité.....	424
3.1.1. Identification des relations commerciales ou financières entre des entreprises liées et détermination des conditions et circonstances économiquement significatives .....	424
3.1.1.1. Les dispositions contractuelles .....	425
3.1.1.2. L'analyse fonctionnelle .....	425
3.1.1.3. L'analyse des risques dans les relations financières.....	426
3.1.2. Comparaison de la transaction contrôlée et délimitée de façon précise avec des transactions comparables entre entreprises indépendantes et détermination de la rémunération de pleine concurrence.....	428
3.1.3. Transactions sans rationalité commerciale.....	429
<b>4. Mesure de simplification</b> .....	429
<b>5. Contenu d'une demande de renseignements ayant pour effet de lier l'Administration des contributions directes en matière de prix de transfert dans le chef d'une société de financement de groupe</b> .....	430
<b>6. Décisions de l'Administration des contributions directes prises avant l'entrée en vigueur de l'article 56bis L.I.R.</b> .....	431
<b>Appendix 2: Glossary of terms</b> .....	433
<b>Appendix 3: Bibliography</b> .....	451