

# Transfer Pricing

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# Transfer pricing: A major concern for international groups

Transfer pricing has become the key issue in the field of international taxes.

All businesses which trade internationally and have cross border transactions between group companies are likely to face transfer pricing issues. These issues include enquiries from the tax authorities in one or more jurisdiction.

The result of adopting incorrect transfer prices is that a business could be found to have:

- a. Been overcharged for purchases of goods or services from associated companies abroad
- b. Undercharged for its sales of goods or services to its foreign affiliates.

The result of such over or under charging is that a tax authority will seek additional taxes and often interest plus penalties as well.

For the international trading group which has budgeted diligently for its worldwide tax liabilities, this can be a harmful blow to its finances.

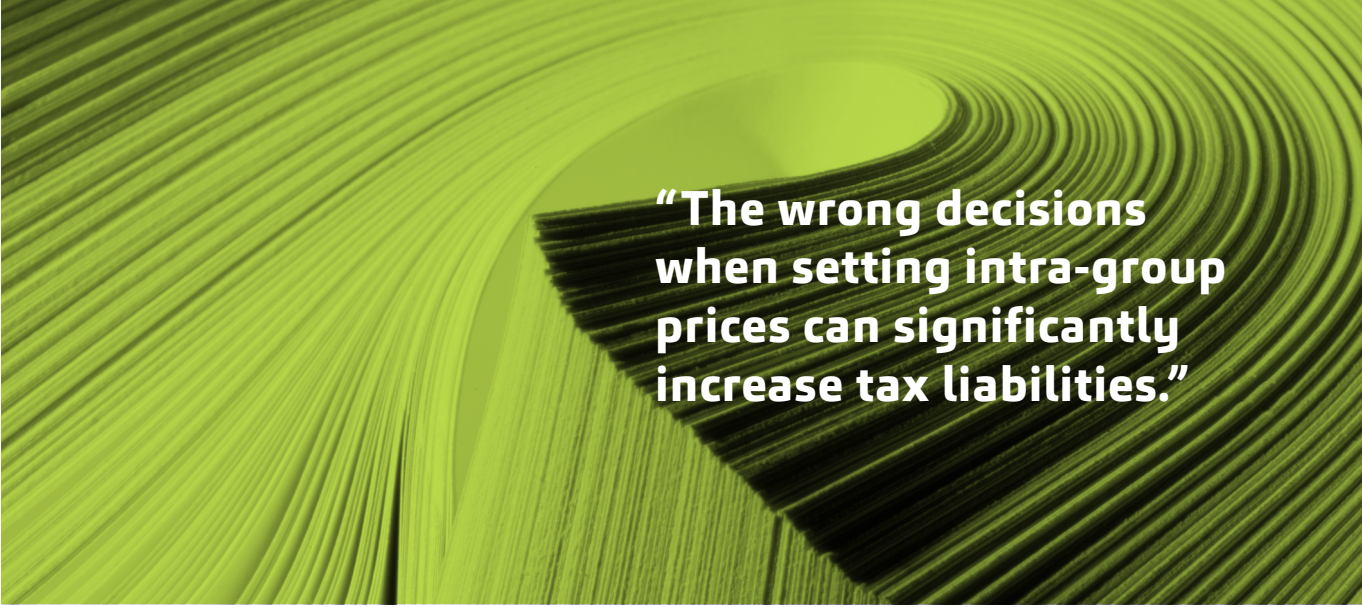
A significant number of jurisdictions now have transfer pricing legislation in place. Accordingly, businesses which trade internationally need co-ordinated advice and protection if they are to achieve their commercial aims.

Some jurisdictions transfer pricing legislation also covers domestic transactions. In such cases, transactions between businesses within the same location would need to be reviewed in detail from a transfer pricing perspective to ensure all transfer pricing obligations are adhered to.

Working together, our members' transfer pricing specialists worldwide provide a full service to internationally trading businesses.

## Here are the main ways transfer pricing specialists can help:

- Advising on prices for intra-group transactions
- Consulting on restructuring business functions
- Assisting with documenting intra-group prices
- Defending a group's transfer pricing policies
- Negotiating advance pricing agreements.



**“The wrong decisions when setting intra-group prices can significantly increase tax liabilities.”**

## **Advising on prices for intra-group transactions**

**Most international trading groups have to make key decisions when setting prices for transactions between group companies. The wrong decisions when setting intra-group prices can significantly increase tax liabilities or result in costly transfer pricing enquiries from tax authorities.**

Intra-group transactions typically relate to the sale of goods, the provision of services, the licensing of technology or intangible assets such as trademarks, or the provision of finance.

When companies with intra-group transactions are located in different jurisdictions, the setting of prices has direct implications for the group's net global profits. This is because intra-group prices influence the allocation of total profits between the jurisdictions in which a multinational group operates and tax rates differ from territory to territory.

National tax authorities, aware of the possibility of base erosion and profit shifting, generally insist that intra-group prices are set on an arm's length basis, namely that they reflect the prices which would be charged between third parties.

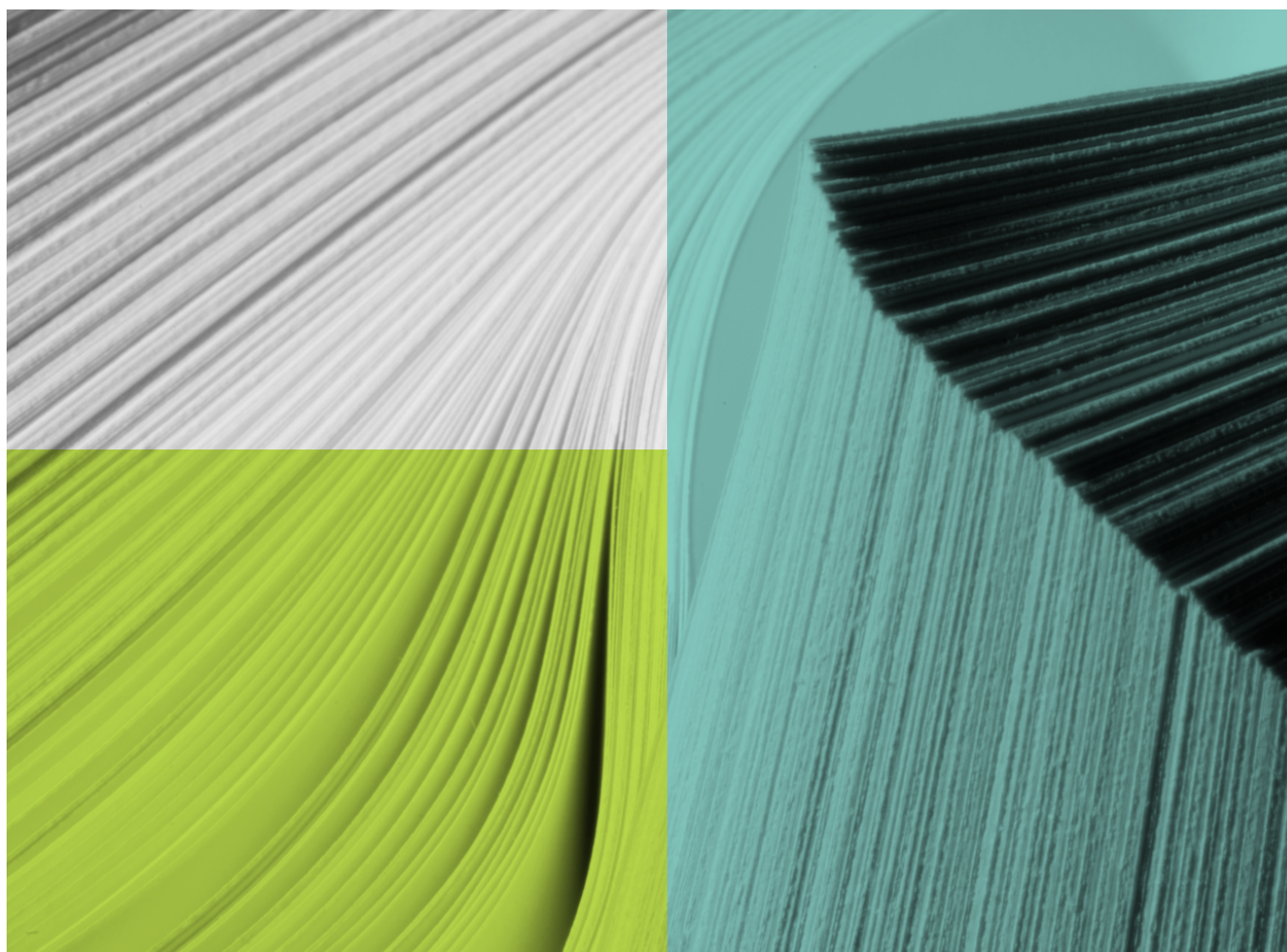
Our transfer pricing specialists have access to proven economic databases worldwide which, coupled with their extensive experience, enable them to advise upon and recommend pricing policies. Such advice aims to satisfy the competing needs of different tax jurisdictions.

## Consulting on restructuring business functions

For commercial purposes, business operations or functions are often transferred to another jurisdiction. Such businesses must confirm and value the tangible and intangible assets which have been transferred. Otherwise a significant transfer pricing risk arises.

In particular, valuing intangible assets in a way that should be defensible to each tax authority involved is highly complex. Therefore, seeking advice at the earliest opportunity regarding transferring intangible assets is paramount. If the restructuring is undertaken in a manner not in line with the arm's length principle, exceptional tax costs could arise.

It is also wise for businesses to gain assistance in the development of intra-group agreements to ensure that arm's length pricing and clarification of the related functions is accurately reflected therein.



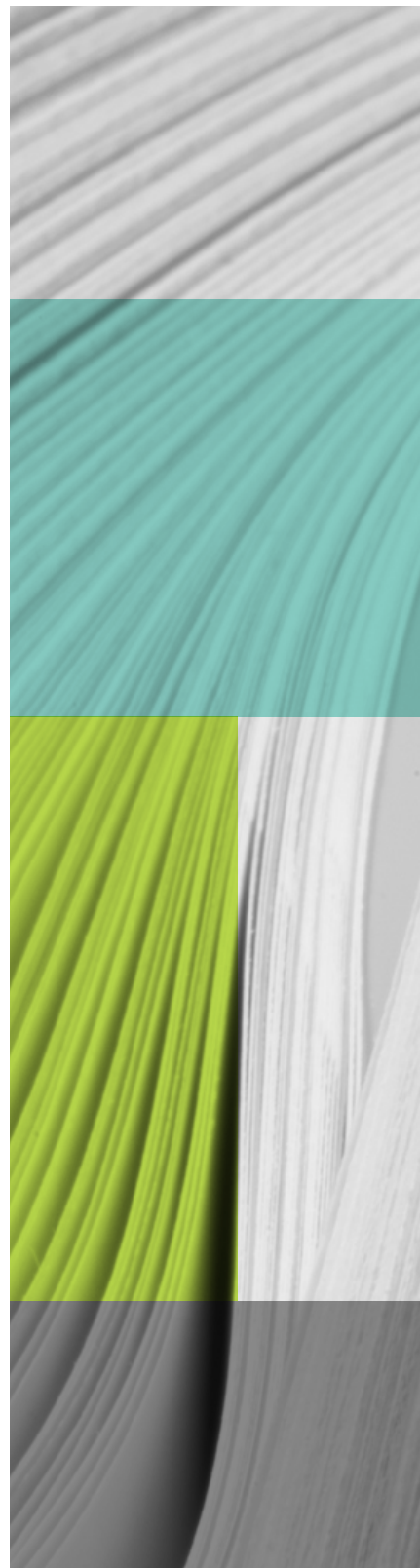
## Assisting with documenting intra-group prices

Once decisions have been made on the prices to be charged for intra-group transactions, it is essential that the reasoning behind the decisions is fully documented.

Most jurisdictions with transfer pricing legislation provide their tax authority with the power to demand to see such documentation. This can also include the right to impose severe financial penalties if such documentation does not exist or is considered inadequate.

Providing a tax authority with a professionally prepared rationalisation of the adopted pricing policies can illustrate that the group takes its transfer pricing obligations seriously. This is likely to enhance the prospects of the policies proving to be acceptable.

Our members' transfer pricing specialists are not only experienced in setting intra-group prices but also in advising on how the reasoning for them should be documented consistently for companies throughout the multinational group.



# Defending a group's transfer pricing policies

**How and when a national tax authority opens an enquiry into an international group's transfer pricing policy and the effect upon a company within its jurisdiction differs from territory to territory.**

In some cases the filing of the annual tax return may trigger the start of the process. In others a letter can be received at any time announcing the commencement of a transfer pricing enquiry.

Sometimes the tax authority will conduct its investigations almost entirely by correspondence with the local company or with its agents. In other cases the local company will need to meet with the tax authority's transfer pricing team.

However the enquiry is conducted, one constant is that the tax authority will have at its disposal considerable expertise in the field of transfer pricing. This is a potentially lucrative source of revenue for national exchequers and they commit resources to it accordingly.

Internationally trading groups therefore need to ensure that they have exceptional professional support in their dealings with the tax authorities. Our specialists are highly experienced in protecting clients' interests and defending their transfer pricing policies.

**“Knowing when to make an advanced pricing agreement application requires advice from an experienced transfer pricing specialist.”**

## **Negotiating advance pricing agreements**

**Sometimes the right approach to the challenges of transfer pricing is to meet them head on, by seeking the prior agreement of national tax authorities to a proposed pricing policy for intra-group transactions.**

Some of the jurisdictions which have transfer pricing legislation include the facility of entering into an advance pricing agreement (APA).

An APA application involves a voluntary disclosure to the tax authority of the group's internal pricing policies. This process can include making representations on why the policies are thought to be fair, detailed discussions thereon, sometimes negotiating amendments, and then the goal is to formally agree with the authority that the intra-group pricing is acceptable and will not be enquired into.

Knowing when to make an APA application requires advice from an experienced transfer pricing specialist. The specialists in our member firms can advise in specific cases on whether it is a course which should be followed.





## Contacts

Below you will find the contact details for the Baker Tilly International regional directors, who can evaluate your specific requirements and ensure a tailored transfer pricing team are brought together to meet your needs:

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