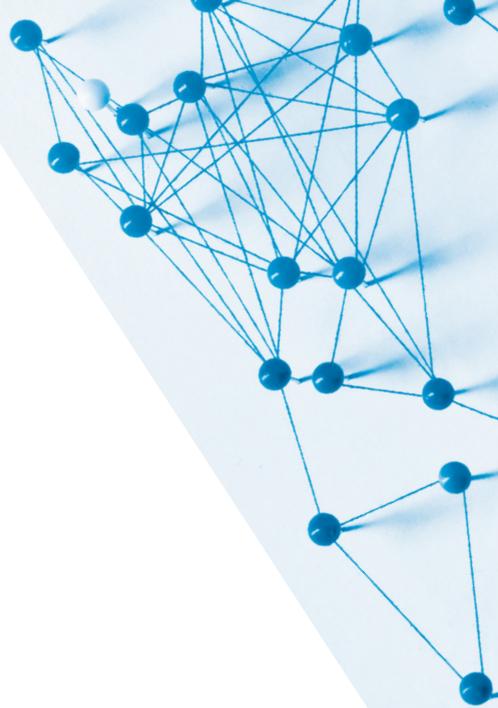

Transfer pricing



“

A prominent player in some of the market's most complicated and challenging multi-jurisdictional cases.

Chambers Global 2014, Tax

“

Praised for its transfer pricing group, which is seen as a unique and first-rate offering.

Chambers Europe 2014, Tax

“

The transfer pricing practice of Freshfields... has positioned itself at the forefront of thought leadership.

International Tax Review's World Transfer Pricing 2015

Transfer pricing

‘Transfer pricing’ refers to the setting of prices for the provision or supply of goods, services and intangible assets within a multinational business.

These are related-party ‘controlled’ transactions, so market conditions do not govern them.

The choice of transfer price can affect how profits are allocated within the organisation and accordingly where taxable profits arise internationally. So transfer pricing is a major concern for national tax authorities. To ensure a fair distribution of tax revenue, Organisation for Economic Co-operation and Development (OECD) guidelines and the local tax laws of most modern or industrialised economies require that transfer prices adhere to the arm’s-length principle.

The arm’s-length principle broadly permits taxing authorities to amend (for tax purposes) the terms of a transaction between connected parties, including to ensure that profits accrue as they would have done (and are taxed as they would have been) if the arrangements were made between independent enterprises.

Designing and documenting an appropriate transfer pricing policy is more than a simple matter of compliance for corporate taxpayers. Informed and strategic transfer pricing advice can protect against double taxation, boost profitability through a reduced global effective tax rate and align inter-company pricing with business strategy, thereby supporting corporate development. At the same time, transfer pricing planning should neither compromise a company’s policy on corporate social responsibility nor lead to a perception that its arrangements are tax-driven.

Global Law Firm of the Year

Who’s Who Legal 2014

How we can help

Recent high-profile transfer pricing cases have been determined on fine points of law and the testimony of expert economists. Moreover, tax authorities are recruiting their own economists and expressing a new determination to litigate when necessary. International bodies are reviewing the interpretation of the OECD Model Tax Convention on the basis of complex economic arguments. Companies must find a way through increasingly detailed and often conflicting statutory transfer pricing codes in more and more tax jurisdictions.

Our dedicated international transfer pricing team offers a complete and independent transfer pricing service – including risk assessment, strategy advice, legal implementation and protection of intangibles, as well as documentation and dispute resolution – which combines expert interpretation of tax, commercial and intellectual property (IP) law, dispute resolution skills, analytical economic thinking and industry-specific commercial awareness.

Whether your business faces the challenge of compliance in different jurisdictions or of international restructuring to prepare for the future, we can provide the solution wherever you operate.

Freshfields combines expert legal interpretation and economic analysis to advise on transfer pricing and safeguard clients' interests worldwide.

Our strategic approach involves comprehensive investigation across the three dimensions of transfer pricing.

Planning

- We can help you to identify and act on 'quick wins'.
- We can advise on all aspects of related-party transactions in goods, services, finance and intangibles.
- You can consult us on how mergers and acquisitions, new ventures and reorganisations provide an opportunity to restructure your supply chain or plan your business to make it more tax-efficient.

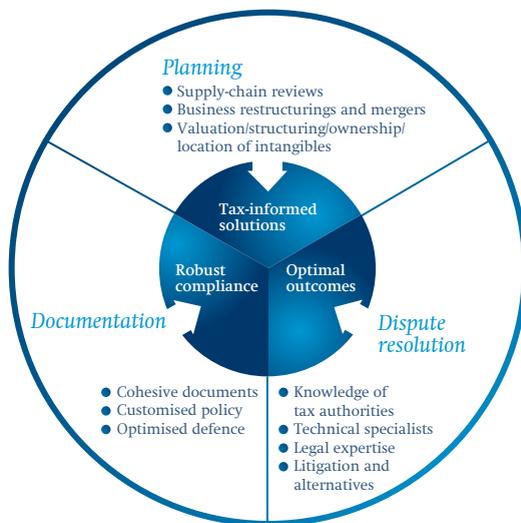
Documentation

- We can help you to meet your immediate benchmarking and compliance obligations.
- We can work with you to devise transfer pricing risk management arrangements that are adequate to maintain a 'low-risk' status in the longer term.

Dispute resolution

- We can help you negotiate advance pricing agreements, advance thin capitalisation agreements, rulings and informal agreements with the tax authorities to achieve greater certainty.
- We can advise you on transfer pricing enquiries and investigations and give you litigation and alternative dispute resolution support when necessary.
- We can also help you with competent authority, mutual agreement and European Arbitration Convention processes.

Freshfields' international tax and dispute resolution teams have an exceptional reputation and are consistently ranked as market leaders. Our international IP specialists advise on brands and products, patents and technology, and IP transactions, with special reference to the telecommunications, media and technology sector, to pharmaceuticals, biotechnology and healthcare and to consumer products, frequently on a multi-jurisdictional basis. We combine all of these skills to act for local and international clients on domestic and cross-border transfer pricing issues, including large-scale transfer pricing disputes. We can provide the benefits of legal privilege.



How we can help

The financial services sector can face specific and exacting transfer pricing issues.

- We can advise on the OECD guidance on the attribution of profits to branches — this is likely to be of interest to banking and insurance businesses.
- With our credit rating agency licence and loan databases, we can apply the latest case law concepts to the determination of interest rates, profit participations and guarantee fees.
- We can carry out a functional analysis and benchmarking to confirm the split of investment management fees between the investment management, advisory, sales and administrative functions of global investment management and services businesses.
- We can carry out a functional analysis and benchmarking to apply the OECD global trading guidelines to a residual profit split analysis between the research, sales and trading functions of corporate and investment banking businesses.
- We can work with you to review the arm's-length nature of tax-structured investment products.
- We can advise financial services head office functions on the EU model services agreement and cost-allocation guidance.
- We can advise on how fundamental new case law affects the interest rates that should be charged in cash pooling arrangements.
- We can advise on bank restructurings and bank recovery and resolution plans.

Examples of our experience

UK

- Advising on major transfer pricing litigation cases.
- Creating a simplified interest rate policy manual for an energy company.
- Advising on the opportunities presented by a company's rebranding project to adopt a global franchising model.
- Advising a hedge fund on the optimal transfer pricing policy for a new UK trading desk and the separate attribution of profits to the permanent establishment created by the desk.
- Acting as expert economic witness in a dispute involving a retailer that was settled through an alternative dispute resolution process.
- Representing a resort owner in a dispute over the expenses and revenues booked to a hotel.
- Assisting with a precedent-setting APA for a series of construction projects.

Austria and Germany

- Valuing the IP and profit potential transferred to China when a manufacturing company moved its activities there, and putting in place the subsequent service charge model.
- Advising on the transfer pricing implications of business restructurings of financial institutions.
- Advising various financial institutions on the transfer pricing issues arising out of tax audits.
- Advising a European financial institution on the cross-border reorganisation of its investment banking activities, including transfer pricing methods for intra-group services and potential exit charges arising from the transfer of intangibles to group companies.
- Reviewing private equity transaction fees.
- Advising on centralising talent acquisition and management for a branded clothing company.
- Advising an international financial and banking group on the country allocation and transfer pricing issues concerning banking, lending, M&A and project finance services to their customers between the German, Austrian and CEE group companies.
- Advising several multinational enterprises in disputes on business restructurings regarding their distribution chains.
- Advising a multinational in a tax dispute regarding the restructuring of its IP business.
- Benchmarking arm's-length interest rates for bank loans to their subsidiaries, based on stand-alone credit scores for parents and subsidiaries and adjustments for implicit parental support.
- Benchmarking arm's-length royalty and sub-licence fees for an IP structure put in place by the acquirer of a retail business.
- Advising on the determination, documentation and change of intra-group charter rates of a shipping group, reflecting new economic challenges.

Examples of our experience

Belgium

- Litigating and subsequently negotiating a transfer pricing arrangement for a major international automotive company with the Belgian tax authorities.
- Obtaining a landmark tax ruling relating to the transfer pricing arrangements entered into by a Belgo-French retail chain.
- Obtaining a precedent-setting transfer pricing tax ruling on the sale by major Belgium-based polished diamond traders of their products to the Asian market through Hong Kong-based sales entities.
- Obtaining an advantageous tax ruling leading to the effective tax exemption in Belgium of more than half of the Belgian accounting profits on the basis of a novel application of the 'location benefits' approach.

Brazil

- Putting in place a trading model for a Moroccan company involving a thin function intermediary distributor in the Netherlands.

China

- Advising an international engineering group on defence of its transfer pricing arrangements in a Chinese transfer pricing audit.
- Ensuring local compliance in respect of new royalties, service fees and semi-finished goods prices to be charged to the Chinese subsidiary of a German manufacturer and IP owner, including an IP charge embodied in the product price and a success fee element in the R&D charge.

France

- Acting for a listed biopharmaceutical company on the update of its transfer pricing policy and its associated legal reorganisation.
- Determining, by five different methods, the interest rate to be charged on a large shareholder loan for a well-known leisure group.
- Advising an international food services operator on an IP transfer pricing planning structure.
- Advising a major multinational mining company on establishing an in-house consultancy firm, including advising on the arm's-length pricing of intercompany consultancy services.
- Advising a multinational chemicals company on a major transfer pricing re-assessment.
- Determining an appropriate sales commission for a subsidiary of an international construction company.
- Advising a manufacturer on financing a new aircraft and the setting up of the advance pricing agreement.
- Advising a French industrial company's environment division on updating its transfer pricing policy.
- Assisting a worldwide transport group, in the context of the acquisition of a majority stake in a French-based logistic group present in 12 countries, in redefining the transfer pricing policies within the target group and with the seller.

Italy

- Advising two Italian branches of foreign banks on pending tax audits, litigations and settlement discussions relating to the denial of interest expenses on a portion of internal funding re-characterised as free capital.
- Advising the Italian subsidiary of a global car manufacturer on a transfer pricing audit and settlement discussions regarding the profit to be attributed for the distribution functions performed in the Italian market.
- Advising a multinational energy producer on the correct transfer pricing analysis of the sale of electricity generated by an Italian gas-fuelled power plant to a foreign group trader.
- Advising a leading investment bank on the transfer pricing aspects of a multi-jurisdictional disposal of its asset management businesses.
- Advising an international pharmaceutical company on defending its transfer pricing policies and procedures including analysis of the transactions, briefing of an expert witness and advice on transfer pricing aspects of the litigation strategy, followed by advice on improvements to the company's transfer pricing controls.
- Advising an online gaming group on a tax audit concerning its transfer pricing policy.

Netherlands

- Advising a Netherlands-resident group financing company of an international airline on the transfer pricing aspects of a convertible bond issue.
- Advising an international real estate private equity fund on the transfer pricing aspects of back-to-back financings through various jurisdictions.
- Representing an international financial institution on a dispute with the Dutch tax authorities in relation to its onshore and offshore captive insurance companies.

Spain

- Advising a major food manufacturer on its transfer pricing arrangements, involving different geographical divisions, and on the tax implications of the use of trade marks and intangibles.
- Advising a large Spanish corporate group on transfer pricing policies and intra-group services agreements.
- Advising several major construction and real estate companies on goodwill valuation and the transfer pricing aspects of corporate reorganisations.
- Benchmarking the interest rate and profit interest elements of profit-participating shareholder loans to a real estate company.

US

- Advising on a transfer pricing report considering the allocation of costs to non-US subsidiaries of a US corporation.

Transfer pricing contacts

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