



# TRANSFER PRICING

HOUTHOFF



**Transfer pricing has gained significance for multinational enterprises over the last few decades. It has become more complex than ever before and for most multinationals, transfer pricing is now the number one tax priority. The developments in the area of transfer pricing are continuing to evolve.**

## Developments

The use of **profit splits** has been promoted by the OECD and many tax authorities. Time will tell whether there will be enough consensus on implementing this in practice and the final outcome. In addition, the OECD's long-awaited attempt to provide guidance on financial transactions has already stirred many disagreements.

**Transfer pricing audits** have become a common phenomenon for multinational enterprises. Tax authorities now have highly skilled transfer pricing teams at their disposal. As a result, disputes between taxpayers and tax authorities have become more and more sophisticated. Nowadays, these disagreements often result in tax litigation. In addition, the European Commission's **State aid decisions and ongoing investigations** into tax rulings criticising transfer pricing methods show the importance of a risk assessment when devising a transfer pricing strategy and negotiating tax rulings. In this respect, there are

several factors which will be decisive in disputes between taxpayers and the authorities. These will also play a key role in decisions by the courts.

Three important factors come into play. First and foremost, the company's overall **tax and transfer pricing strategy** is of major importance, even though every case is unique and requires a different approach. The second factor is your **relationship with the tax authorities**. This boils down to one question: how do you want the tax authorities to view your company? Assuming that your answer is "positively", you must think about what you are proactively doing to help build this impression. The third factor is the **quality of your analyses**. It is essential when you are assessing this to consider whether the tax authorities could refute the outcome of your work by performing their own analyses based on the same information.



## Our approach

Our clients come to us in their most critical moments. When the action they take now will affect their business well into the future. At Houthoff, we help clients to transform these critical moments into long-term opportunities. We call it Going Beyond. We listen to our

clients carefully to genuinely understand their needs. After teaming up, we jointly work on the best solution. We are committed to providing an excellent level of service, so we proactively manage the whole process to ensure timely delivery and decision-making.

## Pragmatic

Our Transfer Pricing Team consists of experienced team members with both extensive in-house and advisory experience. This unique combination of knowledge and experience gained on both sides of the table gives us a 360-degree perspective. We focus on identifying the issues

that are most relevant to our client and offer a wide range of economic services to address them. We have an excellent relationship with the Dutch tax authorities. We regularly conclude advance pricing agreements and advance tax rulings for our clients.

## Full-service practice

The Transfer Pricing Team is part of Houthoff's full-service Tax Team, which consists of both tax lawyers and economists. Our transfer pricing economists perform various valuation services for tax purposes, including intangible and company valuations. This enables us to jointly advise on the most complex combined tax and transfer pricing matters.

We also regularly work together with our notarial and corporate lawyers on M&A transactions, corporate restructurings and intellectual property, arbitration, litigation, competition, real estate and insolvency matters. We work closely together with our Brussels-based State aid experts, particularly on tax rulings, to ensure sound rulings and avoid recovery risks.

## Tax litigation

Houthoff is renowned for its outstanding experience in **tax litigation**. We are one of the few law firms in the Netherlands that litigates before both civil and tax courts, and also, if necessary, before the Dutch Supreme Court.

On transfer pricing cases, our transfer pricing specialists work side by side with our tax litigators, combining knowledge of economics and law to ensure the best outcome for our client.

## Transfer pricing services

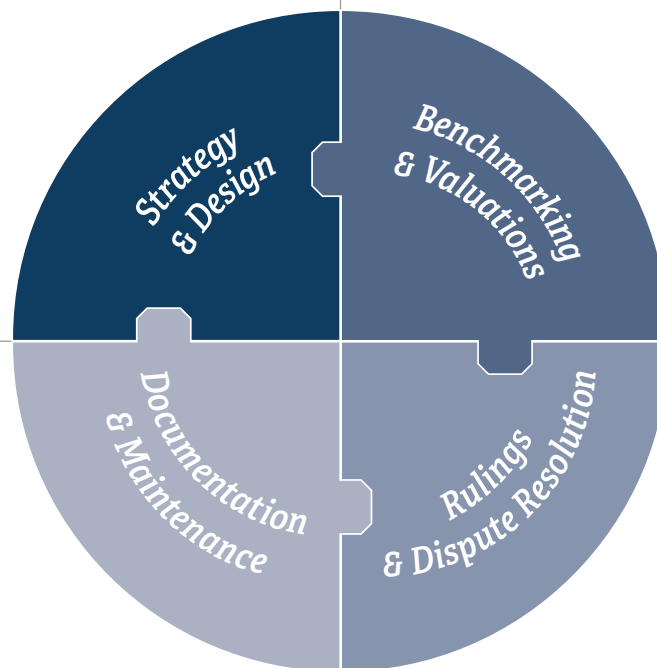
- Design of appropriate and defensible transfer pricing policies
- Diagnostic transfer pricing analyses
- Feasibility study and impact assessment for IP transfer and business reorganisations
- Value chain analysis and optimisation
- Assistance for head of TP and head of Tax in the boardroom
- Advice on automation regarding operational transfer pricing
- Interaction between TP-Customs-VAT
- Risk assessment of country-by-country reporting

### Determining an arm's length remuneration for:

- Distributors, service providers, HQ services, manufacturers, procurement companies, roaming and capacity companies
- Value-added strategic service providers
- Highly integrated operations and/or unique intangibles
- Licensing and transfer of intangibles
- Intercompany loans, cash pooling arrangements, captive insurance, guarantee arrangements, leasing, factoring, etc.

### Other services include:

- Credit rating scoring
- ROA and ROCE analyses
- Debt capacity analysis
- Intangible and company valuations



- Drafting and executing intercompany agreements
- Preparing and updating legally required TP documentation
- OECD's three-tiered approach to TP documentation:
  - Country-by-country Reporting
  - Master file
  - Local file
- Advising on the automation of TP documentation
- Benefit test support including:
  - Guidance on invoicing
  - Act of acceptance procedures
  - Best practices in gathering evidence

- Obtaining certainty in advance on transfer pricing matters using advance pricing agreements
- Advising on the use of mutual agreement procedures (MAP) and the EU Arbitration Convention to resolve any double taxation
- Drafting defence memos, position papers, etc. for audit support
- Litigating before both tax and civil courts, including the Dutch Supreme Court

## About Houthoff

Houthoff is an independent leading law firm headquartered in the Netherlands. We have offices in Amsterdam, Rotterdam, Brussels, London and New York, and representatives in Houston, Singapore and Tokyo. Our 300 lawyers work collaboratively to ensure we are there for our clients when they need us most.

Our work is focused on highly complex transactions and dispute resolution, advising international and domestic corporations, financial institutions, private equity firms and governments on their most strategic and business-critical matters. Whether it is helping to assess the strengths of new opportunities or managing risk, we always look beyond today and find the long-term solution.

### *First Tier firm*

LEGAL 500, TAX (2019 EDITION)

*“Clients describe the team as being ‘very pragmatic and straight to the point, with a great attitude to problem solving and business acumen.’”*

CHAMBERS EUROPE, TAX (2019 EDITION)

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*“The lawyers are ‘technically excellent’, giving ‘detailed advice.’”*

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