

# Transfer pricing: New rules introduced in Germany for financial transactions

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On 22 March 2024, the German Federal Council approved the Wachstumschancengesetz ("the Act"), effective as of 1 January 2024. It introduces key changes to transfer pricing rules for cross-border financial transactions. This legislation includes comprehensive reforms to enhance compliance with the arm's length principle, particularly in the area of controlled financial transactions. Although the Act currently applies mainly to inbound cases, in order to comply with the arm's length principle, which applies to in- and outbound cases, it is highly relevant for Luxembourg-based companies engaged in cross-border transactions with German entities.

On 12 December 2024, the German Federal Ministry of Finance issued the German Administrative Principles on Transfer Pricing 2024 (an update to the 2023 version), providing guidance on the application of the Act.

In this article, we examine the implications of the Act for financial transactions involving Luxembourg companies, focusing on how the new regulations may impact their transfer pricing strategies and compliance requirements. We also address potential challenges, mitigation strategies, and key action points for Luxembourg-based businesses.

## New transfer pricing rules for financial transactions

The Act amends the German Foreign Tax Act (AStG) by adding paragraphs 3d and 3e to Article 1, to ensure compliance with the arm's length principle in cross-border financing relationships within multinational enterprises. Key provisions include:

### 1. Prohibition of non-arm's length expenses

Cross-border financing expenses that reduce a taxpayer's income are considered non-compliant with the arm's length principle unless the taxpayer can credibly demonstrate certain criteria. Firstly, the taxpayer must demonstrate debt-servicing capacity, meaning they have the ability to service the debt over the entire financing term from its inception. Secondly, it is essential to establish a business goal, ensuring that it is necessary and will be used in legitimate business



profitability trends, and debt schedules. A scenario analysis would be helpful to assess ranges by stress-testing elemental parameters.

As this analysis looks to the future and requires significant knowledge about the borrower's business and corporate finance, it is important to document it thoroughly. This is especially important if the actual results deviate from the expectations.

### German Administrative Principles 2024

The Principles outline key guidance for financial transactions under the new law:

- No debt capacity analysis is

activities. Without meeting these criteria, such cross-border financing expenses may be considered non-compliant with the arm's length principle. Also, interest rates higher than what the enterprise could get from unrelated third parties based on the group's credit rating are non-compliant, unless the taxpayer can show that a different credit rating approach is more appropriate for the situation.

### 2. Definition of financing relationships

The new rules cover loans, the use or provision of debt capital, and debt-like instruments, applying broader scrutiny to such arrangements.

### 3. Low-function and low-risk services

Financing activities such as mediating, forwarding funds, or managing liquidity and financial risks are considered low-function and low-risk services, unless a detailed functional and risk analysis proves otherwise. This amendment highlights the importance of aligning financing terms with economic reality and imposes higher documentation requirements.

### Debt-servicing capacity analysis

The main element of the new rules is the debt-servicing capacity analysis. It refers to a borrower's ability to meet debt obligations—both interest payments and principal payments—over the entire financing term from inception to maturity. Key elements of such analysis are the following:

- Cash flow availability
- Revenue stability and predictability
- Leverage and debt structure
- Interest rate and market conditions
- Liquidity and asset quality

To assess and evaluate the debt-servicing capacity of a borrower, a lender would typically perform a financial analysis, which includes a projection of cash flows,

required for cash pools.

- An investment-grade credit rating (BBB- or better) can be used to credibly demonstrate the borrower's ability to service the debt.

- A business purpose is deemed valid if the funds are used for maintaining the business or acquiring relevant assets.

- Additional transaction costs, like prepayment penalties, can be considered reasonable but will be treated the same way as the loan in case of an adjustment.

- Interest rate adjustments may occur only if the rates fall outside the arm's length range.

- A rating analysis by the Deutsche Bundesbank for the corporate group should be accepted alongside other standard approaches.

- The application of § 1(3d) and (3e) of the German Foreign Tax Act (AStG) has been codified in § 21(1a) Sentence 2 AStG. These rules apply to all financing relationships—new and existing loans—starting 1 January 2025.

### Relevance for Luxembourg structures

The Act is significant for Luxembourg companies that play a central role in multinational financing structures. These companies often provide loans to related entities across jurisdictions, including Germany. They also play an important role in financing related parties in private equity or real estate transactions, acting as intermediaries for financing German or other European companies.

Consequently, the provisions of the Act have substantial implications for these Luxembourg entities involved in cross-border financing and investment activities.

Compliance is critical to avoid tax adjustments, penalties, or transfer pricing disputes. The new rules demand robust documentation, clear alignment with arm's length principles, and enhanced economic substance for Luxembourg-based entities.

Examples of relevant Luxembourg structures include:

### - Intercompany financing companies

Luxembourg companies serving as central group financing companies or treasury centers often borrow funds from related parties in various jurisdictions and lend funds to group entities, which need funds for their business purposes. Although, the new rules are directly applicable only to German taxpayers, such Luxembourg companies may be impacted indirectly. To align on the German rules it might be relevant to update their group financing policies, which are often used to achieve consistency in transfer pricing analyses for interest rate benchmarks, debt-servicing capacity analyses and similar topics.

### - Alternative investment structures

A typical structure involving a Luxembourg financing and/or holding company in the alternative industry could be the following. A Luxembourg fund ("Fund") finances a Luxembourg property holding company ("Lux PropCo"), which uses 3<sup>rd</sup> party funding, usually from a bank, related party debt, and equity to acquire real estate property in Germany. As the German asset would be considered a permanent establishment of Lux PropCo in Germany and would be obliged to file a German tax declaration, Lux PropCo would need to ensure compliance with the said rules.

### Conclusion

The Wachstumschancengesetz introduces higher transfer pricing documentation requirements (from a quantitative and qualitative point of view) for new and existing financial transactions (i.e., inception before 2024, which remain in place in 2025 and beyond) involving German entities, with implications for Luxembourg companies. Ensuring compliance will require a thorough review of existing financing arrangements, alignment with arm's length principles, and enhanced documentation.

Proactive measures, such as conducting detailed debt-servicing capacity analyses, benchmarking interest rates, and ensuring economic substance, are essential for mitigating risks and avoiding disputes.

As the Act aligns with OECD guidance, there is a likelihood that other European jurisdictions may follow Germany's lead, updating their domestic legislation to reflect these higher standards. Especially debt-servicing capacity analysis might be in the focus of other European jurisdictions as it is a fundamental measure of financial stability and creditworthiness. It requires a strong cash flow, manageable debt levels, stable revenue sources, and proactive financial management.

Luxembourg companies should review existing intercompany loans with the involvement of German entities (as the debt capacity must be shown as per 31 December 2024) and stay prepared for an evolving regulatory landscape and take steps to future-proof their financing structures.

## Sommet Union européenne Asie centrale en Ouzbékistan :

# Un multilatéralisme pour des enjeux différents

Par Olivier ARIFON, Professeur, Université catholique de Lille, chercheur associé, Laboratoire des Sciences de l'Information et de la Communication (SIC.LAB), Université Côte d'Azur

Quels sont les intérêts du premier sommet entre l'Union européenne et les cinq États d'Asie centrale? Entre commerce, politique et partage de valeurs communes, ces acteurs se sont réunis à Samarcande les 3 et 4 avril 2025. Chacune des deux parties considère ce sommet comme stratégique, mais avec des enjeux différents de part et d'autre.

Compte tenu du paysage géopolitique, les relations entre l'UE et l'Asie centrale ont acquis une importance stratégique. Ce sommet offre à l'UE l'occasion de démontrer son intérêt à renforcer les relations multilatérales et la coopération régionale avec l'Asie centrale. Précisons ici qu'un allant de soi entre partenaires reste le partage d'une vision identique des relations internationales. Ces contacts commerciaux et de coopération reconnaissent une approche multilatérale conforme avec les règles actuelles du multilatéralisme, quoi qu'en disent certaines puissances.

Ces relations constituent des signes de la recherche de nouveaux partenariats, réa-



lités des recompositions commerciales et politiques en cours, et l'Asie centrale attire les pays de l'Union. En 2022, le volume des échanges de marchandises avec l'Europe se montait à 47,6 milliards d'euros, avec un excédent commercial de 15,2 milliards d'euros en faveur de l'Asie centrale. Ce poids est notamment dû au gaz et au pétrole.

Ainsi, l'Union est le premier partenaire commercial du Kazakhstan et le premier investisseur étranger, alors que le Kazakhstan demeure le principal partenaire commercial de l'Union en Asie centrale. L'UE est le deuxième partenaire commer-

cial de la région (22,6% du commerce extérieur combiné en 2023), ainsi que le plus grand investisseur, avec plus de 40% des investissements provenant de l'UE. Et afin d'approfondir les relations bilatérales, l'UE a négocié des accords de partenariat et de coopération renforcés avec ces pays (à l'exception du Turkménistan).

Au régional et à l'international, en économie comme en politique, les cinq pays d'Asie centrale (Kazakhstan, Ouzbékistan, Kirghizstan, Tadjikistan et Turkménistan) représentent un ensemble fort convoité. En cela, cet espace de contact entre Asie et Europe est fidèle à son héri-

tage géographique et à sa tradition de zone d'échanges. Politiquement, ces pays se situent au cœur du jeu, ou du plateau (boardgame), pour continuer la métaphore ludique, de plusieurs acteurs. Voyons lesquels.

La Fédération de Russie, qui reste le plus ancien acteur de la région, poursuit ses liens économiques, utilise son passé soviétique et ses liens entre les élites. En un mot, elle affirme la réalité de la géographie.

La Chine, avec les Nouvelles routes de la soie, est très active sur le plan économique et politique, en particulier au Kirghizstan et au Tadjikistan. Pour la Chine, l'enjeu forme à la fois la continuité des échanges avec l'Europe, les contrats de construction et de savoir-faire et, enfin, l'accès aux ressources, principalement énergétiques, dont disposent ces pays.

Les pays du Golfe (avec un sommet Asie centrale - Conseil de coopération du Golfe évoqué à Samarcande en 2025) sont également présents et actifs. Mentionnons également la Turquie et, plus modestement, les actions de l'Organisation des pays turques sur les questions d'énergie, de culture et de transports.

En préparation de ce sommet, le commissaire européen chargé des partenariats internationaux, Jozef Síkela, s'est rendu du 12 au 18 mars 2025 dans les cinq pays

d'Asie centrale. Il y a fait avancer des projets de développement dans le cadre de Global Gateway. Quatre domaines constituent des priorités en Asie centrale : les transports, avec le développement du corridor de transport transcaspien (Trans-Caspian Transport corridor); les matières premières critiques (dont les terres rares); la connectivité numérique; le secteur de l'eau, de l'énergie et du climat.

Juin 2025, c'est également la deuxième édition du Global Gateway Forum à Bruxelles, le programme de développement et de connectivité de l'UE qui ne se limite pas à la région, mais bien évidemment l'inclut. Ce Forum abordera les mêmes thèmes que ceux de la visite du commissaire citée ci-dessus et y ajoute deux éléments chers à l'UE, l'État de droit et le développement humain.

Affirmation économique, diversification des relations et travail sur l'identité, la zone dispose à la fois de nombreux atouts et doit en même temps faire face à biens de défis. En réalité, quels sont les objectifs et les résultats escomptés par ces nations grâce à leurs politiques multidimensionnelles, que le Kazakhstan et l'Ouzbékistan ont adoptées comme approche commerciale, politique et identitaire? Les nouveaux partenariats en formation dans ces sommets, les attentes des partenaires et les pressions des multiples acteurs sont en place pour un moment.