

NVB Response to the OECD Consultation on the scope of the future revision of Chapter IV (administrative approaches) and Chapter VII (intra-group services) of the Transfer Pricing Guidelines

The Dutch Banking Association or Nederlandse Vereniging van Banken (hereafter: NVB) is the representative voice of the Dutch banking community with over 60 member firms, large and small, domestic and international, carrying out business in the Dutch market and abroad. The NVB strives towards a strong, healthy and internationally competitive banking industry in the Netherlands, whilst working towards wider single market aims in Europe.

This memo is in response to the invitation of the OECD, published 9 May 2018, to provide comments on the scope of the future revision of Chapter IV (administrative approaches) and Chapter VII (intra-group services) of the Transfer Pricing Guidelines.

The NVB would like to thank the OECD for this opportunity and welcomes the initiative to revise the guidance in Chapter IV and Chapter VII of the Transfer Pricing Guidelines.

The OECD has asked for comments on a number of issues. If and insofar the NVB has any comments or views we have listed these issues below.

Chapter IV – Disputes Resolution

- Additional guidance that could be provided on advance pricing arrangements;
NVB: APAs should be more actively encouraged, as a mechanism for dispute prevention. This could be achieved by, for example, fast track procedures for more straightforward areas.
- Any other mechanisms or issues relevant to the administration of transfer pricing and/or to prevention and resolution of transfer pricing disputes for which guidance to be developed as part of the revision of Chapter IV of the TPG.
NVB: Alignment with the EU Council Directive on Tax Dispute Resolution Mechanisms in the EU is preferred.

Chapter VII – Intra-Group Services

- Demonstrating that a service has been rendered and/or that the service rendered provides benefits to the recipient;
NVB: This will always be difficult in practice. The OECD could consider alternative methods, e.g. group members are permitted to deduct group overheads up to an agreed percentage of Earnings / EBIT and/or Capital.
- Drawing a distinction between: (i) activities which do or do not benefit the local affiliates; (ii) benefits that purely arise from group membership and those that arise from a deliberate concerted action; and (iii) shareholder activities and stewardship activities;
NVB: It would be useful to elaborate on the influence of group membership on the credit rating of subsidiaries.
- Identifying in practice duplicated activities;
NVB: Guidance on the role of regional service centers would be useful, as tax authorities often fail to understand that head office may delegate part of its activities to a “regional head office”. This means there are for example costs of local HR, regional HR and central

HR, but this does not necessarily mean there is duplication.

- Finding an appropriate allocation key for charging intra-group services;
NVB: It would be helpful to have more guidance on the use of single versus multiple allocation keys; some examples of general allocation keys that may be appropriate for specific industries; and an indication of specific allocation keys that would not normally be acceptable.

Amsterdam, 2 July 2018.