

## ■ ■ ■ Verrekenprijzen: OESO-richtlijnen en Belgisch perspectief

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### ABSTRACT ■ ■ ■

**T**his article starts with a brief overview of the elements governing the arm's length principle (ALP). The basis thereof can be found in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations adopted on 27 June 1995 <sup>(1)</sup> (OECD TPG). This article discusses the definition of ALP which is the international standard that OECD Member countries have agreed should be used for determining transfer prices for tax purposes. Application of the ALP is based on a **comparison** of the conditions in a controlled transaction with the conditions in transactions between independent enterprises. This also explains the importance of the "comparability analysis" and the five factors determining comparability. While the comparability analysis is found to be the backbone of a transfer pricing analysis, no comparability analysis can be considered complete without a "functional analysis". The comparability (including functional) analysis is therefore discussed in more depth, including its relation with the transfer pricing methods. The article then continues with an analysis of the transfer pricing methods described in the OECD TPG and a brief analysis of the specific considerations for intangible property and intra-group services.

The second part of the article deals with the Belgian situation. The article discusses some recent major developments in the domestic tax law that may have an impact on transfer pricing. The first major development is the introduction of the Patent Income Deduction (PID); i.e. an incentive for R&D by exempting part of the arm's length income related to development, ownership or licensing of patents. A second major development is the explicit introduction of the arm's length principle into domestic law and the implicit recognition of the OECD TPG through the insertion of article 185, § 2, in the Belgian income tax law. A third item is the possible effect on transfer pricing of a change in the Belgian income tax law and more specific the burden of proof that now may lie on the taxpayer. Finally, the article discusses the Belgian approach on documentation, which is in conformity with the OECD TPG and the European Union Transfer Pricing Documentation concept (EUTPD) and gives some insight in the transfer pricing audit structure.

**Keywords:** transfer pricing, arm's length principle, taxation of multinational enterprises

**JEL Classification:** F23, H25

(1) As supplemented by the Report on Intangible property and Services adopted on 23 January 1996, by the Report on Cost Contribution Arrangements adopted on 27 June 1997 and by the report on the Guidelines for conducting APA's under the Mutual Agreement Procedure adopted on 30 June 1999.