



Transfer pricing and Covid-19: focus on financial transactions

16 June 2020

The impact of the covid-19 pandemic on global economic activity is resulting in a significant cash shortage for companies. Companies' financing and cash needs have therefore come to the forefront of the covid-19 issues. Although the State has adopted emergency measures to enable companies to preserve their cash flow, solutions should also be found in-house. This article is the first focus of our set of four.

Whether for short-term cash needs, long-term financing or guarantees, groups will have to meet the increasing needs of their subsidiaries in financial difficulties. In this context, and although the urgency of the situation requires a prompt reaction, it is more necessary than ever to apply the arm's length principle and to follow the new **Transfer Pricing Guidance on Financial Transactions** issued by the OECD last February and thus completing the OECD Guidelines.

❖ Deterioration of financing conditions due to the context

Despite the call by the European Securities and Markets Authority (ESMA) last April for credit ratings agencies not to downgrade corporate and sovereign credit ratings too abruptly, the downgrades of credit ratings and outlooks have already started.

These downgrades will necessarily result in the strengthening of borrowing conditions on the markets and an increase of interest rates when their revision is provided for in current loan agreements.

❖ The management of current intra-group financing

Intra-group financing currently in place could be subject to renegotiations and adjustments regarding the interest rate, the term of the loan or the repayment terms. The incorporation into the capital of the funds that were initially loaned could also be envisaged.

The option of deferring or even simply renouncing to one or more instalments can also be considered.

In any case, these negotiations should be based on the analysis of the contractual provisions in force and reflect the measures that independent third parties in similar circumstances would be likely to take in their mutual interest.

❖ The setting-up of new intra-group financing

Some companies may need to set up new financing. In such cases, it is necessary to consider both the needs (emergency liquidity or longer-term cash needs) and the nature of the appropriate solutions. These new financing may, for example, consist in current account advances, cash pooling, or term loans.

In any case, these new financial transactions will have to be based on open market conditions and thus be remunerated accordingly.

❖ The use of guarantees

Various financial guarantees (whether formal support, simply passive or even implicit) could also be granted at the request of a third-party lender.

Once again, the OECD Guidance will have to be followed in order to characterize the economic benefit derived from each financial guarantee and to determine their arm's length price.

❖ How to secure your intra-group financial transactions?

Financial transactions were already attracting special attention from the **French Tax authorities**, due in particular to a rich jurisprudential evolution. Given the considerable financial stakes that tax audits represent, this attention should not decrease in the coming years.

It is therefore crucial that the **teams in charge of treasury and tax** coordinate and work together in order to secure intra-group financial transactions and anticipate upcoming tax audits. With this in mind, a particular vigilance must be exercised on the following issues:

- **Precise delineation** of the financial transaction (what the needs are and how to meet them) in order to prevent any risk of requalification, including capital requalification;
- **Compliance of the use of funds** with selecting borrowing terms and conditions;
- The performance of **precise and adequate functional analyses**;
- The preparation of a documentation including, in particular, the **appropriate economic analyses**;
- **Other tax consequences** related to financial transactions (in particular with regard to the deductibility of financial charges and withholding tax).

Contacts



Pascal Luquet

Attorney-at-Law – Partner

E: pluquet@avocats-gt.com
T: +33 1 41 16 27 41
M: +33 6 10 12 12 17



Caroline Lebon

Attorney-at-Law

E: clebon@avocats-gt.com
T: +33 1 41 16 27 44
M: +33 6 73 06 49 59



Mickaël Duquenne

Tax Advisor

E: mduquenne@avocats-gt.com
T: +33 1 41 16 27 42
M: +33 6 84 22 42 93

Grant Thornton Société d'Avocats

29, rue du Pont
92200 – Neuilly-sur-Seine
France

www.avocats-gt.com

T : +33 (0)1 41 16 27 27

F : +33 (0)1 41 16 27 28

E : contact@avocats-gt.com



About Grant Thornton Société d'Avocats

Grant Thornton Société d'Avocats supports its clients in all their strategic operations, whether in national or international context through multidisciplinary expertise in all areas of business law.

The firm offers national and international customers all required services for the legal, tax and business management of companies. We deal in all business law matters: legal, tax, labour and contractual due diligences, mergers and acquisitions, tax law, VAT and international trade, global mobility, commercial law, employment law and finally business litigation.

Grant Thornton Société d'Avocats is a member of Grant Thornton International, a global leader in Audit and Advisory services, present in more than 136 countries with over 56,200 employees.

© 2020 Grant Thornton Société d'Avocats. All rights reserved.
Member of Grant Thornton International Ltd.

N.B.: This memorandum is of a general nature and no decisions should be taken without further advice. Grant Thornton Société d'Avocats shall not accept any legal liability relating to the consequences of any decision or any action taken as a result of the information above. You are encouraged to seek professional advice. We would be happy to discuss the application of any of these changes to your particular situation.

