



Amsterdam Centre for Transfer Pricing and Income Allocation (ACTP) Opening Conference

Friday 9 December 2022, University of Amsterdam

An EU Arm's Length Principle? The interplay between transfer pricing and EU law

**This conference qualifies
for 6 NOB PE hours**

speakers / moderators

Marco Adda

Dr. Stine Andersen

Dr. Svitlana Buriak

Prof. dr. Sjoerd Douma

Rutger Hafkenscheid Prof.

Dr. Werner Haslehner

Greetje van Heezik

Dr. Ivan Lazarov

Dr. Aitor Navarro

Rezan Ökten

Natalie Reypens

Ruby Rojas

Antonio Russo

Raffaele Russo

Lucia Sahin

Prof. Dr. Daniel Smit

Agata Uceda

Prof. Dr. Peter Wattel

Prof. Dr. Dennis Weber

Ciska Wisman

9 December

09:00 - 09:15

OPENING

Dr. Svitlana Buriak
Rezan Ökten
Prof. dr. Dennis Weber
Prof. dr. Sjoerd Douma

09:15 - 10:45

PANEL 1

Minimum substance requirements under the Unshell Directive (ATAD 3) and the OECD TPG

The EU Unshell Directive aims to combat the misuse of shell entities for tax purposes. It introduces new reporting obligations for entities with predominantly passive income flows and outsourced day-to-day activities.

In this session, the speakers and panelists will discuss the transfer pricing implications of the ATAD 3 Directive *inter alia* for Dutch, Luxembourg, Italian, Swiss and U.S. taxpayer from the perspective of the source and shareholders' country. They will compare the substance requirements put forward by the domestic legislation (e.g., the Netherlands and Luxembourg), the ATAD 3 Directive and the OECD risk control framework. They will analyse how will ATAD 3 impact current transfer pricing structures, in particular holding and financing company structures, as well as potential impact on beneficial ownership.

In addition, they will deal with the challenges of determining which functions have to be considered 'significant', the distinction between day-to-day and strategic operations, the line between outsourced and in-house functions in case of dependent functionally integrated units, etc. Last but not least, the panellists will evaluate whether the consequences for a shell company under the Directive, which may go beyond the general anti-abuse provision under ATAD (Article 6), meet the requirements of the principle of non-discrimination and proportionality under EU case law (e.g., C-524/04 or C-484/19).

Chair

Raffaele Russo – Of Counsel at Chiomenti, Milan / Senior Fellow at the UvA CPT Project

Speakers

Prof. Dr. Werner Haslehner – Chair for European and International Taxation at University of Luxembourg
Rezan Ökten – Counsel at Houthoff, Amsterdam

Panelists

Dr. Stine Andersen – Partner at KPMG, Copenhagen; Chairwomen at Danish Association for EU tax law
Dr. Aitor Navarro – Senior Research Fellow, Max Planck Institute for Tax Law and Public Finance, Munich
Agata Uceda – Transfer Pricing Partner at KPMG Meijburg & Co, Amsterdam

10:45 - 11:15

BREAK

11:15 - 12:45

PANEL 2

Recharacterization of intra-group transactions and EU ATAD GAAR

Derecognition/recharacterization of transactions (e.g., transactions involving hard-to-value intangibles, recharacterization of a license transaction into a contract manufacturing agreement) as depicted under Chapter 1 of the OECD TP Guidelines may be used by tax authorities as an anti-avoidance provision – general anti-avoidance rules or in the context of beneficial ownership. This may create relevant issues in terms of double taxation also because those cases could not be properly dealt with in the context of MAPs under DTA (a different view may be taken under the Directive on dispute resolution).

The purpose of the contribution should be to verify to what extent the approach proposed by the OECD in relation to derecognition/recharacterization of transactions may trigger any issue vis à vis article 6 of ATAD I and EU fundamental freedoms. More in detail we would like to verify whether the derecognition/recharacterization of transactions on the one hand is consistent with the anti-avoidance provision of ATAD I and, on the other hand, may trigger a discrimination and/or a restriction that in any case could be justified or proportionate following the rule of reason test of CJEU.

Chair

Prof. Dr. Sjoerd Douma – University of Amsterdam / Lubbers, Boer & Douma

Speakers

Dr. Stine Andersen – Partner at KPMG, Copenhagen; Chairwomen at Danish Association for EU tax law

Marco Adda – Partner at BonelliErede, Italy

Panelists

Dr. Ivan Lazarov – Postdoctoral Senior Researcher at Vienna University of Economics and Business

Ciska Wisman – Senior Manager at EY, Amsterdam / Lecturer and PhD Fellow at University of Amsterdam

12:45 - 14.00

LUNCH BREAK



14:00 - 15:30

PANEL 3

Compatibility between transfer pricing secondary adjustments in case of transfer pricing mismatches and EU Parent Subsidiary Directive and fundamental freedoms

Starting from 1 January 2022, a special provision preventing transfer pricing mismatches when applying the ALP is effective in the Netherlands. If an intra-group transaction is not at arm's length, the tax authorities may correct the price by means of an upward or downward adjustment. Under the transfer pricing mismatches rules, a downward adjustment will only be applied if a corresponding upward adjustment is made in the foreign state. This requirement can be against the case law of the Court, in particular with respect to freedom of establishment (C-382/16, *Hornbach-Baumarkt*).

In addition, in this panel, the speakers will discuss whether the payments underlying secondary transactions should be granted the same treatment as ordinary equivalents (e.g., dividends, or interest payments), as well as the application of PSD and IRD to constructive dividend and interest payment transactions.

Chair **Prof. Dr. Dennis Weber** – University of Amsterdam / Loyens & Loeff

Speakers **Lucia Sahin** – Director Transfer Pricing at Deloitte, Amsterdam
Ruby Rojas – Tax Consultant at PwC Sweden, Malmö

Panelists **Svitlana Buriak** – Ass. Professor at University of Amsterdam / Transfer Pricing Specialist at Loyens & Loeff
Antonio Russo – Global Tax Practice Group Chair at Baker & McKenzie, Amsterdam
Greetje van Heezik – Counsel at Houthoff, EU Competition, Belgium

15:30 - 16.00

BREAK



16:00 - 17:30



PANEL 4

Non-ALP and abuse of law: The same or different for interest-limitation rules?

The Dutch anti-base erosion rule is currently under dispute before the Dutch Supreme Court and this Court referred the case to the CJEU. The rule denies deduction of interest in several situations in so far the funding is not based on sound business reasons even if the funding is on market terms. In the recent CJEU decision in *Lexel AB* (C-484/19), the Court ruled that the denial of arm's-length interest expenses was in violation of EU law. In this panel, the speakers and panelists will address the preliminary ruling of the Dutch Supreme Court, the implication for the domestic GAAR, and broader impact on the ATAD interest-deductibility rule. The panelists will discuss whether non-ALP transaction is always a wholly artificial transaction or whether a wholly artificial transaction can be in line with the ALP.

Chair

Prof. Dr. Daniel Smit – Associate Partner at EY Amsterdam / University of Amsterdam

Speakers

Prof. Dr. Peter Wattel – Supreme Court of the Netherlands / University of Amsterdam

Natalie Reypens – Global Head of Transfer Pricing at Loyens and Loeff, Amsterdam

Panelists

Rutger Hafkenscheid – Partner at Huygens Quantitative Tax Consulting

Prof. Dr. Dennis Weber – Professor at University of Amsterdam, Of Counsel at Loyens and Loeff

17:30

DRINKS



Location

University of Amsterdam

Roeterseilandcampus
Building A
Third floor - A3.15 (Moot Court room)
Nieuwe Achtergracht 166
1018 WV Amsterdam

Registration

You can register via [via actl.uva.nl](https://actl.uva.nl) > [ACTP Project](#)
> [News & Events](#)

- The participation fee is 375 euro.
- Early bird fee before 10 November 2022 - 325 euro
- Full-time academics may apply for a fee waiver.
- For UvA students, attendance to the seminar is free (registration mandatory)



About the Amsterdam Centre for Transfer Pricing and Income Allocation (ACTP)

The Amsterdam Centre for Transfer Pricing and Income Allocation (ACTP) is part of the Amsterdam Centre for Tax Law (ACTL). The ACTP brings together world-class education and research in international income allocation. Teaching fellows of the Centre are renowned lecturers, both from practice, academia and government, who lecture at the Advanced LLM Program in International Tax Law at the University of Amsterdam, as well as at the bachelor's and master's programs. ACTP Research Fellows are prominent international transfer pricing scholars and practitioners who distinguish themselves through originality and non-conformist thinking.

The ACTP offers best-in-class education among the academic programs that the University of Amsterdam offers and post-master's professional education. The ACTP distinguishes itself through a case study oriented approach to education, combining the results of academic research and practical experience.

Research within the ACTP is characterized by an independent approach that combines state-of-the-art technical knowledge and expertise with out-of-the-box thinking, leading to innovative solutions for current problems. The ACTP's research results are published in international journals and ACTP research papers, where exemplary master's theses may also be included.

In this way, the ACTP creates an environment where current and next generations of transfer pricing experts from all relevant disciplines can thrive and flourish, in an academic community of students, and fellows. The Centre's daily work will be supervised by the ACTP's Directors and Advisory Board.

Contacts

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