



Smart decisions. Lasting value.

Avoiding Transfer Pricing Disputes

June 17, 2022



Smart decisions. Lasting value.

Welcome



About the Network

“

As a top 10 global accounting network of business and professional experts, we share a common commitment to delivering technical excellence and the highest standards of client service.”

David Mellor,
Chief Executive Officer



Global Network

3,965
Partners

31,115
Professionals

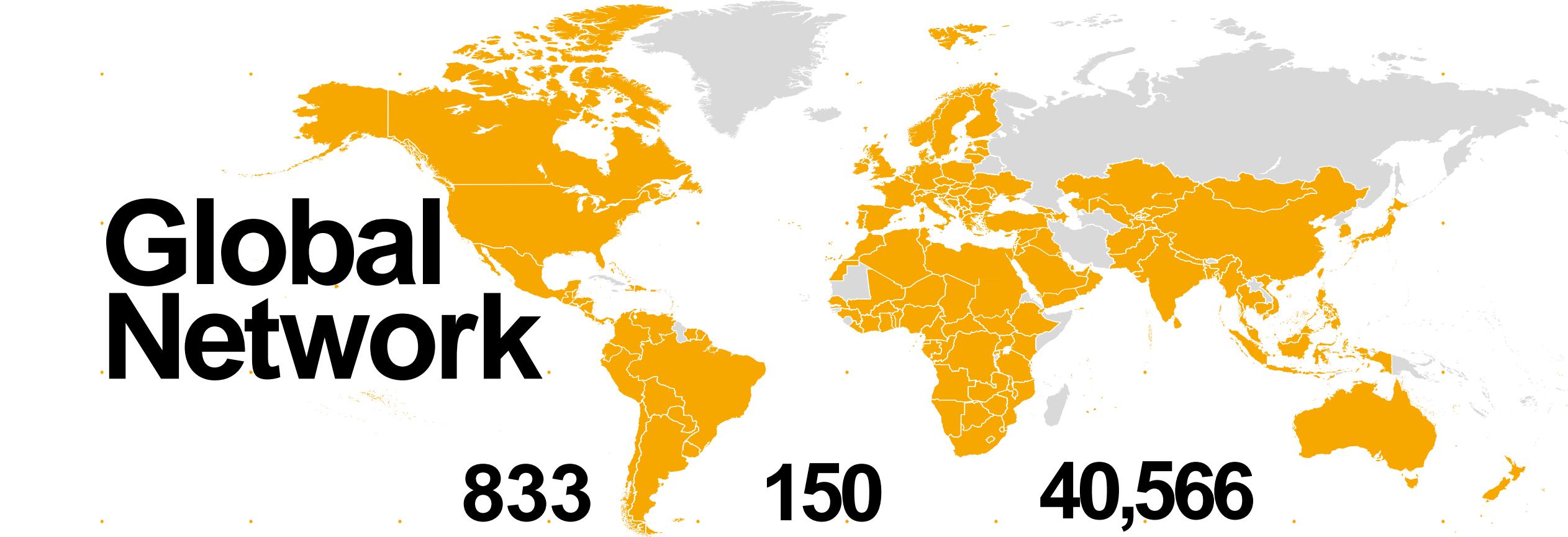
5,486
Support Staff

\$4.6b
Global Revenues

833
Offices

150
Countries

40,566
Total People

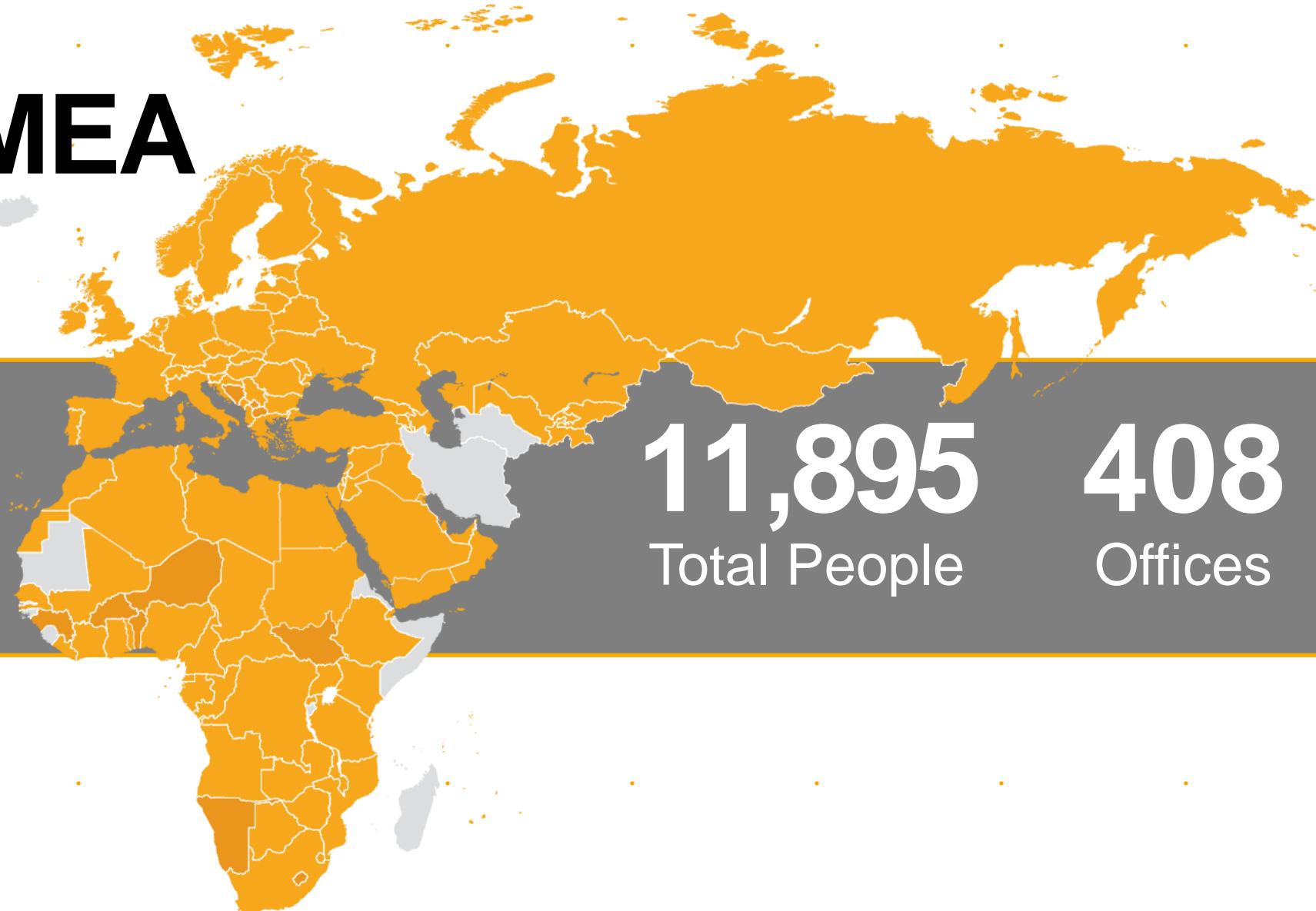


2021 Top 10 Global Networks

Network Rank

1	Deloitte
2	PwC
3	EY
4	KPMG
5	BDO
6	RSM
7	Grant Thornton International
8	Nexia International
9	Crowe Global
10	Baker Tilly International

EMEA

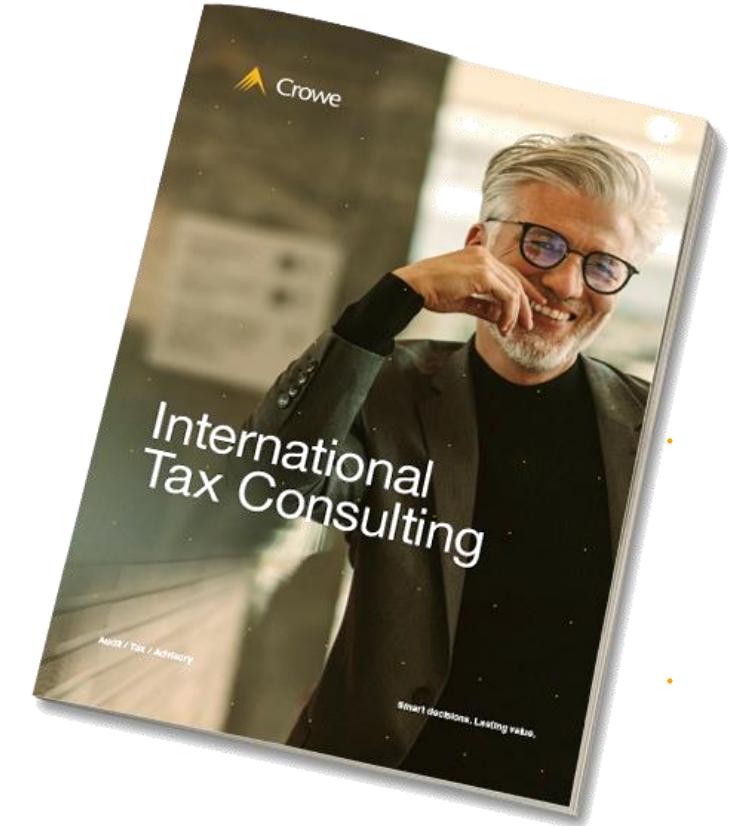


International Tax Services



Claudia Ortiz
International Tax
Committee Chair

- Transfer Pricing
- Value-Added Tax
- Wealth Management
- Real Estate
- Global Mobility
- Corporate Tax Compliance
- International Tax Planning
- Inbound Startups



Crowe Global TP Steering Group



Wolfgang Kirschning
Crowe RWT, Germany

Global TP Steering Group



Sowmya
Varadharajan
Crowe LLP,
USA



Katharina
Herzog
Crowe RWT,
Germany



Andrea
Lahodny
Crowe Vanas,
Austria



Sylvia Song
Crowe
Malaysia,
Malaysia

Regional TP Steering Group

The Americas

- USA
- Canada
- Mexico
- Central America
- Colombia
- Brazil etc....

EMEA

- Germany
- Austria
- Netherlands
- Hungary
- Italy
- Spain etc....

Asia-Pacific

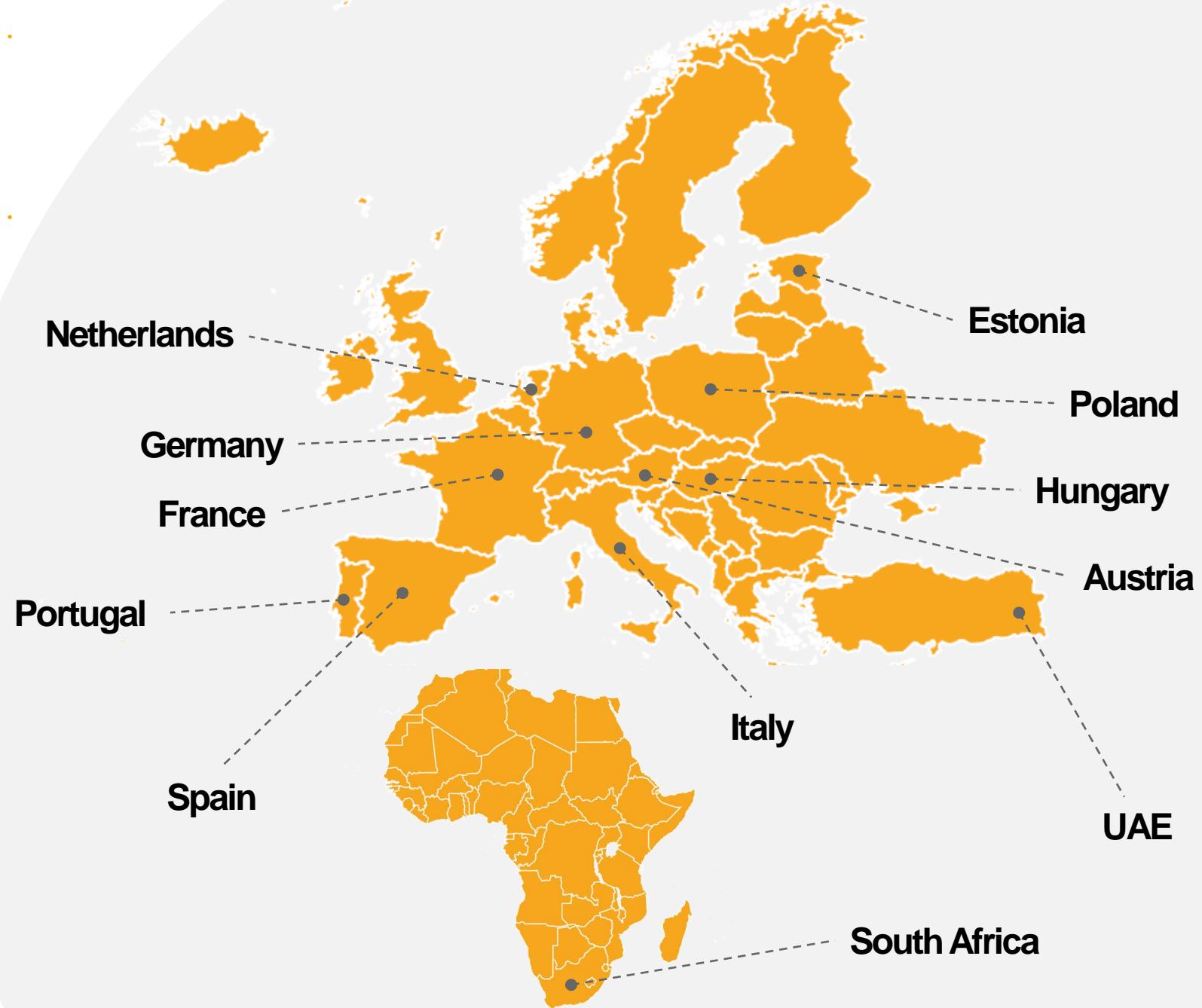
- China
- Singapore
- Japan
- India
- Australia
- Malaysia etc....

TP Specialists in all KEC*

*Key Economic Countries

Transfer Pricing Offices

12 Centers of
TP Competence
in EMEA





Thank you!

Wolfgang Kirschning

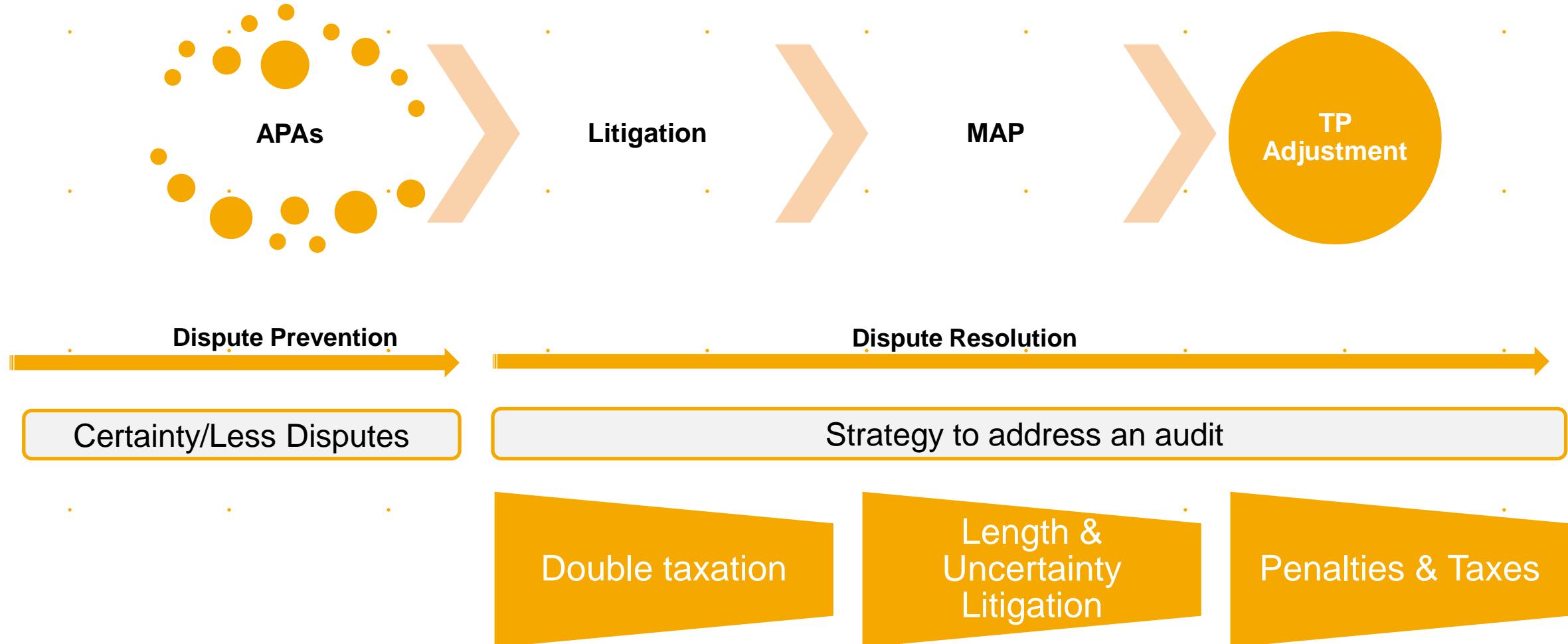
**Head of Crowe Global
Transfer Pricing**

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Avoiding Transfer Pricing Disputes Italian Experience

Dispute Prevention & Dispute Resolution



Strategic Approach to Dispute

Tax Settlement

- allows to avoid the litigation phase
- allows to reduce the potential applicable penalties (from 90% of the higher taxes to 30%)
- cause a double taxation (a downward adjustment in country X after an agreement with the Italian Tax Authorities)
- it is not easy to achieve a relevant reduction of higher taxable income indicated in the ORoF

Tax Litigation

- is the only procedure through which the taxpayer can achieve a confirmation about the correctness of its transfer pricing methods (in case of victory by the taxpayer)
- is a long and uncertain procedure
- the applicable penalties are equal to 90% to the higher taxes (in case of losing by the taxpayer)
- the Tax Court is not formed by transfer pricing experts

Mutual Agreement Procedure

- allows to avoid the litigation phase (even if a tax appeal needs to be submitted)
- is the only procedure that can resolve the potential double taxation considering the agreement between the competent Authorities
- will be related only to taxes and not penalties (that will be applicable in case of upward adjustment in Italy after the MAP)
- is driven by the competent Authorities with a limited involvement of the taxpayer

Unilateral Corresponding Adjustments

- Resident taxpayers **can request a unilateral corresponding adjustment** to the Italian tax administration in case of a primary adjustment notified by another Country resulting in double taxation.
- In case of a foreign primary Transfer Pricing adjustment, the IRA can recognize a downward adjustment not only in execution of a Mutual Agreement Procedure but also upon formal request by the taxpayer.
- The procedure introduced in 2018 allowing Italian taxpayers to obtain a unilateral downward adjustment on their taxable income as a result of transfer pricing adjustment made by foreign tax authorities. The Italian Revenue Agency evaluates whether the primary adjustment made by the other State is in accordance with the ALP, provided that a DTC is in force with the other State, allowing an adequate exchange of information.

See Guidance of unilateral corresponding adjustment request see also the Decision of the Commissioner of Italian Revenue Agency dated 30 May 2018 ("PROVVEDIMENTO PROT.108954/2018)

Tax Risk Management & Strategic Tax Governance

Risk management

- A detailed Value Chain Analysis of the Group is important to show how the business works
- A detailed Functional Analysis of the parties involved in the transactions
- Transfer Pricing Documentation for penalty protection purposes
- Bilateral Advance Pricing Agreement



Thank You



Federico Vincenti

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Pricing Core
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Corresponding Adjustments

Practical Example

Austria

TV Advertising costs in Germany partially adjusted in tax audit



Tax audit in Germany

Advertising initiative in TV were also to the benefit of the Austrian and Swiss group entity.



Allocation Key Number of inhabitants

Only 85% accepted in Germany. 10% allocated to Austria (5% to Switzerland)



Tax audit period FY 2014 - 2018

Final assessments issued by German Tax Authorities in December 2020.

Double Taxation - How to be avoided in international tax?



Is a DTT in place?

Austria has concluded over 90 Double Taxation Treaties.



Is Art 9 para 2 OECD-Model included?

Approx 58 DTT include the obligation to perform a corresponding adjustment in case of arm's length profit adjustment in the other country.



DTT without Art 9 para 2

Austria's Tax Authorities accept the obligation to perform a corresponding adjustment already based on Art 9 para 1.

Corresponding Adjustment

Local procedural law is decisive



Practical experiences

Several legal remedies are discussed and in dispute in theory – **IN PRACTICE** Austria is cooperative in avoiding double taxation and we have succeeded in all our procedures so far.



Period of limitation to be observed

Consider – **time is running!** In our example – FY 2014 could be statute-barred by end of 2021, depending from the date of the assessments etc.



In line with arm's length principle?

Tax audit report of - in our example – Germany needs to provide comprehensive information about facts and documentation of adjustment based on arm's length principle.

Practical Issues and Final Solution

Key Take Aways



Prefiling Contact and Content of Request

We use to contact competent tax office/transfer pricing specialist informally in advance. TP Guidelines require tax authorities to ask for (and check) comprehensive information including foreign final tax assessments.



Period of limitation in dispute

In this specific example we had to bring up arguments from a procedural perspective and were successful. In some other cases we had to file a MAP request for years already barred.



Solution and Key Take Aways

Corresponding adjustment within 1 year at full amount!
Key success factor: information of tax authorities already at first notice of profit adjustment and providing clear information about facts and justification of arm's length.

Thank You



Dr. Andrea Lahodny

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APA Case Studies The Netherlands

What has changed: an overview

After 1 July 2019

Procedure within ruling team more streamlined
Pre-filing meeting
Dutch ruling team still very approachable
The IFZ treatment team and the IFZ College
Economic Nexus
Principle Purpose Test
Blacklist countries
New decree on MAP/BAPA as of 11-6-2020



STAATSCOURANT

Officiële uitgave van het Koninkrijk der Nederlanden sinds 1814.

Nr. 35519
28 juni
2019

Algemene wet inzake rijksbelastingen. Vennootschapsbelasting.
Dividendbelasting. Zekerheid vooraf; Rulings met een internationaal karakter

Directoraat Generaal Belastingdienst
Besluit van 19 juni 2019, nr. 2019/13003

De Staatssecretaris van Financiën heeft het volgende besloten.

Vooroverleg met een internationaal karakter over de toepassing van de Wet op de vennootschapsbelasting 1969 of de Wet op de dividendbelasting 1965 en vooroverleg over de toepassing van een bilateraal verdrag of regelingen ter voorkoming van dubbele belastingheffing op inkomen en vermogen, voor zover verband houdend met de hiervoor genoemde wetten, vindt gecentraliseerd en op uniforme wijze plaats. Om de eenheid van beleid en uitvoering en de kwaliteit te waarborgen, wordt in dit besluit een College Internationale Fiscale Zekerheid geïntroduceerd. Alle afspraken die in vooroverleg worden gemaakt binnen de context van dit besluit, worden ter goedkeuring aan dit College voorgelegd. Voorts wordt in dit besluit geregeld welke onderwerpen in vooroverleg worden behandeld door het Behandelteam Internationale Fiscale Zekerheid en wanneer een verzoek tot vooroverleg aan het aanspreekpunt buitenlandse investeerders wordt gericht. Ook wordt uitgewerkt in welke gevallen geen toegang bestaat tot vooroverleg. Dit besluit vervangt de besluiten van 3 juni 2014, nrs. DGB 2014/3098, DGB 2014/3099 en DGB 2014/3101. Voor zover in het besluit van 3 juni 2014, nr. DGB 2014/3102 regels zijn opgenomen die betrekking hebben op vooroverleg of de totstandkoming van een ruling, zullen de regels van onderhavig besluit daarvoor in de plaats treden.

1. Inleiding

In dit besluit wordt invulling gegeven aan de door de Staatssecretaris in zijn brief van 22 november 2018 aangekondigde beleidsvoornemens over de vernieuwde rulingspraktijk. Een belangrijk aspect is de verzoeken om vooroverleg ter verkrijging van zekerheid vooraf. Het beleid voor vooroverleg is in algemene zin in het BFB neergelegd. Dit besluit is een aanvulling op het BFB en is van toepassing op vooroverleg ter verkrijging van zekerheid vooraf in de vorm van een ruling met een internationaal karakter. De werking van dit besluit is beperkt tot rulings met een internationaal karakter die betrekking hebben op de toepassing van de Wet op de vennootschapsbelasting 1969 of de Wet op de dividendbelasting 1965 en de toepassing van bilaterale verdragen en regelingen ter voorkoming van dubbele belastingheffing op inkomen en vermogen, voor zover verband houdend met deze belastingen.

Gebruikte begrippen en afkortingen

APA
APBI
BAPA
Behandelteam IFZ
Belastingverdrag

Advance Pricing Agreement
Aanspreekpunt potentiële buitenlandse investeerders
Bilaterale APA
Behandelteam Internationale Fiscale Zekerheid van de Belastingdienst
Bilateraal verdrag of regeling ter voorkoming van dubbele belastingheffing op inkomen en vermogen, voor zover verband houdend met de Wet VPR en de Wet DR

APA/ATR – amounts of granted APA/ATR



	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
ATR	451	498	347	355	408	468	441	429	406	348	360	507	433	567
APA	268	206	191	205	248	247	228	203	236	191	132	118	144	173
Total	719	704	538	560	656	715	669	632	642	539	492	625	577	740

Point of contact for Potential Foreign Investors

The point of contact for Potential Foreign Investors is part of the IFZ College. Agreements can be made regarding corporate **income tax, dividend tax, income tax, payroll tax and sales tax**. Contact person for **import duties and excise tax**.

Conditions

Central management of the entity outside of the Netherlands.

No previous activities developed in the Netherlands, beyond assistance and support work.

Substantial (physical) investment in the Netherlands that provides employment in the Netherlands.

When applying this investment requirement, the APBI can take into account the size of the investment in all relevant respects and - more generally - the importance for the Dutch economy.



Jeroen Zegeling

Liaison for Potential Foreign Investors (APBI)



Belastingdienst

The Request

The interested party shall provide the information necessary to assess the request. The request contains a **clear position or clear conclusion** about the **tax consequences** of the submitted case based on a **technical analysis of the relevant legislation and regulations, case law and policy**. An analysis is provided in which the interested party explains in a motivated manner that there are **no impediments as referred to in paragraph 3**.

Paragraph 3

- I. Economic Nexus
- II. Decisive Motive Test
- III. Blacklist

Economic Nexus

An **open norm**, depending on the facts and circumstances of the case.

Entity must be part of a group that carries out **(envisaged) operational business activities in the Netherlands**.

These operational business activities are being conducted for the **risk and the account of the applicant**.

There is **sufficient relevant staff** in the Netherlands, on a Group level.

The operational business activities must **match the function of the applicant within the group**.

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Economic Nexus (1)

Clarification based on published examples

Whether the Economic Nexus is met is assessed **per business activity** (e.g., warehousing employees do not count towards the substance needed for financing activities).

The employees **do not need to be employed directly by the applicant**. If a Dutch central pay rolling company (related entity or third party) loans out the employees and charges their costs through, these employees may count towards the applicant's substance.

Economic Nexus (2)

Clarification based on published examples

The economic nexus may be judged in relation to the *number of employees* with that function worldwide and the *role of the local entity* within the group. An international concern has **75 FTEs** worth of finance department FTEs of which **two** reside in the Netherlands. **All financial streams run through the Netherlands**, reducing source taxation on these streams. The ratio of Dutch employees to foreign employees and the number of streams through the Netherlands result in insufficient economic nexus for an application for a ruling.

Economic Nexus (3)

Clarification based on published examples

However, this is different when a clothing company with 1000 FTE worldwide, which design, produce and sell clothing, that looks to settle in the Dutch market. When it incorporates an entity and hired 2 employees who perform sales, this may well be sufficient economic nexus to perform its limited operational activities.

Additionally, a Dutch company with 100 FTEs which exploit intellectual property rights, by sourcing intellectual property, licensing out these properties and maintaining client contacts, has sufficient economic nexus. Even if it passes the royalties, it earns on to a foreign entity.

Anti Abuse Clauses

No preliminary consultation shall be conducted to obtain certainty in advance in the form of an international ruling **if saving Dutch or foreign tax is the only or decisive motive** for the performance of the (legal) act(s) or transaction(s).

The tax consequences of a direct transactions with entities, established in states included in the **(Dutch) list* of low-tax and non-cooperative jurisdictions**, shall not be subject of a certainty in advance in the form of an international ruling.

**Check the blacklisted countries annually.*



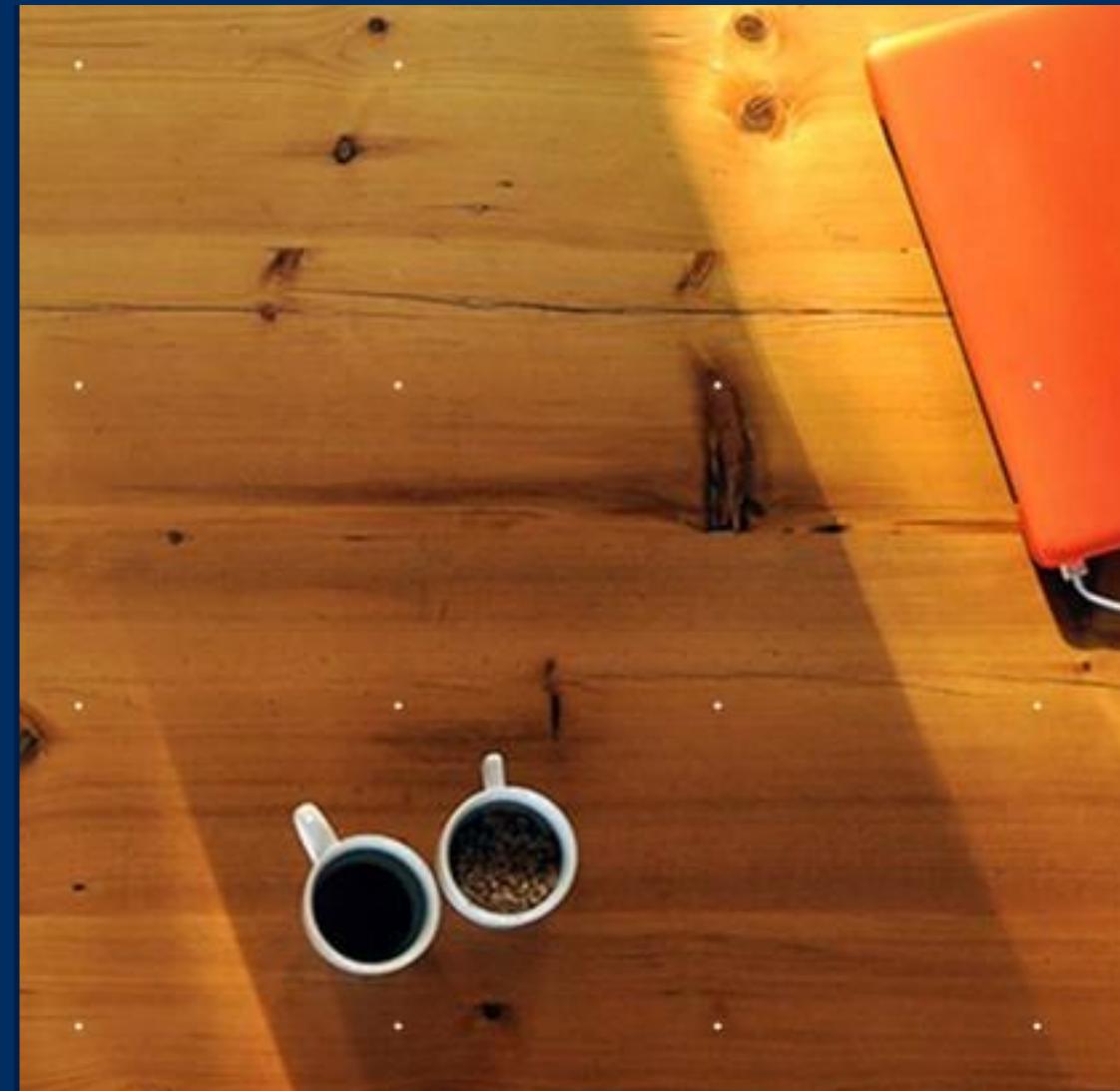
Decisive Purpose Test (1)

Clarification based on published examples

A Dutch entity obtains a loan without interest and wishes to deduct an arm's length interest (informal capital).

Not meeting the economic nexus is an indication of a tax avoidance motive.

The existence of a hybrid entity within the structure is an indication of a tax avoidance motive.

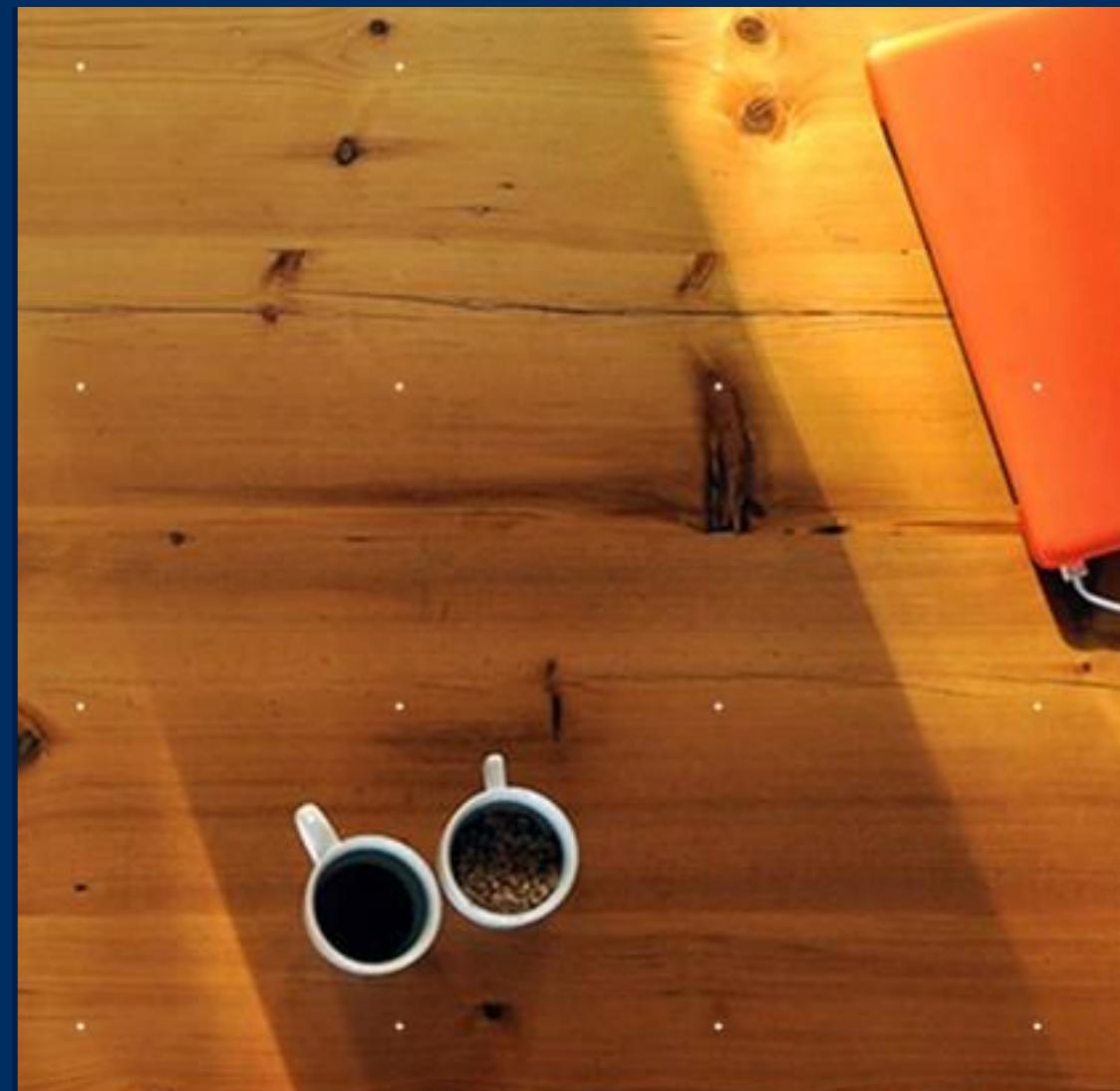


Decisive Purpose Test (2)

Clarification based on published examples

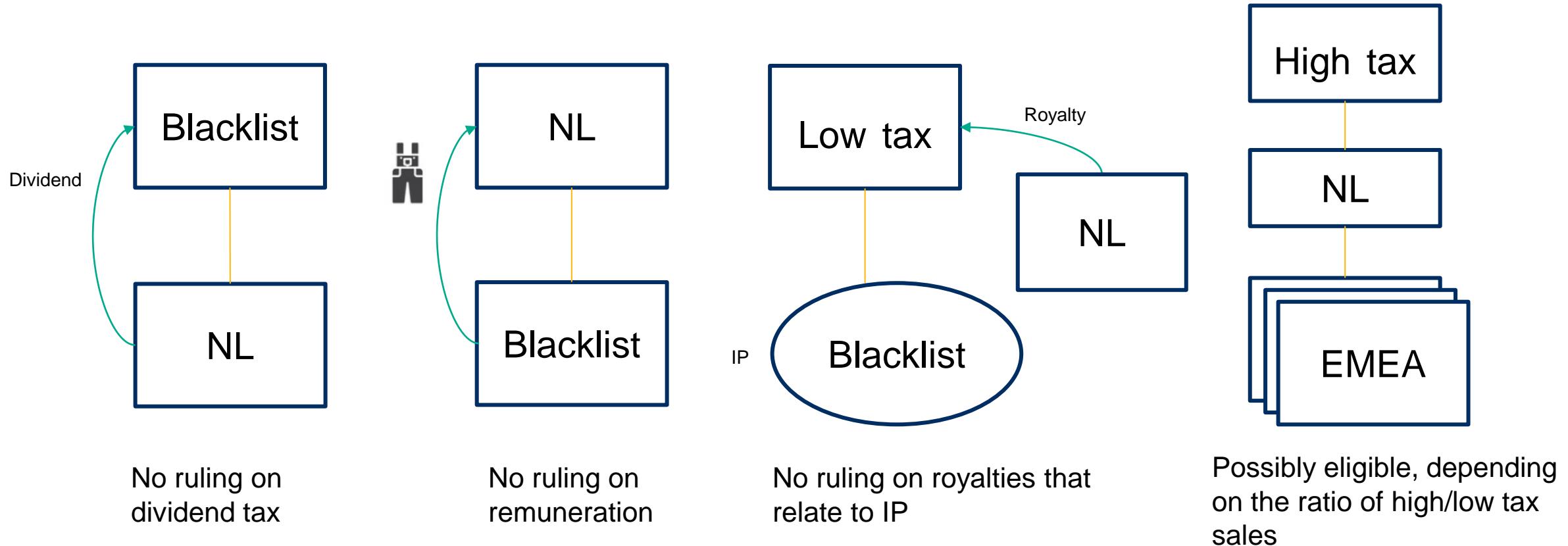
There is a definite overlap between this definition and the principal purpose test in the OECD literature or the Main Purpose test within ATAD I / ATAD II.

Therefore, it is safe to assume that these will all have to be assessed before we can proceed with any APA or ATR request.



Anti Abuse Clause

Clarification based on published examples



Examples for certainty in advance

ATR

Application participation exemption.

Qualification hybrid finance structures/ legal form in international structures.

Application art. 13ab en 23e CIT (CFC).

Permanent establishment.

Exemption for dividend tax.

Principal purpose test / main purpose test.

Conditional withholding tax.

Hybrid mismatch rules (ATAD2).

Examples for certainty in advance

APA

Affiliation according to art. 8b CIT?

At arm's length remuneration for cross border intercompany transactions.

Intra group service or shareholders activity?

Allocation of assets or risks to a PE.

Profit allocation to a PE.

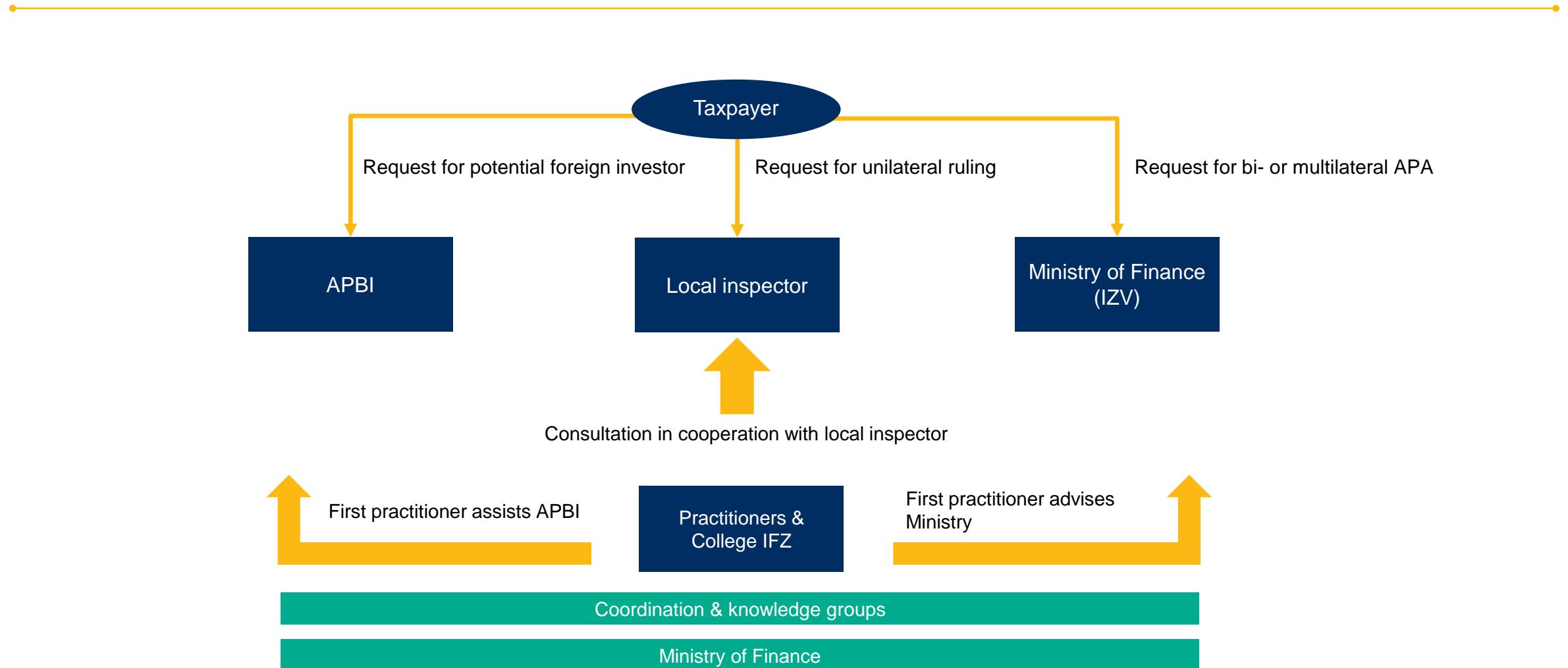
Remuneration of distribution entity in the Netherlands.

Remuneration of manufacturing entity in the Netherlands.

Remuneration of services entity in the Netherlands.

Remuneration of R&D centre in the Netherlands – profit split.

Procedure for crossborder rulings



Bilateral APA (1)

- Agreement between foreign country and NL
- Relating to the presence of an entity in both countries
- New decree on MAP/BAPA of 11-6-2020
- Competent authority is Ministry of Finance (IZV)
- Convert locally in a unilateral APA

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Bilateral APA (2)

- Rollback previous years
- Multilateral APA
- Ultimate certainty?
- Duration
- Numbers?

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Dispute resolution



1. Corresponding adjustment
2. Mutual agreement procedure

Corresponding adjustment

Request at local competent inspector

Normally limited to 5 years

If motivated > 5 years

If not approved > MAP



MAP (1)

- Dispute between competent authorities
- Relating to the presence of an entity in both countries
- Eliminating double taxation
- New decree on MAP/BAPA of 11-6-2020
- Triangular?



MAP (2)

- Competent authority is Ministry of Finance (IZV)
- Assistance of Central Coordination Group Transfer pricing
- Arbitration?
- Combination with local litigation
- Duration
- Numbers?





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How do we help our clients?

The Request (1)

Required Information

- a) a detailed description of the relevant facts and circumstances of the relevant intended legal acts, transactions, products, cases or agreements and a clear position, a clear opinion or a clear conclusion about **the tax consequences** of the intended legal acts or transactions;
- b) the entities and permanent establishments involved;
- c) the other country or countries to which the facts and the intended legal acts or transactions of the request relate
- d) information about the global organizational structure and history of the group (including information about the eventual entitlement to the applicant's assets)



The Request (2)

Required Information

e) if it concerns an APA

the **group file** referred to in Article 29g of the VPB for qualifying multinationals; information on financial data, the products and the **functions performed**, including the **assets (tangible and intangible) employed** in the performance of these functions and the **risks assumed** by applicant and by the related entities involved, as well as **an analysis of the financial interest** of the APA on the duration of the settlement agreement; an analysis and a description of the **proposed transfer pricing method**, including comparability analysis (including comparable figures from independent market parties and any corrections made); **assumptions** that support the request and an **explanation of the effect of changes** in those assumptions or other events, such as unexpected results that may affect the validity of an agreed APA; a description of the **contractual conditions, business strategy and market conditions**, such as for example **industrial trends and competition**;

The Request (3)

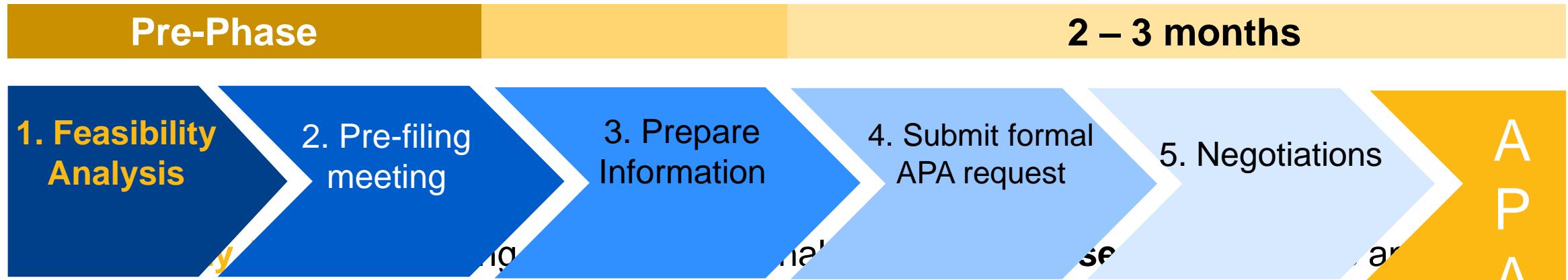
Required Information

- f) the financial years for which the security is requested
- g) a statement by the stakeholder or his representative that none of the stakeholders or directors of the stakeholders of the agreement appear on the EU sanctions list
- h) a drafted standard form for the exchange of cross-border tax rulings as referred to in paragraph 3, third paragraph, BFB. The data on the standard form completed in draft do not provide any certainty about the establishment of the ruling with an international character or the final data that will be exchanged.

Applicant may request for a *prefiling meeting* with the first practitioner to assess which of the pre-mentioned information is required. No position on the request itself will be taken in such a prefiling meeting.

APA Service (1)

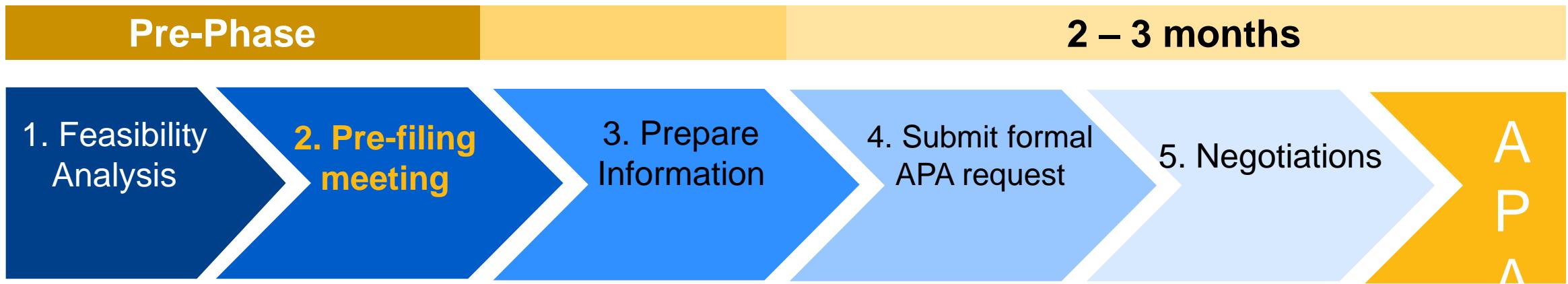
Timeline



determine the type and scope of the ruling. Furthermore, we shall assess the **prerequisites**, the likely extent of your information requirements and provide an estimation of the investment that both preparing any missing information and obtaining the ruling will entail. Based on the Feasibility Analysis, we can provide you with **the insight into the viability of your potential Ruling request**, needed to decide whether to proceed.

APA Service (2)

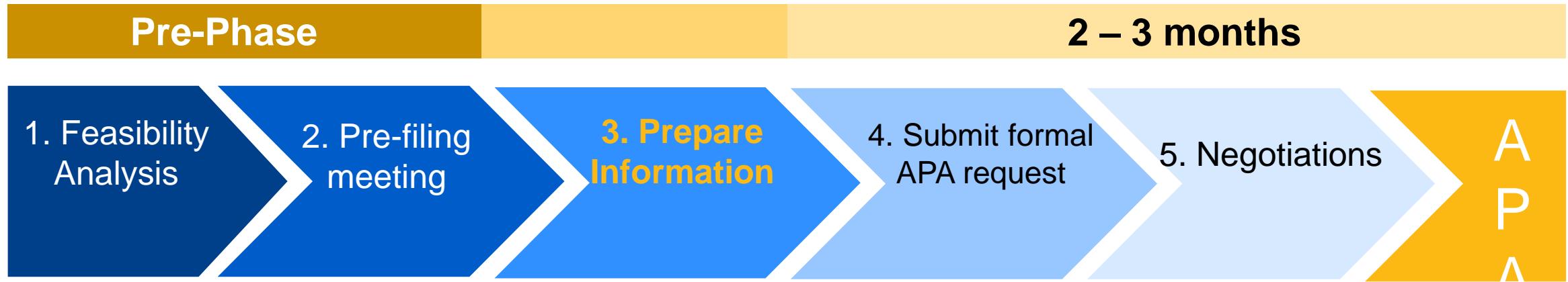
Timeline



2. Pre-filing meeting: The Pre-filing meeting with the DTA aims at **officially assessing the extent of your information requirements**. This is also the first chance of (unofficially) framing the ruling request.

APA Service (3)

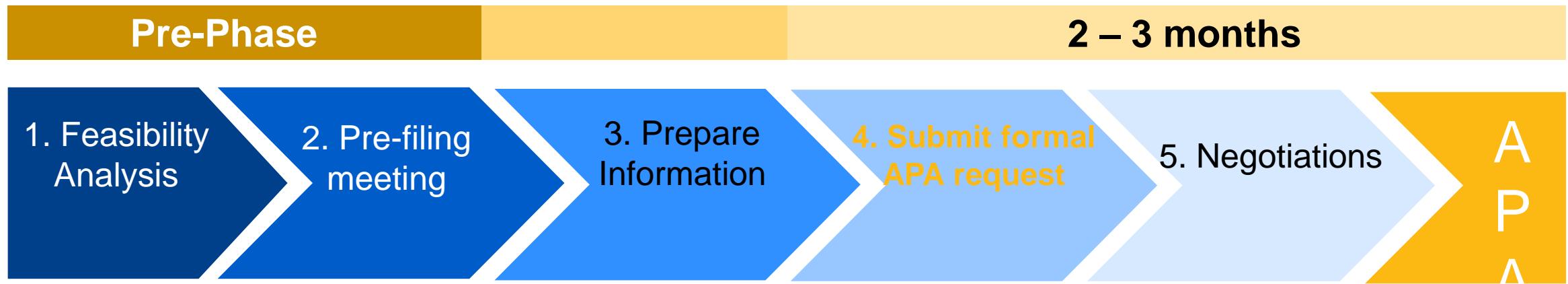
Timeline



3. Prepare Information: During this phase we shall prepare the formal APA request and either help you in gathering the required information, helping you prepare the information and/or prepare items for you. We shall also advise you as to prevent surprises during the formal phase.

APA Service (4)

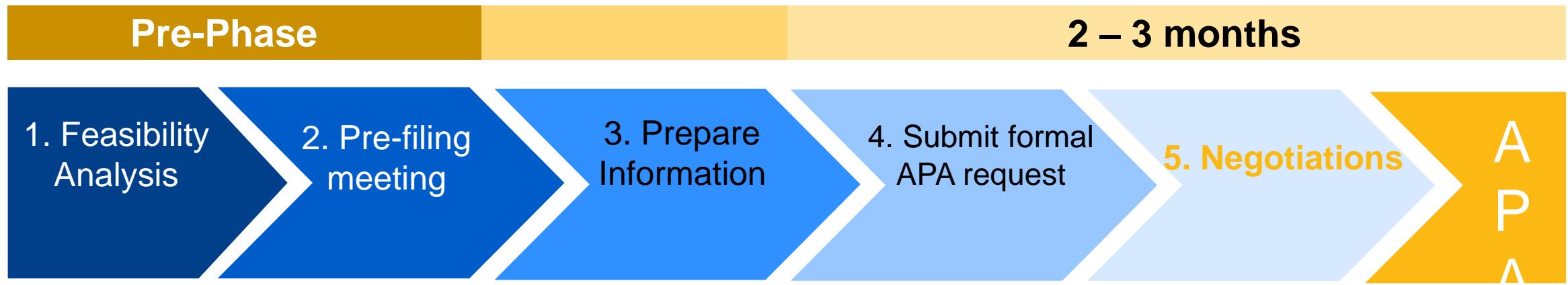
Timeline



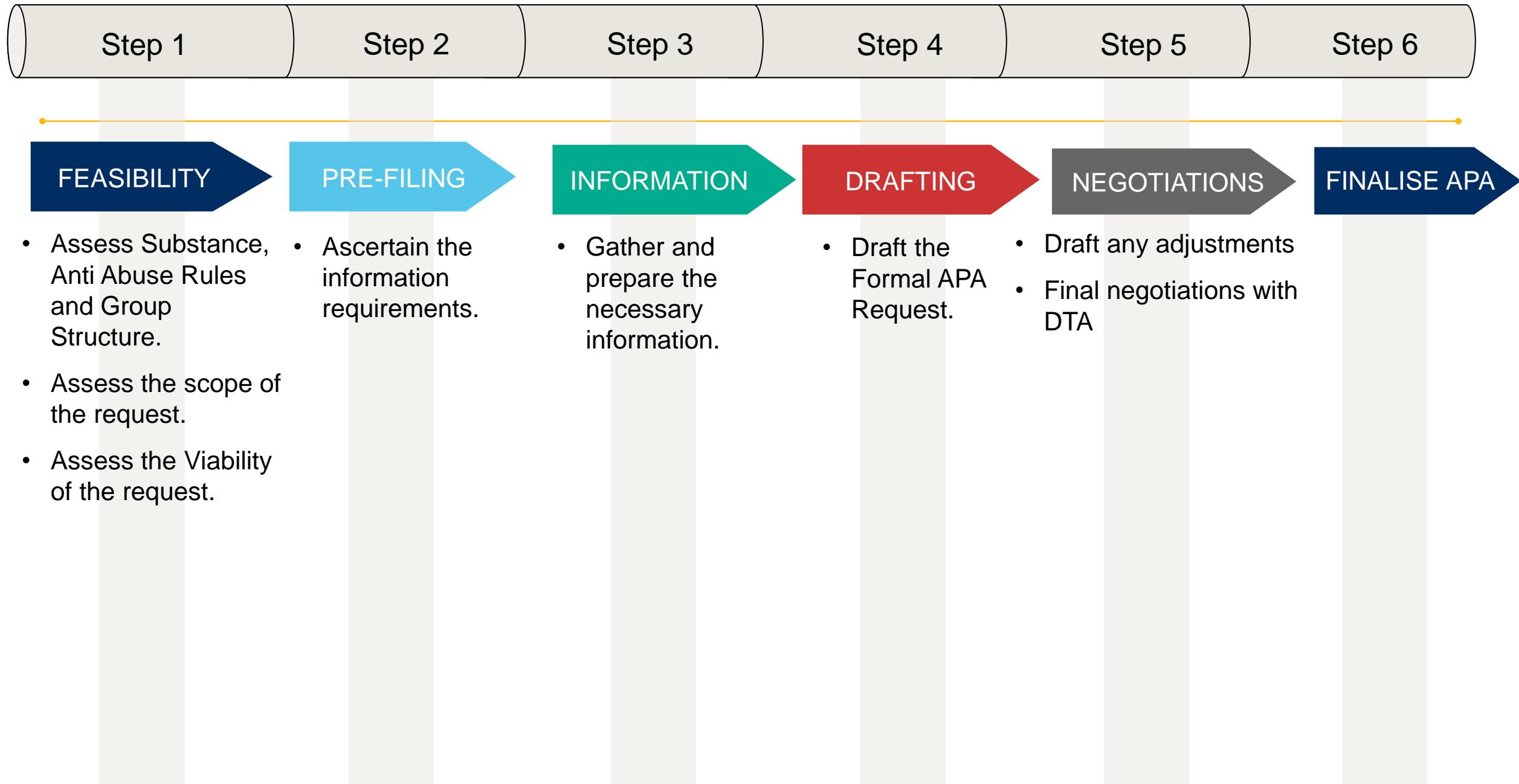
4. Submit formal APA request: The formal APA request includes the **APA documentation prepared** and a **request letter to the Dutch Tax Authorities**. As the required information for the APA request has been fully prepared, the APA request can normally be **reviewed within two weeks** following the submission.

APA Service (5)

Timeline



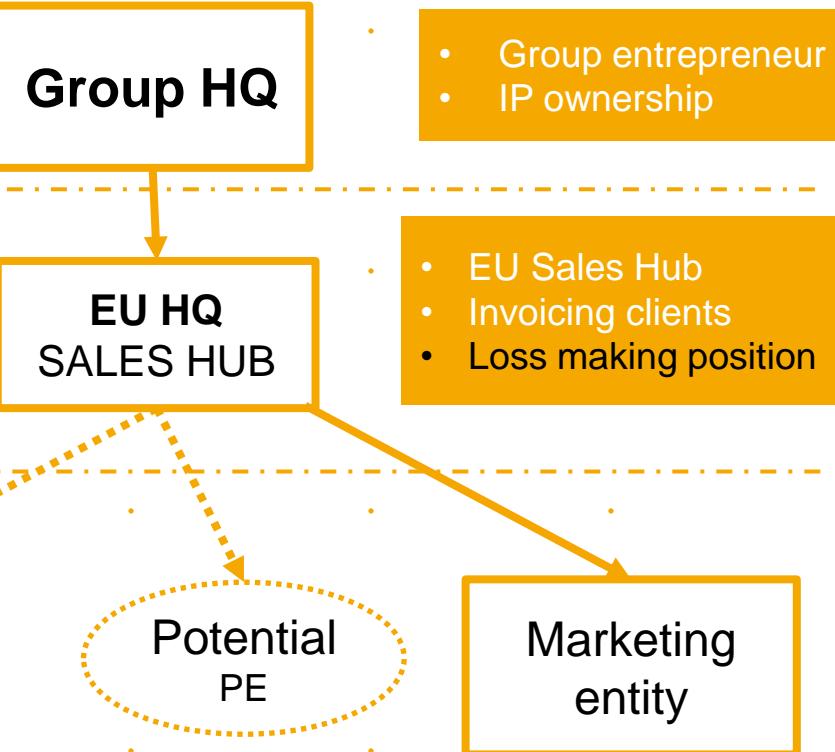
5. Negotiations: The negotiations with the Dutch Tax Authorities take place after their review of the submitted documentation and formal APA request. Depending on the complexity of the case at hand, further meetings may or may not be necessary to finalize the APA. In our experience the negotiations take between 1 and 2 months.



Case Study 1



Purchase of
intercompany sales
for subsequent
distribution in EU



Main tax considerations

- Loss making position
- Accounting books closed in HQ country
- Potential PE

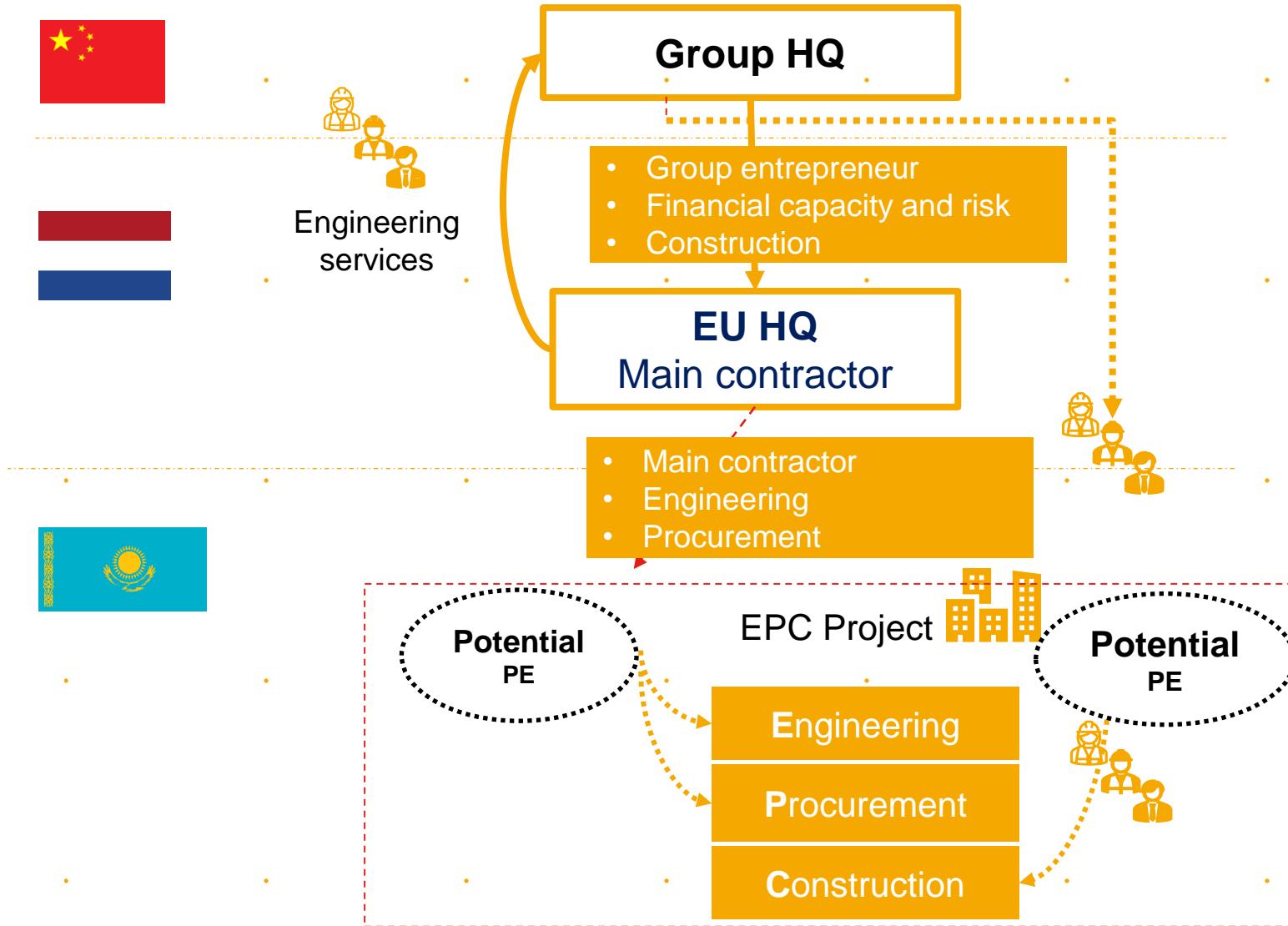
Questions

- Are there any potential PEs? How to allocate taxable profits to these PEs?
- Marketing or sales entity in other EU countries?
- How to deal with loss position?

Main benefits:

- Pre-filing meeting
- Agreements with respect to future investments and business growth potential
- TP remuneration for EU HQ and subsidiaries

Case Study 2



Main tax considerations

- PE-exposure: EU HQ
- PE-exposure: Group HQ
- Contract splitting risks
- Local tax authorities
- VAT exposure
- Global Mobility issues

Questions

- Bilateral APA?
- Multilateral APA?
- Unilateral APA?
- TP model?
- Open relationship with Dutch ruling team to discuss?
- Other tax risks? VAT, ITS, Global Mobility and Accounting impact?

Main benefits:

- Supply Chain optimization
- Treaty benefits
- Dutch ruling practice

Summary of the Benefits

1. **Certainty in advance** for the next 5 financial years for the future profit and cost allocation between NL and other related entities.
2. Certainty about the ownership of the IP/ excess profits.
3. **Mitigate** and eliminate potential **tax adjustments and audits**.
4. Start to establish a **strong relationship** with the Dutch tax authorities.



Summary of the Benefits

5. Discuss the tax and transfer pricing model of other entities managed by EU HQ based in NL and **mitigate potential Permanent Establishment risks.**
6. Auditors/accountants will likely mention transfer pricing risks in their annual reports. Having an advance pricing agreement will eliminate this risk.
7. Headquarters and European headquarters (Netherlands) reach a clear pricing and business model **intercompany agreement.**
8. Creates more **value and certainty to transfer pricing documentation.**





Smart decisions. Lasting value.

Our Transfer Pricing team

Our Transfer Pricing team



Bas Buytendijk
Partner



Wiecher Munting
Partner



Jin Chen
Partner



Yaroslav Kaydash
Consultant



Rani Bindraban
Consultant



Silvia Zhang
Consultant



Jinwen Kok
Consultant

Crowe Netherlands

409
Employees

7
Dutch offices



€ 50.5 m
Annual revenue

15th
Largest Dutch
accounting
firm



Thank You

Jin Chen

Transfer Pricing Partner

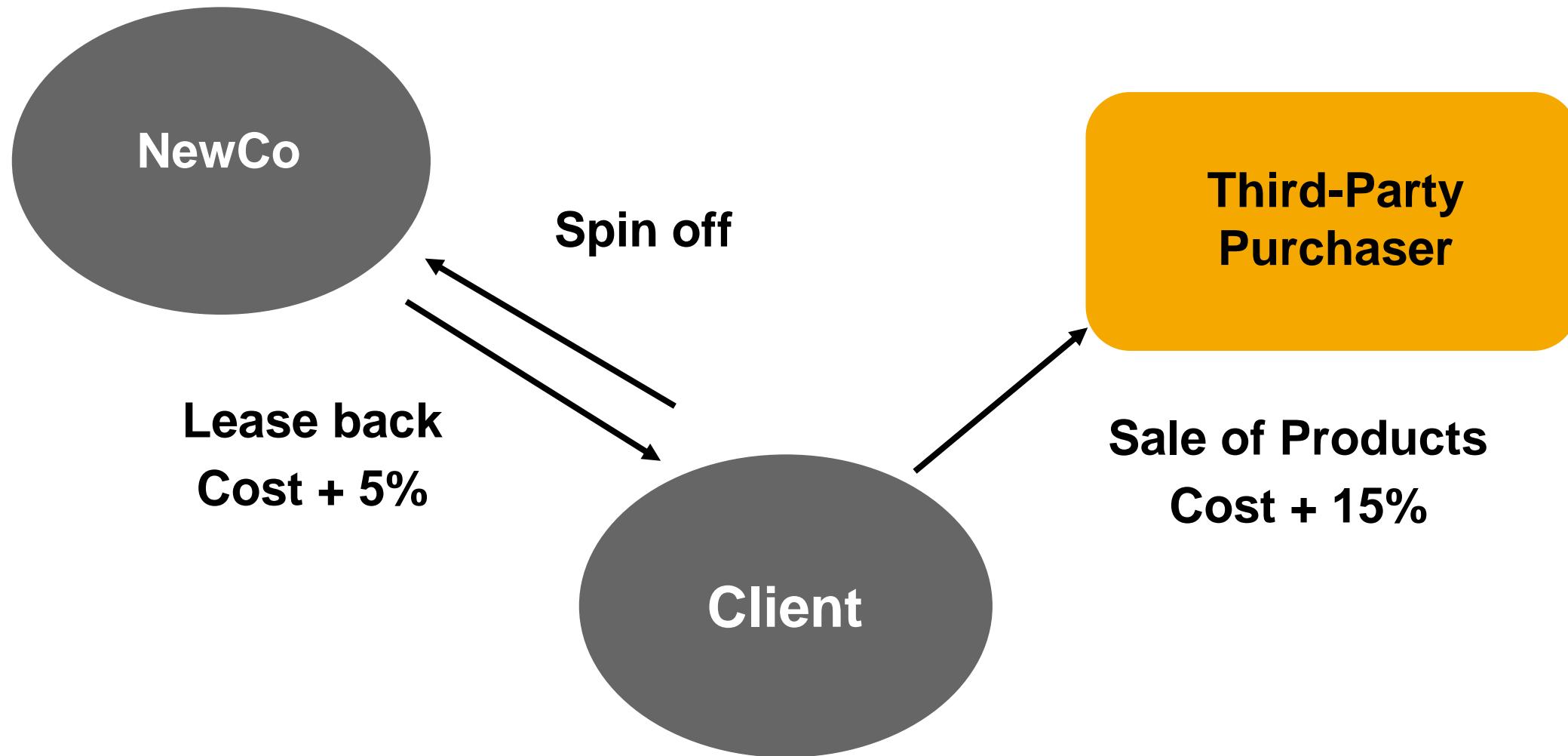
Crowe Foederer

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APA Case Study Hungary

Scheme



Background:

- Our client was a Hungarian company (Client) having industrial plant with used, highly depreciated but still modern **machinery & equipment (M&E)**.
- The machinery & equipment portfolio were **spined off** into NewCo and **then leased back** from NewCo by the Client (the spin off was a tax exempt privileged transformation).
- The leasing fees were set **at cost plus 5%** where cost base comprises of depreciation and running expenses.
- **Business reasons** for the spin off and lease back:
 - Client had flexible contract with its own customer (Third Party Customer) according to which the price of products purchased from Client by Third Party Customer is priced at total manufacturing costs plus 15%. However, since the M&E was already highly depreciated, no adequate depreciation expense appeared as part of total manufacturing costs.
 - By **stepping up the M&E** in the spin off:
 - the depreciation base of M&E was appreciated up to market value generating higher cost base in NewCo's lease back fees (cost + 5%) to Client;
 - hence resulting in higher cost base at Client and pro rata mark up (profit) when pricing (total manufacturing costs + 15%) the products to be sold by Client to Third Party Customer.

APA Questions:

- Cost plus for lease back compliant pricing method?
- 5% mark up is an arm's length mark up?

Submission:

- Submitter: NewCo to Hungarian Tax Authority (HTCO) APA Department (now to Ministry for National Economy)
- Fee for preliminary consultation (HUF 500.000/meeting) + Procedural fee (HUF 2 million)
- Deadline: net 120 days

Submitted:

- 1 Spin-off documents: list of assets and their step-up analytics
- 2 Leaseback contract
- 3 Functional analysis
- 4 Scheme of calculation of leasing fees: determination of cost base
- 5 Benchmark study for supporting the mark-up (5%)

Procedure:

- Consultations with HTCO
- HTCO background checking
- HTCO checked the business reasoning, the functional analysis and the benchmark study

Resolution valid for NewCo:

- APA claim is accepted:
 - cost plus method is fine
 - 5% mark up is acceptable

Critical Conditions:

- Valid for 5 years
- Modification or new APA claim if:
 - the contractual terms are changing
 - significant change to the leased back machinery and equipment portfolio



Thank You

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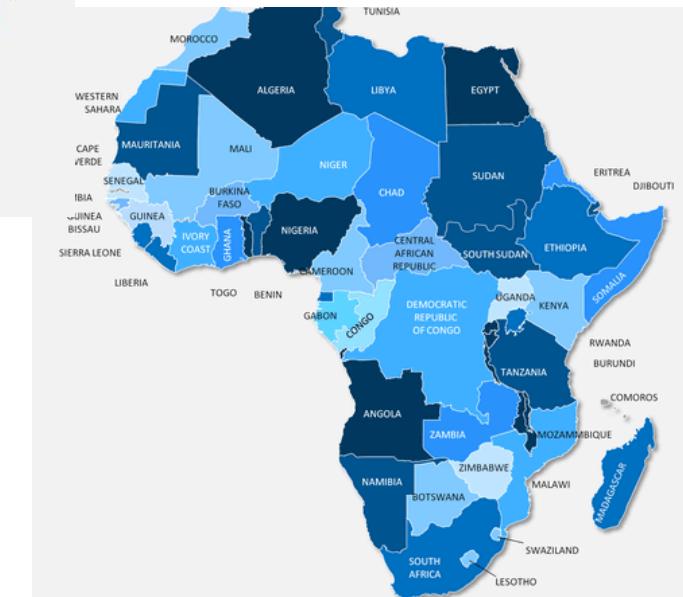
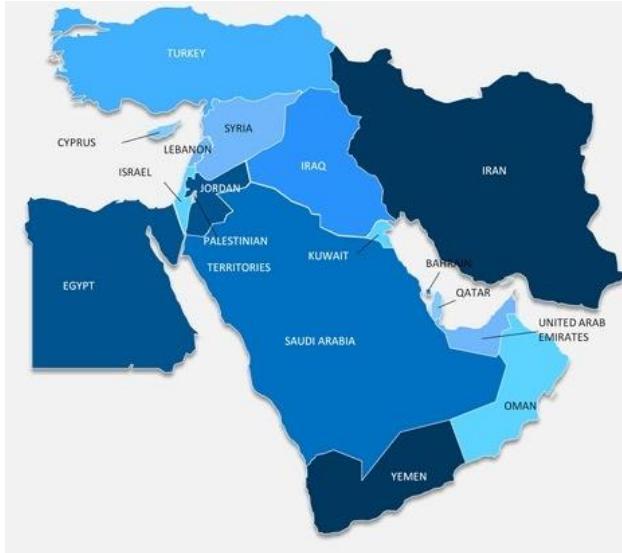
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Transfer Pricing Implications Africa and Middle East

TP Implications – Africa and Middle East

- Most of the countries joined OECD BEPS Project and introduced, TP rules in a country.
- 3-Tier Transfer Pricing documentations adopted.
- Transfer Pricing audit/ scrutiny has increased; and
 - (a) Taxpayers are struggling to submit TP document
 - (b) Risk of tax addition and penalty has increased
- Dispute resolution mechanisms in Middle East is at early stage while it is developing in African countries.



It is estimated that Africa and Middle East loses around USD 100 to 150 billion annually for tax evasion

Transfer Pricing in Middle East region

Country	OECD BEPS Signatory?	Local File and Master File	CbC Report	APA	MAP	Downward adjustment
Egypt	✓	✓	✓	✓	✓	x
Qatar	✓	✓	✓	✓	✓	x
Turkey	✓	✓	✓	✓	✓	x
Kingdom of Saudi Arabia	✓	✓	✓	x	✓	x
United Arab Emirates	✓	✓	✓	x	✓	x
Jordan	✓	✓	✓	x	x	x
Sultanate of Oman	✓	Recommended	✓	NA	✓	NA
Bahrain	✓	Recommended	✓	NA	✓	NA
Kuwait	x	Recommended	x	NA	x	NA
Lebanon	x	Recommended	x	NA	✓	NA

Transfer Pricing in Africa region

Country	OECD BEPS Signatory?	Local File	Master File	CbC Report	APA	MAP	Downward adjustment
Kenya	✓	✓	✗	✓	✗	✓	✗
South Africa	✓	✓	✓	✓	✓	✓	✗
Morocco	✓	✓	✓	✓	✓	✓	✗
Tunisia	✓	✓	✓	✓	✓	✓	✗
Nigeria	✓	✓	✓	✓	✓	✓	✗
Tanzania	✗	✓	✓	✗	✓	✓	✓
Senegal	✓	✓	✓	✓	✓	✓	✗
Rwanda	✗	✓	✗	✓	✓	✓	✓
Ethiopia	✗	✓	✗	✗	✓	✓	✓
Zambia	✓	✓	✓	✓	✗	✓	✓
Uganda	✗	✓	✗	✗	✓	✗	✓
Cameroon	✓	✓	✗	✗	✗	✗	✗
Seychelles	✓	✓	✗	✓	✗	✓	✗
Botswana	✓	✓	✓	✗	✓	✗	✗
Angola	✓	✓	✗	✗	✗	✓	✗
Mozambique	✗	✓	✗	✗	✗	✓	✗
Cote D'Ivoire	✓	✓	✓	✓	✗	✗	✗

Practical Experience



- With increase in TP additions, importance of unilateral APA is increasing in Africa.
- While high cost and excessive time remain top barriers, TP certainty is a motivation factor for MNCs.
- Most Middle East countries are at early stage of TP audits. With introduction of TP and rise in TP audits, it is expected to increase APA applications.



- MAP route is allowed in many of the countries in domestic tax regulation and DTAA.
- Increase in co-operation amongst tax authorities has enabled activation of MAP.
- Practically,



- Unilateral downward adjustment is not yet a popular concept in Middle East and Africa region.
- Countries which provide such option, generally require separate application to be submitted.
- Most likely, allowability will be subject to satisfaction of tax authorities.
- Going forward, this may act as best dispute resolution mechanism.

Robust TP Documentation is key to mitigate TP risk and may also help in dispute resolution process while representing before higher tax authorities.



Thank You



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Q&A



Thank You

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