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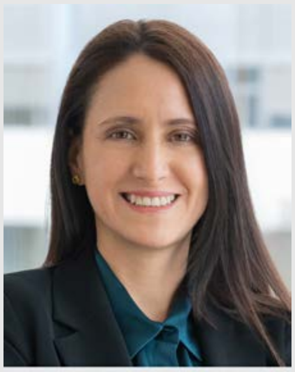

Vanessa Ramos Ferrín

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In this article, Ramos Ferrín examines the evolving landscape of transfer pricing documentation and its advantages as a preventive measure.

For many years, transfer pricing documentation was approached primarily as a defensive necessity. Documentation was prepared to demonstrate that related-party prices complied with the arm's-length principle, and that documentation would be produced if requested by the tax authorities. Compliance, in that sense, was often understood as preparedness for audit.

In Luxembourg, that perception developed in a context where the legal framework provides flexibility in documentation practices. The law does not prescribe a standardized documentation format equivalent to Chapter V of the OECD transfer pricing guidelines,[1] nor does it impose specific penalties solely linked to the absence of transfer pricing documentation. This flexibility reflects a principles-based approach to transfer pricing, allowing documentation to be tailored to the facts and circumstances of each transaction while maintaining clear expectations regarding taxpayers' ability to substantiate their positions.

Articles 56 and 56bis of the Luxembourg Income Tax Law[2] embed the arm's-length principle and establish the analytical framework for evaluating controlled transactions. These provisions define how intragroup arrangements should be analyzed and priced in accordance with internationally recognized transfer pricing principles.

At the same time, section 171 of the General Tax Law (Abgabenordnung) establishes the general duty of cooperation applicable to taxpayers.[3] Section 171(3) clarifies that the obligations set out in paragraphs 1 and 2 apply to transactions between associated enterprises, thereby confirming the tax authorities' expectation that intragroup transactions must be capable of explanation and support by appropriate documentation.[4] While associated enterprises are already subject to the general cooperation obligation under section 171(1), the explicit reference to related-party transactions reflects the increasing importance of transfer pricing in tax administration and audit practice.[5]

[1] OECD, "OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022," at Ch. V (Jan. 20, 2022).

[2] Loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu, at arts. 56 and 56bis (Dec. 4, 1967) (in French).

[3] Abgabenordnung Vom 22. May 1931, at section 171, paras. 1-3 (May 22, 1931) (in German) (paragraph 3 was introduced by Loi du 19 décembre 2014 relative à la mise en œuvre du paquet d'avenir — première partie (2015) (in French)).

[4] *Id.* at section 171(3).

[5] *Id.* at section 171(1).

Recent local[6] and international[7] jurisprudence have reinforced an important shift in perspective: Transfer pricing documentation is no longer viewed solely as a compliance file. It increasingly functions as a governance instrument, supporting pricing decisions, aligning operational conduct, and providing contemporaneous evidence of economic substance.

Recent institutional developments further illustrate this evolution in practice. As of October 1, 2025, the Luxembourg tax administration established a dedicated transfer pricing competence center to support tax offices and litigation divisions in cases involving significant intragroup transactions.[8] The creation of this specialized function reflects the increasing technical complexity of transfer pricing and the growing need for coordinated expertise in reviewing cross-border arrangements.

This evolution is particularly relevant to the private markets industry, including private equity, real estate, infrastructure, and private debt funds, where business models frequently rely on multientity structures spanning several jurisdictions. Management companies, advisory platforms, investment vehicles, and financing entities often operate within the same group but perform distinct functions under regulatory and commercial frameworks. In such environments, alignment among governance, contractual arrangements, and transfer pricing documentation is a critical factor in demonstrating economic substance and operational consistency.

Timing of Transfer Pricing Documentation

A fundamental distinction in transfer pricing practice lies in the timing of documentation preparation. Documentation may be prepared either at the time a transaction is implemented or several years later, often in response to a review or reassessment initiated by the tax authorities. These two situations involve different operational realities and risk levels.

Luxembourg operates a declarative tax system in which taxpayers submit tax returns based on their own assessment of taxable income. Upon submission, the tax authorities automatically issue an initial tax assessment based on the information provided. This initial assessment determines the taxpayer's liabilities but does not prevent subsequent review.

The tax authorities retain the right to examine and, if necessary, revise tax returns within the applicable statute of limitations. Under standard circumstances, reassessment may occur within five years, starting from the first day of the year following the year in which the tax liability arose. In specific situations involving incomplete or inaccurate reporting, the reassessment period is extended from five years to ten years, counted from the same starting date[9] (see Figure 1).

Operational data from the tax administration confirms that post-filing review remains a routine component of tax oversight. In 2025 alone, 20,279 corporate tax returns were subject to subsequent review procedures, resulting in approximately €31,081,153 of tax adjustments.[10] These statistics illustrate that reassessment is not an exceptional event but a normal feature of the tax administration process and that documentation prepared at the time of implementation may need to support tax positions several years later.

Documentation Prepared Before or at Implementation

When transfer pricing documentation is prepared at the time a transaction is implemented, it forms part of the governance and decision-making process. The pricing rationale is documented, and the relevant information, business context, and supporting evidence remain available.

Documentation prepared at implementation typically provides:

[6] Cour administrative, 17 juillet 2019, n°42043C (in French); Tribunal administratif, 22 novembre 2022, n°43535 (in French); Cour administrative, 23 novembre 2023, n°48125C; Cour administrative, 31 juillet 2024, n°49627C (in French); Cour administrative, 17 avril 2025, n°50602C.

[7] *SC Arcomet Towercranes SRL v. Romania*, C-726/23 (2025); *Högkullen AB v. Skatteverket*, C-808/23 (2025); *Weatherford Atlas Gip SA*, C-527/23 (2024).

[8] Ministère des Finances, "Annual Activity Report 2025 — Annexes," at 107 (2025).

[9] Loi du 27 novembre 1933 concernant le recouvrement des contributions directes, des droits d'accise sur l'eau-de-vie et des cotisations d'assurance sociale, at article 10 (Nov. 27, 1933) (in French).

[10] Annual Activity Report 2025 — Annexes, *supra* note 8, at 135.

Figure 1. Corporate Tax Reassessment Period in Luxembourg

- a clear explanation of the economic rationale for the transaction;
- a documented basis for the transfer pricing method selected;
- alignment between operational conduct and financial outcomes;
- a record of the assumptions used in the pricing analysis; and
- continuity of institutional knowledge over time.

From a governance perspective, contemporaneous documentation provides a stable reference point for the organization. Even if personnel change or organizational structures evolve, the reasoning behind the pricing decision remains accessible and traceable.

Documentation Prepared After Implementation

A different situation arises when transfer pricing documentation is prepared only after the transaction has already been implemented, typically during a review or reassessment phase several years later. In such cases, documentation becomes an exercise in reconstructing past events rather than documenting decisions as they occur.

Because reassessments may occur years after fiscal years have closed, the organization must explain historical pricing decisions based on the information that remains available at that time.

Common challenges include:

1. **Loss of historical context**:
   - key individuals involved in the original transaction may no longer be present;
   - assumptions underlying the pricing decision may not be documented; and
   - explanations rely on reconstruction rather than contemporaneous evidence.
2. **Misalignment between documentation and existing records**:
   - legal agreements may not reflect the economic allocation of risks;
   - board decisions may not align with the transfer pricing approach;
   - financial statements have already been approved; and
   - governance records may not support the functional analysis.
3. **Increased cost and complexity**:
   - extensive reconstruction of historical facts is required;
   - involvement of multiple internal functions; and
   - engagement of external advisers to support the position.

Once fiscal years have been closed, it is not possible to return to the original decision-making

Figure 2. Contemporaneous vs. Retrospective Transfer Pricing Documentation

Documentation Prepared At Implementation	Documentation Prepared After Implementation
Economic rationale documented	Reconstruction of past decisions
Evidence available	Incomplete information
Alignment with governance	Potential misalignment with records
Lower reconstruction effort	Higher cost and complexity
Stable institutional knowledge	Reliance on historical reconstruction
Lower risk exposure	Higher risk exposure

moment. The taxpayer must defend the position based on the available documentation, even if it is incomplete (see Figure 2).

Lessons From the 2025 Luxembourg Case Law

Documentation as Evidence of Economic Substance

Certain Luxembourg court decisions issued in 2025 illustrate how transfer pricing documentation is evaluated in practice.

In cases involving intragroup financing, the Administrative Tribunal and the Administrative Court examined not only the selected margin and benchmarking exercise, but also whether the Luxembourg entity genuinely exercised control over the financial risks attributed to it.[11] They considered where strategic decisions were taken, how risk management functions were performed, and whether the functional profile described in the documentation corresponded to operational reality.[12]

In other disputes involving cross-border structures and permanent establishment issues, courts assessed whether the allocation of profits reflected actual economic activity.[13] Governance documentation, personnel functions, and day-to-day conduct were scrutinized alongside contractual arrangements.[14]

A recurring principle emerges from these decisions: Contracts are the starting point of analysis, not its conclusion. If the parties' conduct diverges from the contractual terms, it prevails in delineating the transaction (see Figure 3).

Transfer pricing documentation is therefore evaluated not only as a pricing analysis, but as evidence of economic substance. Where governance practice, booking logic, and written agreements are misaligned, the credibility of the entire structure may be questioned.

Evidence, Benefit, and Substance

Where Transfer Pricing Documentation Adds Value

The increasing emphasis on substance affects the evaluation of service transactions and other intragroup flows. Auditors frequently apply a benefit test, examining whether services were rendered and whether the recipient derived a

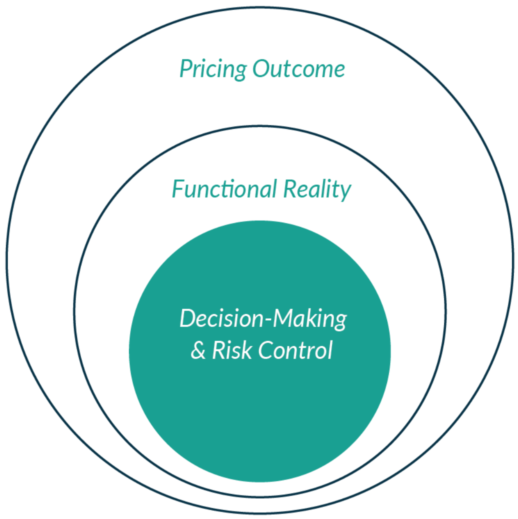
[11] Luxembourg, Tribunal Administratif, 06 juin 2025, Decision No. 47100 (2025) (in French); Luxembourg, Cour Administrative, 17 avril 2025, Decision No. 50602C (2025) (in French).

[12] Luxembourg, Tribunal administratif, 6 juin 2025, Decision No. 47427 (2025) (in French); Luxembourg, Cour administrative, 12 mars 2026, Decision No. 53208C (2026) (in French).

[13] Luxembourg, Tribunal administratif, 6 juin 2025, Decision No. 47426 (2025) (in French); Luxembourg, Cour administrative, 12 mars 2026, Decision No. 53207C (2026) (in French).

[14] Luxembourg, Tribunal administratif, 10 décembre 2025, Decision No. 50224 (2025) (in French); Cour administrative, 17 avril 2025, Decision No. 50602C (2025) (in French).

Figure 3. The Core of Transfer Pricing Analysis



Luxembourg 2025 jurisprudence focuses on economic *substance* beyond benchmarking.

demonstrable advantage.[15] The existence of a contract alone does not suffice. Evidence of actual performance, value creation, and cost allocation may be required.

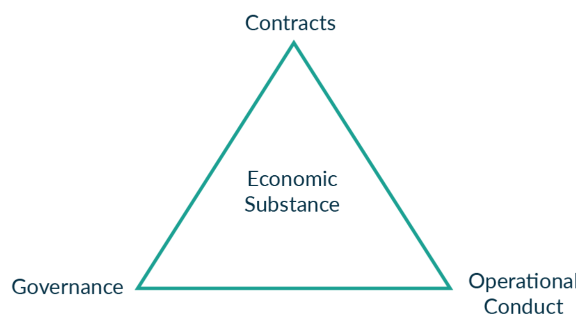
Similarly, in financing arrangements, the contractual allocation of risk must be supported by demonstrable control in practice. The assumption of risk in a contractual clause alone is insufficient if strategic decision-making and risk management functions are exercised elsewhere.

In the private equity, real estate, infrastructure, and private debt environment, these considerations are particularly relevant. Investment structures frequently involve cross-border arrangements between management companies, advisory entities, investment platforms, and financing vehicles. The allocation of functions, risks, and remuneration across these entities, including management fees, performance-related remuneration, cost-sharing arrangements, and intragroup financing, must be supported by consistent governance and documentation. In such structures, transfer pricing documentation supports the consistent allocation of functions, risks, and remuneration across group entities.

Documentation must therefore be supported by processes ensuring that relevant evidence is retained and accessible. This includes:

- board minutes and governance documentation;
- internal policies and decision-making records;
- value chain analyses and functional documentation;
- risk management procedures and control evidence; and
- operational records demonstrating service performance.

Figure 4. Alignment Between Contracts, Governance, and Operational Conduct in Transfer Pricing Analysis



If conduct diverges from contractual terms, conduct *prevails* in delineating the transaction.

Risk Assessment Through Documentation

Base transfer pricing documentation comparable to a local file is typically the first tool used by the tax inspector to assess the risk profile of a taxpayer.

If documentation indicates a higher perceived tax risk, this may trigger a full transfer pricing audit. Such audits require significant internal coordination and financial resources for both taxpayers and tax authorities.

Audit activity remains a routine feature of tax administration practice. In 2025 the Luxembourg tax administration conducted 55 in-depth audit cases covering 178 fiscal years, resulting in

[15] Tribunal Administratif, Decision No. 47100 (noting that it is imperative to ensure that services have actually been provided to justify a charge and concluding that where no services and benefits were received, the charge should not be recognized). The Luxembourg administrative courts have thus confirmed that charges for intra-group services require proof that services were actually performed and that benefits were received by the recipient.

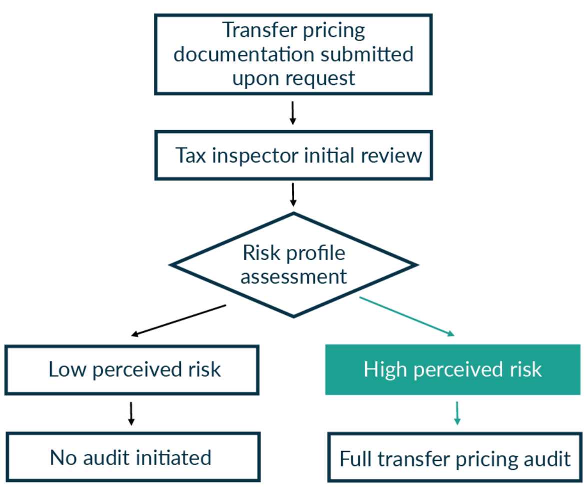
approximately €2,976,045.58 of tax adjustments.[16] These figures confirm that audit procedures represent a structured component of tax administration oversight and that transfer pricing documentation plays a central role in explaining and defending tax positions during such reviews.

Where documentation is incomplete or unclear, misunderstandings may arise between operational teams and tax auditors. These misunderstandings can lead to:

- unilateral transfer pricing adjustments;
- lengthy litigation procedures;
- double taxation requiring resolution through the mutual agreement procedure;[17]
- additional costs related to external transfer pricing experts and legal advisers; and
- potential implications for the statutory auditor's opinion on the annual accounts.

Comprehensive documentation reduces these risks by providing a structured explanation of the transaction and the underlying economic rationale (see Figure 5).

Figure 5. How Transfer Pricing Documentation Is Used in Audit Risk Assessment



Audit requires significant internal coordination and financial resources.

Cross-Border and Joint Audit Considerations

The importance of documentation becomes even more pronounced in cross-border situations, particularly during simultaneous or joint audits involving multiple jurisdictions.

Differences in available information between jurisdictions may lead to inconsistent interpretations of the same transaction. This may result in incorrect delineation of the transaction and conflicting adjustments between tax authorities.

Typical consequences include:

- double taxation arising from divergent tax positions;
- prolonged dispute resolution procedures;
- increased compliance and advisory costs; and
- uncertainty regarding the final tax outcome.

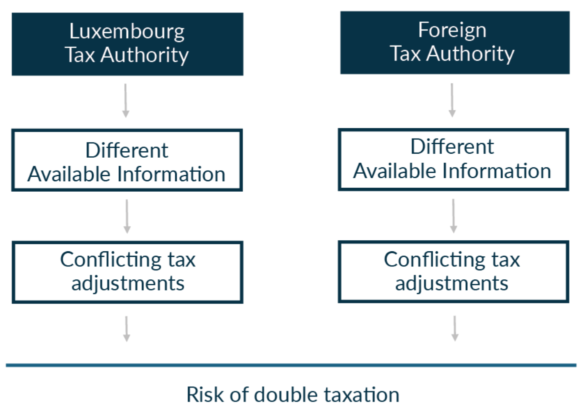
International cooperation between tax administrations has intensified significantly in recent years. In 2025, the Luxembourg Tax Authority received 892 requests for exchange of information, processed 135 requests for assistance and notifications, and conducted additional spontaneous exchanges relating to cross-border tax rulings and advance pricing agreements.[18] These developments illustrate the growing level of transparency and coordination between jurisdictions and reinforce the importance of maintaining consistent documentation across countries (see Figure 6).

[16] Annual Activity Report 2025 — Annexes, *supra* note 8, at 136.

[17] OECD "Model Tax Convention on Income and on Capital 2017" (Apr. 25, 2019). OECD "The 2025 Update to the OECD Model Tax Convention" (Nov. 19, 2025).

[18] Annual Activity Report 2025 — Annexes, *supra* note 8, at 159.

Figure 6. How Different Tax Authorities May Interpret the Same Cross-Border Transaction Differently



Timing and the Embedding of Economic Positions

Additional Domestic Documentation Requirements

Even when pricing is determined before implementation, timing remains critical. At this stage, the issue is no longer the statute of limitations, but the practical constraints that arise once financial results and governance decisions have been formally validated.

Once a transaction is executed and recorded, its economic consequences begin to crystallize. Governance documentation formalizes decisions. Financial statements reflect the chosen allocation of profits. For entities with a December 31 year-end, annual accounts are generally approved within six months and filed shortly thereafter.

From a transfer pricing perspective, the decisive moment is often the approval of the accounts. At that stage, profit allocation has been validated, and auditors have typically completed their review.

While adjustments remain legally possible after approval, they become significantly more complex. They may require additional governance procedures, interaction with statutory auditors, and careful explanation to stakeholders. In practical terms, flexibility narrows, and operational costs increase (see Figure 7).

Additionally, such adjustments may create increased visibility in the tax return, particularly where they are disclosed separately, allowing tax authorities to identify that the original pricing required subsequent correction.

The Illusion of 'Waiting for the Audit'

Compliance Risk Exists Even After Penalties Are Gone

Given that Luxembourg law does not impose a specific penalty solely for the absence of transfer pricing documentation, some taxpayers may consider deferring documentation and relying on the burden of proof resting with the tax authorities in the event of reassessment.

Such an approach underestimates practical realities.

The routine nature of tax review procedures means that transfer pricing positions are regularly revisited by the tax administration. The existence of specialized expertise, including the establishment of dedicated transfer pricing teams within the administration, further reinforces the importance of preparing robust documentation in advance of potential review.

In practical terms, deferring documentation typically results in:

- increased likelihood of audit selection;
- reassessments and potential tax litigation;
- prolonged dispute resolution procedures;
- increased administrative burden; and
- higher advisory costs.

The absence of explicit documentation penalties therefore does not equate to the absence of risk.

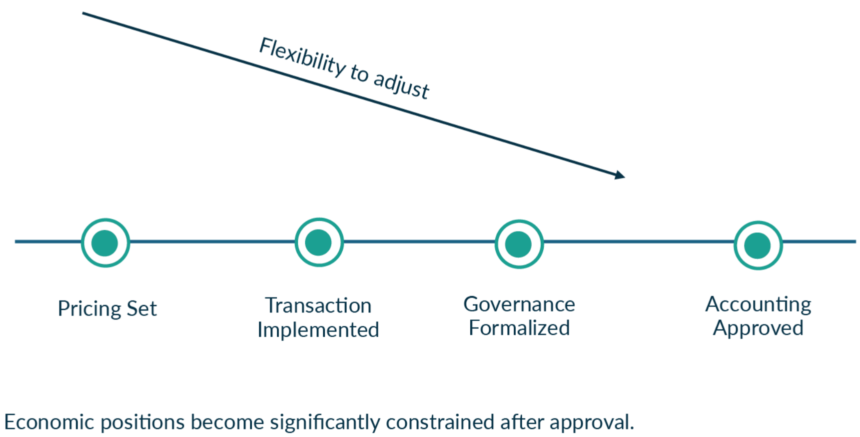
International Convergence and Strategic Alignment

Documentation as a Coordination Mechanism

International developments reinforce the strategic importance of transfer pricing documentation.

Businesses operating in cross-border environments increasingly rely on mechanisms designed to provide tax certainty before transactions are implemented. Advance tax rulings and APAs play an important role in this context by clarifying the tax treatment of complex

Figure 7. Timing Constraints on Transfer Pricing Adjustments

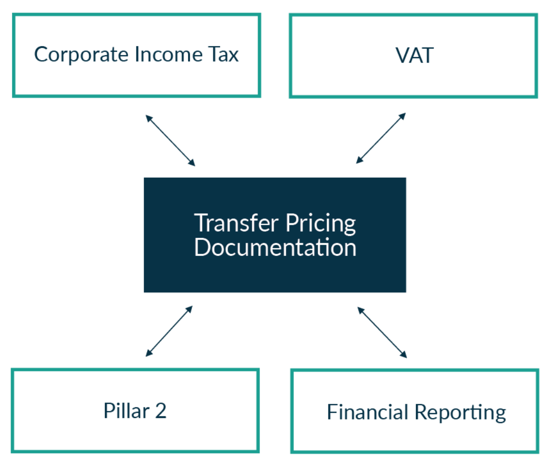


arrangements and reducing the likelihood of future disputes.

Recent administrative data illustrates this trend. In 2025, the Luxembourg tax administration issued 47 advance tax decisions, including two APAs, representing an increase of approximately 47 percent compared with the 32 decisions issued in 2024.[19] This development reflects the continued reliance on advance tax certainty mechanisms to clarify the tax treatment of complex arrangements before implementation.

In this multilayered environment, documentation serves as a coordination mechanism. It aligns tax, finance, and governance, ensuring that pricing decisions, accounting treatment, and contractual arrangements form a coherent whole (see Figure 8).

Figure 8. Transfer Pricing Documentation Across Tax and Reporting Regimes



Conclusions

The cumulative effect of these developments is a redefinition of the role of transfer pricing documentation.

It is not merely a defensive file designed to withstand audit scrutiny. It is a structured analytical process that informs pricing decisions before implementation, aligns governance and operational conduct, and provides contemporaneous evidence of economic substance.

This is particularly true in private market environments, where complex multientity structures and long investment horizons require consistent documentation that can support decisions made many years after transactions have been implemented.

In a landscape characterized by increasing technical scrutiny, institutional specialization, and growing international transparency, the decisive question is no longer whether a margin falls within a statistical range. It is whether the structure, the decision-making process, and the

[19] *Id.* at 123.

economic reality can be demonstrated to be coherent and defensible.

What this expanded vision of transfer pricing documentation therefore calls for is not simply more analysis, but a different way of organizing the work of tax functions. Documentation can no longer be treated as a year-end exercise prepared after transactions have been executed. It must be integrated into the business's decisionmaking process, from the design of structures to their ongoing monitoring.

In practical terms, this means that tax professionals are increasingly required to engage earlier in the decisionmaking process, to work more closely with finance, legal, and operational teams, and to document key assumptions at the time they are made. It also requires establishing internal processes that allow documentation to be maintained, updated, and retrieved consistently and reliably over time.

More fundamentally, it requires a shift in professional posture. The role of the tax function is evolving from that of a technical reviewer of completed transactions to that of a participant in the governance of business structures. This involves ensuring that decision making processes are traceable, that responsibilities are clearly assigned, and that the economic rationale underlying transactions can be explained not only retrospectively, but contemporaneously.

Approached in this way, transfer pricing documentation becomes an instrument of strategic clarity and risk management, one that defines not only how prices are defended, but how they are set. ■