

University of Groningen

## Intra-group financial transactions and the arm's length principle

van Herwaarden, Arjen

DOI:  
[10.33612/diss.218465486](https://doi.org/10.33612/diss.218465486)

**IMPORTANT NOTE:** You are advised to consult the publisher's version (publisher's PDF) if you wish to cite from it. Please check the document version below.

*Document Version*  
Publisher's PDF, also known as Version of record

*Publication date:*  
2022

[Link to publication in University of Groningen/UMCG research database](#)

*Citation for published version (APA):*  
van Herwaarden, A. (2022). *Intra-group financial transactions and the arm's length principle: a comparative and normative analysis*. [Thesis fully internal (DIV), University of Groningen]. University of Groningen. <https://doi.org/10.33612/diss.218465486>

### Copyright

Other than for strictly personal use, it is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), unless the work is under an open content license (like Creative Commons).

The publication may also be distributed here under the terms of Article 25fa of the Dutch Copyright Act, indicated by the "Taverne" license. More information can be found on the University of Groningen website: <https://www.rug.nl/library/open-access/self-archiving-pure/taverne-amendment>.

### Take-down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

Downloaded from the University of Groningen/UMCG research database (Pure): <http://www.rug.nl/research/portal>. For technical reasons the number of authors shown on this cover page is limited to 10 maximum.

## PROPOSITIONS

*Accompanying the PhD thesis*

### **Intra-group financial transactions and the arm's length principle: a comparative and normative analysis**

by Arjen van Herwaarden

1. Countries' pre-2020 administrative guidance and case law on the application of arm's length reasoning/the arm's length principle to intra-group financial transactions are not fully aligned with each other and OECD transfer pricing guidance published in 2020 in part lacks specificity and clarity. Therefore, uncertainty exists as to the appropriate application of arm's length reasoning to intra-group financial transactions.
2. Arm's length reasoning is ill-suited to determine the tax consequences of intra-group financial transactions because it is impossible to apply what constitutes a theoretically correct application of arm's length reasoning in general to intra-group financial transactions.
3. The objectives of arm's length reasoning and the Ottawa taxation framework principles developed by the OECD (neutrality, efficiency, certainty and simplicity, effectiveness and fairness, and flexibility) constitute a suitable framework for establishing the preferable ('second best') approach to determining arm's length terms for intra-group financial transactions.
4. The 'group credit rating approach' constitutes the preferable ('second best') approach to determining arm's length terms for intra-group financial transactions, that is arm's length terms are to be determined on the basis of the credit rating of the group to which the borrowing group company belongs.
5. The view expressed in the OECD Transfer Pricing Guidelines that an intra-group lender which does not control the lending risk is entitled to at most a risk-free return is at odds with arm's length reasoning.
6. In order to modify the text of the OECD Transfer Pricing Guidelines consensus among the OECD member states is required. This leads to less than fully clear guidance.
7. The Court of Justice of the European Union would benefit from the installation of a special tax chamber.
8. The Dutch Supreme Court is not to be applauded for introducing the following vague criterion: an intra-group loan which would become profit-sharing in substance if it would carry an arm's length (amount of) interest is for tax purposes a 'non-business motivated loan' (*onzakelijke geldlening*).