Gebr. Langeveld BV

TRANSFER PRICING DOCUMENTATION

LOCAL FILE

Financial Year Ended 31 December 2022

# Glossary

|  |  |
| --- | --- |
| Abbreviation | Definition |
| APA(s) | Advance pricing agreements |
| ATR(s) | Advance tax ruling(s) |
| CITA | Dutch Corporate Income Tax Act 1969 |
| DTA | Dutch Tax Authorities |
| Dutch entity | Gebr. Langeveld B.V. |
| EU | European Union |
| EUR | Euro, the lawful currency of the Eurozone |
| FTE(s) | Full time equivalent(s) |
| FY under review, FY2022 | Financial year started January 1st and ended December 31st 2022 |
| GSB LLC | Garden State Company Co. LLC |
| GL BV | Gebr. Langeveld B.V. |
| Local File | The present report |
| MNE(s) | Multinational enterprise(s) |
| NBC LLC | Netherlands Bulb Company LLC |
| OECD | Organisation for Economic Co-operation and Development |
| OECD Guidelines | Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, OECD, January 2022. |
| PLI | Profit level indicator |
| RSM, we, our, us | RSM Netherlands Belastingadviseurs N.V. |
| TP | Transfer pricing |
| TP methods | One of the transfer pricing methods listed below:   * Comparable uncontrolled price method (CUP method); * Resale price method (RPM); * Cost plus method (CP method); * Transactional net margin method (TNMM); * Profit split method (PSM). |
| USD | US dollar, the lawful currency of the United States of America |

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# Executive summary

## Introduction

Gebr. Langeveld BV (“GL BV”, “the Dutch entity”) has engaged RSM Netherlands Belastingadviseurs N.V. (“RSM”, “we”, “our”, “us”) to document the transfer pricing (“TP”) policies applicable to the controlled transactions undertaken by GL BV for the financial year ended December 31st 2022 (“FY under review”, “FY2022”). More specifically, this report constitutes the Local File prepared for GL BV for FY2022.

The controlled transaction in scope of this Local File is as follows:

* Sale of flower bulbs by GL BV to Garden State Bulb LLC (“GSB LLC”) and Netherland Bulb Company LLC (“NBC LLC”) for further distribution.

The scope of this report comprises an analysis of the remuneration for the intragroup transactions in scope of this Local File.

This report has been prepared in accordance with the Dutch TP regulations (Articles 8b and 29b through 29h of the Dutch Corporate Income Tax Act 1969 (“CITA”)) and the Organisation for Economic Cooperation and Development (“OECD”) Transfer Pricing Guidelines for Multinational Enterprises (“MNE(s)”) and Tax Administrations (“OECD Guidelines”), issued in January 2022.

## Conclusions

### Sale of flower bulbs by GL BV to GSB LLC and NBC LLC for further distribution

GL BV procures flower bulbs in the Netherlands and on-sells them to GSB LLC and NBC LLC for further distribution in the North American market.

Based on the functions performed, assets deployed and risks assumed GL BV can be characterised as a limited risk intermediary supplier / distributor; whereas GSB LLC and NBC LLC can be characterized as distributors in the controlled transaction under review. Accordingly, we determined that GL BV is the party that has the less complex functional profile in the controlled transaction under review. The Transaction Net Margin Method ("TNMM”) was identified that the most applicable TP method, using the Berry ratio (Gross Profit / Operating expenses) as the profit level indicator ("PLI”).

The Berry Ratio could be considered an appropriate PLI due to the fact that the value of the functions performed in the controlled transaction under review is proportional to the operating expenses. Refer to section 6.3 for further details.

A benchmarking study was performed to assess the arm’s length level of remuneration for the intermediary supplier / distribution activities performed by GL BV. Based on the outcome of the benchmarking study, the interquartile range of Berry ratio’s achieved by companies engaged in comparable activities to those undertaken by GL BV is from 108.21% to 146.40%, with a median of 121.60%.

In FY2022 the actual Berry ratio achieved by GL BV for the intermediary supplier / distribution activities it performed was 112.04% which falls inside the interquartile range of the benchmarking study. Therefore, it could be concluded that the pricing of the controlled transaction under review could be considered arm’s length.

# Introduction

## TP Documentation requirements

The three-tiered TP documentation requirement in OECD BEPS Action Point 13 has been endorsed by the Netherlands and was introduced in the CITA in Articles 8b and 29b through 29h as per 1 January 2016.

Based on Articles 8b and 29b through 29h of the CITA and considering the size of the Group, the Dutch entity is obliged to prepare the following TP documentation:

* A Master File; and
* A Local File.

The Master File of the Group is attached as ***Appendix II***.

## Purpose of this Local File

The purpose of this Local File is to provide tax administrations with detailed information on the arm’s length nature of the controlled transactions in which the Dutch entity is involved.

This information should be seen as a supplement to the Master File of the Group in which a high-level overview is provided to place the TP practices of the Group in their global economic, legal, financial and tax context (***Appendix II***).

The information contained in this report demonstrates that the company meets the requirements of Articles 8b and 29g of the CITA.

## Limitations

The information that the management of the Dutch entity provided to RSM reflects the actual situation in the FY under review and was assumed factually correct; RSM did not independently verify the data.

The scope of this report is limited to the TP aspects of the controlled transactions and does not consider other potential direct and indirect tax implications of the transactions addressed herein. This report has been prepared solely for the purposes described above and we do not accept any responsibility for its use outside this purpose. Except in accordance with its stated purpose, no extract, quote or copy of our report, in whole or in part, may be reproduced without prior written consent and approval of RSM except as required by law.

The analysis and recommendations expressed in this report is subject to the following general conditions:

* **Verification of facts.** We have not undertaken any investigation to confirm or verify any of the facts or representations described in this report and we have relied on the assumptions described in this report. Any change or addition to these facts, representations and assumptions could materially and adversely affect our analysis and recommendations, so you should contact us immediately if you believe that any of these facts, representations or assumptions are inaccurate.
* **Applicable guidelines.** Our analysis and conclusions relate to the application of the Dutch TP legislation and OECD Guidelines as applicable for the year under review. Subsequent changes in the legislation or the issuance of new case or ruling authority, could materially and adversely affect our analysis and conclusions. Delivery of this report is not an undertaking on our part to update this report or advise you of any changes in the legislation. This Local File does not contain conclusions on any other Dutch or foreign tax issues, since the preparation of such conclusions was not part of the scope of work.
* **No guarantee.** Our analysis and recommendations are based upon our interpretation of the OECD Guidelines and Dutch TP legislation as of the date of this report. Some of these matters are not free from doubt, and our analysis and conclusions, recommendations and alternatives are not binding on any local or foreign tax authority, or on any court. Our analysis and recommendations are based upon our professional judgment and are not a guarantee of the ultimate tax consequences described in this report.
* **Reliance.** This report is rendered only for the benefit of the named addressee(s) and does not address the consequences to any other person or entity that is not an addressee. No person or entity other than the named addressee(s) may rely on this report. In carrying out the engagement, we have worked solely on the instructions of the GL BV, and in accordance with the company’s purposes, taking into account GL BV’s particular facts and circumstances. This work may not have considered issues relevant to any third parties. Any such usage by third parties of this Local File is entirely at their own risk and we shall bear no responsibility whatsoever in relation to any such use.
* **Purpose.** Our services were provided for consulting purposes only. We do not assume any management responsibilities in connection with the services and do not take on responsibility for the use of the provided results.

# Description of the Dutch entity

This section provides a description of the Dutch entity. The information provided includes (but is not limited to): a description of the management structure of the Dutch entity, a local organisation chart, and a description of the individuals to whom local management reports and the country (or countries) in which such individuals maintain their principal offices.

Further, the business in which the Dutch entity operates, the key customers and the business strategy of the Dutch entity are discussed, including an indication whether the Dutch entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year. Finally, the key competitors of GL BV are listed.

## Legal structure

GL BV’s corporate structure chart as of 31 December 2022 is presented in ***Appendix III***.

GL BV is a subsidiary of Garden State Bulb Holding Company LLC which is based in the United States.

## Management structure

This section contains a description of the individuals to whom local management reports and country(ies) in which such individuals maintain their principal offices.

GL BV is managed by Peter van Eeden, who is based in the Netherlands. Peter van Eeden reports into Pete Langeveld (COO), who maintains his office in and is a citizen of the United States. All personnel below the level of Pete Langeveld (COO) are based in the Netherlands.

Please find below an organizational chart for GL BV:

A diagram of a company

Description automatically generated

## Group overview

The GSB group is active in the flower bulbs industry and is engaged in the wholesale distribution and sale of flower bulbs. The flower bulbs are bought from a few places worldwide, however most are either bought from or pass through GL BV. The flower bulbs are predominantly sold by the GSB LLC and NBC LLC to several big box companies, specifically US dollar stores but also smaller retail stores and independent nurseries. To a lesser extent (less than 10% of GL BV sales), GL BV sells flowers bulbs directly to third-party customers based on the European Union ("EU”) and a single customer in Canada.

## Company overview

### GL BV

GL BV is a private company with limited liability having its office in Sassenheim, the Netherlands. The company was incorporated on the 21st of February 2022.

The Dutch entity is involved the trade, including import and export, and transit trade of flower bulbs, as well as packaging materials intended for them.

As of 31 December 2022, the company had 14 FTEs.

### GSB LLC

GSB LLC is a private company with limited liability having its office in Vineland, New Jersey. The company was incorporated on 26th of May 1998 and is principally engaged in the wholesale distribution of flower bulbs.

### NBC LLC

NBC LLC is a private company with limited liability having its office in Wilmington, Pennsylvania. The company was incorporated on 17th of June 2016. and is principally engaged in the wholesale distribution of flower bulbs.

## Industry analysis

### Analysed industry

GL BV operates in the flower bulbs industry, therefore the analysis of this industry is provided in the sections further below.

### Market overview

The flower bulb industry is a global market that involves the production, processing, and distribution of various types of flower bulbs. Flower bulbs are used for ornamental purposes, such as landscaping, gardening, and indoor decoration. Some of the most popular flower bulbs include tulips, lilies, hyacinths, daffodils, and crocuses.

The total export value of the Dutch flower bulb market is approximately 650 million Euro per year. The United States is the leading export destination (120 million Euro), followed by Germany (72 million Euro), Japan (66 million Euro), UK (58 million Euro) and France (46 million Euro). Russia and China may be considered as “new markets” with an export value of 22 million Euro. The nursery stock business is more focused on the European markets as 90% of the total sales (460 million Euro) is sold within the borders of the European Union: Germany (145 million Euro), UK (92 million Euro), France (32 8ln.euro), Belgium (22 million Euro) and the United States (19 million Euro).[[1]](#footnote-1)

The United States is the leading export destination for Dutch flower bulbs, with a value of 120 million euros in 2023. The US market is dominated by mass retailers, such as supermarkets and home improvement stores, that offer low prices and convenience to consumers.[[2]](#footnote-2) The US plant and flower growing industry is expected to grow at an annual rate of 1.6% from 2023 to 2028, reaching a revenue of $13.5 billion by 2028.[[3]](#footnote-3)

### General trends

Increased online sales of flower bulbs, especially during the pandemic and post-pandemic periods, as more consumers prefer to shop from home and avoid crowded places. Online platforms also offer more variety, convenience, and customization options for buyers. Wholesalers may need to adapt to the changing consumer behaviour and preferences, and invest in digital marketing, e-commerce, and logistics solutions.[[4]](#footnote-4)

Increased demand for organic, sustainable, and locally grown flower bulbs, as more consumers become aware of the environmental and social impacts of conventional flower production. Wholesalers may need to source their flower bulbs from certified organic or fair trade growers, or grow their own flower bulbs using eco-friendly methods. They may also need to communicate their sustainability practices and values to their customers and stakeholders.[[5]](#footnote-5)

### Key competitors

Some of the Group’s key competitors include:

1. Baucom's Nursery Company.[[6]](#footnote-6)
2. Silverleaf Greenhouses.[[7]](#footnote-7)
3. K. van Bourgondien.
4. Quality Dutch Bulbs, Inc.
5. Peter Nyssen Ltd.

## Business strategy

In this section, we identify and describe the key business strategy of GL BV within the Group. In general, GL BV follows the Group’s business strategy and implements it in the Netherlands.

GL BV procures flower bulbs from the Netherlands and to a lesser extent, from several other European countries, such as the United Kingdom. The Flower bulbs are predominantly sold to GSB LLC and NBC LLC who further distribute the flower bulbs in the United States.

## Business restructurings and / or intangibles transfers

GL BV has not been involved in or affected by any business restructurings, neither has it transferred intangible assets in FY2022.

# Controlled transactions

## General overview and amounts

The following table provides the amounts of the controlled transactions in FY2022.

Table . Amounts of intercompany transactions

| Transaction | Entity receiving income (Seller) | Entity incurring expense (Purchaser) | Amounts of intercompany transactions, EUR |
| --- | --- | --- | --- |
| Sale of flower bulbs by GL BV to GSB LLC and NBC LLC for further distribution | GL BV | GSB LLC, NBC LLC | € 13.537.761[[8]](#footnote-8) |

## Detailed overview of the transaction

GL BV procures flower bulbs predominantly from the Netherlands and to a lesser extent, from several other European countries, such as the United Kingdom. Once the flower bulbs have been purchased, they are transported to GL BV’s warehouse in Sassenheim, the Netherlands, for storage and further processing as may be required. Following receipt of a purchase order, GL BV arranges for the transportation of the flower bulbs to GSB LLC, NBC LLC or a third party as the case may be.

The vast majority of sales made by GL BV are related party transactions with GSB LLC and NBC LLC.[[9]](#footnote-9) GL BV arranges for the export and transportation of the flower bulbs to GSB LLC and NBC LLC warehouses in the United States. Upon receipt, GSB LLC and NBC LLC arrange for distribution to the Group’s end-customers.

The Group’s transfer pricing policy is to ensure that GL BV receives an at arm’s length renumeration for the functions it performs and the risks it assumes. This ensures that an at arm's length profit is allocated to GL BV.

## Intercompany agreements

Intercompany agreements have not been prepared for the controlled transaction under review.

# Specific financial and tax information

## Introduction

This section provides information on the financials of GL BV and any tax arrangements (e.g., ATR or APA) agreed upon by GL BV with the tax authorities.

## Annual report

In ***Appendix I***, the local statutory accounts of GL BV are included for the FY2022.

## Tax arrangements

GL BV has not entered into any APA or ATR during the FY2022.

# Functional analysis

## Introduction

This section details the functional and risk profile of GL BV, GSB LLC and NBC LLC in FY2022 in relation to the cross-border controlled transactions pertaining to the sale of flower bulbs by GL BV to GSB LLC and NBC LLC for further distribution.

These details are described in a so-called functional analysis. The OECD Guidelines state “*Application of the arm’s length principle is generally based on a comparison of the conditions in a controlled transaction with the conditions in transactions between independent enterprises. (….) Independent enterprises, when evaluating the terms of a potential transaction, will compare the transaction to the other options realistically available to them, and they will only enter into the transaction if they see no alternative that is clearly more attractive*.”

In dealings between two independent enterprises, comparison will usually reflect the functions that each enterprise performs, the assets used and the risks assumed. Therefore, in determining whether controlled and uncontrolled transactions or entities are comparable, comparison of the functions taken on by the parties is necessary. This comparison is based on a functional analysis, which seeks to identify and compare the economically significant activities and responsibilities undertaken or to be undertaken by the independent and associated enterprises.

Consistent with the OECD Guidelines, the functional analysis covers only “economically significant” activities. Thus, the functional analysis provides the factual foundation for establishing transfer pricing methods consistent with the arm’s length principle. A controlled transaction meets the arm’s length principle if the results of the transaction are consistent with the results that would have been realized had the same transaction occurred between uncontrolled entities. A functional analysis is essential to the development of transfer pricing policies for the following reasons:

* The functions undertaken by each related party typically correlate with the risks borne and the assets acquired or developed;
* The functions, assets and risks associated with a related party’s operations usually have a significant effect on its expected profitability; and
* The functional analysis provides the information and background necessary to the related parties and identifies uncontrolled transactions potentially comparable to the controlled transactions under review.

In the remainder of this memorandum, we will describe our understanding of the functional and risk profile of GL BV, GSB LLC and NBC LLC in the controlled transaction under review. The description of the functional analysis reflects the situation as per 31 December 2022.

### Overview of the functional profiles

The following table provides overview of the performed functions, assumed risks and utilized assets by the parties of the controlled transaction.

Table . Distribution of functions, risks and assets within the controlled transaction

|  |  |  |
| --- | --- | --- |
| Functions / risks / assets  (X) = limited involvement  X = Minor Involvement  XX = Heavy involvement | GL BV | GSB LLC & NBC LLC |
| Functions | | |
| Supplier identification, negotiation, and procurement of flower bulbs | X | - |
| Purchasing | X | - |
| Warehousing and processing | X | XX |
| Logistics and transportation | X | XX |
| Sales and marketing | X | XX |
| Risks | | |
| Credit risk | - | - |
| Market risk | X | XX |
| Foreign exchange risk | (X) | XX |
| Inventory risk | - | X |
| Assets | | |
| Tangible assets | X | X |
| Intangible assets | - | X |

### Functions

GL BV procures flower bulbs predominantly from the Netherlands as well as several other European countries, such as the United Kingdom. Once the flower bulbs have been purchased, they are transported to GL BV’s warehouse in Sassenheim, the Netherlands, for storage and further processing as may be required. Following receipt of a purchase order, GL BV arranges for the transportation of the flower bulbs to the end-customer. The vast majority of sales made by GL BV are related party transactions with GSB LLC and NBC LLC.[[10]](#footnote-10) GL BV arranges for the export and transportation of the flower bulbs to GSB LLC and NBC LLC warehouses in the United States. Upon receipt, GSB LLC and NBC LLC arrange for distribution to the Group’s end-customers.

Further details will be provided in later sections of this functional analysis.

#### Supplier identification, negotiation and procurement of flower bulbs

Peter van Eeden (Director of GL BV) is responsible for identifying suppliers and negotiating the purchasing terms and conditions for all flower bulbs procured and sold by GL BV.

GL BV does not consider its long term supplier relationships to be a significant value driver.

In the controlled transaction under review, GSB LLC and NBC LLC do not perform any activities related to supplier identification and procurement of flower bulbs. GSB LLC and NBC LLC are engaged in the procurement and purchase of fruit trees from third party suppliers in other countries, excluding the Netherlands.

#### Purchasing

To enable GL BV to procure the correct number and variety of flower bulbs, sales personnel employed by GSB LLC and NBC LLC provide GL BV with a demand forecast based on their forward looking discussions with end-customers in the United States.

As mentioned above, personnel employed by GL BV are ultimately responsible for negotiating and approving all terms and conditions of purchase. GL BV is the “purchaser” and takes ownership of all flower bulbs that it procures.

Aside from providing the demand forecast, GSB LLC and NBC LLC do not perform any functions related to the purchase of flower bulbs in the controlled transaction under review.

#### Warehousing and processing

Once GL BV has procured and purchased the flower bulbs, they are transported to a warehouse facility in Sassenheim, the Netherlands. GL BV leases the warehousing facility and employs 8 full time equivalents (FTEs) who perform all necessary warehousing, quality control and minor production activities such as packing the flower bulbs into crates (generally for sale to big-box customers in the United States) or smaller consumer facing packages (generally for sale to nurseries in the United States).

During the main purchasing season, GL BV may employ temporary seasonal workers to provide additional support. The warehouse thereby leased and operated by GL BV can provide cold and well as ordinary dry storage as need be.

On the other hand, GSB LLC and NBC LLC operate leased warehousing facilities in the United States. Flower bulbs that are purchased from GL BV are transported to these warehouses, where they are stored before being distributed to the Group’s end customers. Depending on the end-customer, GSB LLC and NBC LLC perform minor processing and production activities to prepare the flower bulbs for sale. For big-box customers, this involves fabricating the metal racks and display shelves and pre-stocking them with flower bulbs prior to being shipped to the end-customer. Moreover, flower bulbs and seeds are packaged into consumer facing packaging and labelled, as necessary.

#### Logistics and transportation

Following any necessary processing of the flower bulbs at the Sassenheim warehouse, GL BV engages a third party logistics and transportation service provider to arrange for the export and delivery of the flower bulbs to a port of entry in the United States (or to the port of entry designated by the customer in case of limited sales to third party customers in Canada / Europe). For sales made to GSB LLC and NBC LLC, the flower bulbs are transported on ocean freight.

Once they arrive at the port of entry, personnel employed by GSB LLC and NBC LLC will arrange the necessary import documentation and payment of any import duties. Thereafter, GSB LLC and NBC LLC engage a third party service provider to transport the imported products to their respective warehouses.

#### Sales and Marketing

GSB LLC and NBC LLC perform extensive sales and marketing activities. During the two sales seasons, the US sales team will have twice weekly sales calls with the group’s largest customers and will visit the customer at least four times per year. Development and maintenance of customer relationships is regarded as one of the Group’s most important value drivers. Based on their meetings with customers, the sales team develops a demand forecast which is provided to GL BV for procurement and purchasing purposes.

End-customers of GSB LLC and NBC LLC can be grouped into two categories: (i) Big-box customers and (ii) independent nurseries. Sales to big-box customers (e.g., Home Depot, Lowes and Costco) comprise more than two thirds of the Group’s total sales. The remaining one third comprise sales to more than 7,000 independent nurseries across the United States.

GL BV is engaged in the direct sales of flower bulbs in limited situations, namely:

* Sales to one Canadian customer (approximately EUR 576.290 in FY2022 equivalent to approximately 4% of GL BV’s net revenue in FY2022). The sales relationship with this customer is maintained by the COO of GL BV. It should be noted that the Canadian customer and GSB LLC / NBC LLC occupy different legs in the flower bulb supply chain. Whereas GSB LLC and NBC LLC are wholesale distributors of flower bulbs, the Canadian customer purchases flower bulbs from GL BV in order to cultivate the bulbs and thereafter sell the flowers to the cut flower market.
* Sales to European customers in cases where GL BV has surplus stock of flower bulbs. Sales to European customers are very minor at approximately EUR 672.063 in FY2022 equivalent to approximately 4.71% of GL BV’s net revenue in FY2022.

### Risks

The main risks incurred by the related parties involved in the cross-border intercompany transaction under analysis are summarized below.

#### Credit / bad debt risk

Credit / bad debt risk arises when a company provides goods or services to a client in advance of client payment. The company assumes a risk that the client may fail to make payment.

GSB LLC and NBC LCC, as the entities that are principally engaged in sales with third party customers are exposed to credit risk. A major risk outcome which would have a significant impact on the Group would be if one of the big box customers (i.e. Home Depot, Lowes, Costco, etc.) were to declare bankruptcy and thereby unable to pay GSB LLC / NBC LLC. GSB LLC and NBC LLC actively monitor their largest customers to anticipate potential bankruptcies, financial distress etc.

GL BV is also exposed to credit risk on sales to third party customers, however considering this is a limited activity the risk should be considered minor.

Regarding sales to GSB LLC and NBC LLC, GL BV’s exposure to credit risk is considered minimal as the sales are made to Group companies.

#### Market risk

Market risk refers to the potential for financial losses or operational challenges due to broad economic or market-related factors that impact a particular industry. Key factors include fluctuations in demand, changes in consumer preferences, shifts in economic conditions, regulatory changes, and increased competition. These risks can affect a company’s revenue, costs, and overall business performance, requiring effective risk management strategies to maintain a competitive edge.

For the Group, market risk can manifest in several ways. Fluctuations in demand for the products they distribute could lead to higher inventory levels, resulting in increased warehousing costs and the potential for obsolescence or spoilage. Additionally, changes in market conditions might affect the group’s ability to sell flower bulbs at profitable prices or make it challenging to maintain their desired profit margins. The Group may also face increased competition, which can put downward pressure on prices and impact their market share.

GSB LLC and NBC LLC, as the Group’s main trading entities are directly exposed to market risk. Moreover, through their interactions with their largest customers and monitoring emerging trends, the sales team is able to gauge changes in consumer demand and adjust forecast demand appropriately.

GL BV is also exposed to market risk in the controlled transaction, however risk mitigation activities are performed by personnel of GSB LLC and NBC LLC. Moreover, GL BV receives a management fee from GSB LLC / NBC LLC to ensure that it achieves a stable return on its activities and is therefore effectively shielded from exposure to market fluctuations.

GL BV is also exposed to market risk on sales to the singular Canadian customer, and on the ad-hoc sales to European customers where there is surplus stock. As mentioned above, the profile of the Canadian customer is different to that of GSB LLC and NBC LLC. Moreover, as the sales to European customers are performed on an ad hoc basis and only in event of excess inventory, the sales are generally not conducted as part of GL BV’s ordinary business activities and are more akin to a risk mitigation activity.

#### Foreign exchange risk

Foreign exchange risk, also known as currency risk, is the potential for financial loss resulting from fluctuations in exchange rates between different currencies. This risk arises when an individual or business engages in cross-border transactions, investments, or holds assets denominated in foreign currencies, as changes in currency values can impact the value of those transactions, investments, or asset.

In the controlled transaction under review GL BV technically bears foreign exchange risk as the transaction is undertaken in USD, whereas its functional currency is EUR. However, this risk is practically absorbed by GSB LLC / NBC LLC as GL BV will repatriate losses / gains (as the case may be) resulting from movements in the USD/EUR exchange rate.

GL BV also bears foreign exchange risk in the transaction with the Canadian customer, although this risk should be considered minor given the materiality of the transaction volume.

#### Inventory risk

Inventory risk refers to the potential financial loss and operational challenges associated with holding, managing, and disposing of inventory. This risk can arise from various factors, such as changes in market demand, product obsolescence, spoilage, damage, or theft.

For GL BV, inventory risk is mainly associated with holding and managing the stock of flower bulbs intended for sale to GSB LLC and NBC LLC and third party customers. Fluctuations in demand or changes in market conditions can lead to excess or insufficient inventory levels, resulting in increased warehousing costs, product obsolescence, or lost sales opportunities.

Any inventory risk borne by GL BV is effectively shifted to GSB LLC / NBC LLC. The parties conduct themselves on the basis that in the event that GL BV finds itself in the position whereby it is holding excess inventory which cannot be sold to third parties, GSB LLC / NBC LLC will step in and absorb any potential losses incurred as a result of unsold inventory.

GSB LLC and NBC LLC manages inventory risk by frequent communication with their end-customers timeous updates of forecasted demand. Updates to the demand forecast are communicated down to GL BV, which adjusts their purchasing activity as required. GL BV assists with the risk mitigation activities through the sale of surplus inventory to third parties.

### Assets

The main assets employed by the related parties involved in the cross-border transaction under analysis are summarized below.

#### Tangible assets

In the controlled transaction under review the major tangible assets deployed by GL BV, GSB LLC and NBC LLC includes their respective inventories of flower bulbs, flower bulb packaging machines and routine assets such as office furniture and basic IT equipment.

#### Intangible assets

GL BV does not own any intangible assets.

GSB LLC owns the ‘Garden State Bulb’ trademark and NBC LLC owns the ‘Netherlands Bulb Company’ trademark. GSB LLC and NBC LLC also license the right to sell products under other brand names (e.g., ‘Scotts Miracle-Gro’) which have a minor value.

### Conclusion on functional and risk profiles

Below is a summary of the functions performed and risks borne by the entities under review.

#### GL BV

Based on the aforementioned description of the functions performed, assets used and risks assumed, GL BV can be characterized as an intermediary supplier / distributor and seller of flower bulbs in the controlled transaction with GSB LLC and NBC LLC.

With respect to sales made to third parties, GL BV may be characterised as a wholesale distributor.

#### GSB LLC and NBC LLC

Based on the aforementioned description of the functions performed, assets used and risks assumed by GSB LLC and NBC LLC can be characterized as wholesale distributors of flower bulbs and the purchasers of flower bulbs in the controlled transaction with GL BV.

## Selection of TP methods

This section provides an overview of the specific TP methods recognised by the OECD Guidelines and the main considerations for selecting the most appropriate TP method to assess the arm’s length nature of the intercompany transaction in scope of this report.

### Available methods for price testing

The OECD Guidelines provide specific methods for evaluating the arm’s length nature of inter-company transactions. The OECD Guidelines group TP methods into two categories; the “traditional transaction methods” and the “transactional profit methods.” The OECD Guidelines require an inquiry into the availability and the reliability of data, the degree of comparability between the controlled and uncontrolled transactions and the sensitivity of the assumptions to data deficiencies to determine which method should be used for the particular transaction or group of transactions under review. The arm’s length character of the controlled transactions can be determined by applying one of the following methods:

Traditional transaction methods:

* Comparable uncontrolled price (“CUP”) method;
* Resale price method (“RPM”); and
* Cost plus (“CP”) method.

Transactional profit methods:

* Transactional net margin method (“TNMM”); and
* Profit split method (“PSM”).

The following sections provide the analysis of which method is the most appropriate to test the arm’s length nature of the intercompany transaction.

### CUP method

The CUP method evaluates whether the amount charged in a controlled transaction is at arm’s length, by reference to the amount charged in comparable uncontrolled transactions under similar circumstances.

Applicability of the CUP method requires comparability between the controlled and uncontrolled transactions in terms of both products transferred and other terms of arrangements. For example, some of the arrangement terms that should be considered in determining a potential CUP include the terms of the transaction, volume of sales, time of transaction, geographic markets and the level of the market.

For the purposes of the CUP method, an uncontrolled transaction is considered comparable to a controlled transaction if reasonably accurate adjustments can be made to eliminate the effects of any material differences between the controlled and uncontrolled transactions. The extent and reliability of any such adjustments will affect the relative reliability of the analysis under the CUP method.

When it is possible to identify comparable uncontrolled transactions, the CUP method is the most direct and reliable way to apply the arm’s length standard. However, if reasonably accurate adjustments cannot be made to eliminate any product or functional differences between the controlled and uncontrolled transactions, the reliability of the CUP method will be reduced. Therefore, it might be necessary to combine the CUP method with other less direct methods or to use another more appropriate method instead. There are two types of comparable uncontrolled transactions:

* *External comparables:* external CUPs are prices for transactions between two third parties in which the property transferred or services rendered and circumstances of the transaction are very similar or identical to the property and circumstances of the controlled transaction; and
* *Internal comparables:* internal CUPs are prices for transactions between one of the related parties with a third party in which the property transferred or services rendered and circumstances of the transaction are very similar or identical to the property and circumstances of the controlled transaction.

GL BV does not sell comparable goods to independent third parties under comparable terms, conditions and circumstances. GSB LLC and NBC LLC on the other hand do not purchase any comparable goods from independent third party providers under comparable terms, conditions and circumstances. Furthermore, any independent transactions similar to those between GL BV and GSB LLC and NBC LLC could not be identified.

Whilst GSB LLC and NBC LLC purchase goods from other independent third parties for further distribution, such purchases are not made from the Netherlands and relate to different categories of products (fruit trees) and are accordingly not comparable to the controlled transaction under review.

Similarly, whilst GL BV is engaged in the sale of flower bulbs to third parties, such sales are not conducted under comparable terms, conditions and circumstances. For sales made by GL BV to the Canadian customer, the purchaser grows the bulbs for purposes of sales into the cut flower market whereas sales in the controlled transaction under review are made to wholesale distributors. Additionally, the transaction volumes are not comparable as sales under the controlled transaction account for almost 90% of GL BV’s revenues, whereas sales to the Canadian customer accounts for only 4% of GL BV revenues. These differences could materially impact the transaction prices.

Moreover, when GL BV sells flower bulbs to European third parties, the sales are made as part of the inventory risk mitigation activities, and not in the ordinary course of business.

Therefore, there are no internal or external CUPs available. Due to these reasons, the CUP method could not be selected as the most appropriate method to test the intercompany transaction.

### RPM

The RPM evaluates the arm’s length nature of the transfer price in a controlled transaction by reference to the gross profit margin (the ratio of gross profit to net sales) realised in comparable uncontrolled transactions. The RPM is ordinarily used in situations in which one entity (the reseller) purchases tangible goods from a related entity and the reseller does not physically alter the tangible goods or use any intangible assets to add substantial value to the goods.

An analysis using the RPM begins with the price at which a product that has been purchased from a related entity is resold to an independent entity. The (resale) price is then reduced by an appropriate discount (i.e. gross margin), which should cover the selling and other operating expenses of the reseller, and represent, considering the functions performed, an appropriate profit.

The resale price margin of the reseller in the controlled transaction may be determined in two ways:

* *External comparables:* the resale price margin of the reseller in the controlled transaction can be determined by using the resale price margin earned by an independent entity in comparable uncontrolled transactions.
* *Internal comparables:* the resale price margin of the reseller in the controlled transaction can be determined by using the resale price margin that the same reseller earns on items purchased and sold in comparable uncontrolled transactions.

Whilst GL BV, GSB LLC and NBC LLC are engaged in the resale of flower bulbs to third parties, for the reasons set out above in section 6.2.2, they cannot be considered reliable internal comparables.

Moreover, it is not appropriate to consider the availability of external comparables due to the functional characterization of GL BV as a an intermediary supplier of goods in the controlled transaction under review, as the RPM is typically most appropriate where the reseller purchases goods from a related party (GL BV purchases goods from third parties).

Therefore, the RPM method could not be selected as the most appropriate method to test the controlled transaction.

### CP method

The CP method tests the arm’s length character of a transfer price in a controlled transaction by reference to the gross profit mark-up (the ratio of gross profit to cost of sales) realised in a comparable uncontrolled transaction. The CP method measures the value of the functions performed and is ordinarily appropriate in cases involving the manufacture or assembly of tangible goods, which are sold to a related party, or the provision of services for a related party.

An analysis based on the CP method begins with the costs incurred by the supplier of property or services in a controlled transaction for property transferred or services provided to a related purchaser. An appropriate mark-up is then added to these costs to make an appropriate profit considering the functions performed and the market conditions.

The cost-plus mark-up of the supplier in the controlled transaction may be determined in two ways:

* *External comparables:* the cost-plus mark-up of the supplier in the controlled transaction may be established by reference to the cost-plus mark-up that would have been earned in comparable transactions by independent entities; and
* *Internal comparables:* the cost-plus mark-up of the supplier in the controlled transaction may be established by reference to the cost-plus mark-up that the same supplier earns in comparable uncontrolled transactions.

The gross profit mark-up provides compensation for the manufacturing functions performed and other services provided, plus a return on capital invested and risks assumed by the manufacturer or service provider. Thus, under the CP method, comparability is primarily dependent upon the similarity of the functions performed and the risks assumed by the controlled and uncontrolled manufacturers or service providers and are less dependent on the similarity of the tangible goods involved in the related party transaction.

Due to the difference in functional profile that exists where GL BV purchases and sells flower bulbs to third parties vis-à-vis sales made to GSB LLC and NBC LLC, the (internal) CP method cannot be selected as the most appropriate method given no internal comparable transactions can be identified. Moreover, due to the absence of reliable publicly available gross-profit data on similar transactions between unrelated parties, no external comparables (i.e., uncontrolled transactions between third parties) were available either.

Therefore, the CP method was not selected as the most appropriate method to assess the arm’s length nature of the intragroup dealing between the related parties.

### PSM

The PSM evaluates whether the allocation of combined operating profit or loss attributable to one or more controlled transactions is arm’s length by reference to the relative value of each participant’s contribution to that profit or loss. This method is generally the most appropriate method when both parties to the transaction own valuable, non-routine intangibles, which contribute to the profit earned with the transaction, or when the activities and contributions made by the parties engaged in a controlled transaction are highly integrated.

The PSM involves either the identification of a comparable profit-sharing arrangement between two unrelated parties performing similar functions and bearing similar risks as the controlled taxpayers; or the allocation of combined operating income, first to routine activities through application of a specified method, and then to other non-routine activities performed. Therefore, the PSM consists of two methods; the comparable PSM and the residual PSM.

* *Comparable PSM:* this requires detailed data about the division of profits between unrelated parties. In practice, it is very unlikely that companies would be able to obtain such data concerning unrelated parties; and
* *Residual PSM:* this requires allocations of routine and non-routine contributions. The arm’s length return for the routine contribution is determined by using a method such as the TNMM, while the residual return is allocated based on the relative value of the related party’s contributions to the combined intangible capital.

The PSM could not be selected as the most appropriate method to test the arm’s length nature of the controlled transaction as neither GL BV nor GSB LLC and NBC LLC contribute any valuable intangibles in the transactions; neither the activities nor contributions of both parties are highly integrated.

### TNMM

The TNMM evaluates the arm’s length character of a controlled transaction by comparing the operating profits earned by the party engaged in the controlled transaction to the operating profits earned by uncontrolled parties engaged in similar business activities. The TNMM evaluates the net margin of the taxpayer from the controlled transaction (or transactions that are appropriate to aggregate) by reference to the net margin that the same taxpayer earns in comparable uncontrolled transactions. Where this is not possible, the operating profit that would have been earned in comparable transactions by an independent entity may be used.

The TNMM is applied to the entity for which reliable data and the most closely comparable transactions can be identified. It is usually the entity that is the least complex of the entities involved in the controlled transaction and that does not own valuable intangible property or unique assets.

To be applied reliably, the TNMM must be applied in a manner consistent with the manner in which the RPM or CP method would be applied. In particular, comparability under the TNMM is primarily dependent upon the similarity of capital invested and risks assumed by the controlled parties with respect to their activities. Under the TNMM, comparable companies need only be broadly similar and significant product diversity and some functional diversity between the controlled and uncontrolled parties is acceptable.

The TNMM was selected as the most appropriate TP method to assess the arm’s length remuneration in relation to the intermediary supply / distribution activities performed by GL BV. This is due to the fact that GL BV’s profitability could be reliably tested against the range of profitability of comparable companies selling similar goods. The information on the financial data of comparable distributors could be found in publicly available databases.

## Application of TP methods

For the reasons previously stated, the TNMM is considered the most appropriate method to test the arm’s length nature of distribution activities performed by GL BV. For applying the TNMM, the following steps should be completed:

* Select a tested party;
* Select a profit level indicator;
* Perform a comparability study (i.e. search for comparable companies and select a PLI);
* Construct a range of arm's length results; and
* Compare the tested party's measure of operating profit to the arm's length range.

### Selection of a PLI

Under the TNMM, the net profit margin is measured by use of an appropriate profit level indicator (“PLI”) such as the ratio of operating profits to sales, the ratio of gross profit to operating costs, or the rate of return on capital employed or return on assets. Following the identification of the TNMM as an appropriate TP method, the ‘Berry ratio’ was identified as the most appropriate PLI to provide a reliable measure of the arm’s length remuneration for the distribution activities of GL BV.

Paragraph 2.107 of the OECD Guidelines state that the Berry ratio is an appropriate PLI where:

* The value of the functions performed in the controlled transaction is proportional to the operating expenses;
* The value of the functions performed in the controlled transaction is not materially affected by the value of the products distributed, i.e. it is not proportional to sales; and
* The taxpayer does not perform, in the controlled transactions, any other significant function (e.g. manufacturing function) that should be remunerated using another method or financial indicator.

GL BV meets these requirements due to the fact that the functions performed, risks assumed, and the assets utilized by GL BV in its transactions with GSB LLC and NBC LLC are all closely linked to the operating expenses it incurs. In other words, the amount of money spent on operating expenses corresponds to the value of the functions and risks undertaken in the transactions with GSB LLC and NBC LLC. Moreover, the value of the functions are not materially affected by the volume of the flower bulbs supplied by GL BV to GSB LLC and NBC LLC. Lastly, GL BV does not perform any other significant function in relation to the supply of the tangible goods (I.e., no material modification or assembly) that should be remunerated using another transfer pricing method.

### Selection of a tested party

GL BV has been selected as a tested party for the purpose of testing the activities it performed in the controlled transaction under review. GL BV is the party that has the less complex functional profile in relation to the transaction. This is because GL BV performs less complex functions when compared to both GSB LLC and NBC LLC and does not make any valuable, unique contribution in relation to activities performed.

### Comparability study

A search for comparables to assess the arm’s length remuneration for the activities performed by GL BV was conducted. The search for comparables aimed to identify a sufficient number of comparable companies, which therefore implied to broaden the search process as much as possible when conducting the quantitative screening process. The qualitative screening of each of the comparables search led us to reject all companies considered not comparable to the tested party based on their activities. A report documenting this search is attached in ***Appendix V*** to this Local File.

### Arm’s length range

As a result of the search performed to identify the arm’s length range of results for similar activities, a comparable set of 13 companies was identified. As described above, to assess the arm’s length remuneration for the distribution activities, the Berry ratio was used as a PLI.

Because levels of profitability for different companies within an industry sample will vary, summary statistics indicating a "typical" or expected level of profitability for each sample are calculated. Further, the OECD Guidelines recommend the calculation and application of a range to increase the reliability of the outcome of the sample. They also advocate the use of multiple year data analysis. Consequently, the financial ratios for the years for which data was available (i.e. 2020-2022) were calculated and used for application of the average method described above for the sample of independent companies. Moreover, there were calculated the full and the interquartile ranges (i.e. the 25th to the 75th percentile) of a sample’s observations and the median for the final sample of comparable companies of each of the searches performed. A range of the Berry ratio achieved by companies engaged in comparable activities to those undertaken by GL BV over a three-year period is summarised in the following table.

Table . OM results over a three-year period

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Berry ratio | 2022 | 2021 | 2020 | Weighted Average Berry ratio (2020-2022) |
| Maximum | 185.03% | 174.84% | 181.44% | 165.36% |
| Upper quartile | 139.61% | 143.94% | 129.35% | **146.40%** |
| Median | 128.46% | 129.08% | 113.64% | **121.60%** |
| Lower quartile | 110.95% | 108.26% | 107.40% | **108.21%** |
| Minimum | 107.07% | 106.16% | 25.47% | 89.44% |

Based on the outcome of the benchmarking study, the interquartile range of Berry ratios achieved by companies engaged in comparable activities to those undertaken by GL BV is from 108.21% to 146.40%, with a median of 121.60%.

### Financial analysis

The following table shows the computation of the Berry ratio achieved by GL BV in the controlled transaction under review in FY2022:

Table . Financial result achieved by GL BV in FY2022

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Profit & Loss Item** | **Calculation** | **Controlled Transaction** | **Third Party Transactions** | **FY2022 financial statements** |
| Net turnover | A | € 2.285.092 | € 1.248.354 | € 3.533.447 |
| Cost of raw materials | B | - | € 1.076.806 | € 1.076.806 |
| Gross Profit[[11]](#footnote-11) | C= A - B | € 2.285.092 | € 171.548 | € 2.456.641 |
| Expenses work contracted out and other external expenses | D | € 288.482 | € 27.606 | € 316.088 |
| Expenses of employee benefits | € 1.015.084 | € 97.137 | € 1.112.221 |
| Amortisation of intangible assets and depreciation of property, plant and equipment | € 160.372 | € 15.346 | € 175.718 |
| Other operating expenses | € 575.635 | € 55.084 | € 630.719 |
| Berry ratio | E = C / D | 112.04% | 87.90% | 109.93% |
| Total of operating result | F = C - D | € 245.520 | € -23.626 | € 221.895 |

The following notes are relevant to the above results:

* GL BV presents its financial statements as an agent of GSB LLC and NBC LLC based on representations made by the Group that GL BV does not effectively bear inventory risk and that any losses incurred as a result of unsold inventory are reimbursed by GSB LLC / NBC LLC, respectively.
* Therefore, with respect to the controlled transaction under review GL BV presents a net turnover result (i.e., Revenues on intercompany sales less Cost of raw materials connected to intercompany sales). Accordingly, in relation to the controlled transaction under review the “Net turnover” figures presented in the FY2022 financial statements can be considered to be equivalent to Gross Profit.
* However, GL BV also sells flower bulbs directly to third parties in limited situations. Revenues from third party sales are picked up in the net turnover presented above, and the cost of raw materials related thereto are presented as a separate profit and loss item. Therefore, with respect to sales to third parties, it is possible and necessary to calculate a Gross Profit result to accurately calculate the Berry ratio achieved by GL BV in the controlled transaction under review.
* All operating expenses have been apportioned between the controlled transaction and the third party transaction based on the ratio of the cost of raw materials in those transactions. In FY2022 the cost of raw materials in the controlled transactions with GSB LLC and NBC LLC was € 11.252.669 whereas the cost of raw materials in transactions with third parties was €1.076.806. According, cost of raw materials on sales to the related parties and third parties constitutes 91% and 9% respectively. These percentages were used as the basis for apportioning the operating expenses.

Based on the outcome of the benchmarking study, the interquartile range of Berry ratios achieved by companies engaged in comparable activities to those undertaken by GL BV is from 108.21% to 146.40%, with a median of 121.60%. In FY2022, GL BV achieved a Berry ratio of 112.04% in the controlled transactions with GSB LLC and NBC LLC. Accordingly, the result achieved by GL BV in FY2022 could be considered to be arm’s length.

1. Statutory accounts of Gebr. Langeveld B.V. for the FY2022

Attached as a separate document to this Local File.

1. Master File of the Group

Attached as a separate document to this Local File.

1. The Group’s corporate structure chart

A diagram of a company

Description automatically generated

1. Benchmarking studies

Attached as a separate document to this Local File.

1. Anthos. Available at: https://www.anthos.org/for-and-by-the-trade. [↑](#footnote-ref-1)
2. Anthos. Available at: https://www.anthos.org/for-and-by-the-trade. [↑](#footnote-ref-2)
3. Ibis World. Available at: https://www.ibisworld.com/united-states/market-research-reports/plant-flower-growing-industry/#AboutThisIndustry. [↑](#footnote-ref-3)
4. AIPH. Available at: https://aiph.org/floraculture/news/world-floriculture-map-shows-global-trends-in-production-and-trade/. [↑](#footnote-ref-4)
5. AIPH. Available at: https://aiph.org/floraculture/news/world-floriculture-map-shows-global-trends-in-production-and-trade/. [↑](#footnote-ref-5)
6. Crunchbase. Available at: https://www.crunchbase.com/organization/garden-state-bulb-co. [↑](#footnote-ref-6)
7. Crunchbase. Available at: https://www.crunchbase.com/organization/garden-state-bulb-co. [↑](#footnote-ref-7)
8. Note that GL BV presents its financial statements on the basis that it acts as an agent of GSB LLC and NBC LLC. Therefore, only the Net turnover result (revenues less cost of raw materials) are presented in the FY2022 financial statements. [↑](#footnote-ref-8)
9. GL BV sells flower bulbs directly to a single customer in Canada (EUR 576.290 in FY2022 equivalent to approximately 4% of GL BV’s net revenue in FY2022) and on an ad-hoc basis to European customers in cases of excess inventory (EUR 672.063 in FY2022 equivalent to approximately 4.70% of GL BV’s net revenue in FY2022). [↑](#footnote-ref-9)
10. GL BV sells flower bulbs directly to a single customer in Canada (EUR 576.290 in FY2022 equivalent to 4.% of GL BV’s net revenue in FY2022) and on an ad-hoc basis to European customers in cases of excess inventory (EUR 672.063 in FY2022 equivalent to approximately 4.71% of GL BV’s net revenue in FY2022). [↑](#footnote-ref-10)
11. Gross Profit does not appear as a separate line item in the FY2022 financial statements. Refer to bullet points 2 and 3 above for further explanation. [↑](#footnote-ref-11)