

Netherlands

Transfer Pricing Country Profile

Updated October 2017

	SUMMARY	REFERENCE
The Arm's Length Principle		
1	<p>Does your domestic legislation or regulation make reference to the Arm's Length Principle?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>In 2002 the arm's length principle was codified in the Netherlands by Section 8b of the Dutch Corporation Tax Act.</p>	Section 8b of the Dutch Corporation Tax Act 1969 ('CIT Act').
2	<p>What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?</p> <p>The Guidelines are not part of the Dutch law. From a policy perspective the Secretary of State is of the opinion that the OECD Guidelines intend to provide insight into the way in which the arm's length principle must be applied in practice. In addition, the OECD Guidelines play a major role in an international context in relation to the application of treaties and prevention of double taxation.</p>	Transfer Pricing decree (no. IFZ 2013/184 M)
3	<p>Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>In our law Section 8b, par. 1: it has been stated as follows:</p> <p>“Where an entity participates, directly or indirectly, in the management, control or capital of another entity, and conditions are made or imposed between these entities in their commercial and financial relations (transfer prices) which differ from conditions which would be made between independent parties, the profit of these entities will be determined as if the last mentioned conditions were made.”</p> <p>The first paragraph will also be applicable, when the same person participates, directly or indirectly, in the management, control or capital of both the first and second entity.</p>	Law Section 8b

Transfer Pricing Methods

4	<p>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="padding: 5px;">CUP</th> <th style="padding: 5px;">Resale Price</th> <th style="padding: 5px;">Cost Plus</th> <th style="padding: 5px;">TNMM</th> <th style="padding: 5px;">Profit Split</th> <th style="padding: 5px;">Other (<i>If so, please describe</i>)</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;"><input type="checkbox"/></td> <td style="padding: 5px;"><input type="checkbox"/></td> <td style="padding: 5px;"><input type="checkbox"/></td> <td style="padding: 5px;"><input type="checkbox"/></td> <td style="padding: 5px;"><input type="checkbox"/></td> <td style="padding: 5px;"><input type="checkbox"/></td> </tr> </tbody> </table> <p>In the Netherlands the tax authorities use the OECD guidelines which provide insight into the way in which the arm's length principle must be applied in practice.</p> <p>The regulation refers directly to the OECD TP Guidelines.</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>Transfer Pricing decree (no. IFZ 2013/184 M), par. 3.</p>
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)										
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
5	<p>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</p>	<p>Please check all that apply:</p> <p><input type="checkbox"/> Hierarchy of methods</p> <p><input checked="" type="checkbox"/> Most appropriate method</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p> <p>The choice of the transfer pricing method is dependent on the facts and circumstances of the case.</p>													
6	<p>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</p>	<p><input checked="" type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>)</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p> <p>The Netherlands do not give specific guidance on commodity transactions. In the Netherlands the tax authorities use the OECD guidelines.</p>													

Comparability Analysis

7	Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		In the Netherlands the tax authorities use the OECD guidelines which provide insight into the way in which the arm's length principle must be applied in practice.	
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		In the Netherlands the tax authorities accept foreign comparables as long as geographic differences have no material impact on comparability (unless accurate adjustment can be made).	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		In the Netherlands the tax authorities only use them for case selection and MAP cases.	
10	Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Transfer Pricing decree (no. IFZ 2013/184 M) , par. 2.3.
11	Are comparability adjustments required under your domestic legislation or regulations?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		If necessary comparability adjustments are required.	

Intangible Property

12	Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Transfer Pricing decree (no. IFZ 2013/184 M) , par. 8
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		In the transfer pricing decree the Netherlands give specific guidance on certain issues related to the transfer pricing aspects of Intangibles.	
13	Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (HTVI)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No In the transfer pricing decree the Netherlands give specific guidance on certain issues related to valuation of intangibles, especially in relation to the possibility of price adjustment clauses or renegotiation clauses.	Transfer Pricing decree (no. IFZ 2013/184 M) , par. 5
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No The innovation box rules can be available for self-developed qualifying intangibles (patents).	
Intra-group Services			
15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No In the transfer pricing decree the Netherlands give specific guidance on certain issues related to intra group services, especially in relation to the difference between service transactions and shareholder activities.	Transfer Pricing decree (no. IFZ 2013/184 M) , par. 6
16	Do you have any simplified approach for low value-adding intra-group services?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No In the transfer pricing decree the Netherlands give specific guidance on certain issues related to low value adding intra group services, especially under which conditions it is accepted to charge the fee at cost without a mark-up.	Transfer Pricing decree (no. IFZ 2013/184 M) , par. 6.3
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Cost Contribution Agreements			
18	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No In the transfer pricing decree the Netherlands give specific guidance on certain issues related to CCA's, especially by giving a few examples.	Transfer Pricing decree (no. IFZ 2013/184 M), par. 7
Transfer Pricing Documentation			
19	Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If affirmative, please check all that apply:</i> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG <input checked="" type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG <input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG <input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input checked="" type="checkbox"/> Other (specify): The Netherlands has also a general documentation requirement which also gives an obligation for SMEs.(Section 8b-3 of the 'CIT Act'.) 	Section 8b-3 of the Dutch Corporation Tax Act 1969 ('CIT Act') Article 29b – 29 h CIT act
20	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	<p>The general documentation requirement of article 8b-3 CIT Act has an open norm.</p> <p>In 2016 new legislation has been introduced in the Netherlands as a consequence of the BEPS project (art. 29b – 29h CIT Act).</p> <p>The Netherlands legislation follows the OECD model legislation for CBC reports. The qualifying taxpayer has to file the CBC report within one year after the closing of the fiscal year that is covered in the CBC report. CBC reports may be filed in English or in Dutch.</p> <p>A Master file and a Local file have to be prepared by an MNE Group having a total consolidated group revenue of at least € 50 million in the fiscal year that immediately preceded the year for which a tax return is being filed. A Constituent Entity (from that MNE Group) that is subject to taxation in the Netherlands shall include in its accounts a Master File and a Local File for the year over which it is filing a corporate tax return within the period set for filing a corporate tax return. The Master File and Local File have to be compiled in the Dutch or the English language.</p>	Article 8b-3 CIT Act Article 29b – 29 h CIT act

21	<p>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>If the obligations referred to in Article 29(c) [i.e. obligations regarding the filing of the CBC report] are not complied with, are not complied with in time, or are not complied with in full, attributable to an intentional act or gross negligence on the part of the Reporting Entity, this is an offence in respect of which Our Minister can impose an administrative penalty with a maximum amount of the fourth category as referred to in Article 23, paragraph 4, of the Dutch Criminal Code.</p> <p>The general documentation requirement of article 8b-3 CIT Act has an open norm. If there is not enough documentation the burden of proof can shift to the taxpayer.</p>	<p>Artikel 29(h) CIT Act</p>
22	<p>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</p>	<p>N/A</p>	

Administrative Approaches to Avoiding and Resolving Disputes

23	<p>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</p>	<p>Please check those that apply:</p> <p><input checked="" type="checkbox"/> Rulings</p> <p><input checked="" type="checkbox"/> Enhanced engagement programs</p> <p><input checked="" type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input checked="" type="checkbox"/> Other (<i>please specify</i>): Multilateral and Joint audits</p> <p>The Netherlands' competent authority intention is to eliminate as early as possible taxation that is not in accordance with treaty provisions by initiating early consultations on a mutual agreement or arbitration procedure or by entering into bilateral or multilateral Advance Pricing Agreements (APAs).</p> <p>In the Netherlands the tax administration tries to prevent MAP cases by MLC, joint audits or early MAP contacts. Also JITSIC and exchange of information can be helpful.</p>	<p>Mutual Agreement Procedures (MAP) Decree of September 29th, 2008, No. IFZ 2008/248M</p>
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Safe Harbours and Other Simplification Measures			
24	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
25	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.		
Other Legislative Aspects or Administrative Procedures			
26	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		In the Netherlands a year-end adjustment is possible when this lead to an arm's length outcome.	
27	Does your jurisdiction make secondary adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		From the Dutch point of view a secondary transaction is in general necessary for recognition of the transfer pricing adjustment.	
Other Relevant Information			
28	Other legislative aspects or administrative procedures regarding transfer pricing	<p>Mutual Agreement Procedures (MAP) Decree of September 29th, 2008, No. IFZ 2008/248M. (Non-official English version available.)</p> <p>The Netherlands' competent authority intention is to eliminate as early as possible taxation that is not in accordance with treaty provisions by initiating early consultations on a mutual agreement or arbitration procedure or by entering into bilateral or multilateral Advance Pricing Agreements (APAs).</p> <p>Advance Pricing Agreement (APA) Decree, Besluit DGB 2014/3098, 12 juni 2014.</p> <p>In the Netherlands the coordination group on transfer pricing (CGVP) is responsible for the coordination of transfer pricing cases. They work together with the local tax inspectors. The CGVP coordinates the corresponding adjustments without MAP.</p> <p>In the Netherlands the so called 'APA-team' is responsible for the APA program.</p>	<p>Mutual Agreement Procedures (MAP) Decree of September 29th, 2008, No. IFZ 2008/248M.</p> <p>Advance Pricing Agreement (APA) Decree, Besluit DGB 2014/3098, 12 juni 2014.</p>

29	<p>Other relevant information (e.g. whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire)</p>	<p>The Dutch Transfer Pricing decree has been published in 2013 before the outcome of the BEPS project. The Netherlands prepares an update of the decree (taking into account the BEPS deliverables)</p>	
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