



Transfer Pricing
Country Summary

The Netherlands

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1. Introduction	2
2. Laws & Regulations	2
a) References to OECD/EU/Local Rules	2
b) Definition of Related Party	2
c) Nature of Transfer Pricing Documentation	2
d) Tax Havens & Blacklists	2
e) Advance Pricing Agreement (APA)	3
f) Audit Practice	3
3. Transfer Pricing Documentation	3
a) Level of Documentation	3
b) Industry Analysis	4
c) Company Analysis	4
d) Functional Analysis	4
e) Choice of Transfer Pricing Method	4
f) Economic Analysis – Benchmark Study	4
g) Inter-company (IC) Legal Agreement	4
h) Financial Statements	4
i) Production Process for TP Relevant Returns, Documents, Forms and Financials	5
j) Mandatory Language	5
k) Notification Requirement	5
l) Record Keeping	6
m) Penalties and Interest Charges	6

1. Introduction

The OECD Transfer Pricing Guidelines ("TPG") are not integrated into Dutch legislation; nonetheless, the TPG are regarded as internationally acknowledged guidelines offering explanation and clarification of the (application of the) arm's length concept under the Dutch Transfer Pricing Decree.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

On 11 May 2018, the Dutch Ministry of Finance published a transfer pricing decree (nr. 2018-6865, dated 22 April 2018) that incorporates provisions from the OECD's base erosion and profit shifting (BEPS) action plans (2015) and from the OECD's Transfer Pricing Guidelines (2017). The Dutch transfer pricing decree refers to the arm's length principle, which was codified in the Netherlands in 2002, as section 8b of the Dutch Corporation Tax Act 1969 and provides insight into the interpretation of the arm's length principle, and in particular, focuses on aspects for which the 2017 OECD Transfer Pricing Guidelines leave scope for domestic interpretation. Currently, an update of the decree is being prepared. The update will among others include the new chapter X of the OECD TP Guidelines on financial transactions.

In addition, new legislation is currently being prepared regarding the application of the arm's-length principle. The draft legislation states that if a transaction is not based on arm's-length conditions, a downward adjustment of the taxable income will only be applied to the extent a corresponding upward adjustment is included in the taxable income of the counterparty. With this legislation the Netherlands aims to combat transfer pricing mismatches in order to avoid international double non-taxation.¹

b) Definition of Related Party

According to Article 8b of the Dutch Corporate Tax Act 1969, a related party is defined as a company that directly or indirectly takes part in management, control or capital of the other, or if both companies are under common control, which provides the first entity with sufficient control to influence relationships that may give rise to non-arm's-length arrangements.

Or if one and the same person, directly or indirectly, participates in the management of, or in the supervision of, or in the capital of two entities, the two entities are related parties. Two companies are deemed to be associated if one has influence or control on pricing matters of the other or vice versa.²

c) Nature of Transfer Pricing Documentation

The nature of TP documentation in the Netherlands is threefold. In principle it follows the OECD TP Guidelines according to which taxpayers must submit a Master file, a local file and a CbC report.

d) Tax Havens & Blacklists

the jurisdictions on the Dutch tax blacklist are as follows: Anguilla, Bahamas, Bahrain, Barbados, Bermuda, the British Virgin Islands, Guernsey, the Isle of Man, Jersey, the Cayman Islands, Turkmenistan, the Turks and Caicos Islands, Vanuatu, and the United Arab Emirates.

¹ [OECD TP country profile the Netherlands](#)

² [Article 8b CIT Act](#)

e) Advance Pricing Agreement (APA)

As of 1 July 2019, tax ruling decree 2019/13003 applies, replacing the decree of 2014³. The following mechanisms apply and are described in the new decree: rulings, enhanced engagement programmes, unilateral/bilateral/multilateral APAs, mutual agreement procedures (MAPs) and multilateral and joint audits.

f) Audit Practice

In general, the Dutch tax authorities have significant experience in transfer pricing and have performed transfer pricing audits for many years. The degree of the tax audit depends on facts and circumstances. Upon request, a company is obliged to disclose required and/or intercompany transaction documents.

Transfer pricing tax audit is carried out with the main purpose of verifying the reliability of the company's accounting system and the filing of the tax return. This process may lead to adjustments to transfer prices. Disputes, if any, resulting from adjustments, should be settled during the audit period. Otherwise, an appeal can be filed with the District Court.

The transfer pricing examination is carried out if a company fails to disclose required and/or related party transaction documents or does not meet the requirement for transfer pricing filing to the tax authority. Special attention is given to transactions regarding carried-forward losses, business restructuring or transactions without sufficient economic substance.

3. Transfer Pricing Documentation

a) Level of Documentation

According to Article 8b paragraph 3 of the CIT Act, taxpayers are required to document and substantiate all intercompany transactions in transfer pricing documentation. As no threshold applies to this obligation, this also applies to small and medium sized companies. This documentation requirement is form free. Companies that prepare a local file automatically fulfil this requirement.⁴

The Netherlands adopted the requirements of BEPS Action 13 of the OECD. The requirements apply as of financial years starting on or after 1 January 2016. This three-tiered approach to transfer pricing documentation requires:

(i) a master file (pursuant to Annex I to Chapter V of the TP Guidelines) containing standardised information on organization structure, description of business, intangibles and intercompany financial activities that is relevant for all MNE group members;

(ii) a local file (pursuant to Annex II to Chapter V of the TP Guidelines) referring specifically to material transactions of the local taxpayer such as information on business units exceeding the cross-border transactions threshold, and general information on the company;

(iii) a Country-by-Country Report (pursuant to Annex III to Chapter V of the TP Guidelines) containing certain information relating to the global allocation of the MNE's income and taxes paid together with the list of all constituent entities of the MNE group included in each aggregation per tax jurisdiction.

There is no requirement to file the master file and local file, however the documentation must be available at the moment the taxpayer is required to file its tax return for the same year.

³ [Tax Ruling Decree, June 19, 2019, 2019/13003](#)

⁴ [Artikel 8b Wet op de vennootschapsbelasting 1969](#)

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

e) Choice of Transfer Pricing Method

The transfer pricing methods are incorporated in the Dutch Transfer Pricing Decree of April 22, 2018.⁵ The following methods are accepted: comparable uncontrolled price (CUP) method, resale price method, cost plus method, profit split method and the transactional net margin (TNMM) method.

The choice of transfer pricing method depends on the facts and circumstances, but generally should be the most appropriate method. It must lead to an arm's length outcome. The Netherlands also follows the OECD TPG in this respect. In most cases, the TNMM is used.

f) Economic Analysis – Benchmark Study

The Netherlands largely follows the guidance on comparability analysis outlined in Chapter III of the OECD TP Guidelines. The Dutch tax authorities accept foreign comparables as long as geographic differences have no material impact on the comparability. Comparables from the Pan-European region are in the majority of cases accepted.⁶

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the "conduct of parties" the prevailing concept. The Dutch Transfer Pricing Decree describes intra-group services, shareholder activities and mixed activities. The Decree contains several examples on whether a charge for a service can be considered as arm's length.⁷

h) Financial Statements

Taxpayers are required to submit their financial statements as part of their TP documentation.

⁵ [Transfer Pricing Decree, April 22, 2018, 2018-6865, paragraph 3](#)

⁶ [OECD TP country profile the Netherlands](#)

⁷ [Transfer Pricing Decree, April 22, 2018, 2018-6865, paragraph 6](#)

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification on Deadline *	Threshold* (Yes/No)	Local Language (Yes/No)*(If "No", it can be filed in English)
Corporate Income Tax	File	Local Form	June 1 st	N/A	No	No
Master File	Prepare	OECD Guidelines	Within 5 months after the end of fiscal year	No	Yes	No
Local File	Prepare	OECD Guidelines	Within 5 months after the end of fiscal year	No	Yes	No
CbCR	File	Local Form	Within 12 months after the end of the fiscal year	Before the end of the reporting year	Yes	No
Local form	N/A	N/A	N/A	N/A	N/A	N/A
Annual Accounts	Prepare	Local IFRS	12 months after the end of the financial year	N/A	No	Yes
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A
* The Netherlands has signed the MCAA agreement for the filing of CbCR.						
* The Netherlands does request as much and detailed information from smaller and less complex enterprises (SMEs included) than it does from large and complex enterprises.						

j) Mandatory Language

The documentation may be prepared in English or in Dutch.

k) Notification Requirement

Every Dutch group entity, which is obliged to file a country-by-country report, should file the country-by-country reporting notification form. The Country-by-Country reporting notification form must be filed ultimately on the last day of the financial year the notification relates to.

l) Record Keeping

Taxpayers that prepare transfer pricing documentation based on Article 8b CIT Act, need to keep this documentation in their administration.⁸

m) Penalties and Interest Charges

Penalties may be levied, and the burden of proof may shift to the taxpayer.

⁸ [Article 8b and Articles 29b up and to including 29h CIT Act](#)