

Netherlands

TRANSFER PRICING COUNTRY PROFILE

1. Reference to the Arm's Length Principle

*Article 8b, paragraph 1 Wet op de Vennootschapsbelasting 1969 (Corporate Income Tax Law):
Indien een lichaam, onmiddellijk of middellijk, deelneemt aan de leiding van of het toezicht op, dan wel in het kapitaal van een ander lichaam en tussen deze lichamen ter zake van hun onderlinge rechtsverhoudingen voorwaarden worden overeengekomen of opgelegd (verrekenprijzen) die afwijken van voorwaarden die in het economische verkeer door onafhankelijke partijen zouden zijn overeengekomen, wordt de winst van die lichamen bepaald alsof die laatstbedoelde voorwaarden zouden zijn overeengekomen.*

Non official translation:

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.

2. Reference to the OECD Transfer Pricing Guidelines

Decree Transfer Pricing, November 14th, 2013, No. IFZ 2013/184M (regulation).
Advance Pricing Agreement (APA) Decree, August 11th, 2004, No. IFZ 2004/124M (will be updated in the course of 2014).
Profit allocation to permanent establishments (PE) Decree, January 15th, 2011, No. IFZ 2010/457.
These regulations refer directly to the OECD TP Guidelines.
(Non-official English versions of the Transfer Pricing Decrees are available.)

3. Definition of related parties

*Article 8b, paragraph 1 Wet op de Vennootschapsbelasting 1969 (Corporate Income Tax Law):
Indien een lichaam, onmiddellijk of middellijk, deelneemt aan de leiding van of het toezicht op, dan wel in het kapitaal van een ander lichaam en tussen deze lichamen ter zake van hun onderlinge rechtsverhoudingen voorwaarden worden overeengekomen of opgelegd (verrekenprijzen) die afwijken van voorwaarden die in het economische verkeer door onafhankelijke partijen zouden zijn overeengekomen, wordt de winst van die lichamen bepaald alsof die laatstbedoelde voorwaarden zouden zijn overeengekomen.*

*Article 8b, paragraph 2 Wet op de Vennootschapsbelasting 1969 (Corporate Income Tax Law):
Het eerste lid is van overeenkomstige toepassing indien een zelfde persoon, onmiddellijk of middellijk, deelneemt aan de leiding van of aan het toezicht op, dan wel in het kapitaal van het ene en het andere lichaam.*

Non-official translation:

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.

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.

4. Transfer pricing methods

Decree Transfer Pricing, November 14th, 2013, No. IFZ 2013/184M (regulation). The regulation refers directly to the OECD TP Guidelines. (Non-official English version available.)

5. Transfer pricing documentation requirements

Article 8b, paragraph 3 Wet op de Venootschapsbelasting 1969 (Corporate Income Tax Law):

De in het eerste en tweede lid bedoelde lichamen nemen in hun administratie gegevens op waaruit blijkt op welke wijze de in dat lid bedoelde verrekenprijzen tot stand zijn gekomen en waaruit kan worden opgemaakt of er met betrekking tot de totstandgekomen verrekenprijzen sprake is van voorwaarden die in het economische verkeer door onafhankelijke partijen zouden zijn overeengekomen.

Non-official translation:

The entities referred to in paragraphs 1 and 2 should include in their records information that shows in which way the transfer prices referred to in paragraph 1 were established, and from which can be determined whether - with respect to these transfer prices - conditions were made to which third parties would have agreed.

Companies can get certainty in advance with regard to the magnitude of the documentation requirements (Decree Co-ordination Group on Transfer Pricing ("CGVP"), August 17th, 2004, No. DGB2004/1339M).

6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

The imposition of a penalty based on an incorrect tax return will be limited to cases where it is plausible that a non-arm's length price results from an intentional act. A reversal of burden of proof will only be invoked in transfer pricing situations in case of evident shortcomings in documentation (announcement made by the Under Minister of Finance parl. documents, 28 034, no. 3 pag. 22 jo. No. 5 pag. 48).

7. Relevant regulations on Advance Pricing Arrangements

Advance Pricing Agreement (APA) Decree, August 11th, 2004, No. IFZ 2004/124M (regulation).

8. Links to relevant government websites

<http://www.government.nl/issues/taxation>

<http://www.rijksoverheid.nl/onderwerpen/belastingen-internationaal>

9. Other relevant information

Mutual Agreement Procedures (MAP) Decree of September 29th, 2008, No. IFZ 2008/248M. (Non-official English version available.)

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).