

NETHERLANDS

TRANSFER PRICING 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, March 30th, 2001, No. IFZ 2001/295 (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).

Implementation of the Code of Conduct on Transfer Pricing documentation for associated enterprises in the European Union (EU TPD) - summary of Member States' responses to the 2013 JTPF questionnaire on the implementation of the EU TPD:

http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2013/summary-ms.pdf

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. Information for Small and Medium Enterprises on TP

Information relevant for SMEs in tackling transfer pricing matters is available on the JTPF webpage at: http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/profile-nl.pdf

8. Information on dispute resolution

Competent Authority

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Organization	<p>MAP - Director of International Tax Policy and Legislation of the Ministry of Finance in close co-operation with the "Co-ordination Group on Transfer Pricing (CGTP) of the tax administration"</p> <p>MAP APA - Director of International Tax Policy and Legislation of the Ministry of Finance in close co-operation with the "APA/ATR-team of the tax administration"</p>
Scope of MAP & MAP APA	<p>- Relief of double taxation - Interpretation and application of the treaty * In DTC with US, a possibility of consultation is arranged.</p>
Domestic guidelines & administrative arrangements	<p>MAP: Transfer Pricing Decrees (IFZ2001/295M and IFZ2004/680M), par.3.1</p> <p>APA: APA Decree (IFZ2004/124M) * official Dutch publications as of 30 March 2001 (IFZ2001/295M) and 21 August 2004 (IFZ2004/680M) and 11 August 2004 (IFZ2004/124M) - Administrative arrangement with US (Agreed on 25/08/2003): http://www.irs.gov/pub/irs-news/ir-03-116.pdf</p>
Time for filing	<p>MAP: Within 3 years either of the date of the assessment incorporating the adjustment or of the date on which justification was given for the adjustment, should this be later. This period could differ in specific tax treaties. APA: No specific provision</p>
Form of request	<p>MAP & APA: No specific form</p>
Documentation requirement	<p>MAP - No specific provision in decree. * The taxpayer is required to submit the information necessary to start up the procedure including the amount, the tax years and short substantiation of the point of view of the taxpayer.</p> <p>APA - Required information is provided in par. 6 of IFZ2004/124M</p>
User fees	<p>None</p>
Tax collection / penalty / interest	<p>- Collection: Upon request, deferral will be granted until the date on which both domestic and international procedures have been completed, based on the policy applying to objections against tax assessment.</p> <p>- Penalty: Lowered if the amount of the adjustment is mitigated as a consequence of the MAP. * Government will seek to ensure that the assessment and collection of interest charged and paid by the other state match each other. This policy is also reflected in Dutch tax treaty policy.</p>
Other dispute resolution mechanisms	<p>The EU Arbitration convention for the transfer pricing cases. Arbitration procedure under bilateral income tax conventions.</p>
Government Website	<p>http://www.rijksoverheid.nl/onderwerpen/belastingen-internationaal/onderlinge-overlegprocedure</p>

Dispute resolution under the Arbitration Convention does not need to be initiated and may be suspended if one of the enterprises involved is subject to a 'serious penalty' for the transactions giving rise to the profit adjustment (Article 8).

Unilateral Declaration of Netherlands on Article 8 of the Arbitration Convention (*Official Journal C 160, 30/06/2005 P. 0011 – 0022*)

"The term "a serious penalty" means a penalty imposed by a court due to intentionally committing an offence as listed in Article 68(2), or Article 69(1) or (2), of the General Tax Act."

9. Relevant regulations on Advance Pricing Arrangements

Advance Pricing Agreement (APA) Decree, August 11th, 2004, No. IFZ 2004/124M (regulation). This regulation is a revised version of regulation IFZ 2001/292M of which a non-official English version is available upon request.

10. Links to relevant government websites

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

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

11. Other relevant information

Secondary and compensating year-end adjustments may result in double taxation. Two questionnaires launched by the EU Joint Transfer Pricing Forum (JTTF) in 2011 took stock of the situation prevailing in each EU Member State with respect to secondary and compensating year-end adjustments as on 1 July 2011.

[Secondary Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)

[Compensating/year-end Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)

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).