

The Netherlands

Transfer Pricing Country Profile

Updated July 2021

		SUMMARY	REFERENCE
The Arm's Length Principle			
1	Does your domestic legislation or regulation make reference to the Arm's Length Principle?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No The arm's length principle is codified in article 8b of the Dutch Corporate Income Tax Act 1969 ("CIT Act").	Article 8b CIT Act
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	The OECD Transfer Pricing Guidelines ("TPG") are not incorporated in Dutch legislation, however based on the Dutch Transfer Pricing Decree, the TPG are considered as internationally accepted guidance providing explanation and clarification of the (application of the) arm's length principle.	Transfer Pricing Decree, April 22, 2018, 2018-6865
3	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.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Article 8b CIT Act (codification of the arm's length principle) applies if an entity participates, directly or indirectly, in the management, control or capital of another entity, or the same entity participates, directly or indirectly, in the management, control or capital of both the first and second entity.	Article 8b CIT Act
Transfer Pricing Methods			
4	Does your domestic legislation or regulation provide for transfer pricing methods to be used in respect of transactions between related parties?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If affirmative, please check those provided for in your legislation or regulation:	Transfer Pricing Decree, April 22, 2018, 2018-6865, paragraph 3

		CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)	
		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
		In the Netherlands, the transfer pricing methods are incorporated in the Dutch Transfer Pricing Decree. The Decree includes all of the above methods.						
5	Which criterion is used in your jurisdiction for the application of transfer pricing methods?	<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>						
		Depending on the facts and circumstances, taxpayers have to choose one of the five accepted transfer pricing methods. It is in principle up to the taxpayer to decide which method to apply, however, this must lead to an arm's length outcome. The Netherlands also follows the OECD TPG in this respect.						
6	If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.	<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>						
		The Netherlands does not have specific guidance on commodity transactions. However, the Netherlands follows the OECD TPG in this respect.						
Comparability Analysis								
7	Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>						
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>						

		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.	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		The Dutch tax authorities only use secret comparables 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, April 22, 2018, 2018-6865, paragraph 2
11	Are comparability adjustments required under your domestic legislation or regulations?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		There are no specific provisions regarding comparability adjustments in the Netherlands. However, and given the reference to the TPG, comparability adjustments are required, when necessary and provided that the adjustments increase comparability.	
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, April 22, 2018, 2018-6865, paragraph 5
		The Dutch Transfer Pricing Decree contains 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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No	HTVI Implementation Questionnaire
		The Dutch Transfer Pricing Decree incorporated the OECD's guidance on hard to value intangibles.	
14		<input checked="" type="checkbox"/> Yes	Article 12b CIT Act.

	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input type="checkbox"/> No Taxpayers can under specific conditions apply the Dutch innovation box regime which includes a lower corporate income tax rate on qualifying profits.	
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 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.	Transfer Pricing Decree, April 22, 2018, 2018-6865, paragraph 6
16	Do you have any simplified approach for low value-adding intra-group services?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No The Dutch Transfer Pricing Decree incorporated the OECD's approach on low value adding services, including the mark-up of 5%.	Transfer Pricing Decree, April 22, 2018, 2018-6865, paragraph 6
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	
Financial Transactions			
18	[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No The Dutch Transfer Pricing Decree contains sections on loans, captives and guarantees.	Transfer Pricing Decree, April 22, 2018, 2018-6865, paragraph 9, 10 and 11
19	[NEW] Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Anti-abuse rules might apply to limit the deduction of interest. These anti-abuse rules vary from the 30% EBITDA rule (BEPS Action plan 4 / ATAD) to limitations on interest deductions on related party financing transactions.	A.o.: article 10a, 10b, 13ab and 15b CIT Act

Cost Contribution Agreements

20	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Transfer Pricing Decree, April 22, 2018, 2018-6865, paragraph 7
		The Dutch transfer pricing Decree contains specific guidance on certain issues related to cost contribution agreements including several examples.	

Transfer Pricing Documentation

21	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): 	Article 8b and Articles 29b up and to including 29h CIT Act
		Article 8b paragraph 3 of the CIT Act requires taxpayers 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 fulfill this requirement.	
22	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	<p>The Dutch legislation on CbCR, master file and local file is in line with the OECD model legislation. The legislation applies on January 1, 2016. The documentation may be prepared in English or in Dutch.</p> <p>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.</p> <p>Taxpayers that prepare transfer pricing documentation based on Article 8b CIT Act, need to keep this documentation in their administration, so also for this documentation there is no filing requirement.</p>	
		Article 8b and Articles 29b up and to including 29h CIT Act	

23	Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Penalties may be levied and the burden of proof may shift to the taxpayer.	
24	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	N/A	
Administrative Approaches to Avoiding and Resolving Disputes			
25	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	Please check those that apply: <input checked="" type="checkbox"/> Rulings <input checked="" type="checkbox"/> Enhanced engagement programs <input checked="" type="checkbox"/> Advance Pricing Agreements (APA) <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Unilateral APAs <input checked="" type="checkbox"/> Bilateral APAs <input checked="" type="checkbox"/> Multilateral APAs <input checked="" type="checkbox"/> Mutual Agreement Procedures <input checked="" type="checkbox"/> Other (<i>please specify</i>): Multilateral and Joint audits <hr/> Please refer to the MAP profile of the Netherlands.	Tax Ruling Decree, June 19, 2019, 2019/13003 Mutual Agreement Procedures (MAP) Decree of June 11, 2020, nr. 2020-0000101607 Netherlands' MAP Profile
Safe Harbours and Other Simplification Measures			
26	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No The Netherlands has incorporated the OECD's low value adding services approach which could be considered as a safe harbour (see question 16).	
27	Does your jurisdiction have any other simplification measures not listed in this	N/A	

	questionnaire? If so, please provide a brief explanation.		
Other Legislative Aspects or Administrative Procedures			
28	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 if this leads to an arm's length outcome.	
29	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.	
Attribution of Profits to Permanent Establishments			
30	[NEW] Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?	<input checked="" type="checkbox"/> Yes The policy of the Netherlands is to include the AOA in all treaty negotiations. <input type="checkbox"/> No	
31	[NEW] Does your jurisdiction follow also another approach?	<input type="checkbox"/> Yes <input type="checkbox"/> No We prefer the AOA approach.	
Other Relevant Information			
32	Other legislative aspects or administrative procedures regarding transfer pricing	N/A	

33	<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 was published in 2018. Currently an update of the decree is being prepared. The update will include a.o. the new chapter X of the TPG on financial transactions.</p> <p>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.</p>	
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For more information, please visit: <https://oe.cd/transfer-pricing-country-profiles>