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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Netherlands

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TAX



Netherlands

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The Dutch Tax Authorities intend to adhere to the Organisation for Economic Co-operation and Development (OECD) Guidelines and Base Erosion and Profit Shifting (BEPS) work plan/initiative. The Netherlands also has an accessible and professional Advance Pricing Agreement (APA)/Advance Tax Ruling (ATR) practice. As transfer pricing is becoming ever more important in the Netherlands, the tax authorities have doubled their transfer pricing staff in addition to having a transfer pricing specialist coordination group.

Basic information

Tax authority name

Dutch Tax Authorities (DTA).

Citation for transfer pricing rules

Article 8b of the Dutch Corporate Income Tax Act (Wet op de Venootschapsbelasting 1969).

- Decree IFZ/2013/184, 14 November 2013
- Decree IFZ 2010/457M, 15 January 2011
- Decree IFZ 2008/248M, 29 September 2008
- Decree DGB 2004/1339M, 17 August 2004
- Decree IFZ 2004/126M, 11 August 2004
- Decree IFZ 2004/127M, 11 August 2004
- Decree DGB 2004/1338M, 11 August 2004
- Decree DGB 2004/1337M
- Decree IFZ 2004/124M, 11 August, 2004.

Effective date of transfer pricing rules

Codification as of 1 January 2002.

What is the relationship threshold for transfer pricing rules to apply between parties?

OECD definition (direct or indirect participation in management, control or capital).

What is the statute of limitations on assessment of transfer pricing adjustments?

Five years from the tax year-end plus any extensions granted for filing of the tax return. In certain (international) cases this period may be extended to 12 years.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

The annual Dutch corporate income tax return includes one question on whether there are any transactions with related companies.

What types of transfer pricing information must be disclosed?

If a company has any transactions with related companies, a brief description needs to be included on the corporate tax return form.

What are the consequences of failure to prepare or submit disclosures?

Potential reversal of the burden of proof and (general tax) penalties, where the DTA requests documentation and it is not submitted in time.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all transactions it is a statutory requirement and transfer pricing documentation is not optional. Penalties apply, although not specifically for noncompliance with transfer pricing documentation requirements.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

In the absence of sufficient documentation, the burden of proof will shift from the DTA to the Dutch taxpayer to demonstrate that the transfer prices are at arm's length.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

No.

When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes. Documentation should be, in principle, prepared contemporaneously.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

Is there a priority among the acceptable methods?

No, as long as the outcome is at arm's length.

If there is no priority of methods, is there a "best method" rule?

No. Where a traditional transaction method and a transactional profit method (e.g. the transactional net margin method) can be applied in an equally reliable manner, the former is preferred over the latter method. A Comparable Uncontrolled Price (CUP) method prevails over all other methods, if equally reliable.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

In principle, within 30 days of the request. However, this may be extended by the DTA depending on the complexity of the case.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

Local litigation or mediation, or requesting a unilateral Dutch APA with a roll back provision.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes, general tax penalties only.

To what extent are transfer pricing penalties enforced?

There are no specific transfer pricing penalties. General tax penalties (up to 100 percent) may apply in the case of an intentional act (e.g. the taxpayer took a non-defendable standpoint) leading to underpayment of taxes.

What defences are available with respect to penalties?

Transfer pricing documentation and to argue that any incorrect transfer pricing is not intentional and not of gross negligence.

What trends are being observed currently?

The DTA is enforcing the new 14 November 2013 Decree on transfer pricing. Issues specifically dealt within this Decree are headquarter services, intra-group financing, guarantee provisions, captives, intangibles and centralized procurement.

The number of transfer pricing audits still increases. Business restructuring and exit (valuation) issues continue to be focus areas in audits.

Special considerations

Are secret comparables used by tax authorities?

Yes, but only for case selection.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No. Benchmarking helps to demonstrate that transfer prices are at arm's length, and the DTA accepts pan-European benchmarks, provided they meet comparable search strategy standards set by the DTA.

Do tax authorities have requirements or preferences regarding databases for comparables?

Yes, a strong preference for the extended Amadeus database. For financial and licensing transactions, other databases may be used.

What level of interaction do tax authorities have with customs authorities?

High.

Are management fees deductible?

Yes, if provided on an arm's length basis and a benefit test has been met.

Are management fees subject to withholding?

No, unless such fees are reclassified by the DTA as dividends and may then attract Dutch dividend withholding tax. Furthermore, the 14 November 2013 Decree covers in great depth the transfer pricing treatment of management fees.

Are year-end transfer pricing adjustments permitted?

Yes, provided they are on an arm's length basis.

Other unique attributes?

The DTA generally refers to multiple year data and the interquartile range in terms of benchmarking.

Other recent developments

- The Netherlands issued a new 14 November 2013 Decree, replacing both the 2001 and 2004 transfer pricing decrees.
- The previously released January 2011 Decree is also being enforced in practice on the attribution of profits and transfer pricing issues in relation to permanent establishments, which explains how the DTA is to apply the 2010 OECD report on permanent establishments.
- There is enhanced attention on business restructurings, intra-group guarantees, central procurement, intangibles, and captive insurance transactions following the 14 November 2013 Decree.

- Integrated transfer pricing, VAT and customs actions by the Dutch tax/customs authorities, with rulings are possible.
- DTA is pursuing a high-level of transparency with taxpayers and is prepared to commit itself to high-speed resolution/response of issues. The Dutch tax authorities have indicated they are prepared to address double taxation issues at an early stage by means of “multilateral controls” (i.e. joint tax audits of the Dutch and foreign tax authorities). Accordingly, a pilot study between the Netherlands and Germany (launched 1 January 2013) relies on the early exchange of information, or multilateral controls, as a means of avoiding double taxation arising as a result of transfer pricing adjustments.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. The Netherlands has one of the largest tax treaty networks in the world.

If extensive, is the competent authority effective in obtaining double tax relief?

Almost always.

When may a taxpayer submit an adjustment to competent authority?

The Netherlands aims to eliminate double taxation as early as possible. Therefore, in the Dutch Decree of 29 September 2008, IFZ2008/248M, dealing with mutual agreement procedures (MAPs), a distinction is made between “ordinary”, “accelerated” and “extra-accelerated” procedures. If a Dutch taxpayer can show that due to an action by foreign tax authorities there will be taxation which is not in accordance with the tax treaty, and either no extension for payment of any tax is available or the assessment will trigger substantial interest which might cause immediate financial difficulties for the taxpayer, the Dutch competent authority is willing to assist the taxpayer by commencing bilateral

discussions immediately, namely an extra-accelerated MAP. The Dutch competent authority might even contact its foreign counterparts before any tax assessment (including a transfer pricing adjustment) is received by the Dutch taxpayer in the other jurisdiction, and before a position paper is received from the other jurisdiction’s competent authority (e.g. See the above pilot study for Germany.)

May a taxpayer go to competent authority before paying tax?

Yes, see previous.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral, and combined APA/ATRs.

Is there a filing fee for APAs?

No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Statistical data is published once a year when sending the data to the European Union (EU), which publishes this data in the annual EU report on APAs.

Please provide some information on how successful the APA program is and whether there are any known difficulties?

The APA program is very successful, and Dutch APAs may be concluded within short time frames. In particular, new investments into the Netherlands are welcomed under the Dutch APA program (to agree in advance on an arm’s length outcome).

Language

In which language or languages can documentation be filed?

Dutch is the official language for documentation. In practice, however, documentation in English is also widely accepted. Other languages are not

common. If documentation is drafted in a foreign language, the DTA may request a translation.

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Designed by Evalueserve.

Publication name: Global Transfer Pricing Review

Publication number: 131196

Publication date: June 2014