



*cutting through complexity*

# Global Transfer Pricing Review

Netherlands

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TAX



# Netherlands



## KPMG observation

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) 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 expanded their resources with experienced transfer pricing staff.

Consequently, KPMG in the Netherlands has observed both a more enhanced review of transfer pricing documentation by the tax authorities and a substantial increase in transfer pricing audits and competent authority procedures.

## Transfer pricing study snapshot

### The purpose of a transfer pricing study

	Applicable	Required to be contemporaneous
Legal requirements	●	●
Protection from penalties	●	●
Reduce risk of adjustment	●	●
Shifts burden of proof	●	●

## 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 Vennootschapsbelasting 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 DGB 2014/3101, 3 June 2014
- Decree DGB 2014/3102, 3 June 2014

- Decree DGB 2014/296, 3 June 2014
- Decree DGB 2004/1337M; and
- Decree DGB 2014/3098, 3 June 2014.

### 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 submitted to the revenue authority on an annual basis (e.g. with the tax return)?

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

For intra-group financing and licensing and similar activities, certain substance related questions may need to be replied to.

### 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 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

Can documentation be filed in a language other than the local language? If yes, which ones?

Yes, English.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (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

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes.

## Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 30 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing

requirements for a taxpayer to submit its documentation? Please explain.

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, what dispute resolution options are available?

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 defenses 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 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. Latest (tax) audits have shown a more detailed review of documentation and comparable searches.

## Special considerations

Are secret comparables used by tax authorities?

Yes, but in principle 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 full version Amadeus database. For financial and licensing transactions, other databases may be used.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, always.

Does the tax authority have other preferences in benchmarking? If so, please describe.

See above plus very strict independence criteria.

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

High.

Are there limitations on deductibility of management fees beyond the arm's length principle?

No. Not applicable.

Are management fees subject to withholding?

No.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

No.

Are royalties subject to withholding?

No.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

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.

## 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?

Yes, in practice, not effective for non-OECD countries.

### 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.

### 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.

### 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?

Yes.

### Are there any difficulties or limitations on the availability or effectiveness of APAs?

No. The APA program is very successful, and Dutch APAs may be concluded within short time frames. The main purpose is to agree on arm's length OECD based transfer pricing policies in advance.

### KPMG in Netherlands

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