

THE NETHERLANDS

LEGISLATION	
Existence of Transfer Pricing Laws/Guidelines	<p>Transfer pricing legislation is laid down in Articles 8b and 8c of the Dutch Corporate Income Tax Act. These articles refer explicitly to the arm's length principle and the requirement to establish transfer pricing documentation. A number of decrees related to transfer pricing and APAs were issued in 2001 and 2004, and the most important ones are the following:</p> <ul style="list-style-type: none"> • IFZ 2001/295M as amended by IFZ2004/680M: These decrees address issues such as the use of a range, the application of the cost plus method (cost based, budgeted costs, capacity risk for manufacturers, financing costs), how to deal with requests for arbitration under the EU Arbitration Convention, corresponding and secondary adjustments, arm's length pricing in case of uncertain valuation, cost contribution arrangements, application of profit mark ups for intra-group services, shareholder activities costs; • IFZ2004/127M on intermediate finance companies; • IFZ2004/124M and Advance Pricing Agreements. <p>It can be noted that the OECD Transfer Pricing Guidelines are directly applicable in Dutch tax law.</p>
Related Party Definition	<p>Article 8b of the Dutch Corporate Income Tax Act (Wet Vpb 1969) states that an enterprise is a related party where:</p> <ol style="list-style-type: none"> 1. It participates, directly or indirectly, in the management, control or capital of another enterprise; or 2. The same individual participates, directly or indirectly, in the management, control or capital of two enterprises. <p>An enterprise, as defined in Article 2, Section 1(b) of the General Law regarding taxation, includes associations and other legal entities, partnerships and corporations, enterprises of public legal entities and estates with a purpose.</p> <p>For the application of the related party definition it is important to determine that the enterprise or individual person managing, supervising or participating in the capital of the other enterprise has enough say to exercise any influence on the determination of prices involving the transaction between the involved enterprises. For each specific situation there will have to be determined if there is any material influence. For specific situations the taxpayer can ask the tax authorities for certainty upfront.</p>
Transfer Pricing Scrutiny	<p>In general, the Dutch tax authorities have significant experience in transfer pricing and have performed transfer pricing audits for many years.</p>
Transfer Pricing Penalties	<p>No specific transfer pricing penalties apply. Penalties of 25 %, 50 % and 100 % of additional tax are applicable, the rate depending on the degree of intent to avoid tax or degree of gross negligence. Furthermore non-compliance with administrative obligations is subject to separate sanctions.</p>
Advance Pricing Agreement (APA)	<p>Specific procedural rules have laid down in the APA decree of 2004. The decree contains a detailed description on the conditions to be fulfilled in order to obtain an APA. Critical assumptions are itemized and should be considered carefully.</p>

	<p>In order to encourage the conclusion of APAs several options are offered to taxpayers, viz.:</p> <ol style="list-style-type: none"> 1. There is the possibility for pre-filing meetings; 2. A case management plan providing certainty may be agreed upon by taxpayer and tax authority; 3. For small companies the tax authorities are prepared to deliver comparables. <p>Special attention is given to intermediary services companies in the field of interest and royalties. On an individual basis involving a case-by-case specific application of the arm's length principle, an APA. In particular, the following should be noted:</p> <ul style="list-style-type: none"> • If a financial services company does not assume real risks, advance certainty can only be obtained if the taxpayer agrees to spontaneous exchange of information under income tax treaties in the APA. Therefore, it is important to determine to what extent risk is being incurred by the financial services company with respect to inter-company transactions involved. • A financial services company whose activities consists of the provision of inter-company loans will be considered to be assume real risk if the equity that is required to carry the risks incurred amount to a minimum of 1% of the amount of the loan provided, or an amount of EUR 2,000,000.
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DOCUMENTATION AND DISCLOSURE REQUIREMENTS

Tax Return Disclosures	Related party transactions must be specified in an appendix to the corporate income tax return.
Level of Documentation	<p>A statutory obligation to prepare and keep transfer pricing documentation applies. There is no exhaustive list of the categories of information that should be included in the transfer pricing documentation as the information required will depend on the specific case.</p> <p>Non-compliance with the transfer pricing documentation requirements can result in the burden of proof shifting to the taxpayer.</p>
Record keeping	Documentation must be kept for a period of at least 7 years following the end of the financial year to which the documentation relates.
Language for documentation	Both Dutch and English languages are permitted.
Small and medium sized enterprises (SMEs)	Apart from APA practice (see above) there are no specific rules for small and medium-sized enterprises.
Deadline to Prepare Documentation	Documentation is expected to be available at the moment of the transaction.
Deadline to Submit Documentation	Upon request of the tax authorities the taxpayer must within 4 weeks provide the required information. In case of complex transactions the deadline may be extended to 3 months.

STATUTE OF LIMITATIONS

Generally, the statute of limitations is 3 years from the end of the year of assessment to which the transfer pricing issue relates. However, in certain cases the time limit is extended to 5 or 12 years.

TRANSFER PRICING METHODS

All the methods recommended by the OECD may be applied. No best method rule applies.

COMPARABLES

Pan-European comparables searches are generally accepted by the Dutch tax authorities.

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