

Deputy Minister of Finance releases new Transfer Pricing Decree

On May 11, 2018, the Dutch Deputy Minister of Finance published a new Transfer Pricing Decree, dated April 22, 2018 (no. 2018-6865). This decree replaces the Transfer Pricing Decree of November 14, 2013 (no. IFZ 2013/184M). The 2015 OECD BEPS Actions Plans and update of the 2017 OECD Transfer Pricing Guidelines are incorporated in this new decree. On cross-border (intercompany) transactions there is consensus among the OECD member countries with regard to the arm's length principle as contained in Article 9 of the OECD Model Tax Convention. The arm's length principle has also been described in the OECD Commentary to Article 9 of the OECD Model Tax Convention and the 2017 OECD Transfer Pricing Guidelines. In 2002, the Netherlands codified the arm's length principle in Section 8b of the Dutch Corporation Tax Act 1969.

The new Dutch Transfer Pricing Decree provides insight into the interpretation of the arm's length principle. This decree particularly concentrates on aspects where the 2017 OECD Transfer Pricing Guidelines leave scope for domestic interpretation. The main differences between the 2013 and 2018 Dutch Transfer Pricing Decrees, are listed below:

- Clarification of the process under which intercompany transactions are to be characterized, with the aim to fully reconcile to the actual value creation within an MNE.
- Further explanation with respect to the application of transfer pricing methods in specific situations with more focus on risk and IP management functions and providing guidance on valuation methods.
- Amendments with regard to the section on the pricing of intangible assets at the moment when the valuation is highly uncertain.
- Clarifications on hard-to-value intangible assets (new) providing guidance on acceptable deviations in projections and a five year monitoring period.
- Clarifications on the purchase of shares in a third party company, followed by a business restructuring (new) and in particular when IP is transferred to a different group company.
- Amendments allowing a simplified determination of arm's length charges with regard to "low value adding services" applying a mark-up of 5%. It is also stipulated that such services may under certain conditions be charged at cost.
- Textual amendments to better align the terminology used with the terminology as used in the 2017 OECD Transfer Pricing Guidelines.

For more information and questions, please contact any of our transfer pricing contacts.

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