



Netherlands

WTS Global Country TP Guide

Last Update: December 2017

1. Legal Basis	
Is there a legal requirement to prepare TP documentation?	Yes
Since when does a TP documentation requirement exist in your country?	2002
Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?	Yes
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	CbCR/MF/LF implemented
Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status	Articles 29b - 29h of the Dutch Corporate Income Tax act. Decree DB2015/462M, 30-12-2015, Stcr. 2015, 47457.
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.	<ul style="list-style-type: none"> • Corporate Income Tax Act Article 8b, and 29b to 29h. • Transfer Pricing Decree, November 14, 2013, IFZ 2013/184M; • Decree on organisation and competence APA/ATR practice, 12 June 2014, DGB 2014/296M • Decree on TP Coordination Group, August 17, 2004, DGB 2004/1339M; • APA Decree, 3 June 2014, DGB 2014/3098; • ATR Decree, 3 June 2014, DGB 2014/3099; • Decree on Financial service companies, 12 June 2014, DGB 2014/3101; and • Q&A Decree re financial service companies, 12 June 2014, DGB 2014/3102 • Decree on adjustment term ATR's, 3 November 2015, no. DGB2015/5071M • Decree on Local file, master file and country by country reporting, 30 December 2015, DB2015/462M • Country by country reporting extension filing obligation, 15 November 2016, DGBel 2016-0000184128M • Decree on the application of the AOA, 15 January 2011, IFZ2010/457M.

2. Master File (MF)	
What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?	EUR 50,000,000
Euro Equivalent	EUR 50,000,000
As from which year does this obligation exist?	<ul style="list-style-type: none"> • As from the fiscal year following the fiscal year that the threshold is met. • Applies for fiscal years starting on or after 1 January 2016.
When does the Master File need to be available?	Within the term in which the corporate income tax return needs to be filed.
When does it need to be submitted?	Upon request.
Does the MF have to be prepared in the relevant local language ?	No. both in Dutch and English is allowed.

Is documentation in English permissible?	Yes
What are the possible consequences of not having the MF available?	
Penalties?	Yes
Imprisonment?	Yes
Shifting of the burden of proof?	Yes
Other?	Yes
To which extent do the local rules differ from the OECD standard regarding the OECD content requirements for the MF as shown in the BEPS implementation overview chart?	Consistent with OECD requirements.

3. Local File (LF)	
What is the threshold requirement for the obligation to prepare a LF?	EUR 50,000,000
Euro Equivalent	EUR 50,000,000
As from which year does this obligation exist?	<ul style="list-style-type: none"> • As from the fiscal year following the fiscal year that the threshold is met. • Applies for fiscal years starting on or after 1 January 2016.
When does the LF need to be available?	<ul style="list-style-type: none"> • At the time the corporate income tax return is filed.
When does the LF need to be submitted?	<ul style="list-style-type: none"> • Upon request.
Does the LF have to be prepared in the relevant local language?	No
Further information regarding 3.6 a.	Not implemented
Or is documentation in English permissible?	Yes
What are the possible consequences of not having the LF available?	
Penalties?	Yes
Imprisonment?	Yes
Shifting of the burden of proof?	Yes
Other?	Yes
To which extent do local rules differ from the OECD standard regarding the OECD content requirements for the LF as shown in the 2017 OECD TP Guidelines?	Consistent with OECD requirements.

4. Country-by-Country Reporting	
What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?	EUR 750,000,000
Euro Equivalent	EUR 750,000,000
As from which year does this CbCR obligation exist?	As from the fiscal year following the fiscal year that the threshold is met. Applies for fiscal years starting on or after 1 January 2016.
When and how do the tax authorities need to be notified who the reporting entity is?	Normally ultimately on the last day of the financial year, but for the first time ultimately on 1-9-2017, unless the last day of the financial year is after that date. Than that date is the deadline. The reporting entity is to be specified via the following link: https://www.gegevensportaal.net/cbc/aanmelden/
If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?	Within 12 months after the last day of the financial year that is reported in the annual accounts of the ultimate parent.
Are there any deviating submission deadlines for the secondary mechanism?	No

Does your country have a requirement that the financial figures of the group need to be aligned with?	No
Does your country have a requirement that the financial years of the group need to be aligned with?	No
Where is the CbCR to be submitted ?	The CbCR can be submitted using "Logius Digipoort" (www.logius.nl). The manuals with specifications for the CbCR reporting can be found via www.cggp.nl . Questions can also be addressed to CbC-reporting@belastingdienst.nl
How is the CbCR to be submitted, specifically, is there any prescribed standard?	The CbCR can be submitted using "Logius Digipoort" (www.logius.nl). Questions can be addressed to gegevensuitwisseling@belastingdienst.nl .
What are the possible consequences of not having the CbCR available?	
Penalties?	Yes
Imprisonment?	Yes
Shifting of the burden of proof?	No
Other?	Yes
To which extent do your local rules differ from the OECD standard regarding the content requirements for the CbCR as shown in the 2017 OECD TP Guidelines?	Consistent with OECD requirements
Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?	Yes
Did your country enter into other information exchange agreements, such as on a bilateral basis?	Yes
Please specify the country involved and date the agreement came into force.	The EU Directive was implemented as per 29 May 2017.
Can a taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?	Yes

5. TP disclosure in tax return or transfer pricing specific returns

Does a taxpayer need to disclose information regarding TP documentation in his tax return?	No, but the taxpayer does need to declare whether the company had any international holding, licensing, rental, lease or financing activities with affiliated parties. Furthermore it has to declare whether it receives payment from related parties for the use of tangible and / or intangible fixed assets.
When a taxpayer files a tax return for which he understands or should understand that the result reported in that tax return is too low due to incorrect transfer pricing, what could be the legal consequences?	If a position is taken in the tax return that is not defendable, this can be regarded as intentionally filing an incorrect tax return, which qualifies as a criminal offence. Imprisonment of up to 6 years is possible or penalties of up to EUR 82,000, or 100% of the tax due if that would be higher. Furthermore, our Supreme Court has qualified tax fraud as money laundering for which a confidential reporting obligation exists (to the Financial Intelligence Unit "FIU") for various service providers, including tax advisors.
What could be the consequences for the tax advisor/accountant/administrator drafting and filing the tax return of a client where that advisor/accountant/administrator understands or should understand that the result reported is too low due to incorrect TP?	When a tax advisor/accountant/administrator intentionally drafts and files a corporate income tax return, in which a position is taken that is not defendable (criminal intent), that tax advisor/accountant/administrator could be regarded as a co-perpetrator under certain circumstances. Also in case the advisor/accountant/administrator is not aware of the fact that the position taken is not defendable (i.e. in case of "kleurloos opzet"), he could be regarded as a co-perpetrator.
Does a taxpayer need to file TP-specific returns?	No

6. Benchmarking

Is there any local guidance or requirement with regard to the preparation of a benchmark study?	No, OECD TP guidelines are taken into account.
Are there any materiality thresholds that apply for the requirement to have a benchmark study available?	No
Does your country apply the general guidance by the OECD to prepare a new benchmarking search every three years and an update of the financial data of the accepted comparable in year 2 or 3?	No
Or is a new search every three years without any financial updates in year 2 and 3 sufficient?	Yes, depending on the specifics of the case. No specific comments on this by the Authorities. OECD Guidelines are applied. What is acceptable depends on the level of comparability of an older/partially adjusted study that remains if not benchmarked every year.

7. Year-end adjustments

Are year-end adjustments permissible?	Yes
Does the taxpayer have to comply with any specific features or guidance?	Yes. The taxpayer must substantiate with appropriate documentation that the adjustment is arm's length/leads to an arm's length remuneration.

8. Transfer Pricing Audit and Dispute Resolution Mechanisms

What are currently the main TP areas of scrutiny by the tax authorities in your country?	Loss making transactions, loss making projects and loss making companies.
Based on your experience, are joint or multilateral audits initiated and carried out?	Yes
Does the taxpayer have the option to apply for bilateral or multilateral APAs?	Yes
Are there any restrictions?	Apart from the fact that the application term of bilateral and multilateral APAs can be lengthy, in principle no restrictions exist to apply for an APA. In the APA, the taxpayer waives its right of objection and appeal before the court with respect to the subjects agreed upon in the APA.

Your contact persons:

Mr. Jan Boekel
jan.boekel@wtsnl.com
 T: +31 10 217 9172

Mr. Frank Schwarte
frank@TAEconomics.com
 T: +31 20 237 62 00