

International Tax – Netherlands New TP Decree

On July 01, 2022, the Dutch State Secretary of Finance ('Finance Secretary') published a new decree related to transfer pricing (TP) (Decree) which replaces the previous TP decree published in May 2018. The changes reflect alignment with the 2022 version of the Organisation for Economic Cooperation and Development's TP Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines). A brief summary of the updates of the decree are presented below for ease of reference:

- Introduces new sections and guidance on financial transactions support measures from government in response to the pandemic.
- The Decree urges the Dutch tax authorities to be flexible in their approach and not require the taxpayer to set its transfer prices with an accuracy that is unrealistic given that TP is not an exact science.
- Apart from highlighting the application of arm's length principle and its nuances, the decree also details out TP methods (cost-related, valuation methods), secondary adjustments, (in) tangible fixed assets and transactions related to them (including difficult to value intangibles), Group Services, Cost Contribution arrangement (CCA), Group Purchases, Documentation obligation etc.
- The Decree retains the option to opt for applying the simplified method for low-value added services ('low value-adding intra-group service' as per OECD guidelines), similar to the 2018 decree.

- Introduces a new section on Cash Pooling and on financial service entities and distinguishingly details the three situations for assessing the transfer pricing system of an entity having full control, no control or no control over credit risks and financial capacity.
- Finance Secretary acknowledges that the Dutch jurisprudence in relation to recognition and qualification of intercompany loans as equity follows a different criterion vis-à-vis the OECD Guidelines.
- Apart from the usual Comparable Uncontrolled Price (CUP) approach, discusses application of cost of funds approach for interest and yield approach for guarantee respectively.
- Encourages taxpayers to strive for elimination of possible double taxation in transfer pricing cases by adopting early consultation via the Mutual Agreement Procedure (MAP) route.
- Clarifies that the possibilities of avoiding possible double taxation by exchanging information or jointly performing audit procedures will depend on the legal possibilities and the willingness of other countries to cooperate in such a procedure.

Source: Directorate-General for Tax Affairs, Department of Consumption Taxes, Customs and International Affairs Decree of 14 June 2022 no. 2022-0000139020, Government Gazette 2022, no. 16685 dated July 1, 2022



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