

MFFA Tax Advice

Specialized in Expats and International
Companies

Amsterdam | Amstelveen | Eindhoven | Assen

The Netherlands



New Dutch Transfer Pricing Documentation

Requirements

“Country by Country”



- New Transfer Pricing Documentation requirements in the Netherlands as from 2016
 - General Background (Base Erosion and Profit Shifting)
 - Main changes
 - Specific requirements
 - Who is responsible for filing
 - Timing and penalties
 - How you could resolve this requirement efficiently – our approach
- Our Transfer Pricing Services

- The Dutch government has introduced new and more extensive Dutch transfer pricing documentation requirements as per January 1, 2016
- The new legislation will be relevant in the following situations:
 1. The Dutch entity or branch is part of a multinational group with a consolidated annual turnover of **€ 50 million** or more (Medium Sized Groups – MSG)

Also small Dutch operations will be subject to this new compliance requirements if they are part of a group with a consolidated turnover of at least € 50 million

2. Dutch entities/branches heading an international group or part of multinational group with a consolidated turnover of at least **€ 750 million** (Large Sized Groups – LSG)

These larger groups will be subject to more detailed reporting requirements

The new legislation introduces significant changes to transfer pricing documentation requirements, since:

1. It now provides detailed and very specific (annual) documentation requirements. In the past it was more an open norm and left much more flexibility to the judgement of taxpayers.
2. It introduces a specific penalty when not complying. In the past companies had some time to prepare missing documentation after a request/audit from the tax authorities
3. Finally it provides for detailed filing deadlines and procedures

Requirements MSG (+50mio)



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Medium Sized Groups (MSG) are required to prepare and file:

- *A Master File* – including inter alia an overview of the entire multinational group, the applied world wide transfer pricing policy and worldwide allocation of income and economic activities.
- *A Local File* – including the economic analysis (inter alia functional analysis and benchmarking) regarding the related party transactions of the Dutch local company. This also requires the review of the financial activities of the group, intangible property and group strategy.
- The specific and detailed requirements of the Local File and Master File are included in a Decree of the Dutch State Secretary of Finance (December 30, 2015)

Requirements LSG (+750mio)



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In addition to the requirements for MSGs, Large Sized Groups are also required to prepare:

- *A Country by Country Report* – this report includes for each country where the multinational group is operating details with respect to inter alia:
 - Volume of related and unrelated party transactions
 - Result before tax
 - Tax paid
 - Number of employees
 - Accumulated earnings
 - Main business activities per entity

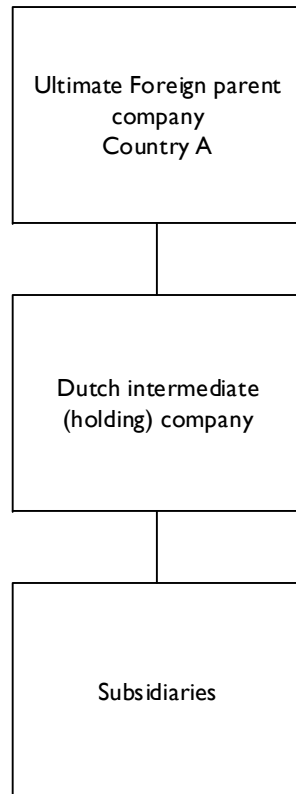
Who files the country file:

- In principle the ultimate parent company that is required to consolidate the results of the subsidiaries
- If the Dutch entity is not the (ultimate) parent company, it can still be held responsible to prepare and file the country file if:
 - It has been appointed by the multinational group to do so; or
 - The multinational group or the foreign tax authorities are not required or able to share the country file with the Dutch authorities

Requirements LSG



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In country A:

- No similar country by country obligations; or
- There is no exchange of information agreement; or
- Negligence of authorities to share information with the Netherlands

Dutch intermediate company may be required to prepare and report country file

When:

- The master file and local file (LSG 50M+) should be prepared for each year and should be available not later than the filing deadline of the CIT return
- The country report must be submitted within 12 months after the end of the financial year

Penalties

- Not meeting the requirements can result in penalties or even imprisonment if the latter was intended by the taxpayer

How to approach?



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Our recommendations	Explanation
<p data-bbox="365 563 1032 727">Prepare an overall transfer pricing health check of your company and prioritize issues</p> <ul data-bbox="365 794 1077 1305" style="list-style-type: none"><li data-bbox="365 794 1077 959">- What documentation is currently already available in your company and what is locally required?<li data-bbox="365 970 1077 1193">- Is it up to date and also provides sufficient substantiation for red flags (swings in profits, losses etc.)?<li data-bbox="365 1204 1077 1305">- Does it meet new (local) TP requirements?	<p data-bbox="1133 563 1839 727">Many countries are introducing new and more stringent transfer pricing rules.</p> <p data-bbox="1133 794 1861 1193">An overall health check makes it possible to start making a priority list of actions. This limits any duplication of work and avoids a myriad of local approaches that is difficult to administer and to process in your administrative systems</p>

How to approach?



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Our recommendations

Start in time, since this gives you the opportunity to recognize transfer pricing vulnerabilities and inconsistencies and opportunities upfront

Explanation

It is key that the transfer pricing documentation is consistent with the actual financial results. Therefore it is more difficult and often challenging to prepare documentation after the close of the financial year. That may also have a negative impact on VAT, customs, financial reporting etc.

Therefore, it provides you more time to resolve possible TP issues. This is ultimately better in terms of use of resources and costs.



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Our Transfer Pricing Services

Our Transfer Pricing Services



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- **Transfer Pricing support for reorganisations (valuation, defence file)**
- **Aligning strategy with worldwide Transfer Pricing framework**
- **Supply chain optimisation (commissionaire, limited risk, contract R&D)**
- **Implementation and documentation (CbC, Master File, Country File)**
- **Valuation and credit rating**
- **Pricing financial instruments (guarantees, back to back, loans)**
- **Litigation support**

Transfer Pricing Proces



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analysis

- Investigate the business set up/value chain and corresponding tax, economic and legal framework which is the core of the functional analysis

design

- Use a balanced approach and design a transfer pricing solution that is understandable and meets the requirements of the different stakeholders (inter alia VAT, customs, IT systems in place)

implement

- Prepare a step plan or project management plan and provide for proper education and involvement of the stakeholders. Translate the transfer pricing framework to the organisational environment

Core Values – Transfer Pricing



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We have the following core values that determine how we work and service our customers:

- **You cannot render proper transfer pricing advice without knowing the business and its industry**
- **The transfer pricing framework and strategy should support the business and not the other way around.**
- **We strive to simplify the transfer pricing framework to make it practically useable and controllable for our customers without oversimplifying things**
- **We aim to be pro-active and responsive and identify transfer pricing opportunities**
- **Be independent and highly experienced in order to provide a one stop shop in tax and transfer pricing solutions**

Track Record – Transfer Pricing



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Preparing a strategic TP framework and document it in a Pan European Master file for the involved European operating entities of a multinational.

Converting a buy-sell model into a license driven structure, in which the owner of the intellectual property is no longer involved in the production and sales function, but purely focuses on making the intellectual property available to group companies.

Assisting with the termination of a Dutch contract R&D structure, and subsequently transferring this to the another country, which included the determination of the transfer price of the IP

Supply Chain management – converting a full risk distributor into a limited risk distributor.

Transferring of manufacturing activities, which included determining of a possible termination fee and transfer price of the intellectual property (know how etc).

Business Reorganisations – converting business model of multinational group into a single business entity

Resume Guido van Asperen



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- Guido is tax counsel of MFFA and has more than 15 years experience in Transfer Pricing and International Taxation issues
- From this, he has extensive experience with, amongst others:
 - ✓ Advising, implementation and documentation with respect to cross border and (Pan) European transfer pricing projects on behalf of clients in different industries
 - ✓ Assist clients with the implementation of (cross border) restructurings
 - ✓ Obtain advice certainty and rulings from tax authorities
 - ✓ Advise and assistance with the design and implementation of tax efficient structures via the Netherlands (corporate tax, VAT and wage tax)
 - ✓ Assist clients with global mobility issues (wage tax, social security)
- Guido is a full member of the International Fiscal Association and holds various master degrees (Tax Law, Tax Economics, Finance and a post Master in International Taxation and European Tax Law)
- Guido is former European RSM Head of Transfer Pricing and contributing member of the European Tax Structuring and European Tax Group. Guido started his career within PWC.



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