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Overview

Borgen Tax

Borgen Tax is a tax advisory firm based in Amsterdam offering a comprehensive range of tax services to Multinational enterprises ("MNEs"), private equity investors and their portfolio companies.

The Borgen Tax team assists clients across the full spectrum of transfer pricing matters, including (1) compliance and reporting, (2) analysis, planning and strategy and (3) disputes and controversy:

- Compliance and reporting: Borgen Tax prepares benchmark studies and transfer pricing documentation, ranging from comprehensive documentation packages to tailored local deliverables. Borgen Tax also assists with global or local transfer pricing compliance processes and supports clients in substantiating their financial results in light of their transfer pricing policies. Furthermore, Borgen Tax advises on Country-by-Country ("CbC") reporting requirements.
- Analysis, planning and strategy: Borgen Tax advises on transfer pricing model design, value chain analysis and optimization, business restructuring, and the development and implementation of transfer pricing strategies and policies. The team also performs independent reviews of existing transfer pricing models and assesses whether those models remain sustainable in light of changes to the business, regulatory environment and applicable transfer pricing standards.
- Disputes and controversy: Borgen Tax assists clients with transfer pricing audits, Mutual Agreement Procedures ("MAPs"), MAP arbitration and the prevention and resolution of transfer pricing disputes through unilateral, bilateral or multilateral Advance Pricing Agreements ("APAs").

General Transfer Pricing Framework

The arm's length principle is codified in article 8b of the Corporate Income Tax Act ("CITA"). Article 8b (3) CITA contains the general transfer pricing documentation requirement. This form free requirement applies to domestic and cross-border transactions between associated entities and requires taxpayers to substantiate the arm's length nature of the conditions applied to those transactions.

In addition, under article 29g CITA, an entity that is subject to Dutch corporate income tax and forms part of an MNE group with at least EUR 50 million of consolidated group revenue in the immediately preceding fiscal year must maintain a master file and local file. These files must be included in the taxpayer's records by the deadline for filing its Dutch corporate income tax return.

MNE Groups with at least EUR 750 million of consolidated group revenue in the immediately reporting fiscal year fall within the CbC reporting framework laid down in articles 29b-29h CITA. The CbC report is generally filed by the ultimate parent entity or surrogate parent entity, although a Dutch entity may be required to file locally in specified circumstances.

Following the publication of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD Guidelines") in January 2022, the Dutch Transfer Pricing Decree ("Transfer Pricing Decree") was published on 1 July 2022. The principal changes included substantially revised guidance on financial transactions reflecting Chapter X of the OECD Guidelines. The Dutch transfer pricing framework is based on the arm's length principle, and the OECD Guidelines are considered an appropriate interpretation and clarification of article 8b CITA. However, Dutch legislation and administrative guidance contain several specific domestic rules and positions. In particular, articles 8ba-bd CITA restrict certain downward transfer pricing adjustments and certain increases in the tax basis of assets where no corresponding amount is included in a tax on profits at the level of the associated entity.

Furthermore, the Amount B Decree 2025 took effect on 1 January 2025. The Netherlands has not implemented Amount B for routine marketing and distribution activities performed by Dutch taxpayers. However, subject to the conditions of the decree, the Netherlands will respect the proper application of Amount B qualifying covered jurisdictions.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not incorporated in Dutch legislation. However, based on the Transfer Pricing Decree, the OECD Guidelines are considered internationally accepted guidance providing an appropriate interpretation and clarification of the application of the arm's length principle.

In line with the OECD Guidelines, the Dutch tax authorities ("DTA") begin a transfer pricing examination from the perspective of the transfer pricing method applied by the taxpayer at the time of the transaction. The taxpayer is, in principle, free to select the transfer pricing method, provided that that method is appropriate in light of the facts and circumstances and produces an arm's length outcome. The taxpayer is not required to analyze every available method or demonstrate that the selected method is the "best" method, but must substantiate its selection.

Dutch transfer pricing policy does prescribe a hierarchy of methods. The five methods recognized in the OECD Guidelines, the Comparable Uncontrolled Price ("CUP") method, resale price method, cost-plus method, Transactional Net Margin Method ("TNMM") and transactional profit split method, may be applied depending on which method is most appropriate in the circumstances. In practice, the CUP method can be difficult to apply because sufficiently comparable transactions are often unavailable. As a result, the TNMM is frequently used.

The taxpayer may also use another method or valuation technique where this is appropriate in the circumstances, produces an arm's length outcome and is adequately substantiated.

Transfer Pricing Documentation Requirements

Article 8b (3) CITA requires taxpayers to document and substantiate the arm's length nature of intercompany transactions with associated entities. As no threshold applies, this obligation also applies to small and medium sized companies. The provision requires Dutch taxpayers to document the transactions entered into with associated entities in both cross-border and domestic situations.

The documentation requirement under article 8b (3) CITA is form free. The required level of detail depends on the facts and circumstances, with proportionality playing an important role. The documentation should ordinarily address the economically relevant characteristics of the controlled transaction, the selection of the transfer pricing method and the conditions, including the price, applied to the transaction.

Under article 29g CITA, an entity that is subject to Dutch corporate income tax and forms part of an MNE group with at least EUR 50 million of consolidated group revenue in the immediately preceding fiscal year must maintain a master file and a local file in accordance with Base Erosion and Profit Shifting ("BEPS") Action 13.

The master file and local file must be available in the Dutch taxpayer's administration by the deadline for filing the corporate income tax ("CIT") return for the respective year. The files are not routinely submitted with the CIT return but must be provided to the DTA upon request. They may be prepared in Dutch or English. The master file and local file must be prepared and maintained for each relevant fiscal year.

The local file documentation must contain the required information relating to each relevant Dutch entity and its material cross-border controlled transactions. Dutch legislation does not provide a general exemption for entities included in the same fiscal unity for CITA purposes. A combined document may be maintained for administrative convenience only where it separately and fully contains the required entity specific information for every entity covered.

MNEs groups with at least EUR 750 million of consolidated group revenue in the immediately preceding reporting fiscal year fall within the CbC reporting rules set out in articles 29b – 29h CITA.

Dutch taxpayers must file a CbC report if the ultimate parent entity or the surrogate parent entity is tax resident in the Netherlands. A Dutch entity may also have a local filing obligation in circumstances specified in article 29c CITA. The report must be filed within 12 months after the last day of the relevant reporting fiscal year.

In principle, every Dutch resident entity of an MNE group that falls within the CbC reporting regime must notify the DTA of the identity and tax residence of the reporting entity, or notify the DTA that it is itself the ultimate parent entity or surrogate parent entity, no later than the last day of the relevant reporting fiscal year. For entities included in the same Dutch fiscal unity, the DTA permits a single notification to be submitted on practical grounds.

Pillar Two Filing

The Dutch Minimum Tax Act 2024 entered into force on 31 December 2023. In June 2026, the DTA made available the digital filing channels through which groups can comply with the Dutch Pillar Two information reporting, notification and tax return requirements.

For multinational and large scale domestic groups within scope of the Pillar Two rules, generally those with consolidated annual revenue of at least EUR 750 million in at least two of the four fiscal years immediately preceding the relevant fiscal year, this commenced the first compliance filing cycle for groups whose first reporting fiscal year ended on 31 December 2024.

The Dutch Pillar Two compliance framework comprises three distinct filing obligations. These are not necessarily cumulative: a notification generally applies instead of a Dutch GloBE Information Return ("GIR") filing, while a Dutch minimum tax return is required only if top-up is payable in the Netherlands.

- GIR / Bijheffing informatieaangifte ("BIA")

  The BIA is the Dutch statutory information return corresponding to the OECD/EU GIR template. It can be submitted electronically through Digipoort, which became available for this purpose on 1 June 2026. Where the relevant requirements are met, GIR information may subsequently be exchanged with other jurisdictions under the applicable international exchange arrangements. A Dutch group entity may be designated to submit the BIA on behalf of the other Dutch group entities.

- GIR Notification

  Where the GIR is filed in another jurisdiction and the DTA receives it through a qualifying international exchange arrangement with the Netherlands, Dutch group entities are relieved from the Dutch BIA filing obligation. Instead, they must notify the DTA of the identity of the entity submitting the GIR and the jurisdiction in which that entity is located. The notification is submitted through the Gegevensportaal, which became available for this purpose on 2 June 2026. One Dutch group entity may be designated to submit the notification on behalf of the other Dutch group entities. No notification is required where the BIA/GIR is filed in the Netherlands.

- Dutch Minimum Tax Return

  The Dutch minimum tax return formalizes and reports any top-up tax payable in the Netherlands, including, depending on the relevant fiscal year and circumstances, amounts arising under the income inclusion rule ("IIR"), undertaxed profits rule ("UTPR") and Dutch domestic top-up tax ("QDMTT"). The UTPR generally applies to fiscal years beginning on or after 31 December 2024 and would therefore ordinarily not apply to a calendar year fiscal year ending on 31 December 2024.

  A Dutch minimum tax return is required only where top-up tax is payable in the Netherlands. The return can be submitted through 'Mijn Belastingdienst Zakelijk', which became available for this purpose on 1 June 2026.

Under the standard rules, the BIA/GIR (or, where applicable, the notification) must be submitted within 15 months after the last day of the reporting fiscal year. The Dutch minimum tax return and any associated payment are due within 17 months after the last day of the reporting fiscal year. For the first reporting fiscal year, transitional deadlines apply, extending these periods to 18 and 20 months respectively.

For groups with a first reporting fiscal year ending on 31 December 2024, the first Dutch Pillar Two deadlines were/are:

- BIA/GIR or notification: 30 June 2026
- Dutch minimum tax return and payment: 31 August 2026

Local Jurisdiction Benchmarks

Depending on the transfer pricing method, benchmarking studies can support the arm's length nature of intercompany transactions. The DTA generally accept pan-European comparables where geographical differences do not materially affect comparability. The selection of the profit level indicator ("PLI") must be appropriate to the selected method, the tested party and the economically relevant characteristics of the controlled transaction.

Benchmarking studies must be based on a transparent and reproducible search strategy and a sufficiently robust comparability analysis, taking into account the five comparability factors identified in the OECD Guidelines.

The DTA may refer to multiple year data where this provides useful information regarding the controlled transaction or the comparables.

The results of a benchmark study yield an arm's length range. Where the results are of sufficiently equal and high reliability, the full range may be relevant. Where residual comparability defects remain, statistical tools such as the interquartile range may be used to enhance reliability. If the tested result falls within the properly determined arm's length range, no adjustment should ordinarily be made. If it falls outside that range, the adjustment should be made to the point that best reflects the facts and circumstances. The median is used only where no other point within a statistically determined range can be identified as more reliable.

Benchmarking analyses should be reviewed annually. Where the underlying business and market circumstances remain unchanged, an external database search may generally be refreshed every three years, provided that the financial data of the selected comparables are updated annually. A new search may be required earlier where material changes affect the controlled transaction, the tested party or the comparability analysis.

A benchmark study can be used to set or support royalty percentages as remuneration for the use of intellectual property. However, royalty benchmarks are generally subject to close scrutiny because publicly available license agreements may contain insufficient information regarding the relevant rights, functions, assets, risks and contractual conditions. A detailed analysis of value creation, including the relevant DEMPE functions, may therefore be required. A Value Chain Analysis ("VCA") can support this analysis. Depending on the facts, an appropriate method may include a CUP method, profit split method, valuation technique or tested-party approach.

Focus on Financial Transactions

Under Dutch law, the transfer pricing treatment of financial transactions is largely aligned with Chapter 10 of the OECD Transfer Pricing Guidelines, which was implemented through the Transfer Pricing Decree. As a result, the Dutch tax authorities place significant emphasis on the arm's length character of both the financing structure and the pricing of intragroup financial transactions. Taxpayers are expected to substantiate that the terms and conditions of intercompany financing arrangements are consistent with the arm's length principle, including the amount of debt, the pricing and other financial conditions. In practice, this requires a detailed analysis of the borrower's creditworthiness, the relevance of potential (implicit) group support, the borrower's realistically available alternatives, and the overall consistency of the financing structure with what independent parties would have agreed under comparable circumstances. Since the introduction of Chapter 10, the DTA have increasingly challenged not only the pricing of financial transactions, but also structural elements including debt capacity, particularly in the context of real estate financing where for example the loan-to-value ratio is relevant in determining the amount of debt that could have been obtained by an independent borrower in relation to the value of the underlying property. In addition, the DTA increasingly scrutinize financing structures where the borrower's ability to service and repay the debt is not supported by recurring income streams but instead relies predominantly on expected capital gains upon a potential sale of the underlying real estate.

The Transfer Pricing Decree also confirms that the tax authorities may disregard or recharacterize financial transactions where the actual conduct or the overall structure differs from what independent parties acting at arm's length would have agreed. In practice, the DTA increasingly use transfer pricing audits on financial transactions as a broader entry point to challenge financing structures and perceived base erosion arrangements. The focus is therefore not limited to the interest rate itself, but extends to the delineation of the transaction, the allocation and control of financial risks, the functional substance of treasury and financing entities, and the extent to which the financing arrangement is consistent with the arm's length principle from the perspective of all parties involved. Robust transfer pricing documentation and a well-supported benchmarking analysis are therefore of particular importance in the Netherlands.

Within the DTA, a dedicated specialist team has been established to review the arm's length character of intragroup financial transactions and financing structures. This team works closely with other coordination groups focusing on tax avoidance and aggressive financing arrangements. In addition to the transfer pricing analysis, Dutch taxpayers must also consider various domestic anti-abuse and interest limitation rules, including the earnings stripping rule implementing ATAD, which generally limits the deductibility of net borrowing costs. These rules operate separately from the arm's length analysis and may restrict interest deductibility even where the pricing of the financing transaction itself is considered arm's length.

Advance Pricing Agreement / Bilateral Advance Pricing Agreement Overview

A revised framework for international tax rulings took effect on 1 July 2019 and has subsequently been amended, including in 2021 and 2023. The framework applies to unilateral, bilateral and multilateral Advance Pricing Agreements ("APAs"). A bilateral or multilateral APA is negotiated by the competent authorities of the relevant jurisdictions under the applicable tax treaty or other international legal instrument.

A request for an international ruling must satisfy the general requirements applicable to advance tax certainty. In principle, advance certainty will not be provided where:

- the requesting taxpayer or group does not carry on sufficient relevant economic activities in the Netherlands, supported by personnel and operational substance appropriate to those activities;
- Dutch or foreign tax savings constitute the sole or decisive motive for the relevant transaction or structure;
- the requested certainty concerns the tax consequences of direct transactions with entities established in jurisdictions included in the Dutch Regulation on low-tax and non-cooperative jurisdictions, subject to the exceptions introduced into the ruling framework; or
- the requesting taxpayer, a relevant director, ultimate beneficial owner or qualifying intermediate holding company appears on an applicable EU sanctions list.

The precise application of these exclusions depends on the nature of the requested certainty, and the ruling framework contains limited exceptions for specified situations.

No fixed statutory processing period applies to bilateral or multilateral APAs. The two-year indicator associated with BEPS Action 14 relates to the timely resolution of MAP cases and should not be presented as a guaranteed BAPA processing period. According to the DTA's 2025 ruling report, the gross average processing time for granted unilateral APA requests was approximately 11 months, compared with approximately 39 months for granted bilateral and multilateral APA requests. These figures are historical averages and do not constitute service guarantees.

An APA under the Dutch ruling practice can cover matters such as the classification and remuneration of intercompany transactions and the profit allocation for permanent establishments.

The processing time depends on, among other matters, the complexity of the case, the completeness of the application, the number of transactions and jurisdictions involved, the required internal review and, for bilateral or multilateral APAs, the negotiations between the competent authorities.

Transfer Pricing Audits

The DTA apply a risk-based approach to tax supervision. Transfer pricing matters may be reviewed as part of a broader corporate income tax audit, through a dedicated transfer pricing examination or by means of targeted information requests.

The DTA do not conduct audits on a mandatory periodic basis. The publication of the Transfer Pricing Decree does not itself determine whether a taxpayer will be audited. It does, however, set out the administrative positions that inspectors will generally apply when examining transfer pricing matters. Transfer pricing matters within the DTA are coordinated by the Coördinatiegroep Verrekenprijzen ("CGVP"). Areas commonly requiring detailed support include financial transactions, transactions involving intangibles, business restructurings and intragroup services.

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Financial transactions continue to receive considerable attention, particularly in relation to the accurate delineation of the transaction, debt capacity, creditworthiness, implicit support, cash pooling, guarantees and the control of financially significant risks.

The Burden of Proof in Dutch Transfer Pricing: Theory vs. Practice

In the Dutch tax system, the allocation of the burden of proof is pivotal in determining the outcome of disputes. As a general starting point, where the inspector makes an upward transfer pricing adjustment, the inspector must substantiate that adjustment in accordance with the ordinary rules governing the allocation of the burden of proof. The precise allocation may nevertheless depend on the nature of the adjustment, the position taken by the taxpayer and the facts and circumstances of the case.

Dutch law requires taxpayers to maintain sufficient documentation to substantiate their transfer prices under Article 8b(3) CITA and, where applicable, the master file and local file requirements under Article 29g CITA.

Failure to comply with the documentation requirements does not automatically reverse the burden of proof. Formal reversal and strengthening of the burden of proof require the applicable statutory and procedural conditions to be satisfied. Depending on the circumstances, this may require the inspector to issue an information decision under Article 52a of the General Taxes Act before the evidentiary consequences provided for in Article 27e of that Act can arise.

In practice, the distinction between the formal and evidential burden remains important. Once the inspector has presented a sufficiently reasoned basis for an adjustment, the taxpayer will generally need to respond with transaction specific facts, functional evidence, financial analyses and reliable comparables. A taxpayer with incomplete contemporaneous documentation may therefore face a materially more difficult evidential position, even where the formal burden of proof has not been reversed.

Given this practical dynamic, Dutch taxpayers should ensure that their transfer pricing documentation is both robust and comprehensive. This includes complying with article 8b(3) CITA and, where applicable, the master file and local file requirements under article 29g CITA.

Contemporaneous documentation should establish a clear and consistent connection between the contractual arrangements, the parties' actual conduct, the functional analysis, the selected transfer pricing method and the financial results. High-quality documentation is therefore both a compliance requirement and an important element of effective audit and dispute management.

Transfer Pricing Penalties

Under Article 29h CITA, failure to comply, or to comply correctly, completely or on time, with specified CbC reporting and notification obligations may result in an administrative penalty where the non-compliance is attributable to intent or gross negligence. The maximum penalty is linked to the sixth statutory penalty category, which amounts to EUR 1.1 million from 1 January 2026. This is a statutory maximum; the actual penalty must reflect the circumstances and seriousness of the infringement.

Dutch law does not prescribe a separate fixed transfer pricing penalty solely for failure to maintain Article 8b documentation or a master file and local file. Such non-compliance may nevertheless have general penalty, administrative and evidentiary consequences, depending on the circumstances.

Local Hot Topics and Recent Updates

Current areas requiring particular attention include financial transactions, transactions involving intangibles and value creation, and intragroup services. These areas are addressed extensively in the Transfer Pricing Decree and frequently require detailed factual and economic substantiation.

Financial transactions: The detailed guidance on financial transactions included in the Transfer Pricing Decree continues to influence the analysis of intragroup loans, cash pooling arrangements, guarantees and financial service entities.

The analysis should consider both parties' perspectives and address the accurate delineation of the transaction, the borrower's debt capacity, credit rating, implicit group support, contractual terms, economically relevant characteristics and realistically available alternatives.

For cash pools, particular attention should be given to the remuneration of the cash pool leader and participants and to whether structurally long-term debit or credit positions should be characterized as deposits or loans. Guarantees should be examined to determine whether they provide an incremental benefit beyond implicit group support and whether a guarantee fee is warranted.

The functions performed, risks controlled and financial capacity of the parties are central to the allocation of the financing return. The historical 1%/EUR 2 million real-risk criterion should not be presented as a general transfer pricing safe harbour or as a rule determining arm's length remuneration.

Where a financial service entity does not control the relevant financial risks or lacks the financial capacity to bear them, the Transfer Pricing Decree takes the position that the entity is not entitled to the return associated with those risks. Where its activities are limited to support or administration, a cost-based remuneration may be appropriate.

Intangibles and Value Chain Analysis: A VCA can be a useful analytical tool for complex business models and transactions involving intangibles. It can help identify how value is created within the group and how the relevant functions, assets and risks, including DEMPE functions, are distributed among the parties. The analysis should distinguish between the identification of value creating contributions and the selection of the appropriate transfer pricing method. A VCA does not, by itself, determine how profits should be allocated and does not replace the need to price the accurately delineated controlled transaction.

For complex or highly integrated transactions, the analysis may need to consider the contributions and realistically available alternatives of all relevant parties. A two-sided or multi-sided analysis is particularly relevant where a one-sided method cannot reliably capture the economically significant contributions made by the parties. It is not, however, mandatory for every controlled transaction.

Intragroup services: Intragroup services remain an important area of transfer pricing compliance. Taxpayers should demonstrate that services were actually rendered, that they provided economic or commercial value to the recipient and that an independent enterprise would have been willing to pay for the services or perform them internally. Relevant considerations include the benefit test, the exclusion of shareholder activities, possible duplication, the composition of the cost base, the allocation keys applied, the distinction between direct and indirect charging methods, and the arm's length mark-up.

Where the conditions for the OECD simplified approach for low value adding intragroup services are met, a 5% mark-up may generally be applied to the relevant cost base without a separate benchmarking analysis. The taxpayer must nevertheless substantiate that the services fall within the scope of the simplified approach.

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Documentation threshold

Master file	Consolidated group turnover EUR 50 million
Local file	Consolidated group turnover EUR 50 million
CbCR	Consolidated group turnover EUR 750 million
Pillar Two	Consolidated group turnover EUR 750 million.

Submission deadline

Master file	Should be available in the taxpayer's administration upon due date filling corporate income tax.
Local file	Should be available in the taxpayer's administration upon due date filling corporate income tax.
CbCR report CbCR notification	Submission within 12 months after end of reporting year. Before year end of the reporting year.
Pillar Two	GIR / GIR Notification Submission within 15 months after end of reporting year. Minimum Tax Return Submission and payment within 17 months after end of reporting year. 18/20 months respectively for the first reporting year.

Penalty Provisions

Documentation – late filing provision	Administrative fines up to a maximum of EUR 6,709 can be imposed.
Tax return disclosure – late/incomplete/no filing	Administrative fines up to a maximum of EUR 6,709 can be imposed.
CbCR – late/incomplete/no filing	Fines up to a maximum of EUR 1,100,000 can be imposed on the taxpayer for non-compliance.
Pillar Two - late/incomplete/no filing of the GIR, GIR Notification or Minimum Tax Return Administrative	Fines up to a maximum of EUR 1,100,000 can be imposed on the taxpayer for non-compliance.

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