Table of contents

Transfer prices, the application of the arm's length principle and the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines)[1]

1. The arm's length principle (*Chapter I*) 1
1.1. Aggregation of transactions (*Paragraphs 1.42-1.44*)
1.2. The use of a range (*Paragraphs 1.45-1.48*)
1.3. The use of multiple year data (*Paragraphs 1.49-1.51*)
1.4. The effect of government policies (*Paragraphs 1.55-1.59*)
1.5. Requests to lower transfer pricing adjustments (*Paragraphs 1.60-1.64*)

2. Transfer pricing methods (*Chapters II and III*)
2.1. Comparable uncontrolled price method (*Paragraphs 2.6-2.13*) 2
2.2. Resale price method (*Paragraphs 2.14-2.31*)
2.3. Cost-plus method (Paragraphs 2.32-2.48)
2.4. Profit-split method (*Paragraphs 3.5-3.25*)
2.5. Transactional net margin method (TNMM) (*Paragraphs 3.26-3.48*)
2.5.1. TNMM versus resale price method
2.5.2. TNMM versus cost-plus method

3. Administrative approach for avoiding and resolving disputes regarding transfer pricing (*Chapter IV*)
3.1. Mutual agreement and arbitration procedures (*Paragraph 4.61*)
3.1.1. General
3.1.2. Address for submitting the request
3.1.3. Deadline for submitting the request
3.1.4. Concurrence of the objection and appeal procedure and the mutual agreement procedure
3.1.5. Start of the two-year period referred to in Article 7 of the EU Arbitration Convention
3.1.6. Oral explanation by the taxpayer
3.1.7. Deadline for making a corresponding adjustment by means of an official reduction of the tax assessment
3.1.8. Transfer pricing adjustments and interest charges (*Paragraphs 4.64-4.66*)

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1. This document contains an unofficial English translation by the Netherlands' Ministry of Finance of Decree No. IFZ 2001/295M, officially published in Dutch on 30 March 2001. Rights can only be derived from the original Dutch text of the decree.

4. Secondary adjustments (*Paragraphs 4.67-4.77*)

5. Arm's length price when valuation at the time of the transaction is highly uncertain (*Paragraphs 6.28-6.35*)

6. Intra-group services (*Chapter VII*)

7. Contributions to a Cost Contribution Arrangement (CCA) with profit mark-up (*Chapter VIII*)

8. Arm’s length fee for financial services

9. Subsidies, tax incentives and costs subject to deduction restrictions

10. Allocation of the profit to headquarters and permanent establishments

11. Entry into force

12. Application to current policy

Transfer prices, the application of the arm’s length principle and the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines)

International Tax Policy and Legislation Directorate, Multilateral Affairs Division
Decree of 30 March 2001, No. IFZ2001/295M
The State Secretary for Finance has decreed as follows.

With regard to cross-border transactions, there is agreement amongst the OECD member countries regarding the "arm's length principle", as is included in Article 9 of the OECD Model Tax Convention. The OECD's commentary on Article 9 of the OECD Model Tax Convention and the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (henceforth the OECD Guidelines)[2] provide further guidance on the arm's length principle. The policy of the Netherlands on the arm's length principle in the field of international tax law is that this principle forms an integral part of the Netherlands' system of tax law as a result of its incorporation in the broad definition of income recorded in Section 3.8 of the Income Tax Act 2001. In principle, this means that the OECD Guidelines apply directly to the Netherlands under Section 3.8 of the Income Tax Act 2001. There are a number of areas in which the OECD Guidelines provide scope for individual interpretation by the member countries. In a number of other areas, practical experience has shown that the OECD Guidelines are in need of clarification. This decree explains the Netherlands' position in relation to these particular points and seeks, where possible, to remove any confusion. The OECD Guidelines have not yet fully crystallised and are regularly expanded and adjusted. If necessary, this decree will also be adjusted to take account of new developments.

For the sake of clarity, the paragraphs in the OECD Guidelines corresponding to the text of the decree are referred to in brackets.

It is important to remember when assessing transfer prices that -- as the OECD Guidelines also stress -- transfer pricing is not an exact science. Accordingly, the OECD urges tax administrations to adopt a flexible approach and not to expect taxpayers to set transfer prices with a degree of accuracy that is unrealistic in the light of all of the various facts and circumstances. The Netherlands' tax administration will also bear this point in mind when assessing transfer prices.

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2. The Dutch translation of the OECD Guidelines is included in the binder *Internationale Fiscale Zaken* (binder A), number 750.00.00.

For the sake of clarity, I have decided to integrate the text of a number of existing decrees into the text of the present decree. This means that the decrees referred to in section 12 are hereby revoked.

1. The arm's length principle (*Chapter I*)

Generally speaking, the arm's length principle is applied by comparing the conditions of a transaction conducted between associated enterprises with the conditions of a transaction conducted by independent or unrelated enterprises. Taxpayers are expected to be able to demonstrate that their transfer prices are consistent with the arm's length principle. The basic principle is that each of the enterprises involved should receive a remuneration that is a reflection of the functions performed, taking into account the assets used and the risks assumed (Paragraph 1.20).

Where the term "function(s)" appears elsewhere in this decree, it is intended to have the meaning of "function(s), taking into account the assets used and the risks assumed".

1.1. Aggregation of transactions (*Paragraphs 1.42-1.44*)

In principle, the OECD Guidelines require arm's length prices to be based on individual transactions. This requirement can, however, create a number of practical problems. When it is either very difficult or impossible to assess each individual transaction, for example, in case of a large number of similar transactions, the transactions may be aggregated for the purpose of deciding whether or not they were conducted at arm's length. In such a situation, taxpayers are expected to be able to demonstrate that the transfer price applying to the aggregated transactions is in accordance with the arm's length principle.

1.2. The use of a range (*Paragraphs 1.45-1.48*)

In some cases it will be possible to apply the arm's length principle and arrive at one single figure that is the most reliable to determine the arm's length character of the transfer prices. Because, however, transfer pricing is not an exact science, a particular transfer pricing method will often generate a range of figures all of which are equally reliable. The range is determined by the largest and the smallest value found. Where an arm's length range is used, after determining such range, the question arises as to which figure within the range a comparison can be made and to what point within the range an adjustment can

be made. The OECD Guidelines leave this open.

It is important to make a distinction, when determining a range, between situations in which the comparables consist of readily comparable values and a situation in which use is made of less accurate comparative material. If the comparables consist of readily comparable values, these are all part of the range. If, however, use is made of less accurate comparative material, it may be necessary to use statistical methods to enhance the reliability of the material. One example would be the use of an interquartile range. The effect of this type of statistical method is to reduce the extent of the range, leaving a relevant range consisting of more reliable reference material.

Once the range is defined, the next step is to decide whether or not the remuneration for the transaction in question falls within the range. If it does fall within the range, no adjustment is made. An adjustment is made only if the remuneration does not fall within the range and the taxpayer cannot provide a substantiated explanation for the deviation. According to the OECD Guidelines, an adjustment should be made in such an event to the point within the range that best reflects the facts and circumstances of the relevant intra-group transaction. If there are grounds for assuming that one specific point within the range comes closest to replicating the conditions under which the intra-group transaction took place, this point should be taken as the basis for the adjustment. If it is not possible to identify one specific point, the Netherlands' position is that the median (i.e. the middle point of the range) should be taken as the basis for adjustment. As the OECD has yet to formulate a clear policy on this point, it may occur that the state in which the associated enterprise is located does not permit the transfer prices to be adjusted to the median. In such situations, the competent authority in the Netherlands, acting on the taxpayer's request, will consult the other state with a view to reaching agreement on a point within the range that is acceptable to both states.

In some cases, the transfer price originally adopted is adjusted either upwards or downwards by the taxpayer, leading to a shift within the range. In such situations, the taxpayer has to be able to substantiate the change in conditions in such a way as to justify the adjustment of the transfer price. If the taxpayer is unable to demonstrate that conditions have indeed changed in such a way as to justify an adjustment in the transfer price, it will generally be assumed that the reasons for adjusting the transfer price are predominantly tax driven. In such situations, the tax administration will not accept the change in the transfer price. An additional condition for accepting this type of shift within the range is that the modified price must be stipulated in the contracts concluded by the parties to the transaction and should actually be charged.

1.3. The use of multiple year data (*Paragraphs 1.49-1.51*)

It may be useful to evaluate data relating to a number of years when assessing a transaction. Making use of data covering a succession of years is one way of preventing adjustments from being made in a particular year, even though the average remuneration received by the taxpayer concerned over a number of years is in fact consistent with the arm's length principle. At the same time, the use of multiple year data may result in certain situations in the past being assessed with the benefit of hindsight. The OECD Guidelines stipulate that tax administrations cannot use hindsight. This means that, when multiple year data are used, the only figures that can be used are those relating to the year in question and previous years. One of the results of this is the system of moving averages. This leads to the following method:

- The first step is to assess whether or not the remuneration for the transaction in question falls within the arm's length range that has been created for the year in question. No adjustment is made if the remuneration falls within the range;
- If the remuneration does not fall within the range, it is then compared with the (moving) averages for a number of years. The length of the period on which this comparison is based depends partly on the length of the product's life cycle. If the average remuneration for the transaction in question falls within the multiple year range, no adjustment is made; and
- If the remuneration does not fall within the arm's length range for the year and not within the multiple year arm's length range, an adjustment is made in accordance with the procedure set out in section 1.2.

1.4. The effect of government policies (Paragraphs 1.55-1.59)

Certain government interventions may be regarded as being market conditions in the country in question and should for this reason be reflected in the transfer price.
Paragraph 1.59 of the OECD Guidelines describes two possible approaches to a situation in which a country, for example, either prevents or blocks a particular payment. Under Netherlands' tax law, the remuneration relating to a particular performance must be reflected in the result. It can, however, be in accordance with sound business practice to depreciate (partly) the value of accounts receivable relating to the particular performance. The costs associated with the transaction can be taken into account. Obviously, an assessment must be made when the account receivable arises as to whether or not the conditions of the transaction justify the conclusion that the transaction should materially be regarded as a contribution of equity rather than remuneration for an activity performed (Supreme Court, 27 January 1988, BNB1988/217). In addition, it goes without saying that the taxpayer is under an obligation to

substantiate the reduction in value of the account receivable.

1.5. Request to lower transfer pricing adjustments (*Paragraphs 1.60-1.64*)

When the tax administration audits a taxpayer's books, the taxpayer is entitled to apply for a reduction in the proposed adjustment of a transfer price if the taxpayer is of the opinion that the adjustment proposed by the tax administration does not take sufficient account of compensating transactions. Under the OECD Guidelines, tax administrations have discretionary powers either to grant or deny such requests. The distinction made in the OECD Guidelines between a situation in which a taxpayer demonstrates the presence of an intentional set-off at the time when a tax return is filed and a situation in which an intentional set-off is stated by the taxpayer (and the acceptability is demonstrated) at the point when the tax administration recommends certain adjustments on the basis of a tax audit, is not relevant to the Netherlands' situation. In both cases, the taxpayer retains his statutory right to lodge an objection or appeal.

2. Transfer pricing methods (*Chapters II and III*)

Chapter II of the OECD Guidelines discusses the three traditional transaction methods introduced in Paragraphs 1.68 to 1.70 (i.e. the comparable uncontrolled price method, the resale price method and the cost-plus method), whilst Chapter III examines the methods known as the transactional profit methods (i.e. the profit-split method and the transactional net margin method or TNMM). Depending on the circumstances, a choice of one of these five accepted methods has to be made. The methods can supplement each other. The OECD Guidelines are based on a certain hierarchy of the methods where a preference exists for the traditional transaction methods. On the one hand, transactional profit methods are considered more or less as methods of last resort. On the other hand, the OECD Guidelines state that the tax authorities need to start a transfer pricing audit from the perspective of the method chosen by the taxpayer (see Paragraph 4.9 of the OECD Guidelines).

In accordance with Paragraph 4.9 of the OECD Guidelines, whenever the Netherlands' tax administration undertakes a transfer pricing audit, it should start from the perspective of the method adopted by the taxpayer at the time of the transaction. This complies with Paragraph 1.68 of the OECD Guidelines. The implication is that taxpayers are in principle free to choose a transfer pricing method, provided that the method adopted leads to an arm's length outcome for the transaction in question. In certain situations,

however, some methods will generate better results than others. Although taxpayers may be expected to base their choice of a transfer pricing method on the reliability of the method for the particular situation, taxpayers are definitely not expected to weigh up the advantages and disadvantages of all of the various methods and then explain why the method that was ultimately adopted generates the best results in the prevailing conditions (i.e. the best method rule). Certain situations are also suited for a combination of methods. At the same time, taxpayers are not obliged to use more than one method. The only obligation resting on the taxpayer is to explain why the decision was taken to adopt the particular method that was adopted.

A number of examples of the various transfer pricing methods are given in the following paragraphs to illustrate how they work. It is explicitly not the object to discuss all issues that may arise in practical situations in relation to each method.

2.1. Comparable uncontrolled price method (*Paragraphs 2.6-2.13*)

With this method, the price calculated for goods that are transferred and services that are performed in a transaction with an associated party is compared with the price that is calculated for similar goods that are transferred and services that are performed in a free market transaction under comparable circumstances. If a comparable price is available, the comparable uncontrolled price method (commonly known as the CUP method) will, in general, be the most direct and the most reliable method in determining the transfer price, so that this method is to be preferred over other methods. A point to note is, however, that the reliability of the CUP method depends on the degree of accuracy with which adjustments can be made for purposes of comparison.

Example

A producer in country X sells wine to an associated Dutch wholesaler. The same producer in country X sells the same wine to an independent Dutch wholesaler for EUR 5 per bottle. In the agreement with the independent wholesaler, the external transportation costs are for the account of the producer. Under the arrangement made with the associated wholesaler, the external transportation charges of EUR 1.50 per bottle are not borne by the producer, but by the wholesaler. The other circumstances are the same for the associated wholesaler and the independent wholesaler. The wine is sold at EUR 12.50 per bottle.

Based on the difference in contractual terms, an adjustment needs to be made to the third party price in

accordance with Paragraphs 2.8 and 2.9 of the OECD Guidelines. The CUP method can be used as follows to calculate the comparable third party price (i.e. the CUP).

Purchase price paid by independent wholesaler	5.00
Adjustment to account for difference in external transportation expenses between associated wholesaler and independent wholesaler	1.50
CUP for associated wholesaler	3.50

2.2. Resale price method (*Paragraphs 2.14-2.31*)

The second traditional transaction method is the resale price method. This method has as its starting point the market price that is agreed to with respect to the sale of a product to third parties. This product has been purchased from an associated enterprise. In order to calculate the arm's length remuneration for the functions performed by the associated enterprise that sells the product to the third party, the product's market price is reduced by a gross profit margin. The gross profit margin consists of the selling expenses and other costs arising from the functions performed by the seller and an appropriate profit margin. What is left after the adjustment for other costs associated with the sale of the product, such as customs duties, is an arm's length price.

Example

This example is based on the same situation used in the example illustrating the CUP method. The resale price method is based on the gross profit margin earned by the independent wholesaler, which may be calculated as follows:

Retail price	12.50	100%
Purchase price paid by independent wholesaler	5.00	40%
Gross profit margin of the independent wholesaler	7.50	60%

The functions performed by the independent wholesaler are the same as those performed by the associated wholesaler. The only difference is that the associated wholesaler is responsible for the external transportation charges whereas the independent wholesaler is not. The associated wholesaler will have to receive as remuneration for the functions performed an amount equal to the remuneration received by the independent wholesaler, plus a mark-up to cover the external transportation charges. The external transportation charges are 12 per cent of the retail price (i.e. EUR 1.50 per bottle selling at EUR 12.50). This means that a commercial gross profit margin for the associated wholesaler can be set at 72 per cent (i.e. 60 per cent plus 12 per cent). Using this figure as a basis, the resale price method can be used to

calculate the following transfer price for the associated wholesaler:

Retail price	12.50	100%
Required gross profit margin	9.00	72%
Arm's length transfer price	3.50	28%

The example shows that the associated wholesaler and the independent wholesaler pay the same purchase price, including external transportation charges (i.e. EUR 3.50 plus EUR 1.50 equals EUR 5).

2.3. Cost-plus method (*Paragraphs 2.32-2.48*)

The cost-plus method is the third traditional transaction method. In applying this method, the costs incurred by the enterprise are divided into the direct and indirect costs that can be allocated to individual transactions with (associated) enterprises (hereinafter: the direct and indirect costs) and the enterprise's other costs which cannot be allocated to individual transactions in such way (hereinafter: overhead costs). An appropriate mark-up that is required to realise profit in accordance with the functions performed is applied to the direct and indirect costs (the cost base) that can be allocated to an individual transaction with an associated enterprise. The mark-up also has to cover the overhead costs. The method is, therefore, based on a gross profit margin. This is the difference between the cost-plus method and the transactional net margin method, in which the operating profit is calculated either as a percentage of total cost, i.e. including overhead costs, or as a percentage of turnover.

Budgeting versus actual cost

In general, prices will be determined in advance based on budgeted cost. If the actual costs that are related to the transaction are higher than the budgeted costs, it depends on the nature of the difference whether or not this will lead to an adjustment of the price. In general, one can assume that the higher costs that are the result of inefficiency will be for the account of the party which performs the functions and services. This is after all the party that can influence the costs. In such a situation, an independent customer would not accept a price adjustment.

A requirement for a correct determination of the transfer prices based on budgeting is that these budgets are determined in an economically correct manner.

Overcapacity losses

A special situation presents itself with a "contract manufacturer". The characteristic of a contract

manufacturer is that it performs certain production activities regarding the products of the principal in return for a previously agreed to fee. Because the goods in question remain the principal's property, the contract manufacturer assumes only a limited degree of risk with regard to the goods. Associated enterprises often subcontract production activities to a contract manufacturer working exclusively for the enterprise in question. The transfer prices are then often calculated on the basis of either the cost-plus method or the TNMM. Here too, the calculated mark-up should reflect the functions performed. An important factor for the calculation of the mark-up for the contract manufacturer is the question of who is responsible for any overcapacity losses. If these are the responsibility of the principal, a low(er) mark-up may be sufficient.

Disbursements

Costs that have the character of disbursements may be excluded from the cost base. These includes costs that are initially paid by the performing party but which are generally passed on separately to the client, for example, legal dues, court registry charges and costs charged for third party services. Although these external charges are related to the functions performed by the performing party, they do not warrant any additional remuneration, as there is no question of any added value generated by the performing party.

Financing costs

As is indicated earlier, overhead costs are excluded from the cost base, but should be covered by the mark-up. Generally, the costs of the capital, both the equity and the loan capital that is used for financing the enterprise's activities are regarded as forming part of the overhead costs. If, however, the financing costs are included in the direct costs in comparable situations, they should be included in the cost base.

Situations in which the cost-plus method can be used

The OECD Guidelines give examples of situations where the cost-plus method can be applied. This method is probably very useful where semi-finished goods are sold between related parties, where related parties have concluded joint facility agreements or long-term buy-and-supply arrangements, or where the controlled transaction is the provision of services (see Paragraph 2.32). Paragraphs 2.46 to 2.48 of the OECD Guidelines provide examples of possible applications of the cost-plus method. From these examples it appears that the cost-plus method gives the most reliable outcomes in situations where the functions performed are relatively straightforward and the contribution made by the associated party concerned is also of little added value or relatively straightforward.

Start-up period

Given that the cost-plus method will generally be used in relatively risk-free and straightforward settings, a party acting on an arm's length basis will not accept that during the start-up period no mark-up is charged. At the same time, the taxpayer may incur a loss because he is less efficient and, therefore, incurs relatively more expenses than the unrelated third party that has been used as a benchmark for the purpose of calculating the mark-up (see the section above on budgeting).

Example

A Dutch company (A) assembles computers for the European market on behalf of an independent computer manufacturer in country X. The assembly work is based on standard instructions compiled by the computer manufacturer in country X. Both the components and the finished products are and remain the property of the computer manufacturer in country X. The remuneration that A agrees with the computer manufacturer is fixed as follows:

Budgeted attributable costs (i.e. direct and indirect assembly costs)	100
Budgeted mark-up to cover overhead costs, plus profit mark-up (60%)	60
Price set	160

A computer manufacturer from country Y decides to set up a subsidiary in the Netherlands (B) to assemble computers for the European market. Whilst the computers assembled by A and B are not entirely identical, the assembly work performed by the two enterprises is comparable. In addition, the two companies assume similar risks (i.e. the computer manufacturer from country Y also holds and retains the title to both the components and the finished products). This means that A and B perform comparable functions. The direct and indirect costs resulting from B's assembly activities are EUR 110.

The cost-plus method can be used as follows to determine the arm's length price.

Budgeted attributable costs (i.e. direct and indirect assembly costs)	110
Budgeted mark-up to cover overhead costs, plus profit mark-up (60%)	66
Arm’s length transfer price set	176

2.4. Profit-split method (*Paragraphs 3.5-3.25*)

The profit-split method is a transactional profit method. If transactions are strongly interconnected, they can often not be evaluated separately. With the profit-split method, first the combined profit accruing to the

associated enterprises from a controlled transaction is identified. Subsequently, this profit is split between the associated enterprises in a manner that approximates to the division of profits that would have occurred in an agreement made at arm's length.

2.5. Transactional net margin method (TNMM) (*Paragraphs 3.26-3.48*)

The TNMM is also a transactional profit method. The net operating profit (i.e. earnings before tax, interest and extraordinary income and expenditure) relating to an appropriate base (such as costs, turnover or assets) that the taxpayer realises from a controlled transaction is compared with the net profit that a third party operating in comparable circumstances and performing comparable functions realises from comparable transactions. Further details on this method are given in Paragraphs 3.26 to 3.48 of the OECD Guidelines.

In the following paragraphs, the difference between the TNMM and the resale price method on the one hand and the TNMM and the cost-plus method on the other is illustrated by two examples.

2.5.1. TNMM versus the resale price method

The details of this example are the same as those in the example used to illustrate the resale price method, with the exception of the additional information given below on the composition of the aggregated costs.

A producer in country X sells wine to an associated Dutch wholesaler. The same producer in country X sells the same wine to an independent Dutch wholesaler for EUR 5 per bottle. Under the contract agreed with the independent wholesaler, the external transportation costs are for the account of the producer. Under the arrangement made with the associated wholesaler, the external transportation charges of EUR 1.50 per bottle are not borne by the producer but by the wholesaler. The other circumstances are the same for the associated wholesaler and the independent wholesaler. The wine sells at EUR 12.50 per bottle.

Additional information: the other costs incurred by the independent wholesaler in addition to the purchase price of the wine are estimated at EUR 6.25 per bottle.

The net profit margin earned by the independent wholesaler may be calculated as follows:

Retail price	12.50	100%
Purchase price paid by independent wholesaler	5.00	40%
Gross profit margin earned by independent wholesaler	7.50	60%
Other costs	6.25	50%
Net profit margin earned by independent wholesaler	**1.25**	**10%**

The associated wholesaler performs the same functions as the independent wholesaler. There are certain costs, however (i.e. the external transportation charges of EUR 1.50 per bottle), that the associated wholesaler bears that are not borne by the independent wholesaler. Provided that there is no difference in the type of functions performed, this type of difference in the division of costs between the producer and the wholesaler will not result in any difference in the net profit margin agreed between the two parties. In other words, the associated wholesaler will need to earn the same net profit margin as the independent wholesaler. The purchase price paid by the associated wholesaler may be calculated as follows:

	Independent wholesaler	**Associated wholesaler**
Retail price	12.50	12.50
Purchase price	5.00	?
External transportation charges	0.00	1.50
Other costs	6.25	6.25
Profit	1.25	1.25

The profit margin earned by the associated wholesaler must be the same as that earned by an independent third party. This means that the purchase price has to be set at EUR 3.50.

The retail price charged by the associated wholesaler may be broken down as follows:

Purchase price paid by associated wholesaler	3.50	28%
Other costs	7.75	62%
Net profit margin earned by associated wholesaler	1.25	10%
Retail price	12.50	100%

2.5.2. TNMM versus the cost-plus method

The details of this example are the same as those in the example used to illustrate the cost-plus method, with the exception of the additional information given below on the composition of the aggregated costs.

A Dutch company (A) assembles computers for the European market on behalf of an independent computer manufacturer in country X. The assembly work is based on standard instructions compiled by the computer manufacturer in country X. Both the components and the finished products are and remain

the property of the computer manufacturer in country X.

Additional information: the remuneration that A agrees with the computer manufacturer is fixed as follows:

Indirect and direct assembly costs + overhead costs	145	(100%)
Net profit mark-up	15	(10.3%)
Price set	160	(110.3%)

A computer manufacturer from country Y decides to set up a subsidiary in the Netherlands (B) to assemble computers for the European market. Whilst the computers assembled by A and B are not entirely identical, the assembly work performed by the two enterprises is comparable. In addition, the two companies run similar risks (i.e. the computer manufacturer from country Y also holds and retains the title to both the components used and the finished products). This means that A and B perform comparable functions. B's aggregate costs are estimated at EUR 160.

Using the TNMM method, the transfer price may be calculated as follows:

Indirect and direct assembly costs + overhead costs	160	(100%)
Net profit mark-up	16	(10.3%)
Price set	176	(110.3%)

3. Administrative approaches for avoiding and resolving disputes on transfer pricing (*Chapter IV*)

3.1. Mutual agreement procedures (Paragraph 4.61)

3.1.1. General

The number of mutual agreement and arbitration procedures with treaty countries is growing as a result of the rapid globalisation of the economy coupled with the increasing interest of tax administrations in transfer pricing issues. Accordingly, it is becoming increasingly important for the business community to be aware of the policies and procedures followed by the Netherlands' government in relation to such mutual agreement and arbitration procedures. The Netherlands aims at resolving issues of double taxation caused by transfer pricing adjustments as quickly as possible, and wishes to minimise the (administrative) burden placed on the private sector as a result of such adjustments.

All of the treaties for the avoidance of double taxation that the Netherlands has entered into contain a clause that is comparable to Article 25 of the OECD Model Tax Convention. In addition, for Member States of the European Union, the Convention on the Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises (henceforth the Arbitration Convention (90/436/EEC)) applies since 1 January 1995. Unlike the mutual agreement procedures, the Arbitration Convention actually obliges the signatories to eliminate double taxation.

Taxpayers are entitled to lodge an objection or appeal if they are of the opinion that a profit adjustment is not justified. In addition, if the profit adjustment leads to international double taxation, taxpayers can also submit an application for a mutual agreement or arbitration procedure to the competent authority in either one of the Member States or both of the Member States involved.

3.1.2. Address for submitting the request

A request for the application of the mutual agreement article of a treaty or an Arbitration Convention procedure should be addressed to the competent authority, i.e.:

The Ministry of Finance
Director of International Tax Policy and Legislation
P.O. Box 20201
2500 EE The Hague
The Netherlands

Requests for a reduction in previous tax assessments resulting from transfer pricing adjustments either already made or likely to be made in the future by foreign tax administrations (i.e. requests for corresponding adjustments) should be addressed to the Ministry of Finance for the attention of the Director of the International Tax Policy and Legislation Directorate.
The competent authority will send a copy of all applications to the Co-ordination Group on Transfer Pricing (*Coördinatiegroep verrekenprijzen*, CGVP) for their advice. The CGVP was set up in March 1998 (see the Decree of 30 March 2001, No. RTB/1365M). In all cases, consultation will take place between the CGVP and the International Tax Policy and Legislation Directorate on the final position.
Where requests for corresponding adjustments in relation to either past or future tax assessments are received by the competent tax inspector, the latter should pass on such applications to the CGVP. The CGVP is responsible for soliciting the views of the International Tax Policy and Legislation Directorate on

the matter and will give the inspector a binding advice on how the application should be dealt with.

3.1.3. Deadline for submitting the request

Article 25 of the OECD Model Tax Convention states that requests for competent authority assistance must be presented within three years from the first notification of the action resulting in international double taxation. Article 6 of the Arbitration Convention contains a similar clause. Neither the commentary on Article 25 of the OECD Model Tax Convention and the Arbitration Convention, nor the text of the articles themselves, make it clear what exactly is meant by the term "first notice". The position taken by the Netherlands' government is that the taxpayer's request is regarded as having been submitted in time if it is received within three years either of the date of the assessment incorporating the adjustment or of the date on which justification was given for the adjustment, should this be later. As the mutual agreement and arbitration procedures involve more than one state, the taxpayer should ascertain the position adopted by the other state with regard to the starting date of the three-year period. If the other state has a different position, this could result in the three-year period commencing on a date prior to that on which the three-year period starts in accordance with the Netherlands' position.

Where the period quoted in the mutual agreement clause in a specific tax treaty differs from the period of three years referred to above, the taxpayer should take regard of the text of the mutual agreement clause and the commentary on this clause in the treaty. As long as there is no conflict either with the tax treaty in question or with the commentary on the treaty, the principle outlined in the preceding paragraph will be followed by analogy.

3.1.4. Concurrence of the objection and appeal procedure and the mutual agreement procedure

In principle, the competent authority in the Netherlands will not consult the competent authority in the other state involved as long as the taxpayer has the possibility under Netherlands' law (i.e. in the form of an objection, an appeal or an appeal in cassation) to contest a tax assessment resulting either from an adjustment or from the rejection of an application for a corresponding adjustment. The competent authority in the other state will, however, be informed that an application for a mutual agreement or arbitration procedure has been received. The reason for not starting consultation is the fact that, until the domestic procedure has been completed, it is not clear whether or not any international double taxation will indeed arise and, if so, what amount will actually be involved.

In certain situations, however, it may be highly inefficient for the competent authority to wait for the completion of all domestic procedures before starting a consultation with a foreign competent authority. For this reason, taxpayers are offered the possibility to request the competent authority to enter into consultation with the competent authority of the foreign state in question, in spite of the fact that the domestic procedures are still pending. A request to this effect will be granted only if the following conditions are met:

- the request for an early commencement of consultation must be made to the competent authority within six weeks of the date of the decision taken on the applicant's letter of objection. The request should be accompanied by a copy of the appeal (either substantive or pro forma) lodged with the Court of Appeal;
- the competent authority will only start the consultation after the Court of Appeal has approved the suspension of legal proceedings for the duration of the mutual agreement or arbitration procedure. To this end, the taxpayer is required to produce a written statement indicating his willingness to lend his full co-operation for a period of two years in obtaining the Court of Appeal's approval for the suspension of legal proceedings or, as the case may be, for the extension of the suspension of legal proceedings. Upon the expiry of this two-year period, the taxpayer is free to request the Court of Appeal to recommence legal proceedings;
- the tax administration and the taxpayer should sign a determination agreement in which the taxpayer undertakes immediately to cease legal proceedings if the mutual agreement or arbitration procedure leads to the elimination of the international double taxation in accordance with the mutual agreement or arbitration clause in the relevant treaty; and
- the competent authority is entitled to deny a request for an early commencement of consultation if the inspector submits detailed evidence showing that the taxpayer has failed to comply with his administrative obligations, as a result of which the burden of proof with respect to the adjustment to which the adjustment relates has been transferred to the taxpayer.

The competent authority in the other state may well not be prepared to assist in the early commencement of the mutual agreement or arbitration procedure, for example, because it feels that there is not sufficient certainty as to the existence of the international double taxation in question. If this situation occurs, the Netherlands' competent authority should notify both the taxpayer and the competent tax inspector immediately. Once they have received this notification, both the taxpayer and the tax inspector are entitled to request the Court of Appeal to recommence legal proceedings.

3.1.5. Start of the two-year period referred to in Article 7 of the Arbitration

Convention

The Decree of 13 October 1997 (No. IFZ97/1113M) and the letters of 19 December 1997 (No. IFZ97/1515) and 15 April 1998 (No. IFZ98/266U) from the State Secretary for Finance to the Permanent Finance Committee of the Lower House of the Netherlands' Parliament set out the government's position on the Arbitration Convention. The Decree of 13 October 1997 (No. IFZ97/1113M) sets out the government's position on the start of the two-year period referred to in Article 7 of the Arbitration Convention. According to the wording of the latter decree, the Netherlands assumes that the two-year period does not start until the competent authority in the other state has rejected the adjustments made by the first state and the tax assessment incorporating the adjustments has been irrevocably determined. Developments in neighbouring countries have caused the Netherlands' government to revise its position on the two-year period. The period is now assumed to start on the later of the following two dates:

- the date on which the tax assessment incorporating the adjustments is irrevocably determined; and
- the date on which the competent authority receives the request.

In principle, it is up to the taxpayer to decide whether or not to invoke the Arbitration Convention straightaway or to avail himself first of the various legal remedies available under Netherlands' law. For the remainder, the decrees referred to above retain their validity.

Even in situations in which the competent authority has started the "early" consultation with the other state involved, as described in section 3.1.4., the wording of Article 7, Paragraph 1, second sentence, of the Arbitration Convention means that the two-year period does not start until the tax assessment incorporating the adjustments has been irrevocably determined. In terms of Article 7, Paragraph 4, of the Arbitration Convention, however, this requirement may be ignored, provided that this is done with the agreement of both the competent authorities and the associated enterprises in question. In terms of this article, the Netherlands' competent authority, acting on the request of the associated enterprises, will suggest to the competent authority in the other state that the two-year period should be limited to no more than twelve months after the date on which the tax assessment incorporating the adjustments has been irrevocably determined. A request to this effect from the associated enterprises in question must be received by the Netherlands' competent authority within six weeks of the date on which the tax assessment incorporating the adjustments has been irrevocably determined. A copy of the proposal to reduce the term will be submitted to the taxpayer at the same time the proposal is submitted to the other competent authority. As soon as the competent authority receives a reply to the request, the taxpayer will be notified.

3.1.6. Oral explanation by the taxpayer

To a greater extent than in other situations, the underlying facts and circumstances play a key role in making and substantiating transfer pricing adjustments. In most cases, the underlying facts and circumstances are both complex in nature and numerous in quantity. Experience shows that taxpayers involved in mutual agreement and arbitration procedures relating to transfer pricing adjustments would like an opportunity to explain their position orally to the competent authority. In the light of this apparent need, taxpayers will upon request be given an opportunity to give such an oral explanation. Taxpayers may indicate, when submitting a request for a mutual agreement or arbitration procedure to be put into motion, that they wish to avail themselves of this opportunity.

3.1.7. Deadline for making a corresponding adjustment by means of a reduction ex officio in the tax assessment

It is frequently the case that, when a foreign state makes a transfer pricing adjustment, the corresponding tax assessments in the Netherlands have already been irrevocably determined. In such an event, a corresponding adjustment will, if necessary, be made in the form of a reduction ex officio in the tax assessments. The Decree on reductions ex officio in irrevocable tax assessments (the Decree of 25 March 1991 (DB89/735)) has given the tax administration a period of five years (plus any extension that has been granted to the taxpayer) in which to grant a request for a reduction ex officio. This period may be extended by a further five years if a reasonably recognisable error has been made. In certain situations in which a mutual agreement procedure has been conducted as a result of transfer pricing adjustments, the five-year period has been found to be too short, despite the fact that the time limits set for the submission of requests in the relevant tax treaty or in the Arbitration Convention have been met. I agree to an extension of the five-year period in such cases, on condition of course that sufficient data are available to substantiate the existence of international double taxation.

3.1.8. Transfer pricing adjustments and interest charges (*Paragraphs 4.64 - 4.66*)

In addition to the actual transfer pricing adjustment that forms the subject of the mutual agreement or arbitration procedure, differences between the arrangements made by the respective states with regard to the collection and assessment of interest charges related to the adjustments may also cause international double taxation. In some cases, the amount of interest due may actually be larger than the tax charge. For this reason, Section 30k of the General Tax Act (*Algemene Wet inzake Rijksbelastingen*) and Section 31a of the Tax Collection Act 1990 (*Invorderingswet* 1990) create the possibility of including interest payments

in any compromise reached in a mutual agreement procedure. When conducting mutual agreement and arbitration procedures, the Netherlands' government will seek to ensure that the assessment and collection of interest charged by one state and paid by the other state match each other.

Where the Netherlands is the state making the adjustment, the Netherlands' tax administration will upon request grant a deferral of payment on that part of the tax charge that is related to the adjustment. In principle, deferral will be granted until the date on which both the domestic and the international procedures for resolving the dispute have been completed. The policy in this respect will be based on the policy applying to objections lodged against tax assessments (see Article 25, Paragraph 2, of the Tax Collection Guidelines 1990 (*Leidraad Invordering* 1990)). The Tax Collection Guidelines 1990 will be amended on this point. This means that the entities involved will, apart from the obligatory collection and assessment interest, not have any other form of loss of interest. The above will resolve the interest and financing problems that can be caused by mutual agreement and arbitration procedures.

4. Secondary adjustments (*Paragraphs 4.67 - 4.77*)

Paragraphs 4.67 to 4.77 of the OECD Guidelines deal with the consequences of secondary transactions. Most countries do not limit transfer pricing adjustments to adjustments of taxable income, but also require that a secondary transaction is made so that the taxpayer's accounts reflect the way in which the adjustment made to the taxpayer's profit and loss account and balance sheet has been processed. A secondary transaction may take the form of an adjustment to a current account, a distribution of income or an informal capital payment. The Netherlands' authorities always require a transfer pricing adjustment to be processed by means of a secondary transaction. A secondary transaction may lead to a secondary adjustment, such as the attribution of interest to the current account, the levying of dividend withholding tax on a distribution of income, or the levying of capital duty on an informal capital payment. Systems differ from one country to another, and this means that the foreign tax authority in question may not be prepared, for example, to credit the dividend withholding tax against its own tax because it does not recognise the payment of a deemed dividend. The secondary adjustment is not performed if the taxpayer is able to demonstrate that, in the light of the difference between the tax systems used by the two states, the dividend withholding tax paid cannot be credited and there is no situation of abuse aimed at the avoidance of dividend withholding tax.

5. Arm's length pricing when valuation at the time of the transaction is highly uncertain (*Paragraphs 6.28 - 6.35*)

Where intangible assets such as patents are transferred, it may be difficult to establish the value at the time of the transfer because not enough information is available about the future benefits and risks. Paragraph 6.34 states in this respect that, if independent enterprises under similar conditions would have demanded a price adjustment clause, a tax administration must be permitted to calculate the price using this type of clause. This refers to an arrangement whereby the fee is commensurate with the benefits that the intangible asset will generate in the future. Agreeing to a benefit dependent fee contributes to taxation that is more in accordance with the actual results obtained. In certain circumstances, the Netherlands' tax administration also takes the position that it is not at arm's length to agree on a fixed price if there is very little certainty about the asset's value at the time of the transaction, as unrelated third parties would not agree on a fixed price in a similar situation. In such cases, a price adjustment clause should be incorporated into the contract between the associated enterprises stating that the price charged depends partly on the level of future income. An example would be the situation in which a new intangible asset has been developed that is sold to an associated enterprise at a time when there are very few guarantees as to its future success, for instance because it has yet to generate any revenue and any estimates of future revenue are surrounded by major uncertainties. In these circumstances, it is very difficult value the asset at the time of the transaction and it would be sensible for the parties to use an arm's length price adjustment clause (see, for example, the Supreme Court decision of 17 August 1998 (No. 32.997, BNB1998/385)).

6. Intra-group services (*Chapter VII*)

According to the arm's length principle, an intra-group service is an activity performed for a group entity that adds economic or commercial value and for which the group entity concerned would normally have been willing to pay. This does not apply to activities performed as a shareholder. The taxpayer can choose one of the methods described above for calculating the transfer price. In principle, remuneration is regarded as arm's length only if it includes an appropriate profit mark-up. The only exception to this requirement is the situation described in Paragraph 7.33 of the OECD Guidelines.

As far as charging for intra-group services is concerned, the OECD Guidelines express a clear preference for a direct method (Paragraph 7.20). Experience shows, however, that indirect methods are also frequently used, because of the major practical problems that the direct method can cause. Where such practical problems occur, the Netherlands' tax authorities will accept the indirect method chosen by the taxpayer. Obviously, the method must produce a reliable result that is in accordance with the arm's length principle. For the purposes of an allocation key, the relationship between turnover, the number of personnel, or the human resource expenses could be relevant. An allocation key in which the price

charged depends on the level of profit is not regarded as generating a result that is in accordance with the arm's length principle.

7. Contributions to a Cost Contribution Arrangement (CCA) with a profit mark-up (*Chapter VIII*)

Paragraph 8.15 of the OECD Guidelines leaves member countries the option of using both market prices (with a profit mark-up) and cost (without a profit mark-up) for the calculation of contributions to a CCA. Some countries give a precise definition of the transactions between related parties which can be regarded as a CCA (without a profit mark-up) and transactions which can be regarded as services (with a profit mark-up). A CCA is defined here as an agreement between related parties in which each of the participants makes a relatively similar contribution and receives relatively similar benefits, and these contributions and benefits are permanently in balance. The Netherlands does not offer a specific definition of what can be classified as a CCA. In principle, a profit mark-up need not be added in a situation where each of the parties makes a similar contribution and receives relatively similar benefits, so that the mutual relationship is fairly in balance. Whether or not such a balance has actually been achieved in practice is a matter that has to be assessed on a case-by-case basis. When embarking on a CCA, one problem is how to make a correct assessment of the likely contributions and benefits for the various participants. The Netherlands takes the position that in principle a profit mark-up is always required on intercompany transactions. If interested parties nevertheless choose not to add a profit mark-up, that choice will have to be properly substantiated. In this respect , see the recommendations on the form of documentation to be supplied in Paragraph 8.40 of the OECD Guidelines.

Certain countries may not allow a mark-up to be charged. In such cases, they may well permit a fee to be charged for the capital tied up in the activities in question. Both methods may lead to the same result. The Netherlands' tax administration may give its consent to a particular modus operandi in the light of the acceptability of charges in certain countries, provided that the result is in accordance with the OECD Guidelines.

8. Arm's length fee for financial services

Financial services exist in a vast variety of forms. Here too, an arm's length price should be calculated on a case-by-case basis, based on the functions performed and on a comparison with transactions between third parties. If the functions of a financial service company consist primarily in supplying loans, the

functions performed by the company in question are basically comparable with the functions performed by independent financial institutions operating under the supervision of the Netherlands' Central Bank (*De Nederlandse Bank*). The application of the arm's length principle implies that the arm's length price for the functions performed should be based on the fees charged by these institutions for comparable services.

Basically, there are four aspects that financial institutions, the functions of which consist of supplying loans, take into account when deciding whether or not to make a loan and, if so, on what conditions this should be made and what level of fee they should charge.

- *Financial risk*. In order to determine the financial risk assumed by the lender, the borrower's financial position is assessed on the basis of its balance sheet and profit and loss account.

- *Debtor risk*. Three specific aspects are scrutinised in order to measure the debtor risk, i.e. the presence of collateral, the purpose of the loan and the term of the loan.

- *Business risk/classification of the quality of the loan*. The assessment of this type of risk is based on the lender's views on the sector in which the borrower is active.

- *Structural risk*. The calculation of this type of risk is based on the classification (ratings) assessed by independent credit rating agencies.

In principle, these elements should be taken into account in determining the arm's length fee which an associated lender should charge.

Independent financial service providers calculate the charges for their loans by adding a number of mark-ups or surcharges to the basic cost of funding, i.e. a surcharge to take account of solvency requirements, a surcharge to take account of the credit risk, a handling fee and a mark-up for any foreign exchange risk that may be involved. The credit risk should be calculated on the basis of the contractual terms of the loan and the results of the risk analysis described above. The contractual terms of the loan also affect the degree of foreign exchange risk. Independent financial service providers always link the size of the fee charged to either the amount of money borrowed or the market value of assets held under management.

A surcharge to take account of solvency requirements may be based on the lender's own solvency or on the solvency of an associated enterprise that is acting as a guarantor, as in the latter case it is the

guarantor's capital that is at risk. In the former case, the surcharge will consist of an arm's length fee for the equity that the lender needs to retain for the purpose of the transaction. In the latter case, the enterprise acting as a guarantor will in principle charge a fee in return for placing its capital at risk. The solvency surcharge charged by the lender should at least consist of the cost of the guarantee.

If either the incoming or the outgoing interest payments are liable to withholding tax, the price charged in a transaction involving two unrelated enterprises will generally take account of which of the two ultimately pays the tax.

9. Subsidies, tax incentives and costs subject to deduction restrictions

It is clear from practical experience that, particularly in situations in which the cost-plus method is used for determining an arm's length price, the question arises as to whether or not subsidies and tax benefits should be deducted from the cost base. The basic rule in the Netherlands is that subsidies may be deducted from the cost base if there is a direct relationship between the subsidy and the product or service supplied, and the subsidy is granted in the form of a discount or a cost allowance. This would be the case, for example, with a subsidy granted for the use of relatively expensive but environmentally friendly materials, a grant awarded on the purchase of an energy-efficient piece of machinery, or a grant made under the government's investment grant scheme (*investeringspremieregeling* (IPR)). Conversely, additional taxes, for example, in connection with the use of materials that are detrimental to the environment, will lead to an increase in the level of the cost base. Reduction remittances referred to in Section 3 of the Wages and Salaries Tax Act (*Wet vermindering afdracht loonbelasting en premie voor de volksverzekeringen*) reduce wage costs and result in a lower cost base for the application of the cost-plus method.

Subsidies and tax benefits granted specifically to the entity in question without any causal link with the cost-plus activity do not lead to a lowering of the cost base. Insofar as these form part of the pre-tax profit, they are credited individually to the profit and loss account.

If the tax benefits in question are granted in the form of tax credits or allowances that may be deducted from the enterprise's taxable income, allowances for work-related training and investment allowances may not be deducted from the cost base. The rule is that the profit should first be calculated using the cost-plus method, after which the allowance is deducted separately from the taxable income.

Under Netherlands' tax law, certain types of cost are not fully deductible. This applies, for example, to costs incurred under Section 3.14 of the Income Tax Act 2001. At the same time, these costs do form part of the cost base to which the cost-plus mark-up is applied. The restriction on the deduction of these costs is implemented by adding the non-deductible part of the cost to the profit when determining the taxable profit.

10. Allocation of profit to headquarters and permanent establishments

The arm's length principle applies by analogy to the permanent establishments of foreign taxpayers. This is in accordance with the existing practice of allocating profits to a foreign taxpayer's permanent establishment under Article 7 of the OECD Model Tax Convention. The country in which the permanent establishment is located is entitled to tax any profits that can be allocated to the permanent establishment in question. Revenue and expenditure are divided between the headquarters and the permanent establishment in accordance with the functions performed by each of them, as if they were unrelated enterprises. This means that an arm's length price should be used for internal supplies of goods and services, except where the commentary on Article 7 of the OECD Model Tax Convention, the Double Taxation Avoidance Decree 2001 (*Besluit voorkoming dubbele belasting* 2001) and/or Netherlands' case law impose certain restrictions on such practices

Any assets transferred to a Netherlands' permanent establishment by the foreign headquarter (i.e. including intangible assets) are valued at fair market value. This applies equally to goodwill. For the purpose of calculating the profit made by the Netherlands' permanent establishment, depreciation of the fair market value of the goodwill and other fixed assets is taken into account.
In order to prevent either all or part of the capitalised value from being disregarded by the relevant foreign tax authorities, the treaty partner will be informed of the capitalised value of the assets in question.

Under the provisions of Article 9 of the Double Taxation Avoidance Decree 2001, the above also applies to the mirror image situation in which the taxpayer needs to calculate the amount of profit that is attributable to a foreign permanent establishment (see also the Decree of 22 January 1996 (No. DGO96/06916)).

Article 7, Paragraph 3, of the OECD Model Tax Convention lays down certain rules for the deduction of costs from the profit allocated to the permanent establishment. Managerial fees and general

administration charges are regarded as qualifying costs irrespective of the country in which these are incurred. In connection with this, Paragraph 3 of Article 7 should be seen as a clarification of, and not as a restriction on, Paragraph 2 of Article 7.

11. Entry into force

This Decree enters into force on 1 April 2001

12. Application to current policy

The publications listed below under points 1 to 11 apply exclusively to rulings (including "quasi" rulings) which, under the transitional arrangement set out in the Decree of 21 December 2000 (No. RTB2000/3227M), are due to expire after 31 March 2001. I should like to point out for the sake of clarity that any rulings currently in force that are consistent with the policy as at 31 March 2001 and which are due to expire before 31 December 2005 will be extended to 31 December 2005, unless the taxpayer wishes to adhere to the earlier date specified in the ruling. It goes without saying that the applicability of the ruling may not be extended beyond 31 December 2005.

The published, tailor-made rulings listed under point 12 below continue to remain valid in accordance with the provisions of the first paragraph with regard to rulings and "quasi" rulings. These publications also remain valid, provided that the policy set out therein is unconnected with the policy that is to be revoked as described in points 1 to 11 below, and on condition that there is no conflict with the provisions of the present decree. The policy on the participation exemption and the provision of advance assurance on the participation exemption remain unchanged.

1. Decree of 25 April 1985 (No. 084-2737); Tax treatment of certain intra-group activities (BNB1985/196).

2. Announcement of 7 May 1985 (No. 285-6549) by the State Secretary for Finance on the treatment of foreign sales corporations, as published in *Infobulletin* 1985/253. This publication contains the letter of 3 December 1985 (No. 284-17129) from the State Secretary for Finance and the letter of 25 March 1985 (Ref. 285-4056) from the State Secretary for Finance.

3. Letter of 15 October 1985 from the State Secretary to the Permanent Finance Committee of the Lower

House of the Netherlands' Parliament, and of 24 December 1986 to the Secretary General of the Lower House of the Netherlands' Parliament (Proceedings II, 19700, Chapter IXB). Nos. 25 and 36 respectively.

4. Decree of 6 June 1989 issued by the State Secretary for Finance, Policy on the extension and termination of tax rulings, Government Gazette (*Staatscourant*) 107.

5. Announcement of 8 August 1989 (No. DB89/3695) by the State Secretary for Finance, Profit ruling on perpetual loans, as published in *Infobulletin* 1989/504.

6. Decree of 26 April 1990 (No. CA90.3) issued by the State Secretary for Finance, Explanatory notes on the concentration of the treatment of rulings, and the reprint of 15 September 1997.

7. Announcement of 4 February 1993 (No. DB93/228) by the State Secretary for Finance, Spreads for finance rulings/arm's length remuneration in respect of finance companies, published in V-N1993/496, point 19, and the revised edition published in V-N1993/606, point 20.

8. Decree of 5 March 1993 (No. DB93/881) issued by the State Secretary for Finance, Ruling, mixed expenses under "Oort" regulations and cost-plus rulings, second reprint of 15 September 1997.

9. Model book rulings, Tax Ruling Team at Local Office for Business Taxpayers/Large Companies in Rotterdam, September 1993.

10. Announcement by Local Office for Business Taxpayers/Large Companies in Rotterdam, unnumbered and undated, guidelines on ruling companies, V-N1994/173, point 28.

11. Brochure outlining the ruling policy, *Financiënreeks* 95-3, 17 February 1995, DB95/761M.

12. Published non-standard, tailor-made rulings:

- Letter of 15 March 1990 from the State Secretary for Finance (No. DB 90/1475);
- Letter of 20 February 1992 from the State Secretary for Finance (No. DB92/831);
- Letter of 7 January 1993 from the State Secretary for Finance (No. DB92/6363);
- Decree of 16 September 1994 (No. V-N1994, p. 3018) issued by the State Secretary for Finance;
- Letter of 11 October 1994 from the State Secretary for Finance;
- Letter of 14 December 1994 from the State Secretary for Finance (No. DB94/4108M);

- Decision of 18 June 1999 (No. WJB99/534) taken by the State Secretary for Finance, V-N1999/31.27;
- List of non-standard rulings for the period from 1995 to 1998, as published in *Fiscaal up to Date* of 7 December 1999, No. 1999-1854, p. 5 ff; and
- List of non-standard rulings for the period from 1999 to mid-September 2000, as included in Annexe 4 to the letter of 20 November 2000 (No. G2000-00454) from the State Secretary for Finance to the Lower House of the Netherlands' Parliament.

The Decree of 18 December 2000 (No. IFZ2000/1327M, transfer of goodwill to a permanent establishment in the Netherlands) is repealed as of 1 April 2001, given that its contents are incorporated into the present decree.