



District Court confirms application of Profit Split Method in a client's Transfer Pricing case

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On 2 December 2025, the District Court of Noord-Holland ruled in a transfer pricing dispute concerning profit allocation to a permanent establishment (“PE”). NovioTax represented the taxpayer, defending the application of the Profit Split Method (“PSM”), allocating 70% of residual profits to the Netherlands and 30% to the PE jurisdiction, against the cost-plus approach (“TNMM”) proposed by the Dutch Tax Authorities (“DTA”). The DTA had proposed an adjustment for fiscal years 2018-2020 based on the TNMM with 15% mark-up on a restricted cost base, effectively allocating 97% of profits to the Netherlands. The dispute involved transfer pricing adjustments of approximately €3.3 million.¹

With respect to the burden-of-proof, the court ruled in favour of the taxpayer, determining that Article 27e of the Dutch General Tax Act (*Algemene wet inzake rijksbelastingen*, “GTA”) did not apply. Article 27e GTA applies (a.o.) when a taxpayer fails to file the required tax return. In such cases, not only does the burden of proof shift to the taxpayer (i.e., reversal of burden-of-proof), but the standard of proof also increases from “*aannemelijk maken*” (i.e., making plausible) to “*overtuigend aantonen*” (i.e., demonstrating convincingly).

The court observed that the taxpayer's position on the profit allocation to the PE and the use of the PSM was substantiated and defended with comprehensive transfer pricing documentation. Accordingly, with regard to applying the reversal and increased burden of proof under Article 27e GTA, the court held that the DTA had not established that the taxpayer had been aware, or should have been aware, that an incorrect tax return had been filed.

Consequently, the burden of proof rested on the DTA to demonstrate that the PSM was unsuitable or that it yielded a non-arm's length profit allocation in the case at hand. The court concluded that this was not the case, partly based on statements by key employees, which the court found to be credible as they were coherent and consistent with the information provided in the TP report, Local file 2019 and Local file 2020.² According to the court, the DTA had not sufficiently challenged this description of activities.³ The court therefore concluded that the DTA had failed to substantiate the facts and circumstances from which it followed that the PSM applied by the taxpayer was an unsuitable allocation method or that a non-arm's length profit had been attributed to the PE.⁴

¹ District Court of Noord-Holland 2 December 2025, ECLI:NL:RBNHO:2025:15830.

² ECLI:NL:RBNHO:2025:15830, consideration 35: “*De gegeven verklaringen zijn coherent en stroken met wat contractueel en in het TP-rapport, Local file 2019 en Local file 2020 is vastgelegd.*” (Informal translation: “*The statements provided are coherent and consistent with what is stipulated in the contract and in the TP report, Local file 2019 and Local file 2020.*”)

³ ECLI:NL:RBNHO:2025:15830, consideration 35: “*De rechtbank acht deze verklaringen geloofwaardig en is van oordeel dat verweerder [de Belastingdienst] onvoldoende heeft gesteld om deze beschrijving van werkzaamheden succesvol te betwisten.*” (Informal translation: “*The court considers these statements credible and finds that the defendant [the DTA] has not provided sufficient evidence to successfully challenge this description of the activities.*”)

⁴ ECLI:NL:RBNHO:2025:15830, consideration 35: “*Op grond van het voorgaande komt de rechtbank tot het oordeel dat [de Belastingdienst] er niet in is geslaagd de feiten en omstandigheden aannemelijk te maken waaruit volgt dat de door [belastingplichtige] toegepaste PSM een ongeschikte allocatiemethode is en dat een onzakelijke winst aan de VI is toegerekend.*” (Informal translation: “*On the basis of the aforementioned, the court concludes that [the Tax and Customs Administration] has failed to substantiate the facts and circumstances from which it follows that the PSM applied by [the taxpayer] is an unsuitable allocation method and that an unbusinesslike profit has been attributed to the VI.*”)

Although the submitted documentation relates to the years from 2019 onwards, this judgment also applies to 2018, since the facts and circumstances in that year were comparable to those in 2019 and 2020.⁵ The court ruled in favour of the taxpayer and annulled the DTA's decisions on objection. The taxable amounts for the years 2018 through 2020 were reduced. Including tax interest, the total refund exceeds €1 million.

Similar to the judgments of the Amsterdam Court of Appeal in the BAT case⁶ and ADM case⁷, this judgement (of the District Court of Noord-Holland) focuses on the division of the burden of proof between the DTA and the taxpayer, resulting from the concurrence of Article 8b of the Dutch Corporate Income Tax Act 1969 (*Wet op de vennootschapsbelasting 1969*, hereinafter: CITA 1969) and Article 27e GTA. The court in this case examined the delineation and characterization of the integrated transaction between the employees of the PE and the head-office and validated the PSM as the appropriate transfer pricing method.

This case demonstrates the importance of comprehensive transfer pricing documentation in dispute resolution. The taxpayer's detailed functional analysis, supported by interviews and risk assessments, established a defensible position under Article 27e GTA. The documentation further substantiated the qualification of integrated activities and justified the PSM selection under Article 8b CITA 1969.

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⁵ Consideration 38, third sentence, District Court of Noord-Holland 2 December 2025, ECLI:NL:RBNHO:2025:15830.

⁶ Amsterdam Court of Appeal, 11-09-2025, nos. 22/2467 to 22/2475, 24/40 to 24/43 and 24/57 to 24/60, ECLI:NL:GHAMS:2025:2377.

⁷ Amsterdam Court of Appeal, 11-07-2024, no. 22/2419 ECLI:NL:GHAMS:2024:19287.

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