

## **Netherlands to adopt BEPS Action 13 based Country-by-Country Reporting and documentation requirements**

The Dutch government presented its main plans for the year ahead on September 15, 2015 during the annual Budget Day (*Prinsjesdag*). Included in the plans is a new section to be added to the Dutch Corporate Income Tax Act 1969 (CITA) regarding ‘Additional transfer pricing documentation requirements’ i.e. Country-by-Country (CbC) Reporting and documentation requirements. Essentially, this means that the Netherlands will incorporate the proposed guidance of BEPS Action 13 on CbC Reporting in the Dutch CITA. The Netherlands will also incorporate documentation requirements following the master file and local file concept for multinational enterprises (MNEs) that have a consolidated group turnover larger than EUR 50 million. The proposed changes are expected to be incorporated in the Dutch CITA as of January 1, 2016.

The proposed CbC Reporting and documentation requirements constitute a ground breaking change from the current Dutch documentation requirements. Not only does the proposed legislation provide more detail on the documentation required as such, but it also introduces a penalty regarding CbC Reporting and enacts a strict filing deadline for documentation.

### **Country-by-Country Reporting**

A key objective of the BEPS Action 13 is to increase transparency through improved transfer pricing documentation standards, including through the use of CbC Reporting. CbC Reporting obliges MNEs to provide tax administrations information annually, in each jurisdiction where they do business, relating to the global allocation of income and taxes paid, together with other indicators of the location of economic activity within the MNE group.

According to the current wording of the proposed law, as from January 1, 2016, parent companies of Netherlands based multinationals with a turnover of a minimum of EUR 750 million will be required to file the new CbC Report within 12 months following fiscal year end closing. The first CBC reports would be filed in 2017 and can be filed in either English or Dutch.

The proposed law is in line with the CbC Reporting Implementation Package as issued by the OECD in June 2015. This requires tax payers to disclose per country information on revenues, profit before income tax, corporate income tax paid, corporate income tax as included in the annual accounts, stated capital, accumulated earnings, number of employees, and tangible assets other than cash and cash equivalents. Also, the following information needs to be provided for all the constituent entities of the MNE group: constituent entities resident in the tax jurisdiction, tax jurisdiction of organization or incorporation if different

form tax jurisdiction of residence, and main business activity(ies). Additional guidance will follow regarding the form and content of the CbC Report.

BEPS Action 13 proposes automatically exchanging the CbC Reports filed in the jurisdiction of the (surrogate) parent with the tax authorities of all jurisdictions in which the MNE operates. In line with the recommendations in BEPS Action 13, the proposed Dutch law obliges constituent entities in the Netherlands to file the CbC Report for the whole MNE should the CbC Report not be exchanged with the Netherlands by the country of the (surrogate) parent.

Non-compliance due to intentional or gross negligent behavior of the reporting entity regarding its obligation to file the CbC-Report could lead to a penalty up to EUR 20,250 or criminal prosecution.

### **More stringent Dutch documentation requirements**

In addition to the introduction of CbC Reporting the Dutch government announced more stringent documentation requirements for MNE group entities that are tax resident in the Netherlands and are part of a group that has a consolidated turnover exceeding a threshold of EUR 50 million. The group entity will be required to file a master file that provides an overview of the MNE as a whole, including the nature of its activities, its general transfer pricing policy, and its global allocation of income and economic activities. A local file also needs to be in place, which reflects information that is relevant for the transfer pricing analysis relating to transactions between the tax payer and related parties in other tax jurisdictions. Both files can be filed in either English or Dutch. The current wording of the proposed law is in line with the master file and local file as described in the BEPS Action 13 report, whereas additional guidance regarding the form and content of the documentation is announced in the draft law.

An important and new requirement is that the master file and the local file need to be part of the entity's administration prior to filing the tax return. This is a major change from the current practice which requires the tax payer to provide transfer pricing documentation within two months after a formal request has been issued by the Dutch Tax Administration. Non compliance with the documentation requirements results in the reversal of the burden of proof.

### **Conclusion**

Since the new regulations are proposed to enter into force as per January 1, 2016, entities that are part of an MNE group which has a consolidated turnover exceeding the threshold of EUR 50 million should start preparing for the upcoming changes in the documentation

requirements. Furthermore, MNEs with a turnover exceeding EUR 750 million should be ready to file CbC Reports.

In order to assist multinationals in preparing themselves to comply with the proposed CbC Reporting and documentation requirements, Meijburg & Co has developed the [Diagnostic Review](#) to assist MNEs in assessing their BEPS readiness.

For further questions and assistance, please contact us:

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