

## FACTSHEET

# Transfer pricing documentation and Country-by-Country reporting



The Netherlands has released new law implementing new transfer pricing documentation requirements in line with Base Erosion and Profit Shifting (BEPS) Action 13. Multinational enterprises (MNE) will have to deal with a three-tiered (master file, local file and CbC Report) approach to transfer pricing documentation.

Under the adjusted legislation, the master file, local file, and CbC Report requirements will be applicable for fiscal years starting on or after 1 January 2016. Non-compliance leads to legal sanctions.

### **Transfer pricing documentation requirements (master file and local file)**

For members of an MNE group resident in the Netherlands (with a minimum consolidated turnover of EUR 50 million), additional (obligatory) transfer pricing documentation requirements are introduced. The

qualifying MNE group should have a master file and local file available at the level of the Dutch entity for the previous financial year at the moment of filing the corporate income tax return. Separate Ministerial regulation as published on 30 December 2015 further details the form and minimum content of the master file and local file, which is largely similar to the template as provided by the OECD BEPS Action 13 report. According to this Ministerial regulation, the master file should provide an overview of the MNE group business, including (not exhaustive):

- ▶ The nature of the business activities;
- ▶ Overview of supply chain for the group's five largest products and/ or service offerings by turnover, plus any other products and/or services amounting to more than 5 percent of group turnover.
- ▶ The general transfer pricing policy;
- ▶ The global allocation of income and economic activities;
- ▶ Organisational structure;
- ▶ A brief functional analysis describing the principal contributions to value creation;
- ▶ Intangibles;
- ▶ Intercompany financing activities; and
- ▶ Financial and tax positions of the Group (such as a description of the MNE group's existing unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income among jurisdictions).

The local file should include information relevant for the transfer pricing analysis of inter-company transactions between the Dutch entity and a foreign related entity. This information should help to substantiate the arm's length nature of the transactions. Information supporting the arm's length allocation of profits to a permanent establishment should be included in the local file as well.

The Ministerial regulation lists the following additional elements of a local file (not exhaustive):

- ▶ A description of the management structure;
- ▶ A description and the amounts of the relevant intercompany transactions;
- ▶ Indication of the most appropriate transfer pricing method and the reasons for selecting this method;
- ▶ Relevant financial information regarding the entity, intercompany transactions and comparables used in the analysis;
- ▶ A detailed comparability and functional analysis; and
- ▶ Details of APAs, and other rulings to which the Dutch tax authorities is not a party and which are related to the relevant intercompany transactions.

The Netherlands has a penalty regime regarding tax administration and the existing regime is also applicable to the master file and the local file (a fine for non-compliance, and in case of a transfer pricing adjustment, an additional fine up to 100% of the amount of the adjustment). Furthermore, non-compliance could lead to double taxation and shift the burden of proof.

Please note that the existing documentation requirements remain applicable for Dutch tax resident group entities that have a consolidated turnover of less than EUR 50 million. However, this may differ in a situation where the head of the MNE group is established in a jurisdiction that does not have these minimum documentation requirements in place. In that case, a Dutch entity might still be required to prepare a (more) comprehensive transfer pricing documentation.

## Country-by-country- reporting

The CbC requirements apply to Dutch tax resident entities which are members of an MNE group with a minimum consolidated group turnover of EUR 750 million. The consolidated group turnover for this purpose is calculated based on the fiscal year preceding the fiscal year to which the CbC report applies. The primary purpose of CbC reporting should be a risk assessment tool for tax administrations and should be used to assess the accuracy of the transfer pricing policy applied within an MNE group. The MNE group is obliged to provide a CbC report within one year after the end of the reporting (financial) year to the tax authorities where the ultimate head of the group is located. CbC reporting obliges companies to provide the tax authorities with:

- ▶ Aggregate, jurisdiction wide information on global allocation of income (regardless of activities or size in a jurisdiction);
- ▶ The taxes paid (including withholding taxes); and
- ▶ Indicators of economic activities.

CbC reports should be filed with the jurisdiction of the ultimate parent entity of a group. The ultimate parent entity of an MNE group which has its tax residency in the Netherlands is obliged to file a country-by-country report, apart from the corporate income tax return, with the Dutch Tax Administration. However, in specific cases, this obligation can also be on a Dutch resident group entity that is not the ultimate parent entity of the group.

Local filing or filing to the next tier parent entity may be required if:

- ▶ The ultimate parent jurisdiction does not require CbC reporting; or
- ▶ There is no adequate mechanism for the timely exchange of CbC reports; or
- ▶ There is a systematic failure to exchange information in practice.

The CbC report should be prepared in XML format. Furthermore, there will come an 'implementation package' in place to facilitate effective exchange of information, including by way of automatic exchange. The filed CbC report will subsequently be exchanged automatically with jurisdictions the MNE is operating in with whom the Netherlands has concluded an information exchange agreement.

The law requires that all group entities, which are Dutch tax resident, should notify the tax inspector if they are the ultimate parent entity of the group. If the Dutch group entity is not the ultimate parent entity, it is obliged to disclose the identity and the tax residency of the reporting entity.

If the CbC reporting filing obligation is not met, penalties can be imposed to the entity. Not satisfying the requirements to submit the CbC report will be regarded as a criminal offense and non-compliance will lead to a monetary fine.

## Assistance by BDO

MNE groups with a presence in the Netherlands are advised to evaluate whether the new transfer pricing documentation requirements are applicable to them and, if so, whether they should take actions to meet these requirements.

BDO can assist MNEs with the preparation of compliant transfer pricing documentation as well as the Country-by-Country report.

## new perspectives

In the new economy we need to capitalize on market opportunities faster than ever. New rules challenge us to act more business-like. And a new generation is ready to do things differently. Better, smarter, more innovatively. To succeed as an entrepreneur we need to renew ourselves too. Be open to change. And have a broad-minded view of the possibilities that lie before us. New perspectives. That's what BDO wants to offer you. And that's exactly what we do, with our unique combination of local market knowledge and an international network. Personal service and a professional approach. At BDO, we want to help you get a fresh angle on your business. So you can make the right decisions to increase the agility, strength and success of your organisation – whether it is a small or medium-sized enterprise, a family-owned business, a public organisation or an international corporation. BDO is eager to look ahead with you. Together we will gain new insights and new opportunities in your market. Together we will create new perspectives.

## More information?

For further information with respect to transfer pricing documentation, the implications of the additional documentation requirements and to discuss the possibilities for your company, please contact:



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