

NEW DUTCH TRANSFER PRICING DOCUMENTATION REQUIREMENTS

As per January 2016, the Netherlands introduced new legislation regarding the so-called three-tiered approach to transfer pricing documentation. These detailed new regulations – included in the Dutch Corporate Income Tax Act – are in line with Action 13 of the Base Erosion and Profit Shifting (BEPS) Action Plan of the OECD. The new transfer pricing regulations entail an obligation for additional documentation for Dutch taxpayers that are part of a multinational enterprise (MNE) group with a consolidated turnover as from € 50 million. These MNE's have to include a master file and a local file (tier one and tier two) in their administration. Dutch entities that are part of a MNE group with a consolidated turnover of at least € 750 million will have to inform the Dutch tax authorities – before September 1, 2017 – which entity of the group (usually the Ultimate Parent company of the group) will complete the Country-by-Country (CbC) report (tier three). The reports will be used to assess transfer pricing risks and every other risk related to profit shifting and base erosion.

Country-by-Country reporting

A CbC report is a report about the MNE which contains the following content:

- For each state in which the MNE group is active the CbC report should include the revenues, earnings before income tax, income tax paid, income tax paid according to the statutory accounts, paid-up capital, accumulated profit, number of employees and the tangible assets other than cash or cash equivalents;
- A description of each group entity of the MNE group with reference to the state of which the group entity is a tax resident, and in case of deviation, the state under whose law the group entity has been incorporated. Also the nature of the main business activities of the group entity should be included;
- In the Netherlands the CbC report should be delivered in the Dutch or English language.

A Dutch-resident ultimate parent entity of a MNE group with a consolidated turnover of at least € 750 million is obliged to provide a CbC report within 12 months after the last day of the (fiscal) year. The CbC report will be exchanged by the tax inspector with other tax authorities in countries the MNE is operating in, as long as the Netherlands has concluded an information exchange agreement. If the Dutch-resident entity is not the ultimate parent company of a qualifying MNE, it might be obliged to file a CbC report in the Netherlands if the country in which the ultimate parent entity is a

tax resident has not implemented any CbC reporting obligations in her own legislation or does not have a signed agreement regarding the exchange of information with the Netherlands on CbC reports. It might also be obliged to file a CbC report if the inspector has informed the Dutch group entity that the country in which the ultimate parent company is a tax resident has systematically failed to comply.

Master file

The master file should provide an overview of the MNE group business, its overall transfer pricing policy and its global allocation of income and economic activities. This means that more specifically the master file should include the following information:

- The organizational structure of the MNE group;
- A description of its business activities;
- The MNE's intangibles;
- Its financial and tax position;
- A list of important agreements, intangibles and transactions.

Local file

A local file should include the more detailed information related to intercompany transactions. It will help in assessing whether the taxpayer has complied with the arm's length principle in its transactions with another entity of the group in another country as well as the allocation of profits to a permanent establishment.

In principle every Dutch corporate-tax paying company of a Dutch or foreign group is obliged to provide at least a master file and a local file. However, the Dutch State Secretary for Finance decided that MNE groups with a consolidated turnover up to € 50 million will be free of the obligation to provide a CbC report, master file and/or local file. They do still need to fulfill the standard (light, prescribed form) administrative transfer pricing obligations.

Govers Accountants has several experienced transfer pricing specialists. If you think that there might be a risk that your company is obliged to fulfil the additional reporting standards, please feel free to contact Bas Pijnaker (pijnaker@govers.nl) or Harm Kolen (kolen@govers.nl +31 40 2504 504). We can help you with the preparation of transfer pricing documentation, design a transfer pricing system and strategy, assist you with tax audits and conflicts in relation to transfer pricing.