



THE NETHERLANDS REGULATES SUPPLEMENTARY TRANSFER PRICING DOCUMENTATION REQUIREMENTS

On December 30, 2015, the Dutch Ministry of Finance (“MoF”) issued a regulation (no. DB/2015/462M) on new standardized transfer pricing (“TP”) documentation requirements, including Country-by-Country (“CbC”) report, master file and local file for Multinational Enterprise (“MNE”) groups. The supplementary TP documentation requirements are in line with the draft law as proposed by the Dutch State Secretary of Finance on September 15, 2015 and are codified in Articles 29b – 29h of the Dutch Corporate Income Tax Act 1969 (“CITA 1969”).

The regulation entered into force on January 1, 2016, and consists of 7 articles, 6 annexures and an explanation in line with the Base Erosion and Profit Shifting (“BEPS”) Action 13 on TP documentation and CbC reporting. The regulation includes a model template for the CbC report and specifies the information that should be incorporated in the master file and local file, which are almost identical to the templates provided in BEPS Action 13. The CbC report, master file and local file can be prepared in Dutch or English language. The CbC report should be prepared in XML format.

Implications

With the new regulations, the CbC report, master file and local file requirements are applicable for fiscal years starting on or after January 1, 2016. MNE groups with a presence in the Netherlands must act in a timely manner to comply with the following new regulatory requirements. This is a trend that is not only applied in the Netherlands but throughout Europe where a significant amount of countries have started to implement or already implemented the recommendations laid down in BEPS Action 13

CbC report

MNE groups with a minimum consolidated revenues of EURO 750 million in the fiscal year preceding the fiscal year to which the CbC report applies must notify the Dutch Tax

Authorities by December 31, 2016 as to which group member company will file the CbC report. For MNE groups, with fiscal years ending on December 31, the first CbC report would be required to be filed by December 31, 2017. Non-compliance may lead to a potential penalty varying from EURO 8,100 (unintentional act) to EURO 20,250 (serious misconduct) in addition to a possible imprisonment in the event of serious misconduct.

Master File and Local File

Dutch tax resident entities that are a part of MNE groups with a minimum consolidated group revenue of EURO 50 million in the fiscal year preceding year for which tax return applies must prepare up a master file and local file as part of their administration records at the time of filing tax returns. Non-compliance may lead to a reversal of the burden of proof and potential penalties.

For smaller groups, the already existing Dutch TP documentation requirements under Article 8b (3) CITA 1969 will remain applicable which in case of non-compliance may also lead to a reversal of the burden of proof and potential penalties.

For further information, please contact your trusted RSM advisor, or [Mario van den Broek](#) or [Rishi Sapra](#).