

## **Country-by-Country Reporting – Additional rules for exchanging Country-by-Country reports and OECD update**

On January 17, 2017 a bill to implement Council Directive (EU) 2016/881 ('DAC4') concerning Country-by-Country Reporting ('CbCR') was presented to the Lower House of the Dutch Parliament. Please refer to our previous [memorandum](#) on this. On March 21, 2017 the Memorandum of Amendment (*Nota van Wijziging*; 'NvW') and the Memorandum in response to the Report (*Nota naar aanleiding van het Verslag*; 'NaV') were sent to the Lower House. On April 18, 2017 the Lower House adopted the bill (34 651) and an amendment (no. 13) on the maximum penalty.

In addition to this, on April 6, 2017 the OECD published [additional guidance](#) for the implementation of CbCR.

The most striking changes are summarized below. During the Transfer Pricing Seminar that Meijburg & Co is organizing on June 6, 2017 from 8:00 a.m. to 12:30 p.m. at its Amstelveen office, these changes, as well as other issues, will be discussed in more detail with a representative from the Dutch tax authorities.

### **Adopted Dutch bill on additional rules for the exchange of Country-by-Country reports**

The legislative amendments are envisaged to take effect on June 5, 2017 and will apply to reporting fiscal years commencing on or after January 1, 2016.

#### *The incomplete Country-by-Country report ('Secondary Filing')*

The bill of January 17, 2017 had already offered the possibility to (i) within the EU designate one group entity as the reporting entity and to (ii) allow a designated Dutch group entity to file an incomplete Country-by-Country report with all the information at its disposal (the 'secondary filing mechanism').

The NaV clarifies that the incomplete Country-by-Country report will not be automatically exchanged with other EU Member States (or with third countries) and that it is therefore also not possible to have an EU group entity that will prepare the incomplete Country-by-Country report act as the 'designated group entity' for EU purposes. The NaV also states that the notification about the incomplete Country-by-Country report will however be exchanged with all EU Member States.

#### *Permanent establishment as surrogate parent entity or designated group entity?*

In response to questions from the Dutch Association of Tax Advisors, the NaV notes that a permanent establishment situated in the Netherlands cannot act as the surrogate parent entity or the designated group entity.

#### *Expansion of penalty after notification*

In the bill of January 17, 2017, the penalty provision for not complying with the reporting requirements for the Country-by-Country report had already been expanded to cover the notification. The NvW explains that this expansion will take effect as of June 5, 2017 and thus will not be applied with retroactive effect.

On April 18, 2017 the Lower House adopted an amendment (no. 13) on the basis of which the maximum amount of the potential pecuniary penalty is increased from EUR 20,250 to EUR 820,000 (!).

*Acceptance of 'voluntary filing' or 'parent surrogate filing'*

As already noted in our previous [memorandum](#), under current legislation the Netherlands cannot accept any 'voluntary filing' or 'parent surrogate filing'. In the NaV it is announced that the Cabinet will present a proposal to make this possible as part of the 2018 Tax Plan.

*Master file and deviating reporting fiscal years*

In his letter dated April 12, 2017, the Deputy Minister of Finance confirmed that where the reporting fiscal years for the foreign ultimate parent entity and for a Dutch group entity deviate, the reporting fiscal year of the ultimate parent entity can be used for the Master File. This was already explicitly laid down in law for the Country-by-Country report.

With regard to the Local File, it will continue to cover the reporting fiscal year to which the Dutch corporate income tax return relates.

To avoid any doubt with regard to the above changes, we would like to point out that the bill will, of course, also have to be adopted by the Upper House.

**Additional OECD guidance**

The additional guidance for the implementation of CbCR that was published by the OECD on April 6, 2017, updates the additional guidance that had previously been published in June and December 2016. The most striking changes are:

*Definition of associated enterprises*

The OECD has indicated that the term 'associated enterprises' as it relates to the column 'Income - Related party' should be interpreted as 'constituent entity' (by which they mean 'group entity'). This is a significant narrowing of the definition, given that the scope of the term 'associated enterprises' is broader than the term 'group entity'.

*Relevant reporting rules for the application of the 'listed fiction'*

The OECD has confirmed that as a result of the 'listed fiction', the consolidation exemption for participation companies – and thus the determination of the scope of the group and the determination of the ultimate parent entity of the group – must always be assessed on the basis of the reporting rules that apply to listed companies.

We look forward to meeting you at the Meijburg & Co Transfer Pricing Seminar on June 6, 2017 in Amstelveen.

*The information contained in this memorandum is of a general nature and does not address the specific circumstances of any particular individual or entity. Although we strive to provide accurate and complete information, we cannot guarantee that the information provided is accurate on the date on which it is received, or that it will remain so in the future. No-one should rely on such information without obtaining appropriate professional advice, after a thorough assessment of the specific situation*