

## **Implementation of EU Country-by-Country Reporting and Secondary Filings**

On January 17, 2017 the Deputy Minister of Finance presented a bill to the Lower House aimed at transposing into law, where necessary, the EU Directive on the exchange of Country-by-Country reports with the tax authorities of other EU Member States. The bill also contains more details about the secondary filing mechanism for Country-by-Country reports.

### **Automatic exchange of Country-by-Country reports**

The bill makes it possible to automatically exchange the Country-by-Country report submitted by a Dutch-resident Reporting Entity to the Dutch tax authorities, with the competent tax authorities of other Member States. This involves one or more Member States where – according to the information in the Country-by-Country report – one or more group entities of the multinational group (MNE group) of the Reporting Entity are tax residents, or where these entities are subject to taxation on the activities performed through a permanent establishment.

The Country-by-Country report should be exchanged within 15 months of the last day of the MNE group's reporting year covered by the Country-by-Country report. An exception is made for the Country-by-Country report covering the MNE group's first reporting year commencing on or after January 1, 2016, where a maximum of 18 months applies for the exchange of the report.

The Member States must have transposed the Directive by June 4, 2017 at the latest, so that it can be applied as of June 5, 2017.

### **Proposed changes to provisions on the Country-by-Country report**

Currently a Dutch resident group entity that is not the Ultimate Parent Entity or the Surrogate Parent Entity of a MNE group must submit a Country-by-Country report in the Netherlands if one of the following conditions applies:

- 1) The Ultimate Parent Entity of the MNE group is not obliged to submit a Country-by-Country report in the jurisdiction of tax residence.
- 2) An international agreement to which the Netherlands is a party currently applies in the jurisdiction where the Ultimate Parent Entity is a tax resident, but no agreement exists between the competent tax authorities of that State and the Netherlands to automatically exchange Country-by-Country reports.
- 3) The tax inspector has notified the group entity of a systematic failure by the State in which the Ultimate Parent Entity is a tax resident.

If one of the above situations arises, the bill will make it possible to designate a group entity that is resident in one of the Member States as the Reporting Entity for the purposes of submitting a Country-by-Country report on behalf of all the group entities in the Member States. By virtue of the automatic exchange of Country-by-Country reports between Member States, the report will be automatically exchanged between the competent tax authorities of the Member States involved.

If a Dutch-resident group entity is designated as the Reporting Entity, it should request all the relevant information from its Ultimate Parent Entity in order to comply with this

obligation. If the Ultimate Parent Entity fails to provide the necessary information, the Dutch Reporting Entity must notify the Dutch tax authorities of this. This entity must nevertheless submit a Country-by-Country report to the tax inspector, containing all the information currently available, within 12 months of the last day of a reporting year. This is the abovementioned secondary filing mechanism.

The bill explicitly states that the Country-by-Country report must include aggregated information for each country where the MNE group is active. This amendment will finally put an end to the uncertainty that currently exists in practice about whether income from transactions with affiliated parties within the same country must be included on a consolidated or an aggregated basis in the Country-by-Country report.

The notification obligation regarding which entity in which country must submit the Country-by-Country report will be extended to include notification by a designated Reporting Entity, in addition to the existing notification obligation for the Surrogate or the Ultimate Parent Entity.

It has been proposed to extend the scope of the sanctions to cover non-compliance with the notification obligations (in case of deliberate or gross negligence), in addition to the current sanctions which only cover the failure by the Reporting Entity, either deliberately or through gross negligence, to comply, on time, completely or correctly with the obligation to submit a Country-by-Country report.

Upon enactment the Bill will take effect on June 5, 2017 and will apply for the first time to the reporting years of MNE groups commencing on or after January 1, 2016.

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