KPMG Meijburg & Co Tax Lawyers

Draft Implementation Decree on the Identification and Reporting Requirements for the Common Reporting Standard published

Background:
On November 9, 2015 the Dutch Ministry of Finance published the Draft Identification and Reporting Requirements Implementation Decree ("the Decree") for the Common Reporting Standard ("CRS"), which includes the identification and reporting requirements contained in the CRS and in Council Directive 2014/107/EU for reporting Financial Institutions. The CRS, developed by the OECD and largely based on FATCA, is a standard that governs the exchange of financial account information and will be implemented by the 'CRS states'. Within the EU, the standard is laid down in the abovementioned Directive and will therefore have to be transposed into the national law of the Member States. In the Netherlands this will be achieved by way of the amendment of legislation, including the International Assistance in the Levying of Taxes Act ("IALTA").

The CRS creates a reporting standard and includes a model agreement for the automatic exchange of information and an identification and reporting standard for "Financial Institutions". The latter term is defined for Dutch purposes in the newly introduced Section 2a IALTA, by reference to Annex 1 to Council Directive 2011/16/EU. The annex states that:

"The term 'Financial Institution' is defined as:
[1] a Custodial Institution,
[2] a Depositary Institution,
[3] an Investment Entity, or
[4] a Specified Insurance Company."

Please note that not only banks fall under this broad definition of a Financial Institution, but that a large number of entities can fall under one of the above definitions.

Information about the account holders of Financial Institutions that will, in principle, be exchanged concerns: name, address, residence for tax purposes, tax identification number, date of birth and place of birth. The information to be exchanged about the accounts themselves concerns: the amount of interest or dividends received or paid, the account balance and the sale proceeds of financial assets.

The Draft Implementation Decree further explains the Dutch implementation of the identification and reporting requirements for the CRS, as laid down in the new Sections 10a, 10b and 10c of the IALTA. These amendments will take effect as of January 1, 2016

Pre-existing individual accounts:
The Decree describes the requirements on the basis of which a Financial Institution must analyze whether a Financial Account of an individual is a reportable account. These

requirements are less strict for low value accounts (accounts with a balance not more than the Euro equivalent of
USD 1,000,000) than for high value accounts (accounts with a balance greater than the Euro equivalent of USD 1,000,000). If a pre-existing account is not a high value account on December 31, 2015, but it is on the last day of the following calendar year, the Financial Institution must complete the enhanced procedure for high value accounts no later than December 31 of the next following year.

The Decree also states that any Financial Institution that knows or has reason to know that the account holder's country of tax residence has or may have been changed, must obtain a self-certification from the account holder that confirms or refutes this suspicion. Until this self-certification is received, but for no longer than 90 days, the institution may continue to use the previously established country of residence. If, after 90 days, no evidence has been received that refutes their suspicion, the institution will have to assume that the presumed country of residence is the country of residence.

New individual accounts:
Upon opening a new account, a bank must always obtain a self-certification from the individual account holder. If the self-certification indicates that the person is a reportable person, the account will be treated as a reportable account. And once again, if a change in circumstances causes a Financial Institution to know or suspect that the most recent self-certification obtained to establish the account holder's country of tax residence is incorrect, it must obtain a new self-certification from that account holder within 90 days. Until the self-certification is received, but for no longer than 90 days, the institution may continue to use the previously established country of residence. If, after 90 days, no evidence has been received that refutes their suspicion, the institution will have to assume that the presumed country of residence is the country of residence.

Pre-existing entity accounts:
There is also a procedure for entity accounts that the Financial Institution must follow to identify whether an account maintained by an entity is a reportable account. The institution may, however, elect not to apply this procedure to accounts with a maximum balance of (the Euro equivalent of) USD 250,000 and, in that case, it will not have to report on such accounts. However, if the account exceeds that threshold on December 31 of any subsequent year, the institution has until December 31 of the next following year to apply the procedure.

Pre-existing and new entity accounts, suspicion of change in country of tax residence
When opening a new account, an entity will in future have to provide a self-certification concerning the country of tax residence. As is the case with individuals, where a Financial Institution knows or has reason to know that circumstances have changed to such an extent that the self-certification previously provided by the account holder about its country of tax

residence is no longer correct, it will have to obtain a new self-certification within 90 days. Until the self-certification is received, but for no longer than 90 days, the institution may rely on the previously established country of residence. After that, the bank must use the presumed country of tax residence if it has not received notification that refutes their suspicion.

Additional identification and reporting requirements:
A Financial Institution must not rely on a self-certification or documentary evidence if the institution knows or has reason to know that the self-certification is incorrect or unreliable.

A reporting Financial Institution may also apply the procedure for determining whether a new account is a reportable account to pre-existing accounts and the procedure for high value accounts to low value accounts.

A reporting Financial Institution must set out the steps it has taken and the evidence it relied on when complying with the identification and reporting requirements.

Timing for exchange of information:
Whether high value accounts are reportable accounts will be established for the first time on December 31, 2016 at the latest; for low value accounts this will happen no later than December 31, 2017. Whether pre-existing entity accounts with a balance on December 31, 2015 that does not exceed (the Euro equivalent of) USD 250,000 are reportable accounts will be established for the first time on December 31, 2017 at the latest. Whether new accounts are reportable will be determined as from January 1, 2016. Financial Institutions must provide the information no later than January 31 of the year following the year of the reporting period. The first reporting period is the 2016 calendar year.

In conclusion:
The above decree explains the obligations of Financial Institutions in more detail. If you have any questions about which entities qualify as Financial Institutions, their obligations, requests for obtaining a self-certification, your CRS status or other questions about the CRS or FATCA, please feel free to contact one of the persons listed below. They will be pleased to be of assistance.

Michèle van der Zande
Partner
E: vanderzande.michele@kpmg.com
T: +31(0)88 – 909 1345

Jenny Tom
Director
E: tom.jenny@kpmg.com
T: +31(0)88 – 909 2099

Barry Larking
Director
E: larking.barry@kpmg.com
T: +31(0)88 - 909 1465

Jordi van der Struis
Tax Manager
E: vanderstruis.jordi@kpmg.com
T: +31(0)88 – 909 1041

Jip Lieverse
Tax Consultant
E: lieverse.jip@kpmg.com
T: +31(0)88 – 909 1128

Bas Jorissen
Tax Assistant
E: jorissen.bas@kpmg.com
T: +31(0)88 – 909 1853

Meijburg & Co
December 2015