

Dutch transfer pricing documentation requirements

Subject to certain 'thresholds' (see below), multinational groups may face additional transfer pricing documentation obligations effective as from financial years starting on or after 1 January 2016. The new Dutch transfer pricing documentation requirements involve the preparation of a so-called 'country-by-country report', a 'master file' and a 'local country file'. These new documentation requirements aim to implement the results of Action Plan 13 of the OECD's project on Base Erosion and Profit Shifting.

On 30 December 2015 the Dutch State Secretary of Finance also published additional guidance on the formats to be used for the country-by-country reporting and the information to be included in the master file and the local country file, respectively. We have included these formats in the annexes to this newsletter.

Country-by-country reporting

- The country-by-country report aims to facilitate a more efficient transfer pricing risk analysis by tax authorities.
- A country-by-country report is only mandatory in case the multinational group to which the Dutch group company belongs reports a consolidated turnover ('revenue') of at least EUR 750 million in the reporting year immediately preceding the reporting year for which a country-by-country report would be prepared.
- A country-by-country report drafted in English should meet the language requirements in the Dutch guidelines for such a report.
- Information required to be processed in the country-by-country report may - for each State in which the multinational is active on an aggregated basis - include revenues, profits before income taxation, the amount of profit tax paid, the amount of current year income tax accrued, the amount of stated capital, the accumulated retained earnings, the number of employees, the amount of assets (other than cash), the tax residency of each group company and a description of the main business activities of each group company.
- We refer to Annex A for the country-by-country reporting template published in the Decree of the Dutch State Secretary of Finance dated 30 December 2015, DB/2015/462M.
- Please note that for the below terms and deadlines the reporting year of the ultimate parent entity is in principle decisive (even if that reporting year would deviate from the reporting year of the Dutch group company).

Reporting entity

- The country-by-country report is in principle required to be filed by the ultimate parent entity of the group. If the group's ultimate parent entity has its tax residence in the Netherlands, the ultimate parent entity is held to file a country-by-country report with the Dutch tax authorities within 12 months following reporting year end.
- If a Dutch tax resident group company is not the group's ultimate parent entity, it is only held to provide the Dutch tax authorities with a country-by-country report within 12 months following reporting year end (a) in the event that the group's ultimate parent entity is not obliged to file a country-by-country report in the State in which it resides, (b) in the event that the group's ultimate parent company is obliged to file a country-by-country report in its State of residence, but there is no treaty in place providing for the automatic exchange of the country-by-country report information to the Netherlands, or (c) in the event that the tax inspector has informed the group company that the State in which the ultimate parent entity resides is structurally negligent in exchanging the country-by-country reports. In these cases the Dutch group company may be held responsible for providing the country-by-country report to the Dutch tax authorities (unless the obligation to provide such a country-by-country report is fulfilled within the relevant time frame by a 'surrogate' parent company appointed within the group).
 - On 25 May 2016 EU Directive 2016/881 was also adopted introducing country-by-country reporting within the EU and arranging for the automatic exchange of information

Dutch transfer pricing documentation requirements

of country-by-country reports between EU Member States. On 17 January 2017 the Dutch State Secretary of Finance submitted a legislative proposal to implement this EU Directive into Dutch law as per 5 June 2017. In the Netherlands this law is then to become effective for financial years starting on or after 1 January 2016.

- The country-by-country documentation requirements following from this EU Directive have for the most part already been implemented in Dutch legislation. The legislative proposal therefore only introduces some additional items. For instance, the option will be introduced to appoint a group company within the EU to meet the reporting obligation for all EU resident group companies.
- In case a Dutch group company is appointed as reporting entity it needs to request its ultimate parent company for the information necessary to meet its country-by-country reporting obligation. The legislative proposal submitted on 17 January 2017 introduces an additional notification requirement (in addition to the notification requirement described further below) for the situation in which the (non-Dutch resident) ultimate parent company refuses to provide the information necessary for preparing a country-by-country report to the Dutch group company. The Dutch group company in that case nevertheless needs to provide a country-by-country report to the Dutch tax authorities within the 12 months following reporting year end reflecting the information that is does have available (“secondary filing mechanism”).

Reporting entity notification requirement

- Ultimately on the last day of the respective reporting year the Dutch tax authorities need to be notified by the Dutch group company which group company will be the reporting entity (identity and tax residency of the reporting entity need to be disclosed). The “reporting entity notification requirement” in principle applies for all group companies. If the group companies are included in a fiscal unity for Dutch corporate income tax purposes a notification by the fiscal unity parent company should suffice.
- The deadline for the filing of the first reporting entity notification has been postponed.
 - To determine whether a foreign group company can be the reporting entity it is relevant to assess whether there is a treaty in place providing for the automatic exchange of the country-by-country report to the Netherlands (see our comments above). Therefore, it is relevant to determine between which countries an agreement for the exchange of country-by-country information has been concluded. This is the case if the respective country - like the Netherlands - has signed the Multilateral Competent Authority Agreement (“MCAA”) CbC AND has filed the notification ex Article 8 MCAA CbC with the OECD. In a notification ex Article 8 MCAA CbC the respective country, among others, confirms that it has implemented the CbC legislation. This notification also lists the countries with which it wishes to exchange information. When two countries listings ‘match’ an exchange of CbC information relation is established between them.
 - As countries are currently still in the process of implementing CbC legislation and not all Article 8 MCAA CbC notifications have yet been filed with the OECD, the Dutch State Secretary of Finance issued a Decree on 15 November 2016. This Decree postpones the first year’s deadline for the filing of the “reporting entity notification” to 1 September 2017 (provided that the last day of the multinational group’s reporting year ends before 1 September 2017).
The Decree of 15 November 2016 also mentions that the Dutch tax authorities have developed a notification software tool for filing the “reporting entity notification”.
- Taxperience can assist in meeting the reporting entity notification requirement. Penalties may apply in case the country-by-country reporting obligation and/or reporting entity notification requirement are not (timely) met (in case of bad intent or gross negligence).

Dutch transfer pricing documentation requirements

Master File and Local Country File

- A group company which is subject to Dutch corporate income tax may be held to prepare a 'master file' and a 'local file'. The master file and local file should substantiate the transfer pricing applied and should be available ultimately at the date on which the Dutch corporate income tax return is to be filed. This transfer pricing requirement only applies in case the multinational group to which the Dutch group company belongs reports a consolidated turnover ('revenue') of at least EUR 50 million in the reporting year immediately preceding the reporting year to which the tax return relates.
- The master file and local file may be prepared in Dutch or in English.
- The master file should include an overview of the business of the group, including the nature of the group's business activities, the group's transfer pricing policy and the worldwide allocation of income and economic activities to support tax administrations in identifying any substantial transfer pricing risks. The master file should therefore also include the organizational structure, an overview of the relevant agreements, transactions and intangible assets, the financial activities within the group and the group's financial and tax position.
- The local file should include information which is relevant for the transfer pricing analysis with respect to specific transactions between the taxpayer and the foreign affiliated entity or with respect to the profit attribution to a foreign permanent establishment. The information should include the relevant financial information with respect to those specific transactions, a comparability analysis, and a selection and application of the most appropriate transfer pricing method. The documentation should therefore substantiate the specific transfer prices applied.
- Please note that also under current legislation taxpayers (even if their group revenues are less than EUR 50 million) are held to substantiate their transfer pricing in their administration when dealing with affiliated entities.
- We refer to Annex B for the specific master file requirements published in the Decree of the Dutch State Secretary of Finance of 30 December 2015, DB/2015/462M, and to Annex C for the specific local file requirements published in this Decree.

January 2017

While we have taken the greatest possible care in compiling and maintaining the information provided, Taxperience cannot guarantee that this information is complete, up to date and/or accurate. Therefore Taxperience does not accept any liability for direct or indirect damage arising from the use of, reliance on or action taken as a result of the information in this newsletter, except where caused by bad intent or gross negligence on the part of Taxperience.

Dutch transfer pricing documentation requirements

ANNEX A: MODEL TEMPLATE FOR THE COUNTRY-BY-COUNTRY REPORT

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

Tax Jurisdiction	Revenues		Profit (Loss) before Income Tax	Income Tax Paid (on Cash Basis)	Income Tax Accrued – Current Year	Stated Capital	Accumulated Earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party							

Name of the MNE group:
Fiscal year concerned:
Currency used:

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Tax Jurisdiction	Constituent Entities Resident in the Tax Jurisdiction (including Tax Identification Number and address)	Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence	Main Business Activity(ies)														
			Research and Development	Holding or Managing Intellectual Property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to Unrelated Parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding Shares or Other Equity Instruments	Dormant	Other ¹		
	1.																
	2.																
	3.																
	1.																
	2.																
	3.																

Name of the MNE group:
Fiscal year concerned:

1. Please specify the nature of the activity of the Constituent Entity in the "Additional Information" section.

Table 3. Additional information

<p>Name of the MNE group: Fiscal year concerned:</p> <p>Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the Country-by-Country Report.</p>
--

Dutch transfer pricing documentation requirements

ANNEX B: MODEL MASTER FILE

The following information should be included in the master file:

1. Organisational structure

Chart illustrating the MNE's legal and ownership structure and geographical location of operating entities.

2. Description of MNE's business(es)

General written description of the MNE's business including:

- a. Important drivers of business profit
- b. A description of the supply chain for the group's five largest products and/or service offerings by turnover plus any other products and/or services amounting to more than 5 percent of group turnover. The required description could take the form of a chart or a diagram.
- c. A list and brief description of important service arrangements between members of the MNE group, other than research and development (R&D) services, including a description of the capabilities of the principal locations providing important services and transfer pricing policies for allocating services costs and determining prices to be paid for intra-group services.
- d. A description of the main geographic markets for the group's products and services that are referred to under b.
- e. A brief written functional analysis describing the principal contributions to value creation by individual entities within the group, i.e. key functions performed, important risks assumed, and important assets used.
- f. A description of important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year.

3. MNE's intangibles (as defined in Chapter VI of the OECD's 'Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations')

- a. A general description of the MNE's overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management.
- b. A list of intangibles or groups of intangibles of the MNE group that are important for transfer pricing purposes and which entities legally own them.
- c. A list of important agreements among identified associated enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and licence agreements.
- d. A general description of the group's transfer pricing policies related to R&D and intangibles.
- e. A general description of any important transfers of interests in intangibles among associated enterprises during the fiscal year concerned, including the entities, countries, and compensation involved.

4. MNE's intercompany financial activities

- a. A general description of how the group is financed, including important financing arrangements with unrelated lenders.
- b. The identification of any members of the MNE group that provide a central financing function for the group, including the country under whose laws the entity is organised and the place of effective management of such entities.
- c. A general description of the MNE's general transfer pricing policies related to financing arrangements between associated enterprises.

5. MNE's financial and tax positions

- a. The MNE's annual consolidated financial statement for the fiscal year concerned if otherwise prepared for financial reporting, regulatory, internal management, tax or other purposes.
- b. A list and brief description of the MNE group's existing unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income among countries.

Dutch transfer pricing documentation requirements

ANNEX C: MODEL LOCAL FILE

The following information should be included in the local file:

1. Local entity

- a. A description of the management structure of the local entity, a local organization chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.
- b. A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.
- c. Key competitors.

2. Controlled transactions

For each material category of controlled transactions in which the entity is involved, provide the following information:

- a. A description of the material controlled transactions (e.g. procurement of manufacturing services, purchase of goods, provision of services, loans, financial and performance guarantees, licences of intangibles, etc.) and the context in which such transactions take place
- b. The amount of intra-group payments and receipts for each category of controlled transactions involving the local entity (i.e. payments and receipts for products, services, royalties, interest, etc.) broken down by tax jurisdiction of the foreign payor or recipient.
- c. An identification of associated enterprises involved in each category of controlled transactions, and the relationship amongst them.
- d. Copies of all material intercompany agreements concluded by the local entity.
- e. A detailed comparability and functional analysis of the taxpayer and relevant associated enterprises with respect to each documented category of controlled transactions, including any changes compared to prior years. To the extent this functional analysis duplicates information in the master file, a cross-reference to the master file is sufficient.
- f. An indication of the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method.
- g. An indication of which associated enterprise is selected as the tested party, if applicable, and an explanation of the reasons for this selection.
- h. A summary of the important assumptions made in applying the transfer pricing methodology.
- i. If relevant, an explanation of the reasons for performing a multi-year analysis.
- j. A list and description of selected comparable uncontrolled transactions (internal or external), if any, and information on relevant financial indicators for independent enterprises relied on in the transfer pricing analysis, including a description of the comparable search methodology and the source of such information.
- k. A description of any comparability adjustments performed, and an indication of whether adjustments have been made to the results of the tested party, the comparable uncontrolled transactions, or both.
- l. A description of the reasons for concluding that relevant transactions were priced on an arm's length basis based on the application of the selected transfer pricing method.
- m. A summary of financial information used in applying the transfer pricing methodology.
- n. A copy of existing unilateral and bilateral/multilateral APAs and other tax rulings to which the local tax jurisdiction is not a party and which are related to controlled transactions described above.

3. Financial information

- a. Annual local entity financial accounts for the fiscal year concerned. If audited statements exist they should be supplied and if not, existing unaudited statements should be supplied.
- b. Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.
- c. Summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.