Country-by-Country Reporting: pay attention to notification duty deadline!

As of 1 January 2016 there are additional transfer pricing documentation requirements included in the Dutch Corporate Income Tax Act. Multinational enterprises are faced with new, standardised documentation requirements for financial years that begin on or after 1 January 2016. Depending on the amount of the consolidated group revenue, the new requirements consist of the preparation of a country-by-country report, a group file and a local file. Group entities for which the regulation concerning the country-by-country reporting applies must notify the reporting entity to the Dutch Tax Authority *no later than 1 September 2017.* (notification duty).

Master file and local file

Entities of a multinational group established in the Netherlands must prepare a master file and a local file if the consolidated group revenue in the previous year is more than EUR 50 million. A multinational enterprise is considered to exist if two or more affiliated entities have their tax domicile in a different country. For the application of this regulation, a permanent establishment for which annual financial statements are prepared is also considered as an entity. The Dutch entities of the multinational group must include the master file and the local file in their administration for the year to which the declaration refers. The period for the inclusion of the two files in the administration is the same as the period for the filing of the corporate income tax return.

Master file

By ministerial decree, further regulations are laid down regarding the form and the content of the files. The master file includes an overview of the enterprise of the multinational group which contains, amongst other things, the following information:

- Organisational structure
- Description of the supply chain for the five largest products and/or services
- A functional analysis describing the contributions to the value creation within the group
- Group financing
- Non-current intangible assets
- General transfer pricing policies
- Financial and tax position of the multinational group
- Overview of the existing taxation agreements (APAs and/or rulings)

Local file

The local file contains information which is relevant for the transfer pricing analysis for intercompany transactions. A substantiation must also be included which underpins a commercial profit allocation to permanent establishments. The file should also include the following information:

- Description of the management structure
- Specification of the intercompany transactions
- A substantiation of why the transfer pricing method used is the most suitable
- A detailed comparability and functional analysis of the intercompany transactions
- Information and allocation schedules which show how the financial data used for the application of the transfer pricing method can be linked to the annual financial statements

Both files form part of the administration of the Dutch entity/entities. In the Netherlands, failure to meet the administration duty can lead to reversal of the burden of proof with double taxation as a consequence. Furthermore, a fine of up to a maximum of 100% over any corrected transfer prices can be imposed if the files are not prepared.

Country-by-Country report
For multinational enterprises with a consolidated group revenue of more than EUR 750 million, the additional requirement of the preparation and provision of a country-by-country report applies. The country-by-country report includes the following information for each country in which the multinational group is active:

- The amount of the revenue
- Profit before tax
- Corporate income tax paid
- Corporate income tax accrued - current year
- Stated capital
- Accumulated earnings
- Number of employees
- Overview of tangible assets (other than cash and cash equivalents)

Furthermore, the country-by-country report must also include a description of each entity of the multinational group specifying the country in which this group entity is established for tax purposes, as well as an explanation of the principal business activities. A Dutch or English language version of the country-by-country report must be prepared in accordance with the model specified by ministerial decree.

For what is the country-by-country report used?
The inspector uses the country-by-country report to assess substantial transfer pricing risks and other risks for the Netherlands with regard to the erosion of the tax base and the diversion of profits. The Dutch Tax Authority automatically supplies the country-by-country report to the competent authorities of each member state in which one or more group entities of the multinational group of the reported entity is established for tax purposes or in which it has a permanent establishment.

Who must report?
The principal rule is that the group supplies the country-by-country report to the Tax Authority in the country where the head (the ultimate parent company) of the group is established for tax purposes. If the ultimate parent company is not established in the Netherlands, there are certain situations in which a Dutch group entity can be required to provide a country-by-country report to the Dutch Tax Authority. For example, in the situation where:

- The head in another country is not obliged to submit a country-by-country report
- The other country does not exchange information with the Netherlands
- The other country is systematically negligent with regard to the exchange of information with the Netherlands
- This requirement can also be fulfilled by a group company in another country, provided that this country shares the country-by-country report with the Netherlands.

Notification duty
The principal rule is that the Dutch Tax Authority must receive the notification no later than the last day of each reporting year. A deferment applies for the first notification. This means that the first notification must be received before 1 September 2017, unless the last day of the financial year of the multinational enterprise is after 31 August 2017. Thus, for entities of a multinational enterprise established in the Netherlands, the inspector must be notified before **1 September 2017** of the entity in the multinational group which is going to supply the country-by-country report for **2016** and in which country. The inspector must be informed no later than **31 December 2017** about who is going to submit the country-by-country report for **2017** and where.

When must the report be provided?
If the reporting company is established in the Netherlands then the country-by-country report must be supplied to the inspector within twelve months of the last day of the reporting year. The delivery of the report is a self-standing obligation, in addition to the filing of the corporate income tax return. Legally binding sanctions apply in the event of a failure to provide the country-by-country report, such as administrative penalties (maximum € 820,000) and criminal prosecution.