



Transfer Pricing Alert

July 2017

In 2015, the Dutch State Secretary of Finance issued a decree (nr. DB/2015/462M) containing the updated transfer pricing documentation requirements, which shall apply from January, 2016 going forward.¹ For many businesses the FY 2016 filing deadline is approaching. In this respect, have you already prepared your transfer pricing documentation accordingly?

Through this tax alert, we would kindly remind you and create awareness regarding the updated transfer pricing documentation requirements and your transfer pricing risk in the Netherlands.

Background

Dutch tax resident companies that belong to a multinational group are obliged to have transfer pricing documentation for administration purposes. As per 30 December 2015, additional and specific documentation requirements have been announced. The exact requirements depend on the consolidated turnover of the multinational group to which the Dutch company belongs.

Consolidated group turnover < EUR 50 million

Dutch tax resident companies that form part of a multinational group with a consolidated group turnover of less than EUR 50 million are obliged to prepare documentation that describes how the transfer prices have been established.

Consequences

- The lack of transfer pricing documentation in the Netherlands will shift the burden of proof regarding the arm's length nature of the transfer price used to the taxpayer. This implies that the Dutch Tax Authorities ("DTA") can determine the at arm's length price for your transactions instead.
- Furthermore, a penalty plus interest can be imposed if a company's transfer pricing position is not considered to be at arm's length whereby the amount of the penalty depends on the amount of underpaid taxes as a result of the transfer prices not being at arm's length.

Timing: There is no specific deadline on when you should have the transfer pricing documentation in your administration. However, you should have documentation in place upon request of the DTA.

Please be aware that the preparation of proper transfer pricing documentation could take at least 2-3 months.

Consolidated group turnover ≥ EUR 50 million

Based on the updated legislation, Dutch tax resident companies part of a multinational group with a consolidated group turnover ≥ EUR 50 million or more, are obliged to have a master file and local file in their administration when filing the tax return of the financial year that started in 2016.²

Timing: It is crucial to know when your Dutch CIT tax return for FY 2016 will be filed and to communicate this date with your transfer pricing advisor.

Please be aware that the preparation of proper transfer pricing documentation needs to be at least 2-3 months.

¹ 30 December 2015

² FY 2016 if financial year ends on December 31, 2016 or FY 2017 if financial year ends after December 31, 2016.

Consequence

- The lack of transfer pricing documentation in the Netherlands will shift the burden of proof regarding the arm's length nature of the transfer price used to the taxpayer. This implies that the DTA can determine the at arm's length price for your transactions instead.
- Furthermore, intentional non compliance with the master file and local file requirements can attract a penalty of up to EUR 20,250 or imprisonment of up to 4 years.

Consolidated group turnover \geq EUR 750 million

In addition to the above described master file and local file requirements, ultimate parent companies of Dutch tax resident multinationals with a consolidated group turnover of EUR 750 million or more are also required to prepare and file a country-by-country ("CbC") report based on the new legislation.

Timing: The CbC report should be provided to the tax inspector within 12 months after the end of the relevant fiscal year. Please be aware that the preparation of proper CbC report may need at least 3-6 months. Our transfer pricing team has developed an inhouse CbC risk assessment tool to assess your CbC-related risks.

Notification requirements: Dutch tax resident entities that are part of a multinational group with a consolidated turnover of EUR 750 million or more are required to provide a notification to the DTA on the last day of the financial year of the multinational group (for most groups this deadline would be December 31, 2016). The notification must contain information regarding which entity within the multinational group is submitting the CbC report. The DTA have granted all Dutch entities an extension of the notification term by 8 months to September 1, 2017. This extension will only apply to multinational groups that have concluded their financial year prior to August 31, 2017.

Timing: Please let us know which entity within your group is filing the CbC report. Our TP team can assist you with the CbC notification to the DTA.

Consequence

- Intentional non-compliance with the CbC and notification requirements can attract a penalty up to EUR 20,500. As of June 5th 2017 this penalty can be up to a maximum of EUR 820,000.
- Furthermore, intentional non-compliance can have the consequence of imprisonment of up to 4 years.

Contact details Grant Thornton Transfer Pricing Team

For more information and assistance in order to be(come) compliant with the new requirements please contact:



Charles Marais

Head of Transfer Pricing

T +31 88 676 92 59

E charles.marais@nl.gt.com



Jin Chen

Junior Transfer Pricing Manager

T +31 88 676 93 32

E jin.chen@nl.gt.com



Adriaan Bijleveld

Transfer Pricing Advisor

T +31 88 676 92 88 (direct)

E adriaan.bijleveld@nl.gt.com

You can also find additional information on our website www.gt.nl.