



Manual

Filing CbC-reports ("Country-by-Country Reporting")

Part 1 – General

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1 Introduction

1.1 General

This manual aims to assist *Reporting Entities* of an *MNE group* that have to file a *Country-by-Country Report* (CbC-report) with the Dutch Tax Authorities.

As of 1 January 2016, MNE groups having a total consolidated group revenue equal to or exceeding EUR 750 million in the fiscal year immediately preceding the Reporting Fiscal Year covered by the CbC-report, have to provide tax administrations on an annual basis with information about their profits, income taxes paid and activities. A template developed by the OECD is used for this reporting obligation.

This manual gives further background about this reporting obligation, which entities of an MNE group have to report and gives further practical guidance (when, how and what has to be reported). The aforementioned is also applicable to the notification obligation.

Annex 1 contains an overview of important definitions (Glossary). On their first appearance in this manual, those definitions are written *in italics*.

This manual part 1 *Filing CbC-reports ("Country-by-Country Reporting")* replaces the previous version 16.1.0 of the manual part 1 and is part of the following three separate parts:

1. General: tax law related topics and the filing process;
2. EBV message specification; and
3. Overview data structure.

As a result of this approach, the relevant information per area of expertise is identified and can be further distributed to the responsible employees.

For the latest version of these manuals, reference is made to:
<https://odb.belastingdienst.nl/>.

1.2 Reason new manual part 1

The reason for releasing this (new version of the) manual is mainly due to:

- the changes in the Dutch Corporate Income Tax Act 1969 (hereafter: CITA) and the '*Wet op de internationale bijstandsverlening bij de heffing van belastingen*' (Law on the international assistance in the levying of taxes) as a consequence of the implementation of the EU Directive 2016/881 of the Council dated 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (DAC 4)¹, which includes amongst others:
 - the extension of the possibility to impose a penalty and increase the penalty;
 - rules around the exchange of country-by-country reports;
- facilitation of Country-by-Country Reporting in case a jurisdiction has not implemented country-by-country reporting per 1 January 2016 (voluntary filing)².

¹ Law of 29 May 2017 to amend the Law on the international assistance in the levying of taxes and the Corporate Income tax act 1969 containing supplementing rules in connection with the automatic exchange of intelligence with regard to country-by-country reports (Law supplementary rules exchange Country-by-Country Reports);

² Amendments of some tax laws and other laws (Other tax measures);

Furthermore, the OECD has released additional guidance which have been and will be periodically amended, amongst others:

- Guidance on the Implementation of Country-by-Country Reporting;
- Guidance on the Implementation of Country-byCountry Reporting.
Compilation of approaches.

It will be periodically assessed whether (additions to) the additional guidance give rise to adjustments to the manual.

1.3 Part 1 of the manual

Part 1 of the manual contains the following chapters. Chapter 1 contains the introduction. Chapter 2 focuses on the tax law related aspects of the obligation to prepare and file a CbC-Report and the notification obligation. Then, in chapter 3 and 4, the subject (who) and the object (what) of the CbC-report will be discussed. In chapter 5, the consequences of (partly) failing to comply with the obligation to file the CbC-report are discussed. In chapter 6, the logistics of the filing process will be explained. Finally, chapter 7 provides an overview of the support given by the Dutch Tax Authorities with filing the CbC-reports.

It is explicitly noted that this manual is written for information purposes only. The relevant legal provisions and the Regulation (Regulation additional transfer pricing documentation requirements) are always leading. In addition, it is explicitly noted that this document is an unofficial translation of the manual that has been published in Dutch. Some tax law related concepts and terms may be difficult to translate. In these cases the wording from BEPS Action 13 is used. As such, some tax technical provisions may not be literally translated from the Dutch version of this manual. In case of any inconsistencies between the Dutch and the English version of this manual, the Dutch version will prevail at all times.

The developments in the area of CbC-Reporting do not stop. At the same time, the exact impact is not always clear yet. This new version of the manual includes the Guidance on the Implementation of Country-by-Country Reporting (up to and including the update of 13 September 2018) and the Guidance on the Implementation of Country-byCountry Reporting: Compilation of approaches adopted by jurisdictions (up to and including the update 30 April 2018). Periodically, these documents will be amended. For the latest version of the guidance, reference is made to:

<http://www.oecd.org/tax/beps/country-by-country-reporting.htm>.

With respect to Country-by-Country Reporting, in principle, The Netherlands follows the relevant existing and future releases of the OECD³. Furthermore, The Netherlands follows the recommendations of the EU Joint Transfer Pricing Forum as much as possible, except where it makes a reservation⁴.

1.4 Point of contact Country-by-Country Reporting

The Coordination Group Transfer Pricing (hereafter: CGTP) is responsible for the executional coordination⁵ in the field of transfer pricing within the Dutch Tax Authorities and guards the unity of policy and implementation in this respect. This mainly includes the interpretation and application of the arm's-length principle for intra-group transactions and attribution of profits to permanent establishments.

The responsibilities of the CGTP also include the coordination of the execution in the field of the supplementary transfer pricing documentation requirements in articles 29b up to and including 29h, 34f and 34g CITA and supporting the international exchange of information, including the analysis of the CbC-reports received.

³ Kamerstukken II 2016/17, 34651, nr. 3, p. 4-5;

⁴ Decree of the State Secretary of Finance of 22 april 2018 (Stcrt. 2018, 26874);

⁵ Decree of the State Secretary of Finance of 22 april 2018 (Stcrt. 2018, 26876);

Furthermore, the CGTP can also be contacted with respect to questions on explanation or interpretation of Country-by-Country Reporting.

The activities with respect to Country-by-Country Reporting are principally performed by the dedicated CbC-team, which forms part of the CGTP.

The CbC-team can be contacted by e-mail via: cbc-reporting@belastingdienst.nl.

1.5 Up to date information

When information has to be provided to the Dutch Tax Authorities, the most actual information is needed in order to know how to comply. This information can be found on a separate secure website of Support Digital Messaging (*'Ondersteuning Digitaal Berichtenverkeer'*): <https://odb.belastingdienst.nl/>. An account has to be created. This website includes, amongst others, the XSD's for all XML-messages discussed in this manual (previously disclosed on www.oswo.nl).

Other locations where relevant information can be found are:

- www.logius.nl
Logius, the digital government service of the Ministry of the Interior and Kingdom Relations, provides the Dutch Tax Authorities with the Electronic Messaging (EM) service, through the portal 'Digipoort'.
- <https://www.gegevensportaal.net/cbc/aanmelden/>
The notifications following article 29d, paragraph 1 and 2 CITA must be filed here. This website also includes additional information regarding the notification.

More information on Logius can be found in part 2 of this manual (accessible via <https://odb.belastingdienst.nl/>).

2 Tax law related topics

2.1 Legal basis

2.1.1 Introduction

On the basis of the CITA, *Reporting Entities*⁶ of *MNE Groups*⁷ that are tax resident in The Netherlands⁸ are required to provide information to the tax inspector on their own initiative⁹. This has been stipulated in Chapter VIIa ("Additional transfer pricing documentation obligations") of the CITA, in articles 29b-29h, excluding article 29g¹⁰.

With this new obligation to file a CbC-report, The Netherlands implemented the outcomes of Action 13 of the OECD's *Base Erosion and Profit Shifting project* (BEPS-Project) for fiscal years beginning on or after 1 January 2016. The new standard has been published in '*Transfer Pricing Documentation and Country-by-Country Reporting Action 13*¹¹' (October 5 2015) and are included in the OECD's Transfer Pricing Guidelines as the new chapter 5.

An MNE Group having total consolidated group revenue of more than EUR 750 million in the *Fiscal Year* immediately preceding the Reporting Fiscal Year has to prepare an annual CbC-report.

2.1.2 Implementation Directive (EU) 2016/881

Directive (EU) 2016/881 (hereafter DAC4) is implemented in Dutch law by amending the CITA and the *Wet op de internationale bijstandsverlening bij de heffing van belastingen* (Law on the international assistance in the levying of taxes, hereafter: WIB). DAC4, dated 25 May 2016, largely matches the OECD on Country-by-Country Reporting, apart where it supplements the OECD¹²:

- the WIB includes the legal basis for The Netherlands to automatically exchange CbC-reports to other EU member states;
- the CITA includes the possibility to designate an EU constituent entity to file the CbC-report on behalf of all EU constituent entities, provided that the CbC-report is not an incomplete report.

The amendments in the WIB and CITA came into effect on 5 June 2017 and are applicable for the first time for fiscal years of the MNE Group that commence on or after 1 January 2016¹³.

As also elaborated on later, whereas-clause 17 to DAC 4 indicates that DAC 4 should be explained in line with the OECD-standard. In addition, this whereas-clause 17 also refers to future OECD developments. This is in line with the view of The Netherlands regarding the explanation of the Dutch legislation regarding Country-by-Country Reporting.

6 Article 29b, letter d CITA;

7 Article 29b, letter b CITA;

8 Article 29c, paragraph 1 and paragraph CITA;

9 Article 29e CITA;

10 Article 29g CITA refers to master file and local file;

11 <http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm>;

12 Kamerstukken II, 20/17, 34651, nr. 6, p. 6;

13 Article 29e CITA 1969;

2.1.3 *Guidance on the implementation of Country-by-Country Reporting*

In order for The Netherlands not to deviate from the international standard, The Netherlands follows – as also indicated above – the current and future explanation of the OECD regarding the standardized documentation obligation as incorporated in the CITA, unless it explicitly deviates thereof¹⁴.

Therefore, in principle, The Netherlands will follow as much as possible the explanation of the OECD, which can be derived from the Guidance on the implementation of Country-by-Country Reporting: BEPS Action 13 (hereafter OECD Guidance), unless there is an explicit deviation.¹⁵ The Netherlands will also – as indicated above – follow the recommendations of the EU Joint Transfer Pricing Forum, except where The Netherlands makes a reservation.¹⁶

It has been decided to include certain OECD developments in this manual for practical reasons. In case certain OECD developments are not included in this manual, it does not imply that The Netherlands deviates from the OECD standard. Therefore, this manual should be read in conjunction with current and future OECD developments.

The interpretation by the OECD can be found on the OECD website¹⁷. The OECD has included this further guidance mostly on Country-by-Country Reporting on the website:

- <http://www.oecd.org/tax/beps/country-by-country-reporting.htm>.

An overview of the activated exchange relationships per jurisdiction can be found on the website:

- <http://www.oecd.org/ctp/beps/country-by-country-exchange-relationships.htm>.

The Netherlands has made certain choices regarding the interpretation of certain subjects. The choices made as included in the 'Guidance on the implementation of Country-by-Country Reporting: Compilation of approaches adopted by jurisdictions' will be discussed below.

Interpretation threshold (EUR 750 million)

In determining whether the total consolidated group revenue of an MNE Group exceeds EUR 750 million, all of the revenue that is reflected in the consolidated financial statements of the MNE Group of the Fiscal Year immediately preceding the Fiscal Year covered by the CbC-report should be used. For this purpose, The Netherlands does not require inclusion of extraordinary income and gains from investment activities in total consolidated group revenue unless these items are included in revenue under applicable accounting rules. As such, The Netherlands uses revenue as reflected in an MNE's group's consolidated financial statements.

Threshold and special situations

It is possible that the preceding fiscal year of an MNE Group is shorter than 12 months. When the preceding fiscal year of an Ultimate Parent Entity is shorter than 12 months, The Netherlands uses the actual total consolidated group revenue for the short accounting period and the threshold applicable to a 12 month fiscal year. This implies that it is not required to adjust the total consolidated group revenue for the short accounting period to reflect the consolidated group revenue that would correspond to a 12 month accounting period.¹⁸

¹⁴ Kamerstukken II 2016/17, 34651, nr. 6;

¹⁵ Kamerstukken II 2015/16, 34305, nr. 6, p. 10;

¹⁶ Decree of the State Secretary of Finance of 22 april 2018 (Stcrt. 2018, 26874);

¹⁷ <https://www.oecd.org>;

¹⁸ Position The Netherlands short accounting period: Guidance on implementation of Country-by-Country Reporting: Compilation of approaches adopted by jurisdictions;

Mergers/acquisitions/demergers

The question arises when in a given year there are changes in ownership due to mergers, acquisitions and demergers, how the CbC filing obligation for that given year is affected and what information should be reported in the CbC report. The OECD-guidance includes guidelines for these situations.

The Netherlands has included in the compilation of approaches its point of view for the situation where in Y1, Group S sells a sub-group of its own entities, and the sub-group of entities subsequently becomes an independent Group E. In such situation, it would not be required for Group E to submit a CbC report for reporting fiscal year Y1, on the basis that the group did not exist as an independent MNE group in Y0.

2.2 Who is obliged to prepare a CbC-report?

This manual, as mentioned before, is meant for *Reporting Entities* of MNE Groups that are tax resident in The Netherlands. Two questions arise: first, the question which multinational enterprises are obliged to prepare a CbC-report, and second, which *Constituent Entity* has the obligation to file the CbC-report.

In this paragraph the first question will be discussed, which is the so-called qualifying MNE Group. First, it has to be assessed whether an MNE Group is present. If that is the case, it has to be assessed whether an exception is applicable. If no exception is applicable, a qualifying MNE Group is present and is obliged to prepare a CbC-report.

In answering the second question, it needs to be determined whether the qualifying MNE Group has one or more Constituent Entities that are tax resident in The Netherlands. For qualifying MNE Groups, a CbC-report can be filed by a Constituent Entity that is tax resident in The Netherlands (a Reporting Entity that is tax resident in The Netherlands). Otherwise, the CbC-report can be filed – under certain conditions – by a foreign Constituent Entity in the tax jurisdiction where that entity is tax resident. In the latter case, the Constituent Entity tax resident in The Netherlands is not obliged to file the CbC-report. The Dutch Tax Authorities will receive the CbC-report through the automatic exchange of information. In case no automatic exchange of information is in place (since not all relevant conditions are met), the CbC-report has to be filed with the Dutch Tax Authorities through '*local filing*'.

2.2.1 Definition MNE Group

MNE Groups are obliged to file a CbC-report. Article 29b, letter a, CITA defines group as follows:

The term "Group" means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange. (Article 29b, letter a, CITA);

The enterprises included in the Consolidated Financial Statements are the starting point in determining the existence of a Group. In addition, an additional provision (the so-called "deemed listing provision") may be applicable in case multinational enterprises are not required to prepare Consolidated Financial Statements. In that case, it has to be determined whether the enterprise would be so required if equity interests in any of the enterprises were to be traded on a public securities exchange. If that requirement would exist, the group of enterprises will also qualify as a "Group".

Article 29b, letter b, CITA defines MNE Group as follows:

The term "MNE Group" means any group that

- 1. includes two or more enterprises the tax residence for which is in different jurisdictions; or*
- 2. includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction.*

The definitions 'tax residence' or 'tax resident' as used in chapter VIIa relates to entities (in Dutch: lichamen) that are considered resident of that country both on the basis of the domestic (tax) law and the relevant bilateral tax treaty¹⁹.

The Regulation²⁰ (Regulation additional transfer pricing documentation requirements; in Dutch: ministeriële regeling - Regeling aanvullende documentatieverplichtingen verrekenprijzen) indicates the following with respect to the CbC-report:

A tax jurisdiction is defined as a State as well as a non-State jurisdiction which has fiscal autonomy.

Consolidated Financial Statements are defined in this context as follows (article 29b, letter h, CITA):

The financial statements of an MNE Group in which the assets, liabilities, income, expenses, and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as those of a single economic entity.

In principle, the obligation to file a CbC-report is applicable in case the aforementioned conditions are met. However, an exemption may be applicable for Excluded MNE Groups. This will be explained below.

2.2.2 Definition Excluded MNE Group

An exemption in the form of a threshold for the filing obligation of the CbC-report can be found in article 29c, paragraph 5, CITA:

Paragraph 1 up to and including paragraph 4 are not applicable for Constituent Entities of an MNE Group having a total consolidated group revenue of less than EUR 750 million during the Fiscal Year immediately preceding the Reporting Fiscal Year.

The term *Fiscal Year* (article 29b, letter g, CITA) is defined as: *an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements.*

Total consolidated group revenue is not defined in the law. In general, total consolidated group revenue can be found in the Consolidated Financial Statements of the MNE Group.²¹

In case the total consolidated group revenue of an MNE Group is kept in a currency other than the euro, the threshold to determine whether a filing obligation applies (in The Netherlands) should also be determined in that currency, equaling EUR 750 million as of January 2015.

As an exception to the above, there is no local filing obligation in the Netherlands if the jurisdiction of the Ultimate Parent Entity has implemented a reporting threshold that is a near equivalent of EUR 750 million in domestic currency as it was at

¹⁹ Kamerstukken II, 2015/16, 34305, nr. 3, p. 33;

²⁰ Ministerial Regulation Ministerial Regulation on additional transfer pricing documentation requirements, p. 13;

²¹ Kamerstukken II, 2015/16, 34.305, nr. 3, p. 35;

January 2015 and the MNE Group has a total consolidated group revenue which is below this local threshold.²²

The obligation to file the CbC-report is applicable for all MNE Groups having total consolidated group revenue of EUR 750 million or more during the Fiscal Year immediately preceding the Reporting Fiscal Year. In the remainder of this manual, the definition "MNE Group" is only used for MNE groups that are required to file a CbC-report. Besides the aforementioned threshold of EUR 750 million, there are no other exceptions with regard to the obligation to file a CbC-report.²³

2.2.3 *Definition Constituent Entity of an MNE Group*

If a 'qualifying' MNE Group is present, the next question is whether a CbC-report has to be filed with the Dutch Tax Administration. The answer to this question is yes if the MNE Group has one (or more) *Constituent Entity(y)(ies)* that are tax resident in The Netherlands. Filing of the CbC-report can either take place by (one of) the Constituent Entity(y)(ies) that is (are) tax resident in The Netherlands with the Dutch Tax Authorities or from a foreign country through the automatic exchange of information.

This paragraph will further explain the definition of Constituent Entity. We will first clarify in which situations the definition Constituent Entity is important. First, defining Constituent Entities is important as they can act as Reporting Entity tax resident in The Netherlands or in another state, if applicable. Second, defining Constituent Entities is important for the Notification Obligation²⁴, which will be discussed in paragraph 2.5. Lastly, defining Constituent Entities is important for table 2 of the submitted information of the CbC-report, which will be discussed in chapter 4.

A Constituent Entity is defined in article 29b, letter c, CITA as:

1. any separate business unit (*in Dutch: lichaam*) of an MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on a public securities exchange;
2. any separate business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size or materiality grounds;
3. a permanent establishment of a separate business unit of the MNE Group included in (1) or (2) above provided that the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.

2.3 **Which Constituent Entities are required to file the CbC-report?**

Paragraph 2.2 discussed which MNE Groups are required to file the CbC-report. This paragraph discusses which Constituent Entity is required to file the CbC-report on behalf of the MNE Group. Filing can be done with the Dutch Tax Authorities or with the tax authorities of another jurisdiction.

The obligation to file a CbC-report is applicable to Reporting Entities²⁵.

²² OECD Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13, paragraph IV, number 1.1.

²³ Transfer Pricing Documentation and Country-by-Country Reporting Action 13 Final Report, 5 October 2015, par. 55 / OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, OECD, Paris, July 2017, par. 5.55;

²⁴ Article 29d CITA;

²⁵ article 29b, part d CITA;

First, in this paragraph the definition of Reporting Entity will be discussed. Then, the three main groups of Reporting Entities are discussed, including voluntary filing and incomplete CbC-reports. We will also discuss under which conditions a Reporting Entity with tax residency in The Netherlands is present. Finally, we will indicate in which cases the CbC-report has to be filed with the tax authorities in a different jurisdiction. The international exchange of CbC-reports will be discussed in paragraph 2.6.2.

2.3.1 *Definition Reporting Entity*

If an MNE Group meets all the conditions and, as such, is required to file a CbC-report, a Constituent Entity has to be identified that qualifies as the Reporting Entity. The Reporting Entity is responsible for filing the (complete) CbC-report on behalf of the MNE Group.

A Reporting Entity is defined in article 29b, letter d, CITA:

The Constituent Entity that is required to file a country-by-country report conforming to the requirements of article 29e on behalf of its MNE Group in the state of which it is tax resident, being:

1. *The Ultimate Parent Entity (main group 1);*
2. *The Surrogate Parent Entity (main group 3);*
3. *Any other entity as described in article 29c, paragraph 2 or 3 (main group 2).*

Article 34f CITA contains temporary legislation for MNE Groups with an Ultimate Parent Entity resident in a jurisdiction whose CBC reporting legal framework is in effect for Reporting Periods later than 1 January 2016 and allow to file a CbC-Report on a voluntary basis. This is called "voluntary filing" or "parent surrogate filing".

Regardless of the form of filing a CbC-Report, the starting point is that the Reporting Entity files a complete CbC-Report.

In the following paragraphs the three main groups will be discussed whereby a Constituent Entity (either tax resident in The Netherlands or in another state) has to file the CbC-report with either the Dutch Tax Authorities or with the tax authorities of another state, namely:

- Main group 1:
 - a) an Ultimate Parent Entity tax resident in The Netherlands.
 - b) an Ultimate Parent Entity tax resident outside The Netherlands.
- Main group 2:
 - a) a Constituent Entity, as meant in article 29c, paragraph 2 or 3 CITA, tax resident in The Netherlands (local filing – Netherlands, including European local filing).
 - b) a Constituent Entity tax resident outside The Netherlands (local filing – foreign country).
- Main group 3:
 - a) a Surrogate Parent Entity tax resident in The Netherlands.
 - b) a Surrogate Parent Entity tax resident outside The Netherlands.

For foreign Reporting Entities this obligation is based on the applicable laws of the relevant state of which the Reporting Entity is tax resident.

The temporary rule of "voluntary filing" or "parent surrogate filing" will be discussed in paragraph 2.3.5.

Finally, paragraph 2.4 will discuss the rules resulting from DAC 4 around incomplete CbC-reports (article 29c, paragraph 3 and article 29d, paragraph 2 CITA).

2.3.2 *Ultimate Parent Entity filing*

2.3.2.1 Filing by an Ultimate Parent Entity tax resident in The Netherlands

The main rule²⁶, that the Dutch tax resident Ultimate Parent Entity of an MNE Group files the CbC-report with the Dutch Tax Authorities, can be found in article 29c, paragraph 1, CITA:

An Ultimate Parent Entity of an MNE Group that is resident for tax purposes in The Netherlands shall file a CbC-report conforming to the requirements of article 29e with the Dutch tax inspector with respect to its Reporting Fiscal Year within 12 months after the last day of the Reporting Fiscal Year.

An Ultimate Parent Entity is defined in article 29b, letter e, CITA:

A Constituent Entity of an MNE Group

- 1. that owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and*
- 2. in which no other Constituent Entity of such MNE Group owns directly or indirectly an interest described in subsection (1) above.*

The term Fiscal Year²⁷ has been discussed in paragraph 2.2.2.

In case the aforementioned conditions are met, an Ultimate Parent Entity that is tax resident in The Netherlands with the obligation to file a CbC-report on behalf of the MNE Group is present. The Dutch Tax Authorities will upon receipt of the CbC-report automatically exchange the report with other relevant treaty partners, whereby the countries included in the CbC-report form the basis of exchanging the CbC-reports to²⁸.

The term '*relevant treaty partners*' will be discussed in paragraph 2.6.2.

The Ultimate Parent Entity has the obligation to file a complete CbC-report in a timely manner.

2.3.2.2 Filing by an Ultimate Parent Entity tax resident outside The Netherlands

If the Ultimate Parent Entity of an MNE Group is tax resident in another state than The Netherlands, the CbC-report has, in principle, to be filed with the tax authorities of the state of which the Ultimate Parent Entity is tax resident. The Dutch Tax Authorities will then receive the CbC-report from the foreign tax authorities through automatic exchange of the CbC-report. An exception applies if the conditions stipulated in article 29c, paragraph 2, CITA are met (local filing), as will be discussed in paragraph 2.3.3 below.

2.3.3 *Local filing*

2.3.3.1 Local filing by a Constituent Entity tax resident in The Netherlands

In three situations, the obligation to file the CbC-report with the Dutch Tax Authorities lies with a Constituent Entity that is resident for tax purposes in The

²⁶ Kamerstukken II, 2015/16, 34.305, nr. 3, p. 34;

²⁷ Article 29b, part g CITA;

²⁸ Article 6e, paragraph 1, WIB;

Netherlands that is not the Ultimate Parent Entity of the MNE Group. This is called the fall back option²⁹. If one of the requirements of article 29c, paragraph 2, CITA is met, the Constituent Entity in The Netherlands has in principle the obligation to file the CbC-report. Below, the three situations will be described and discussed in more detail.

Article 29c, paragraph 2, CITA provides:

A Constituent entity that is resident for tax purposes in The Netherlands that is not the Ultimate Parent Entity of an MNE Group, shall file a CbC-report conforming to the requirements of article 29e with the Dutch tax inspector with respect to its Reporting Fiscal Year within 12 months after the last day of the Reporting Fiscal Year if

- a. The Ultimate Parent Entity of the MNE Group is not obliged to file a CbC-report in its jurisdiction of tax residence; or*
- b. Within 12 months after the last day of the Reporting Fiscal Year the jurisdiction of which the Ultimate Parent Entity is resident for tax purposes has an agreement in force that by its terms provides legal authority for the exchange of information between jurisdictions, but no agreement is in force between competent authorities of that jurisdiction and The Netherlands that by its terms provides legal authority for the automatic exchange of CbC-reports; or*
- c. There has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Dutch tax inspector to the Constituent Entity resident in The Netherlands for tax purposes.*

The first situation³⁰ (letter a) concerns the situation in which the Ultimate Parent Entity of the MNE Group is not obliged to file a CbC-report in its jurisdiction of tax residence. For example, this is the case when the jurisdiction in which the Ultimate Parent Entity has its tax residence has not (yet) introduced CbC-legislation. As a consequence, in this situation no automatic exchange of information can take place between the Dutch and the foreign tax authorities. As such, the Dutch Tax Authorities are not able to obtain the CbC-report.

Furthermore, it is possible that a jurisdiction has implemented CbC-legislation, however, has included certain exemptions from filing a CbC-report. In such situation, and provided that the MNE Group contains a Dutch constituent entity, there is a filing obligation in The Netherlands which falls within the scope of the first situation (letter a), unless it is an exemption in line with OECD-guidance.

The second situation³¹ (letter b) concerns the situation in which the CbC-report is filed with the foreign tax authorities, but the report cannot be exchanged with The Netherlands as there is no agreement in place between the competent authorities pursuant to which this exchange can take place. Paragraph 2.7.2 will discuss the situations in which an agreement is in force between the competent authorities.

The third situation³² (letter c) concerns the situation in which there has been a *Systemic Failure* of another jurisdiction in exchanging the CbC-reports.

This is the case if (article 29b, letter i, CITA):

A jurisdiction has an agreement in force concluded with The Netherlands that requires the automatic exchange of CbC-reports, has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement), or otherwise persistently failed to automatically provide to The

²⁹ Kamerstukken II, 2015/16, 34305, nr. 6, p. 17;

³⁰ Kamerstukken II, 2015/16, 34305, nr. 3, p. 34;

³¹ Kamerstukken II, 2015/16, 34305, nr. 3, p. 34;

³² Kamerstukken II, 2015/16, 34305, nr. 3, p. 34;

Netherlands the CbC-reports in its possession of MNE Groups that have Constituent Entities in The Netherlands.

In this case, there is an agreement in place concerning the automatic exchange with The Netherlands but – for reasons other than those that are in accordance with the terms of that Agreement – the exchange of information has been suspended. The other jurisdiction could also persistently fail to automatically provide to The Netherlands the CbC-report in its possession of MNE Groups that have Constituent Entities in The Netherlands³³.

It should however be noted that in practice an available CbC-report can be obtained within the MNE Group³⁴. This report should be filed in accordance with the Dutch provisions and specifications in the prescribed XML-format.

2.3.3.2 Local filing by a Constituent Entity tax resident outside The Netherlands

A Constituent Entity will have to file a CbC-report in its jurisdiction of residence on the basis of local filing under the circumstances and under the CbC legislation as applicable in that specific jurisdiction.

2.3.3.3 EU-local filing by a Constituent Entity tax resident in The Netherlands

Special provisions are included in case an MNE Group has multiple Constituent Entities in the European Union.

Article 29c, paragraph 3, first sentence, CITA provides that:

Where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in a Member State of the European Union and one or more of the conditions set out in paragraph 2, letters a, b and c, apply, the MNE Group may designate one of such Constituent Entities to file the CbC-report within 12 months after the last day of the Reporting Fiscal Year of the MNE Group to satisfy the filing requirement of a CbC-report conforming the requirements of article 29e for that Fiscal Year.

On the basis of this provision, the MNE group may designate one of the Constituent Entities resident in the European Union to satisfy the CbC-report filing obligation for all these Constituent Entities within the European Union³⁵. An exception to this provision applies in case of the situation described in article 29c, paragraph 3, second sentence CITA. This will be discussed hereafter.

In case a Constituent Entity resident in The Netherlands is designated to file the CbC-report on the basis of EU local filing, the CbC-report will need to be filed with the Dutch Tax Authorities. After receipt of the CbC-report, the Dutch Tax Authorities will automatically exchange the CbC-report to the relevant EU Member States.

This provision increases the effectiveness for MNE Groups with constituent entities in various EU Member States, by enabling it to file its CbC-Report only once within the EU.³⁶

As also mentioned before in section 2.3.1, it is aimed that the CbC-reports filed are complete CbC-reports.

A Constituent Entity tax resident in The Netherlands or in another EU Member State is not allowed to file the CbC-report on the basis of EU-local filing, in case it

³³ Kamerstukken II, 2015/16, 34305, nr. 3, p. 34;

³⁴ Kamerstukken II, 2015/16, 34305, nr. 3, p. 34;

³⁵ Kamerstukken II 2017/18, 34786, nr. 3, p. 8;

³⁶ Kamerstukken II 2017/18, 34786, nr. 3, p. 8;

concerns an incomplete CbC-report. In such case, the Constituent Entity(ies) tax resident in The Netherlands would then fall within the scope of article 29c, paragraph 2 CITA (local filing).

This implies that in case there are various Constituent Entities tax resident in The Netherlands, which are part of the same MNE Group, and an incomplete CbC-report is filed, in principle all Dutch resident Constituent Entities of the aforementioned MNE Group have the obligation to file a CbC-report.³⁷

For more information about the subject incomplete CbC-reports, reference is made to paragraph 2.4.

2.3.3.4 EU-local filing by a Constituent Entity tax resident outside The Netherlands

An MNE Group may designate a Constituent Entity tax resident in another EU Member State to file a CbC-report in its jurisdiction of tax residence under the circumstances and under the CbC legislation as applicable in that specific EU Member State.

In case of such EU-local filing, the CbC-report will be filed with the tax authorities of that Constituent Entity. The Dutch Tax Authorities will receive that CbC-report through automatic EU exchange of information.

2.3.4 *Filing by a Surrogate Parent Entity*

2.3.4.1 Filing by a Surrogate Parent Entity tax resident in The Netherlands

Local filing by a Dutch Constituent Entity on the basis of article 29c, paragraph 2 and 3, CITA can be prevented by an MNE Group by designating a Surrogate Parent Entity.

In case a Constituent Entity resident in The Netherlands has the obligation to file a CbC-report under local filing obligation (article 29c, paragraph 2 CITA), a Surrogate Parent Entity may be designated in The Netherlands.

Article 29b, letter f, CITA defines Surrogate Parent Entity as follows:

A Constituent Entity of the MNE Group that has been appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the CbC-report as meant in article 29e in that Constituent Entity's jurisdiction on behalf of such MNE Group, when one or more conditions set out in article 29c, paragraph 2, letters a, b, and c, apply;

An MNE Group can appoint a Dutch Constituent Entity to act as sole substitute to file the CbC-report with the Dutch Tax Authorities on behalf of that MNE Group. When such choice is made, the MNE Group has a notification obligation on the basis of article 29d, paragraph 1, CITA, which will be discussed in paragraph 2.5.1 below. The Dutch Tax Authorities will upon receipt of the CbC-report automatically exchange the CbC-report with other relevant treaty partners.

In case a Dutch Constituent Entity did not receive all relevant information to comply with the obligation, this entity cannot be designated as Surrogate Parent Entity.

If a CbC-Report is filed by a Surrogate Parent Entity tax resident in The Netherlands, the same legal basis is applicable to this Surrogate Parent Entity as would be applicable to the filing of a CbC-Report by an Ultimate Parent Entity.

³⁷ Kamerstukken II, 2016/17, 34651, nr. 6;

2.3.4.2 Filing by a Surrogate Parent Entity tax resident in another jurisdiction

In article 29c, paragraph 4, CITA a provision is included for Surrogate Parent Entities in a foreign jurisdiction. If a Constituent Entity resident for tax purposes in another jurisdiction acts as Surrogate Parent Entity, and the CbC-report is made available to the local tax authorities, it is no longer required for the Dutch Constituent Entity to file the CbC-report on the basis of article 29c, paragraph 2 and 3, CITA. Five cumulative conditions need to be satisfied, as described below.

Article 29c, paragraph 4, CITA, provides:

A Constituent Entity as meant in paragraph 2 or 3 is not required to file a CbC-report conforming to the requirements of article 29e with the Dutch tax inspector within 12 months after the last day of the Reporting Fiscal Year of its MNE Group if such MNE Group, within such term, has made available such a CbC-report through a Surrogate Parent Entity to the tax authorities of the jurisdiction of its tax residence. If the Surrogate Parent Entity has its tax residency outside of the the EU, the first sentence only applies if:

- a. the jurisdiction of tax residence of the Surrogate Parent Entity requires filing of CbC-reports conforming to the requirements of article 29e;*
- b. no later than 12 months after the last day of the Reporting Fiscal Year, the jurisdiction of tax residence of the Surrogate Parent Entity has a Qualifying Competent Authority Agreement in force with The Netherlands that requires the automatic exchange of CbC-reports;*
- c. the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the Dutch Tax Authorities of a Systemic Failure;*
- d. the jurisdiction of tax residence of the Surrogate Parent Entity has been notified, pursuant to a provision similar to article 29d, paragraph 1, by the Constituent Entity resident for tax purposes in its jurisdiction that it is the Surrogate Parent Entity; and*
- e. a notification has been provided to the Dutch tax inspector in accordance with article 29d, paragraph 2.*

The first condition requires that the jurisdiction of tax residence of the Surrogate Parent Entity requires filing of CbC-reports. If this condition is not satisfied, Constituent Entities from that jurisdiction cannot act as Surrogate Parent Entity.

The second condition requires that between the jurisdiction of tax residence of the Surrogate Parent Entity and The Netherlands, no later than the deadline for filing of the CbC-report, a Qualifying Competent Authority Agreement is in force between the competent authorities that requires the automatic exchange of CbC-reports.

The definition of Qualifying Competent Authority Agreement will be discussed in paragraph 2.6.2.

The third and fourth condition concern the notification obligation in The Netherlands, and in the jurisdiction of tax residence of the Surrogate Parent Entity. In other words: the jurisdiction has been notified by a Constituent Entity in its jurisdiction that it is the Surrogate Parent Entity. In addition, the Dutch Tax Authorities have received a notification on the *identity* and the tax residence of the Reporting Entity.

Lastly, the fifth condition requires that the jurisdiction has not provided the Dutch Tax Authorities with a notification of Systemic Failure (and this jurisdiction may not persistently fail in exchange CbC-reports). Systemic Failure has been discussed in paragraph 2.3.4 (Local filing by a Constituent Entity tax resident in The Netherlands).

If all those conditions are satisfied, it is no longer required for Constituent Entities resident for tax purposes in The Netherlands to file a CbC-report. The jurisdiction of

tax residence of the Surrogate Parent Entity will upon receipt of the CbC-report automatically exchange the report with the Dutch Tax Authorities.

2.3.5 *Filing by an Ultimate Parent Entity tax resident outside The Netherlands under voluntary filing or parent surrogate filing*

Article 34f CITA contains a transitional provision³⁸ for the (temporary) situation where MNE Groups with an Ultimate Parent Entity resident in a jurisdiction whose CbC reporting legal framework is in effect with respect to Reporting Periods later than 1 January 2016, that such jurisdiction allows an Ultimate Parent Entity to file a CbC-report on a voluntary basis³⁹.

By accepting such "voluntary filing" under certain conditions, it is prevented that Dutch Constituent Entities forming part of such MNE Groups will need to file the CbC-report locally, as included in article 29c, paragraph 2 and 3 CITA.

If an Ultimate Parent Entity resident in another jurisdiction files its CbC-report (voluntarily) with the tax authorities of its jurisdiction, the local filing obligation for the Dutch resident Constituent Entity is cancelled under the cumulative conditions included in article 34f CITA, i.e.:

- a) *The jurisdiction of which the Ultimate Parent Entity is tax resident has a legal basis to require the filing of CbC-reports within the meaning of article 29e CITA, no later than 12 months following the last day of the Fiscal Year covered by the CbC-report;*
- b) *The jurisdiction of which the Ultimate Parent Entity is tax resident has, no later than 12 months following the last day of the Fiscal Year covered by the CbC-report, an agreement in effect with The Netherlands that provides for the automatic exchange of CbC-reports;*
- c) *The jurisdiction of which the Ultimate Parent Entity is tax resident has not notified The Netherlands of a Systemic Failure;*
- d) *The jurisdiction of which the Ultimate Parent Entity is tax resident has, no later than fifteen months following the last day of the Fiscal Year covered by the CbC-report, exchanged the CbC-report with The Netherlands; and*
- e) *The tax inspector has been notified following article 29d, paragraph 2 CITA that that Constituent Entity is the Ultimate Parent Entity.*

The OECD has released information on the current status of implementation of country-by-country reporting around the world. This includes an update on the implementation by jurisdictions whether they allow (temporarily) voluntary filing. In this respect, reference is made to <http://www.oecd.org/tax/automatic-exchange/country-specific-information-on-country-by-country-reporting-implementation.htm>.

Voluntary filing provisions are temporarily in nature. Dependent on the outcomes of the OECD peer review for CbC-reporting and application of CbC-reporting by the various jurisdictions⁴⁰, the legislator may consider to withdraw article 34f CITA. It seems obvious to withdraw article 34f CITA in the situation that a large amount of jurisdictions have implemented country-by-country reporting in its local legislation⁴¹.

The explanatory memorandum⁴² contains the following example:
The Ultimate Parent Entity of an MNE Group is resident in country A and has a Fiscal Year equal to calendar year. The MNE Group includes a Dutch tax resident Constituent Entity. Country A introduces country-by-country reporting in its

³⁸ Amendments of some tax laws and some other laws (Other Tax measures 2018);

³⁹ Kamerstukken II, 2017/18, 34.786, nr. 3, p. 11;

⁴⁰ Various countries have committed themselves to Country-by-Country Reporting and the intended OECD evaluation in 2020. Additionally, there are various stakeholders of Country-by-Country reporting;

⁴¹ Kamerstukken II, 2017/18, 34.786, nr. 3, p. 46;

⁴² Kamerstukken II, 2017/18, 34.786, nr. 3, p. 47;

legislation per 1 January 2017, while in The Netherlands the obligation to file a CbC-report regards Fiscal Years starting on or after 1 January 2016. Following article 29c, paragraph 2 CITA, the Dutch resident Constituent Entity is obliged to file a CbC-report in The Netherlands for the Fiscal Year starting 1 January 2016 and ending 31 December 2016. After all, the Ultimate Parent Entity is not obliged – for that Fiscal Year - to file a CbC-report in Country A. However, in anticipation of country-by-country reporting legislation, Country A accommodates "voluntary filing" or "parent surrogate filing" in line with the option provided by the OECD guidance with respect to Fiscal Years commencing 1 January 2016, in this example the Fiscal Year commencing on 1 January 2016 and ending 31 December 2016. The Ultimate Parent Entity will file this CbC-report with the tax authorities in country A. Subsequently, Country A will exchange the CbC-report before 1 April 2018 with The Netherlands, assuming that in Country A the legal basis to exchange CbC-reports is in effect, and therefore Country A has an agreement in place with The Netherlands to automatically exchange CbC-reports. On the basis of the proposed article 34f CITA, the obligation for the Dutch resident Constituent Entity to file a CbC-report with the Dutch Tax Authorities is cancelled, provided all conditions in article 34f, letter a up to and including e CITA are met.

2.4 Filing an incomplete CbC-report by a Dutch resident Constituent Entity

As also described above, the starting point is that the Reporting Entity files a complete CbC-report, regardless of whether it is an Ultimate Parent Entity, Surrogate Parent Entity or local filer.

However, with articles 29c, paragraph 3 CITA and 29d, paragraph 3 CITA it is considered possible that the constituent entity, not being a Ultimate Parent Entity, nor a Surrogate Parent Entity, may not receive all relevant information for a CbC-report from its Ultimate Parent Entity, and therefore is not able to file a CbC-report within the meaning of article 29e CITA to the Dutch Tax Authorities.

In such situation, the Constituent Entity will need to inform the tax inspector and file a CbC-report with the information it does have; this ultimately 12 months after the last day of the reporting year, with respect to which the ultimate parent entity has not provided all the required information.

Article 29c, paragraph 3, third sentence, CITA includes the obligation to notify the Dutch Tax Authorities in case of an incomplete CbC-Report. This is included in paragraph 2.6.2.

Articles 29c, paragraph 3, CITA and 29d, paragraph 3, CITA should be read as such that the Reporting Entity actively endeavours demonstrably to obtain all the required information with the intention to be able to file a CbC-Report which is as complete as possible. Both articles include the obligation for the Reporting Entity to endeavour demonstrably, with all means available to the entity, to obtain the required information.

Due to the introduction of the article 29c paragraph 3 and 29d, paragraph 3 CITA, the penalty for not, or incorrectly filing the notification has been equalised with the penalty for not, or incorrectly (and/or incompletely) filing a CbC-report.

Considering the importance of countering tax avoidance by means of openness and transparency which is achieved by means of CbC-reporting, the Dutch Tax Authorities will enforce responsively (*in Dutch: responsief handhaven*) in case of none compliance, none timely compliance, incomplete compliance or incorrect compliance with the requirements of article 29c and 29d CITA. For more information regarding penalties, please refer to chapter 5.

2.5 Effective date and deadline for filing CbC-report

The Dutch legislation for CbC-reports entered into force per 1 January 2016.

The obligation to prepare a CbC-report is effective for Fiscal Years beginning on or after 1 January 2016.

The CbC-report shall in all cases be filed with the Dutch Tax Authorities no later than 12 months after the last day of the Reporting Fiscal Year. The Fiscal Year means the annual accounting period with respect to which the Ultimate Parent Entity prepares its financial statements.

2.6 Which Constituent Entities are required to provide a notification?

In principle, all Constituent Entity resident for tax purposes in The Netherlands that are part of an MNE Group to which the CbC-reporting legislation is applicable are required to provide a notification⁴³.

In the Dutch CbC-reporting legislation, the following articles include a notification obligation:

- article 29d, paragraph 1, CITA
- article 29d, paragraph 2, CITA
- article 29c, paragraph 3, third sentence, CITA
- article 29d, paragraph 3, CITA.

These articles cover four different situations.

If two or more Constituent Entities are included in a fiscal unity for Dutch corporate income tax purposes, it is allowed, for practical reasons, that only the parent company (for example) provides a notification⁴⁴.

For the three first mentioned notification obligations it is required that the Dutch Tax Authorities will receive the notification no later than the last day of the Reporting Fiscal Year of the MNE Group of the Constituent Entity.

The notification mentioned in article 29d, paragraph 3, CITA, should be done no later than 12 months after the last day of the respective reporting year.

This notification should be done in XML-format, when filing the CbC-report.

The Dutch Tax Authorities have developed a digital notification tool for the three first mentioned notifications, which MNE Groups can use for these notifications. Constituent Entities are requested to use this notification tool to satisfy the notification obligation.

This tool can be found at:

<https://www.gegevensportaal.net/cbc/aanmelden/>

Further background is provided below.

2.6.1 Notification obligation – article 29d, paragraph 1, CITA

The notification obligation in paragraph 1 concerns a Constituent Entity resident for tax purposes in The Netherlands that is an Ultimate Parent Entity or a Surrogate Parent Entity.

⁴³ Kamerstukken II 2015-2016, 34 305, nr. 3, p. 35;

⁴⁴ Kamerstukken II 2015-2016, 34 305, nr. 3, p. 35;

This article stipulates:

A Constituent Entity of an MNE Group resident for tax purposes in The Netherlands, shall notify the Dutch tax inspector whether it is the Ultimate Parent Entity or the Surrogate Parent Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group.

This notification obligation serves to inform the Dutch Tax Authorities about which CbC-reports they have to exchange with other relevant jurisdictions⁴⁵.

2.6.2 Notification obligation – article 29d, paragraph 2, CITA

The notification obligation in paragraph 2 concerns a Constituent Entity resident for tax purposes in The Netherlands that is not an Ultimate Parent Entity or a Surrogate Parent Entity.

A Constituent Entity of a MNE Group resident for tax purposes in The Netherlands, that is not the Ultimate Parent Entity nor the Surrogate Parent Entity, shall notify the Dutch tax inspector of the identity and tax residence of the Reporting Entity no later than the last day of the Reporting Fiscal Year of such MNE Group.

In this notification the Constituent Entity of the MNE Group that is the Reporting Entity – and its tax residency – has to be identified.

Identifying a Constituent Entity entails to providing the *Tax Identification Number* and address details of that Constituent Entity⁴⁶.

2.6.3 Notification obligation – article 29c, paragraph 3, second sentence, CITA

Where a CbC-report is filed through local filing as meant in article 29c, paragraph 2, CITA and more than one Constituent Entity is resident for tax purposes in The Netherlands, the designated Constituent Entity shall provide a notification to the Dutch Tax Authorities. The definition of designated Constituent Entity is discussed in paragraph 2.3.4.

Article 29c, paragraph 3, second sentence, CITA stipulates:
The designated Constituent Entity shall notify the Dutch tax inspector that the filing of the CbC-report is intended to satisfy the filing requirement of all Constituent Entities of such MNE Group that are tax resident for tax purposes in The Netherlands.

In this notification, the MNE Group shall specify which Constituent Entity resident for tax purposes in The Netherlands shall file the CbC-report.

2.6.4 Notification obligation – article 29d, paragraph 3, CITA

The notification obligation in article 29, paragraph 3, CITA, pertains to Constituent Entities which are Tax Resident in The Netherlands, which file an incomplete report and which are not the Ultimate Parent Entity or the Surrogate Parent Entity.

Article 29d, paragraph 3 CITA, stipulates:

A Constituent entity which is a tax resident of The Netherlands and, on the basis of art. 29c, paragraph 2, CITA, is required to provide the tax inspector within 12 months after the last day of the Reporting year of the multinational entity group of which she is a Constituent entity, with a CbC-report as meant in article 29e CITA, which concerns the respective Reporting Year, shall request her Ultimate Parent Entity to provide her with all the information required to fulfil this obligation. If the

⁴⁵ Kamerstukken II 2015-2016, 34 305, nr. 3, p. 35;

⁴⁶ Ministerial regulation December 30 2015, nr. DB/2015/462M, p. 3, column 2;

Constituent Entity has not received or obtained all information required to fulfil the previously mentioned obligation, the Constituent entity will inform the tax inspector and provide the tax inspector with a CbC-report with all information she possesses, latest 12 months after the last day of the reporting year in relation to which the Ultimate Parent Company has not made the information available.

The purpose of this notification is that the Constituent entity declares that it has not received, or obtained all information required to file a complete CbC-report.

This notification should be done via the XML-file that will be filed with the Dutch Tax Authorities.

2.7 For what purposes do the Dutch Tax Authorities use the information?

The general idea behind the new standardized CbC-report is that tax authorities can more efficiently conduct a transfer pricing risk assessment⁴⁷. If the results of this risk assessment show a high risk on profit shifting, the tax authorities can make further requests to further investigate the issue. Limited resources can be deployed more efficiently and base erosion and profit shifting can be prevented more effectively. The standardization is advantageous for businesses, as they do not have to comply with different documentation requirements in different countries.⁴⁸

In this paragraph the purposes for which the Dutch Tax Authorities will use the information from the CbC-reports will be discussed. In addition, the international exchange of CbC-reports will be discussed.

2.7.1 Use of information in CbC-report by Dutch Tax Authorities

In line with article 29f CITA, the Dutch Tax Authorities will use the information in a CbC-report for:

1. assessment of substantial transfer pricing risks; *and*
2. assessment of other risks for The Netherlands related to base erosion and profit shifting, including the risk of non-compliance of transfer pricing rules by Constituent Entities of the MNE Group; *and*
3. where needed, performing economical and statistical analyses⁴⁹.

The CGTP plays a central role in the assessment of CbC-reports and will liaise with the competent tax inspector⁵⁰⁵¹.

A transfer pricing adjustment by the tax inspector will not be based on data from the CbC-report⁵².

The confidentiality of the information in the CbC-report is covered by the existing confidentiality obligation clauses in article 67 of the General Tax Law Act and articles 16 en 28 of the *WIB*⁵³.

2.7.2 International exchange of the CbC-report

This paragraph will discuss the automatic exchange of CbC-reports:

1. from the Dutch Tax Authorities to tax authorities of other relevant treaty partners;
2. from tax authorities of other relevant treaty partners to the Dutch Tax Authorities.

⁴⁷ Kamerstukken II, 2015/16, 34.305, nr. 3, p. 9;

⁴⁸ Kamerstukken II, 2015/16, 34.305, nr. 3, p. 9;

⁴⁹ Article 29f, first sentence, of the CITA;

⁵⁰ Kamerstukken II 2015/16, 34.305, p. 15;

⁵¹ Decree of the Secretary of State of Finance of 30 April 2018 (Stcr. 2018, 26 875);

⁵² Article 29f, second sentence, of the CITA;

⁵³ Kamerstukken II 2015/16, 34305, nr. 3, p. 36;

In the context of the automatic international exchange of CbC-reports, the relevant treaty partners are: jurisdiction with which The Netherlands has concluded a (bilateral or multilateral) tax treaty or a Tax Information Exchange Agreement (TIEA), and the competent authorities of both countries have signed an agreement on the automatic exchange of CbC-reports. The relevant legislation has to be implemented and in force.

A list of jurisdictions that have implemented their legislation and have signed a Qualifying Competent Authority Agreement will be published on the website of the OECD.

Ad 1) The Ultimate Parent Entities and the Surrogate Parent Entities that are resident for tax purposes in The Netherlands are required to file a CbC-report with the Dutch Tax Authorities. The CbC-report needs to be filed no later than 12 months after the last day of the Reporting Fiscal Year of the MNE Group. Upon receipt of the CbC-report, the Dutch Tax Authorities will determine with which relevant treaty partners exchange of the CbC-report shall take place, which in principle will happen based on the content of the CbC-report. The actual exchange of the CbC-report with the tax authorities of the other relevant treaty partners will take place automatically.

Ad 2) The Ultimate Parent Entity and the Surrogate Parent Entities that are resident for tax purposes in foreign jurisdictions are required to file the CbC-report with the tax authorities in the jurisdiction of its tax residence. Upon receipt of the CbC-report, the tax authorities of that jurisdiction will determine with which relevant treaty partners, including The Netherlands, exchange of information shall take place. Next, the actual exchange of the CbC-report with the tax authorities of the other relevant treaty partners will take place automatically.

The actual exchange of CbC-reports will take place no later than 15 months after the last day of the Reporting Fiscal Year.

The Dutch Tax Authorities will exchange CbC-reports with jurisdictions with which The Netherlands has concluded an agreement that covers such exchange. The definitions International Agreement and Qualifying Competent Authority Agreement are important in this respect. Both definitions are not defined as such in article 29b, CITA. Instead, the material content of the relevant provisions in the CbC-model Final Report on BEPS Action 13 is included in the respective articles where these articles play a role. No deviation from BEPS Action 13 is intended⁵⁴.

International Agreement covers:

1. the multilateral convention on mutual administrative assistance in tax matters (hereinafter: *MAAT Convention*);
2. any bilateral tax treaty that includes a provision on automatic exchange of information (such as for example the treaty with the United States); and
3. Directive 2011/16/EU, regarding the automatic exchange of CbC-reports between EU-member states.

The term 'Qualifying Competent Authority Agreement' means a (multilateral or bilateral) agreement

1. between authorized representatives of those jurisdictions that are parties to an International Agreement; *and*
2. that requires the automatic exchange of CbC-reports between the party jurisdictions.

⁵⁴ Kamerstukken II 2015/16, 34305, nr. 3, p. 33;

The exchange of (tax) information regarding CbC-reporting is possible through, amongst others the 'Multilateral Competent Authority Agreement' (*MCAA*)⁵⁵. This MCAA is based on the MAAT Convention.

⁵⁵ <http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/a-boost-to-transparency-in-international-tax-matters-31-countries-sign-tax-co-operation-agreement.htm>;

3 Filing and notification obligation – who?

This chapter gives general information on two relevant 'who'-questions relating to the filing and notification obligation:

- who has to file the CbC-report; *and*
- who has to provide the notification.

3.1 Reporting Entity tax resident in The Netherlands

In principle, the MNE Group as such has to file the CbC-report. However, in the technical delivery in XML-format of the CbC-report, as further explained in part 2 and part 3 of this manual, this term has not been used. Instead, the term 'Reporting Entity' is used.

Reporting Entities of MNE Groups that are resident for tax purposes in The Netherlands are obliged to file the CbC-report with the Dutch Tax Authorities on behalf of the MNE Group.

This can be applicable to:

1. The Ultimate Parent Entity that is resident for tax purposes in The Netherlands;
2. The Surrogate Parent Entity that is resident for tax purposes in The Netherlands; *or*
3. Any other Constituent Entity that is resident for tax purposes in The Netherlands (local filing).

The definitions MNE Group, Reporting Entity, Ultimate Parent Entity, and Surrogate Parent Entity are explained in chapter 2.

3.2 Notification obligation

For all three notifications, the entity that has to provide the notification is the Constituent Entity that is resident for tax purposes in The Netherlands. The definitions MNE Group, Constituent Entity and notification obligation are explained in chapter 2.

4 Filing and notification obligation – what?

This chapter focuses on the general information about the information that has to be submitted and its composition.

First, the concept of a CbC-report and its division into three tables will be discussed. Then, the guidelines for the tables will be discussed. Thereafter, the different columns of the tables will be defined, as discussed in the Ministerial Regulation⁵⁶. Lastly, the information that has to be included in a notification will be discussed.

4.1 CbC-report

According to article 29e, paragraph 1, CITA, a CbC-report is defined as follows:

A CbC-report with respect to an MNE Group containing:

- a. aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates;*
- b. an identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of such Constituent Entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such Constituent Entity is organized, and the nature of the main business activity or activities of such Constituent Entity.*

Article 29e, CITA contains a general provision concerning the form and content of the CbC-report.

Article 29e, paragraph 1, CITA, summarizes the information to be included in the CbC-report. The information should be aggregated⁵⁷ per jurisdiction. This means that transactions between associated enterprises in the same country should be included and as such should not be eliminated.⁵⁸ Hereafter follows an example from the parliamentary history⁵⁹, for clarification purposes.

Example

A Multinational Entity Group has two Constituent Entities in country X, hereinafter referred to as A and B. A provides a loan of 100 with an annual interest of 5% to B. Thus A annually receives an interest income of 5, while B correspondingly reports an interest payment of 5. Accordingly, the CbC-Report should include an income of 5 in the column "revenue - related party". Such corresponding income and expenses should hence not be consolidated within a country (X).

The OECD-guidance (July 2017) discusses "aggregated or consolidated, data to be reported per jurisdiction". The Netherlands requires the use of aggregated data in the CbC-report; the introduced optional exception in the aforementioned OECD-guidance is not applicable in The Netherlands.

⁵⁶ Ministerial regulation 30 December 2015, nr. DB/2015/462M;

⁵⁷ With the implementation of DAC 4, the word "opgestelde" has been altered to "geaggregeerde" in order to stay in line with the terminology used in DAC 4. No changes in terms of interpretation have been intended, Refer to Kamerstukken II, 2016/17,34651, nr. 3, p. 10;

⁵⁸ Kamerstukken II, 2016-2017, 34651, nr. 3, p. 10;

⁵⁹ Kamerstukken II, 2016-2017, 34651, nr. 3, p. 10;

With respect to "being active", the following is mentioned in the parliamentary history⁶⁰: A Multinational Entity Group is active in a certain country if one or more Constituent Entities of that Multinational Entity Group are tax resident in that state, or are subject to tax with respect to activities that are being performed through a permanent establishment in that state, irrespective of the nature and size of these activities.

Article 29e, paragraph 2, CITA indicates that further guidelines on the form and content of the CbC-report, including rules on the definitions and guidelines used in preparing the CbC-report, will be published in a Ministerial Regulation⁶¹.

Language

Based on article 3 of the Regulation additional transfer pricing documentation requirements, the CbC-report shall be prepared in accordance with the templates in Annex A (Dutch) or Annex B (English) and will be prepared in XML format. This is in line with Annex III to Chapter V of the OECD report 'Guidance on Transfer Pricing Documentation and Country-by-Country Reporting'⁶².

Article 3, paragraph 2, Regulation on additional transfer pricing documentation requirements⁶³ states the following:

If a CbC-report, as mentioned in the first paragraph, has been prepared in line with the model included in Appendix A (Dutch language) and table 3 of that model includes additional information, the additional information will be provided in both the Dutch language as well as the English language.

This means that the additional information of explanation that is included in table 3 of appendix 3 of the Regulation on additional transfer pricing documentation requirements, should also be provided in the English language. This table may include information that the Multinational Entity Group deems necessary or provides additional explanation with respect to the required information included in the CbC-report. The additional subparts of the CbC-report may be provided in either English or Dutch. It is also allowed to provide all subparts of the CbC-report in English⁶⁴.

The CbC-report consists of three tables, which are included in Annex A to the Regulation on additional transfer pricing documentation requirements, namely:

- table 1: as a result of article 29e, paragraph 1, letter a, CITA;
- table 2: as a result of article 29e, paragraph 1, letter b, CITA;
- table 3: to be used for additional information.

4.2 General guidelines for the CbC-report

The explanation to the CbC-report (Annex D to the Regulation additional transfer pricing documentation requirements) gives general guidelines for preparing the CbC-report.

Article 29c CITA states per 1 January 2016 that an Ultimate Parent Entity with its tax residence in The Netherlands, will provide the tax inspector within 12 months after the end of a Reporting Year with a CbC-report with respect to the respective Reporting Year, as mentioned in article 29e CITA. In the circumstances mentioned (as of 1 January 2016) in article 29c CITA, the other entities mentioned in that

⁶⁰ Kamerstukken II, 2016/17, 34651, nr. 6, p. 3;

⁶¹ Ministerial regulation 30 December 2015, nr. DB/2015/462M;

⁶² Ministerial regulation 30 December 2015, nr. DB/2015/462M, p. 11;

⁶³ Regulation of the State Secretary of finance of 28 December 2017, to amend the law regarding taxation of personal cars and motorized cars 1998, and of some executional regulations in the field of taxation and allowances;

⁶⁴ Kamerstukken II, 2016/17, 34651, nr. 6, p. 8;

article may also be obliged to file the CbC-report. Hence, the term "Reporting Entity" is used.

4.2.1

Source of data

The Reporting Entity shall consistently use the same sources of data from year to year in completing the template.

The following sources of data can be used:

1. Consolidation reporting packages;
2. Separate entity statutory financial statements;
3. Regulatory financial statements; and/or
4. Internal management accounts.

The Reporting Entity shall provide in table 3 'additional information' of the template a brief description of the sources of data used in preparing the template. If a change is made in the source of data used from year to year, the Reporting Entity shall also explain the reasons for the change and its consequences in table 3 'Additional information' section of the template.

It is not necessary to reconcile the revenue, profit, and tax reporting in the template to the consolidated financial statements⁶⁵. It is also not necessary to make adjustments for differences in accounting principles applied in different tax jurisdictions.

Period covered by the annual template

The CbC-report that has to be prepared in accordance with the template should cover the fiscal year of the Reporting Entity. For Constituent Entities, at the discretion of the Ultimate Parent Entity, the template should reflect on a consistent basis either:

1. information for the fiscal year of the relevant Constituent Entities ending on the same date as the fiscal year of the Ultimate Parent Entity, or ending within the 12 month period preceding such date; or
2. information for all the relevant Constituent Entities reported for the fiscal year of the Ultimate Parent Entity.

Currency

All amounts included in the CbC-report have to be in the same currency, being the currency of the Ultimate Parent Entity⁶⁶.

If statutory financial statements are used as the basis for reporting, all amounts should be translated to the stated functional currency of the Ultimate Parent Entity at the average exchange rate for the year stated in the Additional Information section of the template.

Materiality

Both table 1 and table 2 of the CbC-report should include all tax jurisdictions in which the MNE Group has an entity resident for tax purposes, regardless of the size of business operations in that tax jurisdiction.

Treatment of permanent establishments

The permanent establishment data should be reported by reference to the tax jurisdiction in which it is situated and not by reference to the tax jurisdiction of residence of the business unit of which the permanent establishment is a part. Residence tax jurisdiction reporting for the business unit of which the permanent establishment is a part should exclude financial data related to the permanent establishment.

⁶⁵ Article 29b, part h, CITA;

⁶⁶ Country-by-Country Reporting XML Schema: User Guide for Tax Administrations and Taxpayers, version 1.0 – march 2016, p. 24, IV Currency;

4.3 Instructions table 1 CbC-report

In table 1 of the CbC-report the data have to be included per tax jurisdiction. In the following paragraphs, the definitions of the different columns in table 1 will be listed, in accordance with the definitions in the Regulation additional transfer pricing documentation requirements.

1st column table 1 – tax jurisdiction

In the first column of the template, the Reporting Entity should list all of the tax jurisdictions in which Constituent Entities of the MNE group are resident for tax purposes. A tax jurisdiction is defined as a State as well as a non-State jurisdiction that has fiscal autonomy. A separate line should be included for all Constituent Entities in the MNE group deemed by the Reporting Entity not to be resident in any tax jurisdiction for tax purposes.

Where a Constituent Entity is resident in more than one tax jurisdiction, the applicable tax treaty tiebreaker should be applied to determine the tax jurisdiction of residence. Where no applicable tax treaty exists, the Constituent Entity should be reported in the tax jurisdiction of the Constituent Entity's place of effective management. The place of effective management should be determined in accordance with the provisions of Article 4 of the OECD Model Tax Convention and its accompanying Commentary.

MNE groups with income derived from international transportation or transportation in inland waterways that is covered by treaty provisions that are applicable to such income and under which the taxing rights on such income are allocated exclusively to one jurisdiction, should include the information required by the country-by-country template with respect to such income only against the name of the jurisdiction to which the relevant treaty provisions allocate these taxing rights. This wording is derived from paragraph 55 of chapter 5 of the Transfer Pricing Guidelines on Documentation⁶⁷.

The OECD-guidance includes additional directives for table 1.

2nd – 4th column table 1 - revenue

In the three columns of the template under the heading Revenues, the Reporting Entity should report the following information:

- (i) the sum of revenues of all the Constituent Entities of the MNE group in the relevant tax jurisdiction generated from transactions with associated enterprises;
- (ii) (the sum of revenues of all the Constituent Entities of the MNE group in the relevant tax jurisdiction generated from transactions with independent parties; *and*
- (iii) the total of (i) and (ii).

Revenues should include revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts (e.g. extraordinary income). Revenues should exclude payments received from other Constituent Entities that are treated as dividends in the payer's tax jurisdiction.

5th column table 1 Profit (loss) before income tax

In the fifth column of the template, the Reporting Entity should report the sum of the profit (loss) before income tax for all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The profit (loss) before income tax should include all extraordinary income and expense items. Payments received from other

⁶⁷ http://www.oecd-ilibrary.org/taxation/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report_9789264241480-en, p. 21, paragraph 55;

group entities that are treated as dividends in the tax jurisdiction of the payer are excluded from the profit (or loss) before income tax.

6th column table 1 – Income Tax Paid (on Cash Basis)

In the sixth column of the template, the Reporting Entity should report the total amount of income tax actually paid during the relevant fiscal year by all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. Taxes paid should include cash taxes paid by the Constituent Entity to the residence tax jurisdiction and to all other tax jurisdictions. Taxes paid should include withholding taxes paid by other entities (associated enterprises and independent enterprises) with respect to payments to the Constituent Entity. Thus, if company A resident in tax jurisdiction A earns interest in tax jurisdiction B, the tax withheld in tax jurisdiction B should be reported by company A.

A tax burden should be included as a positive amount, while a tax benefit should be included as a negative amount.

Where dividends from other Constituent Entities (CEs) are excluded from "Profit (loss) before Income Tax" in Table 1, any income tax accrued or income tax paid on these dividends should also be excluded from the relevant column(s).

7th column table 1 – Income Tax Accrued (Current Year)

In the seventh column of the template, the Reporting Entity should report the sum of the accrued current tax expense recorded on taxable profits or losses of the year of reporting of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The current tax expense should reflect only operations in the current year and should not include deferred taxes or provisions for uncertain tax liabilities. As such changes in deferred tax assets or deferred tax liabilities should not be included.

A tax burden should be included as a positive amount, while a tax benefit should be included as a negative amount.

Where dividends from other Constituent Entities (CEs) are excluded from "Profit (loss) before Income Tax" in Table 1, any income tax accrued or income tax paid on these dividends should also be excluded from the relevant column(s).

8th column table 1 – Stated Capital

In the eighth column of the template, the Reporting Entity should report the sum of the stated capital of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, the stated capital should be reported by the legal entity of which it is a permanent establishment unless there is a defined capital requirement in the permanent establishment tax jurisdiction for regulatory purposes. The term stated capital in table 1 includes both the stated capital and the additional paid in capital.

9th column table 1 – Accumulated Earnings

In the ninth column of the template, the Reporting Entity should report the sum of the total accumulated earnings of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction as of the end of the year. With regard to permanent establishments, accumulated earnings should be reported by the legal entity of which it is a permanent establishment.

10th column table 1 – Number of Employees

In the tenth column of the template, the Reporting Entity should report the total number of employees on a full-time equivalent (FTE) basis of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The number of employees may be reported as of the year-end, on the basis of average employment levels for the year, or on any other basis consistently applied across tax jurisdictions

and from year to year. For this purpose, independent contractors participating in the ordinary operating activities of the Constituent Entity may be reported as employees. Reasonable rounding or approximation of the number of employees is permissible, providing that such rounding or approximation does not materially distort the relative distribution of employees across the various tax jurisdictions. Consistent approaches should be applied from year to year and across entities.

11th column table 1 – Tangible Assets other than Cash and Cash Equivalents

In the eleventh column of the template, the Reporting Entity should report the sum of the net book values of tangible assets of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, assets should be reported by reference to the tax jurisdiction in which the permanent establishment is situated. Tangible assets for this purpose do not include cash or cash equivalents, intangibles, or financial assets.

4.4 Instructions table 2 CbC-report

In table 2 the Reporting Entity lists all Constituent Entities of the MNE Group. Constituent Entities resident for tax purposes in the same tax jurisdiction will be grouped together. In addition, per Constituent Entity, the main business activit(y)(ies) of each Constituent Entity should be determined.

1st column table 2

In the first column, all tax jurisdictions should be listed. For the definition 'tax jurisdiction', reference is made to the instructions to table 1.

2nd column table 2

In the second column, the Reporting Entity should list, on a tax jurisdiction-by-tax jurisdiction basis and by legal entity name (including Tax Identification Number and address details), all the Constituent Entities of the MNE group that are resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, however, the permanent establishment should be listed by reference to the tax jurisdiction in which it is situated. The legal entity of which it is a permanent establishment should be noted (e.g. XYZ Corp – Tax Jurisdiction A PE).

3rd column table 2

In the third column, the Reporting Entity should report the name of the tax jurisdiction under whose laws the Constituent Entity of the MNE is organized or incorporated if it is different from the tax jurisdiction of residence.

4th – 16th column table 2

In column 4 up to and including column 16, the main business activities are described, namely:

- 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.

If the nature of the activities is qualified as 'other', the nature of the activities of the Constituent Entity should be specified in the "Additional Information" section.

The Ultimate Parent Entity should determine the nature of the main business activit(y)(ies) carried out by the Constituent Entity in the relevant tax jurisdiction, by ticking one or more of the appropriate boxes.

4.5 Instructions table 3 CbC-report

In this table, the 'additional information' described in paragraph 4.2-4.4, and the additional information required as per the OECD-guidance, shall be included. This table should also include any further information or explanation that may be considered necessary or that provides additional explanation with respect to the compulsory information provided in the CbC-report.

Table 3 of the CbC-report includes obligatory information. Not filing table 3 will result not fully meeting the obligations as included in article 29c CITA, by the reporting entity

4.6 Notification obligation

As discussed in paragraph 2.6, four notifications are included in the Dutch legislation.

The three types of notifications mentioned hereafter serve to inform the inspector about the identity of the reporting entity:

- article 29d, paragraph 1, CITA;
- article 29d, paragraph 2, CITA; and
- article 29c, paragraph 3, third sentence, CITA.

For more information regarding these notifications, please refer to the information on the website mentioned below, including the *frequently asked questions*:
<https://www.gegevensportaal.net/cbc/aanmelden/>

In the notification ex article 29d, paragraph 3, CITA, the Dutch Tax Authorities should be notified that the Reporting Entity did not receive or obtain all the required information to file a complete CbC-report.

This notification should be filed in the XML-format of the CbC-report, as is described in part 2 and part 3 of the Manual, in which the available information should be provided to the Dutch Tax Authorities.

5 Failing to comply - no filing, filing too late or filing an incomplete / incorrect CbC-report or notification

This chapter discusses the consequences of (partly) failing to file, filing too late or filing an incomplete or incorrect:

1. CbC-report; and
2. Notification in the sense of articles 29c, paragraph 3, sentence 3 CITA and 29d CITA.

The consequences of failing to comply with the obligations by a Reporting Entity on behalf of the MNE Group and the obligations of the Dutch Constituent entity may result in an administrative penalty or in a criminal penalty⁶⁸. From the perspective of the legislator, compliance with both obligations has been adequately secured⁶⁹. Both penalties are described below.

5.1 General

Article 25bis of Directive 2011/16/EU⁷⁰ requires member states to take all measures necessary to ensure that the articles of the directive are applied and implement penalties which shall be effective, proportionate and dissuasive⁷¹.

According to the parliamentary proceedings⁷², timely submission of an acceptable CbC-report is crucial in achieving the goals of BEPS Action 13. An effective enforcement is necessary.

A parallel can be drawn between the CbC-report and other information that has to be provided for the (automatic) international exchange of information⁷³. Failing to comply with the obligation to submit information for the international exchange of information can be subject to an administrative penalty and a criminal penalty (dual system). The obligation to file a CbC-report is included in article 29c, CITA. This obligation includes the obligation to file a CbC-report conforming the requirements of article 29e, CITA and the obligation to file the CbC-report within the term stipulated in article 29c, CITA.

Additionally, a penalty is applicable to not filing, too late filing or filing an incomplete or incorrect notification. Due to the penalty regime, compliance with the notification obligation is also adequately secured.⁷⁴

Considering the importance of countering tax avoidance by means of openness and transparency which is achieved by means of CbC-reporting, the Dutch Tax Authorities will enforce responsively (*in Dutch: responsief handhaven*) in case of none compliance, none timely compliance, incomplete compliance or incorrect compliance with the requirements of article 29c and 29d CITA.

5.2 Administrative penalty

In article 29h, paragraph 1, CITA, the administrative penalty is described:

⁶⁸ Article 29 CITA;

⁶⁹ Kamerstukken II 2016-2017, 34651, nr. 3 p. 11;

⁷⁰ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC;

⁷¹ Kamerstukken II 2016/17, 34651, nr. 3 p. 11;

⁷² Kamerstukken II 2015/16, 34 305, nr. 3 p. 38;

⁷³ Kamerstukken II 2015/16, 34 305, nr. 3 p. 38;

⁷⁴ Kamerstukken II 2016/17, 34651, nr. 7 p. 2;

If, as a result of intentional acts or gross negligence, the hereafter mentioned have not, too late, not completely or not correctly been met:

- a. the obligation, mentioned in article 29c or article 29d, by the reporting entity;*
- b. the obligation, mentioned in article 29d, paragraph 2, by the Constituent Entity mentioned in article 29d, paragraph 2*

this qualifies as an wrongdoing for which our Minister can impose a penalty on the Reporting Entity, respectively on the Constituent Entity mentioned in article 29d, paragraph 2 of no more than the amount of the 6th category, as meant in article 23, paragraph 4 of the Criminal Code.

5.2.1 *Amount of administrative penalty*

The amount of the administrative penalty, as can be concluded from the above, is derived from the penalty imposed if intentionally no records (according to the requirements set out in the Dutch tax law) are kept.

In addition, in the Decree Administrative Penalties of the Dutch Tax Authorities⁷⁵ (in Dutch: Besluit Bestuurlijke Boetes Belastingdienst (or: BBBB)), paragraph 28h is included. This paragraph limits the fine to be imposed as follows:

- 1. If the interested party (in Dutch: belanghebbende) did not fulfil, not timely fulfil, fulfil incorrectly or fulfil incompletely its obligations as mentioned in article 29c CITA due to an intentional act or gross negligence, the inspector will impose a penalty, (article 29h, paragraph 1, CITA);*
- 2. In case of gross negligence, the inspector will impose a penalty of 25% of the maximum fine as mentioned in article 29h, paragraph 1, CITA. In case of an intentional act, the inspector will impose a penalty of 50% of the maximum fine as mentioned in article 29h, paragraph 1, CITA.*

The issues discussed in BBBB relating to (i) the absence of a "reasonable stance" (in Dutch: pleitbaar standpunt) and (ii) any other circumstances that may impact (increase or decrease) the penalty are also relevant for the penalties that can be imposed as a result of article 29h, CITA⁷⁶.

Based on paragraph 8 BBBB, the penalties may be increased in case of circumstances that justify an increase of the penalty.

5.2.2 *Term for imposing an administrative penalty*

In article 29h, second paragraph, CITA, the term for imposing an administrative penalty is discussed:

Notwithstanding the provisions of article 5:45 of the General Administrative Law Act [in Dutch: Algemene wet bestuursrecht], the possibility to impose a penalty as meant in paragraph 1, expires five years after the end of the calendar year during which the obligation has arisen.

The term for imposing an administrative penalty by the Dutch Tax Authorities is equal to the term applicable to other tax related administrative penalties [in Dutch: vergrijpboetes]: five years⁷⁷. The term starts at the end of the calendar year during which the obligation has arisen. That obligation arises on the basis of article 29c, paragraph 1, CITA within 12 months after the last day of the Reporting Year. The provisions of title 5.1 (partly) and 5.4 (in full) of the General Administrative Law Act

⁷⁵ Besluit Bestuurlijke Boeten Belastingdienst;

⁷⁶ Kamerstukken II 2015/16, 34305, nr. 6, p. 23;

⁷⁷ Kamerstukken II 2015/16, 34 305, nr. 3, p. 39;

en chapter VIIIA, part 2 General Tax Law Act are applicable to these administrative monetary penalties.

5.3 Criminal penalty

Not complying with the obligations of article 29c, or 29d CITA is considered a criminal act. Article 29h, paragraph 3, CITA provides that chapter IX of the General Tax Law Act is also applicable.

Article 29h, paragraph 3, CITA provides:

Chapter IX of the General Tax Law Act, not including the requirement of article 69 of that act that not enough tax is levied, is also applicable for those that do not comply with the obligation as meant in article 29c or 29d.

If a legal offense is committed by a Reporting Entity, the following penalty will be imposed: imprisonment of no more than 6 months or a fine equal to the third category, as meant in article 23, paragraph 4 of the Criminal Code.

If the CbC-report obligations are intentionally not met, a criminal act is committed by the Reporting Entity. The following penalties apply: a penalty equal to the fourth category, as meant in article 23, paragraph 4 of the Criminal Code or imprisonment of no more than 4 years.

The requirement in article 69 of the General Tax Law Act (a (intentional) act – in this case: not complying with the obligation – that leads to the situation that not enough tax is levied) is not applicable in this context. The background is that not meeting the obligation to timely submit a correct and complete CbC-report does not per se lead to the situation that not enough tax is levied in The Netherlands⁷⁸.

⁷⁸ Kamerstukken II 2015/16, 34 305, nr. 3, p. 38;

6 Logistics

6.1 General

Based on the Regulation Electronic Messaging Tax Authorities,⁷⁹ the Reporting Entity shall submit the required data through a secured internet connection to the Dutch Tax Authorities. This is referred to as Electronic Messaging (EM, in Dutch: elektronisch berichtenverkeer (EBV)). In part 2 of this manual, more specific information on EM will be provided.

Sources and communicators

For the submission of data, the Dutch Tax Authorities distinguish between *Sources* and communicators. A Source is the formal owner of the data and is required to submit the information. A communicator is the organization that actually submits the information on behalf of the Source. In general, the Source and the communicator will be the same organization.

In this manual, the Reporting Entity is the Source. If a Reporting Entity uses a service provider for the submission of information, that organization qualifies as communicator.

The Dutch Tax Authorities communicate with the Source about the filing requirements and the quality of the information. This Source will receive the invitation letters, requests for adjustments and reminders. The invitation letter will indicate a filing number. Each document needs to have an own filing number in accordance with specific requirements. Each submitted document has its own unique identification. The Dutch Tax Authorities use this number in further communication about that document.

The Dutch Tax Authorities will communicate with the communicator about the processing of the submitted information. The communicator needs to comply with the obligations of the Source. If the communicator fails to comply, the Dutch Tax Authorities will inform the formal owner (the Source) about the information.

It is important that the information is registered properly with the Dutch Tax Authorities to ensure a smooth process. It is therefore important to inform the Dutch Tax Authorities about changes in name, address, city and other contact details as quickly as possible. The most important contact details can be found in paragraph 7.2.

6.2 Resubmissions, adjustments, additions and withdrawals

The Dutch Tax Authorities may find that resubmission is necessary if the initial submission contains technical or legal errors. If this is case, the Dutch Tax Authorities will ask for a new, improved submission of information. In this request, it will be indicated – in an error report or in a *process report* – which issues of the earlier submission did not meet the requirements. In case a resubmission is necessary, the communicator will be contacted.

In case of a resubmission, the full document needs to be submitted. The document needs to be submitted in the same way as with the initial submission. One should use a unique filing number for each resubmission. However if the initial submission is not yet processed in the backoffice systems of the Dutch Tax Authorities, one can still use the same filing number for the resubmission as was used for the initial submission. The process is the same as with the initial submission. On the ODB

⁷⁹ Regulation electronic messaging Tax authorities;

website the overview of messages of the dialogue models can be found. For a correct order of the process, the process report or the error report of the Dutch Tax Authorities needs to be awaited before the resubmission is performed. The Dutch Tax Authorities will communicate with the communicator, unless agreed otherwise.

Adjustments may for example be present in case the Dutch Tax Authorities send a process report with errors that did not stop the further process. The document (as a whole) is not rejected. It is possible that incorrect information has been submitted for certain parts or that not all information has been submitted. It is possible that an adjustment is made in the administration to information that has been submitted before. In that case, a new filing number has to be used for that improved submission.

All data that has been submitted before (in a document that has not been rejected as a whole) – whether considered correct or not – can be adjusted by submitting the data again with the correct information.

Attention:

The order of eventual adjustments is determined by the Dutch Tax Authorities on the basis of the attached 'creation date'. It is therefore important that the order in which the documents are created is the same as the order in the mentioned 'creation dates'.

Adjustments and additions need to be made as soon as possible.

7 Support

7.1 Services

The Dutch Tax Authorities have set up a number of supporting services to facilitate the filing process. This paragraph describes those services.

Manual

The most important service is probably this manual. Suggestions to improve this manual are welcome and can be sent to the Contact Center (contact details in paragraph 7.2)

Electronic Messaging

The information has to be submitted through a secured internet connection, using Electronic Messaging. More information on Electronic Messaging can be found in part 2 of this manual.

Testing facility

The Dutch Tax Authorities offer the possibility to test files before they are officially filed.

Information can be submitted in a test-document that will be processed by the Dutch Tax Authorities. The goal of this facility is to check whether the systems of the communicator work properly and if a proper connection can be made with the systems of the Dutch Tax Authorities. After processing the test-document, the communicator will be informed about the *findings* of the test performed. Submitting a test-document can be useful when changes are made to the system. More information on submitting a test-document can be found in part 2 of the manual. On the website odb.belastingdienst.nl the last specifications (XSD's) for all XML messages described in this manual can be found. More information can be found in part 2 of this manual.

Monitoring progress

When the information has been submitted, the Dutch Tax Authorities will process the information in order to ensure it is completely available in its administration. If any problems occur in this process, the communicator will be contacted.

7.2 Contact possibilities

Different possibilities exist to reach out to the Dutch Tax Authorities in case you have any questions. Please note that communication will be in Dutch.

Contact Centre

For primary questions on the submission of CbC-reports, the Dutch Tax Authorities have set up a Contact Centre. Employees of the Contact Centre can assist you with specific questions that go further than the scope of this manual. The Contact Centre can be reached by telephone and by e-mail.

Telephone: 0800 – 0227065, on working days between 09:00 and 16:00.

E-mail: gegevensuitwisseling@belastingdienst.nl

Client coordinators and account managers

If an MNE Group falls under the scope of the Large Enterprises department of the Dutch Tax Authorities, tax technical questions can be sent to the client coordinator with a copy to CBC-reporting@belastingdienst.nl. For any other questions, the questions can be sent by e-mail to the email address gegevensuitwisseling@belastingdienst.nl. The first contact point with the Dutch Tax

Authorities is the relevant client coordinator.

For the automatic submission of information, the Dutch Tax Authorities have set up an additional Contact Centre. Account managers are ready to assist. They can inform timely with new developments and requirements, so that organizations can prepare themselves.

Upon request, an account manager can visit you to discuss any problems and explain unclear issues. If any errors are found in the technological processes, the account manager can contact to discuss and improve the process. In addition, they can assist in answering process questions that cannot be answered (sufficiently) by the Contact Center / manual.

Digital community

The Dutch Tax Authorities have developed a digital community in which information is available and questions can be asked on the filing process.

The digital community can be reached via odb.belastingdienst.nl. The latest documents can be downloaded, including the manual. Register for the digital community via the procedure explained on odb.belastingdienst.nl.

annex 1. Glossary

Term	Definition
BEPS	Base Erosion and Profit Shifting
CbC-report	A report with respect to an MNE Group containing: <ul style="list-style-type: none"> a. aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates; b. an identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of such Constituent Entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such Constituent Entity is organized, and the nature of the main business activity or activities of such Constituent Entity.
Calendar year	Periods of exactly one year, starting on January 1 and ending on the last day of December.
Consolidated Financial Statements	The financial statements of an MNE Group in which the assets, liabilities, income, expenses, and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as those of a single economic entity (article 29b, letter h, CITA).
Constituent Entity	A Constituent Entity is defined in article 29b, letter c, CITA: <ol style="list-style-type: none"> 1. any separate business unit (in Dutch: lichaam) of an MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on a public securities exchange; 2. any such business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size or materiality grounds; 3. any permanent establishment of any separate business unit of the MNE Group included in (1) or (2) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.
Entity	Entity as defined in Civil Law Code (in Dutch: Burgerlijk Wetboek (BW))
Fiscal Year	An annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements (article 29b, letter g, CITA).
Group	The term "Group" means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the

Term	Definition
	enterprises were traded on a public securities exchange. (article 29b, letter a, CITA).
Identity	For Notification purposes, this includes: Tax Identification Number and address details of the Constituent Entity.
local filing	Obligation to file a CbC-report with the Dutch tax authorities on the basis of article 29c, paragraph 2 and 3, CITA, by a Constituent Entity resident for tax purposes in The Netherlands that is not the Ultimate Parent Entity nor the Surrogate Parent Entity of that MNE Group.
MAAT Convention	Multilateral convention on mutual assistance in tax matters
MCAA	Multilateral Competent Authority Agreement
MNE Group	The term "MNE Group" means any group that <ol style="list-style-type: none"> 1. includes two or more enterprises the tax residence for which is in different jurisdictions; or 2. includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction.
OECD	Organisation for Economic Cooperation and Development
Process report	Report with findings on (the quality of) the filed information of the current year and corresponding corrective actions and recommendations for amendments of the control framework for the filing process for next year.
Relevant treaty partners	In the context of the automatic international exchange of CbC-reports, the relevant treaty partners are: jurisdiction with which The Netherlands has concluded a (bilateral or multilateral) tax treaty or a Tax Information Exchange Agreement (TIEA), and the competent authorities of both countries have signed an agreement on automatic exchange of CbC-reports. The relevant legislation has to be implemented and in force.
Reporting Entity	The Constituent Entity that is required to file a country-by-country report conforming to the requirements of article 29e on behalf of its MNE Group in the state of which it is tax resident, being: <ol style="list-style-type: none"> 1. The Ultimate Parent Entity; 2. The Surrogate Parent Entity; 3. Any other entity as described in article 29c, paragraph 2 or 3.
Source	A Source is the formal owner of the data and is required to submit the information.
Systemic Failure	A jurisdiction has a agreement in force concluded with The Netherlands that requires the automatic exchange of CbC-reports, has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement), or otherwise persistently failed to automatically provide to The Netherlands the CbC-reports in its possession of MNE Groups that have Constituent Entities in The Netherlands.
TIEA	Tax Information Exchange Agreement

Term	Definition
TIN	Tax Identification Number. Registration number used by foreign tax authorities for the identification of their taxpayers.

annex 2. Glossary Dutch - English

Begrip Nederlands	Begrip Engels
geconsolideerde jaarrekening	Consolidated Financial Statements
groep	Group
groepsentiteit	Constituent Entity
internationale overeenkomst	International Agreement
landenrapport	Country-by-Country Reporting
multinationale groep	MNE Group
notificatie	Notification
overeenkomst tussen bevoegde autoriteiten	Qualifying Competent Authority Agreement
rapporterende entiteit	Reporting Entity
surrogaatmoederentiteit	Surrogate Parent Entity
systematische nalatigheid	Systemic Failure
uiteindelijkkemoederentiteit	Ultimate Parent Entity
verslagjaar	Fiscal Year

annex 3. Chapter VIIa - Additional transfer pricing documentation requirements, CITA

Artikel 29b

Voor de toepassing van dit hoofdstuk wordt verstaan onder:

a. groep: een eenheid waarin lichamen door bezit, eigendom of zeggenschap zodanig zijn verbonden dat ze ofwel op grond van de van toepassing zijnde regels een geconsolideerde jaarrekening moeten opmaken voor de financiële verslaggeving, ofwel dit zouden moeten doen indien aandelenbelangen in een van de lichamen worden verhandeld op een openbare effectenbeurs;

b. multinationale groep: een groep die:

1°. twee of meer lichamen omvat die hun fiscale vestigingsplaats in een verschillende staat hebben; of

2°. een lichaam omvat dat fiscaal inwoner is van de ene staat en in een andere staat aan belasting onderworpen is met betrekking tot voordelen verkregen uit een onderneming die of het gedeelte van een onderneming dat wordt gedreven met behulp van een vaste inrichting in die staat;

c. groepsentiteit:

1°. een lichaam van een multinationale groep dat is opgenomen in de geconsolideerde jaarrekening van de multinationale groep voor de financiële verslaggeving, of dat daarin zou worden opgenomen indien aandelenbelangen in een lichaam van de multinationale groep op een openbare effectenbeurs worden verhandeld;

2°. een lichaam van een multinationale groep dat enkel op grond van omvang of materieel belang niet is opgenomen in de geconsolideerde jaarrekening van de multinationale groep; of

3°. een vaste inrichting van een lichaam van een multinationale groep als bedoeld onder 1° of 2°, indien het lichaam voor de vaste inrichting een afzonderlijke jaarrekening opmaakt met het oog op de financiële verslaggeving, het naleven van regelgeving, het voldoen aan fiscale verplichtingen of de interne beheerscontrole;

d. rapporterende entiteit: de groepsentiteit die, in de staat waarvan zij fiscaal inwoner is, gehouden is namens de multinationale groep een landenrapport in te dienen dat voldoet aan de voorwaarden van artikel 29e, zijnde:

1°. de uiteindelijk moederentiteit;

2°. de surrogaatmoederentiteit; of

3°. enige andere groepsentiteit als bedoeld in artikel 29c, tweede of derde lid;

e. uiteindelijk moederentiteit: een groepsentiteit van een multinationale groep:

1°. die middellijk of onmiddellijk een belang bezit in een of meer andere groepsentiteiten van die multinationale groep dat voldoende is om verplicht

te zijn een geconsolideerde jaarrekening op te maken op grond van de verslagleggingsregels die algemeen van toepassing zijn in de staat waar de entiteit haar fiscale vestigingsplaats heeft, of om dit verplicht te zijn indien haar aandelenbelangen in de staat waar ze haar fiscale vestigingsplaats heeft, worden verhandeld op een openbare effectenbeurs; en

2°. waarin geen andere groepsentiteit van die multinationale groep middellijk of onmiddellijk een belang bezit dat aan de voorwaarde, bedoeld onder 1°, voldoet;

f. surrogaatmoederentiteit: een groepsentiteit van een multinationale groep die door die multinationale groep wordt aangewezen als enige plaatsvervanger voor de uiteindelijkkemoederentiteit om namens die multinationale groep het landenrapport, bedoeld in artikel 29e, in te dienen in de staat waarvan die groepsentiteit fiscaal inwoner is, indien aan een of meer van de voorwaarden, bedoeld in artikel 29c, tweede lid, onderdelen a, b en c, wordt voldaan;

g. verslagjaar: een jaarlijkse verslagleggingsperiode waarover de uiteindelijkkemoederentiteit van de multinationale groep haar jaarrekening opmaakt;

h. geconsolideerde jaarrekening: de jaarrekening van een multinationale groep waarin de activa, de passiva, de inkomsten, de uitgaven en de kasstromen van de uiteindelijkkemoederentiteit en van de groepsentiteiten zijn weergegeven als die van een enkele economische entiteit;

i. systematische nalatigheid in relatie tot een staat: het door een staat die een in werking zijnde overeenkomst met Nederland heeft die voorziet in de automatische uitwisseling van landenrapporten, om andere redenen dan die welke in overeenstemming zijn met de bepalingen van die overeenkomst, opschorten van die automatische uitwisseling, dan wel het anderszins stelselmatig nalaten door die staat om aan Nederland automatisch de landenrapporten te verstrekken die die staat in zijn bezit heeft en die multinationale groepen betreffen met groepsentiteiten in Nederland.

Artikel 29c

1 Een uiteindelijkkemoederentiteit die haar fiscale vestigingsplaats in Nederland heeft, verstrekt de inspecteur binnen twaalf maanden na de laatste dag van een verslagjaar een landenrapport als bedoeld in artikel 29e dat betrekking heeft op dat verslagjaar.

2 Een fiscaal in Nederland gevestigde groepsentiteit die niet de uiteindelijkkemoederentiteit van een multinationale groep is, verstrekt de inspecteur binnen twaalf maanden na de laatste dag van een verslagjaar van de multinationale groep waarvan ze een groepsentiteit is, een landenrapport als bedoeld in artikel 29e dat betrekking heeft op dat verslagjaar, indien:

a. de uiteindelijkkemoederentiteit van de multinationale groep niet verplicht is een landenrapport in te dienen in de staat waarvan zij fiscaal inwoner is;

b. uiterlijk twaalf maanden na de laatste dag van het verslagjaar met de staat waarvan de uiteindelijkkemoederentiteit fiscaal inwoner is wel een overeenkomst van kracht is die voorziet in de uitwisseling van inlichtingen, waaronder de automatische uitwisseling van inlichtingen, maar er geen in werking zijnde overeenkomst tussen de bevoegde autoriteiten van die staat en Nederland is die voorziet in de automatische uitwisseling van landenrapporten; of

- c. de inspecteur de groepsentiteit heeft bericht dat er sprake is van een systematische nalatigheid van de staat waarvan de uiteindelijk moederentiteit fiscaal inwoner is.
- 3 Indien meerdere groepsentiteiten van dezelfde multinationale groep fiscaal inwoner zijn van een lidstaat van de Europese Unie en aan een of meer van de voorwaarden, bedoeld in het tweede lid, onderdelen a, b en c, wordt voldaan, mag de multinationale groep een van die groepsentiteiten aanwijzen om uiterlijk binnen twaalf maanden na de laatste dag van het verslagjaar van de multinationale groep te voldoen aan de verplichting tot het verstrekken van een landenrapport als bedoeld in artikel 29e dat betrekking heeft op dat verslagjaar. Een groepsentiteit kan niet worden aangewezen als groepsentiteit als bedoeld in de eerste volzin indien deze niet alle nodige informatie heeft ontvangen of verkregen om aan de verplichting, bedoeld in artikel 29d, derde lid, eerste volzin, te kunnen voldoen. De aangewezen groepsentiteit die fiscaal inwoner is van Nederland bericht de inspecteur dat de verstrekking van het landenrapport geschiedt om te voldoen aan de verplichtingen die gelden voor alle groepsentiteiten van die multinationale groep die fiscaal inwoner van een lidstaat van de Europese Unie zijn.
- 4 Een groepsentiteit als bedoeld in het tweede of derde lid is niet verplicht de inspecteur binnen twaalf maanden na de laatste dag van een verslagjaar van de multinationale groep waarvan zij een groepsentiteit is een landenrapport als bedoeld in artikel 29e te verstrekken indien die multinationale groep binnen die termijn een zodanig landenrapport beschikbaar stelt via een surrogaatmoederentiteit die dit rapport verstrekt aan de belastingautoriteiten van de staat waarvan zij fiscaal inwoner is. Indien de surrogaatmoederentiteit haar fiscale vestigingsplaats buiten de Europese Unie heeft, vindt de eerste volzin slechts toepassing indien:
- a. de staat waarvan de surrogaatmoederentiteit fiscaal inwoner is, het verstrekken van zodanige landenrapporten als bedoeld in artikel 29e verplicht;
- b. de staat waarvan de surrogaatmoederentiteit fiscaal inwoner is, uiterlijk twaalf maanden na het verslagjaar waarop het landenrapport betrekking heeft, een in werking zijnde overeenkomst heeft met Nederland die voorziet in de automatische uitwisseling van landenrapporten;
- c. de staat waarvan de surrogaatmoederentiteit fiscaal inwoner is, de Nederlandse autoriteiten niet in kennis heeft gesteld van een systematische nalatigheid;
- d. de staat waarvan de surrogaatmoederentiteit fiscaal inwoner is, op basis van een regeling vergelijkbaar met artikel 29d, eerste lid, door die groepsentiteit in kennis is gesteld van het feit dat die groepsentiteit surrogaatmoederentiteit is; en
- e. de inspecteur hierover is bericht op basis van artikel 29d, tweede lid.
- 5 Het eerste tot en met vierde lid zijn niet van toepassing op groepsentiteiten van een multinationale groep die in het verslagjaar onmiddellijk voorafgaande aan het verslagjaar waarop het landenrapport betrekking zou hebben minder dan € 750.000.000 aan geconsolideerde groepsopbrengsten heeft behaald.
- 6 Bij ministeriële regeling worden nadere regels gesteld over de vorm en de inhoud van het bericht, bedoeld in het derde lid.

Artikel 29d

- 1 Een groepsentiteit van een multinationale groep die fiscaal inwoner is van Nederland, bericht de inspecteur uiterlijk op de laatste dag van het verslagjaar van die multinationale groep of zij de uiteindelijkkemoederentiteit, de surrogaatmoederentiteit of de aangewezen groepsentiteit, bedoeld in artikel 29c, derde lid, is.
- 2 Indien een groepsentiteit van een multinationale groep die fiscaal inwoner is van Nederland noch de uiteindelijkkemoederentiteit, noch de surrogaatmoederentiteit, noch de aangewezen groepsentiteit, bedoeld in artikel 29c, derde lid, is, bericht deze de inspecteur uiterlijk op de laatste dag van het verslagjaar van die multinationale groep over de identiteit en de fiscale vestigingsplaats van de rapporterende entiteit.
- 3 Een groepsentiteit die fiscaal inwoner is van Nederland en op basis van artikel 29c, tweede lid, verplicht is de inspecteur binnen twaalf maanden na de laatste dag van een verslagjaar van de multinationale groep waarvan zij een groepsentiteit is een landenrapport als bedoeld in artikel 29e te verstrekken dat betrekking heeft op dat verslagjaar, verzoekt haar uiteindelijkkemoederentiteit om haar alle nodige informatie te verstrekken om te kunnen voldoen aan deze verplichting. Indien die groepsentiteit niet alle nodige informatie heeft ontvangen of verkregen om aan de in de vorige volzin bedoelde verplichting te kunnen voldoen, bericht die groepsentiteit de inspecteur hierover en verstrekt deze de inspecteur een landenrapport met alle informatie in haar bezit uiterlijk twaalf maanden na de laatste dag van een verslagjaar ten aanzien waarvan de uiteindelijkkemoederentiteit niet alle nodige informatie ter beschikking heeft gesteld.
- 4 Bij ministeriële regeling worden nadere regels gesteld over de vorm en de inhoud van het bericht, bedoeld in het eerste tot en met derde lid.

Artikel 29e

- 1 Het landenrapport is een rapport over de multinationale groep met:
 - a. voor elke staat waarin de multinationale groep actief is, geaggregeerde informatie over de omvang van de inkomsten, de winst vóór winstbelasting, de betaalde winstbelasting, de in de jaarrekening opgenomen winstbelasting, het gestorte kapitaal, de gecumuleerde winst, het aantal personeelsleden en de materiële activa andere dan geldmiddelen of kasequivalenten;
 - b. een omschrijving van elke groepsentiteit van de multinationale groep met vermelding van de staat waarvan die groepsentiteit fiscaal inwoner is, en indien afwijkend, de staat op grond van wiens recht die groepsentiteit is opgericht, alsmede van de aard van de voornaamste bedrijfsactiviteit of bedrijfsactiviteiten van die groepsentiteit.
- 2 Bij ministeriële regeling worden nadere regels gesteld over de vorm en de inhoud van het landenrapport, waaronder regels over de bij het opmaken van het landenrapport te gebruiken definities en richtlijnen.

Artikel 29f

De inspecteur gebruikt het landenrapport voor het beoordelen van substantiële verrekenprijrisico's en van andere risico's voor Nederland die verband houden met uitholling van de belastinggrondslag en winstverschuivingen, daaronder begrepen het risico van het niet naleven van de van toepassing zijnde verrekenprijregels door leden van de multinationale groep, en, waar nodig, voor het maken van

economische en statistische analyses. Een aanpassing van verrekenprijzen door de inspecteur wordt niet gebaseerd op het landenrapport.

Artikel 29g

- 1 Een groepsentiteit die belastingplichtig is in Nederland neemt, binnen de termijn gesteld voor het indienen van haar aangifte voor de heffing van vennootschapsbelasting, een groepsdossier en een lokaal dossier inzake het jaar waarop de aangifte betrekking heeft in haar administratie op. Het groepsdossier en het lokale dossier worden in de Nederlandse of in de Engelse taal opgesteld.
- 2 In het groepsdossier wordt een overzicht gegeven van de onderneming van de multinationale groep, inclusief de aard van haar bedrijfsactiviteiten, haar algehele verrekenprijsgedragslijn en haar wereldwijde allocatie van inkomen en economische activiteiten om belastingadministraties te ondersteunen bij de beoordeling van de aanwezigheid van een substantieel verrekenprijsrisico.
- 3 In het lokale dossier wordt informatie opgenomen die relevant is voor de verrekenprijsanalyse met betrekking tot transacties tussen een belastingplichtige en een gelieerde groepsentiteit in een andere staat en die helpt te onderbouwen dat aan artikel 8b wordt voldaan, alsmede informatie die een zakelijke winstallocatie aan vaste inrichtingen onderbouwt.
- 4 De verplichting, bedoeld in het eerste lid, geldt voor groepsentiteiten van een multinationale groep die, in het verslagjaar dat onmiddellijk voorafgaat aan het jaar waarop de aangifte betrekking heeft, ten minste € 50.000.000 aan geconsolideerde groepsopbrengsten heeft behaald.
- 5 Bij ministeriële regeling worden nadere regels gesteld over de vorm en de inhoud van het groepsdossier en het lokale dossier.

Artikel 29h

1. Indien het aan opzet of grove schuld is te wijten dat niet, niet tijdig, niet volledig of niet juist is of wordt nagekomen:
 - a. de verplichting, bedoeld in artikel 29c of artikel 29d, door de rapporterende entiteit;
 - b. de verplichting, bedoeld in artikel 29d, tweede lid, door de groepsentiteit, bedoeld in artikel 29d, tweede lid;vormt dit een vergrijp ter zake waarvan Onze Minister de rapporterende entiteit, onderscheidenlijk de groepsentiteit, bedoeld in artikel 29d, tweede lid, een bestuurlijke boete van ten hoogste het bedrag van de zesde categorie, bedoeld in artikel 23, vierde lid, van het Wetboek van Strafrecht, kan opleggen.
2. 2 In afwijking in zoverre van artikel 5:45 van de Algemene wet bestuursrecht vervalt de bevoegdheid tot het opleggen van de bestuurlijke boete, bedoeld in het eerste lid, vijf jaren na het einde van het kalenderjaar waarin de verplichting is ontstaan.
3. Hoofdstuk IX van de Algemene wet inzake rijksbelastingen, met uitzondering van het in artikel 69 van die wet genoemde vereiste dat het feit ertoe strekt dat te weinig belasting wordt geheven, is van overeenkomstige toepassing ten aanzien van degene die niet voldoet aan de verplichting, bedoeld in artikel 29c of artikel 29d.

Artikel 34f

In afwijking van artikel 29c is een groepsentiteit als bedoeld in het tweede of derde lid van dat artikel niet verplicht de inspecteur binnen twaalf maanden na de laatste dag van een verslagjaar van de multinationale groep waarvan zij een groepsentiteit is een landenrapport als bedoeld in artikel 29e te verstrekken indien die multinationale groep binnen die termijn een zodanig landenrapport beschikbaar stelt via een uiteindelijkkemoederentiteit die dat rapport verstrekt aan de belastingautoriteiten van de staat waarvan zij fiscaal inwoner is, mits:

- a. de staat waarvan de uiteindelijkkemoederentiteit fiscaal inwoner is, uiterlijk twaalf maanden na de laatste dag van het verslagjaar waarop het landenrapport betrekking heeft, het verstrekken van zodanige landenrapporten als bedoeld in artikel 29e verplicht;
- b. de staat waarvan de uiteindelijkkemoederentiteit fiscaal inwoner is, uiterlijk twaalf maanden na de laatste dag van het verslagjaar waarop het landenrapport betrekking heeft, een in werking zijnde overeenkomst heeft met Nederland die voorziet in de automatische uitwisseling van landenrapporten;
- c. de staat waarvan de uiteindelijkkemoederentiteit fiscaal inwoner is, de Nederlandse autoriteiten niet in kennis heeft gesteld van een systematische nalatigheid;
- d. de staat waarvan de uiteindelijkkemoederentiteit fiscaal inwoner is, uiterlijk vijftien maanden na de laatste dag van het verslagjaar waarop het landenrapport betrekking heeft, dat rapport heeft uitgewisseld met de Nederlandse autoriteiten; en
- e. de inspecteur op basis van artikel 29d, tweede lid, is bericht dat die groepsentiteit uiteindelijkkemoederentiteit is.

Artikel 34g

In afwijking van artikel 34f, onderdeel d, hoeft een groepsentiteit als bedoeld in dat artikel met betrekking tot het eerste verslagjaar van de multinationale groep waarvan zij een groepsentiteit is dat begint op of na 1 januari 2016 niet aan de verplichting, bedoeld in artikel 29c, te voldoen indien de staat waarvan de uiteindelijkkemoederentiteit fiscaal inwoner is uiterlijk achttien maanden na de laatste dag van dat verslagjaar het landenrapport, bedoeld in artikel 29e, dat betrekking heeft op dat verslagjaar heeft uitgewisseld met de Nederlandse autoriteiten.

annex 4. Ministerial Regulation on additional transfer pricing documentation requirements

Regeling van de Staatssecretaris van Financiën van 30 december 2015, nr. DB/2015/462M, houdende voorschriften ter verdere uitwerking van de aanvullende documentatieverplichtingen voor multinationale ondernemingen (Regeling aanvullende documentatieverplichtingen verrekenprijzen)

30 december 2015

Nr. DB2015/462M

Directoraat-Generaal voor Fiscale Zaken Directie Directe Belastingen

De Staatssecretaris van Financiën,

Gelet op de artikelen 29e en 29g van de Wet op de vennootschapsbelasting 1969,

Besluit:

HOOFDSTUK 1 AANVULLENDE DOCUMENTATIEVERPLICHTINGEN VERREKENPRIJZEN

Artikel 1 Reikwijdte

Deze regeling geeft uitvoering aan de artikelen 29e, tweede lid, en 29g, vijfde lid, van de Wet op de vennootschapsbelasting 1969.

Artikel 2 Definities

Deze regeling verstaat onder:

- a. *wet*: Wet op de vennootschapsbelasting 1969;
- b. *groep (Group)*: groep als bedoeld in artikel 29b, onderdeel a, van de wet;
- c. *multinationale groep (MNE Group)*: multinationale groep als bedoeld in artikel 29b, onderdeel b, van de wet;
- d. *groepsentiteit (Constituent Entity)*: groepsentiteit als bedoeld in artikel 29b, onderdeel c, van de wet;
- e. *verslagjaar (Fiscal year)*: verslagjaar als bedoeld in artikel 29b, onderdeel g, van de wet;
- f. *geconsolideerde jaarrekening (Consolidated Financial Statements)*: geconsolideerde jaarrekening als bedoeld in artikel 29b, onderdeel h, van de wet.

Artikel 3 Landenrapport

1 Het landenrapport, bedoeld in artikel 29e van de wet, wordt opgemaakt overeenkomstig het in bijlage A (Nederlandse taal) dan wel bijlage B (Engelse taal) opgenomen model en opgesteld in XML format.

2 Indien het landenrapport, bedoeld in het eerste lid, is opgemaakt overeenkomstig het in bijlage A (Nederlandse taal) opgenomen model en tabel 3 van dat model is voorzien van aanvullende informatie, wordt die informatie zowel in de Nederlandse taal als in de Engelse taal opgemaakt

Artikel 4 Groepsdossier

Het groepsdossier, bedoeld in artikel 29g van de wet, wordt opgemaakt overeenkomstig het in bijlage C (Nederlandse taal) dan wel bijlage D (Engelse taal) opgenomen model.

Artikel 5 Lokaal dossier

Het lokale dossier, bedoeld in artikel 29g van de wet, wordt opgemaakt overeenkomstig het in bijlage E (Nederlandse taal) dan wel bijlage F (Engelse taal) opgenomen model.

HOOFDSTUK 2 SLOTBEPALINGEN

Artikel 6 Inwerkingtreding

Deze regeling treedt in werking met ingang van 1 januari 2016 en vindt voor het eerst toepassing met betrekking tot te rapporteren jaren van multinationale groepen die aanvangen op of na 1 januari 2016.

Artikel 7 Citeertitel

Deze regeling kan worden aangehaald als: Regeling aanvullende documentatieverplichtingen verrekenprijzen.

Deze regeling zal met de toelichting in de Staatscourant worden geplaatst.

*De Staatssecretaris van Financiën,
E.D. Wiebes*

BIJLAGE A. MODEL LANDENRAPPORT

Tabel 1. Overzicht van verdeling van baten, belastingen en bedrijfsactiviteiten naar belastingjurisdictie

[illegible]

Tabel 2. Lijst van alle groepsentiteiten van de multinationale groep die vallen onder iedere totalisatie per belastingjurisdictie

[illegible]

Tabel 3. Aanvullende informatie

Naam van de multinationale groep: Betreffende verslagjaar:
Gelieve hier alle verdere korte informatie of uitleg te geven die u noodzakelijk acht of die de verplichte informatie die verstrekt wordt in het landenrapport helpt te doen begrijpen.

BIJLAGE B. MODEL TEMPLATE FOR THE COUNTRY-BY-COUNTRY REPORT

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

[illegible]

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

[illegible]

Table 3. Additional information

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>

BIJLAGE C. MODEL GROEPSDOSSIER

In het groepsdossier wordt de volgende informatie opgenomen:

1. Organisatiestructuur

Schema waarin de juridische structuur en de eigendomsstructuur van de multinationale groep en de geografische locatie van de bedrijfsentiteiten wordt verduidelijkt.

2. Beschrijving van de bedrijfsactiviteiten van de multinationale groep

Algemene schriftelijke beschrijving van de bedrijfsactiviteiten van de multinationale groep, waaronder:

- a. Belangrijke pijlers van de ondernemingswinst.
- b. Een beschrijving van de toeleveringsketen voor de vijf grootste producten en/of aangeboden diensten van de groep op basis van omzet plus andere producten en/of diensten die meer dan 5 procent bedragen van de groepsomzet. De vereiste beschrijving mag de vorm hebben van een schema of grafiek.
- c. Een lijst en beknopte beschrijving van belangrijke dienstverleningsafspraken tussen leden van de multinationale groep, anders dan diensten op het gebied van spoor- en ontwikkelingswerk (S&O), waaronder een beschrijving van de capaciteiten van de belangrijkste locaties alwaar belangrijke diensten worden verricht en beleid wordt gemaakt inzake verrekenprijsgrondslagen voor het toerekenen van servicekosten en het vaststellen van de voor intra-groepsdiensten te betalen prijzen.
- d. Een beschrijving van de belangrijkste geografische markten voor de onder b genoemde producten en diensten van de groep.
- e. Een beknopt beschreven functionele analyse waarin de belangrijkste bijdragen aan waardecreatie door individuele entiteiten binnen de groep beschreven worden, dat wil zeggen uitgeoefende sleutelfuncties, belangrijke op zich genomen risico's, en belangrijke aangewende activa.
- f. Een beschrijving van belangrijke bedrijfsreorganisatietransacties, bedrijfsovernames en bedrijfsoverdrachten die tijdens het verslagjaar plaatsvonden.

3. Immateriële activa van de multinationale groep (zoals gedefinieerd in hoofdstuk VI van de OESO 'Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations')

- a. Een algemene beschrijving van de algehele strategie van de multinationale groep voor de ontwikkeling, eigendom en exploitatie van immateriële activa, waaronder de locatie van de voornaamste S&O-faciliteiten en de locatie van het S&O-management.
- b. Een lijst van immateriële activa of groepen van immateriële activa van de multinationale groep die belangrijk zijn voor verrekenprijsdoeleinden met daarbij welke entiteiten de juridische eigendom hiervan hebben.
- c. Een lijst van belangrijke overeenkomsten tussen vastgestelde gelieerde lichamen die verband houden met immateriële activa, waaronder afspraken over kostenbijdragen, de voornaamste dienstverleningsovereenkomsten op onderzoeksgebied en licentieovereenkomsten.
- d. Een algemene beschrijving van de verrekenprijsgedragslijn van de multinationale groep met betrekking tot S&O en immateriële activa.
- e. Een algemene beschrijving van alle belangrijke overdrachten van belangen in immateriële activa tussen gelieerde lichamen gedurende het betreffende verslagjaar, met inbegrip van de betrokken entiteiten, landen en vergoedingen.

4. Onderlinge financiële activiteiten van de multinationale groep

- a. Een algemene beschrijving van hoe de groep gefinancierd wordt, waaronder belangrijke financieringsafspraken met niet gelieerde geldschieters.
- b. Het benoemen van alle leden van de multinationale groep die een centrale financieringsfunctie voor de groep vervullen, met inbegrip van het land naar het recht waarvan de entiteit is opgericht en de plaats van werkelijke leiding van die entiteit.
- c. Een algemene beschrijving van de algemene verrekenprijsgedraglijn van de multinationale groep die verband houdt met financieringsafspraken tussen gelieerde lichamen.

5. Financiële en fiscale positie van de multinationale groep

- a. De geconsolideerde jaarrekening van de multinationale groep voor het betreffende verslagjaar, indien deze ook anderszins wordt opgemaakt met het oog op de financiële verslaglegging, het naleven van regelgeving, interne beheerscontrole, belasting- of andere doeleinden.
- b. Een lijst en beknopte beschrijving van de bestaande eenzijdige vaststellingsovereenkomsten – advance pricing agreements (APA's) – van de multinationale groep en andere belastingafspraken met betrekking tot de allocatie van inkomen tussen landen.

BIJLAGE D. 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 these Guidelines)

- 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.

BIJLAGE E. MODEL LOKAAL DOSSIER

In het lokale dossier wordt de volgende informatie opgenomen:

1. Lokale entiteit

- a. Een beschrijving van de managementstructuur van de lokale entiteit, een lokaal organisatieschema, en een beschrijving van de natuurlijke personen aan wie het lokale management rapporteert en het land/de landen waarin deze personen hun hoofdkantoor houden.
- b. Een gedetailleerde beschrijving van de onderneming en de ondernemingsstrategie die gevolgd wordt door de lokale entiteit, waaronder begrepen een indicatie of de lokale entiteit betrokken is geweest bij of is geraakt door bedrijfsreorganisaties of overdrachten van immateriële activa in het huidige of voorafgaande jaar en een toelichting op die aspecten van dergelijke transacties die invloed hebben op de lokale entiteit.
- c. Belangrijkste concurrenten.

2. Gelieerde transacties

Verschaf de volgende informatie voor iedere van wezenlijk belang zijnde categorie van gelieerde transacties waarbij de entiteit betrokken is:

- a. Een beschrijving van de van wezenlijk belang zijnde gelieerde transacties (bijvoorbeeld de verwerving van fabricagediensten, inkoop van goederen, het verlenen van diensten, het verstrekken van leningen, financiële en prestatiegaranties, licenties met betrekking tot immateriële activa etc.) en de context waarin dergelijke transacties plaatsvinden.
- b. Het bedrag aan intragroepbetalingen en ontvangsten voor iedere categorie van gelieerde transacties, waar de lokale entiteit bij betrokken is (dat wil zeggen betalingen en ontvangsten voor producten, diensten, royalty-rechten, rente etc.) gespecificeerd naar belastingjurisdictie van de buitenlandse betaler of ontvanger.
- c. Een inventarisatie van gelieerde lichamen die betrokken zijn bij iedere categorie van gelieerde transacties, en hun onderlinge verhouding.
- d. Afschriften van alle significante intragroepsovereenkomsten die gesloten zijn door de lokale entiteit.
- e. Een gedetailleerde vergelijkbaarheids- en functionele analyse van de belastingplichtige en relevante gelieerde lichamen met betrekking tot iedere gedocumenteerde categorie van gelieerde transacties, inclusief alle veranderingen in vergelijking tot eerdere jaren.¹
- f. Een indicatie van de meest geschikte verrekenprijsmethode met betrekking tot de transactiecategorie en de redenen om die methode te selecteren.
- g. Een indicatie van welk gelieerd lichaam geselecteerd wordt als de getoetste partij, indien van toepassing, en een uiteenzetting van de redenen voor deze selectie.
- h. Een overzicht van de belangrijke vooronderstellingen waarvan wordt uitgegaan bij de toepassing van de verrekenprijsmethodologie.
- i. Indien relevant, een uiteenzetting van de redenen voor het uitvoeren van een meerjarenanalyse.
- j. Een lijst en beschrijving van geselecteerde vergelijkbare niet-gelieerde transacties (intern of extern), indien die er zijn, en informatie omtrent relevante financiële indicatoren voor onafhankelijke lichamen waarop men zich baseert bij de verrekenprijsanalyse, waaronder een beschrijving van de vergelijkbaarheidszoekmethodologie en de bron van die informatie.

¹ Waar bij deze functionele analyse informatie uit het groepsdossier gekopieerd wordt, volstaat een verwijzing naar het groepsdossier.

- k. Een beschrijving van alle verrichte aanpassingen op basis van vergelijkbaarheid, en een indicatie of er aanpassingen zijn verricht aan de uitkomsten van de getoetste partij, de vergelijkbare niet-gelieerde transacties, of beide.
- l. Een beschrijving van de redenen om tot de conclusie te komen dat voor relevante transacties een prijs werd vastgesteld op zakelijke basis, gebaseerd op de toepassing van de geselecteerde verrekenprijsmethode.
- m. Een overzicht van de financiële informatie gebruikt bij de toepassing van de verrekenprijsmethodologie.
- n. Een afschrift van bestaande unilaterale en bilaterale/multilaterale vaststellingsovereenkomsten – advance pricing agreements (APA's) – en andere belastingafspraken, waarin de lokale belastingjurisdictie geen partij is en die verband houden met hierboven beschreven gelieerde transacties.

3. Financiële informatie

- a. Jaarrekening van de lokale entiteit voor het betreffende verslagjaar. Indien er een gecontroleerde jaarrekening bestaat, dient deze verstrekt te worden en zo niet, dan dient er een niet-gecontroleerde uiteenzetting verstrekt te worden.
- b. Informatie en allocatieschema's die laten zien hoe de financiële gegevens die gebruikt zijn bij de toepassing van de verrekenprijsmethode gekoppeld kunnen worden aan de jaarrekening.
- c. Samenvattende schema's van relevante financiële gegevens voor vergelijkingen die bij de analyse gebruikt zijn en de bronnen waaruit die gegevens zijn verkregen.

BIJLAGE F. 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.²
- 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.

² To the extent this functional analysis duplicates information in the master file, a crossreference to the master file is sufficient.

- 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.

TOELICHTING

I Algemeen

Ingevolge Overige fiscale maatregelen 2016 (OFM 2016) worden met ingang van 1 januari 2016 nieuwe gestandaardiseerde documentatieverplichtingen in de Wet op de vennootschapsbelasting 1969 (Wet Vpb 1969) opgenomen voor multinationale groepen over de verrekenprijzen die zij binnen het concern hanteren. Deze nieuwe documentatieverplichtingen in hoofdstuk VIIa van de Wet Vpb 1969 zien op het opstellen – en waar nodig verstrekken – van een landenrapport, een groepsdossier en een lokaal dossier. Met deze nieuwe documentatieverplichtingen implementeert Nederland voor boekjaren die aanvangen op of na 1 januari 2016 de uitkomst van actiepunt 13 van het OESO-project Base Erosion and Profit Shifting (BEPS-project) in opdracht van de G20.

In de onderhavige ministeriële regeling worden nadere regels gesteld over de vorm en de inhoud van voornoemd rapport en voornoemde dossiers. Hierbij wordt aangesloten bij de bijlagen I, II en III bij hoofdstuk V van het OESO-rapport 'Guidance on Transfer Pricing Documentation and Country-by-Country reporting'.³ Genoemde vorm en inhoud zijn uitgewerkt in zowel de Nederlandse als de Engelse taal. Aan deze ministeriële regeling zijn geen budgettaire aspecten of EU-aspecten verbonden. De uitvoeringskosten voor de Belastingdienst alsmede de gevolgen voor bedrijfsleven en burger zijn reeds meegenomen bij hetgeen hierover is opgemerkt in de memorie van toelichting van OFM 2016.⁴

II Artikelsgewijs

Artikel 2

In artikel 2 van de onderhavige regeling wordt een zestal definities opgenomen die van toepassing zijn voor de onderhavige regeling. Deze definities zijn – behoudens de in onderdeel a opgenomen definitie – overgenomen uit het met ingang van 1 januari 2016 in te voeren artikel 29b van Wet Vpb 1969.

Artikel 3

In artikel 29e van de Wet Vpb 1969 wordt met ingang van 1 januari 2016 de omschrijving van het landenrapport opgenomen. Tevens wordt in voornoemd artikel opgenomen dat bij ministeriële regeling nadere regels worden gesteld over de vorm en de inhoud van het landenrapport. In artikel 3 van de onderhavige regeling wordt hier uitvoering aan gegeven, onder verwijzing naar het in bijlage A (Nederlandse taal) dan wel bijlage B (Engelse taal) opgenomen model voor dit rapport. Hierbij wordt aangesloten bij bijlage III bij hoofdstuk V van het OESO-rapport 'Guidance on Transfer Pricing Documentation and Country-by-Country reporting'.

Artikel 4

In artikel 29g van de Wet Vpb 1969 wordt met ingang van 1 januari 2016 opgenomen dat in het groepsdossier een overzicht wordt gegeven van de onderneming van de multinationale groep, inclusief de aard van haar bedrijfsactiviteiten, haar algehele verrekenprijsgedraglijn en haar wereldwijde allocatie van inkomen en economische activiteiten. Dit om belastingadministraties te ondersteunen bij de beoordeling van de aanwezigheid van een substantieel verrekenprijzrisico. Tevens wordt in voornoemd artikel opgenomen dat bij ministeriële regeling nadere regels worden gesteld over de vorm en de inhoud van

³ http://www.oecd-ilibrary.org/taxation/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report_9789264241480-en

⁴ Kamerstukken II 2015/16, 34 305, nr. 3, blz. 23-24.

het groepsdossier. In artikel 4 van de onderhavige regeling wordt hier uitvoering aan gegeven, onder verwijzing naar het in bijlage C (Nederlandse taal) dan wel bijlage D (Engelse taal) opgenomen model voor dit groepsdossier. Hierbij wordt aangesloten bij bijlage I bij hoofdstuk V van het OESO-rapport 'Guidance on Transfer Pricing Documentation and Country-by-Country reporting'.

Artikel 5

In artikel 29g van de Wet Vpb 1969 wordt met ingang van 1 januari 2016 opgenomen dat in het lokale dossier informatie wordt opgenomen die relevant is voor de verrekenprijsanalyse met betrekking tot transacties tussen een belastingplichtige en een gelieerde groepsentiteit in een andere staat en die helpt te onderbouwen dat aan artikel 8b van die wet wordt voldaan, alsmede informatie die een zakelijke winstallocatie aan vaste inrichtingen onderbouwt. Tevens wordt in voornoemd artikel 29g opgenomen dat bij ministeriële regeling nadere regels worden gesteld over de vorm en de inhoud van het lokale dossier. In artikel 5 van de onderhavige regeling wordt hier uitvoering aan gegeven, onder verwijzing naar het in bijlage E (Nederlandse taal) dan wel bijlage F (Engelse taal) opgenomen model voor dit lokale dossier. Hierbij wordt aangesloten bij bijlage II bij hoofdstuk V van het OESO-rapport 'Guidance on Transfer Pricing Documentation and Country-by-Country reporting'.

Artikel 6

De regeling treedt in werking met ingang van 1 januari 2016 en vindt voor het eerst toepassing met betrekking tot te rapporteren jaren van multinationale groepen die aanvangen op of na 1 januari 2016.

Toelichting op het landenrapport (bijlage A)

Algemeen

In artikel 29c van de Wet Vpb 1969 wordt met ingang van 1 januari 2016 geregeld dat een uiteindelijkkemoederentiteit die haar fiscale vestigingsplaats in Nederland heeft, de inspecteur binnen twaalf maanden na de laatste dag van een verslagjaar een landenrapport als bedoeld in artikel 29e van de Wet Vpb 1969 verstrekt, dat betrekking heeft op dat verslagjaar. Onder de met ingang van 1 januari 2016 in artikel 29c van de Wet Vpb 1969 genoemde omstandigheden kan deze rapportageverplichting ook bij een andere in die bepaling genoemde entiteit berusten. Het landenrapport wordt opgemaakt overeenkomstig het in deze ministeriële regeling in bijlage A (Nederlandse taal) dan wel bijlage B (Engelse taal) opgenomen model.

Behandeling van vaste inrichtingen

De gegevens van de vaste inrichting dienen te worden gerapporteerd door verwijzing naar de belastingjurisdictie waar de vaste inrichting is gelegen en niet door verwijzing naar de belastingjurisdictie van de vestigingsplaats van het bedrijfsonderdeel waarvan de vaste inrichting een onderdeel is. De verslaglegging betreffende de belastingjurisdictie waar het hoofdhuis is gelegen (voor het bedrijfsonderdeel waar de vaste inrichting deel van uitmaakt) dient financiële gegevens die gerelateerd zijn aan de vaste inrichting uit te sluiten.

De periode waarop het model voor het landenrapport betrekking heeft

Het volgens het model in te vullen landenrapport dient betrekking te hebben op het verslagjaar van voornoemde uiteindelijkkemoederentiteit. Voor groepsentiteiten dient het model op consistente basis, ter beoordeling van die uiteindelijkkemoederentiteit,

ofwel (i) informatie weer te geven over het verslagjaar van de relevante groepsentiteiten dat eindigt op dezelfde datum als het verslagjaar van de uiteindelijkkemoederentiteit, of dat eindigt binnen de twaalfmaandsperiode die voorafgaat aan een dergelijke datum, dan wel (ii) informatie weer te geven voor alle relevante groepsentiteiten waarover gerapporteerd wordt, voor het verslagjaar van de uiteindelijkkemoederentiteit.

Gegevensbronnen

De uiteindelijkkemoederentiteit maakt bij het invullen van het model van jaar tot jaar op consistente wijze van dezelfde gegevensbronnen gebruik. De uiteindelijke-kemoederentiteit kan ervoor kiezen om gegevens te gebruiken uit haar consolidatierapportagepakketten, uit wettelijk voorgeschreven jaarrekeningen van afzonderlijke entiteiten, gereguleerde jaarrekeningen, of financiële gegevens van het interne management. Het is niet noodzakelijk de verslaglegging op het gebied van inkomsten, winst en belasting in het model in overeenstemming te brengen met de geconsolideerde jaarrekening (artikel 29b, onderdeel h, van de Wet Vpb 1969). Indien wettelijk voorgeschreven jaarrekeningen als de basis voor verslaglegging worden gebruikt, worden alle bedragen omgezet in de aangegeven functionele valuta van de uiteindelijkkemoederentiteit tegen de gemiddelde wisselkoers over het jaar dat aangegeven wordt in het onderdeel 'Aanvullende informatie' van het model. Er hoeven echter geen aanpassingen te worden gemaakt voor verschillen in verslaggevingsregels tussen de belastingjurisdicties.

De uiteindelijkkemoederentiteit geeft in het onderdeel 'Aanvullende informatie' van het model een korte beschrijving van de gegevensbronnen die bij het invullen van het model worden gebruikt. Indien er een verandering wordt aangebracht in de gegevensbron die van jaar tot jaar wordt gebruikt, zet de uiteindelijkkemoederentiteit in het onderdeel 'Aanvullende informatie' van het model de redenen uiteen voor de verandering en de gevolgen daarvan.

Materialiteit

In zowel tabel 1 als tabel 2 van het landenrapport worden alle belastingjurisdicties opgenomen waarin een multinationale groep een groepsentiteit heeft die fiscaal inwoner is, ongeacht de omvang van de bedrijfsactiviteiten.

Toelichting op tabel 1. Overzicht van verdeling van baten, belastingen en bedrijfsactiviteiten naar belastingjurisdictie

Belastingjurisdictie

In de eerste kolom van het model dient de uiteindelijkkemoederentiteit alle belastingjurisdicties op te sommen waarin groepsentiteiten van de multinationale groep voor belastingdoeleinden gevestigd zijn. Een belastingjurisdictie wordt gedefinieerd als een jurisdictiegebied van een staat of een niet-staat dat fiscale autonomie heeft. Een afzonderlijke regel dient te worden toegevoegd voor alle groepsentiteiten in de multinationale groep die volgens de uiteindelijkkemoederentiteit voor belastingdoeleinden niet gevestigd zijn in een belastingjurisdictie. Ingeval een groepsentiteit fiscaal gevestigd is in méér dan één belastingjurisdictie, dient de van toepassing zijnde tiebreaker van een belastingverdrag toegepast te worden om de fiscale vestigingsplaats te bepalen. Waar geen sprake is van een toepasselijk belastingverdrag, dient de groepsentiteit te worden gerapporteerd in de belastingjurisdictie waar de groepsentiteit haar plaats van werkelijke leiding heeft. De plaats van werkelijke leiding dient te worden vastgesteld overeenkomstig de bepalingen van artikel 4 van het OESO-Modelverdrag en het bijbehorende commentaar.

Indien een multinationale groep inkomen genereert uit internationaal vervoer of vervoer over de binnenwateren, vindt de toerekening van dit specifieke inkomen voor het landenrapport als volgt plaats. Voor zover het specifieke inkomen op basis van het belastingverdrag exclusief wordt toegerekend aan een belastingjurisdictie, wordt de informatie benodigd voor het landenrapport voor dit specifieke inkomen verantwoord in de betreffende belastingjurisdictie waaraan op basis van het van toepassing zijnde belastingverdrag het heffingsrecht is toegewezen. Dit punt is opgenomen in onderdeel 55 van hoofdstuk V van de Transfer Pricing Guidelines on Documentation.⁵

Inkomsten

In de drie kolommen van het model onder het kopje 'Inkomsten' wordt door de uiteindelijk moederentiteit de volgende informatie opgenomen: (i) de som van de uit transacties met gelieerde ondernemingen gegenereerde inkomsten van alle groepsentiteiten van de multinationale groep in de desbetreffende belastingjurisdictie; (ii) de som van de uit transacties met niet-gelieerde partijen gegenereerde inkomsten van alle groepsentiteiten van de multinationale groep in de desbetreffende belastingjurisdictie; en (iii) het totaal van (i) and (ii). Inkomsten omvatten inkomsten uit verkoop van voorraad en onroerend goed, diensten, royalty-rechten, rente, premies en andere bedragen (bijvoorbeeld incidentele opbrengsten). Van inkomsten zijn uitgesloten de van andere groepsentiteiten ontvangen betalingen die behandeld worden als dividenden in de belastingjurisdictie van de betaler.

Winst (verlies) vóór winstbelasting

In de vijfde kolom van het model geeft de uiteindelijk moederentiteit de som van de winst (het verlies) vóór winstbelasting op voor alle groepsentiteiten die voor belastingdoeleinden gevestigd zijn in de desbetreffende belastingjurisdictie. De winst (het verlies) vóór winstbelasting omvat alle buitengewone inkomsten- en uitgavenposten.

Betaalde winstbelasting (op kasbasis)

In de zesde kolom van het model geeft de uiteindelijk moederentiteit het totale bedrag op van feitelijk door alle groepsentiteiten die voor belastingdoeleinden gevestigd zijn in de desbetreffende belastingjurisdictie, betaalde winstbelasting gedurende het betreffende verslagjaar. Betaalde belastingen dienen contante door de groepsentiteit aan de belastingjurisdictie van de fiscale vestigingsplaats en aan alle andere belastingjurisdicties betaalde belastingen te omvatten. Betaalde belastingen dienen bronbelastingen te omvatten die door andere entiteiten (gelieerde ondernemingen en niet-gelieerde ondernemingen) met betrekking tot betalingen aan de groepsentiteit betaald zijn. Dus, als vennootschap A dat fiscaal gevestigd is in belastingjurisdictie A rente ontvangt uit belastingjurisdictie B, dient de in belastingjurisdictie B ingehouden belasting bij vennootschap A te worden opgegeven.

In de jaarrekening opgenomen winstbelasting

In de zevende kolom van het model wordt door de uiteindelijk moederentiteit de som van de nog te betalen belastinglasten van het onderhavige jaar die geboekt zijn op belastbare winsten of verliezen van het verslagleggingsjaar, van alle groepsentiteiten die voor belastingdoeleinden gevestigd zijn in de desbetreffende belastingjurisdictie, opgegeven. De belastinglasten van het onderhavige jaar zien geven slechts op bedrijfsactiviteiten in het lopende jaar weer en omvatten geen

⁵ http://www.oecd-ilibrary.org/taxation/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report_9789264241480-en, p. 21, onder 55.

uitgestelde belastingverplichtingen of voorzieningen voor onzekere belastingsschulden.

Gestort kapitaal

In de achtste kolom van het model wordt door de uiteindelijk moederentiteit de som van het bedrag aan gestort kapitaal van alle groepsentiteiten die voor belastingdoeleinden gevestigd zijn in de desbetreffende belastingjurisdictie, opgegeven. Met betrekking tot vaste inrichtingen wordt het bedrag aan gestort kapitaal opgegeven door de *rechtspersoon* waartoe de vaste inrichting behoort, tenzij er voor regelgevende doeleinden sprake is van een vastgesteld vermogensbeslag in de belastingjurisdictie van de vaste inrichting. Onder het begrip gestort kapitaal voor tabel 1 van het landenrapport wordt naast storting op aandelen mede agio verstaan.

Gecumuleerde winst

In de negende kolom van het model wordt door de uiteindelijk moederentiteit de som van de totale gecumuleerde winst van alle groepsentiteiten die voor belastingdoeleinden gevestigd zijn in de desbetreffende belastingjurisdictie, opgegeven per einde van het jaar. Met betrekking tot vaste inrichtingen wordt de gecumuleerde winst opgegeven door de rechtspersoon waartoe de vaste inrichting behoort.

Aantal personeelsleden

In de tiende kolom van het model wordt door de uiteindelijk moederentiteit het totale aantal personeelsleden op voltijdbasis (FTE) van alle groepsentiteiten die voor belastingdoeleinden gevestigd zijn in de desbetreffende belastingjurisdictie, opgegeven. Het aantal personeelsleden kan worden gerapporteerd naar de situatie aan het einde van het verslagjaar, op basis van gemiddelde dienstverbandniveaus over het jaar, of op een andere basis die van jaar tot jaar en consistent wordt toegepast in de belastingjurisdicties. Hiertoe kunnen onafhankelijke contractanten die deelnemen aan de gewone bedrijfsactiviteiten van de groepsentiteit worden gerapporteerd als personeelsleden. Een redelijke afronding of benadering van het aantal personeelsleden is toelaatbaar, op voorwaarde dat een dergelijke afronding of benadering de relatieve verdeling van personeelsleden over de verschillende belastingjurisdicties niet wezenlijk vertekent. Er dient van jaar tot jaar en met betrekking tot alle entiteiten sprake te zijn van een consistente benadering.

Materiële activa andere dan geldmiddelen of kasequivalenten

In de elfde kolom van het model wordt door de uiteindelijk moederentiteit de som van de nettoboekwaarden van de materiële activa van alle groepsentiteiten die voor belastingdoeleinden gevestigd zijn in de desbetreffende belastingjurisdictie, opgegeven. Met betrekking tot vaste inrichtingen worden activa opgegeven onder verwijzing naar de belastingjurisdictie waar de vaste inrichting is gelegen. Materiële activa omvatten dan ook geen geldmiddelen of kasequivalenten, immateriële of financiële activa.

Toelichting op tabel 2. Lijst van alle groepsentiteiten van de multinationale groep die vallen onder iedere totalisatie per belastingjurisdictie

Groepsentiteiten fiscaal gevestigd in de betreffende belastingjurisdictie

De uiteindelijk moederentiteit noteert per belastingjurisdictie en via de naam van de rechtspersoon (inclusief Tax Identification Number en adresgegevens), alle groepsentiteiten van de multinationale groep die voor belastingdoeleinden gevestigd

zijn in de desbetreffende belastingjurisdictie. Echter, zoals hierboven vermeld met betrekking tot vaste inrichtingen, wordt een vaste inrichting genoteerd onder verwijzing naar de belastingjurisdictie waar deze gelegen is. De rechtspersoon waartoe de vaste inrichting behoort, wordt eveneens vermeld (bijv. XYZ Vennootschap-Belastingjurisdictie A vaste inrichting).

Indien afwijkend van fiscale vestigingsplaats, de staat op grond van wiens recht de groepsentiteit is ingericht of opgericht

De uiteindelijk moederentiteit vermeldt de naam van de belastingjurisdictie krachtens de wetgeving waarnaar de groepsentiteit van de multinationale groep is ingericht of opgericht, indien deze verschilt van de belastingjurisdictie van de plaats van vestiging.

Belangrijkste bedrijfsactiviteit(en)

De uiteindelijk moederentiteit bepaalt de aard van de belangrijkste bedrijfsactiviteit(en) die wordt (respectievelijk worden) uitgevoerd door de groepsentiteit in de desbetreffende belastingjurisdictie, door één of meer van de toepasselijke vakjes aan te kruisen.

Het gaat daarbij om de volgende bedrijfsactiviteiten:

- onderzoek en ontwikkeling;
- houden of beheren van intellectuele eigendom;
- inkoop of afname;
- fabricage of productie;
- verkoop, marketing of distributie;
- diensten op het gebied van administratie, beheer of ondersteuning;
- dienstverlening aan niet gelieerde partijen;
- interne groepsfinanciering;
- gereguleerde financiële diensten;
- verzekering;
- houden van aandelen of andere eigenvermogensinstrumenten;
- slapend;
- anderszins.⁶

Toelichting op tabel 3

In 'tabel 3. Aanvullende informatie' wordt alle verdere korte informatie of uitleg gegeven die noodzakelijk wordt geacht of die de verplichte informatie die verstrekt wordt in het landenrapport helpt te doen begrijpen.

*De Staatssecretaris van Financiën,
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⁶ Gelieve de aard van de activiteit van de groepsentiteit te specificeren in het onderdeel "Aanvullende informatie".