



Introduction of country-by-country reporting standards

Introduction

Curaçao tax legislation is amended in line with the OECD's country-by-country ("CbC") reporting standards. The Base Erosion and Profit Shifting ("BEPS") report on action 13 of the OECD includes administrative obligations that were introduced in Curaçao tax legislation as per July 1st, 2018. As such, the documentation obligation that was recently introduced in Curaçao applies to the reporting year 2018. However, please be informed that with regard to the years 2016 and 2017 this documentation obligation can be reported on a voluntary basis.

The documentation obligation includes requirements based on international reporting standards for multinational enterprise groups ("MNE") regarding transfer prices within the group. The documentation obligations consist of:

- Country-by-country report,
- Master file, and
- Local file.

The purpose of the standardized documentation obligations is to support tax administrations in assessing the existence of a substantial transfer price risk and contribute to the effectiveness of avoiding base erosion and profit shifting. Furthermore, the international reporting standards contribute to the uniformity of the documentation obligations which the MNE groups must take into account.

Curaçao reporting entity

The Curaçao reporting entity is the entity within the MNE group which is a resident of Curaçao for tax purposes and is obliged to report and file the CbC reporting in Curaçao. One of the following entities can be considered as the Curaçao reporting entity:

- The ultimate parent entity;
- The "surrogate" parent entity; or
- Another group entity.

Please note that in principle the ultimate parent entity is obliged to register and file the CbC report. However, in case the ultimate parent entity is not residing in Curaçao or another country in which the obligation of CbC reporting is implemented and which has an

information exchange agreement with Curaçao, another entity within the MNE group will be considered as the Curaçao reporting entity, such as the surrogate parent entity or another group entity.

Country-by-country reports

Based on the BEPS report on action 13, the ultimate parent entity is held to register the CbC reporting annually and for each country in which business activities are operated. Under the recently amended legislation, the obligation to provide the Curaçao Tax Authorities with a CbC report arises in the following circumstances.

- The MNE group has a combined turnover in excess of ANG 1,500,000,000; and
- The Curaçao entity acts as a parent entity or a similar entity of an MNE group.

The reporting entity should be a resident in Curaçao. This Curaçao reporting entity must provide the CbC report to the Inspector of Taxes within twelve months after the last day of a financial year. It should include specific information regarding all countries in which the group operates, such as: a description of each group entity within the MNE group including the country of residence for tax purposes of each group entity, the country under which laws each group entity is established, the nature of the main business of each entity. Furthermore, the amount of revenue per country, profit before profit tax, the profit tax paid, the profit tax included in the annual accounts, the paid-in capital, the cumulated profit, the number of employees and the non-monetary assets other than money or its equivalents.

Not providing the CbC report to the Inspector of Taxes, or failing to do so within the permitted timeframe, or filing incomplete or incorrect documentation, due to willful misconduct or gross negligence, constitutes a failure to comply with the documentation obligation. If so, fines of ANG 100,000 up to ANG 250,000 may be imposed on the reporting entity.

If the Curaçao reporting entity did request the ultimate parent company for information concerning the CbC and the ultimate parent company did not provide the reporting entity with information, then the Curaçao

reporting entity should file only the information that is available.

After filing the CbC report, the Curaçao tax authorities will automatically exchange the report to the countries in which the MNE group operates and with which Curaçao concluded an information exchange agreement.

Master file and local file

Under the new legislation, the obligation to have a master file and a local file in place encompasses the following circumstances.

- The MNE group has a combined turnover in excess of ANG 100,000,000 in the year directly prior to the related tax year; and
- At least one of the MNE group entities is a Curaçao entity.

A Curaçao entity is obliged to have a master file and a local file within the period set for the filing of the profit tax declaration. The master file and the local file must contain specific information regarding cost and revenue allocation and the transfer pricing analysis.

More specifically, the master file must contain an overview of the MNE group, including the nature of the business activities, its general transfer pricing policy and its worldwide allocation of income and economic activities.

The local file includes relevant information for the transfer price analysis with regard to each type of transaction (each good and each service) within the MNE group between a local entity and a related group entity in another country.

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Please contact our office at the email addresses mentioned in this newsflash if you have any questions about the amendments or need additional information.

We would be pleased to assist you with your questions.

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