

Netherlands

Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. The Netherlands' implementation of the Action 13 minimum standard meets all applicable terms of reference for the year in review. The report, therefore, contains no recommendations.

Part A: Domestic legal and administrative framework

2. The Netherlands has rules (primary and secondary laws, as well as guidance) that impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in the Netherlands. The first filing obligation for a CbC report in the Netherlands commences in respect of fiscal years commencing on or after 1 January 2016. The Netherlands meets all the terms of reference relating to the domestic legal and administrative framework.¹

Part B: Exchange of information framework

3. The Netherlands is a signatory of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011), which is in effect for 2016, and is also a signatory of the CbC MCAA; it has provided its notifications under Section 8 of this agreement and intends to exchange information with all other signatories of this agreement which provide notifications. The Netherlands has also signed a bilateral competent authority agreement (CAA) with the United States. As of 12 January 2018, the Netherlands has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under a bilateral CAA. The Netherlands has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016). Against the backdrop of the still evolving exchange of information framework, at this point in time, the Netherlands meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.²

Part C: Appropriate use

4. There are no concerns to be reported for the Netherlands. The Netherlands indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the *OECD Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer “yes” to the additional questions on appropriate use.³ The

Netherlands meets the terms of reference relating to the appropriate use aspects under review for this first annual peer review.⁴

Part A: The domestic legal and administrative framework

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. The Netherlands has primary law in place for implementing the BEPS Action 13 minimum standard which consists on amendments to the Dutch Corporate Income Tax Act to implement rules, as well as secondary law (hereafter referred to as the “regulations”)⁵ establishing the necessary requirements, including the filing and reporting obligations. Guidance has also been published.⁶

(a) Parent entity filing obligation

Summary of terms of reference:⁷ Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. The Netherlands has introduced a domestic legal and administrative framework which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).

8. In its guidance relating to the definition of an “Excluded MNE Group”,⁸ reference is made to the situation where the total consolidated group revenue is kept in a different currency: the guidance explains that the threshold should then be determined in that currency, equalling EUR 750 million or a near equivalent amount in domestic currency as of January 2015. While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in the Netherlands, it may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a Dutch tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group.⁹ However, the Netherlands confirms that this paragraph of the guidance is only a reminder of the Action 13 provisions and no departure from the OECD guidance on currency fluctuations is intended. As such, no recommendation is made but this aspect will be further monitored.

9. No inconsistencies were identified with respect to the Netherlands’ domestic legal framework in relation with the parent entity filing obligation.

(b) Scope and timing of parent entity filing

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

10. The first filing obligation for a CbC report in the Netherlands commences in respect of periods commencing on or after 1 January 2016.¹⁰ The CbC report must be filed within 12 months after the end of the period to which the CbC report of the MNE Group relates.¹¹

11. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

(c) Limitation on local filing obligation

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

12. The Netherlands has introduced local filing requirements as from the reporting period starting on or after 1 January 2016.¹² No inconsistencies were identified with respect to the limitation on local filing obligation.

(d) Limitation on local filing in case of surrogate filing

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

13. The Netherlands' local filing requirements will not apply if there is surrogate filing in another jurisdiction.¹³ No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

(e) Effective implementation

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to

enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

14. The Netherlands has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to Ultimate Parent Entities as well as Constituent Entities in the Netherlands.¹⁴ There are also penalties in place in relation to the filing of a CbC report for failure:¹⁵ (i) to file a CbC report, (ii) to incompletely file a CbC report and (iii) to submit it on time. In addition, any Constituent Entity of a MNE Group that is resident in the Netherlands is obliged to keep records of the financial position and information related to business or activity of the entity and to provide any information that is relevant for their tax position. Penalties or criminal sanctions may be imposed in case the obligations are not met.

15. There are no specific processes in place that would allow to take appropriate measures in case the Netherlands is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. The Netherlands mentions that in addition to existing international consultation procedures, the Dutch Tax and Customs Administration intends to design and develop processes specifically designed for incorrect/incomplete CbC information or non-compliance with respect to CbC obligations. Such notifications will be, in first instance, centrally taken care of by the newly established Dutch Country-by-Country Reporting team and Country-by-Country Reporting coordinator. However, these processes are not in place yet. The Netherlands also notes that article 29h of the Corporate Income Tax Act provides for sanctions in case of non-compliance with CbC obligations. As no exchange of CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

Conclusion

16. In respect of paragraph 8 of the terms of reference (OECD, 2017b), the Netherlands has a domestic legal and administrative framework to impose and enforce CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in the Netherlands. The Netherlands meets all the terms of reference relating to the domestic legal and administrative framework.

Part B: The exchange of information framework

17. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information framework as specified in paragraph 9 (a) of the terms of reference (OECD, 2017b).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

18. The Netherlands has domestic legislation that permits the automatic exchange of information on CbC reports.¹⁶ It is part to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (signed on 27 May 2010, in force on 1 September 2013 and in effect for 2016) and (ii) multiple bilateral Double Tax Agreements and Tax Information and Exchange Agreements.¹⁷ It also implemented the Council Directive (EU) 2016/881 of 25 May 2016, amending Directive 2011/16/EU as regards mandatory Automatic Exchange of Information in the field of taxation.¹⁸

19. The Netherlands signed the CbC MCAA on 27 January 2016 and submitted a full set of notifications under section 8 of the CbC MCAA on 24 November 2016. It intends to have the CbC MCAA in effect with all other Competent Authorities that provide a notification under Section 8(1)(e) of the same agreement. It is noted that the Netherlands has signed a bilateral QCAA with the United States. As of 12 January 2018, the Netherlands has 55 bilateral relationships activated under the CbC MCAA or exchanges under the EU Council Directive (2016/881/EU) and under a bilateral CAA with the United States.

20. The Netherlands has taken steps to have Qualifying Competent Authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions (including legislation in place for fiscal year 2016).¹⁹ Against the backdrop of the still evolving exchange of information framework, at this point in time the Netherlands meets the terms of reference relating to the exchange of information framework aspects under review for this first annual peer review.

Conclusion

21. Against the backdrop of the still evolving exchange of information framework, at this point in time, the Netherlands meets the terms of reference regarding the exchange of information framework.

Part C: Appropriate use

22. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

23. In order to ensure that a CbC report received through exchange of information or local filing can be used only to assess high-level transfer pricing risks and other BEPS-related risks, and, where appropriate, for economic and statistical analysis, and in order to ensure that the information in a CbC report cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full

functional analysis and a full comparability analysis; or is not used on its own as conclusive evidence that transfer prices are or are not appropriate; or is not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income), the Netherlands indicates that measures are in place to ensure the appropriate use of information in all six areas identified in the *OECD Guidance on the appropriate use of information contained in Country-by-Country reports* (OECD, 2017a). It has provided details in relation to these measures, enabling it to answer “yes” to the additional questions on appropriate use.

24. There are no concerns to be reported for the Netherlands in respect of the aspects of appropriate use covered by this annual peer review process.

Conclusion

25. In respect of paragraph 12 (a) of the terms of reference (OECD, 2017b), there are no concerns to be reported for the Netherlands. The Netherlands thus meets these terms of reference.

Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved			Recommendation for improvement
Part A	Domestic legal and administrative framework	-	
Part B	Exchange of information framework	-	
Part C	Appropriate use	-	

Notes

¹ Paragraph 8 of the terms of reference (OECD, 2017b).

² Paragraph 9 (a) of the terms of reference (OECD, 2017b).

³ These questions were circulated to all members of the Inclusive Framework following the release of the Guidance on the appropriate use of information in CbC reports on 6 September 2017, further to the approval of the Inclusive Framework.

⁴ Paragraph 12 (a) of the terms of reference (OECD, 2017b).

⁵ Primary law consists of Chapter VIIA of the Corporate Income Tax Act 1969 (CITA): <http://wetten.overheid.nl/BWBR0002672/2018-01-01#HoofdstukVIIa> (accessed 23 April 2018). Secondary law consists of Government Gazette No. 47457/2015, providing for regulations on additional transfer pricing documentation requirements: <http://wetten.overheid.nl/BWBR0037475/2016-01-01> (accessed 20 April 2018).

⁶ Guidance consists on the 2016 Manual for Filing CbC Reports, from the Tax and Customs Administration. The Netherlands indicates that this explains more details about CbC and contains instructions for filling out the fields in the notification portal and important remarks and is available at: www.gegevensportaal.net/cbc/aanmelden/ (accessed 20 April 2018). In addition, the Netherlands published a Policy decision on notification aspects dated November 15, 2016, nr. DGBel 2016-0000184128M, Staatscourant (Official Gazette), November 21, 2016, nr. 63121, <https://zoek.officielebekendmakingen.nl/stcrt-2016-63121.html> (accessed 20 April 2018).

⁷ The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017b).

⁸ Section 2.2.2 of the “2016 Manual - Filing CbC reports - Part I General”.

⁹ See question IV. 1. “Impact of currency fluctuations on the agreed EUR 750 million threshold (June 2016) of the “*Guidance on the Implementation of Country-by-Country Reporting*” (OECD, 2018).

¹⁰ See article 6 of the Regulation of the State Secretary for Finance of the Netherlands of 30 December 2015, No. DB/2015/462M, containing requirements for the further implementation of the supplementary documentation obligations for multinational enterprises (Regulation Supplementary Transfer Pricing Documentation Obligations) (Government Gazette No. 47457/2015).

¹¹ See article 29(c) paragraph 1 of the CITA.

¹² See article 29(c) paragraph 2 of the Corporate Income Tax Act 1969 and paragraph 2.3.4 of the 2016 Manual for Filing CbC Reports.

¹³ See article 29(c) paragraph 4 of the Corporate Income Tax Act 1969. The Netherlands announced in the Policy decision dated November 15, 2016 that voluntary parent surrogate filing

would be recognised and that legislation in that respect would be introduced. With regard to the legislative developments, the Netherlands indicates that it intends to temporarily create a legal basis for voluntary parent surrogate filing in the CITA with a retroactive effect to 1 January 2016, in conformity with the OECD guidance.

¹⁴ See article 29(c) paragraph 4 of the CITA. The notification has to be done on the last day of the MNE's Fiscal Year at the latest (and, with regard to Fiscal Years commencing in 2016: on September 1, 2017, at the latest); the use of an online notification tool, www.gegevensportaal.net/cbc/aanmelden/ (accessed 20 April 2018), is mandatory.

¹⁵ See article 29(h) of the CITA: in respect of these offences, the Minister can impose an administrative penalty pursuant to Article 23, paragraph 4, of the Dutch Criminal Code: on 18 April 2017, the Dutch Parliament passed an amendment raising the penalty to a maximum amount of the sixth category as referred to in Article 23, paragraph 4, of the Dutch Criminal Code or EUR 820 000. For the imposition of a penalty, guidance is issued. According to the guidance, a penalty of 25% of the maximum amount, or EUR 205 000, is imposed in the case of gross negligence and a penalty of 50% of the maximum amount, or EUR 410 000, is imposed in the case of intent. The penalty imposed in a particular case may be lower or higher (up to the maximum amount), depending on the specific circumstances in that particular case.

¹⁶ Article 6 of the Dutch International Assistance (Levy of Taxes) Act.

¹⁷ The Netherlands lists tax agreements with Curaçao (“Belastingregeling Nederland-Curaçao” // Tax regulation Netherlands – Curaçao) and with Aruba and Sint Maarten (“Belastingregeling voor het Koninkrijk // Tax regulation for the Kingdom of the Netherlands”) (the Netherlands further indicates the “Belastingregeling Nederland-Curaçao” (Tax regulation Netherlands – Curaçao) is a statute law as well, which applies to the Netherlands and Curaçao. Article 25 of this regulation allows for the exchange of information, including automatic exchange. In addition, the “Belastingregeling voor het Koninkrijk” (Tax regulation for the Kingdom of the Netherlands) is a statute law which applies to the Netherlands, Aruba and Sint Maarten. Article 37 of this regulation allows for the exchange of information, including automatic exchange); as well as bilateral tax treaties that allow for the Automatic Exchange of Information with the following jurisdictions: Albania, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Brazil, Bulgaria, Canada, China (People's Republic of), Croatia, Czech Republic, Denmark, Egypt, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Ghana, Greece, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Korea, Kosovo, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Moldova, Morocco, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom and United States.

¹⁸ The Netherlands indicates that the translation of Chapter VII (a) of the Dutch CITA which was provided with the questionnaire for the reviewed jurisdiction was the current legislation at that time, which served only to implement the provision of BEPS Action 13. Since then, a few provisions have been added to implement EU Directive 2016/881. The adapted text of Chapter VII(a) of the CITA entered into force on 5 July 2017. One of the adaptations was to section 29h of the CITA. Therefore, since 5 July 2017, non-compliance with the notification obligations of article 29d of the CITA is a punishable offence as well. The penalty is the same as for non-compliance with the filing obligations of article 29c of the CITA.

¹⁹ It is noted that a few Qualifying Competent Authority agreements are not in effect with jurisdictions of the Inclusive Framework that meet the confidentiality condition and have legislation in place: this may be because the partner jurisdictions considered do not have the Convention in effect for the first reporting period, or may not have listed the reviewed jurisdiction in their notifications under Section 8 of the CbC MCAA.

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