

Tax Instant News June 2018

Introduction of additional documentation requirements and other legislative amendments

In 2015 the Organization for Economic Cooperation and Development (OECD) published the final report presenting 15 actions for the prevention of base erosion and profit shifting by multinationals, the so-called BEPS action plan. More than 100 countries, including Curacao, have committed themselves to implement these actions into their national legislation.

On June 7th, 2018 the Government of Curacao has approved several legislative changes that will implement the first part of the BEPS action plan into its national tax legislation. In the following we will provide you with an overview of the implemented legislative changes.

Filing obligation for the private foundation

As per January 1st, 2019 the private foundation will have an obligation to annually submit a profit tax return with the tax authorities. The filing obligation does not affect the profit tax exemption for private foundations that do not conduct a business enterprise.

Amendments to the export regime

As of July 1st, 2018 the permitted activities in the export regime have been amended. The provision of licenses is no longer allowed under this regime. Entities that currently carry out licensing activities may request for the application of the export regime in the 2018 final profit tax return if they fulfill all requirements of the export regime on June 30th, 2018. In that case they may still apply the export regime as applicable on June 30th, 2018 until December 31st, 2018. Currently, a bill proposing the repeal of the export regime is pending before parliament.

Amendments to the exempt status

With effect as of July 1st, 2018 the permitted activities for profit tax exempt companies will be amended. The statutory objective as well as the actual activities carried out by tax exempt companies may no longer include the provision of licenses concerning intellectual and industrial property. Companies that carry out the aforementioned activities and have obtained the tax exempt status before July 1st, 2018 may continue to carry out these activities and will maintain the tax exempt status until December

31st, 2018. Currently, a bill to further amend the tax exempt regime is pending before parliament. Pursuant to that bill development and exploitation of intellectual and industrial property rights would qualify as permitted activities.

Introduction UBO-register

As of June 16th, 2018 entities are required to submit information regarding the identity of their ultimate beneficial owners (UBO) to a government agency still to be appointed. This agency will submit the information to a central UBO register. The UBO register will not be publicly available but will only be accessible to Government agencies and independent agencies that carry out a supervisory function.

An overview of the ultimate beneficiaries of the entity must also be submitted when filing the profit tax return.

Extension definition of administrators

Upon dissolution of an entity the person charged with liquidation of the entity will be regarded as the administrator for tax purposes.

Administrative sanctions

As of June 16th, 2018 an administrative fine not exceeding ANG 25,000 can be applied to taxpayers who do not comply with their administrative obligation including the exchange of information obligations.

Additionally, the scope of the administrative sanctions is expanded to also include the obligation to provide information for the purposes of a taxpayer's own tax position as well as for tax purposes of affiliated entities and third parties. Noncompliance with the UBO register obligations are also subject to this fine.

Notification of information exchange

In the event of a request for information exchange from other countries, the Minister of Finance is no longer obligated to inform the taxpayer regarding this request. Additionally, it is no longer possible to file an objection or an appeal against the decision to comply with request for information.

Rulings

Although a longstanding practice, the possibility for taxpayers to enter into agreements with the tax authorities is now incorporated in the law. Taxpayers may request the tax authorities to provide them with a ruling providing assurance regarding the tax consequences in a specific case. What constitutes a ruling is determined in line with internationally accepted terminology as used by the OECD. In connection with the filing of a ruling request ANG 500 per ruling request will be charged. The tax inspector should provide the taxpayer with a decision on the ruling request within two weeks but ultimately within 30 days from the date of filing the request. The effective date of this legislation will be announced by national decree at a yet to be determined date.

Introduction additional documentation requirements

For financial years starting on or after January 1st, 2018 three new transfer pricing obligations have been introduced for multinational enterprises (MNE).

- The filing of the Country-by-Country report;
- The Master File as part of the administration of the taxpayer;
- The Local file as part of the administration of the taxpayer.

The Country-by-Country report (CbC report)

The MNE that in the previous financial year earned more than ANG 1.5 billion in worldwide consolidated group revenue must submit a CbC report with the tax authorities within 12 months following the end of the financial year. For submission of the CbC report, the MNE should appoint a group entity as a reporting entity. If the CbC report is submitted on behalf of the MNE by another group entity in another country, in most cases the Curacao group entity would not be required to submit an additional CbC report in Curacao.

Content CbC report

The CbC report provides tax authorities with information regarding the revenues, profits, activities and size of the entity. The tax authorities may use this information for evaluating transfer pricing risks and other tax risks for Curacao in connection with profit shifting or tax base erosion.

Notification obligation

No later than December 31st of the financial year, the Curacao group entity informs the tax authorities whether it will be the reporting entity on behalf of the MNE. If the Curacao group entity is not the reporting entity of the MNE, it informs the tax authorities about the identity and tax residence of the reporting entity. The CbC report should be submitted with the tax authorities no later than December 31st of the year following the financial year.

Master File (MF) and Local File (LF)

The group entity established in Curacao that is part of an MNE that has more than ANG 100 million in consolidated group revenue in the previous financial year must include a MF as well as a LF in its administration. The MF and LF should be in place at the time the final profit tax is filed.

The tax authorities may request the entity for the MF and LF.

Content MF and LF

The MF provides the tax authorities with an overview of the transfer pricing policy of the MNE. The intra-group transactions of the local group entity is documented the LF.

Sanctions

If the reporting entity does not (fully or timely) comply with the aforementioned obligations intentionally or due to gross negligence, this entity can be issued a fine of at least ANG 100,000 and at most ANG 250,000 for this offense. In addition, a criminal charge can also be imposed on the reporting entity for a maximum of ANG 25,000.

Contact

If you have any questions and/or remarks about this tax alert, please do not hesitate to contact us via the contact details below.

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