

**Linette A. Gibs**

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**From:** Nancy R. Guishard-Joubert  
**Sent:** Monday, September 24, 2018 10:36 AM

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**From:** Lieveld, Wilgo [<mailto:Wilgo.Lieveld@sintmaartengov.org>]  
**Sent:** Monday, September 24, 2018 9:43 AM  
**To:** Nancy R. Guishard-Joubert  
**Subject:** DIVno.2860

Beste Nancy,

Bijgaand de eindtekst van de Algemene Landsverordening landsbelastingen in verband met international verplichtingen (IS350/2017-2018).

Dit is een van de 2 onderwerpen waarvoor wij a.s. woensdagmiddag naar het parlement komen.

Ik hoop je voldoende te hebben geïnformeerd en ben in afwachting van je reactie.

**Wilgo F. Lieveld**  
Director of the Cabinet of the Minister of Finance



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## ST. MAARTEN

To the Chairwoman of Parliament  
Wilhelminastraat 1  
Philipsburg  
Sint Maarten

Uw nummer:                      Uw brief van:                      Ons nummer:                      Afd: JZ&W

Subject: ontwerp van landsverordening tot wijziging van de Algemene landsverordening  
landsbelastingen in verband met internationale verplichtingen

**Philipsburg,**

With much interest, I have taken note of the report of Parliament to the draft National Ordinance amending the General National Ordinance Land Taxes in connection with international obligations. I would like to thank Parliament for issuing the report on the aforementioned draft National Ordinance.

In response, I hereby present to Parliament the note to its report.

**The United Democrats-faction** would like to know if there is a yearly membership fee to be paid by Sint Maarten besides the Nafl. 1 million for system, set up and training. Further to this, the faction would like to know if online companies will be affected by this legislation and if so how, what blacklisting measures will be taken if we are not a member of the OECD and if there will be an additional cost pertaining to personnel.

### *Answer*

*A yearly fee has to be paid for the use of the Common Transmission System (CTS). The CTS is a "global" transmission system being developed under the Organization for Economic Cooperation and Development (OECD) Forum on Tax Administration. The purpose of the CTS will be to facilitate the automatic exchange of financial account information, "country-by-country" reporting and other exchanges of information between tax administrations. Nobody will be directly affected by this draft amendment (law). Only online companies with financial accounts in Sint Maarten and are tax residents of relevant Reporting Jurisdictions or such accounts in which persons that are tax residents of relevant Reporting Jurisdictions will be affected by the CRS-legislation (the national decree, containing general measures). In those cases, the account information will be exchanged with the relevant Reportable Jurisdictions.*

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Gelieve bij beantwoording datum en nummer te vermelden en in elke brief slechts ÉÉN onderwerp

For the answer regarding blacklisting measures, reference is made to the response provided to the National Alliance faction below regarding this topic, independent if we are a member of the OECD or not.

For completeness sake, I hereby present a breakdown of all costs relating to the technical implementation of the CRS (based on information received on August 17<sup>th</sup>, 2018):

The projected costs are in the first year:

- Purchase of software (Tax administration will be owner) (\$ 337.000)

- One time setup fee	\$ 102.750,-
- Attack & Penetration test	\$ 35.000,-
- EV-certificate	\$ 2.000,-
- Infrastructure hosting data center	\$ 68.000,-
- Capacity projectleader implementation CRS	\$ 30.000,-
- Capacity professional tester	\$ 25.000,-
- Fortigate en fortiweb	\$ 15.000,-
- Mailserver	\$ 2.000,-
- Website	\$ 4000,-
Total first year	\$ 620.750,-

Yearly structural operational costs:

- EV-certificate	\$ 1.000
- Subscription fee CTS	\$ 8.000,-
- Maintenance software CRS	\$ 67.500,- (incl. Be-Informed software license)
- Infrastructural costs	\$ 50.000,-
- 0,2 fte Inspector and 0,3 fte IT	\$ 5.000,-
- Attack & penetration	\$ 35.000,-
- Website	\$ 4000,-
Total yearly costs	\$ 170.500,-

Secondly, there are also other costs relating to the structural embedding of security awareness and integrity at the Tax Administration (training for employees). All employees should be trained for this. The projected associated costs amount to approximately NAF 35.600,- (USD 20.000).

Thirdly, there are costs relating to the description of confidentiality and data safeguards procedures based on the Action Plan as formulated in consultation with the OECD. The projected costs: Expertise and advice NAF 317.256,- (€ 153.650,-). The Netherlands will finance 25% of the advice cost at the amount of € 38.412,- (NAF 79.313,-).

**The Sint Maarten Christian Party- faction** mentioned that in the past countries have signed agreements with each other to exchange tax information. This faction would like to know if this amendment will give Government the authority to exchange tax and financial information automatically with other countries without having to sign further treaties or agreements with those other countries. Can an indication be given how many times this national ordinance was applied in its 5 years of existence? How many treaties were signed and how many times financial information was exchanged and to which countries?

*Answer*

*Even though no further treaties or agreements are needed to exchange tax information, this amendment doesn't give the Government the authority to exchange tax and financial information automatically for the following reason. This amendment governs solely the relationship between the local financial institutions and the Government. As mentioned on page 1, second paragraph of the elucidation the legal basis and thus the authority of the Government to exchange tax and financial information automatically is article 63a, first and second paragraph of the National Ordinance of General Taxes (Algemene landsverordening landsbelastingen, hereafter: ALL).*

*The ALL was a law of the former Country Netherlands Antilles. Per 10-10-10 Country Sint Maarten automatically inherited this law. In the context of the 'Project Herschrijven wet- en regelgeving van Sint Maarten' the ALL was adjusted and published by Country Sint Maarten in 2013. Since then Country Sint Maarten:*

- did not sign any tax treaties;*
- exchanged financial information 26 times to the following countries The Netherlands, France, U.S.A., Canada and Aruba.*

The faction indicated that the Netherlands Antilles was a jurisdiction (rechtsgebied) that participated in the CRS. Is Sint Maarten now a jurisdiction and if yes, since when? Countries involved in automatic exchange of information committed to provide information as of September 2017. Furthermore, on a list of the OECD, Sint Maarten along with other countries, is scheduled to provide its first tax and financial information effective September 2018. Other countries that started exchanging information in 2017 did so as September 2017, yet Sint Maarten in 2018 wants to submit information as of July 1, 2017, the latter according to the Explanatory Memorandum. Why does Sint Maarten want to provide the information retroactively from July 1, 2017, according to page 2 of the elucidation?

*Answer*

*Firstly, clarification should be made to the fact that the CRS emerged in 2013 as stated on page 1, first paragraph in the elucidation and therefore technically impossible for the Netherlands Antilles to participate in the CRS. Furthermore, Sint Maarten has been an autonomous tax jurisdiction since 10-10-10. CRS information required to be exchanged automatically shall take place before September of the year following the calendar year to which such exchange relates. This means that CRS information regarding the calendar year 2016 should be exchanged before September of the calendar year 2017 and CRS information regarding calendar year 2017 should be exchanged before September of the calendar year 2018 and the CRS information over the calendar year 2018 should be exchanged before September of the calendar year 2019. This is the reason why in the elucidation is stated in 2018 information regarding information as of July 1<sup>st</sup> 2017 will be exchanged.*

Does the government have a plan outlining when the various national decrees, containing general measures will be required and executed?

*Answer*

*First of all, clarification should be made that it is not 'various national decrees, containing general measures' but a published 'national decree, containing general measures' is needed to really implement the CRS. The Department of Fiscal Affairs (AFZ) has already drafted this national decree and the Tax Administration has*

reviewed and returned this on August 21<sup>st</sup> 2018. AFZ is currently addressing the comments made by the Tax Administration. Hereafter, the mentioned draft will be sent to the Department of Legal Affairs and Legislation for legal vetting. After AFZ has addressed the possible remarks of the Department of Legal Affairs and Legislation, this draft will be submitted to the Council of Ministers via the Department of Legal Affairs and Legislation for approval after which it will be sent to other institutions for advice (Council of Advice etc). Considering this, at this moment, unfortunately, no timeline can be given regarding the publication of the national decree, containing general measures. However, this will be worked on expeditiously.

Further, the faction would like to know if the government has a division that is tasked with the handling, receiving, filing and processing of financial information received from banks and other financial institutions. If not, how does it plan on setting up such a division?

*Answer*

*Existing staff of the Tax Administration will be trained to receive and process the incoming information.*

On page 3, reference is made to article 45a of the General National Ordinance Land Taxes. This article could not be found in the original national ordinance. Can the Government indicate in the amended national ordinance where article 45a is included?

*Answer*

*Clarification must be made that on page 3 of the elucidation reference is made to the proposed article 45a of the ALL in the draft 'Landsverordening herziening formeel belastingrecht'. This automatically means that said article 45a cannot be found in the ALL. Furthermore, it is also stated on page 3 of the elucidation that the original proposed article 45a in the aforementioned draft is extracted out of this draft and placed as article 61a in the draft 'Landsverordening tot wijziging van de Algemene landsverordening landsbelastingen in verband met internationale verplichtingen'. Consequently, the original proposed article 45a is no longer present in the draft 'Landsverordening herziening formeel belastingrecht'.*

Can Government give an indication as to how much the actual execution of this national ordinance and the national decrees, containing general measures will cost Government (besides the Nafl. 1 million in obtaining software)? What are the other cost involved, such as staffing, office space and such?

*Answer*

*There will be indeed additional costs, such as:*

- *Cost associated with the training of staff;*
- *The yearly fee for the Common transmission system (CTS) \$ 8000;*
- *Data safeguard and security of CRS system*

*For a complete breakdown of all cost, I refer to the response to the United Democrats Faction.*

Is there a timeline set out after the approval of this Ordinance for the automatic exchange of information and financial information to be put in place? When will this national ordinance be implemented? Can Government provide a list of all countries that Sint Maarten would be able to require this information from about its residents (residents of those countries that are here on Sint Maarten or have a business on Sint Maarten)? What are the financial benefits for Sint Maarten being able to exchange this tax information automatically? Can the Government provide a list of all countries that Sint Maarten has tax treaties with to avoid double

taxation? Can Government provide the policy, if there is one, concerning the inkeerregeling? Will Sint Maarten establish an automatic exchange of tax information with places such as Anguilla, Curacao, Aruba, Cayman Islands, Bahamas, Turks and Caicos?

*Answer*

*Further to that already stated, the CRS legislation will be implemented when the national decree, containing general measures is published.*

*As was stated in the presentation, CRS provides standard procedures to be followed by Sint Maarten financial institutions to identify and report annually to the local tax authorities certain accounts (Reportable Accounts) held by tax residents of Reportable Jurisdictions, or accounts for certain entities in which such persons have an interest. Local tax authorities will, in turn, forward the information to the relevant Reportable Jurisdictions with which they have Competent Authority Agreements (CAAs) and accordingly have an obligation to exchange information. So based on the CRS, that regards automatic exchange of information and therefore not exchange of information on request, Sint Maarten cannot require information from those jurisdictions regarding their residents. If the fiscal residency of their residents is also Sint Maarten (dual tax residency) then those CRS countries are obliged to exchange CRS information of their residents with Sint Maarten provided that the conditions of confidentiality and data safeguards are met here and that the international legal framework is in place. In that case Sint Maarten will receive CRS information from the following jurisdictions (based on the OECD list of intended partners of Dec 12<sup>th</sup>, 2017):*

*ANTIGUA AND BARBUDA, ARGENTINA, ARUBA, AUSTRALIA, AUSTRIA, BELGIUM, BERMUDA, BRAZIL, BRITISH VIRGIN ISLANDS, BULGARIA, CANADA, CAYMAN ISLANDS, CHILE, CHINA (PEOPLE'S REPUBLIC OF), COLOMBIA, COOK ISLANDS, CROATIA, CURAÇAO, CYPRUS, CZECH REPUBLIC, DENMARK, FAROE ISLANDS, FINLAND, FRANCE, GERMANY, GIBRALTAR, GREENLAND, GRENADA, GUERNSEY, HUNGARY, ICELAND, INDIA, INDONESIA, IRELAND, ISLE OF MAN, ITALY, JAPAN, JERSEY, KOREA, LATVIA, LEBANON, LIECHTENSTEIN, LUXEMBOURG, MALAYSIA, MALTA, MAURITIUS, MEXICO, MONTSERRAT, NETHERLANDS, NORWAY, POLAND, PORTUGAL, ROMANIA, RUSSIAN FEDERATION, SAINT LUCIA, SAINT VINCENT AND THE GRENADINES, SAUDI ARABIA, SEYCHELLES, SLOVENIA, SOUTH AFRICA, SPAIN, SWEDEN, TRINIDAD AND TOBAGO, TURKS AND CAICOS ISLANDS, UNITED KINGDOM AND VANUATU.*

*The financial benefit for Sint Maarten is that Sint Maarten will receive information of tax residents of Sint Maarten regarding financial accounts held by them in the other CRS-countries provided that the conditions of Confidentiality and Data Safeguards are met here and the international legal framework is in place. Sint Maarten will then be able to combat tax fraud by levying additional taxes (navorderings-/naheffingsaanslag) on undeclared income of residents of Sint Maarten.*

*Sint Maarten has a double tax agreement to avoid double taxation with Norway, Curacao, Aruba and the Netherlands.*

*With regards to the 'inkeerregeling', article 26 of the ALL is applicable. In the event a taxpayer or withholding agent submits a correct and complete tax return or provides correct and complete information, data or indications before he knows or reasonably suspect that one or more officials of the tax administration are aware, or will become aware of the incorrectness or incompleteness of a previously submitted tax return, instead of an offense penalty, a default fine of not more than 15% will be imposed.*

*Aruba, Curacao, Cayman Islands and the Turks and Caicos Islands are signatories to the MCAA and for this reason there will be automatic exchange of information with those countries providing the international legal framework is in place and that the conditions of confidentiality and data safeguards are met. Regarding Anguilla, they have not yet submitted their list of intended partners while regarding Bahamas, there is not yet an international legal framework for exchanging CRS information.*

How many offshore companies are registered in Sint Maarten? How much tax income is generated from the companies in the offshore sector? How many trust offices are registered in Sint Maarten? What is the contribution of the financial offshore sector to Sint Maarten, to its GDP, to the total tax revenue and to the total employment? Does the tax office assess the offshore and trust companies every year? Does Government know if the offshore companies on Sint Maarten are compliant to having a physical address and a resident director? Does Government know if the Chamber of Commerce has also cleaned up its registry (to ensure that every offshore company has a physical address and a resident director)? If the answer is no, then what does Government intend to do about this?

*Answer*

*According to the Tax Administration, there are 276 off shore companies registered on St. Maarten. There are 2 trust companies registered on Sint Maarten. It is difficult to say what the total tax revenue is of the financial offshore sector to Sint Maarten. The ICT system of the Tax Administration can generate an overview of the total profit tax revenues, however the ICT system is not programmed to provide a break down per sector. Such a breakdown has to be manually extracted out of the system. The Tax Administration indeed assesses the offshore and trust companies every year.*

*These questions are also partially directed to the Ministry of TEATT and VSA to be addressed. The Ministry of TEATT provided the following information:*

*Here below is a quick assessment of the Int. Finance & Business Sector Contribution to island's GDP, based the request and available data:*

*Inflow of Int. Finance and Business Sector to Sint Maarten (Naf. Millions)*

	2014	2015	2016	2017	4 yr Avg.
<i>Int. Finance and Business Sector</i>	43.2	42.1	39.1	38.1	40.6

*Source: BoP of SXM -CBCS*

*Over the past 4 years the Int. Finance and Business Sector contributed on average, Naf. 40.6 mil to the overall economy according to data collected by CBCS and illustrated on the island's Balance of Payment. This amount represents an estimated 2.2 percent of the island's GDP.*

*Regarding the question regarding whether off shore companies are required to have a physical address and a local director, the response is as follows: The trust companies act as the director(s) of the offshore companies and also the (local) address of the trust companies would act as the (local) address of the off shore companies.*

*The Ministry of VSA provided the following information:*

*Furthermore, there is no information readily available regarding the contribution of the financial offshore sector to the total employment of Sint Maarten.*

Can Government share with Parliament what conditions will be set in the national decrees, containing general measures before the exchange of tax information can go into effect? What conditions will be included in those decrees that the persons who are to comply will have to comply with?

*Answer*

*The national decree, containing general measures is based on the OECD Wider Approach model. Parliament should already have received a copy of this model.*

The faction notes that the process of the trajectory of a national ordinance in Sint Maarten from start to finish takes much longer on Sint Maarten than in the Netherlands. It is for this reason that the Government wants to bypass the process of presenting national ordinances to Parliament and only work in the future with national decrees, containing general measures. This would mean that after Parliament approves this amendment, Parliament has no further say in this matter.

*Answer*

*Sint Maarten must be able to respond quickly to future changes in the CRS in order to prevent it from being regarded as not compliant by the OECD. This is only possible if these changes can be implemented quickly in the CRS legislation of SXM. This objective is not achieved if a formal law has to be amended here since the formal legislative process in Sint Maarten is very long. For this reason, it has been decided to regulate the detailed CRS-legislation, following Curaçao, through a national decree, containing general measures. This is also in accordance with the OECD "key points to consider when translating the CRS into domestic law". One of those key points regards the use of primary legislation and secondary legislation in the legal framework that is required to implement the CRS in domestic law.*

*According to the OECD, in broad terms the primary legislation should include the high-level collection and reporting requirements in the Standard, such as their scope, the application of enforcement provisions on financial institutions for noncompliance with the reporting obligations and provisions to enable the subsequent introduction of the more detailed reporting requirements. The proposed articles 21b and 61a of the ALL are consistent with this. In accordance with the OECD, the secondary legislation should contain as much as possible the detailed aspects of the CRS. The draft national decree, containing general measures is consistent with this.*

The faction also notes that the Council of Advice and Government did not agree on several issues regarding this piece of legislation. One of the critical notes from the Council of Advice was that the Government didn't consult any stakeholders such as the SER when drafting this Ordinance. One of the reasons given was that in the Netherlands and in Curaçao, the SER was not consulted. The faction is of the opinion that the reality of Sint Maarten is completely different compared to that of Curaçao and the Netherlands.

*Answer*

*The task of the Council is to advise the Government on all important subjects of a socio-economic nature (article 2, paragraph 1, of the National Ordinance Social Economic Council). The present bill contains only*



provisions to enable the subsequent introduction of the CRS. As the faction previously mentioned: The draft amendment is simply an addition to the foundational law (ALL), nothing really happens unless the national decree, containing general measures are written and become official. This means that this draft amendment, unlike the opinion of the Council of Advice does not have a direct effect on individuals and the business community. For that reason, advisory bodies or interest groups and the Social Economic Council do not have to be consulted about this bill.

Furthermore, it should be noted that far-reaching administrative obligations for businesses in the context of countering international tax fraud do not fall under important subjects of socio-economic nature. As is clearly stated on page 5, second paragraph, of the elucidation, the aforementioned arguments are the reason not to consult the SER and not the fact that the Netherlands nor Curaçao did not consult the SER regarding this topic. Those countries were mentioned only as examples in relation to the relevant subject that is not different in Curaçao, the Netherlands and Sint Maarten. The implementation of the CRS must be seen as an OECD assignment that is not open to discussion.

**The National Alliance – faction** is interested to know if a timeline/deadline can be obtained as to when the national decree, containing general measures can be expected.

*Answer:*

*No timeline can be given, please refer to the answer given to the Christian Party faction regarding this question.*

The Council of Advice raised questions and give advice on privacy and certain areas being regulated by a ministerial regulation vs. a national decree, containing general measures. Have any adjustments been made in this respect?

*Answer*

*No and yes. Regarding privacy, please see the response to the United St. Maarten Party faction below. Regarding the regulation of certain areas being regulated by a national decree, containing general measures rather than ministerial regulation, the government has opted to follow this advice.*

Has the amount of Naf. 1 million been budgeted in the budget? If so, please indicate where? Assuming that this fall under 'Capital Expenditures', how is it expected to be funded since based on the last budget meetings the source to fund the 'Capital Expenditures' was unknown?

*Answer*

*In the 'Capital Expenditures' NAF 6 million is taken up for the Tax Administration.*

What exactly is being amended in this national ordinance compared to the prior national ordinance? What changes are being made and how do they change the national ordinance?

*Answer*

*This bill is an amendment to the National Ordinance on General National Taxes and can be considered an addition to this law to include a provision enabling financial institutions to automatically provide certain financial information to the Tax Administration on a yearly basis and a corresponding enforcement provision.*

Can the list of countries that are member to this agreement and thus can request information from Sint Maarten's residents and businesses be provided? Are there more FATCA agreements such as these that we are signatory to and what are the consequences of such for the residents and registered businesses of Sint Maarten?

*Answer*

*Clarification should be made to the fact that the CRS regards the automatic exchange of financial information and therefore not exchange of financial information on request. To the following Reportable Jurisdictions Sint Maarten will automatically send CRS-information provided that the international legal framework is in place and that they meet the Confidentiality and Data Safeguards conditions:*

*ANTIGUA AND BARBUDA, ARGENTINA, ARUBA, AUSTRALIA, AUSTRIA, BELGIUM, BRAZIL, BULGARIA, CANADA, CHILE, CHINA (PEOPLE'S REPUBLIC OF), COLOMBIA, COOK ISLANDS, CROATIA, CURAÇAO, CYPRUS, CZECH REPUBLIC, DENMARK, FAROE ISLANDS, FINLAND, FRANCE, GERMANY, GIBRALTAR, GREENLAND, GRENADA, GUERNSEY, HUNGARY, ICELAND, INDIA, INDONESIA, IRELAND, ISLE OF MAN, ITALY, JAPAN, JERSEY, KOREA, LATVIA, LEBANON, LIECHTENSTEIN, LUXEMBOURG, MALAYSIA, MALTA, MAURITIUS, MEXICO, MONTSERRAT, NETHERLANDS, NORWAY, POLAND, PORTUGAL, ROMANIA, RUSSIAN FEDERATION, SAINT LUCIA, SAINT VINCENT AND THE GRENADINES, SAUDI ARABIA, SEYCHELLES, SLOVENIA, SOUTH AFRICA, SPAIN, SWEDEN, TRINIDAD AND TOBAGO, UNITED KINGDOM AND VANUATU.*

*Further, clarification should be made to the fact that Sint Maarten is not signatory to a FATCA Intergovernmental Agreement. Furthermore, there are no more agreements like the CRS-MCAA agreement that Sint Maarten is signatory to. As said before, CRS provides standard procedures to be followed by Sint Maarten financial institutions to identify and report annually to the local tax authorities certain accounts (Reportable Accounts) held by tax residents of Reportable Jurisdictions, or accounts for certain entities in which such persons have an interest. Local tax authorities will, in turn, forward the information to the relevant Reportable Jurisdictions with which they have Competent Authority Agreements (CAAs) and accordingly have an obligation to exchange information. This means that the CRS has no consequences for residents and registered business of Sint Maarten unless those residents are also tax residents of the Reportable Jurisdictions or such persons have an interest in financial accounts held by the registered businesses of Sint Maarten. In those cases, Sint Maarten will exchange automatically information regarding those accounts with the relevant Reportable Jurisdictions.*

There is a discussion between our Government and others within the Kingdom. Is there a difference between the 'ingezetene' and 'ingeschrevene' here on Sint Maarten as there is in the Netherlands? Who exactly is affected by this amendment? Who is expected to comply with this national ordinance once this has passed? What are some of the consequences? What exactly does blacklisting imply for Sint Maarten if we do not comply with this national ordinance? Can it involve that Government will be fined? What will be the repercussions on individuals, besides Government? What are all of the negative consequences on the banking and investment climate of Sint Maarten?

*Answer*

*As previously mentioned, only certain accounts (Reportable Accounts) held by tax residents of Reportable Jurisdictions, or accounts for certain entities in which such persons have an interest are affected by the CRS. Financial institutions are expected to comply with this law and national decree, containing general measures*

once passed. In addition to blacklisting, it is currently unclear which other negative consequences non-compliance can bring. Blacklisting may imply that negative advice is given to invest in Sint Maarten or that parent companies abroad cannot benefit from the participation exemption on the profits that their subsidiaries in Sint Maarten transfer to these companies, as a result of which these profits are faced with double taxation, namely in Sint Maarten and in the countries of residence of the parent companies. Consequently, this is very detrimental to the investment climate of Sint Maarten.

Was any input from the SER sought or will any be sought? If and when this national ordinance is passed, will an information campaign be launched to further inform the general public and those that would be affected about timeline, effect etc.? Which entity would ensure that Sint Maarten complies with this national ordinance?

*Answer*

*Regarding input from the SER, the answer is negative. This has already been addressed in the response to the Christian Party faction. Regarding the launch of an information campaign for this draft, the answer is 'no', because as The Christian Party faction mentioned, 'The draft amendment is simply an addition to the foundational law (ALL), nothing really happens unless the national decrees, containing general measures are written and become official'. The Tax Administration will launch an information campaign (newspaper article etc) when this national decree is published. Finally, as previously mentioned, nothing really happens regarding this national decree, unless this is written and become official. Hereafter, the financial institutions of Sint Maarten have to comply with the CRS legislation and the Tax Administration will ensure that this happens.*

Mention is made by the Council of Advice that 'geen notificatie of inzage of correctierecht is opgenomen in het ontwerp', has this been corrected? If included in other national ordinances, can an indication be given where these missing components can be found? In responding to the Council of Advice in the further report (nader rapport), the Government made note that certain recommendations did not need further elucidation in the Explanatory Memorandum, specifically, on page 4, 4 points were mentioned. How will the CRS influence the privacy of concerned persons, who will be affected? Under which circumstances has Sint Maarten committed itself to the CRS? What is the content of the CRS? Where are the obligations for reporting taken up?

*Answer*

*Regarding the correction, the answer is negative, because as stated in the elucidation on pages 7 and 8 :*

- 1. Firstly, the proposed article 61a does not in itself impose obligations to the clients of Financial Institutions;*
- 2. Secondly, these rights are already granted in Article 26 and Chapter 4 of the National Ordinance on the Protection of Personal Data (Landsverordening bescherming persoonsgegevens). These rights are mentioned in the draft Explanatory Note (Nota van Toelichting) to the national decree, containing general measures for the implementation of the CRS. It is therefore redundant to include them in this bill.*

*Regarding the 4 points mentioned:*

*1) CRS provides standard procedures to be followed by Sint Maarten financial institutions to identify and report annually to the local tax authorities certain accounts (Reportable Accounts) held by tax residents of Reportable Jurisdictions, or accounts for certain entities in which such persons have an interest. Local tax authorities will, in turn, forward the information to the relevant Reportable Jurisdictions with which they have Competent Authority Agreements (CAAs) and accordingly have an obligation to exchange information.*

*This information primarily concerns data about the account holder, the so-called subject data. This concerns the following personal data: the name, the address, the tax residence, the tax identification number and, in the case of natural persons, the date of birth and place of birth. In the event that the account holder is tax resident in more states, all tax residence statements and tax identification numbers must be provided. Furthermore, financial institutions must report data of the account, the so-called object data. This includes the account number, the balance of the account, the value of a capital insurance policy and the total gross amount in interest paid to the account.*

*2) On August, 1<sup>st</sup>, 2014 the OECD sent the Minister of Finance a letter inviting Sint Maarten to commit to the CRS. On October, 27<sup>th</sup>, 2014, Sint Maarten committed to the OECD to implement the CRS in 2018 after taking into account the negative consequences of not doing so. On October, 29<sup>th</sup>, 2015 Sint Maarten, along with a large number of other countries, committed itself by signing a Multilateral Competent Authority Agreement (MCAA) to exchange information automatically from 2018 based on the CRS.*

*3) For the content of the CRS, reference is made to point 1 above.*

*4) Furthermore, the reporting obligations are taken up in paragraphs A en B of Section I of the CRS, subject to paragraphs C to E of the CRS. For more information, reference is made to the following link: [https://read.oecd-ilibrary.org/taxation/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters\\_9789264216525-en#page31](https://read.oecd-ilibrary.org/taxation/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters_9789264216525-en#page31).*

**The United St. Maarten Party – faction** would like to know if the national ordinance is in accordance with any privacy related national ordinances. Would it be something where advice from the Ombudsman would be needed?

*Answer*

*There is not a lack of restriction and this bill does not violate any privacy laws including the constitution for the reasons stated on page 6 of the elucidation.*

*Pursuant to Article 5 of the Constitution, rules are laid down by or pursuant to national ordinance for the protection of privacy in connection with the recording and providing of personal data and also with regard to claims from persons to the knowledge of data about them and the use made of them. The national ordinance referred to in this article is the National Ordinance on the Protection of Personal Data (hereinafter: Lbp) which is therefore an organic national ordinance. Where personal data are processed as a result of the proposed Article 61a and the delegated regulations, the Lbp is applicable to these statutory regulations. The Lbp contains conditions for the processing of personal data and guarantees for those whose personal data are processed. One of the conditions for data processing according to Article 7 of the Lbp is that personal data are collected for specific, explicit and legitimate purposes. The Council of Advice apparently overlooked the fact that the data processing in the proposed Article 61a and the delegated legislation (the national decree, containing general measures) is governed by the current provisions of Chapter VIII, Section 2, of the ALL.*

*Article 61 of the ALL stipulates that the provisions of the said section serve to fulfill obligations arising from the Tax Regulations for the Kingdom, a convention for the prevention of double taxation, a convention for the exchange of information, or regulations of international law granting mutual assistance in levying and*

collection of the taxes referred to in article 1 of the ALL, as well as the corresponding taxes levied by a foreign power. Considering this, based on both the proposed Article 61a and the future national decree, containing general measures, only data types for the above-mentioned purposes can be requested from the Financial Institutions who possess them. Thus, the Council of Advice's argument that the ministerial regulation can arrange that every type of data can be requested for every purpose of every taxpayer is not valid.

For the sake of clarity, the proposed text of Article 61a (1) states that data and information must be provided to the Minister in connection with the implementation of international law regulations to provide mutual assistance in the levying of taxes. As a result, Article 61a specifies for which purposes the data should be provided as advised by the Council of Advice.

In accordance with article 127, third paragraph, of the Constitution of Sint Maarten, the Ombudsman can request the Constitutional Court to assess the compatibility with the Constitution of a legal regulation that has been ratified but has not taken effect as referred to in Article 81(g) of the Constitution. This, within six weeks of the ratification of the legal regulation. Considering this, there is no need to seek advice from the Ombudsman at this time regarding this bill. Moreover, the Ombudsman cannot submit such a request as this draft has not been ratified as yet.

What effect might this national ordinance have on our banking sector and the ability for the banking sector to handle and give good service to businesses and individuals in Sint Maarten? Will this have any effect on the time it takes for someone to open an account? Are there any situations because of lack of information that people will not be able to open an account because maybe they haven't complied with a request by the Inspectorate to submit information? Will that now have an effect on the ability to do banking in Sint Maarten?

*Answer*

Yes, the CRS-legislation will have an effect on the time it takes for someone to open an account but not on the ability to do banking on Sint Maarten. There are no situations because of lack of information that people will not be able to open an account because maybe they haven't complied with a request by the Inspectorate to submit information. In order to open an account at a financial institution, a person does not need to submit any information regarding the CRS to the Inspectorate of taxes. However, there may be situations where financial accounts cannot be opened due to a lack of information that people have to provide Financial Institutions in order to open an account for example information needed for a self-certification required to open new accounts (Taxpayer Identification Number, fiscal residency etc).

From an overall perspective, where does Sint Maarten rank in a global view? Are there any situations where Sint Maarten is blacklisted in any way or acquired a lower level? Are we in any sort of different level in an international scope in terms of tax compliance, banking etc?

*Answer*

Sint Maarten underwent a peer review in 2015, regarding the Implementation of the Standard in practice. This Standard regards tax transparency and exchange of information (on request). This peer review yielded a rating of 'Partially compliant' for Sint Maarten, while the OECD - norm is at least "Largely compliant'. Until now, Sint Maarten has not been blacklisted.

The faction expresses its concern about one of the amendments resulting in the Minister of Finance having the authority to impose a fine of up to Naf. 25.000. Are there any specific guidelines as to how, if any measures/ fines are taken or even further legal measures taken for people that may not be in compliance for whatever reason? What is the process for executing such measures? Does the Minister of Finance need an advice from the Inspectorate before executing any reason for legal recourse or fines?

*Answer*

*After the approval of this bill and the draft national decree, containing general measures, a policy should be made regarding the application of a fine. The Inspectorate of Taxes can impose a fine without any advice.*

  
The Minister of Finance  
24/09/18  
