
Belgium – Prepare for imminent introduction of transfer pricing documentation obligations

June 14, 2016

In brief

On June 2, 2016 the Belgian Government introduced before Parliament a draft Program Act setting forth the blueprint of how Belgium aims to introduce the product of the OECD's BEPS Action 13 into Belgian tax law. In essence, Belgium will introduce formal transfer pricing documentation requirements, compelling multinational groups with operations in Belgium – subject to certain conditions – to submit a Master file, Local file, and country-by-country (CbC) report.

It is expected that the draft Program Act will be approved before Parliament's summer recess and will apply to accounting years that started on or after January 1, 2016.

In detail

With the imminent introduction of transfer pricing documentation obligations, Belgium joins an increasing number of countries that are formally adopting such requirements aligned with the OECD's BEPS initiatives and Action 13 in particular (see our [Tax Insight](#) dated December 21, 2015).

Although the Belgian tax authorities increasingly had been turning their attention toward transfer pricing to address the perceived risk of

erosion of Belgium's tax base, the sweeping nature of the new requirements will provide the tax authorities with a wealth of information on intra-group transactions. This is expected to enhance their risk assessment process and result in more in-depth transfer pricing audits.

The draft bill contains the three-tier approach advocated by the OECD: Master file, Local file, and CbC report.

Content of the transfer pricing documentation

The content requirements for the Master file are closely

aligned with those put forth by the OECD. As a result, the Master file will need to provide an overview of the multinational group, including:

- the nature of its global business operations;
- intangible assets;
- intra-group financial transactions;
- consolidated financial and tax statements of the multinational group;

- its overall transfer pricing policies; and
- the global allocation of income and economic activity, in order to assist tax administrations in evaluating the presence of transfer pricing risk.

As regards the Local file obligation, Belgium appears to be moving beyond the OECD's requirements by requesting the filing of two forms — one that needs to contain general information on the local entity, and a second that focuses on detailed information on the transfer pricing applied between the local entity and foreign group entities. This detailed information is to consist of financial information and mapping of the intra-group transactions, a comparability analysis, and the selection and application of the most appropriate transfer pricing method. As this more detailed form, however, also refers to information that would need to be attached (for example, on the method selection and the comparability analysis), it appears that on top of completing the form taxpayers also would need to prepare a local file like the form of Action Point 13).

The content of the CbC report is in line with that of the OECD's Action 13 requirements. It is explained that the CbC report will be used for the assessment of major transfer pricing and other BEPS-related risk, although the latter is not further specified. In line with the OECD's guidance, a clear position is being taken that the report in isolation cannot be used to make transfer pricing adjustment, although it can be used as a basis for a transfer pricing audit or other tax-related issues. In addition, the report may also be used for making economical and statistical analyses.

For sake of completeness, the following aggregate amounts will need

to be provided with regard to each jurisdiction in which the MNE group operates:

- Revenue;
- Profit (loss) before income tax;
- Income tax paid;
- Income tax accrued as recorded in the single annual financial statement;
- Stated capital;
- Accumulated earnings (reserved profit);
- Number of employees (in full-time equivalents); and
- All assets other than cash or cash equivalents with maturity of less than three months not subject to substantial changes in value and intangible assets and shares recorded as financial assets.

For each constituent entity of the multinational group, the following information also should be provided:

- The jurisdiction of tax residence;
- Where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such constituent entity has been incorporated; and
- The nature of the main business activity or activities.

Filing obligation

The obligation to file a Master file will be imposed on every Belgian entity of a multinational group that on the basis of the Belgian annual financial statements related to the accounting period immediately preceding the last accounting period exceeds one of the following criteria:

- Operational and financial revenue of at least 50 million euro

(excluding non-recurring revenue); or

- Balance sheet total of 1 billion euro; or
- Annual average number of employees of 100 full-time equivalents.

Similar criteria are being introduced to determine which Belgian entities need to file the Local file. However, the second form containing the detailed information only is to be filed when at least one of the business units of the Belgian entity has realised intra-group cross-border transactions of more than one million euros during the last accounting period. In such case, the detailed information form should be filed with the tax return for every business unit that exceeds the aforementioned threshold.

The documentation obligations also are imposed upon permanent establishments situated in Belgium.

The CbC report should be filed by the Belgian ultimate parent entity of a multinational group that has a gross consolidated group revenue of at least 750 million euro as reflected in the consolidated financial statements during the year preceding the reporting year.

The draft Program Act requires a Belgian entity that is not the ultimate parent entity of the multinational group to directly file the CbC report with the Belgian tax authorities under certain conditions (e.g., in case the ultimate parent would not be required to file the report under its jurisdiction's tax legislation).

Timing of the filing obligation

The Master file and CbC report should be filed no later than 12 months after the last day of the reporting period concerned of the multinational group.

The Belgian entity that files a CbC report must indicate whether it is the ultimate parent entity or the surrogate parent entity no later than the last day of the reporting period of the multinational group.

When the Belgian entity is neither the ultimate parent entity nor the surrogate parent entity, it is to notify the tax administration of the identity and tax residence of the reporting entity, no later than the last day of the reporting fiscal year of the multinational group.

The Local file should be filed with the tax return concerned.

Language in which the forms should be filed

The draft bill indicates that the reporting can be made in English or in one of the Belgian official languages (Dutch, French, or German). However, this possibility is only available for the filing. For any other use of the forms (like court proceedings), an official translation – if requested – will need to be provided.

Documentation-related penalties

The draft bill also introduces specific transfer pricing documentation penalties, ranging from 1,250 euro to 25,000 euro.

The takeaway

The documentation obligations represent a new requirement for transfer pricing purposes under Belgian tax law.

Once the Program Act is adopted, an overnight shift will have been accomplished from (almost) no formal transfer pricing documentation requirements to preparing a full set of transfer pricing documents under local filing obligations, which may need to be filed – at least partially – with the tax return. The content of the Local file seems to exceed the OECD's

requirements; this is likely to impose a heavy compliance burden on Belgian entities subject to the requirements.

It appears that the Belgian Government has chosen to change from a pragmatic documentation approach to a formalistic transfer pricing documentation approach associated with a penalty regime. Given the rather limited manpower of the specialised transfer pricing team within the Belgian tax authorities, it can be expected that there will be more reliance on data-mining techniques to select files for transfer pricing audits.

Nevertheless, given that the attention and resources of the Belgian tax authorities apparently will increasingly be geared toward transfer pricing, all Belgian companies that will be subject to the upcoming transfer pricing documentation obligations should give consideration to:

- Assessing whether Belgian subsidiaries will be subject to the upcoming requirements;
- Undertaking a dry run to assess the red flags that might arise and implementing a mitigation strategy;
- Best managing the increased burden put on multinationals in an increasing number of countries from a technology, governance, and process perspective;
- Undertaking a strategic assessment of technology capabilities as they relate to the CbC report and transfer pricing documentation; and
- Reviewing the company's transfer pricing policies and their sustainability in light of the transparency that will be created on the activities that really drive

value within the overall value chain of an MNE by means of a value chain analysis.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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