



Belgium tax authorities publish guidance on application of transfer pricing documentation penalty regime

Global Transfer Pricing Alert 2019-010

The Belgian tax authorities published additional guidance on the application of the transfer pricing documentation penalty regime on 8 February 2019. The guidance was published as a circular (2019/C/14) that will be an addendum to an existing circular (2017/C/56) on the Belgian transfer pricing reporting requirements.

Background

A Belgian entity that is part of a multinational group that exceeds certain thresholds is required to prepare and file transfer pricing documentation (the country-by-country (CbC) report, the CbC notification form, the master file form, and the local file form).

The penalty regime included in the Belgian tax code sanctions failure to file timely comprehensive and accurate documentation. The amount of the penalty depends on both the nature and the ranking of the violation.

Nature and ranking of violation

The new circular provides a three-tiered penalty regime whereby penalties may be imposed depending on the nature of the offense:

- For offenses due to circumstances beyond the taxpayer's control, no penalty is imposed.
- For offenses that do not involve a wilful intent to harm or to commit fraud, no penalty is imposed for the first offense; for the second violation, penalties that range from EUR 1,250 to EUR 25,000 can be imposed, depending on the ranking of the violation.
- For offenses that do involve a wilful intent to harm or to commit fraud, a penalty of EUR 12,500 can be imposed for the first offense. For subsequent violations, a penalty of EUR 25,000 can be imposed.

The circular confirms that, to determine the ranking of an offense, only offenses of the same nature must be taken into consideration. In addition, whether a violation should be considered as a subsequent violation depends on whether the tax authorities informed the taxpayer that a previous violation of the same nature had already been identified. In this respect, the tax authorities must give notice of the identification of a violation and the related penalty. The circular includes additional examples relating to this guidance.

Date of violation

The circular states that the exact date of an offense depends on the type of offense.

In cases of failure to submit a comprehensive and correct transfer pricing form, or late submission of the form, the date of the violation is the due date for submission of the pertinent form.

If an incomplete or incorrect form is submitted (regardless of whether the submission was on time or late), the date of the offense is the date on which the form was submitted.

Date of applicability of penalty regime

The circular confirms the dates as of which the various provisions of the penalty regime are applicable. Offenses that did not entail a wilful intent to harm or to commit fraud committed on or after 19 July 2018 fall within the scope of the penalty regime. Offenses that do entail a wilful intent to harm or to commit fraud are penalized from 8 January 2018.

Going forward, the Belgian tax authorities may be expected to closely monitor compliance with transfer pricing obligations, and to impose penalties in cases of noncompliance.

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