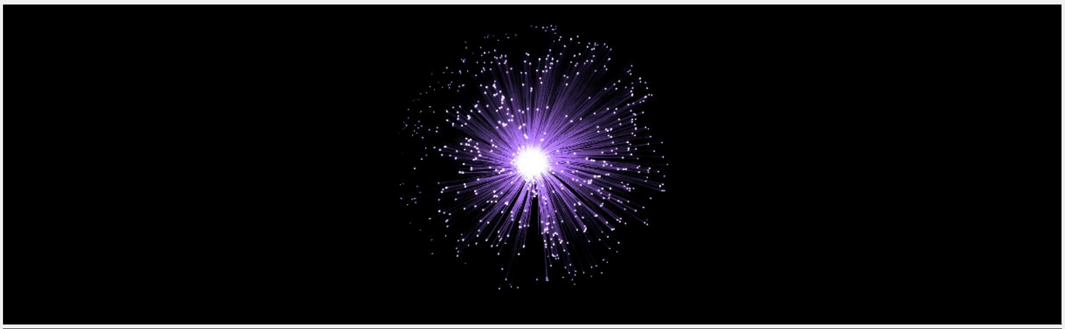

Belgium finalizes mandatory transfer pricing reporting requirements

Global Transfer Pricing Alert 2016-027

On July 4, 2016, Belgium's Program Law of July 1, 2016, introducing legislation implementing Action 13 of the OECD's Base Erosion and Profit Shifting (BEPS) project was published in the Belgian Official Journal. As expected, the new transfer pricing documentation legislation does not deviate from the draft program law issued on June 2, 2016.

The new transfer pricing documentation rules will be embedded in new articles 321/1–321/7 of the Belgian Income Tax Code.

Belgium generally follows OECD guidance and the EU directive on the harmonized implementation of a country-by-country (CbC) reporting requirement. Consequently, the OECD's three-tiered approach to transfer pricing documentation -- master file, local file, and country-by-country report -- will be mandatory in Belgium going forward.

Master and local file

A Belgian entity that is part of a multinational group will have to compile (1) a master file and (2) a local file when it exceeds one of the following thresholds (on a non-consolidated basis) in the accounting year immediately preceding the last closed accounting year:

- Combined operating and financial income of EUR 50 million (excluding non-recurring income);
- A balance sheet total of EUR 1 billion; or
- Annual average number of 100 full-time equivalents.

Both the master file and local file will have to be filed in specific forms, which will be published in a forthcoming Royal Decree. The master file form must be filed within 12 months after the reporting period of the multinational group with the Belgian tax authorities; the local file form must be submitted together with the tax return.

Additional documentation must be provided in the local file, including a comparability analysis, in case at least one "business unit" of a Belgian group entity has cross-border, intragroup transactions of more than EUR 1 million in total during the last closed accounting year.

Country-by-country report

In line with OECD guidance, a CbC report must be filed in Belgium within 12 months after the final date of the multinational group's reporting period, if the group's ultimate parent entity is located in Belgium.

Even if the ultimate parent entity is not located in Belgium, a Belgian group entity may be required to file a CbC report under certain circumstances (for instance, when the ultimate parent entity's jurisdiction does not require a CbC report to be prepared). However, this would not be the case if the multinational group appoints a "surrogate parent entity" within the group to file the CbC report in its tax jurisdiction, when certain conditions are fulfilled.

The CbC report is due only when the multinational group's consolidated gross revenue exceeds EUR 750 million in the reporting period immediately preceding the last closed reporting period.

Entry into force and penalties

The new transfer pricing reporting rules will apply to reporting periods of multinational groups with accounting years starting on or after January 1, 2016.

Noncompliance with the transfer pricing reporting requirements will trigger special penalties ranging from EUR 1,250 to EUR 25,000 after the second violation.

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Contacts

André Schaffers (Brussels)
Partner
Deloitte Belgium
aschaffers@deloitte.com

Patrick Cauwenbergh (Brussels)
Partner
Deloitte Belgium
pcauwenbergh@deloitte.com

Rob Peeters (Brussels)
Senior Manager
Deloitte Belgium
robpeeters@deloitte.com

Joachim Janssen (Brussels)
Senior
Deloitte Belgium
joajanssen@deloitte.com

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