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# ***Belgium – Transfer pricing documentation and country-by-country reporting obligations – detailed requirements published***

*December 15, 2016*

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## ***In brief***

While the Programme law of July 1, 2016 formally introduced transfer pricing documentation requirements into Belgian law (for more information see our [Tax Insight of June 14, 2016](#) ), the Belgian tax authorities only recently published the detailed forms to be used in this respect. The publication of these forms in the Belgian Official Gazette is the final step in the formal introduction of the country's transfer pricing documentation requirements. Belgium has now joined the increasing number of countries that have formally adopted requirements generally aligned with Action 13 of the Organisation for Economic Co-operation and Development's (OECD) base erosion and profit shifting (BEPS) initiative.

As these documentation obligations represent a new requirement for transfer pricing purposes under Belgian tax law, multinational groups are recommended to assess their practical impact and take the necessary steps to ensure compliance.

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## ***In detail***

On December 2, 2016, the Royal Decrees containing the transfer pricing documentation forms were published in the Belgian Official Gazette. Although the Belgian transfer pricing documentation requirements are partly aligned with regard to the principle of the three-tiered approach (Master File, Local File, and Country-by-Country (CbC) reporting), the content of the Local File as implemented into Belgian law (further

referred to as Local Form) departs considerably from the Local File template published by the OECD under BEPS Action 13. Together with the forms, guidance was published on how to use and complete the forms.

### ***Master File***

The Belgian tax authorities have imposed an obligation to file the Master File on every Belgian entity of a multinational group that – on the basis of the annual financial statements

related to the accounting period immediately preceding the last accounting period – exceeded one of the following criteria:

- Operational and financial revenue of at least 50 million euros (non-recurring revenue excluded); or
- Balance sheet total of one billion euros; or
- Annual average number of employees of 100 full-time equivalents.

As the content requirements of the Master File are closely aligned with those put forth by the OECD, the Master File should contain an overview of the multinational group, including:

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

In addition, the explanatory notice to the form indicates the following should be included:

- overall transfer pricing policies; and
- the global allocation of income and economic activity.

The above-mentioned information can either be inserted directly into the form as provided for by the Royal Decree or joined as an attachment to this form (e.g., in case the group intends to submit a copy of its group Master File).

### Local Form

In addition to the Master File, a “Local Form” needs to be submitted. The same thresholds for filing the Master File – operational and financial revenue of at least 50 million euros; balance sheet total of one billion euros; or annual average number of employees of 100 full-time equivalents – apply to the Local Form.

The Local Form under the Belgian documentation requirements in essence consists of three parts, the content of which is further explained below. Important to note is that part 2 of the form (containing detailed

transactional data) only needs to be filed when at least one of the business units of the Belgian entity has realized cross-border intra-group transactions of more than one million euros. In such case, part 2 of the form should be filed with the tax return for every business unit that exceeds the one million euros threshold.

In summary, part 1 of the form should contain an overview/description of:

- the operational management structure of the Belgian enterprise;
- the direct shareholding (one level up) in the Belgian enterprise or the head office;
- the direct shareholding (one level down) of the Belgian enterprise in enterprises in which it has control;
- the Belgian reporting structure: name and function, national or international reporting structure, function of the individual to whom people report, and the country in which that person is employed;
- activities of the enterprise per business unit including the business strategy;
- the name and country of the most important competitors;
- core data such as:
  - a) the ultimate parent entity;
  - b) the reporting structure, i.e., the number of business units within the enterprise and the number of business units that exceed the reporting threshold of one million euros of related-party transactions;
  - c) whether the enterprise is a head office (with indication of permanent establishments situated abroad) or a permanent establishment in

Belgium (with identification of the head office abroad);

- d) whether the enterprise has been involved in business restructurings (mergers, demergers, acquisitions, on-going concern transfers, changes in shareholding structure) during the tax year; and
- e) intangible related transactions during the tax year.

- When the Belgian entity is not liable to mandatory filing of the full schedule of the annual financial accounts, an overview of related party and non-related party transactions for the taxable period concerned and the two previous taxable periods needs to be provided (including the amounts of the turnover, commercial goods, raw materials and consumables, gross profit, other operational expenses, and operational profit or loss).

Part 2 should contain the following detailed information. Note that an optional materiality threshold of 25,000 euros for inclusion of transactions applies. In summary, part 2 of the form should contain an overview/description of:

- The nature of the activities per business unit;
- An overview of the related party and non-related party transactions split according to business unit for the taxable period concerned, and the two previous taxable periods including the accounting standard (IFRS, Belgian GAAP, etc.) and the amount of the turnover, commercial goods, raw materials and consumables; gross profit;

other operational expenses; and operational profit or loss;

- Details on the intra-group cross-border transactions, including the transfer pricing methodology or methodologies applied for finished products, commercial goods, raw materials, and consumables; intangible assets; tangible assets; financial assets; rents, royalties, and licence fees; service fees for management, marketing, training, engineering, or technical services, (re)insurance premiums, research and development; and commission fees;
- Details on intra-group cross-border financial transactions and the transfer pricing methodology applied, including interests paid and received (on loans, cash-pooling, and commercial debt) guarantee fees, captive (re)insurance fees; derivatives and any other financial transaction;
- Details on related-party loans positions;
- Details on related-party cash-pool positions;
- Details on related-party commercial debt positions;
- Indication whether documentation on transfer pricing methodologies, contracts and transfer pricing studies are available;
- Attribution of profits to permanent establishments if applicable; and
- Details on cost contribution arrangements, advance pricing arrangements, advance rulings, and captive (re)insurance.

Part 3 allows for providing useful information to the tax authorities to interpret the content provided in parts 1 and 2 of the form. Therefore, this is a

non-mandatory section that allows for additional useful information such as transfer pricing studies, contracts, organisational structures, etc. to be provided. The guidance that was published on how to use and complete the forms refers to requirements for the Local File as put forward by the OECD under BEPS Action 13 for useful guidance in respect of transfer pricing studies.

#### *Country-by-country report*

As regards the CbC reporting obligation, please see PwC's [Tax Insight of June 14, 2016](#).

#### *Timing of the filing obligation*

The Master File and CbC report must be filed no later than 12 months after the last day of the reporting period concerned of the multinational group. As regards the Local Form (to be filed with the tax return), the following timing aspects need to be considered for the first filing:

- part 1 — in which general information on the enterprise needs to be provided — applies to the accounting periods that started on or after January 1, 2016;
- part 3 — in which optional documents can be provided that can help the Belgian tax authorities with the interpretation of information provided in parts 1 and 2 of the form — applies to the accounting periods that started on or after January 1, 2016;
- part 2 — in which detailed information is provided on intra-group cross-border transactions per business unit (when a threshold of more than one million euros of cross-border intra-group transactions is exceeded) — will only need to be provided for the reporting periods starting on or after January 1, 2017.

#### *Language in which the forms should be filed*

The Programme law of July 1, 2016 indicated that the reporting can be made in English or in one of the Belgian official languages (Dutch, French, or German). However, the Royal Decree does not contain an appropriate version in the four languages mentioned; only a Dutch and French version was published. It is PwC's understanding that the English and German versions are still under preparation.

#### *Notification of the entity filing the country-by-country report*

Together with the transfer pricing documentation forms and the guidance, an optional CbC notification form has been published that could be used to identify the reporting entity for CbC reporting purposes. Note: The Belgian tax authorities have decided to postpone the first formal notification to September 30, 2017 (latest) for the accounting period that started on or after January 1, 2016.

#### *Filing of the forms*

The filing of the transfer pricing forms should be done electronically. Any supporting documentation that is attached to the forms should be filed in PDF format whereby the explanatory memorandum provides further details on the exact nature of the electronic format.

#### *Documentation-related penalties*

The penalties as set out in the draft legislation have been adopted, implying that specific transfer pricing documentation related penalties ranging from 1,250 euros to 25,000 euros can be applied.

#### *The takeaway*

The Belgian Government has changed from a more pragmatic transfer pricing documentation approach to a more formalistic transfer pricing

documentation approach combined with a penalty regime. Given the limited manpower of the specialised transfer pricing team within the Belgian tax authorities, it can be expected that more reliance on data mining techniques to select files for transfer pricing audits will take place.

The introduction of these formalistic transfer pricing documentation requirements is likely to go hand-in-hand with increased attention and resources devoted to transfer pricing

by the Belgian tax authorities. All Belgian companies that are subject to the new requirements should consider:

- Undertaking a dry run to assess red flags that might arise and implement a mitigation strategy;
- Analysing the required resources to manage the increased compliance burden from an organisational, systems, and processes perspective;

- Reviewing transfer pricing policies and their sustainability in light of the transparency that will be created on the activities that really drive value within the value chain by means of a value chain analysis; and
- Undertaking a strategic assessment of technology capabilities as they relate to the CbC report and transfer pricing documentation.

## Let's talk

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

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