Belgian transfer pricing audits: increased manpower, new focus areas, and enhanced cooperation on the horizon

February 9, 2018

In brief

Beginning in February of 2018, the Belgian tax authorities will initiate a new wave of transfer pricing (TP) audits. The central transfer pricing investigation team (TP Unit) is investing in additional manpower and changing investigation approaches to increase the effectiveness of audits. Taxpayers should also expect more scrutiny on TP matters from other tax departments, such as the Large Companies Department and the Special Tax Inspectorate (BBI/ISI), given specific training was recently conducted to educate these field inspectors on new international tax developments and given the enhanced collaboration protocols those tax departments now have with the TP Unit. Taxpayers may also be increasingly faced with joint/multilateral audits and the international exchange of information through such audits. The TP Unit is teaming with foreign tax authorities more frequently to conduct investigations and check consistency of taxpayer information.

Although the selection, approach, and criteria used to conduct an audit will remain largely unchanged for 2018, it is expected that the process will change starting next year, when the Belgian tax authorities will have access to country-by-country reporting data, the Master File and the Local File/specific Belgian Local Form. Fuelled by international tax developments and new information reporting requirements, the TP Unit is keen to focus on certain topic areas such as intangibles, financing, procurement-related arrangements, and (captive) re-insurance as part of its new TP audit wave.

In detail

New approach for audit selection on the horizon

Since 2013, the Belgian TP Unit has been conducting a yearly wave of centrally selected TP audits. Beginning in February 2018, several hundred new investigations will be launched, with a standardized questionnaire, once again, as the starting point for the audit. Elements such as fluctuating or deviating profitability margins, business restructurings, high leverage or structural loss-making positions will continue to be key risk factors leading to audit selection.

The option for a ‘pre-audit’ meeting will be put forward more explicitly by the TP Unit as part of the initial request for information, allowing the TP Unit and the taxpayer to discuss material intercompany transactions and industry specific elements, as well as jointly assess what information in the standardized questionnaire is most relevant to the taxpayer’s operations. This approach is intended to help better manage the audit information flow and overall timeline of the audit.

Beginning in 2019, it is anticipated that the Belgian tax authorities will significantly change their audit selection approach by utilizing the information reported as part of the new country-by-country reporting as well as the Master File/Local File documentation required as result of the OECD's base erosion and profit shifting (BEPS) deliverable Action 13, together with the specific Local Form required according to Belgian regulations. The level of detail included in such filings will enable the TP Unit to fine-tune its data-mining efforts and enhance its risk assessment processes, which in turn could make the extended standard questionnaire redundant.

Increased number of resources

The Belgian tax authorities have made significant investments in additional manpower as well as enhanced processes to handle more effectively and efficiently the information received in collaboration with other tax departments.

In this regard, the TP Unit will be hiring 15 additional personnel, thus raising the headcount of the central department to over 40 full-time equivalents (FTEs).

Furthermore, the TP Unit has enhanced its cooperation with the Large Companies Department. Over 200 field inspectors of the Large Companies Department received intensive training from the TP Unit, specifically focused on new international tax developments, primarily with respect to transfer pricing, as well as audit techniques to identify transfer pricing risks.

Beginning in 2018, the Large Companies Department will dedicate a significant number of FTEs to focus on transfer pricing and certain other international tax issues as part of its regular investigations. These teams will be assisted by the TP Unit for technical support.

In addition, the number of audit days allocated to a specific file will be significantly extended so as to enable field inspectors to perform more in-depth investigations.

The TP Unit will also cooperate more closely with the Special Tax Inspectorate (referred to as the BBI/ISI). The TP Unit and the BBI/ISI have concluded a protocol under which the BBI/ISI may involve specialists from the TP Unit when presented with transfer pricing issues during inspections – resulting in real time exchange of best practices and audit techniques.

Joint/multilateral audits

The Belgian tax authorities will increasingly engage in joint/multilateral TP audits. This trend is the result of recent successful pilot cases that the Belgian tax authorities have undertaken with other countries, and is supported by the European Union (EU) Fiscalis 2020 Programme (i.e., an EU cooperation program that enables national tax administrations to exchange information).

Observation: While the Belgian tax authorities have not initiated a significant number of joint/multilateral audits compared to other countries thus far, this factor has not prevented them from actively participating and collaborating in such audits upon the request of foreign tax authorities. Cooperation with the Dutch tax authorities is a key example where jointly conducted audits have proven to be successful in recent years.

It is, however, important for taxpayers to be aware that there are legal boundaries to joint/multilateral audits, e.g., in terms of investigative actions, so taxpayers should carefully monitor and safeguard their rights in Belgium and other territories.

Expected focus areas

The expected focus areas for the new wave of TP audits are inspired by recent international tax developments, including the revised OECD Transfer Pricing Guidelines following the BEPS project. These areas include, but are not limited to, hybrid mismatches, exit taxation, anti-abuse regulations, artificial avoidance of permanent establishments, and base erosion involving interest deduction.

Specific to TP audits, the Belgian tax authorities have indicated that more scrutiny will be paid to the following areas:

- intangibles,
- financing,
- procurement, and
- (captive) re-insurance.

Observation: Based on recent experience, it is expected that the TP Unit will increasingly focus on and challenge the 'accurate delineation' of an intercompany transaction and the selection of the TP method, in addition to testing the arm's length nature of the transfer pricing arrangement. It is also expected that the TP Unit will pursue a stricter timeframe and more often engage in a written procedure.

The takeaway

The Belgian tax authorities are increasing their manpower, shifting focus areas, and stepping up national and international cooperation with other tax authorities and/or departments, with a clear view to audit TP and other international tax matters in a more targeted and efficient way.

In this regard, taxpayers should review their TP policies in light of recent developments in the international tax field. This review should hone in on red flags that might arise during audits, and if identified, include a risk mitigation strategy where appropriate (along with implementation of that strategy). Taxpayers should also ensure that they have robust and consistent TP documentation across multiple jurisdictions, particularly given new mechanisms allowing for the increased exchange of information and joint/multilateral audits.

Let's talk

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

Transfer Pricing and Tax Controversy and Dispute Resolution

Xavier Van Vlem, *Ghent*
+32 9 268 83 11
xavier.van.vlem@pwc.com

Bram Markey, *Ghent*
+32 9 268 83 48
bram.markey@pwc.com

Stefaan De Baets, *Brussels*
+ 32 2 710 47 19
stefaan.de.baets@pwc.com

Kris Smits, *Antwerp*
+32 3 259 31 06
kris.smits@pwc.com

Transfer Pricing Global, Americas, and US Leaders

Isabel Verlinden, *Brussels*
Global Transfer Pricing Leader
+32 2 710 44 22
isabel.verlinden@pwc.com

Horacio Peña, *New York*
Americas Transfer Pricing Leader
+1 646 471 1957
horacio.pena@pwc.com

Paige Hill, *New York*
US Transfer Pricing Leader
+1 646 471 5192
paige.hill@pwc.com

Tax Controversy and Dispute Resolution Global Leader

David Swenson, *Washington DC*
+1 202 414 4650
david.swenson@pwc.com