



## RSM InterTax Tax Insights June 2019

### Transfer pricing documentation requirements: Local file to be filed before 27 September 2019 – The notification (275 CBCNOT) should no longer be filed systematically every year but only when there is a change in the information previously provided

#### RSM BELGIUM INFORMS YOU

The transfer pricing documentation obligation was introduced by the Program Law of 1 July 2016 and is in line with the three-tiered approach (country-by-country report, master file and local file) of the BEPS (Base Erosion and Profit Shifting) Action 13 project. These obligations are required for accounting periods beginning on 1 January 2016.

These rules are included in Articles 321/1 – 321/7 of the 1992 Belgian Income Tax Code (BITC 92).


#### 1) Country-by-country report

- If the Ultimate parent company of a MNE group with a consolidated annual group turnover equal to or exceeding €750 million is a Belgian tax resident : it must prepare and submit a CbCR form (statement 275);
- If the Belgian group entity is not the ultimate parent company of the MNE group, it should also file a CbCR form (statement 275 CBC) in one of the following cases:
  - The ultimate parent company is not obliged to submit a CbCR form in its country of residence;
  - The ultimate parent company is obliged to submit a CbCR form, but there is no automatic exchange of CbCR between Belgium and the country of residence of the parent company;
  - The ultimate parent company is obliged to submit a CbCR, and there is automatic exchange of CbCR, but due to systematic failure, there is no effective exchange.

#### 2) Master/Local file

- Every qualifying Belgian group entity that is member of an MNE group will be required to prepare **and file on a yearly basis** a Master File and a Local File (statements 275 MF and 275 LF) when one of the following criteria is exceeded in its statutory financial accounts of the prior year:
  - Gross operating and financial income equal to or exceeding €50 million;
  - Balance sheet total equal to or exceeding €1 billion,
  - Average annual number of employees of 100 or more in FTE

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- The Master file must be submitted no later than 12 months after the last day of the reporting period. The local file must be submitted within the same period as the tax return.
  - In addition, an information document must be attached to the local file where, for at least one of the business units within the Belgian company, the total value of cross-border transactions with related entities has exceeded the threshold of €1,000,000 during the last reporting period. In this case, the information form must be completed for each business unit that exceeds this threshold.

### 3) Country-by-country notification

- Article 321/3 BITC 92 introduces a **notification** obligation for Belgian constituent entities of a multinational group which have to submit a country-by-country report according to Article 321/2, § 4 BITC 92.
- These Belgian constituent entities have to inform the Belgian tax administration at the very latest on the last day of the reporting fiscal year of the multinational group if they are the ultimate parent entity, the surrogate parent entity or the Belgian constituent entity as described in Article 321/2, § 2 BITC 92, or, if they are none of those, they have to indicate the identity of the reporting entity.

In principle, for Belgian constituent entities, ending their financial year on 31<sup>st</sup> December 2018 for which the thresholds are reached, the country-by-country report and/or the master file must be submitted on 31 December 2019 at the latest. These documents must be filed with the Belgian tax administration platform (MyMinfinPro) by using a specific XML format.

The local file must be submitted within the same period as the income tax return (in principle before 27 September 2019).

### **Country-by-country obligation (275 CBCNOT)**

Finally, we would like to inform you that the notification should no longer be filed systematically every year but only when there is a change in the information provided for the previous reference period. This is stated in articles 35 and 36 of the Belgium's law of 2 May 2019 regarding various tax provisions that was published in the Belgian Gazette on 15 May 2019. This applies to reference periods ending on or after 31 December 2019.

### **Administrative penalties**

Failure to submit the country-by-country report, master file, local file and/or country-by-country notification will result in an administrative penalty ranging from €1,250 to €25,000 as from the second infringement.

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The administrative penalties are depending on the type of infringement and the recurrence:

Type of infringement	Administrative penalties
<b>Due to independent circumstances</b>	<b>0</b>
<b>Not attributable to tax evasion or bad faith</b>	
<b>1st infringement</b>	<b>0</b>
<b>2nd infringement</b>	<b>1.250</b>
<b>3rd infringement</b>	<b>6.250</b>
<b>4th infringement</b>	<b>12.500</b>
<b>Following</b>	<b>25.000</b>
<b>Attributable to intention of tax evasion or bad faith (+ filing of inaccurate or incomplete forms)</b>	
<b>1<sup>st</sup> infringement</b>	<b>12.500</b>
<b>Following</b>	<b>25.000</b>

If you want more information about this, or any other assistance, the RSM Belgium tax team is at your disposal.

RSM Intertax  
 Represented by  
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