



RSM InterTax Tax Insights August 2016

The Transfer pricing documentation becomes a legal obligation in Belgium

The OECD BEPS Action Plan (base erosion and profit shifting) thoroughly shakes the international tax landscape. The 15 action plans were adopted in October 2015, with the aim of preventing tax base erosion. Some plans have immediate effect (eg. the interpretation of certain transfer pricing rules). For others, the OECD is working on a multilateral instrument to adjust tax treaties. For yet others, the domestic legislation should be amended. In Belgium this is particularly the case for the patent income and interest deduction. With respect to documenting transfer pricing, a draft bill has been adopted in the meantime. Large companies have been imposed a new documentation requirement.

Until now, there was no legal obligation for a group of companies to proactively document or justify transactions between related companies. In practice, companies are only required to substantiate those transactions in case of a tax audit. This will change radically in the future.

The BEPS Action Plan 13 includes two main components: the country report and the documentation requirements for transfer pricing, consisting of a master file and a local file.

The initiatives from the OECD Action Plan 13 are now implemented into Belgian domestic legislation. The draft bill has been approved in July. It introduces the obligation for a Belgian group entity to provide for the master – and local file.

Which companies?

The obligation to submit a master and local file will apply for enterprises which, for the financial year immediately preceding the last financial year, exceed one of the following criteria, as reflected in the separate financial statements:

- Operating and financial income of more than €50 million;
- Assets of more than €1 billion;
- Annual average workforce of 100 full-time equivalents.

It is sufficient to exceed one criterion to fall under the new documentation requirement. Reportedly, the obligation would affect more than 3,000 Belgian companies.

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Drafting the Master File

Those companies are therefore obliged to submit a master file. The master file provides for an overview of the multinational group, the nature of its business activities, the ownership of intangible assets, royalties paid or received, intra-group financial transactions and consolidated financial and tax position of the group, its overall business policy and global allocation of its income and economic activity. The master file must be submitted electronically on a form that will be determined by Royal Decree.

... and local file

In second instance, it is also required to provide a 'local file'. The local file consists of two forms which together form a whole:

1. a *general* form with more information about the nature and activities of the Belgian group entity, an overview of the related transactions and an indication of the number of business units which exceed the threshold of €1 million on related party transactions;
2. an information document which, *per business unit* of the Belgian group entity, displays the related party transactions (goods, services and financial) along with a detailed transfer pricing analysis of the business unit, in terms of comparability as well as in terms of methodology.

The second-mentioned information document only needs to be filled in if a business unit of the Belgian group entity is involved in cross-border related party transactions for a total of €1 million or more.

The local file must also be submitted electronically on a form which will be determined by Royal Decree.

Penalties

Companies which do not comply with the new documentation requirements in a correct way, will incur a penalty. If the master file or the local file is not filed, is filed late or incomplete, the tax authorities may impose a fine ranging from €1,250 to € 25,000 to the Belgian group entity, although only as from the second offense.

Entry into force

The new documentation requirement applies to reporting periods or financial years starting from January 1, 2016.

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Do SMEs escape?

At first glance many SMEs escape from the new documentation requirements. If they do not meet the aforementioned criteria, they are indeed not obliged to comply with the new documentation requirement. But it is clear that due to the introduction of these new documentation rules, as well as the other transfer pricing elements provided in the BEPS project, tax audits will pay more attention to the transfer pricing policy of related companies in the future. A group of companies that are not covered by the documentation requirement should still be able to show that normal prices are used in group transactions in case of a tax audit. If they cannot provide this evidence at that time, transfer pricing adjustments will follow.

The new documentation requirements summarized

The described obligations can be summarized as follows:

New obligation	Which companies?	For financial years per 31 December 2016
Country Report (Country-by-country reporting)	Multinational groups with consolidated Group revenue \geq € 750 million	Before December 31, 2017
Notification obligation	Multinational groups with consolidated Group revenue \geq € 750 million	At the latest on December 31, 2016
Submission of a group file (master file)	Entity that exceeds any of these criteria: <ul style="list-style-type: none">- Business and financial income > € 50 million- Total assets > € 1 billion- Annual average personnel > 100 FTE	Before December 31, 2017
Submission of a local file (local file) - general form	Entity that exceeds any of these criteria: <ul style="list-style-type: none">- Business and financial income > € 50 million- Total assets > € 1 billion- Annual average personnel > 100 FTE	Together with the corporate income tax return tax year 2017 (at the latest in September 2017)
Submission of a local file - specific information document	Entity that exceeds any of these criteria: <ul style="list-style-type: none">- Business and financial income > € 50 million- Total assets > € 1 billion- Annual average personnel > 100 FTE- Related transactions > € 1 million,	Together with the corporate income tax return tax year 2017 (at the latest in September 2017)

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September 30, 2017 will be there soon!

BEPS provides a profound change in the international tax landscape. The current Belgian law is the first legislative initiative which implements BEPS in Belgian tax law. Many companies will be faced with a completely new documentation requirement. The corporate income tax return for the tax year 2017 (financial year 2016) must include the local file. Three months later the group file will follow. That means the clock is ticking fast. The "prudent manager" has been warned: only 12 months are left!

Contact your RSM tax specialist

If you would like to receive more information about the impact of BEPS and the new documentation requirements for your company, you can contact the specialists of RSM Belgium.

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