

## **Belgium: postponed transfer pricing deadline until 31 March 2018**


The Belgian tax administration has, on the 28<sup>th</sup> November 2017, stated that a delay is granted for the filing of the Country-by-Country Report, Country-by-Country notification, Master file and Local file, that have to be done by Belgian constitutive entities (ultimate parent entity, for the country-by-country report) of multinational group and for which, the due date was primarily the 31<sup>st</sup> December 2017.

On July 2016, the transfer pricing legislation has been approved and introduced by the Belgian Government. The legislation is aligned with the three-tiered approach (Country-by-country reporting, Local file, and Master file) of Action 13 of the OECD Base Erosion and Profit Shifting project. These new requirements have to be complied with by Belgian companies for financial years starting on or after 1<sup>st</sup> January 2016.

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

- Country-by-country reporting
  - For Belgium, if the Belgian tax resident is the ultimate parent company of a multinational enterprise (MNE) group with a consolidated annual group turnover equal to or exceeding €750 million, the entity must prepare and submit a CbCR form to the Belgian tax authorities within 12 months as of the last day of the financial year. Moreover, even if the Belgian entity is not the ultimate parent company of the MNE, it should also file a CbCR form in one of the following cases :
    - The ultimate parent company is not obliged to submit a CbCR for in its country of residence;
    - The ultimate parent company is obliged to submit a CbCR, but there is not automatic exchange of CbCR Belgium and the country of residence of the ultimate parent company;
    - The ultimate parent company is obliged to submit a CbCR form, but there is no effective exchange of information takes place.
- Master file/Local file
  - Every qualifying Belgian group entity of an MNE group is required to prepare Master File and a Local File when one of the following criteria is exceeded in its annual financial statement in 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 in full time equivalents

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- The Master File should be submitted to the Belgian tax authorities within 12 months after the end of the financial year. The Local File should be submitted with the tax return.
  - Local form
    - In addition, the Belgian entity is also required to submit a detailed form for the business units of the Belgian entity of which the cross border transactions exceed an amount of €1 million in the last accounting year. The same thresholds for filing the Master File apply to the local form.
  - Country-by-country notification
    - A notification obligation for Belgian constituent entities of a multinational group which have to submit a country-by-country report has also been introduced (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 (constituent entity of the MNE group that has been appointed by the group as a sole substitute for the ultimate parent entity to file the form) 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 no later than the last day of the reporting fiscal year of the group.

Basically, for Belgian constituent entities, with a financial year ending on 31 December 2016 and if the thresholds are met, the CbCR report and/or the Master file will now have to be submitted for the 31<sup>st</sup> of March 2018 at the latest. This deadline is also applicable for the filing of the CbC notification for Belgian constituent entities with a financial year ending on 31 December 2017. These documents will have to be submitted on MyMinfinPro, the Belgian tax administration platform, in an XML format.

Finally, please note that the Local file has still to be submitted with the tax return of the Belgian entity. For companies, with financial years started on or after 1<sup>st</sup> January 2016, and which still have to submit their tax returns can submit their Local file in an XML-format or in PDF by using the mail address BEPS13@minfin.fed.be. The Local file will have to be submitted in an XML-format via MyMinfinPro, for companies with financial years started on or after the 1<sup>st</sup> January 2017.

### RSM Belgium informs you

If you would like to receive additional information on this matter, the tax team of RSM Belgium is at your disposal.

RSM Intertax

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