



Transfer pricing alert International Tax

BEPS: Belgian program law on implementation of Action 13

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Within the context of the OECD's initiative to tackle Base Erosion and Profit Shifting ('BEPS'), Action 13 is concerned with increasing transparency through the provision of adequate information for the performance of risk assessments and the audit of transfer pricing practices. In essence, the OECD has introduced a three-tiered approach to transfer pricing documentation which requires multinational enterprises to compile (1) a Country by Country report ('CbC'), (2) a Master file and (3) a Local file.

Currently, countries are adopting the OECD guidance into their domestic legislations. In Belgium's case, a draft program law should soon be deposited with parliament, specifying how BEPS Action 13 would need to be implemented in Belgian law. What follows are the main elements of the proposed draft legislation.

Generally, it can be concluded that Belgium aligns itself with the OECD guidance. Consequently, the three-tiered approach to transfer pricing documentation would become mandatory going forward. The threshold for MNEs to draft a CbC-report would be a consolidated group revenue exceeding EUR 750 million in the preceding fiscal year. A Belgian company part of a multinational group would have to file Master and Local files if it exceeds any of the following thresholds based on its stand-alone statutory accounts:

- Combined operating and financial income of EUR 50 million
- A total balance sheet of EUR 1 billion
- Annual average number of 100 FTE

The draft program law also includes a penalty regime (EUR 1,250 to EUR 25,000) for failing to comply with the aforementioned reporting requirements.

There are some particularities where the proposed legislation diverges – to some extent – from OECD guidance. Regarding the Local file, the compliance burden is somewhat reduced by the specification that an economic analysis should only be included in the local file for intra-group transactions concluded between the Belgian entity and a (foreign) group entity if the transaction exceeds EUR 1 million. Additionally, the draft legislation specifies that the CbC-report would not only be used to estimate transfer pricing risks that could potentially impact base erosion and profit shifting, but that it would also be used for economic and statistical analysis, going beyond the purpose of the CbC-report as defined by the OECD.

The draft program law specifies that the reporting requirements would become effective for reporting MNE Groups' Fiscal Years beginning on or after 1 January 2016. Reports may be drafted in English. In case of an audit however, a translation of the reports in one of the official languages may be requested.

At the same time, the European council adopted a directive on the exchange of tax-related information on multinationals, the Country-by-Country ('CbC') directive. The directive aims at ensuring the harmonised implementation of the OECD recommendations on CbC reporting in the EU. Already for Fiscal Year 2016, multinationals are required to report detailed CbC information to the tax authorities of the member state where the group's parent company is tax resident. As with BEPS Action 13, the directive also applies to multinational groups of companies with a total consolidated group revenue of EUR 750 million or more.

Building on the existing EU framework for automatic exchange between tax authorities, the directive requires tax authorities to exchange the reports automatically. Hence, the CbC-reports can be used by tax authorities to assess tax avoidance risks related to transfer pricing. While the directive requires companies to file the CbC-report no more than 12 months after the end of the fiscal year, tax administrations have a further three months to automatically exchange the information.

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