



Belgium publishes new transfer pricing circular letter

Global Transfer Pricing Alert 2020-005

The Belgian tax authorities on 25 February published the final version of the transfer pricing circular letter in [Dutch](#) and in [French](#) on their website.

Circular 2020/C/35 provides an overview of chapters I, II, III, VI, VII, VIII, and IX of the [OECD's 2017 transfer pricing guidelines](#), which were amended to reflect the BEPS Actions 8-10 final reports. The circular also provides guidance on certain financial transactions and a high-level discussion of the OECD guidelines on permanent establishments. The circular also states the Belgian tax authorities' position where required and appropriate.

As a general introduction, the Belgian tax authorities declare adherence to the principles of the OECD 2017 transfer pricing guidelines, and state that Belgium is likely to accept future changes to the guidelines.

The TP circular contemplates two separate (and retroactive) entry-into-force dates. Most paragraphs (in line with the OECD 2017 transfer pricing guidelines) will apply to intercompany transactions as of 1 January 2018. However, the provisions listed below, and the recently published Chapter X of the OECD transfer pricing guidelines on financial transactions are applicable to intercompany transactions as of 1 January 2020:

- For comparability analyses, the Belgian tax authorities expect taxpayers to take into account at least three years of comparables, whereas only one year is examined for the tested party (para. 78);
- When testing a party with a limited-risk functional profile against a set of comparable companies, the Belgian tax authorities will not accept comparables in the interquartile range that incurred losses for two or more years (para. 106);
- Unless the tested party is a start-up, the Belgian tax authorities will not accept recently established companies (defined as companies that have been active for less than the four preceding years) as comparables, because of potentially limited data comparability (due to start-up losses, market penetration costs, etc.) (para. 108);
- To improve comparability, the comparables search should be as close as possible to the year in which the tested party transaction under review took place. The Belgian tax authorities recommend an annual update of the financial results of the comparables search and require a regular update of documentation linked to the comparables search regarding any changes in functions performed, risks assumed, and underlying economic factors of the tested party (para. 115);
- The Belgian tax authorities expect taxpayers to update their transfer pricing studies every three years, unless the underlying facts and circumstances require an earlier update (para. 116);
- If the tested party's results fall outside the range of comparable companies (the full range in the case of high-quality comparables, and the interquartile range in other cases) and requires adjustment, the Belgian tax authorities highlight that any point within the range can be acceptable, if it best reflects the tested party transaction's underlying facts and circumstances. If no such specific point within the range can be identified, the Belgian tax authorities would prefer an adjustment toward the median (para. 126).

The Belgian tax authorities highlight that rulings granted before the TP circular's publication remain valid.

With this circular, the Belgian tax authorities confirm the alignment of domestic transfer pricing rules with the BEPS changes to the OECD transfer pricing guidelines, albeit with a specific focus on certain areas and a deviating position on a few topics. It is likely that they will apply these positions in the expected wave of transfer pricing audits.

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