

Country by Country Reporting Notification Form

Who

Each constituent entity, part of a group which falls under the CbCR requirements.

What

The CbCR Notification Form should include:

- Whether the Belgian entity is the filing entity, and if not, who will be the filing entity within the group (e.g. the Ultimate Parent Entity or a Surrogate Parent Entity); and
- Where applicable, reasons why the Country-by-Country reporting filing will not be performed by the Ultimate Parent Entity or a Surrogate Parent Entity.

As from when

The CbCR Notification Form should be filed for accounting years starting on or after January 1, 2016.

When to be filed

The CbCR Notification Form submission will have to be performed by the end of the reporting period of the group. In relation to the first year filing, an exceptional delay has been granted for the filing of the CbCR Notification Form until September 30, 2017. The filing should be performed electronically as well.

Penalties

Companies and permanent establishments that fail to satisfy the reporting and filing requirements will be subject to penalties ranging from €1.250 to €25.000, and this as from the second infringement.

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Belgian Transfer Pricing Documentation

No Longer Optional

Introduction

In line with the guidance provided by the OECD in Action Point 13 of its Base Erosion and Profit Shifting (BEPS) reports, Belgium did introduce transfer pricing documentation requirements through the Program Law of July 1, 2016 and the related Royal Decree dated October 28, 2016.

By doing so, Belgium is moving from an era where no transfer pricing documentation was being required (unless requested in the context of a tax audit), to a formal transfer pricing documentation obligation which includes the electronic filing of the documentation to be prepared.

All related documents (including the Law, Royal Decree and individual Forms to be filed), as well as additional guidance, have been posted by the Belgian tax authorities on the following website:

Dutch link:

<http://financien.belgium.be/nl/onderemingen/internationaal/verrekenprijzen-beps-13>

French link:

<http://finances.belgium.be/fr/entreprises/international/prix-de-transfert-beps-13>

A Trilogy which should tell a coherent story

The transfer pricing documentation structure proposed by the OECD has been adopted by Belgium, i.e. three layers of documentation which have each a specific purpose:

- Country by Country Reporting
- Master File
- Local File

Taken together, these three documents require taxpayers to articulate consistent transfer pricing positions.

The three reports (to be compiled in specific Form formats) will, where applicable, have to be filed annually and will need to be filed electronically. An electronic platform will be foreseen for the filing which is expected to be accessible as from July 2017.

Master File Form

Who

Belgium did introduce a requirement for filing a Master File for each Belgian company or permanent establishment (of a multinational group) that exceeds one of the following thresholds (to be assessed on the basis of the stand-alone financial statements of the Belgian entity—company or permanent establishment—concerned for the preceding financial year):

- A sum of operational and financial income of €50 million (excluding non-recurring income);
- A balance sheet total of €1 billion; or
- An annual average of employees of 100 full-time equivalents.

What

The Master File Form is composed of the content as suggested in the Action 13 Report, and should describe the following main elements:

- Organizational structure;
- Description of MNE's business(es);
- MNE's intangibles;
- MNE's intercompany financial activities; and
- MNE's financial and tax positions.

From the commentaries to the Belgian Master File Form, it appears that for some of the above listed sections, slightly more detailed information is being requested compared to the OECD requirements (e.g. request to list paid contributions in relation to the main intangible property transactions).

However, in practice, it would be generally expected that Master Files prepared in line with OECD guidance are likely to be acceptable.

As from when

The Master File Form should be filed for accounting years starting on or after January 1, 2016.

When to be filed

The Master File Form would have to be filed with the Belgian tax authorities within a period of 12 months after the close of the reporting period of the group.

Local File Form

Who

The same thresholds as described above for the Master File are applicable to the Local File. The Local File is also applicable to each Belgian company or permanent establishment of a multinational group that satisfies one of the thresholds.

However, as will be described below, the Local File Form is composed of three parts. The second part of the Local File Form will only have to be completed in the below described cases:

- One of the three above listed thresholds has been exceeded; and
- There are, per Business Unit, more than €1 million of cross border intercompany transactions. The second part of the Local File will therefore only have to be completed for the Business Units exceeding the €1 million threshold (and one of the three first mentioned thresholds).

What

Although the general concept of the Belgian Local File Form is in line with Action Point 13 of the OECD, the Belgian Local File Form can be said to go beyond the OECD requirement, considering the detailed quantitative data requested therein.

The Local File Form to be filed is composed of three parts, i.e.:

- A first more general, but not less important, part where one has to provide detailed information as to the management structure of the Belgian entity, its legal ownership structure, its international reporting flows, description of the main activities per business

unit, list of competitors, information as to Permanent Establishments (PEs), notification of restructurings which took place during the year, etc.

- A second more quantitative part, which is focusing on the cross-border intercompany transactions (or dealings for PEs) themselves, and the applied transfer pricing methods.
- More specifically, the second part requires, amongst others, the following information: detailed description of business unit activities, the sales/gross margins/operating margins earned per business unit over the past three years (third and related party financial information), list of cross border intercompany transactions for goods, services, financial and other transactions (including parties involved, transfer pricing policy applied and volume of transactions), information on cost contribution arrangements, list of Advanced Pricing Agreements, etc.
- A third part provides the possibility to attach other documents (optional).

As from when

Whereas the first part ("A" labeled tables) and third part ("C" labeled table) of the Local File Form should be filed for accounting years starting on or after January 1, 2016 (in line with the CbC Reporting and Master File requirements), the second part ("B" labeled tables) of the Local File should only be filed as for accounting years starting on or after January 1, 2017.

When to be filed

The Local File should be filed together with the corporate income tax return. The filing due date corresponds therefore to the filing date of the corporate income tax return.

Country by Country Reporting (CbCR) Form

Who

Groups with a consolidated gross revenue exceeding €750 million, to be assessed on the basis of financial statements for the preceding financial year.

Only the Ultimate Parent, or where applicable the Surrogate Parent Entity, will have to perform the filing. Where the Belgian entity or permanent establishment is not the filing entity, there will only be a CbCR Notification requirement (see below).

What

The CbCR Form is in line with the format (three tables) published on October 5, 2015 by the OECD's Action 13 BEPS report.

As from when

The CbCR should be filed for accounting years starting on or after January 1, 2016.

When to be filed

The filing entity will have to file the CbCR with the Belgian tax authorities within 12 months after the closing of the consolidated financial statements of the group.