NEWSFLASH JULY 2016

BELGIUM INTRODUCES NEW TRANSFER PRICING DOCUMENTATION RULES

The Belgian Parliament has enacted a series of new rules on transfer pricing ("TP") documentation, which rules will have a substantial impact on the substance and format of TP documentation (Program Law of July 1, 2016 and published in the Belgian Official Gazette of July 4, 2016).

The present newsflash offers an overview of the new TP documentation rules applicable as from Tax Year 2017 (i.e. Accounting Year ending on 31 December 2016 or later).

As a result of this new legislation, Belgium has joined the group of tax jurisdictions that have introduced country-specific transfer pricing requirements. Belgian resident and non-resident corporate taxpayers need to consider the new requirements and take the necessary steps and actions to comply with these in due time.

NEW TP DOCUMENTATION RULES

The new Belgian rules are based on international TP documentation guidelines, and more specifically on Action 13 of the OECD's set of "BEPS" rules ("Base Erosion and Profit Shifting"). More specifically, the new articles 321/1-7 of the Income Tax Code comply to a large extent with the three-tier TP documentation requirements imposed on multinational enterprises by the OECD guidelines : Master file, Local file and Country-by- Country Reporting.

We will hereinafter analyse these TP documents in greater detail:

1 Master file and Local file

A Belgian entity (company or permanent establishment) of a multinational group will only have to file a **Master file and a Local file** if the entity exceeded one of the following criteria of its stand-alone statutory accounts in the preceding financial year:

- A total amount of operating and financial revenue of at least 50 million EUR (excluding non-recurring revenue); or
- A balance sheet total of 1 billion EUR; or
- An annual average payroll of 100 full-time employees.

The **Master file** should provide an overview of the structure of the multinational group, including a description of the type of operational activities, the intangible fixed assets, the intra-group financial activities and the consolidated financial and tax position of the multinational group, the overall group TP policy and the worldwide allocation of income and economic activities.

The **Local file** consists of two parts. The first part provides general information on the kind of operations of the Belgian group entity and an overview of the intra-group transactions. The second part includes additional information on the intra-group transactions between related entities per business unit, including a detailed economic analysis. This second part is only required under Belgian legislation if a threshold of a total of 1 million EUR in intra-group transactions is exceeded. The latter threshold is to be considered per separate business unit.
The **Master file** should be **filed no later than 12 months** after the closing of the Accounting Year of the multinational group. The Local file should be filed with the corporate tax return of the Belgian entity (company or permanent establishment).

2 Country-by-Country report

The new TP documentation rules also introduce a **Country-by-Country reporting** requirement (CbC) which is compliant with OECD guidelines and EU legislation.

The CbC report should include the effective identification of each entity that is part of the multinational group, including the jurisdiction in which the entity is resident and a description of the main activities of that entity. The report should also provide quantitative information, including the overall income generated, the precise profit/loss position before tax, the paid corporate income taxes, the paid-in capital, the number of employees, etc…

This specific CbC reporting requirement will only apply to a Belgian ultimate parent entity of a multinational group with a gross consolidated group turnover exceeding 750 million EUR. However, in some cases this CbC requirement will also apply to a Belgian resident group entity which is not the ultimate parent entity, if at least one of the following conditions applies:

- If the ultimate parent entity qualifies as a tax-resident company in a jurisdiction which does not impose CbC filing; or
- in the case of absence of a qualifying agreement on the automatic exchange of CbC reporting between the tax jurisdiction of the ultimate parent and a competent authority to which Belgium is a party; or
- in the case of a notification by the Belgian tax authorities to the Belgian group entity that the tax jurisdiction of the ultimate parent company remains in systematic breach of its reporting obligation.

The **Country-by-Country report** should **be filed no later than 12 months** after the closing of the Accounting Year of the multinational group.

3 Penalties

The new TP documentation rules provide for substantial penalties for companies and permanent establishments failing to comply with the new rules. Indeed, in a case of no report being filed, or in a case of late or incomplete reporting, administrative penalties ranging from 1,250 EUR up to 25,000 EUR will apply (article 445 Income Tax Code).

4 Implementation of the new TP documentation rules.

The new rules apply as from Tax Year 2017 (i.e. Accounting Year ending on 31 December 2016 or later).
The documentation format and the filing modalities for the Country-by-Country reporting, the Master file and the Local file still have to be specified by the Minister of Finance. The required executive legislation is expected to be finalised by early October 2016. ■

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