



Overview

Arteo, Taxand Belgium

Arteo is a Brussels-based independent law firm founded in 2020 by the members of the tax department of a large, full-service Belgian law firm.

Arteo has developed strong expertise in matters involving transfer pricing, an evolving area in the Belgian tax market:

- ❖ Arteo regularly advises on transfer pricing issues and frequently assists clients in an increasing number of transfer pricing audit and litigation cases; Arteo's broad tax litigation experience is a key asset when dealing with transfer pricing issues;
- ❖ Arteo also has a substantial know-how in assisting clients in applying for advance tax rulings with respect to transfer pricing before the Belgian Ruling Commission (in collaboration with economists for the drafting of transfer pricing studies).

General: Transfer Pricing Framework

As a general principle, Belgium adheres to the arm's length criterion as proposed by the fiscal committee of the OECD. In 2004, Belgium explicitly introduced the arm's length principle into its domestic law (inspired by Article 9 of the OECD Model Convention).

The main transfer pricing adjustments are traditionally based on domestic law. Several articles of the Belgian Income Tax Code 1992 ("BITC") provide the Belgian tax authorities with a tool for scrutinizing intercompany transactions, among which:

- ❖ Art. 26 of the BITC: "abnormal or gratuitous benefits" granted by a Belgian enterprise to foreign affiliated companies are added to its taxable income;
- ❖ Art. 206/3, § 1, first indent, of the BITC: losses (whether current-year or carried forward) and tax attributes (e.g., dividend received deduction) cannot be offset against profits derived from "abnormal or gratuitous benefits" obtained from an enterprise with which the taxpayer has a direct or indirect relationship of interdependence. Such profit constitutes therefore a minimum taxable basis effectively subject to Belgian corporate income tax;
- ❖ Art. 55 of the BITC: interest is deductible as a business expense, provided the interest rate is fixed on an arm's length basis taking into account the risks relating to the operation, the financial position of the debtor and the duration of the loan;
- ❖ Art. 54 of the BITC: payments of interest, royalties and service fees made directly or indirectly to related tax haven beneficiaries are deductible only if the Belgian taxpayer proves that (i) the beneficiary is subject to an effective income tax charge equal to at least 50% of the tax that would have been due had it been established in Belgium or (ii) the payments correspond to genuine and sincere transactions and that they do not exceed normal limits.

Belgium has introduced the requirement to prepare and file transfer pricing documentation (see below), which is intended to enable the Belgian tax authorities to carry out a proper analysis of transfer pricing risks and to conduct a more effective audit.

Accepted Transfer Pricing Methodologies

As a general principle, Belgium follows the OECD transfer pricing guidelines (see Administrative Circular 2020/C/35 dated 25 February 2020).

There is no hierarchy among the transfer pricing methods, provided that the method chosen results in an arm's length outcome for the specific transaction. In practice, taxpayers usually use one of the five OECD transfer pricing methods.

Other transfer pricing methods (or a combination of transfer pricing methods) may also be acceptable depending on the case.

The Administrative Circular 2020/C/35 recognizes that pricing between related companies is not an exact science and that both the Belgian tax authorities and the taxpayer need to show flexibility and cooperation to arrive at an arm's length price.

Transfer Pricing Documentation Requirements

A Belgian entity of a multinational enterprise ("MNE") group is required to file a master file as well as a local file (statements 275 MF and 275 LF) if it exceeds one of the following thresholds in its stand-alone financial statements of the prior financial year:

- ❖ Operating and financial income equal to or exceeding EUR 50 million (excluding non-recurring items); or
- ❖ Balance sheet total equal to or exceeding EUR 1 billion; or
- ❖ Average annual number of 100 or more FTEs.

The master file should be filed within 12 months of the last day of the reporting period of the MNE group. The local file must be filed annually as an attachment to the Belgian corporate income tax return (Art. 321/4 and 321/5 of the BITC).

A Belgian entity may also be required to file a country-by-country report ("CbCR") and/or CbCR notification form (statements 275 CBC and 275 CBC NOT) if it belongs to an MNE group having a gross consolidated revenue of at least EUR 750 million as reflected in the consolidated financial statements during the year preceding the reporting year.

The CbCR report must be filed within 12 months of the last day of the reporting period of the MNE group, unless the filing is done by a qualifying parent in its jurisdiction of residence. The CbCR notification form should be filed no later than the last day of the reporting period of the MNE group and only insofar as the information differs from that provided for the previous period (Art. 321/2 and 321/3 of the BITC).



Three Royal Decrees enacted on 16 June 2024 have updated the transfer pricing documentation requirements in Belgium (content of the master file, local file and CbCR), with the aim of increasing transparency at the national and international levels and clarifying interpretation. These changes apply to qualifying taxpayers for fiscal years beginning on or after 1 January 2025.

The law of 8 January 2024 implementing the EU Directive 2021/2101 introduced the Belgian public country-by-country reporting ("PCbCR") requirements. The first Belgian PCbCR must be published for financial years starting on or after 22 June 2024. For companies with financial statements following the calendar year, the first reporting year will be the 2025 financial year and the first filing date, 31 December 2026. Belgian entities in scope must publish their PCbCR on their company website and file it with the National Bank of Belgium.

Local Jurisdiction Benchmarks

A comparability analysis is important for all transfer pricing methods used in order to assess whether related transactions comply with the arm's length principle. Benchmarking and the establishment of a transfer pricing policy are therefore recommended and constitute the basis for any justification of the prices used. In line with the OECD transfer pricing guidelines, the emphasis is more on the reliability of the comparability results than on the process to be followed. In practice, external comparables may be sought in publicly accessible data or commercial databases (from domestic and/or foreign information sources). The Belgian tax authorities accept pan-European benchmarks. In practice, the Belgian tax authorities consider that an update of the results obtained from the comparability analysis should be carried out every three years (except when facts and circumstances require an earlier update).

Focus on Financial Transactions

Under Belgian law, the tax authorities' approach to intercompany financing transactions is, as a rule, aligned with the OECD Transfer Pricing Guidelines. No specific guidance has been issued as such on intra-group transactions; however, the general transfer pricing circular (Administrative Circular 2020/C/35 dated 25 February 2020) addresses key financial transactions such as intra-group loans, guarantees and cash-pooling arrangements, broadly in line with the OECD guidance on financial transactions.

Audits of intra-group financing are common, carried out by the Special Tax Inspectorate, the Large Enterprises Unit (including the specialized International Tax Unit or Transfer Pricing Cell) or the SME Unit, and are increasingly driven by data mining, including the exploitation of transfer pricing forms, tax returns, financial statements and publicly available information. In practice, the authorities may sometimes challenge the commercial terms of a transaction without carrying out a full comparability analysis, which makes robust contemporaneous documentation essential to demonstrate the arm's-length

nature of the financing – including through benchmarking studies and credit rating analyses where appropriate.

As mentioned above, specific provisions target the deductibility of non-arm's-length interest and of interest paid to related beneficiaries located in tax havens (Articles 54 and 55 of the BITC).

Finally, the transfer pricing analysis operates alongside the general rules on interest deductibility (notably Articles 49, 198, §1, 11° and 198/1 of the BITC), which may further restrict the deductibility of interest irrespective of arm's-length pricing – including through the ATAD EBITDA rule (cap at the higher of EUR 3 million or 30% of tax EBITDA).

Transfer pricing audits concerning intercompany financing transactions are regularly combined with audits of withholding taxes and the availability of exemptions or reductions claimed by the taxpayer.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

It is common to apply to the Ruling Commission, an autonomous section of the tax authority, for a unilateral APA in the form of an advance tax ruling (officially named "advance decision in tax matters"). The process usually starts with a pre-filing phase, in which the envisaged structure is explained and discussed. In the second phase, a written ruling application is submitted in which the facts and circumstances and tax analysis are set out in detail (together with supporting documents, such as benchmarking studies), and the decision is rendered based on this application. The entire process generally takes four to six months. An anonymized version of the advance tax ruling is subsequently published. Unilateral APAs are in principle valid for a (renewable) period of three years.

Bilateral APAs are infrequent. Applications go to the tax authorities' International Relations Department and need to be submitted before the end of the first year intended to be covered. The International Relations Department coordinates applications with the other relevant jurisdictions. Bilateral APAs are not published. The time taken for the process varies and can extend over several years in complex files.

The procedures to obtain advance rulings and bilateral APAs entail no filing fees in Belgium.

Transfer Pricing Audits

Lately, tax auditors have been very much on the lookout for transfer pricing and international transactions generally. In recent years, the tax authorities have developed their data-mining capabilities to identify which individual taxpayers and groups of taxpayers are worth auditing; their algorithms are a closely held secret.

They are helped by a number of transfer pricing documentation requirements (namely master file, local file and CbCR reporting; see above) and a special schedule (statement 275 F) attached to the corporate income tax



return listing payments made directly or indirectly to entities established in tax havens.

There has been a substantial increase in transfer pricing litigation in Belgium as a consequence of the government's development of its transfer pricing unit, a specialist team within the federal tax authority. The transfer pricing unit controls transfer pricing arrangements of multinational companies as well as smaller international companies.

The audit usually begins with the reception of a standard transfer pricing questionnaire (that tends to become more tailor-made questionnaires in recent years) listing questions to be answered within 30 days. The questions relate to intra-group transactions, the company's overall business, functions, risks and assets (in particular intangible assets). In addition, detailed information regarding the existence of transfer pricing documentation and methodology is requested. The profile of the companies audited is diverse: industrial and trading companies, as well as holdings, or financing centres.

The Burden of Proof in Transfer Pricing: Theory versus Practice

In Belgium, the burden of proof in transfer pricing matters lies with the tax authorities. The tax authorities must demonstrate that the transfer pricing method used by the taxpayer in intra-group transactions deviates from the arm's length conditions (and more precisely that the prices applied by the taxpayer are outside the arm's length range). If the tax authorities are successful in challenging the transfer pricing method used by the taxpayer, they are authorized to substitute their method provided it is consistent with the OECD transfer pricing guidelines. Belgian courts have a rather strict approach to these principles. Taxpayers should however strictly abide by their reporting obligations in transfer pricing matters.

Transfer Pricing Penalties

Administrative fines can be imposed by the tax authorities for failure to comply with the transfer pricing documentation requirements (lump-sum fines ranging from EUR 1,250 to EUR 25,000) and/or in case of transfer pricing adjustments (ad valorem tax increases from 10% to 200%, depending

on the seriousness of the infringement and the taxpayer's previous conduct). Also, the additional tax base determined by the tax authorities cannot be offset with tax losses and other tax attributes (except where no tax increase or a tax increase below 10% was imposed). Following a Program Law of 18 July 2025, the tax authorities are no longer entitled to impose the 10% penalty in cases of a first infringement committed in good faith.

Local Hot Topics and Recent Updates

On 20 September 2023, the General Court of the European Union ruled that the so-called Belgian regime of "excess profit tax rulings" constitutes an unlawful State aid scheme and dismissed the actions that were initiated by the Belgian State and 29 beneficiary companies.

These tax rulings were granted to Belgian subsidiaries and permanent establishments of multinational groups and exempted the so-called "excess" profits (i.e., profits exceeding the profit that would have been made by comparable standalone companies operating in similar circumstances) from corporate income tax, irrespective of whether the other State adjusted the taxable profit upwards. According to the Belgian tax authorities, these excess profits were the result of synergies, economies of scale or other advantages arising from being part of a multinational group, and were therefore not attributable to the Belgian entities in question.

With its judgements of 20 September 2023, the General Court reversed its prior decision in 2019 which ruled that the European Commission had erred in treating the different tax rulings granted as the implementation of a "scheme". An appeal (limited to points of law only) has been lodged before the Court of Justice in most of the cases.

In her opinion of 26 March 2026 (Joined Cases C-757/23 P and C-758/23 P), the Advocate General proposed that the European Court dismiss the appeals and confirm that the Belgian excess profit ruling practice constitutes unlawful State aid under EU law. If these appeals are dismissed, the beneficiaries of the excess profit tax rulings will have to refund definitively to the Belgian State the advantage they have derived from it.



Documentation threshold

Master file	❖ Operating and financial income equal to or exceeding EUR 50 million (excluding non-recurring items); or ❖ Balance sheet total equal to or exceeding EUR 1 billion; or ❖ Average annual number of 100 or more FTEs
Local file	Same criteria as for the master file
CbCR	Gross consolidated revenue of at least EUR 750 million

Submission deadline

Master file	Within 12 months of the last day of the reporting period of the MNE group
Local file	Within the deadline for filing the corporate income tax return
CbCR	Within 12 months of the last day of the reporting period of the MNE group

Penalty Provisions

Documentation – late filing provision	Fines up to a maximum of EUR 25,000
Tax return disclosure – late/incomplete/no filing	Fines up to a maximum of EUR 1,250; ad valorem tax increase ranging from 10% to 200%
CbCR – late/incomplete/no filing	Fines up to a maximum of EUR 25,000



CONTACT
Jean-Michel Degée
 Arteo
jm.degee@arteo.law
 + 32 2 392 81 00



Xavier Pace
 Arteo
x.pace@arteo.law
 + 32 2 392 81 00



Steven Peeters
 Arteo
s.peeters@arteo.law
 + 32 2 392 81 00