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Belgian Programme Law Introduces New Tax Measures

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Belgium's Programme Law of July 1 introduced a number of fiscal measures, including transfer pricing documentation in line with action 13 of the OECD's base erosion and profit-shifting project and measures to combat tax fraud.

Transfer Pricing Documentation

The law implements the three-tiered, standardized approach set out in action 13 of the BEPS project in new articles 321/1 through 321/7 of the Income Tax Code (ITC) 1992, with a master file, a local file, and country-by-country (CbC) reporting.

CbC Reporting

Every year, Belgian-resident parent companies of multinational groups with consolidated gross revenue of €750 million must file a CbC report.

A Belgian company that is not the ultimate parent company may be appointed a surrogate ultimate parent company if:

- the ultimate parent entity is not required to submit a CbC report in its country of residence;
- the ultimate parent entity is required to submit a CbC report, but there is no automatic exchange of CbC reports between Belgium and its country of residence; or
- the ultimate parent company is required to submit a CbC report, and even if there is automatic exchange of CbC reports, there is no effective exchange of information because of systematic failure.

In each of these three situations, a group can decide to nominate a Belgian company as the surrogate ultimate parent that will comply with the CbC reporting obligations. A Belgian group entity must notify the tax authorities that it is either the ultimate or the surrogate parent, and if it

is neither, it must report the identity and residence of the ultimate or surrogate parent.
The CbC report must detail for each country where the group has activities:

- the gross revenue;
- the profit or loss before income tax;
- the income tax paid;
- the income tax accrued in the financial statements;
- the share capital;
- the retained earnings;
- the number of employees in full-time equivalents; and
- the company's tangible assets.

The report must be filed on a specific form that will be determined by Royal Decree within 12 months after the end of the financial year, and must be completed in one of the three official languages or in English. The information in the CbC reports will be exchanged with the tax authorities of other countries when required by qualifying agreements, such as the Multilateral Convention on Administrative Assistance in Tax Matters, bilateral or multilateral tax conventions, or tax information exchange agreements to which Belgium is a party.

Master File and Local File

If financial statements for the previous year show that Belgian companies that are part of a multinational group meet one of the following criteria, they must keep a master file and a local file:

- their gross operating and financial revenue (excluding nonrecurring items) is at least €50 million;
- their balance sheet total is at least €1 billion; or

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- they have 100 employees (in full-time equivalents) per year.

The master file, or group file, is an overview of the multinational group: the nature of its business activities, its intangible assets, the intragroup financial activities, the consolidated financial and tax position of the group, its general transfer pricing policy, its worldwide allocation of income, and its economic activities.
The master file must be filed with the Belgian tax authorities within 12 months following the end of the financial year.

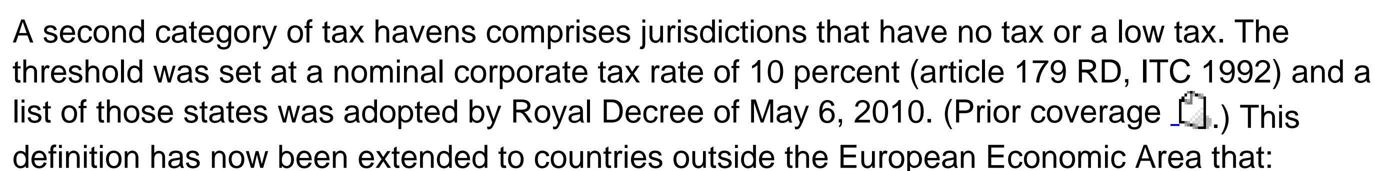
The local file, which is submitted with the tax return, gives general information about the local entity and contains a detailed form with the transfer pricing analysis of transactions in excess of €1 million between any business unit of the local entity and the group's overseas entities. In particular, these forms give information about the transactions' relevant financial information, the comparability study, and the selection and application of the most appropriate transfer pricing method.

The new rules apply to financial years starting on or after January 1.

Extension of Reporting Obligation for Payments to Tax Havens

Since 2010, Belgian companies and permanent establishments of foreign companies have been required to report in their annual tax returns all (direct and indirect) payments totaling €100,000 or more that they have made to tax havens (article 307, ITC 1992). If the payments are not reported, they are not tax deductible. When reported, the payments are tax deductible only if the taxpayer can show that the payments were made in actual transactions with persons, and not in the context of artificial tax avoidance schemes.
The law defines as tax havens noncompliant jurisdictions (that is, jurisdictions that are considered by the OECD Global Forum on Transparency and Exchange of Information as not having effectively or substantially implemented the OECD exchange of information standard).

While in the past, the jurisdiction had to be noncompliant during the entire year in which the relevant payments were made, the rule has been adapted to say that payments should be reported if they were made in the course of the period during which the jurisdiction was noncompliant.



A second category of tax havens comprises jurisdictions that have no tax or a low tax. The threshold was set at a nominal corporate tax rate of 10 percent (article 179 RD, ITC 1992) and a list of those states was adopted by Royal Decree of May 6, 2010. (Prior coverage .) This definition has now been extended to countries outside the European Economic Area that:

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- do not levy corporate income tax on domestic or offshore income;
- have a nominal corporate income tax rate under 10 percent; or
- have an effective corporate tax rate of less than 15 percent on foreign income.

The definition of jurisdiction has been extended to subdivisions of states that have an autonomous competence to levy corporate income tax.
The new rules also apply to payments to PEs located in those jurisdictions, to bank accounts managed by or held with individuals or PEs located in those jurisdictions, or to accounts managed by or held with credit institutions, or their PEs, located in those jurisdictions.

The new rules will apply as of July 14.

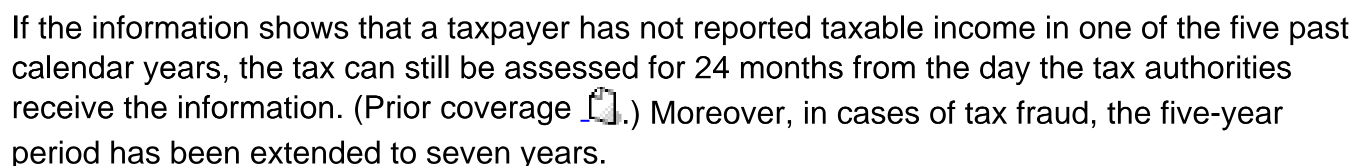
New Penalties for Failure to Report Legal Arrangements

In 2015 Belgium introduced a transparency, or look-through, tax for legal arrangements such as trusts and trustlike vehicles and for other legal arrangements that have legal personality. The founder or sponsor of the legal arrangement is taxed on the income of the legal arrangement as if it were his personal income unless a beneficiary has received the income. Moreover, when the original founder dies, his heirs must report the income of the legal arrangement.
The founder (or his heirs) must report the income and identify each legal arrangement; the law introduces a penalty of €6,250 for every arrangement that is not reported in the tax return.

Statute of Limitation for Assessing Tax

The statute of limitations on income tax assessments is three years. That means the tax authorities must issue a tax assessment within three years starting on January 1 of the tax year. For income relating to 2013, the tax year is 2014 and the tax must be levied by December 31. For companies, the tax year starts on the first day following the end of the accounting period. If the accounting period ends on June 30, 2013, the tax year starts on July 1, 2013, and the tax must be assessed before June 30, 2016.
That period has been extended by four years in cases in which the taxpayer is believed to have deliberately failed to declare his income, either with fraudulent intent or with the intention to harm the interests of the treasury.

The statute of limitation is also extended when the tax authorities obtain information from their colleagues in another country following a local audit or investigation. However, that extension previously was not available if the information was received as a consequence of a spontaneous information exchange between tax authorities. The extension is now also available if information is obtained as a consequence of the exchange of information based on tax treaties and other instruments (multilateral agreements, tax information exchange agreements, EU directives, and so forth).

If the information shows that a taxpayer has not reported taxable income in one of the five past calendar years, the tax can still be assessed for 24 months from the day the tax authorities receive the information. (Prior coverage .) Moreover, in cases of tax fraud, the five-year period has been extended to seven years.

A corresponding adaptation has been made to the rules on the statute of limitations in the VAT Code.

VAT on Online Betting and Gambling

Effective August 1, VAT will be due on online betting and gambling (with the exception of lotteries).

Excise Duties

The minimum excise duties on tobacco will be increased. The higher excise duties for diesel and alcohol that took effect on December 12, 2015, have also been inserted in the excise duties legislation. Moreover, the government has reintroduced the so-called cliquet system, which allows the government to monitor excise duties and increase them when official oil prices drop. The excise duty rates will be indexed on January 1 of 2017 and 2018. These measures entered into force on July 1.
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