



Belgium

WTS Global Country TP Guide

Last Update: December 2017

1. Legal Basis	
Is there a legal requirement to prepare TP documentation?	Yes
Since when does a TP documentation requirement exist in your country?	2016
Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?	Yes
Which TP methods may be applied?	In accordance with OECD TP Guidelines
Are any TP methods preferred over others?	No formal hierarchy; In practice, CUPs, if CUPs exist
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	CbCR/MF/LF implemented
Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status	https://financien.belgium.be/nl/ondernemingen/internationaal/verrekenprijzen-beps-13
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general	<ul style="list-style-type: none"> • Program Law ("Programmawet") of 01/07/2016 (art. 53 - 64, Belgian Official Gazette ("Belgisch Staatsblad" / "BS") 4/7/2016); • 3 Royal Decrees of 28/10/2016 (prescribing the content and form of MF, LF and CbCR), BS 02/12/2016 • Article 321 WIB 92

2. Master File (MF)	
What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?	<p>Yes</p> <p>BE taxpayers that, in the previous financial year, exceeded one of the following criteria (to be determined on the basis of the unconsolidated financial statements of the Belgian company or permanent establishment):</p> <ul style="list-style-type: none"> - gross revenues (operating+financial) > EUR 50 million, OR - total balance sheet > EUR 1 billion, OR - average FTEs > 100
As from which year does this obligation exist?	Statutory TP documentation requirement has been introduced effectively for accounting years starting as from 1 January 2016 (before no statutory requirement, yet recommended)
When does the Master File need to be available?	Must be filed no later than 12 months after the last day of the reporting fiscal year of the MNE Group, using a form prescribed by Royal Decree (to which MasterFile can be attached)
When does it need to be submitted?	Actively filed before aforementioned deadline
How and where should the MF be filed?	It should be filed electronically using the electronic form issued by the tax administration
Does the MF have to be prepared in the relevant local language ?	No, in one of the formal languages, but English is also permissible
Is documentation in English permissible?	Yes
What are the possible consequences of not having the MF available?	
Penalties?	Yes
Imprisonment?	No
Shifting of the burden of proof?	Yes
Other?	No

<p>To which extent do the local rules differ from the OECD standard regarding the OECD content requirements for the MF as shown in the BEPS implementation overview chart?</p>	<p>The contents of the Master file follows the OECD standard.</p>
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3. Local File (LF)	Yes
<p>What is the threshold requirement for the obligation to prepare a LF?</p>	<p>(Same as Master File) BE taxpayers that in the previous financial year exceeded one of the following criteria (to be determined on the basis of the unconsolidated financial statements of the Belgian company or permanent establishment):</p> <ul style="list-style-type: none"> - gross revenues (operating+financial) > EUR 50 million, OR - total balance sheet > EUR 1 billion, OR - average FTEs > 100
<p>As from which year does this obligation exist?</p>	<p>(Same as the Master File, in principle) Statutory TP documentation requirement has been introduced effectively for accounting years starting as of 1 January 2016 (before no statutory requirement, yet recommended) (However!) !) For the section referred to as Section B (note that there are 3 sections: A, B & C) should be filed only for the financial year starting on or after 1 January 2017 (hence, an exceptional postponement has been granted for this section - relating to financial year 2016 - which is the most detailed of the form)</p>
<p>When does the LF need to be available?</p>	<p>Should be filed together with (and as integral part of) the Belgian income tax return for the covered year, using a form prescribed by Royal Decree (to which additional documentation can be attached).</p>
<p>When does the LF need to be submitted?</p>	<p>Actively filed before a deadline</p>
<p>How and where should the LF be filed?</p>	<p>It should be filed electronically using the electronic form issued by the tax administration, together with (and as integral part of) the tax return for the concerning year. The exception to file per email was only allowed for assessment year 2017. As all forms need to be submitted electronically on a specific platform, ready now, we suggest to delete the exception.</p>
<p>Does the LF have to be prepared in the relevant local language?</p>	<p>No, in one of the formal languages, but English is also permissible</p>
<p>Or is documentation in English permissible?</p>	<p>Yes</p>
<p>What are the possible consequences of not having the LF available?</p>	
<p>Penalties?</p>	<p>Yes</p>
<p>Imprisonment?</p>	<p>No</p>
<p>Shifting of the burden of proof?</p>	<p>Yes</p>
<p>Other?</p>	<p>Yes</p>

<p>To which extent do local rules differ from the OECD standard regarding the OECD content requirements for the LF as shown in the 2017 OECD TP Guidelines?</p>	<p>The implementation of the OECD TP Guidelines in respect of the Local File into Belgian tax law, has been interpreted by the Belgian legislator to consist of a prescribed form, which does not follow the contents of a Local File as per the OECD TP Guidelines.</p> <p>The Belgian Local File Form is composed of three parts, i.e.:</p> <ul style="list-style-type: none"> • Section A) A first more general, but not less important, part where one has to provide detailed information as to a.o. the management structure of the Belgian entity/PE concerned, its legal ownership structure (1 step up/1 step down), its national and international reporting structure, description of the main activities per business unit and strategy, list of competitors, identification of ultimate parent entity, existence of PEs, and notification of restructurings which took place during the year concerned. • Section B) A second, more quantitative, part (applicable as from financial year starting on or after 1/1/2017, focuses 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 and captive insurance. • Section C) A third and optional part provides for the possibility to attach other documents which the taxpayer may deem useful. In the commentary of the tax administration this may be used to attach information which did not fit the form well, but also to submit contracts and a transfer pricing study that would be drafted in line with the recommendations of the OECD TP Guidelines
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<p>4. Country-by-Country Reporting</p>	<p>Yes</p>
<p>What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?</p>	<p>At least EUR 750,000,000 gross consolidated group revenues (operating+financial+extra-ordinary) in the previous financial year</p>
<p>As from which year does this CbCR obligation exist?</p>	<p>Statutory TP documentation requirement has been introduced effectively for accounting years starting as from 1 January 2016, including for CbCR</p>
<p>When and how do the tax authorities need to be notified who the reporting entity is?</p>	<p>In principle, before the end of the accounting period. However, for financial year 2016, an extension until 30 September 2017 has been granted to file the notification</p>
<p>If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?</p>	<p>Must be filed no later than 12 months after the last day of the financial year of the MNE Group (In the transition period where certain (OECD member) countries have not yet introduced formal CbC reporting requirements, Belgium is prepared to accept voluntary CbC reporting in these countries provided that a qualifying exchange of information agreement is in place within 12 months after the reporting period)</p>
<p>Are there any deviating submission deadlines for the secondary mechanism?</p>	<p>No</p>
<p>Does your country have a requirement that the financial figures of the group need to be aligned with?</p>	<p>No. The same information sources should be used on a consistent basis to compile the CbCR. The group can use consolidated accounts, stand alone financial statements or internal reports to collect the requested financial data. In case statutory accounts are used, all information must be converted to the same currency at the average exchange rate. No adjustments must be made for GAAP differences</p>

Does your country have a requirement that the financial years of the group need to be aligned with?	No
Where is the CbCR to be submitted ?	Online reporting system (available as from 1 July 2017)
How is the CbCR to be submitted, specifically, is there any prescribed standard?	OECD's XML Scheme standardisation is anticipated
What are the possible consequences of not having the CbCR available?	
Penalties?	Yes
Imprisonment?	No
Shifting of the burden of proof?	Yes
To which extent do your local rules differ from the OECD standard regarding the content requirements for the CbCR as shown in the 2017 OECD TP Guidelines?	Consistent with OECD guidelines
Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?	Yes
Did your country enter into other information exchange agreements, such as on a bilateral basis?	No
Can a taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?	Yes

5. TP disclosure in tax return or transfer pricing specific returns

Does a taxpayer need to disclose information regarding TP documentation in his tax return?	Yes. In the sense that the Local File Form is considered to be an integral part of the tax return.
What would be the filing deadline?	The Local File is to be submitted with the tax return
When a taxpayer files a tax return for which he understands or should understand that the result reported in that tax return is too low due to incorrect transfer pricing, what could be the legal consequences?	Adjustment of taxable income and penalties, which could lead to fraud and director's liability investigations.
What could be the consequences for the tax advisor/accountant/administrator drafting and filing the tax return of a client where that advisor/accountant/administrator understands or should understand that the result reported is too low due to incorrect TP?	Fraud investigations.
Does a taxpayer need to file TP-specific returns?	Yes
Please state the filing form number and name.	In principle, this would be the Belgian Local File Form, however, the Belgian legislator has considered this to be the OECD-aligned Local File, and therefore we have treated this form above
What would be the filing deadline?	See above: Local File
What would be the penalties for non-compliance?	See above: Local File

6. Benchmarking	
Is there any local guidance or requirement with regard to the preparation of a benchmark study?	No, mere consistency with OECD TP Guidelines is expected
Are there any materiality thresholds that apply for the requirement to have a benchmark study available?	No
Does your country apply the general guidance by the OECD to prepare a new benchmarking search every three years and an update of the financial data of the accepted comparable in year 2 or 3?	No

7. Year-end adjustments	
Are year-end adjustments permissible?	Yes
Does the taxpayer have to comply with any specific features or guidance?	No (however, indirect tax scrutiny may apply)

8. Transfer Pricing Audit and Dispute Resolution Mechanisms	
What are currently the main TP areas of scrutiny by the tax authorities in your country?	Restructurings and IP-related matters, Financial transactions, Recuperation of losses
Based on your experience, are joint or multilateral audits initiated and carried out?	No, however, an increase in joint or multilateral transfer pricing audits can be expected due to the huge data flow that is available at the level of the tax authorities
Does the taxpayer have the option to apply for bilateral or multilateral APAs?	Yes
Are there any restrictions?	No

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