

CIRCULAR
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SUBJECT

RESOLUTION AMENDING THE RESOLUTION ON THE DISTRIBUTION OF DISGUISED PROFITS VIA TRANSFER PRICING

The Presidential Resolution No. 2151 published in the Official Gazette No. 31050 of February 25, 2020 introduced a regulation in Turkey within the framework of the transfer pricing reporting standards listed in the Base Erosion and Profit Shifting (BEPS) action plan No: 13 of the Organization for Economic Cooperation and Development (OECD).

1. Amendments to Documentation Obligations

The relevant Resolution regulates a three-tiered documentation approach for transfer pricing:

- 1. Country-by-Country Reporting (CbC Reporting):** A sort of reporting covering revenues, profit/loss before tax, paid/accrued income/corporate tax, capital, the number of employees, tangible assets (except for cash and cash equivalents) and various business activity measures regarding each country in which the group of multinational enterprises (MNEs) of which the corporate taxpayer resident in Turkey is a part is operating,
- 2. Master File:** A global reporting covering specific information about the group such as commercial activities, intangibles, intragroup financial transactions, finance and tax status,
- 3. Annual Transfer Pricing Report:** A reporting covering detailed information on the group's entity resident in Turkey and the transactions performed by this entity with its related companies.

The transfer pricing documentation obligations following the relevant amendments are summarized in the following table:

Documentation Obligations - Summary Table			
Type of Report	Scope of Report	Timing	First Reporting Period
Country-by-Country Report (CbCR, CbC Report)	Ultimate parent entity resident in Turkey for the MNE Group whose total consolidated group revenue is EUR 750 million and higher as shown by the consolidated financial statements of the previous accounting period.	It must be submitted electronically until the end of the twelfth month following the reported accounting period.	2019 Accounting Period
Master File	Corporate taxpayers which are a part of the MNE Group and whose both asset size in the balance sheet of the previous accounting period and net sales revenue amount in the income statement is TRY 500 million and higher.	Drawn up until the end of the accounting period following the relevant accounting period.	2019 Accounting Period
Annual Transfer Pricing Report	<ul style="list-style-type: none"> • Domestic and foreign controlled transactions of taxpayers registered in Büyük Mükellefler (Major Taxpayers) Tax Office • Domestic controlled transactions of corporate taxpayers operating in free zones • Only foreign controlled transactions of other corporate taxpayers (in a way to cover the transactions performed by these taxpayers with their foreign branches, PEs and related parties in free zones); 	Drawn up until the corporate tax return is filed.	2019 Accounting Period

1.1. Country-by-Country Report

1.1.1. Relevant Definitions

Some definitions covered by the said resolution are as follows:

Group: A collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange.

Multinational Enterprise Group (MNE Group): Any Group that (i) includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction.

Constituent Entity: Any separate business unit of an MNE Group or any permanent establishment of any separate business unit of an MNE Group that is included in the consolidated financial statements of the MNE Group.

Ultimate Parent Entity (UPE): Constituent entity of an MNE Group that owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence.

Surrogate Parent Entity (SPE): A Constituent Entity that has been appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the Country-by-Country Report in that Constituent Entity's jurisdiction of tax residence, on behalf of such MNE Group.

1.1.2. Scope of Reporting

The Country-by-Country Report will be drawn up by the UPE resident in Turkey for the MNE Group whose total consolidated group revenue is EUR 750 million and higher. In case of more than one entity resident in Turkey, only one of these entities will submit country-by-country report. Members of the MNE Group eligible for the CbCR must either submit the CbCR as a "UPE" or as an "SPE". Article 19(10) of the Resolution on documentation provides the conditions of for an SPE.

Information that must be included in the Country-by-Country Report is summarized below:

- A. Concerning each country where the MNE Group is operating;
- amount of revenue,
 - profit/loss before tax,
 - paid income/corporate tax,
 - accrued income/corporate tax,
 - capital,
 - accumulated earnings,
 - the number of employees and
 - tangible assets other than cash and cash equivalents

- B. Concerning each entity of an MNE Group;
- Trade name of the entity,
 - if the country where the entity is resident is different from the country where it is resident in terms of tax (tax jurisdiction), the name of the tax jurisdiction and
 - main activities of each entity

1.1.3. Calculation of the Consolidated Group Revenue and EUR 750 Million Threshold

Consolidated group revenue for the relevant reporting period will be determined based on the consolidated financial statements of the accounting period prior to the reported accounting period. **For example, the total consolidated revenue of the group in its consolidated financial statements for 2018 will be taken into consideration for the 2019 CbCR.**

If consolidated financial statements are issued in a currency other than Euro, EUR 750 million will be calculated by considering the average buying rate of exchange calculated by the Central Bank of the Republic of Turkey for the previous accounting period. **For instance, the average buying rate of exchange set by the Central Bank of the Republic of Turkey for 2018 will be used for determining the reporting threshold for 2019 CbCR.**

1.1.4. Obligation of Notification

Members of an MNE Group eligible for reporting must notify the tax administration of:

- Whether they are the UPE or SPE,
- If not, which entity of the MNE Group is the reporting entity, and
- Information about the reported accounting period

Notifications regarding the first CbCR will be notified to the tax administration **by the end of the sixth month following the publication of this Resolution. Concerning the subsequent years**, such information will be submitted to the tax office **by the end of June of each year**.

It is possible to summarize the notification deadlines as follows:

- Until August 31, 2020 for the 2019 CbCR
- Until the end of June of each year for 2020 and the subsequent periods

1.2. Master File

The master file is composed of five main categories covering:

1. Organizational Structure,
2. Description of Business Activities,
3. Intangibles,
4. Intra-Group Financial Transactions,
5. Finance and Tax Status

for an MNE Group. Other details regarding the master file will be set by the tax office.

First Master File will be drawn up:

- For 2019 accounting period by the taxpayers operating on the basis of a calendar year,
- For the accounting period starting as of January 1, 2019 by the taxpayers subject to a special accounting period.

It is compulsory to prepare the Master File until the end of the accounting period following the relevant accounting period and to submit it to the tax administration or those authorized to conduct a tax inspection upon request following the expiry of this period. For example, the taxpayers whose accounting period ends as of December 31, 2019 must prepare a master file until December 31, 2020.

A master file will be drawn up by the corporate taxpayers which are part of an MNE Group and whose **asset size in the balance sheet** attached to corporate tax return declaration of the previous accounting period and **net sales amount in the income statement** are **both TRY 500 million and higher**. For instance, the balance sheet and income statement amounts in the corporate tax return intended for 2018 will be taken into account for threshold of preparing a Master File for 2019.

1.3. Annual Transfer Pricing Report

The obligation to prepare an annual transfer pricing report has remained the same for taxpayers.

2. Other Issues Regulated by the Resolution No. 2151

As per the Resolution, some amendments previously made have been reflected in the Resolution No. 2007/12888 of November 27, 2007 apart from the issues of documentation summarized above. Significant amendments are provided below:

- Amendments concerning the definition and scope of related party as well as the elimination of hierarchy between the transfer pricing methods have been reflected.
- Application period for the renewal of Advance Pricing Agreements (APAs) has been revised as "at least 6 months prior" instead of "at least 9 months prior".
- Validity period of APAs has been increased from three to five years.
- Explanations have been provided regarding the retrospective implementation of APAs.
- The phrase "full and timely" as used regarding a 50%-reduced penalty applicable if documentation is performed in a full and timely manner has been clarified.

3. Conclusion and Evaluation

Amendments introduced by the resolution highlight transparency and consistency in the transfer pricing documentation as per the objectives of the BEPS Action Plan 13 and upgrade the relevant reporting standards. It is stated that the Country-by-Country Report will be submitted to the Administration electronically. However, a detailed explanation is expected on how to perform such reporting.

The Resolution also provides that the Administration is authorized to set the period for the first reporting as 2020 accounting period and the special accounting period starting following January 1, 2020.

Sincerely,

**DENGE İSTANBUL YEMİNLİ
MALİ MÜŞAVİRLİK A.Ş.**

ANNEX:

The Presidential Resolution No. 2151

(*) The remarks in our circulars are for informational purposes only. We recommend that the opinion and support of a qualified counsellor be received before establishing final transactions on the questionable matters. Our company shall not be held responsible for any damages to be incurred as a result of transactions to be made solely on the basis of the statements in our circulars.

(**) For opinions, criticisms and questions about our circulars, you can contact our specialists the contact information of whom is provided below.

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