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Global Tax Alert

News from Transfer Pricing

UAE introduces Country-by-Country Reporting

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Executive summary

The United Arab Emirates (UAE) has introduced, through Ministerial Resolution, Country-by-Country (CbC) Reporting (CbCR) requirements.

The new requirements will affect all businesses that have a legal entity or branch in the UAE and are members of a multinational enterprise (MNE) group with annual turnover above AED3.15b (approximately US\$850m).

The CbCR rules are effective for fiscal years beginning on or after 1 January 2019. Affected entities will need to submit a CbCR notification before the last day of the fiscal year and submit the first CbC report 12 months after the last day of the fiscal year end.

Entities affected by the new rules will need to make arrangements to comply with the new requirements, as well as review the impact that the UAE's new rules may have on the MNE group's reporting and notification requirements in other countries.

Detailed discussion

Background

In May 2018, the UAE became a member of the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS)

Inclusive Framework, committing the UAE to align its domestic tax rules with the shared international consensus on international tax rules, and implementing the BEPS minimum standards.

One of the minimum standards is CbCR, which is covered in Action 13. It introduces a requirement for MNE groups to file a CbC report, setting out financial information for each tax jurisdiction where the group has a presence. The objective of a CbC report is for tax authorities to assess high-level risks related to transfer pricing and BEPS for MNE groups.

In addition, the UAE became a signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports in June 2018, which provides a mechanism for the automatic exchange of CbC reports among members.

New rules in the UAE

On 30 April 2019, the UAE published Ministerial Resolution No. 32 of 2019, which introduces CbCR rules for MNE groups operating in the UAE. Broadly, the resolution is in line with the OECD Model Legislation set out in the Action 13 report and Annex III of Chapter V of the OECD Transfer Pricing Guidelines.

Under the new rules, an entity or branch located in the UAE is required to file a CbC report and/or CbCR notification in the UAE if it is a member of an MNE group that had at least AED3.15b consolidated group revenue in the preceding fiscal year. The new reporting requirements apply to fiscal years beginning on or after 1 January 2019. An entity affected by the CbCR rules is referred to as a Constituent Entity.

Filing requirements under the new rules

A UAE Constituent Entity will be required to submit a notification no later than the last day of the reporting fiscal year of such MNE group. This notification should identify whether the Constituent Entity is the Ultimate Parent Entity (UPE) or the Surrogate Parent Entity (SPE) of the MNE group. If the Constituent Entity is neither the UPE nor the SPE, the notification shall include the identity and tax residence of the Reporting Entity. For MNE groups with a 31 December 2019 fiscal year end, the first UAE notification deadline will be 31 December 2019.

A UAE Reporting Entity (i.e., UPE or SPE) must file its CbC report no later than 12 months after the last day of the reporting fiscal year of the MNE group. For MNE groups with a 31 December 2019 fiscal year end, the first UAE filing deadline will be 31 December 2020.

Sanctions for noncompliance

Failure to comply with the CbCR obligations set out in the resolution may result in penalties being levied on the Reporting Entity as follows:

1. Penalty of AED100,000 (US\$27,400) for failure to retain supporting documentation and information
2. Penalty of AED100,000 for failure to provide the competent authority with requested information
3. Initial penalty of AED1m (US\$274,000), and AED10,000 (US\$2,740) to be applied daily until a maximum of AED250,000 (US\$68,500) for failure to file the CbCR notification or CbC report
4. Minimum penalty of AED50,000 (US\$13,700) to a maximum of AED500,000 (US\$137,000) for failure to report complete and accurate information

With the exception of the additional penalty provided under point 3 above, total penalties shall not exceed AED1m.

Next steps

MNE groups with operations in the UAE will need to assess if they are subject to CbCR notification and filing requirements under the new rules.

Groups headquartered outside the UAE, with a UAE presence, will be required to submit a CbCR notification and may (depending on certain circumstances) be required to submit their CbC report in the UAE also.

Many UAE-headquartered groups may be required to file a CbC report for the first time. For UAE-headquartered groups that have filed CbC reports for previous reporting years in the jurisdiction of an SPE, the new rules could result in the filing location of the CbC report transferring to the UAE from the SPE's tax jurisdiction.

All affected MNE groups will need to review their CbCR processes to ensure compliance with global CbCR requirements in all relevant jurisdictions and the new UAE requirements.

The UAE has not yet activated any exchange relationships for CbCR. However, it is expected that these will get activated and become effective in advance of the first CbCR deadline (i.e., 12 months after the last day of the fiscal year end). MNE groups should continue to review this point, as it could impact their CbCR notification and filing requirements in other countries.

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