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Subject:



Turkey proposes adoption of BEPS Action 13, Country-by-Country reporting requirements through Draft Transfer Pricing General Communiqué No. 3

The Turkish Revenue Administration on March 16, 2016, released proposed (draft) Transfer Pricing General Communiqué No: 3, relating to the adoption of OECD's base erosion and profit shifting (BEPS) Action 13. The proposed (draft) regulations follow the three-tier documentation approach contained in the OECD's "Transfer Pricing Documentation and Country-by-Country Reporting Final Report" issued on October 5, 2015.

- A master file with global information about a multinational corporation group, including specific information on intangibles and financial activities;
- A local file with detailed information on all relevant intercompany transactions of the particular group entity in Turkey; and
- A country-by-country (CbC) report of income, earnings, taxes paid, and certain measures of economic activity.

The goal of the CbC reporting requirement is to make the global allocation of income among businesses in the form of legal entities belonging to an MNE more transparent, and to make the exchange of information among tax authorities easier, to support them in the evaluation of the appropriateness of intercompany transfer prices and in their risk assessment activities.

Master file

Turkish corporate income taxpayers, that are members of a multinational group, with assets and net revenues of TL 250 million (approx. € 78 million) or more in the previous year (i.e.

2015), shall be required to prepare a master file to be submitted to the Turkish Tax Authority for fiscal years beginning on or after January 1, 2016. The master file must be prepared until the end of the second month following the filing deadline of corporate income tax return (i.e. until the end of June 2017 for those taxpayers having calendar year fiscal accounting period). The required information in the master file can be grouped into five categories:

- The MNE's organizational structure
- A description of the MNE's business or businesses
- The MNE's intangibles
- The MNE's intercompany financial activities
- The MNE's financial and tax positions

Local file

According to the Draft Transfer Pricing General Communiqué No. 3, corporate taxpayers registered with the Large Taxpayers' Tax Office (LTTO) and corporate taxpayers operating in Turkish Free Trade Zones are required to prepare annual transfer pricing documentation report regarding their both cross-border and domestic transactions with related parties. The obligation of preparation of local annual transfer pricing documentation report was already existing in Turkey starting from 2007 as per the Transfer Pricing General Communiqué No. 1 announced on 18 November 2007. The local documentation is indicated to be prepared according to the guidelines stipulated in Appendix 3 of the Transfer Pricing General Communiqué No. 1 which is in effect since 18 November 2007. The only difference introduced through Draft TP General Communiqué No. 3 for local file obligation is that cross-border related party transactions of those corporate taxpayers operating in Turkish Free Trade Zones are now also included in the scope of local documentation, which are currently outside the scope of local documentation. Corporate taxpayers not registered with the LTTO shall continue to prepare annual documentation regarding only their cross-border transactions with related parties (as in the current status). These taxpayers are also required to maintain certain background documents regarding their domestic related-party transactions. The background documents required to be maintained are very detailed and similar to the contents of the transfer pricing documentation detailed in Appendix 3 of the Transfer Pricing General Communiqué No. 1.

Local file must be prepared by the time corporate tax returns are filed (i.e. by the end of April 25th of the following year for those taxpayers having calendar year fiscal accounting period) . In addition to the local file requirements, all corporate taxpayers shall be required to complete a "Form Relating to Transfer Pricing, Controlled Foreign Companies, and Thin Capitalization,

Form No:2 ” as stipulated in Appendix 2 of the existing Transfer Pricing General Communiqué No. 1, and submit it to their tax office with their corporate tax returns. The form is intended to collect summary information on the identity of related parties, include an enumeration of related-party transactions, and identify transfer pricing methods utilized to determine intercompany transfer pricing policies.

The corporate taxpayers with assets and net revenues of TL 100 million (approx. € 31 million) or more in the previous year (i.e. in 2015 with respect to the reporting obligations for 2016), are required to complete an additional form “Form No:4” electronically as stipulated in Appendix 4 of the Draft Transfer Pricing Communiqué, detailing the related party transactions on entity basis via providing information on intercompany agreements, previous and current tax inspections, reverse charge VAT and withholding taxes paid related with intercompany transactions. Form No:4, shall be prepared until the end of the second month following the filing deadline of corporate income tax return (i.e. until the end of June 2017 for those taxpayers having calendar year fiscal accounting period).

Only those related party transactions equal to or above the TL 30,000 (approx. € 9,000) threshold shall be declared in both of the above-mentioned forms.

Country-by-country (CbC) report

The “Ultimate” parent companies of multinational groups are required to file the first CbC reports for their first fiscal year beginning on or after January 1, 2016, and to file it no later than 12 months after the end of the relevant fiscal year. This means that, for MNEs with fiscal years ending on December 31, the first CbC report shall be required to be filed by December 31, 2017. For MNEs with special accounting periods, the first CbC report shall be required to be filed in 2018, (i.e.12 months after the close of the first fiscal year beginning after January 1, 2016). Accordingly, for those corporate taxpayers with special accounting period ending on March 31st; the first fiscal year subject to CbC report shall be the special accounting period starting on 1 April 2016 and ending on 31 March 2017 and the CbC report shall be required to be filed until 31March 2018.

The CbC report requirement applies to MNEs whose 2015 annual consolidated group revenues are TL 2,037,000,000 (approx. € 633 million) or more for the first year of CbC reporting (i.e. 2016). The revenue threshold for reporting periods starting from 2017 shall be determined in local currency in TL, however shall always be equivalent of € 750 million or

more as recommended in the OECD Action 13 Final Report on Transfer Pricing Documentation and Country-by-Country Reporting.

In case the “ultimate” parent company required to prepare CbC reporting does not have an agreement in force with Turkey for the exchange of information related to the CbC reporting; or has not introduced the obligation to file a CbC report, the reporting rules will apply to the the Turkish subsidiaries of the “ultimate” parent company.

Consistent with the OECD Guidance, the Draft Transfer Pricing Communiqué No. 3 notes that the CbC report will include the global allocation by country of key variables for the MNE, including revenue, profit, tax paid, stated capital, accumulated earnings, number of employees and tangible assets, as well as the main activities of each of its subsidiaries in a form format stated in the Appendix 5 of the Communiqué.

All the above explained documentations shall be prepared in Turkish language.

Notes

The Turkish Revenue Authority has requested comments on the proposed Draft Transfer Pricing General Communiqué No. 3 to be submitted through its website by the end of March 2016.

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