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MAJOR DEVELOPMENT: NEW DOCUMENTATION REQUIREMENTS ARE INTRODUCED FOR TURKISH MNEs



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THE PRESIDENTIAL DECREE WHICH AMENDS THE CABINET DEGREE ON DISGUISED PROFIT THROUGH TRANSFER PRICING

Cabinet Degree on Disguised Profit Distribution Through Transfer Pricing numbered 2007/12888, dated 27.11.2007, has been amended by the Presidential Decree numbered 2151, dated 24.02.2020 in accordance with Article 13 of Corporate Income Tax Code numbered 5520.

The Presidential Decree basically envisages the followings:

- ✚ Amendments have been made on definition of related party person
- ✚ Masterfile and CbCR (Country by Country Reporting) Documentation Requirement is regulated besides the Local File requirement which has still been in force.

1- Definition of Related Party

In terms of the application of the Income Tax Law, the spouse of the real person business owner, and the people who have kinship in the direct line and collateral kinship including the third degree and kinship by marriage will continue to be evaluated as related persons.

In addition, the Presidential Decree adds a new requirement for the situations that can be determined as the disguised profit distribution. As per the legislation, real or legal persons directly or indirectly holding minimum 10% of shares, voting rights or dividend rights of a company will be considered as a related party.

2- Master File

Corporate taxpayers, who are affiliated with MNEs, whose asset size in the balance sheet and net sales in the income statement for the previous fiscal period are both **TL 500 million** and above, have been obliged to prepare a master file.

In this context, the issues related to the master file adopted within the scope of the OECD BEPS project are also adopted by our legislation. Accordingly, a master file should include the following subjects:

- ✚ Organizational Structure of the MNE
- ✚ Definitions of Business Activities
- ✚ Intangibles Owned
- ✚ Intra-group Financial Transactions
- ✚ Financial and Tax Status

According to the Presidential Decree, the first master file of the taxpayers will be prepared for the financial year **2019**. Companies having special accounting period will prepare their first master file for the accounting period starting after **January 1, 2019**.



3- Country by Country Reporting ("CbCR")

Mutual Administrative Assistance Agreement in Tax Matters which is signed by Turkey provides the legal basis for the exchange of information among the countries. In the context of this Agreement, the CbCR requirements of OECD entered into force in Turkey.

Accordingly, the ultimate parent company of a MNE Group resident in Turkey which has total consolidated group revenue of **Euro 750 Million** or above for the accounting period of the previous fiscal year to the reporting year, shall prepare CbCR **until the end of the next twelve-month period** after the end of the reported fiscal year and submit to the Revenue Administration electronically.

CbCR shall include the following information for each country where a MNE operates:

- + Revenue
- + Profit/Loss Before Tax
- + Paid Income Tax/Corporate Tax
- + Accrued Income Tax/Corporate Tax
- + Capital
- + Accumulated Earnings
- + Number of Employees
- + Tangible Assets other than Cash and Cash Equivalents
- + The title of each business residing in the relevant country, the name of the country and main activities of each business, information on whether the country where the business is established is different from its tax residency.

The Turkish resident companies of a MNE Group shall submit CbCR to Revenue Administration in the case that the country where ultimate parent company is resident does not require CbCR, it does not have an effective competent authority agreement with Turkey, or systematic errors occur.

The Turkish resident companies of a MNE Group shall submit CbCR to Revenue Administration in the case that the reporting company is surrogate entity and the relevant country has no competent authority agreement with Turkey or systematic errors occur.

The first CbCR of the taxpayers will be prepared for the financial year **2019 and will be submitted until 31.12.2020**. Companies having special accounting period will prepare their first CbCR for the accounting period starting after **January 1, 2019 and submit it until twelve months after the end of their accounting period for 2019**.



Our Evaluations

The Presidential Decree introduces new documentation requirements for the Multinational Companies related to transfer pricing rules. It also envisages that the tax loss penalty will be applied at a **50% discount** for the taxes not accrued in time or not accrued completely within the scope of Disguised Profit Distribution through Transfer Pricing if the documentation requirements are **fulfilled fully and on time**.

In this context, timely fulfillment of transfer pricing documentation requirements by Multinational Companies will both be a protection shield for these companies and allow benefiting reduced penalty rates if the transactions are considered as against the arm's length principle.

Based on these evaluations, we recommend Turkish MNEs to determine whether they have documentation requirements for master file and CbCR for the financial year of 2019.

We recommend that a Turkish entity of a MNE Group headquartered overseas shall demand the master file and/or CbCR prepared for FY2019 from their ultimate parent companies. Besides that, Turkish Conglomerates which are required to submit these documentations must prepare those reports as quickly as possible.

In addition, we expect a communiqué on the application and principles regarding the documentation requirements to be published soon.

King Regards,

Please contact us for the further details on our international tax bulletin and transfer pricing documentation services provided by Centrum.



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