Tax & Legal Highlights

Romania

Additional implementation guidance on CbC reporting

The OECD Guidelines on 18 July released additional guidance on the implementation of the country-by-country ("CbC") reporting requirement introduced in the BEPS Action 13 final report.

The main guidance refers to:

- **CbC financial data should be presented on an aggregated basis for different group entities in a single jurisdiction. However, there are exceptions from this rule;**
- **Reporting entities are also required to provide an explanatory note on the CbC report if consolidated data is used;**
- **The provisions regarding parent surrogate filing were updated.**

The additional guidance consolidates and expands all of the additional implementation guidance issued by the OECD Guidelines since the release of the Action 13 Report ("Transfer Pricing Documentation and Country-by-Country Reporting").

To assist jurisdictions with the introduction of consistent domestic rules, the additional guidance addresses two specific issues:

- Whether aggregated or consolidated data for each jurisdiction is to be reported in Table 1 of the CbC report; and
- How to treat an entity owned and/or operated by two or more unrelated multinational enterprise groups (MNE groups).

Aggregate versus consolidated data (new guidance)
The 18 July OECD Guidance addresses whether the CbC financial data should be presented on an aggregated or consolidated basis for different group entities in a single jurisdiction. This issue may be of particular importance in reporting related-party revenue and total revenue.

The additional guidance states that reporting should be done on an aggregate basis. The guidance does provide, however, that jurisdictions may create an exception to this and allow reporting on a consolidated basis, just as long as:

- Consolidated data is reported for each jurisdiction on the CbC report; and
- Consolidation must be used consistently across the years.

Reporting entities are also required to provide an explanatory note on the CbC report if consolidated data is used. Importantly, however, this is applicable only to jurisdictions that have "a system of taxation for corporate groups which includes consolidated reporting for tax purposes, and the consolidation eliminates intra-group transactions at the level of individual line items."

Entities owned and/or operated by more than one unrelated MNE group (new guidance)
According to the 18 July OECD implementation guidance, if an entity is owned and/or operated by more than one unrelated MNE group, the treatment of that entity for CbC reporting purposes should be determined under the accounting rules applicable to each of the unrelated MNE groups separately.

In addition, if pro rata consolidation is applied to an entity in an MNE group in preparing the group's consolidated financial statements, jurisdictions may allow a pro rata share of the entity's total revenue to be taken into account for the purpose of applying the EUR 750 million threshold. Finally, jurisdictions may also allow an MNE group to include a pro rata share of the entity's financial data in its CbC report, in line with the information included in the MNE group's consolidated financial statements, instead of the full amount of this financial data.

Parent surrogate filing (updated guidance)
When surrogate filing (including parent surrogate filing) is available, it will mean that there are no local filing obligations for the particular MNE in any jurisdiction that otherwise would require local filing in which the MNE has a constituent entity (herein referred to as the local jurisdiction).

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VAT split payment – Draft of Govern Ordinance

Romania intends to apply the VAT split payment from 1 January 2018, according to a draft Government Ordinance, published by the Ministry of Public Finances.
Taxable persons registered for VAT purposes will have to open a separate bank account (the VAT account) to receive the VAT charged to customers and pay the VAT invoiced by suppliers.

You may find below both the main proposals (draft)

- The application of the VAT split payment is optional from 1 October 2017 and mandatory from 1 January 2018;
- Opening of a bank account by taxable persons, including public institutions, registered for VAT purposes at the Treasury or at any bank. The IBAN will include the characters 'TVA'.
- Direct receipt in the VAT account of the VAT invoiced to clients for supplies of goods/services.
- The amounts from the VAT account can be used to pay the VAT invoiced by suppliers and to pay the VAT due to the State Budget.
- The possibility of transferring amounts from VAT accounts to another (current) account by the holder only with the approval of National Agency for Fiscal Administration (ANAF).
- Cash withdrawals from VAT account are prohibited.
- As of 1 January 2018, for debiting and crediting the VAT account, banks must also put in place an automatic / manual mechanism to verify that payments are made only between these accounts.
- Various incentives for taxable persons that choose to join the system until 31 December 2017:
    - Cancellation of late payment penalties related to VAT liabilities, outstanding as of 30 September 2017, subject to certain conditions;
    - A 5% discount to the payment of corporate income tax/microenterprises tax;

- The sanctions:
  - A grace period of 7 working days in which errors can be corrected. If such errors are not corrected within this deadline, a penalty of 0.06% per day of delay will be applied considering the value of the VAT, but for no more than 30 days.
  - After the 30 days deadline, for:
    - Not wiring the VAT amount in the VAT account of the supplier or wrong debiting of the VAT account, a fine of 50% of the VAT amount will be applied, while for
    - Not wiring the VAT amount from the current account the VAT account or the payment of the VAT due from other account than the VAT account, a fine of 10% of the VAT amount will be applied.

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Labor Code: Changes Impacting Employers

Amendments to the Labor Code by Emergency Ordinance no. 53/2017, published on August 7, 2017, have as their primary purpose the fight against undeclared work and mainly target:

- **Define the concept of undeclared work**
- **The sanctioning regime**
- **Introducing new obligations for employers**

GEO 53/2017 brings a series of important amendments, as follows:

1. Defining the concept of undeclared work

According to the recent amendments, undeclared work represents:

- hiring a person without concluding an individual employment agreement, in written form, on the previous day of the starting date of activity;
- hiring a person without registering the individual employment relationship in the General Registry of Employees, one day before the starting date, at the latest;
- receiving an employee to work during the period when the employee's individual employment agreement is suspended;
- receiving a part time employee to work outside the working schedule established by the part time employment agreement.

Moreover, hiring more than 5 persons without an individual employment agreement is no longer incriminated as a criminal offence.

2. The sanctioning regime

The employer may be sanctioned for undeclared work with:

- fine of RON 20,000 for each person that is in any of the situations provided at point (a), (b) and (c) above;
- fine of RON 10,000 in the situation provided at point (d) above.

The employer has the possibility of paying only half of the amount of the fine, provided the payment is made within 48 hours from the date of conclusion of the minutes or, as the case may be, from the date of its communication.

Also, according to the new legal provisions, in case of:

- hiring a person without concluding an individual employment agreement;
- hiring a person without registering the individual employment agreement into the General Registry of Employees, one day before the starting date, at the latest;
- allowing a person to work when their individual employment agreement is suspended,

the labor inspector shall dispose, as a complementary sanction, stopping the employer's activity at the working place where the irregularities are discovered. The activity may be resumed only after paying the fine and proving the remedy of the breach that led to the stopping of the activity. However, this sanction cannot be applied yet, as it requires a specific procedure which will be prepared in the future.

3. The conclusion of the individual employment agreement in written form is no longer a condition of validity of the employment agreement

4. Unpaid professional training leave will constitute length of service

5. Introducing new obligations for the employers

GEO 53/2017 introduces as well new obligations incumbent to the employers, namely:

- keeping a copy of the individual employment agreement at the workplace where employees perform their activity (the sanction for non-compliance is a RON 10,000 fine);
- the individual employment agreement must be concluded prior to the starting date of employment;
- any addendum to the individual employment agreement must be concluded before the occurrence of the amendment (except where such amendments are expressly provided by law or in the collective bargaining agreement);
- keeping records of the hours worked by each employee, on a daily basis, showing the starting and ending hours of the working schedule (the sanction is fine ranging between RON 1,500 – RON 3,000).

Entry into force

The Government Emergency Ordinance no. 53/2017 amending and supplementing of Law no. 53/2003 – the Labor Code is applicable starting with the date of its publication in the Official Gazette, respectively 07.08.2017.

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