



Turkey proposes adoption of country-by-country reporting requirement

Global Transfer Pricing Alert 2016-013

The Turkish Revenue Administration on March 16 released a proposed transfer pricing communiqué relating to the adoption of the country-by-country (CbC) reporting requirement under the OECD's base erosion and profit shifting (BEPS) Action 13 recommendations.

The proposed regulations -- Draft Transfer Pricing General Communiqué No. 3 -- 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, and would require:

- A **master file** with global information about a multinational enterprise (MNE) 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 **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 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), will 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 by the end of the second month following the filing deadline for the corporate income tax return (that is, by the end of June 2017 for taxpayers with calendar year accounting periods).

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 communiqué, corporate taxpayers registered with the Large Taxpayers' Tax Office (LTTO) and corporate taxpayers operating in Turkish free trade zones will be required to prepare annual transfer pricing documentation reports regarding both their cross-border and domestic transactions with related parties.

The obligation to prepare a local annual transfer pricing documentation report has been in place in Turkey since 2007, as per Transfer Pricing General Communiqué No. 1. Local documentation must be prepared according to the guidelines stipulated in Appendix 3 of Transfer Pricing General Communiqué No. 1, which has been in effect since November 18, 2007.

The only difference introduced through Draft TP General Communiqué No. 3 regarding the local file obligation is that cross-border related-party transactions of corporate taxpayers operating in Turkish free trade zones are now also included in the scope of local documentation. Corporate taxpayers not registered with the LTTO will continue to prepare annual documentation only for their cross-border transactions with related parties (as under the current rules). These taxpayers are also required to maintain 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 Transfer Pricing General Communiqué No. 1.

The local file must be prepared by the time corporate tax returns are filed (by April 25 of the following year for taxpayers that have calendar year accounting periods).

In addition to the local file requirements, all corporate taxpayers will 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 must 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.

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 an entity basis by providing information on intercompany agreements, previous and current tax inspections, reverse charge VAT, and withholding taxes paid on intercompany transactions. Form No:4 must be prepared by the end of the second month following the filing deadline for the corporate income tax return (by the end of June 2017 for taxpayers with calendar year accounting periods).

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

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 must 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 must be filed by December 31, 2017. For MNEs with special accounting periods, the first CbC report will be required to be filed in 2018 (12 months after the close of the first fiscal year beginning after January 1, 2016). Accordingly, for corporate taxpayers with special accounting periods ending on March 31, the first fiscal year subject to the CbC reporting requirement will be the special accounting period starting on April 1, 2016, and ending on March 31, 2017, and the CbC report will be required to be filed by March 2018.

The CbC reporting 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 (2016). The revenue threshold for reporting periods starting from 2017 will be determined in local currency, the Turkish lira; however, it will always be equivalent to €750 million or more, as recommended in the OECD Action 13 Final Report.

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

Consistent with the OECD guidance, 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 format presented in Appendix 5 of the communiqué.

All documentation must be prepared in the Turkish language.

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