

## LT In Focus

# Review of Draft Law on Country-by-Country Reporting

As we reported earlier, on 8 April 2016, the draft law “On amendments to Part I of the Tax Code of the Russian Federation,” regarding the preparation and submission of country-by-country reporting and notifications of participation in multinational enterprise groups, (hereinafter the “Draft Law”) was published. The draft law was developed in accordance with the Organisation for Economic Co-operation and Development (OECD) guidelines on the preparation and submission of country-by-country reporting (OECD Guidelines). The full text of the draft law can be found on the [Federal Portal for Draft Regulations](#).

The draft law proposes the addition of a *Country-by-Country Reporting* section to Chapter 14.4 of the Russian Tax Code containing the following articles:

- Article 105.16-1 *Submission of Notifications of Participation in Multinational Enterprise Groups*;
- Article 105.16-2 *Submission of Country-by-Country Reporting*

OECD Guidelines provide for these types of reporting.

A more detailed review of the new requirements set by the Draft Law is presented below, followed by the description of their main differences from the OECD Guidelines.

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### Key definitions

The draft law defines the following key concepts required to introduce the country-by-country reporting submission liability:

- multinational enterprise group;
- participant in a multinational enterprise group;
- parent company of a multinational enterprise group, which is responsible for the preparation and submission of country-by-country reporting;
- authorised participant in a multinational enterprise group, which is a company that may prepare and submit country-by-country reporting instead of the parent company (in compliance with the conditions stipulated by the Draft Law);

- fiscal year;
- consolidated financial statements.

These definitions generally coincide with those proposed by the OECD Guidelines.

Normally, the parent company of a multinational enterprise group must prepare and submit country-by-country reporting. In certain cases stipulated by the Draft Law, an authorised participant in the multinational enterprise group is appointed to prepare international reporting.

## Revenue size

Requirements set by the Draft Law apply to multinational enterprise groups whose aggregate revenue recognised in the consolidated financial statements for the fiscal year preceding the fiscal year for which country-by-country reporting is submitted amounts to at least RUB 50 billion.

OECD Guidelines propose a EUR 750 million threshold for these purposes. Thus, differences due to varying threshold amounts may arise (RUB 50 billion is currently equivalent to EUR 670 million). In other words, certain companies may be liable for preparing and submitting country-by-country reporting in Russia, while

having no such liability in other countries where the group is present, or otherwise. The course of action in a situation when a group appoints an authorised participant of a multinational enterprise group to be responsible for the preparation and submission of country-by-country reporting locally instead of the parent company also remains unclear. If this participant is located in a country where the threshold is established at EUR 750 million and the group's consolidated revenue is below this level but above the RUB 50 billion threshold set by the Draft Law, should the international group submit the report, and what is the procedure for its submission?

## Content of reporting

Disclosures in country-by-country reporting proposed by the Draft Law are in line with the Guidelines regarding the following information:

- 1) total income (revenue) derived from transactions, including transactions with related or independent parties;
- 2) amount of profit (loss) before tax;
- 3) amount of profit tax paid (income/profit tax paid by the foreign entity);
- 4) amount of profit tax assessed in the current year (income/profit tax assessed by the foreign entity in the current year);
- 5) amount of share capital (authorised share capital);
- 6) amount of accumulated profit (retained earnings);
- 7) headcount;
- 8) amounts of tangible assets (except for cash and cash equivalents);
- 9) identification data about each participant in the multinational enterprise group, including the country (territory)

of incorporation, tax residency and principal business activities of each participant in the multinational enterprise group.

The data must be aggregated by country.

The Draft Law also provides for the submission of other additional information presenting more detailed data on the amounts and information listed above.

OECD Guidelines propose the following templates of tables:

- 1) table with the overview of allocation of income, taxes and business activities by tax jurisdiction (corresponding to items 1–9 in the list above);
- 2) table presenting the principal activities of the group's companies (corresponding to part 2 of item 9 in the list above);
- 3) additional information.

## Notification

Notification of participation in a multinational enterprise group is submitted by taxpayers no later than 20 September of each calendar year. The Draft Law specifies the list of data that must be included in the notification. Namely, the group's parent company and the authorised participant of the group (if applicable) must be indicated.

The current version of the Draft Law contains no definition of entities that will be subject to notification submission requirements and does not clarify whether a threshold will be introduced based on the group's consolidated revenue or if all groups, regardless of their revenue size, will be liable to submit notifications of participation in a multinational enterprise group.

## Country-by-country reporting preparation and submission terms

Country-by-country reporting is submitted no later than 12 months after the date when the respective fiscal year ended. The first year in which the new rules will apply is the international group's fiscal year that begins in 2017.

OECD Guidelines propose applying the new rules for the first time to the international group's fiscal year that begins in 2016.

Some countries have already amended their legislation with regard to the submission of country-by-country reporting for 2016. The Draft Law stipulates that taxpayers may apply the new provisions to fiscal years beginning earlier than 2017.

## Fines

The Draft Law proposes the following fines for taxpayers who are members of multinational enterprise groups but fail to submit country-by-country reporting or notifications or submit inaccurate information:

- In relation to notifications on participation in multinational enterprise groups — RUB 50,000;

- In relation to country-by-country reporting — RUB 100,000.

The Draft Law stipulates a transition period (2017–2019) during which these fines will not apply.

## Information exchange terms

OECD Guidelines specify that the tax authorities are liable for submitting country-by-country reporting to other relevant tax administrations within 15 months after the end of the reporting year in the periods following.

Automated information exchange is provided for this procedure, which is governed by the

Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports, currently signed by 32 countries. It is estimated that Russia plans to sign this agreement in the near future.

## Use of information presented in country-by-country reporting

The Draft Law provides for the usage of country-by-country reporting for the purposes of tax control.

The wording has no clear indication of purposes for which the information presented in country-by-country reporting will be used.

OECD Guidelines state that country-by-country reporting may not replace detailed transfer price analysis based on complete functional analysis and comparability analysis.

Country-by-country-by-country reporting data may not be used for the purposes of adjusting income in certain jurisdictions. Additionally, OECD Guidelines suggest that countries may be excluded from information exchange procedures in the event of a confidentiality breach or non-compliance with other conditions of information exchange.

## Comments

The Draft Law is generally in line with OECD guidelines regarding the preparation and submission of country-by-country reporting. It should be noted that the Draft Law contains no further instructions with regard to the Master File

and the Local File, which, together with country-by-country reporting, comprise a three-level transfer pricing documentation system proposed for the purposes of standardizing the respective reporting with OECD Guidelines.

On 12 April 2016, shortly after the Draft Law was published, the European Commission proposed introducing obligatory public disclosure of information on corporate taxation of multinational enterprise groups. Namely, it proposed amending the European Union (EU) Accounting Directive and oblige EU multinational enterprise groups and multinational enterprise groups that are present in the EU with global revenues exceeding €750 million per year to make their annual consolidated reports that are similar to country-by-country reporting available to the public on their official websites. This amendments will be applicable to multinational enterprise groups whose parent company is a resident of the EU and multinational enterprise groups that operate in the EU via a company that meets at least two of the following criteria: annual revenue of at least EUR 40 million, a balance sheet total of at least EUR 20 million, headcount of at least 250 people, or via a representative office whose revenue is at least EUR 8 million<sup>1</sup>.

Content of the report proposed by the EU Directive is generally in line with the content of the country-by-country reporting prescribed by the Draft Law, except for disclosures of share capital and tangible assets amounts (except for cash and cash equivalents).

The report should additionally include clarification of the differences between the amounts of tax assessed and paid.

The information should be broken down by EU countries and jurisdictions recognised by the EU

as tax havens. The list of tax havens is expected to be published at the end of 2016.

The information on other jurisdictions may be aggregated.

The proposed changes will have a significant impact on a number of Russian companies present in the EU.

We recommend that groups comprising two or more companies that are tax residents of different jurisdictions and earning more than RUB 50 billion (or almost RUB 50 billion) of consolidated revenue take the following steps:

- review ownership structure to determine which company in the multinational group will submit country-by-country reporting to the tax authorities of the relevant jurisdiction;
- review the tax residency of the group's companies to determine differences in legislative requirements and develop a strategy to minimize potential risks;
- test the possibilities for prompt collection and consolidation of information required to prepare and submit country-by-country reporting on the group level; develop/adjust information systems so that the company responsible for the submission of country-by-country reporting has access to the required information in real time, if necessary;
- test the possibility of aggregating information on different levels of the multinational enterprise group.

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We hope that you will find the information presented in this issue useful and interesting. Our professionals are ready to answer any questions you may have regarding the topic presented in this issue and assist you in preparing the required documents.

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<sup>1</sup> This criterion is set at each EU country level, but amounts to at least EUR 8 million (may be increased to EUR 12 million).

If you have any questions about the information presented here, please contact the following Tax & Legal specialists:

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