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Newsflash: Income Tax – Introduction of country-by-country reporting (CbCR) for companies in UAE [Resolution No. 32 of 2019]

1.0 Background

The United Arab Emirates (“UAE”) Cabinet of Ministers in line with OECD's recommendations, (Action 13 – guidance on the implementation of Transfer pricing) passed Resolution No. 32 of 2019 (the “Resolution”) on Country-by-Country Reporting (“CbCR”).

The CbCR requirements apply to entities that are tax resident in the UAE (hereinafter, “tax resident in the UAE”) and are part of a multinational group of enterprises (“MNE”) with consolidated revenues equal to or exceeding AED 3.15 billion (approx. EUR 764 million / USD 858 million) in the financial year preceding the ‘financial reporting year’ concerned.

2.0 CbCR filing requirements

The Resolution places a requirement on MNEs with an ultimate parent entity (“UPE”) that is tax resident in the UAE, and exceeds the AED 3.15 billion consolidated revenues threshold, to file a CbC report with the Ministry of Finance within 12 months after the end of the financial reporting year.

The Resolution states that any affiliated entity of an MNE that is tax resident in the UAE, but is not the UPE, shall prepare and submit the CbCR on behalf of the MNE if certain conditions are met.

However, where the tax resident entity in the UAE is not an UPE, a notification in lieu of an actual filing would satisfy the CbCR requirements, so long as the MNE has filed the CbCR in the UPE's tax jurisdiction or in a Surrogate Parent Entity's (“SPE”) tax jurisdiction, and certain conditions in relation to automatic exchange of the CbCR, by such tax jurisdictions with the UAE, are met.

The CbCR requirements are applicable to financial reporting years starting on or after January 1st 2019, and the CbCR is required to be submitted within 12 months from the end of the financial reporting year.

Accordingly, for the financial reporting year starting on January 1st 2019, the CbC report must be submitted latest by December 31st 2020.

CbCR notifications must be submitted by an MNE affiliated entity that is tax resident in the UAE, no later than the last day of the financial reporting year of the MNE. Accordingly, for the MNE financial reporting years starting on 1 January 2019, notifications are due by no later than 31 December 2019.

3.0 CbCR Notification

Any affiliated entity of an MNE that is tax resident in the UAE, shall notify the Competent Authority (i.e. the UAE Ministry of Finance, MOF) whether it bears the capacity of an ultimate or surrogate parent entity, (“SPE”) no later than the last day of the financial reporting year of such MNE.

If such entity is neither an UPE nor an SPE, it shall notify the Competent Authority of the identity of the entity submitting the CbCR and its tax residence, no later than the last day of the financial reporting year of such MNE.

4.0 Administrative Offences and Penalties

Sr. No	Particulars	Administrative Penalty
(a)	Failure to retain documentation and information for minimum five years from the date of reporting	AED 100,000
(b)	Failure to provide the competent authority with any requested information	AED 100,000
(c)	Failure to report the information or failure to notify the competent authority on or before the required reporting date, of the intention to file a report in respect of a certain accounting period	AED 1,000,000 (plus AED 10,000 every day for which the failure continues to a maximum of AED 250,000)
(d)	Failure to report complete or accurate information	From AED 50,000 to AED 500,000

With the exception of the additional penalty provided under paragraph (c) of above table, a Reporting Entity's total penalties for any violations of the Regulations in any Reporting Fiscal Year shall not exceed one million dirhams (AED 1,000,000)

5.0 Procedures for Appeal against the decision to Impose Penalty

A Reporting Entity may appeal against the penalty imposed or against its amount for any of the following grounds:

- It did not commit a violation that warrants the imposition of the penalty.
- Appeal against the amount of the penalty imposed on it.

The Appellant shall submit its appeal to the Competent Authority, in writing, within thirty (30) business days from the date on which the Reporting Entity is notified of the penalty in accordance with Clause 2 of Article 10 of this Resolution; and set out the grounds of appeal.

The Competent Authority may confirm or cancel the assessment. The Competent Authority shall within a period of 60 business days consider the appeal and notify the reporting entity of its determination. If the Competent Authority fails to give written notice of its decision for the appeal within the period specified, then the appeal will be deemed to have been successful and any penalty imposed shall be cancelled.

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In this newsflash, we have summarized the notification of CbCR by the Cabinet Ministers of UAE in line with OECD recommendations and the implications of the same on resident entities in UAE.

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