

MNCs, enterprise groups: documentation requirements to be enhanced

The Federal Board of Revenue (FBR) will enhance documentation requirements for multinational companies and enterprise groups having a turnover of over Rs 100 million to maintain a master file under procedure for documentation and international reporting requirements regarding transfer pricing. In this regard, the FBR issued SRO No 421(I)/2017 here on Friday on the draft legislation introduced regarding documentation and country-by-country reporting requirements pertaining to transfer pricing.

Every taxpayer, being a constituent entity of a multinational enterprise (MNE) group and having a turnover of more than one hundred million rupees, shall keep and maintain a master file. Master file as referred to in rule 27J, shall contain standardised information relevant for all MNE group members and must include chart illustrating the MNE's legal and ownership structure and geographical location of operating entities; general written description of the MNE's business including important drivers of business profit; a description of the supply chain for the group's five largest products or service offerings by turnover plus any other products or services amounting to more than five percent of group turnover, the FBR proposed.

Sources said that the Base Erosion and Profit Shifting (BEPS) Action Plan adopted by the OECD and G20 countries recognised that enhancing transparency for tax administrations by providing them with adequate information to assess high-level transfer pricing and other BEPS-related risks is a crucial aspect for tackling the BEPS problem. It provides a template for Multinational Enterprises (MNEs) to report annually and for each tax jurisdiction in which they do business the information set out therein. Sources added that through Finance Act, 2016, requirement for maintaining certain prescribed transfer pricing related documentation was introduced. Now, it is proposed that in the case of failure to maintain the said transfer pricing documentation, the penalty at 1 percent of the value of transactions can be imposed.

Under SRO N 421 (1)/2017, the FBR has proposed that every constituent entity shall, if it is an ultimate parent entity or a surrogate entity, furnish to the Board, the information whether the constituent entity is an ultimate parent entity or a surrogate entity. Every constituent entity resident in Pakistan, if it is constituent entity of an MNE group and the ultimate parent entity of which is not resident in Pakistan, shall furnish to the Board: if the constituent entity is not the ultimate parent company or the surrogate parent entity, the details of the ultimate parent entity or the surrogate parent entity of the MNE group and the country or territory of which the said entities are resident.

Every ultimate parent entity or the surrogate parent entity resident in Pakistan shall, for every reporting fiscal year in respect of the MNE group of which it is a constituent entity, furnish country-by-country report to the Board on or before the due date specified under rule 27G.

A constituent entity resident in Pakistan, which is neither the ultimate parent entity nor the surrogate parent entity of an MNE group, shall file a country-by-country report to the Board with respect to the reporting fiscal year of an MNE group of which it is a constituent entity, on or

before the date specified under rule 27G, if The ultimate parent entity of the MNE group is not obligated to file a country-by-country report in the country or territory of which the ultimate parent entity is a resident. The country or territory in which the ultimate parent entity is resident has an international agreement to which Pakistan is a party but does not have a competent authority agreement to exchange country-by-country report; or there has been a systemic failure of the country or territory of which the ultimate parent entity is a resident and the said failure has been intimated by the Board to such constituent entity.

Provided that where there are more than one constituent entities of the same MNE group that are resident in Pakistan and one or more of the above conditions apply, the MNE group may designate one of such constituent entities to furnish the country-by-country report to the Board with respect to any reporting fiscal year on or before the date specified under rule 27G and to intimate in writing to the Board that the filing is intended to satisfy the filing requirement of all the constituent entities of such MNE group that are resident in Pakistan.

The provisions shall not apply, if a surrogate parent entity of the MNE group has furnished a country-by-country report with respect to any reporting fiscal year with the tax authority of country or territory of which the surrogate parent entity is a resident on or before the date specified under rule 27G and satisfies the laid down conditions.

The Board shall use the country-by-country report for purposes of conducting informed risk assessment for transfer pricing and other base erosion and profit shifting related risks in Pakistan, including assessing the risk of non-compliance by constituent entities of the MNE group with applicable transfer pricing rules and where appropriate for economic and statistical analysis.

The Board shall preserve the confidentiality of the information contained in the country-by-country report at least to the same extent that would apply if such information were provided to it under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

Every taxpayer, being a constituent entity of an MNE group and having a turnover of more than one hundred million rupees, shall keep and maintain a master file. Master file as referred to in rule 27J, shall contain standardised information relevant for all MNE group members and must include chart illustrating the MNE's legal and ownership structure and geographical location of operating entities; general written description of the MNE's business including important drivers of business profit; a description of the supply chain for the group's five largest products or service offerings by turnover plus any other products or services amounting to more than five percent of group turnover. The required description could take the form of a chart or a diagram; a list and brief description of important service arrangements between members of the MNE group, other than research and development (R&D) services, including a description of the capabilities of the principal locations providing important services and transfer pricing policies for allocating services costs and determining prices to be paid for intra-group services; a description of the main geographic markets for the group's products and services that are referred to in sub-clause (ii); a brief written functional analysis describing the principal contributions to value creation by individual entities within the group ie key functions performed, important risks assumed and important assets used; and a description of important business restructuring

transactions, acquisitions and divestitures occurring during the fiscal year.

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