

Cabinet Resolution Number 58 of 2019

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CABINET OF MINISTERS RESOLUTION

No. 32 OF 2019

CONCERNING

REGULATION OF THE SUBMISSION OF REPORTS BY MULTI-NATIONAL COMPANIES

Cabinet of Ministers

- Having reviewed The Constitution,
- Federal Law No. (1) of 1972 on the Competencies of Ministries and the Powers of Ministers, as amended,
- Federal Law No. (5) of 1985 Issuing the United Arab emirates Civil Transactions law, as amended,
- Federal Law No. (3) of 1987 Issuing the Penal Code, as amended,
- Federal Law No. (10) of 1992 Issuing the Code of Evidence in Commercial and Civil Transactions, as amended,
- Federal Law No. (11) of 1992 Issuing the Civil Procedure Law, as amended,
- Federal Law No. (8) of 2004 Regarding Financial Free Zones,
- Federal Decretal Law No. (8) of 2011 on Regulations of Preparing Balance Sheet and Closing Accounts,
- Federal Law No. (2) of 2015 on Commercial Companies, as amended,
- Federal Decretal Law No. (13) of 2016 Establishing Federal Tax Authority,
- Federal Law No. (14) of 2016 on Administrative Violations and Penalties in the Federal Government,
- Federal Law No. (7) of 2017 concerning the Tax Procedures,

- Federal Decretal Law No (48) of 2018 Approving the Multilateral Administrative Agreement for the Automatic Exchange of Information,
- Federal Decree No. (54) of 2018 Approving the Convention on Mutual Administrative Assistance in Tax Matters,
- Federal Decree No. (24) of 2019 Approving the Country-by-Country Reporting Multilateral Competent Authority Agreement, which instruments form part of the OECD anti-Base Erosion and Profit Shifting minimum standard on increasing transparency,
- And based on the proposal of the Minister of Finance and the approval there of by the Cabinet of Ministers,

Has Resolved:

Article 1 Definitions

For purposes of implementing the provisions of this Resolution, these Regulations, the following terms have the following meanings unless the context requires otherwise:

State: The United Arab Emirates.

Competent Authority: the Ministry of Finance,

Report: The Report that is to be filed to the Competent Authority pursuant to Article 2 of this Resolution and shall contain the information referred to in Article 4 of this Resolution.

Group: a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange.

MNE Group: any Group that

1. includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an

enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction.

2. and having total consolidated group revenue equal to or more than AED 3,150,000,000 (three billion one hundred fifty million dirham) during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year.

Constituent Entity: means any of the following:

1. any separate business unit of an MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting preparation purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on a public securities exchange.
2. any business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size or materiality grounds.
3. any permanent establishment of any separate business unit of the MNE Group referred to in paragraphs 1 or 2 above, provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting preparation, regulatory, tax reporting, or internal management control purposes.

Reporting Entity: the entity that is required to file a Report pursuant to the provisions of Article 2 of this Resolution.

Ultimate Parent Entity: a Constituent Entity of an MNE Group that meets the following criteria:

- (a) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence.
- (b) there is no other Constituent Entity of such MNE Group that owns directly or indirectly an interest described in subsection (a) above in the first mentioned Constituent Entity.

Surrogate Parent Entity: one Constituent Entity of the MNE Group that has been appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the Report in that Constituent Entity's jurisdiction of tax residence, on behalf of such MNE Group, when one or more of the conditions set out in Article 2 of this Resolution.

Fiscal Year: an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements.

Reporting Fiscal Year: that Fiscal Year the financial and operational results of which are reflected in the Report in accordance with Article 4 of this Resolution.

Business Day: any day other than a weekend and any other days which are official holidays for the private or government sector in the State.

Qualifying Competent Authority Agreement: an agreement that is between authorised representatives of those jurisdictions that are parties to an International Agreement and that requires the automatic exchange of country-by- country reports between the party jurisdictions.

International Agreement: the Multilateral Convention for Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral Tax Convention, or any Tax Information Exchange Agreement to which the United Arab Emirates is a party, and that its terms provides for the obligation of the parties thereto for the exchange of tax information between themselves, including automatic exchange of such information.

Consolidated Financial Statements: the financial statements of an MNE Group in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as those of a single economic entity.

Systemic Failure: with respect to a jurisdiction means that a jurisdiction has a Qualifying Competent Authority Agreement in effect, but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement) or otherwise persistently failed to automatically provide to the State Reports in its possession of MNE Groups that have Constituent Entities in the State.

Article 2 Filing Obligation

1. Each Ultimate Parent Entity of an MNE Group that is resident for tax purposes in the State shall file a Report conforming to the requirements of Article 4 of this Resolution with the Competent Authority with respect to its Reporting Fiscal Year on or before the date specified in Article 5 of this Resolution.
2. A Constituent Entity which is not the Ultimate Parent Entity of an MNE Group shall file Report conforming to the requirements of Article 4 of this Resolution with the Competent Authority with respect to the Reporting Fiscal Year of an MNE Group of which it is a Constituent Entity, on or before the date specified in Article 5 of this Resolution, if such Entity is resident for tax purposes in the State and one of the following conditions in respect thereof applies:
 - (a) the Ultimate Parent Entity of the MNE Group is not obligated to file a Report in its jurisdiction of tax residence.
 - (b) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the State is a party but does not have a Qualifying Competent Authority Agreement in effect to which the State is a party for filing the Report for the Reporting Fiscal Year.
 - (c) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Competent Authority to the Constituent Entity resident for tax purposes in the State.
3. Where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in the State and one or more of the conditions set out in Clause 2 of this Article apply, the MNE Group may designate one of such Constituent Entities to file the Report conforming to the requirements of Article 4 of this Resolution with Competent Authority with respect to any Reporting Fiscal Year on or before the date specified in Article 5 of this Resolution and to notify the Competent Authority that the filing is intended to satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the State.
4. Notwithstanding the provisions of Clause 2 of this Article, when one or more of the conditions set out of Clause 2 of this Article apply, an entity described in Clause 2 of this Article shall not be required to file a Report with Competent Authority with respect to any Reporting Fiscal Year if the MNE Group of which it

is a Constituent Entity has made available a Report conforming to the requirements of Article 4 of this Resolution with respect to such Fiscal Year through a Surrogate Parent Entity that files that Report with the tax authority of its jurisdiction of tax residence on or before the date specified in Article 5 of this Resolution and that satisfies the following conditions:

- (a) the jurisdiction of tax residence of the Surrogate Parent Entity requires filing of Reports conforming to the requirements of Article 4 of this Resolution.
- (b) the jurisdiction of tax residence of the Surrogate Parent Entity has a Qualifying Competent Authority Agreement in effect to which the State is a party by the time specified in Article 5 of this Resolution for filing the Report for the Reporting Fiscal Year.
- (c) the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the Competent Authority of a Systemic Failure.
- (d) the jurisdiction of tax residence of the Surrogate Parent Entity has been notified in accordance with Clause 1 of Article 3 of this Resolution by the Constituent Entity resident for tax purposes in its jurisdiction that it is the Surrogate Parent Entity.
- (e) a notification has been provided to Competent Authority in accordance with Clause 2 of Article 3 of this Resolution.

Article 3 Notification

1. Any Constituent Entity of an MNE Group that is resident for tax purposes in the State shall notify the Competent Authority whether it is the Ultimate Parent Entity or the Surrogate Parent Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group.
2. Where a Constituent Entity of an MNE Group that is resident for tax purposes in the State is not the Ultimate Parent Entity nor the Surrogate Parent Entity, it shall notify the Competent Authority of the identity and tax residence of the Reporting Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group.

Article 4 Contents of the Report

1. For purposes of these Regulations, a Report with respect to an MNE Group shall include the following:
 - (a) Aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates.
 - (b) An identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of such Constituent Entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such Constituent Entity is organised, and the nature of the main business activity or activities of such Constituent Entity.
2. The Report shall be filed in a form identical to and applying the definitions and instructions contained in the standard template set out at Annex III of Chapter V of the OECD Transfer Pricing Guidelines as the same may be modified.

Article 5 Time for Filing

1. The Report required by these Regulations shall be filed no later than (12) twelve months after the last day of the Reporting Fiscal Year of the MNE Group.
2. The obligation referred to in Clause 1 of this Article shall, with respect to the Reports for the Fiscal Year of the MNE Group, take effect from 1 January 2019.

Article 6 Use and Confidentiality of Report Information

1. The Competent Authority shall use the Report for any of the following purposes:
 - (a) assessing high-level transfer pricing risks.

- (b) assessing other base erosion and profit shifting related risks in the State.,
- (c) assessing the risk of non-compliance by members of the MNE Group with applicable transfer pricing rules.
- (d) for economic and statistical analysis.

Transfer pricing adjustments by the Competent Authority will not be based on the Report.

2. The Competent Authority shall preserve the confidentiality of the information contained in the 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.

Article 7 Powers of the Competent Authority to Request Information and Review Records

1. The Competent Authority may request information from and, enter any premises or place of business of a Reporting Entity for the following purposes:
 - (a) determining whether information provided by the Reporting Entity included in the Report made under this Resolution is correct and complete.
 - (b) ensuring that the information not included in a Reporting Information was correctly not included.
 - (c) examining the procedures put in place by a Reporting Entity for the purposes of ensuring compliance with that Reporting Entity's obligations under this Resolution.
2. A Competent Authority may, by notice in writing, require a Reporting Entity to provide the Competent Authority within no more than fourteen (14) Business Days with such information (including copies of any relevant books, records or other documents) as the Competent Authority may require for any purpose relating to the enforcement of this Resolution.
3. A Competent Authority may require a Reporting Entity to:

- (a) produce books, records or other documentation.
- (b) to provide information, explanations and any further particulars relating to such information.
- (c) to give all assistance which the Competent Authority may require relating to the enforcement of this Resolution or any international convention or agreement.

Article 8 Maintenance and Submission of Reports

Every Reporting Entity is required under this Resolution to:

1. keep records for a period of five (5) years after the date of reporting to the Competent Authority. The Reporting Entity may retain such records electronically, provided that the records are retained in an electronically readable format and in accordance with UAE laws and regulations relating to the retention of electronic records.
2. Every Reporting Entity that obtains or creates records, as required under this Resolution, in a language other than English shall, upon request, provide an English translation to the Competent Authority.
3. File its Reporting Information electronically with the Competent Authority using such technology and systems as may be approved or provided by the Competent Authority, and in such form as the Competent Authority may require.
4. If a Reporting Entity enters into any arrangements or engages in a practice, the main purpose of which can reasonably be considered to be to avoid an obligation imposed under this Resolution, the Reporting Entity shall remain responsible as if the Reporting Entity had not entered into the arrangement or engaged in the practice.

Article 9 Administrative Offences and Penalties

1. An administrative penalty shall be imposed on the Reporting Entity which fails to comply with the obligations set out in this Resolution as follows:
 - (a) where a Reporting Entity fails to retain the documentation and information required to be collected in

the course of meeting its reporting obligations under this Resolution for a minimum period of five (5) years after the date of reporting to the Competent Authority, the Reporting Entity shall be subject to a penalty of one hundred thousand dirham (AED 100,000);

(b) where a Reporting Entity fails to provide the Competent Authority with any information requested in accordance with this Resolution, the Reporting Entity shall be subject to a penalty of one hundred thousand dirham (AED 100,000).

(c) one million dirham (AED 1,000,000); and ten thousand dirham (AED 10,000) for every day during which the failure continues to a maximum of two hundred and fifty thousand dirhams (AED 250,000). where a Reporting Entity fails to report the information required to be reported under this Resolution on the required Reporting Date or fails 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.

(d) The Reporting Entity shall be subject to a minimum penalty of fifty thousand dirhams (AED 50,000) and a maximum penalty of five hundred thousand dirhams (AED 500,000) if the Reporting Entity fails to report the information required to be reported under this Resolution in a complete and accurate manner.

2. With the exception of the additional penalty provided under paragraph (c) of Clause 1 of this Article, 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).

Article 10 Procedures for Imposing Administrative Penalties

1. The Competent Authority may order certain actions that Reporting Entities must take subsequent to a contravention of this Resolution as the Competent Authority may deem appropriate to ensure that the violation is not repeated.

2. The Competent Authority shall notify a Reporting Entity in writing of a violation of any of the provisions of this Resolution and shall provide the Reporting Entity with a period of fourteen (14) Business Days to rectify its failure, failing which the above penalties shall be applied.

3. Liability to a penalty under Article 9 of this Resolution does not arise if the Reporting Entity satisfies the

Competent Authority that there is a reasonable excuse for the failure, which shall be assessed at the sole direction of the Competent Authority.

4. For the purposes of Clause 3 of this Article, the following shall not be considered as reasonable excuses:
 - (a) that there is an insufficiency of funds to comply with this Resolution, or
 - (b) that the information required under this Resolution is in the possession of a third party.
5. If a Reporting Entity had a reasonable excuse for a failure but the excuse has ceased, the Reporting Entity is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.
6. If a Reporting Entity becomes liable to a penalty under Article 9 of this Resolution, the Competent Authority shall assess the penalty payable, and notify the Reporting Entity of the assessment.
7. An assessment of a penalty under Clause 6 of this Article shall be made within the period of six (6) months commencing from the date on which: the Reporting Entity became liable to the penalty, or the violation first came to the attention of the Competent Authority.
8. A penalty under this Article shall be paid to the Competent Authority within thirty (30) Business Days from the date on which notification of the penalty was made to the Reporting Entity or the date on which a decision to turn down an appeal is issued.

Article 11 Procedures for Appeal Against the Decision to Impose Penalty

1. A Reporting Entity may appeal against the penalty imposed or against its amount for any of the following grounds:
 - (a) It did not commit a violation that warrants the imposition of the penalty.
 - (b) Appeal against the amount of the penalty imposed on it.
2. 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.

3. On an appeal under Clause 2 of this Article that is notified to the Competent Authority, the Competent Authority may confirm or cancel the assessment.
4. The Competent Authority shall, within a period of sixty (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 under this paragraph 16, then the appeal will be deemed to have been successful and any penalty imposed shall be cancelled.

Article 12 Effective Date

This Resolution shall come into force on the date of its issuance.

Article 13 Publication in the Official Gazette

This Resolution shall be published in the Official Gazette.

Mohammed Bin Rashed Al Maktoum

Prime Minister

Issued: by us on:

24 Shabaan 1440 Hijri

30 April 2019