STRENGTHENED REPORTING FOR TRANSFER PRICING

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The finance law for 2016 is an important step in strengthening the effectiveness of transfer pricing controls, by increasing the necessary documentary requirements. Article 121 completes transfer pricing documentation by requiring some companies to provide, within twelve months from the close of the financial year, a "declaration of the Group's turnover country-by-country, and economic, accounting and tax information, as well as information on the location and activity of the entities concerned ".

This new requirement is the transposition of the Country-by-Country Reporting (CbC R) implementation package, which is an important measure of the OECD's Base Erosion and Profit Shifting (BEPS) plan, in its Action 13.

The objective of BEPS is to increase transparency and communication in tax matters.

About 200 groups in France, not to mention foreign groups that have French subsidiaries, will be affected by this new reporting requirement.

Affected Companies

International groups established in France, are subject to this reporting requirement if they meet the criteria listed below:

- realizing an annual turnover (VAT excluded) greater than or equal to 750 M€,
- producing consolidated accounts,
- holding or controlling, directly or indirectly, one or several entities outside France or having foreign branches,
- are not held by one or more legal entities in France or outside France, already subjected to the requirement of filing a similar report pursuant to a foreign regulation.

The criteria for consolidated accounts to be taken into account for the reporting requirement are (2 of the 3 following thresholds must be exceeded): total balance sheet (24 M€), turnover (48 M€), or employee numbers (250 employees)).

For the assessment of independence, refer to the list of countries participating in the automatic exchange of statements by country with the France (list soon be determined). This list will show which countries that have adopted a regulation mandating the reporting by country (such as the United Kingdom, the Ireland and the Netherlands), who have already concluded an agreement with the France to exchange these statements and comply with the obligations of this agreement.

Country-by-Country Reporting information

The precise list of information should be specified in the first quarter of the year 2016. However, the information in question should resume the work of the OECD for each country in which the Group of multinational companies engaged:

- turnover before VAT (in distinguishing the sales group and non-group),
- amount of income tax, due and actually paid,
- government grants received,
- retained earnings,

- social capital,
- employees.
- location and activity of entities concerned

The tax administration should provide a standardized template form and reporting must be produced and submitted by electronic means.

This new declaration by country applies to fiscal years beginning from January 1, 2016. It must be filed no later than December 31, 2017, for companies whose fiscal year coincides with the calendar year. The failure to file or late filing would be penalized by a fine not exceeding 100 KEUR. The parent company will be responsible for the declaration.

Questions still arise as to the source of the data published for each country (data from income tax returns and/or consolidated data), in order to submit of uniform declarations, or to which of their entities it really may applied.

It's strongly advised for international groups to anticipate the production of the CbC R declaration, while still awaiting further clarifications.

For more information

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