

Cabinet of Ministers

Cabinet of Ministers Resolution No. (44) of 2020

Concerning the Regulation of Reports Submitted by Multinational Companies

The Cabinet of Ministers:

- Having reviewed the Constitution,
- And Federal Law No. (1) of 1972 concerning the Competencies of Ministries and the Powers of Ministers, and its amendments,
- And Federal Law No. (5) of 1985 promulgating the Civil Transactions Law, and its amendments,
- And Federal Law No. (3) of 1987 promulgating the Penal Code, and its amendments,
- And Federal Law No. (10) of 1992 promulgating the Law of Evidence in Civil and Commercial Transactions, and its amendments,
- And Federal Law No. (11) of 1992 promulgating the Civil Procedures Law, and its amendments,
- And Federal Law No. (8) of 2004 concerning Financial Free Zones,
- And Federal Law No. (2) of 2015 concerning Commercial Companies, and its amendments,
- And Federal Decree-Law No. (13) of 2016 concerning the Federal Tax Authority,
- And Federal Law No. (14) of 2016 concerning Violations and Administrative Penalties in the Federal Government,
- And Federal Law No. (7) of 2017 on Tax Procedures,
- And Federal Decree No. (48) of 2018 ratifying the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information,
- And Federal Decree No. (54) of 2018 ratifying the Convention on Mutual Administrative Assistance in Tax Matters,
- And Federal Decree No. (24) of 2019 ratifying the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports,
- And Cabinet of Ministers Resolution No. (32) of 2019 concerning the Regulation of Reports Submitted by Multinational Companies,
- And based on the proposal of the Minister of Finance, and the approval of the Cabinet of Ministers,

Has decided:

Article (1)

Definitions

In the application of the provisions of this Resolution, the following words and expressions shall have the meanings assigned to each of them, unless the context otherwise requires:

The State: The United Arab Emirates.

The Competent Authority: The Ministry of Finance.

The Report: The report related to a Multinational Enterprises Group containing the data specified in Error! Reference source not found. of this Resolution, which is submitted to the Competent Authority in accordance with the provisions of Error! Reference source not found. 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.

Multinational Enterprises Group (MNE Group): Any Group that includes:

1. 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 whose total consolidated group revenue is equal to or more than AED 3,150,000,000 (three billion, one hundred and fifty million UAE Dirhams) 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 purposes, or would be so included if equity interests in such business unit were traded on a public securities exchange.
2. Any such 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 included in (1) or (2) above, provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax, or internal management control purposes.

Reporting Entity: The Ultimate Parent Entity of an MNE Group that is tax resident in the State and is required to file the Report in accordance with the provisions of Clause (2) of Error! Reference source not found. of this Resolution.

Ultimate Parent Entity: A Constituent Entity of an MNE Group that is required to notify the Competent Authority in accordance with the provisions of Clause (Error!

Reference source not found.) of Error! Reference source not found. of this Resolution and which 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 paragraph (a) above in the first-mentioned Constituent Entity.

Fiscal Year: The annual accounting period with respect to which the Reporting Entity prepares the financial statements of the MNE Group.

Reporting Fiscal Year: The Fiscal Year the financial and operational results of which are reflected in the Report in accordance with the provisions of Error! Reference source not found. of this Resolution.

Business Day: Any day other than a weekend and official public holidays, whether for the private or public sector in the State.

International Agreement: The Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information, or the Convention on Mutual Administrative Assistance in Tax Matters, or any bilateral or multilateral tax convention, or any tax information exchange agreement to which the State is a party, and which provides for the exchange of tax information between jurisdictions, including the 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.

Article (2)

Notification and Filing Obligation

1. The Ultimate Parent Entity of an MNE Group that is tax resident in the State must notify the Competent Authority that it is the Reporting Entity, on a date not later than the last day of the Reporting Fiscal Year of the Group.
2. Every Reporting Entity must file a report in accordance with the requirements of Error! Reference source not found. of this Resolution with the Competent Authority with respect to its Reporting Fiscal Year on or before the date specified in Error! Reference source not found. of this Resolution.

Article (3)

Contents of the Report

1. The report must include the following elements:
 - 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 respect 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 the jurisdiction under the laws of which such Constituent Entity is organized if different from the jurisdiction of tax residence, and the nature of the main business activity or activities of each such Constituent Entity.

2. The report shall be filed in the format and with the definitions specified in the model template attached as Annex III to Chapter V of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, and any amendments thereto.

Article (4)

Filing Date

1. The report must be filed no later than twelve (12) 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 take effect from January 1, 2019.

Article (5)

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.

The Competent Authority shall not make transfer pricing adjustments based on the Report.

2. The Competent Authority is obligated to maintain the confidentiality of the information contained in the Report to at least the same extent that would apply if such information were provided to it under the provisions of the Convention on Mutual Administrative Assistance in Tax Matters.

Article (6)

Powers of the Competent Authority to Request Information and Access Records

1. The Competent Authority may request information from the Reporting Entity or access its premises or place of business in the following cases:

- a. To determine whether the information provided by it and included in the Report under this Resolution is accurate and complete.

- b. To verify that information not included in the Report was omitted for a valid reason.
 - c. To inspect the procedures established by the Reporting Entity for the purposes of ensuring the Reporting Entity's compliance with its obligations under this Resolution.
2. The Competent Authority may, by written notice, require the Reporting Entity to provide it, within a period not exceeding fourteen (14) business days, with any information - including copies of any relevant records, books, or other documents - for any purpose related to the implementation of any provision of this Resolution.
3. The Competent Authority may require the Reporting Entity to do the following:
- a. Produce records, books, or any other documents.
 - b. Provide information, explanations, and any other additional data relating to that information.
 - c. Provide all assistance that the Competent Authority may require in connection with the implementation of any provision of this Resolution or any international treaty or agreement.

Article (7)

Retention and Submission of Reports

1. Every Reporting Entity under this Resolution must maintain physical records for a period of five (5) years following the date of submission of its report to the Competent Authority. The Reporting Entity may maintain such records electronically provided that such records are prepared in an electronically readable format in accordance with the laws and regulations in force in the State governing the retention of electronic records.
2. If the Reporting Entity maintains or creates records (as required under this Resolution) in a language other than English, it must provide, upon request, a translation of these records into English to the Competent Authority.
3. Every Reporting Entity and every Ultimate Parent Entity responsible for notification in accordance with the provisions of Error! Reference source not found. of this Resolution must submit the Report or notification (as the case may be) to the Competent Authority electronically using the technology and systems approved or provided by the Competent Authority, in the format that the Competent Authority may specify.
4. If the Reporting Entity enters into any arrangements or engages in a practice that can reasonably be considered to be primarily aimed at avoiding the obligation imposed on it under this Resolution, this entity shall remain liable as if it had not entered into any such arrangements or engaged in such practice.

Article (8)

Administrative Fines and Penalties

1. An administrative fine shall be imposed on a Reporting Entity that violates the obligations contained in this Resolution, as follows:
 - a. If the Reporting Entity fails to file by the deadline specified in Error! Reference source not found. of this Resolution, it shall be subject to:
 1. An administrative fine of AED (1,000,000) one million, and
 2. An administrative fine of AED (10,000) ten thousand for each day the failure continues, up to a maximum of AED (250,000) two hundred and fifty thousand.
 - b. An administrative fine of AED (100,000) one hundred thousand shall be imposed if the Reporting Entity fails to maintain the documents and information it is required to collect in the course of fulfilling its reporting obligations arising from this Resolution for a period of not less than five (5) years from the date of submitting the Report to the Competent Authority.
 - c. An administrative fine of AED (100,000) one hundred thousand shall be imposed if the Reporting Entity fails to provide the Competent Authority with any information required in accordance with this Resolution.
 - d. An administrative fine of not less than AED (50,000) fifty thousand and not exceeding AED (500,000) five hundred thousand shall be imposed if the Reporting Entity fails to report the information required to be reported under this Resolution completely and accurately.
2. If the Ultimate Parent Entity fails to provide the notification referred to in Clause (Error! Reference source not found.) of Error! Reference source not found. of this Resolution within the period specified in that clause, it shall be subject to:
 1. An administrative fine of AED (1,000,000) one million, and
 2. An administrative fine of AED (10,000) ten thousand for each day the failure continues, up to a maximum of AED (250,000) two hundred and fifty thousand.
3. With the exception of the additional fine provided for in paragraph (2)(a) of Clause (1) and the additional fine provided for in paragraph (2) of Clause (Error! Reference source not found.) of this Article, it shall not exceed

The total fines imposed on the Reporting Entity or the Ultimate Parent Entity (as the case may be) in accordance with the provisions of this Resolution for any fiscal reporting year shall amount to one million (1,000,000) dirhams.

Article (9)

Procedures for Imposing Administrative Fines

1. The Competent Authority may request the Reporting Entity or the Ultimate Parent Entity to take certain measures following its commission of any violation of the provisions of this Resolution, as this Authority deems appropriate to ensure non-repetition of the violation.
2. The Competent Authority shall notify the Reporting Entity or the Ultimate Parent Entity in writing of any violation committed against any of the provisions of this Resolution. The Reporting Entity or the Ultimate Parent Entity (as the case may be)

shall be granted a period of fourteen (14) working days to rectify this violation, under penalty of applying the fines stipulated in this Resolution.

3. Liability for payment of the fines mentioned in Error! Reference source not found. of this Resolution shall not arise if the Reporting Entity or the Ultimate Parent Entity (as the case may be) is able to convince the Competent Authority of a reasonable excuse for its failure to comply with any of the provisions of this Resolution. The excuse presented to the Competent Authority shall be assessed at its absolute discretion.

4. For the purposes of Clause (Error! Reference source not found.) of this Article, the excuses listed below shall not be considered reasonable excuses:

a. Insufficient funds to comply with this Resolution.

b. That the information required under this Resolution is in the possession of a third party.

5. If the reason for the reasonable excuse for the violation ceases to exist, the Reporting Entity or the Ultimate Parent Entity (as the case may be) is considered to be under this excuse if it proceeds, without unreasonable delay, to rectify the breach after its cause has ceased to exist.

6. If the Reporting Entity or the Ultimate Parent Entity (as the case may be) becomes subject to a fine under Error! Reference source not found. of this Resolution, the Competent Authority shall determine the value of the fine to be paid and notify it of that value.

7. The value of the fine under Clause (Error! Reference source not found.) of this Article must be determined within a period of six (6) months following the date on which the Reporting Entity or the Ultimate Parent Entity (as the case may be) became liable for the fine, or the date the Competent Authority became aware of the violation.

8. The fine imposed under this Article shall be paid to the Competent Authority within a period of thirty (30) working days from the date of notifying the Reporting Entity or the Ultimate Parent Entity (as the case may be) of the fine, or from the date of the decision to reject the grievance if a grievance against the decision is filed within the prescribed period.

9. Any other financial resources designated for the Fund by a resolution of the Cabinet.

Article (10)

Grievance Procedures Against the Decision to Impose Fines

1. The Reporting Entity or the Ultimate Parent Entity (as the case may be) may file a grievance against the decision to impose the fine or its value based on one of the following two reasons:

- a. It did not commit any violation that warrants the imposition of the fine.
 - b. Disputing the value of the fine imposed on it.
2. The grievant must submit its grievance to the Competent Authority in a written document within a period of thirty (30) working days from the date of being notified of the fine in accordance with Clause (2) of Error! Reference source not found. of this Resolution, stating the reasons for the grievance submitted.
 3. The Competent Authority examining the grievance submitted to it under Clause (Error! Reference source not found.) of this Article may confirm or cancel its decision to impose the fine, and it may also decide to reduce the value of the imposed fine in accordance with paragraph (d) of Clause (Error! Reference source not found.) of Error! Reference source not found. of this Resolution.
 4. The Competent Authority must consider the grievance and notify the Reporting Entity or the Ultimate Parent Entity (as the case may be) of its decision on the grievance within a period of sixty (60) working days from the submission of the grievance, and it must notify it of its decision. If the Competent Authority fails to send a written notification of its decision on the grievance within the period specified in this clause, the grievance shall then be considered accepted and the imposed fine shall be canceled.

Article (11)

Executive Resolutions

The Minister of Finance shall issue the necessary resolutions to implement the provisions of this Resolution.

Article (12)

Repeals

Cabinet Resolution No. (32) of 2019 regarding the organization of reports submitted by multinational companies is hereby repealed, and any provision that violates or contradicts this Resolution is also repealed.

Article (13)

Publication and Entry into Force

This Resolution shall be published in the Official Gazette and shall come into force from the date of its issuance.

Issued by us:

On: 12 / Shawwal / 1441 H

Corresponding to: 04 / June / 2020 G

Mohammed bin Rashid Al Maktoum

Prime Minister