

TAX HOT TOPICS

15.06.2017

Amendments brought to the Fiscal Procedure Code – additional obligations in the transfer pricing area

Government Emergency Ordinance no. 42/2017 published in the Official Gazette no. 438 of 13 June 2017

- ❖ The present Emergency Ordinance transposes art. 1 and sections I and II from the annex III of Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU regarding the mandatory automatic exchange of information in the field of taxation.
- ❖ Specifically, country-by-country reporting obligation of companies part of multinational groups (MNE Groups) is introduced in the local legislation.
- ❖ Thus, new provisions are introduced in the Fiscal Procedure Code, as follows:
 - ❖ An ultimate-parent entity of a MNE Group¹ tax resident in Romania or another reporting entity (namely, a surrogate parent entity or other constituent entity under certain conditions, both resident in Romania), shall file a country-by-country report for each fiscal reporting year (beginning on or after 1 January 2016);
 - ❖ The filing term is of 12 months since the last day of the reporting fiscal year of the MNE Group;
 - ❖ The Romanian competent authority, recipient of the country-by-country report, by means of automatic exchange and within 15 months of the last day of the fiscal year of the MNE Group to which the country-by-country report relates, shall communicate to any other member state in which, on the basis of the information in the country-by-country report, one or more constituent entities of the MNE Group of the reporting entity are either resident for tax purposes or subject to tax with respect to the business carried out through a permanent establishment.

¹ a group having total consolidated group revenue of more than EUR 750,000,000 or an amount in RON equivalent to EUR 750,000,000 during the fiscal year preceding the reporting fiscal year

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- ❖ The country-by-country report shall contain aggregate information, such as:
 - ❖ amount of revenue;
 - ❖ profit (loss) before income tax;
 - ❖ income tax paid;
 - ❖ income tax accrued;
 - ❖ stated capital;
 - ❖ accumulated earnings;
 - ❖ number of employees;
 - ❖ information used to identify every constituent entity of the MNE Group;
- ❖ **The information communicated between member states are used for the purposes of assessing high-level transfer-pricing risks and other risks related to base erosion and profit shifting.**
- ❖ Transfer-pricing adjustments made by the tax authorities of the receiving member state are not based on the information exchanged according to the new-added article.
- ❖ The relevant Romanian authority may use the information communicated between member states as a basis for making further enquiries into the MNE Group's transfer-pricing arrangements or into other tax matters in the course of a tax audit, and, appropriate adjustments to the taxable income of a constituent entity may be made.
- ❖ Non-submission or late submission by the reporting entities of the country-by-country report, as well as communicating incorrect or incomplete information represents a contravention and is sanctioned with fines ranging between RON 30,000 – RON 100,000.
- ❖ The Romanian resident entity, part of a MNE Group, has the obligation to notify the relevant authorities with regard to the identity and residence of the reporting entity until the last day of the reporting fiscal year of the MNE Group at the latest, but not later than the submission deadline of the tax statement of the respective constituent entity for the previous year.

For details you can contact any member of TaxHouse team or you can send us a message at the email address office@taxhouse.ro.