Presidential Decree No. 2151. on OECD BEPS Action 13 Country by Country Reporting and Transfer Pricing Documentation published in Turkey

February 2020

On February 24, 2020, Presidential Decree No. 2151. mainly related to OECD BEPS Action 13 Country by Country Reporting and Transfer Pricing Documentation had been published. With the new Decree, OECD BEPS 13 Transfer Pricing and reporting requirements are now in effective in Turkey. The first CBCR and Master file will be related to 2019 accounting period and submitted/prepared until the end of December 2020.

BEPS 13 Documentation requirements

The Decision clearly states new documentation rules which are in line with OECD BEPS 13 reporting and documentation requirements. With the Decree, the transfer pricing documentation have been divided into 3; master file (MF), local file (LF) and country by country reporting (CbcR).

MF: The multinational taxpayers which have net sales and assets greater than 500 mil TRY are required to prepare MF. The first MF will be related to period 2019 and has to be prepared until following year-end and shall be submitted to Tax Authorities upon request.

LF: The LF requirement is same as the former annual transfer pricing report and all taxpayers which have cross border transactions (for large corporation taxpayers both domestic and cross border intercompany transactions) have to prepare local transfer pricing report. In addition companies operating in free trade zones are required to prepare transfer pricing report for their domestic intercompany transactions.

CbCR: The country by country reporting is for taxpayers which are belonging to a MNE group which have consolidated revenue of 750 mil Euro or above. The first CbCR will be for year 2019 and will be submitted by the December 31, 2020.

CBCR Notification requirement: With the Decision, notification requirement have been introduced. The Multinational entities covered, the reporting entity (whether ultimate parent entity or surrogate entity) and which entity will report CbRC should be notified to Turkish Tax Authorities within 6 months after the effective date of this Decree.(August 2020) For following reporting periods, notification shall be made by the end of June with a written petition to the Tax Authorities.

Other Amendments

The Presidential Decree also made the following amendments and additions to the existing transfer pricing rules in Turkey. As known the Article 59 of new Law, numbered 6728, has introduced some amendments to article 13 of Corporate Tax Law numbered 5520 where

Turkish transfer pricing rules have been more converged to OECD transfer pricing guidelines.

The Presidential Decree also includes such changes which were put into force with law 6728. The relevant changes are 10 percent threshold for related party definition, Recognition of Transitional Net Margin and Profit Split Method, the rollback of APA and relief from 50 percent of tax penalty in case proper and timely documentation is in place.

The Decision also brings new rules to the former added rules such as ; — The related party definition also includes real persons and their definition from Income Tax Code perspective.— The APA period now covers 5 years instead of 3 years. The taxpayers have to submit the renewal of APA before 6 months (formerly 9 months) of the expire of the APA. — The analysis term of the APA negotiation has been described as the evaluation of comparable transactions, function analysis, comparable search process, contract terms, transaction adjustments and other key terms. —the hierarchy over transfer pricing methods have been eliminated.

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