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Country-by-Country Reporting Regulation

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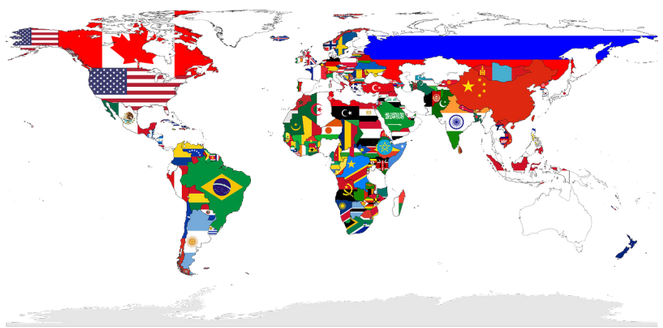

Introduction

In the absence of Country-by-Country Reporting (CbCR) requirements, MNE groups are mostly required by financial reporting standards to report incomes, expenses, assets, liabilities, and equity at a consolidated level. Financial reporting standards do not require country level breakdowns of these elements of financial statements, masking the size of their incomes and expenses at the country level.

The absence of this openness permits MNEs to employ various tax planning methods in order move their profits out of the countries where they actually conduct their business (i.e, where they employ their workers, run their production, or sell products and services) into low or no tax jurisdictions, thereby avoiding tax in those countries.

The Inclusive Framework on BEPS

In the year 2016, more than 100 countries, led by the OECD/G20, came together to form the Inclusive Framework on Base Erosion and Profit Shifting, to counter tax avoidance by MNEs. Specifically, fifteen measures or actions that were previously developed by the OECD/G20 were adopted, which became known as the BEPS Actions. On 3-November-2017, Maldives became the 104th jurisdiction to join the Inclusive Framework.

CbCR is based on the BEPS Action 13 Report. Action 13 is a minimum standard which is required to be implemented by all member countries of the Inclusive Framework. CbC Reporting of MNEs show in which jurisdictions its Constituent Entities are resident, where its revenues are generated, assets are held, taxes are paid, and employees work etc.

BEPS Action 13 Final Report recommends a three-tiered approach to transfer pricing documentation, namely, (1) Master File, (2) Local File, and (3) Country-by-Report. The Master File and Local File transfer pricing documentation requirements are specified in the Transfer Pricing Regulation issued by MIRA.

Automatic Exchange of Information

The CbC Reporting is designed to work through an Automatic Exchange of Information (AEOI) mechanism. The Reporting Entity of an MNE group files CbCR with the competent authority of the jurisdiction where it is resident. The competent authority then automatically exchanges the report with other competent authorities of jurisdictions where the MNE group has Constituent Entities or their permanent establishments.

CbC reports received to MIRA will be provided to tax authorities with which Maldives has established a bilateral AEOI relationships under the Multilateral Competent Authority Agreement on exchange of CbCR (MCAA CbCR).

Multilateral Agreements

In order to start exchanging CbC Reports filed by Reporting Entities, and receive CbC Reports of MNE groups from other countries, Maldives has to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention), and the Multilateral Competent Authority Agreement on the exchange of CbC Reports (MCAA CbCR). The Maldives on the path accede these multilateral agreements.

The Convention lays the groundwork of the legal obligation for the AEOI. Article 6 of the Convention specifies that, "with respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information..."

In addition to the Convention, the signing of the MCAA CbCR will enable Maldives to establish a wide network of jurisdictions for the automatic exchange of CbC Reports by establishing AEOI relationships with countries with which Maldives wishes to exchange CbCR.

Filing of CbCR by the Reporting Entity

Generally, the Ultimate Parent Entity (UPE) of an MNE Group that is resident in the Maldives, is required to file CbCR with MIRA. The report should be filed no later than 12 months after the last day of the reporting fiscal year of the MNE Group.

Although, the general rule is that only UPEs must file CbCR, a Constituent Entity other than the UPE of an MNE group must file CbCR with MIRA, if certain conditions are met. For example, if a Constituent Entity is resident in Maldives, and the Ultimate Parent Entity of the MNE Group is not obligated to file a CbCR in its jurisdiction of tax residence, then that Constituent Entity must file CbCR with MIRA.

Under the overall CbCR framework, each MNE group is generally required to file CbCR only once in one of the countries where its Constituent Entities are resident. In order to achieve this objective, the CbC Regulation issued by MIRA states that, a Constituent Entity that is not an UPE of an MNE group that is resident in Maldives, is not required to file a CbCR with MIRA, if the MNE Group of which it is a Constituent Entity has made available the CbCR through a Surrogate Parent Entity that files CbCR with the tax authority of its tax residence. A Surrogate Parent Entity is the substitute for the Ultimate Parent Entity to file the CbCR in that Constituent Entity's jurisdiction of tax residence.

Notification by Constituent Entities

A Constituent Entity of an MNE group that is resident in Maldives shall notify MIRA whether it's the Ultimate Parent Entity or the Surrogate Parent Entity responsible for filing of CbCR. If that Constituent Entity is not the Ultimate Parent Entity or the Surrogate Parent Entity, it must notify MIRA of the identity and tax residence of the Reporting Entity that files CbCR for the MNE group.

Exemptions

An MNE group is exempt from the requirements of CbCR if the total consolidated group revenue is less than EUR 750 million.

Penalties

Penalty for non-filing of CbCR (and non-notification) will be determined as below:

- A fine of 0.5% (zero point five per cent) of the amount of tax payable for the taxable period; and
- A fine not exceeding MVR 50 (Fifty Rufiyaa) for each day of delay from the date required to file.

60 days to appeal MIRA's decision

Ahmed Shaheen, Principal Tax Officer, Tax Academy

Previously ascribed 30 days period to appeal MIRA's decision at Tax Appeal Tribunal (TAT) has now changed to 60 days. This change has been brought via third amendment to the Tax Administration Act (TAA) (Law number 3/2010). Third amendment to Tax Administration Act was ratified on 16 December 2020.

Another remarkable change made by the amendment is that, taxpayers can now appeal against tax amount assessed by MIRA at TAT after paying an amount not less than 25% of the amount of tax in dispute. Prior to the Amendment, taxpayers are required to pay an amount not less than 30% of the tax in dispute. This 25% will be calculated exclusive of any fines orinterests.

In addition, with the new changes made by the amendment, appeals filed at the TAT must be adjudicated and decided upon within a period of 180 days from the date of filing. Where the members of the Tax Appeal Tribunal hearing the case, after having considered all relevant matters pertaining to the case, are of the opinion that a decision that is fair cannot be reached within the stipulated time period, members of the TAT can extend this period of not more than 90 days. Moreover, the pending appeals at the date of effect of this Amendment is to be decided upon within a period of not more than 180 days from the date of effect of the Amendment.

Additional changes made by the amendment includes, procedures MIRA is required to be followed to recover tax and tax related dues through court action, and amendments with regard to collection and recovery of non-tax money by MIRA.

Details of remuneration has to be provided to the recipients

Ahmed Shaheen, Principal Tax Officer, Tax Academy

Income Tax Regulation requires payers of remuneration to provide in writing to the recipients the details of the remuneration paid to each respectively. This has been highlighted in a circular issued by MIRA on 28 December 2020.

Hence, if a recipient of remuneration is subject to employee withholding tax, the total amount of remuneration which was subject to employee withholding tax must be disclosed in the salary slip of that recipient for that month. Even if the recipient of remuneration is not subject to employee withholding tax, the total amount of remuneration paid in a tax year must be provided to the recipient in writing within 30 days from the end of that tax year. All payers of remuneration are required to adhere to this rule irrespective of whether or not being registered under the Income Tax Act.

Remuneration consists of all monetary and non-monetary allowances and benefits provided to the recipient, except for the benefits and allowances specified in Chapter 3 of the Income Tax Regulation. The methods for computing nonmonetary allowances and benefits are set out in Chapter 4 of that same Regulation.

The circular advises payers of remuneration take extra consideration to prepare and provide in writing the total amount of remuneration paid to the recipients who are not subject to employee withholding tax, within 30 days from the end of the year 2020.

GST:

Relief given on deduction of input tax in relation to capital expenditure

Ahmed Shaheen, Principal Tax Officer, Tax Academy

Input tax in relation to capital expenditure deduction procedures have been alleviated via twenty eighth amendment to the Goods and Services Tax regulation (2020/R-119). This Amendment was published in the Government Gazette on Tuesday the 15th of December 2020.

With this Amendment, any amount of input tax in relation to capital expenditure that remains unclaimed, for any reason, by the end of the 12-month duration or, any amount of input tax in relation to capital expenditure that remains unclaimed, for any reason, by the end of the 36-month duration, can be set off against the output tax in subsequent taxable periods. Previously, under the regulation, input tax in relation to capital expenditure that remains unclaimed by the end of 12-month or 36-month duration would be forfeited.

Additional changes made by the Amendment includes, how time of supply is decided where consideration for a supply is paid in nonmonetary form, determining if goods were supplied in the Maldives and determining if a person is in the Maldives. More information about the Amendment is available at MIRA's website https://www.mira.gov.mv/TaxLegislations.