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## TRANSFER PRICING GENERAL COMMUNIQUÉ SERIES NO.4 REGARDING THE CHANGES IN THE TRANSFER PRICING GENERAL COMMUNIQUÉ NO.1 HAS BEEN PUBLISHED

“*Communiqué Series No.4 Regarding the Changes in the General Communiqué on Disguised Profit Distribution Through Transfer Pricing (Series No.1)*” (“*Communiqué*”) has been published in the Official Gazette dated 01.09.2020 and numbered 31231, and the regulations came into force as of the same date.

The important regulations introduced with the Communiqué are presented below for your information.

### A- EXPLANATIONS REGARDING THE THREE-TIERED TRANSFER PRICING DOCUMENTATION OBLIGATION

As mentioned in [our Bulletin](#) regarding the Presidential Decree No.2151, after a long waiting period, as of February 25, 2020, Turkey has introduced to three-tiered documentation approach in the Transfer Pricing stipulated by the OECD as part of the BEPS Action Plan.

In the Communiqué, explanations regarding the three-tiered documentation obligation have been made. The important parts and summary of the explanations are as follows:

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## 1- MASTER FILE

The obligation to prepare Master File has been newly introduced to our legislation. This report will generally consist of the information regarding the structure of a Multinational Entity (MNE) group and the group’s overall transfer pricing policies. Master File will not include information of the members of the MNE individually.

Master File consists of five main categories: the MNE group’s organizational structure, description of the entity activities, intangible rights owned, intra-group financial transactions and financial & taxation situation.

Since the Report should include information about the whole group, Master File is generally prepared by the parent company of the group and is forwarded to the group companies when needed.

Unlike the Presidential Decree No.2151 and the previously published Draft Communiqué, with the newly published Communiqué, it is stated that if the Multinational Entity (MNE) group operates in different business lines and it is appropriate to arrange Master File in terms of these business lines, Master File can be prepared separately in this way. In this case, it is stated that due care should be exercised in reflecting the transactions between central group functions and business lines in the report.

Master File	
<b>Who are Obligated to File</b>	Shall be prepared by the corporate income taxpayers affiliated with an MNE group and having an asset value stated in the balance sheet attached to the Corporate Income Tax (CIT) Return for the previous accounting period <b>AND</b> a turnover stated in the income statement both amounting to <b>TRY 500 million or more</b> . (Taxpayers, whose net sales amount is not included in the income statement, should consider the income amount related to their main activities as “net sales”.)
<b>Content</b>	<ul style="list-style-type: none"> <li>Organizational structure of the MNE group,</li> <li>Description of the entity activities,</li> <li>Intangible rights owned,</li> <li>Intra-group financial transactions and financial &amp; taxation situation</li> </ul>
<b>Deadline</b>	It is mandatory for it to be prepared by the end of the accounting period following the relevant accounting period. After this period ends, it is obligatory to be submitted to the Tax Authority or to those authorized to conduct tax inspection, <b><u>when requested</u></b> .
<b>Effective Date</b>	The first Master File for the accounting period of 2019 shall be prepared until December 31, 2020 and if requested after this date, it must be submitted to the Tax Authority or to those authorized to conduct tax inspection. Companies with special accounting period shall prepare the first Master File for the accounting period after January 1, 2019.

According to the statements in the Communiqué, the Corporate Income Taxpayer affiliated with the MNE group can also submit a Master File to the Tax Authority prepared on behalf of the group by a group entity abroad. If the mentioned report is prepared in a foreign language, its Turkish translation should also be provided.

## 2- ANNUAL TRANSFER PRICING REPORT (LOCAL FILE)

The obligation to prepare Annual Transfer Pricing (TP) Report for the taxpayers listed below has been in force since 2007.

Annual Transfer Pricing Report	
<b>Who are Obligated to File</b>	<p>Taxpayers are required to prepare Annual TP Report for the below conditions:</p> <ul style="list-style-type: none"><li>• Corporate income taxpayers registered to the Large Taxpayers Tax Office (Büyük Mükellefler Vergi Dairesi) for their domestic and foreign related-party transactions,</li><li>• Companies registered to other Tax Offices for their foreign related-party transactions,</li><li>• Corporate income taxpayers that are operating in Free Trade Zones (FTZ) in Turkey for their transactions with their related parties in Turkey,</li><li>• All corporate income taxpayers for their transactions with their foreign branches and their related parties in FTZ.</li></ul>
<b>Content</b>	<ul style="list-style-type: none"><li>• Description of taxpayer's activities, organizational structure (headquarter, branch) and shareholders, capital structure, industry that the taxpayer operates in, summary of its economic and legal history, definition of related parties (tax identification numbers, addresses, phone numbers, etc.) and property relations between related parties,</li><li>• All information regarding functions performed, risks borne and assets used,</li><li>• General information regarding product price lists related to the year that the transaction is performed (Detailed information and documents are not required to be included in the Annual TP Report but must be submitted upon request.),</li><li>• General information regarding production costs related to the year that the transaction is performed (Detailed information and documents are not required to be included in the Annual TP Report but must be submitted upon request.),</li><li>• The category of transactions with related and unrelated parties during the related year which the transactions are performed and the amount of these transactions on a country basis,</li><li>• All samples of contracts signed with related parties during the year that the transaction is performed,</li><li>• Summary of financial statements of related parties,</li><li>• Intercompany/intra-group pricing policy applied for transactions performed between related parties,</li><li>• Information about different accounting standards and policies, in the case that they are used by the related parties,</li><li>• Information regarding the ownership of intangible assets and intangible rights which are purchased or paid,</li></ul>

Annual Transfer Pricing Report	
	<ul style="list-style-type: none"> <li>Information and documents regarding the reason and application of the selected TP method (internal and/or external comparables),</li> <li>Detailed information regarding the calculations and assumptions which are made in determining the arm's length price or profit margin,</li> <li>The method selected in determining arm's length price range,</li> <li>Other documents required to determine the arm's length price,</li> <li>Information regarding the reasons if multi-year analysis is made to determine the arm's length price,</li> <li>A sample of each unilateral, bilateral or multilateral advance pricing agreements,</li> <li>Financial information used in the application of TP method.</li> </ul>
<b>Deadline</b>	The Annual TP Report shall be prepared until the submission of CIT Return. After this period ends, it is mandatory to submit it to the Tax Authority or to those authorized to conduct tax inspection, <b><u>when requested</u></b> .
<b>Effective Date</b>	It has been in force since 2007.

### 3- COUNTRY-BY-COUNTRY REPORTING (CbCR)

CbCR particularly applies to the MNEs headquartered in Turkey, and unlike the Master File and Annual Transfer Pricing Report, it is not a report but a table that should be completed and submitted to the Tax Authority. In this context, a sample CbCR table is included in Appendix-6 of the Communiqué.

CbCR allows the MNE group to compare their activities on a country basis from certain perspectives (profitability, number of employees, capital, paid taxes, etc.). It is aimed that after the CbCR is assigned to a country, the relevant ministry of finance would share the report with the ministries of finance of all the countries where the MNE operates.

Country-by-Country Reporting	
<b>Who are Obligated to File</b>	<p>MNE group's ultimate parent company resident in Turkey with annual consolidated group revenue (sum of all income, earnings and revenue items that are separately included in the consolidated financial statements) amounting to <b>EUR 750 million or more</b> according to the financial statements of the accounting period prior to the reported accounting period (If the consolidated financial statements are prepared in a currency other than Euro, the average annual foreign exchange buying rates announced by the Central Bank of the Republic of Turkey (CBRT) for the previous fiscal year's reporting period will be taken into account in the calculation of the EUR 750 million limit. In case a different currency is used in the preparation of the consolidated financial statements, the relevant explanations should also be included in the CbCR.).</p> <p>In cases where the ultimate parent or the surrogate entity is not present in Turkey and the threshold for CbCR is determined in local currency in the country where the ultimate parent or the surrogate entity is located, the</p>

Country-by-Country Reporting	
	<p>local currency threshold equivalent of EUR 750 million will be taken into account when calculating the limit above.</p> <p>In the case where the ultimate parent company of an MNE group is located in Turkey, even if the CbCR is made in another country with a “surrogate entity” title or according to local reporting requirements, it will be prepared by the ultimate parent company in Turkey and submitted to the Tax Authority.</p>
<b>Content</b>	<ul style="list-style-type: none"> <li>• Country-based distribution of income, taxes and business activities; income, profit/loss before tax, income tax/CIT paid, income tax/CIT accrued, capital, retained earnings, number of employees and tangible assets other than cash and cash equivalents related to each country in which the MNE group operates,</li> <li>• Country-based list of all entities included in the MNE group; name/title of each MNE group company on country basis where they are resident, and if the country where the company is established is different from the country where the company is resident in terms of taxation, the name of the country and main activities of each company.</li> <li>• Additional explanations required when filling of the tables.</li> </ul>
<b>Deadline</b>	Prepared until the end of the 12 <sup>th</sup> month following the accounting period and submitted to the Tax Authority electronically. <b>It is not necessary to be requested by the Tax Authority.</b>
<b>Declaration Process</b>	<p>CbCR tables will be filled in accordance with the explanations in the Revenue Administration Information Transfer System (BTRANS) application and will be submitted electronically in xml format.</p> <p>BTRANS application available at the <a href="http://www.gib.gov.tr">www.gib.gov.tr</a> website will be used for submission. In order for the taxpayers to send data via BTRANS, they must first obtain a user code and a password.</p> <p>Accordingly, a user code and a password will be requested by sending a petition with an original signature to the Administration’s Department of Application and Data Management. The reporting entity will need to complete BTRANS applications before the first data submission date.</p>
<b>Effective Date</b>	The first CbCR related to the accounting period of 2019 shall be submitted to the Tax Authority until December 31, 2020. The ultimate parent company resident in Turkey subject to a special accounting period shall prepare the first CbCR for the accounting period starting after January 1, 2019 and submit electronically until the end of the 12 <sup>th</sup> month following the related special accounting period end to the Tax Authority.

CbCR that is prepared on behalf of the MNE group whose ultimate parent entity is in Turkey will be shared with the tax authorities of other countries within the framework of bilateral and/or multilateral international agreements of which Turkey is a party. The list of countries with mutual information sharing will be announced by the Administration.

As of the publication date of our Bulletin, there is no country with which Turkey has a competent authority agreement within the scope of CbCR. Since CbCR prepared by the MNE group’s ultimate parent entity located in Turkey will only be shared with the countries with a competent authority agreement as of 31.12.2020; for the countries that are included in the group as of this date and

have no competent authority agreement, the CbCR will also need to be submitted either in the relevant countries or in another country that is in a joint competent authority agreement with the relevant countries in addition to the report submitted in Turkey.

CbCR can be sent by the taxpayer in person or through independent accountant and financial advisors with intermediary and liability agreements, or through sworn-in certified public accountants (CPAs) with tax certification agreements in the relevant period.

#### 4- CbCR NOTIFICATION

The notification obligation concerns a wide range of taxpayers. In this context, a sample CbCR notification form is included in Appendix-5 of the Communiqué.

The companies that are member of an MNE that fall under the scope of CbCR obligation (consolidated group revenue of EUR 750 million and above) are required to notify the Turkish Finance Administration regularly about the company and the country that the CbCR would be prepared by, **even though they are not the parent company.**

The members of the MNE group within the scope shall annually submit the information about whether they are the ultimate parent or surrogate entity and which entity will report on behalf of the group and the information about the accounting period until the end of June (end of October for 2020) of the year following the accounting period to be reported and in accordance with the content in Appendix-5 of the Communiqué and the explanations in the Interactive Tax Office by filling out the “Notification Form Regarding CbCR” **electronically through the Interactive Tax Office.**

The MNE group whose consolidated financial statements for the previous accounting period have not been established as of these dates may apply for additional time by notifying this situation to the Tax Authority.

The taxpayers within the scope are required to obtain a user code and a password from their tax office. **Notification forms in paper (by hand or by mail) will not be accepted.** In order for the notification form to be deemed given electronically, it is necessary for the approval process to be made through the system. The approval process must be completed until 11:59 p.m. of the last day of the period during which the notification should be given.

**No notification is required by the MNE group member that is out of scope.**

In case the ultimate parent company of the MNE group is resident in Turkey, this notification is required to be made **only by the ultimate parent company** on behalf of the MNE group. The notification can be made on behalf of the MNE group whose ultimate parent entity is not resident in Turkey by **one of the members** of the group resident in Turkey.



CbCR Notification	
<b>Who are Obligated to Notify</b>	Group members of an MNE that is within the scope of CbCR
<b>Content</b>	The information regarding which entity will be the reporting entity, whether they are the ultimate parent or a surrogate entity, as well as the accounting period
<b>Deadline</b>	The CbCR notification form will be submitted electronically through the Interactive Tax Office by the end of June of each year. The MNE group whose consolidated financial statements for the previous accounting period have not been established as of these dates may apply for additional time by notifying this situation to the Tax Authority.
<b>Effective Date</b>	The first CbCR shall be notified to the Tax Authority <u>until October 30, 2020</u> . The information regarding the following years will be submitted to the Tax Authority until the end of June of each year.

The notification form can be sent by the taxpayer in person or through independent accountant and financial advisors with intermediary and liability agreements, or through sworn-in CPAs with tax certification agreement in the relevant period.

## B- OTHER REGULATIONS INTRODUCED WITH COMMUNIQUÉ SERIES NO.4

### 1- FORM ON TRANSFER PRICING, CONTROLLED FOREIGN CORPORATION AND DISGUISED CAPITAL (APPENDIX-3 FORM)

This is the amendment that concerns the largest taxpayer group among the regulations introduced with the Communiqué.

As is known, Corporate Income taxpayers have been required to fill out the “*Form on Transfer Pricing, Controlled Foreign Corporation and Disguised Capital*” in Appendix-3 regarding the purchases or sales of goods or services with related parties within an accounting period and send it to the affiliated tax office as an attachment of the CIT Return since 2007.

Until now, there was no threshold for filling out the Form. Therefore, even if a transaction of TRY 1 was made with related parties, this transaction had to be specified in this Form. With the regulation of the Communiqué, the workload in filling out the Form has been somewhat reduced. Accordingly, when filling out the Form, it is not necessary to include information on the purchase or sale of goods or services with a total annual net amount of less than TRY 30,000 on the basis of each related-party and the information on that related party.

Since the Communiqué entered into force on the date of publication, this threshold may be taken into account in the CIT Returns to be submitted after 01.09.2020.

## 2- REGULATIONS REGARDING THE METHODS USED TO DETERMINE THE ARM'S LENGTH PRICE OR VALUE

According to the communiqué, arm's length prices or values are determined using the method most appropriate among comparable uncontrolled price, cost-plus and resale price methods, named as traditional transaction methods, and profit distribution and transactional net margin methods, named as transactional profit methods, to the nature of the transaction. There is no priority order among these methods. However, with the regulation introduced in the Communiqué, in cases where the methods are equally applicable, traditional transaction methods will be preferred to transactional profit methods.

## 3- EXPLANATIONS ON PENALTY IMPLEMENTATION IN TRANSFER PRICING

### Penalty Implementation in Disguised Profit Distribution Through Transfer Pricing

Penalty proceedings will be applied in accordance with the provisions of the Tax Procedure Law (TPL) for those who do not submit reports, notifications and other information and documents that are obliged to be submitted to the Administration with the Communiqué, and who provide incomplete or misleading information. There is no separate penalty provision within the scope of the Transfer Pricing documentation. Therefore, if the obligations regarding documentation are not fulfilled on time or are fulfilled incompletely, the provisions for irregularity and special irregularity penalties of TPL will be applied. In case of incomplete notification, 2<sup>nd</sup> degree irregularity fine (TRY 120 as of 2020); if the forms are not submitted, special irregularity fine (TRY 2,300 as of 2020).

Although the mentioned irregularity penalty amounts are low, maximum care should be taken in this regard, as failure to do so in a timely manner will lead to a tax inspection on the company.

### Documentation and Penalty Deduction

Provided that the documentation obligations regarding Transfer Pricing are fulfilled fully and on time, the tax penalty is applied with a 50% deduction for taxes that have not been accrued on time or accrued incompletely due to disguised profit distribution.

Explanations have been made in the Communiqué regarding the documentation obligation regarding Transfer Pricing and what is meant by the full and timely fulfillment of this obligation. Accordingly, in order to benefit from the deduction, the documentation obligations stated in the Communiqué must be fulfilled fully, on time and in accordance with the determined procedure.

Errors and omissions that do not affect the basis of the documentation will not prevent the implication of penalty deduction. In case it is determined by the Administration or tax inspectors that the documentation obligations are not fulfilled thoroughly, taxpayers will not be able to benefit from the penalty deduction.



The timely fulfillment of the documentation obligations refers to the submission of the documentation within this period if a period has been determined, or within the periods determined by the Administration or tax inspectors if the period has not been determined.

#### 4- OTHER AMENDMENTS

Other amendments made except for the ones explained above mostly consist of the adaptation of the previously published Decree with the current Transfer Pricing legislation. Please [click](#) for the mentioned Communiqué and its appendices (in Turkish).

Kind regards.