

## 2017/01 Draft Council of Minister Decision Regarding the Disguised Profit Distribution via Transfer Pricing Published

29.05.2017



On March 16, 2016, draft Transfer Pricing Communique mainly related to OECD BEPS Action 13 Country by Country Reporting and Transfer Pricing Documentation had been published. Those amendments related to transfer pricing which aims to meet OECD BEPS 13 Transfer Pricing and reporting requirements are regulated by draft Council of Minister decision which is expected to be in force before the end of 2017.

The draft Council of Minister decision has introduced the definition of terms such as Group, Multinational Enterprises, Ultimate Parent, Reporting entity, Surrogate Entity and Systemic Failure which are important for Country by Country Reporting Purposes. The definitions of these terms are same as OECD model.

The draft Council of Minister decision 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 draft decision 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 roll back of APA and relief from 50 percent of tax penalty in case proper and timely documentation is in place.

The draft 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.
- It has been stated that there is no priority over transfer pricing methods.
- 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 roll back of APA has been described so that the signed APA will be used to correct the previous years' taxable returns which are not barred by statue of time limitations given that the practice of repentance and correction precepts of the Tax Procedure Law. It is also stated that the excess taxes paid (if any) in previous years cannot be refunded except the taxpayer can benefit from the clauses in Tax procedure code in relation to Correction of tax Failures and Decline.

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

**MF:** The multinational taxpayers which have net sales and assets greater than 250 mil TRY are required to prepare MF. The first MF will be related to period 2017 and has to be prepared within 2 months after the submission of corporate tax income returns 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 2,37 billion TRY.( equivalent of 750 mil Euro). The CbCR will include profit/loss before tax, paid/accrued tax, capital, previous year losses, headcount, tangible products (exc cash and cash equivalents) which is in line with OECD template.

**Notification requirement:** The first CbCR will be covering period 2016 and will be submitted by the December 31, 2017. With the Draft 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 3 months after the effective date of this Decree. For following reporting periods, notification shall be made by the end of March with a written petition to the Tax Authorities.

## Contact Us:

### Başak Diclehan

Transfer Pricing Services,  
Director, Tax  
T : + 90 216 681 90 04  
E : [bdiclehan@kpmg.com](mailto:bdiclehan@kpmg.com)

### Aylin Obalı

Transfer Pricing Services,  
Manager, Tax  
T : + 90 216 681 90 04  
E : [aobali@kpmg.com](mailto:aobali@kpmg.com)

### Tax Services

Yetkin Yeminli Mali Müşavirlik A.Ş.

### KPMG Istanbul Office

Kavacık, Rüzgarlı Bahçe Mahallesi  
Kavak Sokak, No; 29  
Beykoz 34805 İstanbul  
Tel. +90 (216) 681 91 00  
Fax. +90 (216) 681 91 91

### KPMG Ankara Office

Paragon Tower  
Kızılırmak Mah.  
Ufuk Üniversitesi Cad. No: 8  
Çukurambar, Ankara  
Tel :+90 (312) 491 72 31  
Fax : +90 (312) 491 71 31

### KPMG Izmir Office

Heris Tower, Akdeniz Mah.Şehit  
Fethi Bey Cad. No:55 Kat:21 D:34  
Alsancak-Konak / İZMİR  
Tel : +90 (232) 464 20 45  
Fax : +90 (232) 464 21 45



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation. KPMG International Cooperative, a Swiss entity. Member firms of independent firms are affiliated with KPMG International Cooperative. KPMG International Cooperative provides no client services. No member firm has any authority to obligate or bind KPMG International Cooperative or any other member firm vis-à-vis third parties, nor does KPMG International Cooperative have any such authority or bind any member firm.

© 2017 Yetkin Yeminli Mali Müşavirlik A.Ş., a Turkish corporation and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative, a Swiss entity. All rights reserved. Printed in Turkey.