Tax Alert

TRANSFER PRICING REPORTING

Mazars in Ukraine | December 2022

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If a Ukrainian company, which is part of a multinational enterprise (hereinafter referred to as "MNE"), has carried out controlled transactions with related parties, such a company has the obligation to prepare and timely submit to the tax authorities a number of reporting documents:

1. Report on controlled transactions
2. Notification of participation in multinational enterprise
3. TP documentation (Local File)
4. Country-by-country Report
5. Global documentation (Master File)

The first two types of reporting (point 1 and point 2 above) should be submitted by October 1 of the year following the reporting year. Local File should be submitted at the request of the tax authorities of Ukraine.

There are also new type of reporting: Country-by-Country Report and Master File. Both documents are components of three-level TP reporting and should be submitted for the first time in 2023[1]. Therefore, currently there is no practice and explanations regarding the specifics of compiling and submitting these reports.

Below, we briefly provide the main information. Note that tax authorities may request the Master File starting from January 1, 2023.

	Master file (MF)	Country-by-country report (CbCR)
When where is an obligation to file this report?	If the total consolidated income of the MNE for the financial year preceding the reporting year is equal to or exceeds the equivalent of **EUR 50 million.** If there are several companies registered in Ukraine that are part of the same MNE, the request can be sent to only one of them. If the response is not provided within the specified period, the tax authorities of Ukraine have the right to send a request to another taxpayer-member of the MNE. The first taxpayer is not exempted from providing an answer.	If the total consolidated income of the MNE for the financial year preceding the reporting one exceeds the equivalent of **750 million euros + one of the following circumstances is in place**: • the taxpayer is the parent company of MNE; • the MNE's parent company has authorized the taxpayer to file the CbCR; • the MNE's parent company does not file the CbCR and does not authorize another participant to file the CbCR; • there is no effective exchange of CbCRs between Ukraine and the country where the MNE's parent company is located[2]. Please note that not every Ukrainian member of the MNE is obliged to file a CbCR.

[1] Currently, clarifications from the tax authorities are awaited as to which period should be considered the first reporting period for the CbCRs (2021 or 2022), since the wording in the Tax Code of Ukraine is not clear enough.
[2] The conditions are fully explained in para. 39.4.10 clause 39.4 of Art. 39 of the Tax Code of Ukraine.

What are the filing deadlines?	Should be submitted only **upon request** from the tax authorities. • The request is sent after 12 months and before than 36 months after the end of the financial year of the MNE or the reporting year (if there is no data on the financial year). • MF should be filed within 90 calendar days from the date of receipt of the request. • If MF contains incomplete information, the tax authorities have the right to send an additional request, the answer should be provided within 30 calendar days.	Should be filed **independently** by the taxpayer. • It is filed within 12 months after the end of the financial year established by the MNE's parent company. • In the absence of information about such a financial year - within 12 months after the end of the calendar year.
What is reporting period?	For the financial year established by the MNE's parent company (may not coincide with the calendar year).	
What is the first year to file the report?	Financial year ending in 2021.	Financial year that ends in 2021, but not earlier than the year in which Ukraine signed a multilateral agreement on the automatic exchange of CbCRs. The agreement was signed in November 2022. Currently, clarifications from the tax authorities are awaited as to which period should be considered the first reporting period for the CbCRs (2021 or 2022), since the wording in the Tax Code of Ukraine is not clear enough.
What is reporting format?	A set of documents or a single document compiled **in an arbitrary form**	A special **template approved by the** Order of the Ministry of Finance of Ukraine.
What should it contain?	Should present **general overview of the activities of the MNE,** in particular, should contain the MNE's structure, a general description of its activities, its intangible assets, should contain the MNE's consolidated financial statements for the last financial year, etc.	Should contain **information about each jurisdiction** in which the MNE conducts its activities. The CbCR reflects the distribution of income, profits, taxes and economic activity among the MNE's members. The CbCR also allows to assess whether the amount of income received by the Ukrainian member of the MNE corresponds to its functions, assets, and risks.

How will tax authorities use the reports?	The Tax Code of Ukraine does not contain information on the use of MF by tax authorities. According to the OECD Guidelines, the main purpose of the MF is to demonstrate to the tax authorities the transparency of the MNE's tax structures, and to confirm that the MNE has paid due attention to TP issues. It is expected that the MF would be used to review and assess the activities of the MNE for cross-border profit shifting risks. In particular, attention would be paid to the TP policy for the most significant and common intra-group transactions, information on the distribution of functions, assets and risks among the MNE's members. If the MF contains signs of transactions aimed at tax evasion or does not confirm the transparency of the TP Policy applied by the MNE, the Ukrainian participant of such MNE may become the object of tax audits.	The CbCR is an object of automatic exchange of tax and financial information between countries. The CbCR is used for the purposes of TP risk assessment during monitoring of controlled operations. Notably, the CbCR cannot be an independent basis for adjusting the amount of the taxpayer's taxable income. Based on the CbCR, tax authorities will be able to analyze information about the activities of the MNE in different countries for the purpose of monitoring TCUP risks.
What is the liability for failure to submit?	Failure to submit MF entails a fine of **300 subsistence minimums** (currently UAH 744,300).	Failure to submit the Report entails a fine equivalent to **1,000 subsistence minimums** (currently UAH 2,481,000).
	For untimely submission, the penalty is **5 subsistence minimums** (currently UAH 12,405) for **each calendar day** of late submission, but **no more than 300** subsistence minimum (currently, no more than UAH 744,300).	

Kindly note that both Master File and Country-by-Country Report are rather complex documents, the preparation requires several months and the most information should be provided by the Group.

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