

UNITED ARAB EMIRATES

THE CABINET

CABINET RESOLUTION NO (44) OF 2020 ORGANISING REPORTS SUBMITTED BY MULTINATIONAL COMPANIES

The Cabinet:

- After reviewing the Constitution; and
- Federal Law no (1) of 1972, concerning Ministries Competencies and Ministers' Powers, as amended;
- Federal Law no (5) of 1985, issuing the Civil Transactions Code, as amended;
- Federal Law no (3) of 1987, issuing the Penal Code, as amended;
- Federal Law no (10) of 1992, issuing the Law of Evidence in Civil and Commercial Transactions, as amended;
- Federal Law no (11) of 1992, issuing the Civil Procedures Code, as amended;
- Federal Law no (8) of 2004, concerning Financial Free Zones;
- Federal Law no (2) of 2015, concerning Commercial Companies, as amended;
- Federal Decree-Law no (13) of 2016, concerning the Federal Tax Authority;
- Federal Law no (14) of 2016, concerning Administrative Offences and Penalties in the Federal Government;
- Federal Law no (7) of 2017, concerning Tax Procedures;
- Federal Decree no (48) of 2018 Ratifying the Multilateral Administrative Agreement for the Automatic Exchange of Information;
- Federal Decree no (54) of 2018 Ratifying the Multilateral Convention on Mutual Administrative Assistance in Tax Matters;
- Federal Decree no (24) of 2019 Ratifying the Multilateral Agreement Concluded between the Competent Authorities on the Exchange of Reports on a Country-by-Country Basis;
- Cabinet Decision no (32) of 2019 concerning the Regulation of the Submission of Reports by Multinational Companies; and
- Pursuant to the proposal of the Minister of Finance and the Cabinet approval;

Has Resolved:

Article (1)

Definitions

For the purpose of implementing the provisions of this Resolution, the following terms and expressions have the meaning set opposite thereto below unless the context otherwise dictates:

The State	The United Arab Emirates
The Competent Authority	The Ministry of Finance
The Report	The report relating to a Multinational Enterprises Group which shall contain the data described in Article (3) of this Resolution, and which shall be submitted to the Competent Authority in accordance with the provisions of Article (2) of this Resolution.
Group	A group of companies related through ownership or control, such that it either is required to prepare Consolidated Financial Statements for the purposes of preparing financial reports under the applicable accounting principles, or would be so required if the equity interests in any of the companies were traded on a public securities exchange.
Multinational Enterprises (MNE) Group	Any group that includes: <ol style="list-style-type: none"> 1) Two or more companies the tax residence of which is located in different jurisdictions, or including one single company having its tax residence in one country and being subject to tax with respect to the activity it carries out through a permanent entity located in another country; 2) Which has a total consolidated group revenue that is equal to or more than AED 3,150,000,000 (UAE Dirhams Only Three Billion One Hundred and Fifty Million) during the Fiscal Year immediately preceding the Reporting Fiscal Year as indicated in its Consolidated Financial Statements for that preceding Fiscal Year.
Constituent Company	Means any of the following: <ol style="list-style-type: none"> 1) Any separate business unit of an MNE Group that is included in the Consolidated Financial Statements of the MNE Group for the purposes of preparing the financial reports, or would be so included therein if equity interests therein were traded on a public securities exchange 2) Any business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size or materiality grounds. 3) Any permanent establishment pertaining to any separate business unit of the MNE Group referred to in Clauses (1) or (2) above, provided that the said business unit prepares separate financial statements for such permanent establishment for the purposes of financial reporting preparation, regulatory, tax reporting, or internal management control purposes.

Reporting Entity	The Ultimate Parent Entity of the MNE Group whose tax residence is located in the State and is required to submit the Report in accordance with the provisions of Clause (2) of Article (2) of this Resolution.
Ultimate Parent Entity	<p>The Constituent Company in the MNE Group, required to submit notification to the Competent Authority in accordance with the provisions of Clause (1) of Article (2) of this Resolution, and meeting the following criteria:</p> <p>a) Owns directly or indirectly a sufficient interest in one or more Constituent Companies of such MNE Group such as it is required to prepare Consolidated Financial Statements under the accounting principles generally applicable in its jurisdiction tax residence, or be so required if its equity interests were traded on a public securities exchange in its jurisdiction tax residence;</p> <p>b) Its Group does not include any other Constituent Company that owns directly or indirectly an interest described in Paragraph (a) above in such Entity.</p>
Fiscal Year	The annual accounting period in respect to which the Reporting Entity prepares the financial statements of the MNE Group.
Reporting Fiscal Year	The Fiscal Year during which the financial and operational results are reflected in the report in accordance with the provisions of Article (3) of this Resolution.
Business Day	Any day other than a weekend and official holiday both for the private and public sectors in the State.
International Convention	The Multilateral Convention on Mutual Administrative Automatic Exchange of Information, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral Tax Convention, or any Tax Information Exchange Agreement to which the State is a party, and stipulating that the parties thereto are bound to exchange tax information, including the automatic exchange of such information.
Consolidated Financial Statements	The financial statements of the MNE Group in which the assets, liabilities, revenues, expenses, and cash flows of the Ultimate Parent Entity and Constituent Companies are presented as those of a single economic entity.

Article (2)

Notification and Reporting Obligation

1. Each Ultimate Parent Entity of the MNE Group whose tax residence is located in the State shall notify the Competent Authority that it is the Reporting Entity, no later than the last day of the Group's Reporting Fiscal Year.
2. Each Reporting Entity shall submit a Report to the Competent Authority in accordance with the requirements provided for in Article (3) of this Resolution concerning its Reporting Fiscal Year on or before the date specified in Article (4) of this Resolution.

Article (3)

Contents of the Report

1. The Report shall include the following elements:
 - a. Aggregate information related to the amount of revenue, profits (losses) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, non-monetary or cash equivalent tangible assets in respect of each country in which the MNE Group carries out its activities;
 - b. An identification of each Constituent Company of the MNE Group indicating the jurisdiction of tax residence of such Constituent Company, and, where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such Constituent Company is established, and the nature of the main business activity or activities for each such Companies.
2. The Report shall be submitted according to the form and definitions specified in the Standard Template attached in Annex (3) to Chapter (V) of the Economic Cooperation and Development (OECD) Transfer Pricing Guidelines and any amendment thereto.

Article (4)

Submission Date

1. The Report shall be submitted no later than the twelve (12) months grace period subsequent to the last day of the Reporting Fiscal Year of the MNE Group.
2. The obligation referred to in Clause (1) of this Article shall take effect on January 01, 2019.

Article (5)

Use and Confidentiality of Report Information

1. The Competent Authority shall use the Report to fulfil any of the following purposes:
 - a. Assessing the transfer pricing which is categorized as “high risk”;
 - b. Assessing other risks associated with Base Erosion and Profit Shifting in the State;
 - c. Assessing the risk of non-compliance by members of the MNE Group with applicable transfer pricing rules;
 - d. For economic and statistical analysis purposes;
 - e. The Competent Authority shall not, when carrying out Transfer Pricing adjustments, rely on the report.
2. The Competent Authority shall preserve the confidentiality of the information contained in the Report at least to the same extent that would apply if such information were provided thereto under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

Article (6)

Powers of the Competent Authority to request Information and Access Records

1. The Competent Authority may request information from the Reporting Entity or access its premises or place of work in the following cases:
 - a. Determining whether the information provided thereby and that is included in the Report under this Resolution is correct and complete;
 - b. Ensuring that any information not included in the report was omitted for a valid reason;
 - c. Inspecting the procedures adopted by the Reporting Entity in order to ensure the latter’s compliance with its obligations stipulated in this Resolution.

2. The Competent Authority may, by written notification, request the Reporting Entity to provide it, within a period not exceeding fourteen (14) Business Days, with any information -including copies of any records, books or other relevant documents- for any purpose relating to the implementation of any provisions of this Resolution.
3. The Competent Authority may request the Reporting Entity to do the following:
 - a. Present the records, books, or any other documents;
 - b. Provide information, clarifications, and any other additional data related to such information;
 - c. Provide full assistance as may be required by the Competent Authority in relation to the implementation of any provision of this Resolution, or of any international convention or agreement.

Article (7)

Maintenance and Submission of the Reports

1. Every Reporting Entity under this Resolution must maintain actual records for a period of five (5) years after the date on which its Report was submitted to the Competent Authority. The Reporting Entity may retain such records electronically, provided that those records are prepared in an electronically legible format in accordance with the laws and regulations relating to the retention of electronic records in force in the State.
2. If the Reporting Entity maintains or produces records (as required by this Resolution) in a language other than English, it shall, upon request, provide the Competent Authority with an English translation of these records.
3. Every Reporting Entity, and every Ultimate Parent Entity responsible for notification according to the provisions of Article (2) of this Resolution, shall submit to the Competent Authority the Report or notification (as the case may be) electronically using the technology and systems approved or provided by the Competent Authority, according to the form determined by the Competent Authority.
4. If the Reporting Entity enters into any arrangements or engages in a practice, the main purpose of which can reasonably be considered to avoid its obligations under this Resolution, the Reporting Entity shall remain responsible as if it had not entered into such arrangements or engaged in such practice.

Article (8)

Administrative Offences and Penalties

1. An administrative penalty shall be imposed on the Reporting Entity that fails to comply with the obligations set out in this Resolution as follows:
 - a. If the Reporting Entity fails to meet the deadline specified in Article (4) of this Resolution, it is liable:
 - i. to pay an administrative penalty of UAE Dirhams One Million (AED 1,000,000); and
 - ii. to pay an administrative penalty of UAE Dirhams Ten Thousand (AED 10,000) for each day that the failure continues with a maximum of UAE Dirhams Two Hundred Fifty Thousand (AED 250,000).
 - b. An administrative penalty of UAE Dirhams One Hundred Thousand (AED 100,000) shall be imposed if the Reporting Entity fails to maintain the documents and information required to be collected in the course of meeting its reporting obligations under this Resolution for a minimum period of five (5) years after the date of reporting the Report to the Competent Authority.

- c. An administrative penalty of UAE Dirhams One Hundred Thousand (AED 100,000) shall be imposed if the Reporting Entity fails to provide the Competent Authority with any information required in accordance with this Resolution.
 - d. An administrative penalty of a minimum of UAE Dirhams Fifty Thousand (AED 50,000) and with a maximum of UAE Dirhams Five Hundred Thousand (AED 500,000) shall be imposed if the Reporting Entity fails to provide the information required to be reported under this Decision in a complete and accurate manner.
2. If the Ultimate Parent Entity fails to provide the notification referred to in Clause (1) of Article (2) of this Resolution within the timeline stipulated in that Clause, it is liable:
 - i. to pay an administrative penalty of UAE Dirhams One Million (AED 1,000,000); and
 - ii. to pay an administrative penalty of UAE Dirhams Ten Thousand (AED 10,000) for each day that the failure continues with a maximum of UAE Dirhams Two Hundred Fifty Thousand (AED 250,000).
 3. With the exception of the additional penalty provided under Paragraph (2.a) of Clause (1) and the additional penalty provided under Paragraph (ii) of Clause (2), of this Article, the total penalties imposed on the Reporting Entity or on the Ultimate Parent Entity (as the case may be) in accordance with the provisions of this Resolution for any Reporting Fiscal Year, may not exceed, the amount of UAE Dirhams One Million (AED 1,000,000).

Article (9)

Procedures for Imposing Administrative Penalties

1. The Competent Authority may request certain actions that the Reporting Entity or the Ultimate Parent Entity must take subsequent to a violation of this Resolution as such Competent Authority may deem appropriate to ensure that the offence is not repeated.
2. The Competent Authority shall notify the Reporting Entity or the Ultimate Parent Entity in writing of any violation of any of the provisions of this Resolution, and it shall grant the Reporting Entity or the Ultimate Parent Entity (as the case may be) a grace period of fourteen (14) Business Days to remedy such violation, prior to applying the penalties stipulated in this Resolution.
3. The liability to pay the penalties stated in Article (8) above shall not arise if the Reporting Entity or the Ultimate Parent Entity (as the case may be), is able to convince the Competent Authority that there is a reasonable excuse for its failure to comply with any of the provisions of this Resolution. Such excuse provided to the Competent Authority shall be evaluated according to its absolute discretion.
4. For the purposes of Clause (3) of this Article, the below mentioned excuses shall not be considered reasonable:
 - a. That there are insufficient funds to comply with this Resolution;
 - b. That the information required under this Resolution is in the possession of a third party.
5. In the event where the reasonable excuse for the offence ceases to exist, the Reporting Entity or the Ultimate Parent Entity (as the case may be), remains covered by this excuse if it initiates, without any unreasonable delay, to remedy of the offence after its reason has ceased to exist.
6. If the Reporting Entity or the Ultimate Parent Entity (as the case may be) becomes liable to a penalty pursuant to Article (8) of this Resolution, the Competent Authority must determine the payable penalty value and notify the same to the relevant Entity.
7. The penalty value must be determined pursuant to Clause (6) of this Article within the period of six (6) months following the date on which the Reporting Entity or the Ultimate Parent Entity

(as the case may be) became liable for the payment of the penalty, or from the date on which the Competent Authority became aware of the offence.

8. The penalty imposed under this Article must be paid to the Competent Authority within thirty (30) Business Days from the date on which notification of the penalty was made to the Reporting Entity or the Ultimate Parent Entity (as the case may be), or the date on which a decision to turn down an appeal is issued in the event of such appeal being filed against the decision within the specified deadline.
9. Any other financial resources determined for the Fund according to a Cabinet Resolution.

Article (10)

Procedures of Appeal against the Decision to Impose Penalties

1. The Reporting Entity or the Ultimate Parent Entity (as the case may be), may complain about the decision imposing a penalty or about its value based on one of the following two reasons:
 - a. The relevant Entity did not commit any violation that warrants the imposition of the penalty;
 - b. Appeal against the amount of the penalty imposed on the relevant Entity.
2. The Appellant shall submit its appeal to the Competent Authority in writing within thirty (30) Business Days from the date on which the Reporting Entity is notified of the penalty in accordance with Clause (2) of Article (9) of this Resolution, and set out the grounds of such appeal.
3. The Competent Authority considering the appeal filed thereto under Clause (2) of this Article may confirm or cancel its decision imposing the penalty, and may as well decide to reduce the amount of the penalty imposed according to Paragraph (d) of Clause (1) of Article (8), of this Resolution.
4. The Competent Authority shall consider the appeal and notify the Reporting Entity or the Ultimate Parent Entity (as the case may be) of its decision in this respect within sixty (60) Business Days from the date of submitting the appeal, and shall notify its decision to the relevant Entity. If the Competent Authority fails to give a written notice of its decision on the appeal within the deadline specified in this Clause, then the appeal shall be deemed to have been successful and the penalty imposed shall be cancelled.

Article (11)

Executive Resolutions

The Minister of Finance shall issue the necessary resolutions for the implementation of the provisions of this Resolution.

Article (12)

Cancelations

The Cabinet Resolution no (32) of 2019 concerning the Regulation of the Submission of Reports by Multinational Companies shall be repealed, as well as every provision contradicting or conflicting with this Resolution.

Article (13)

Publication and Effective Date

This Resolution shall be published in the Official Gazette and shall come into force from date of issuance.

/Official Seal of the Cabinet/

/Original signed by HH Sheikh Mohamed Bin Rashid Al Maktoum/

Prime Minister

Issued by us:

Date : Shawal 12, 1441AH

Corresponding to : June 04, 2020AD