

## **Cabinet Resolution No. 44 of 2020 Regarding Organizing Reports Submitted by Multinational Companies**

### **The Cabinet:**

- Upon reviewing the Constitution;
- Federal Law No 1 of 1972 on the Competences of Ministries and Powers of Ministers, and any amendments thereof;
- Federal Law No. 5 of 1985 Promulgating the Civil Transactions Law, and any amendments thereof;
- Federal Law No. 3 of 1987 Promulgating the Penal Code, and any amendments thereof;
- Federal Law No. 10 of 1992 Promulgating the Law of Evidence in Civil and Commercial Transactions, and any amendments thereof;
- Federal Law No. 11 of 1992 Promulgating the Civil Procedure Code, and any amendments thereof;
- Federal Law No. 8 of 2004 on Financial Free Zones;
- Federal Law No. 2 of 2015 on Commercial Companies, and any amendments thereof;
- Federal Law by Decree No. 13 of 2016 Establishing the Federal Tax Authority;
- Federal Law No. 14 of 2016 on Violations and Administrative Penalties in the Federal Government;
- Federal Law No. 7 of 2017 on Tax Procedures;
- Federal Decree No. 48 of 2018 Approving the Multilateral Convention on Mutual Administrative Automatic Exchange of Information;
- Federal Decree No. 54 of 2018 Approving the Multilateral Convention on Mutual Administrative Assistance in Tax;
- Federal Decree No. 24 of 2019 Approving the Multilateral Agreement Concluded Between the Competent Authorities on the Exchange of Reports on a Country-by-Country Basis;
- Cabinet Resolution No. 32 of 2019 Organizing Reports Submitted by Multinational

Companies;

- Upon the proposal of the Minister of Finance, and the approval of the Cabinet;

**Has Resolved:**

## **Article (1)**

### **Definitions**

In application of the provisions of this Resolution, the following words and phrases shall have the meanings assigned to each of them, unless the context indicates otherwise:

- |                            |  |
|----------------------------|--|
| <b>State</b>               | : United Arab Emirates.  |
| <b>Competent Authority</b> | : Ministry of Finance.   |
| <b>Report</b>              | : The report pertaining to a Multinational Enterprises (MNE) Group which contains the data stated in Article 3 of this Resolution and which is submitted to the Competent Authority in accordance with the provisions of Article 2 of this Resolution.   |
| <b>Group</b>               | : A collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange.   |
| <b>MNE Group</b>           | : Any group that includes: <ol style="list-style-type: none"><li>1. Two or more enterprises the tax residence for which is in different countries, or includes an enterprise that is resident for tax purposes in one country and is subject to tax with respect to the business carried out through a permanent establishment in another country.</li><li>2. Which has a total consolidated group revenue that is</li></ol> |

equal to or more than 3,150,000,000 (three billion one hundred and fifty million) AED during the Fiscal Year immediately preceding the Reporting Fiscal Year as indicated in its Consolidated Financial statements for such preceding Fiscal Year.

- Constituent Enterprise** : Refers to any of the following:
1. Any separate business unit of an MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included 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 of any separate business unit of the MNE Group referred to in Clauses 1 or 2 above; provided that the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.
- Reporting Entity** : The Ultimate Parent Entity of an MNE Group the tax residence of which is located in the State and which is required to submit the report in accordance with the provisions of Clause 2 of Article 2 of this Resolution.
- Ultimate Parent Entity** : The Constituent Entity of the MNE Group, which is required to submit notification to the Competent Authority in accordance with the provisions of Clause 1 of Article 2 of this Resolution and meets the following

criteria:

- a. It owns directly or indirectly a sufficient interest in one or more other Constituent Enterprises of such MNE Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its country of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its country of tax residence.
- b. There is no other Constituent Entity of its Group that owns directly or indirectly an interest described in Paragraph A above in such Entity.

<b>Fiscal Year</b>	: An annual accounting period with respect to which the Reporting Entity prepares the financial statements of the MNE Group.
<b>Reporting Fiscal</b>	: The Fiscal Year during which the financial and operational results are stated in the report in accordance with Article 3 of this Resolution.
<b>Business Day</b>	: Any day except the weekend and public holidays, whether for the Private or Sector in the State.
<b>International Agreement</b>	: The Multilateral Convention on Mutual Administrative Automatic Exchange of Information, the Multilateral Convention for 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 of which provisions obligates its parties to exchange tax information, including automatic exchange of such information.
<b>Consolidated Financial</b>	: The financial statements of an MNE Group in which the

## **Statements**

assets, liabilities, revenues, expenses and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as the financial statements of a single economic entity.

## **Article (2)**

### **Notification and Reporting Obligation**

1. Each Ultimate Parent Entity of an MNE Group the tax residence of which is located in the State shall notify the Competent Authority that it is the Reporting Entity on a date not exceeding the last day of the Group's Reporting Fiscal Year.
2. Each Reporting Entity shall submit a report in accordance with the requirements of Article 3 of this Resolution to the Competent Authority with respect to its Reporting Fiscal Year on or before the date specified in Article 4 of this Resolution.

## **Article (3)**

### **Contents of Report**

1. The report shall include the following:
  - a. Aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each country in which the MNE Group carries out its activities.
  - b. An identification of each Constituent Entity of the MNE Group stating its country of tax residence, and the country in which such Entity is incorporated in case it is different from its country jurisdiction of tax residence, and the nature of the main business activity or activities of such Entity.
2. The Report shall be submitted in a form identical to and applying the definitions contained in the standard template attached to Annex 3 of Chapter 5 of the Organization for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines, and any amendments thereto.

## **Article (4)**

### **Date of Submission**

1. The report must be submitted in a date no later than the twelve (12) month 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 1 January 2019.

## **Article (5)**

### **Use and Confidentiality of Report Information**

1. The Competent Authority shall use the report to achieve the any of the following purposes:
  - a. Assessing high-level transfer pricing risks.
  - b. Assessing other base erosion and profit shifting related risks in the State.
  - c. Assessing the risk of non-compliance by members of the MNE Group with applicable transfer pricing rules.
  - d. For purposes of economic and statistical analysis.

Transfer pricing adjustments by the Competent Authority shall not be based 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 View Records**

1. The Competent Authority may request information from the Reporting Entity or enter its headquarters or place of work, in the following cases:
  - a. Determining whether the information provided thereby that is included in the report under this Resolution is correct and complete.
  - b. Ensuring that the information that was not included in the report was for a valid

reason.

- c. Examining the procedures established by the entity responsible for submitting the report for purposes of ensuring that the entity responsible for submitting the report complies with its obligations set out in this resolution.
2. The Competent Authority may request the Reporting Entity by written notification to provide it within a period not exceeding fourteen (14) business days any information-including copies of any records, books or other relevant documents – for any purpose with respect to the implementation of any provision of this Resolution.
3. The Competent Authority may request the Reporting Entity to do the following:
  - a. Presenting records, books or any other documents.
  - b. Providing information, clarifications, and any other additional data related to such information.
  - c. Providing all assistance required by the Competent Authority with respect to the implementation of any provision of this Resolution or any international treaty or agreement.

## **Article (7)**

### **Maintaining and Submitting Reports**

1. Each 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 maintain those records electronically, provided that those records are prepared in an electronic readable form in accordance with the laws and regulations in force in the State regulating the maintenance of electronic records.
2. If the Reporting Entity maintains or creates 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 in accordance with 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 technology and systems approved or provided by the Competent Authority, according to

the formula determined by the Competent Authority.

4. If the Reporting Entity makes any arrangements or participates in a practice that can reasonably be considered as mainly aimed at evading the obligation imposed thereon under this Resolution, such Entity remains responsible as if it has not entered into any of such arrangements or has not participated in such practice.

## **Article (8)**

### **Administrative Fines and Violations**

1. An administrative fine shall be imposed on the Reporting Entity that violates the obligations contained in this Resolution, as follows:
  - a. If the Reporting Entity fails to meet the deadline specified in Article 4 of this Resolution, the following shall be imposed thereon:
    1. An administrative fine of one million (1,000,000) AED, and
    2. An administrative fine of ten thousand (10,000) AED for each day that the failure continues and not exceeding two hundred and fifty thousand (250,000) AED.
  - b. An administrative fine of one hundred thousand (100,000) AED shall be imposed if the Reporting Entity fails to maintain the documents and information which it is required to collect in terms of fulfilling its notification obligations arising from this Resolution for a period not less than five (5) years as of the date of submitting the report to the Competent Authority.
  - c. An administrative fine of one hundred thousand (100,000) AED 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 fine not less than fifty thousand (50,000) AED and not exceeding five hundred thousand (500,000) AED shall be imposed if the Reporting Entity fails to fully and accurately report the information required to be provided under this Resolution.
2. If the Ultimate Parent Entity fails to provide the notification referred to in Clause 1 of Article 2 of this Resolution within the period specified in that Clause, the following shall be imposed thereon:



1. An administrative fine of one million (1,000,000) AED, and
2. An administrative fine of ten thousand (10,000) AED for each day that the failure continues and not exceeding two hundred and fifty thousand (250,000) AED.
3. With the exception of the additional fine stipulated in Paragraph 2/A of Clause 1 and the additional fine stipulated in Paragraph 2 of Clause 2 of this Article, the total fines imposed on the Reporting Entity or 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 one million (1,000,000) AED.

## **Article (9)**

### **Procedures of Imposing Administrative Fines**

1. The Competent Authority may request the Reporting Entity or the Ultimate Parent Entity to take certain measures after committing any violation of any of the provisions of this Resolution in accordance with what this Authority deems appropriate to ensure that the violation 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 this violation, prior to applying the fines stipulated in this Resolution.
3. The liability for paying the fines stated in Article 8 of this Resolution shall not arise if the Reporting Entity or the Ultimate Parent Entity (as the case may be) is able to convince the Competent Authority of a reasonable excuse for its failure to comply with any of the provisions of this Resolution. Such excuse given to the Competent Authority shall be assessed according to its absolute discretion.
4. For the purposes of Clause 3 of this Article, the excuses below shall not be considered reasonable excuses:
  - 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. If the reason for the reasonable excuse for the violation is removed, the Reporting Entity or the Ultimate Parent Entity (as the case may be) is considered to be under this excuse if it initiates without any unreasonable delay to remedy the violation after its reason has ceased to exist.
6. If the Reporting Entity or the Ultimate Parent Entity (as the case may be) becomes subject to a fine under Article 8 of this Resolution, the Competent Authority must determine the value of the fine to be paid, and notify it of that value.
7. The value of the fine shall be determined according to Clause 6 of this Article within the grace period of six (6) months subsequent to the date on which the Reporting Entity or the Ultimate Parent Entity (as the case may be) became liable for the payment of the fine, or the date on which the Competent Authority is informed of the violation.
8. The fine imposed under this Article shall be paid to the Competent Authority within a period of thirty (30) business days starting as of the date of notifying the Reporting Entity or the Ultimate Parent Entity (as the case may be) of the fine, or starting as of the date of issuing a decision to reject the grievance in the event of filing a grievance against the decision within the specified time.
9. Any other financial resources determined for the Fund by a Cabinet Resolution.

## **Article (10)**

### **Procedures for Grievance Against the Decision to Impose Fines**

1. The Reporting Entity or the Ultimate Parent Entity (as the case may be) may file a grievance against the decision to impose the fine or its value based on one of the following two reasons:
  - a. That it did not commit any violation requiring the imposition of the fine.
  - b. Disputing the value of the fine imposed thereon.
2. The grievant shall submit its grievance to the Competent Authority by virtue of a written document within thirty (30) business days as of the date of notification of the fine in accordance with Clause 2 of Article 9 of this Resolution, stating the reasons for the grievance submitted thereto.
3. The Competent Authority that considers the grievance submitted thereto pursuant to

Clause 2 of this Article may confirm or cancel its decision to impose the fine, and it may also decide to reduce the value of the imposed fine in accordance with Paragraph 1/D of Article 8 of this Resolution.

4. The Competent Authority shall consider the grievance and notify the Reporting Entity or the Ultimate Parent Entity (as the case may be) of its decision on the grievance within sixty (60) business days of submitting the grievance, and it shall notify it of its decision. If the Competent Authority fails to file a written notification of its decision on the grievance within the grace period specified in this Clause, the grievance shall then be considered admissible and the imposed fine shall be cancelled.

## **Article (11)**

### **Executive Resolutions**

The Minister of Finance shall issue the necessary resolutions to implement the provisions of this Resolution.

## **Article (12)**

### **Repeals**

The Cabinet Resolution No. 32 of 2019 Organizing Reports Submitted by Multinational Companies shall be repealed, as well as every provisions that violates or conflicts with this Resolution.

## **Article (13)**

### **Publication and Enforcement of the Resolution**

This Resolution shall be published in the Official Gazette and shall come into force as of the date of its issue.

**Mohammed Bin Rashid Al Maktoum**  
**The Prime Minister**

**Issued by us:**

**Date: 12 Shawwal 1441 H**

**Corresponding to: 4 June 2020**