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Ministerial Order No. (28) of (2021)

Concerning Country-by-Country Reporting

The Minister of Industry Commerce and Tourism having perused:

Legislative Decree No. 1 of 2021 with respect to promulgating the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports;

Legislative Decree No. 27 of 2015 concerning Commercial Registration as amended by Legislative Decree No. 52 of 2018;

Legislative Decree No. 21 of 2001 concerning Commercial companies as amended by Legislative Decree No. 53 of 2018;

Legislative Decree No.13 of 2018 with respect to promulgating the Convention on Mutual Administrative Assistance in Tax Matters;

Central Bank of Bahrain and Financial Institutions Law No. 64 of the year 2006 and its amendments.

And according to the presentation of the Undersecretary of Commerce Affairs

Has resolved the following:

Article 1

Definitions

For purposes of this Order the following terms have the following meanings:

a. Ministry: the Ministry concerned with the Commerce affairs.
b. Resident: Any entity considered resident in a country for tax purposes
c. Residency: residency in a country for tax purposes
d. The Report: the Country-by-Country report, which must be submitted annually by the Reporting Entity in accordance with the provisions of this Order and the instructions issued by the Organization for Economic Cooperation and Development, which are amended after reviewing from time to time.

e. Group: 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.

f. Multinational Enterprise (MNE) Group: any Group that includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, and is not an Excluded MNE Group in accordance with the provisions of this Order.

g. Excluded MNE Group: MNE Group, with respect to any Fiscal Year of the Group, having total consolidated group revenue of less than 342 million Bahraini Dinars during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year.

h. Constituent Entity: Any of the following enterprises:

   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 in such business unit of an MNE Group were traded on a public securities exchange;

   2) any such business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size or materiality grounds; and

   3) any permanent establishment of any separate business unit, of the MNE Group included in (a) or (b) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.

i. Ultimate Parent Entity: a Constituent Entity of an MNE Group that owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence, provided that there is no other Constituent Entity of such MNE Group that owns directly or indirectly an interest described above in the first mentioned Constituent Entity.

j. Reporting Entity: the Constituent Entity that is required to file a country-by-country report conforming to the requirements in accordance with the provisions of this Order in its jurisdiction of tax residence on behalf of the MNE Group.

k. Fiscal Year: an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements.

l. Reporting Fiscal Year: that Fiscal Year the financial and operational results of which are reflected in the country-by-country report defined in Article 5.

m. Qualifying Competent Authority Agreement: an agreement that is between authorized representatives of those jurisdictions that are parties to an International Agreement and that requires the automatic exchange of country-by-country reports between the party jurisdictions.

n. International Agreement: 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 Kingdom of Bahrain is a party, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information.

o. Consolidated Financial Statements: the financial statements of an MNE Group in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as those of a single economic entity.

Article 2

Scope

With the exception of the group of Excluded MNE Group, the provision of this Ministerial Order shall apply to every ultimate parent entity, including financial institutions licensed by the Central Bank of Bahrain, as of the fiscal year beginning on January 1 of 2021

Article 3

Notification

a. Any Constituent Entity of an MNE Group that is resident for tax purposes in the Kingdom of Bahrain shall notify the Ministry whether it is the Ultimate Parent Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group. The Ministry may extend the mentioned period with respect to the Fiscal Year starting on or after the beginning of January 2021. Where a Constituent Entity of an MNE Group that is resident for tax purposes in the Kingdom of Bahrain is not the Ultimate Parent Entity, it shall notify the Ministry of the identity and tax residence

of the Reporting Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group.

b. The Ministry may determine the form and method for submitting the notification stipulated in this article.

Article 4

Obligation to Submit the Report

Each ultimate parent entity that is resident in the Kingdom of Bahrain shall file the Report to the Ministry conforming to the requirements of Article 5 of this Ministerial order for the reported fiscal year no later than twelve months from the last day of the reported fiscal year for the MNE Group

Article 5

Contents of the Report

a. A country-by-country report with respect to an MNE Group shall contain

    1. 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 jurisdiction in which the MNE Group operates;
    2. An identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of such Constituent Entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such Constituent Entity is organized, and the nature of the main business activity or activities of such Constituent Entity.

b. The Report shall be filed in a form identical to and applying the definitions and instructions contained in the standard template set out at Annex III of Chapter v of the OECD Transfer Pricing Guidelines, and the OECD Country-by-Country Reporting XML Schema User Guide, as may be modified from time to time.

c. The Report stipulated in this article must be submitted in the manner specified by the Ministry

Unofficial Translation

Article 6

Confidentiality of Information

The Ministry shall preserve the confidentiality of the information contained in the Report, to the same extent that would apply if such information were provided to it under the provisions of an International Agreement.

Article 7

Penalties

Without prejudice to the provisions of Article (19) of Legislative Decree No. (27) of 2015 regarding the Commercial Registry, anyone who violates the provisions of this decision shall be punished with the penalties stipulated in Article (20) of the same law.

Article 8

Implementation

This Order shall be implemented by the Undersecretary of Commerce Affairs and shall be effective as of the date of its issue and shall be published in the Official Gazette.

Minister of Industry, Commerce & Tourism

Zayed R. Alzayani

Issued on: 3 February 2021