Demystifying Disputes in Country-by-Country Reporting Compliance

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Country-by-Country Reporting (CbCR) compliance obligations for multinational entity groups (MNCs or multinational companies) were introduced in the UAE in mid-2019 via Cabinet Resolution No. 32 of 2019, where the first notification and reporting deadline was set for 31 December 2019.

There is no shortage of industry experts in the UAE to have assisted MNCs with the technical elements of the submissions with respect to contents of the report, identification of constituent entities, tax residency parameters, and so.

In this article, we look at the penalties that could be imposed on an MNC for violation the CbCR compliance obligations, and how to dispute those penalties before the competent authorities.

Penalties

The Ministry of Finance, which oversees CbCR compliance, has the authority to implement penalties of various proportions on the reporting entity (e.g. the MNC);

- Failure to retain CbCR compliance documents/data for a minimum period of five years after the date of reporting to the Ministry of Finance: AED 100,000;
- Failure to provide the Ministry of Finance with any information requested: AED 100,000;
- Failure to report information in a complete and accurate manner: AED 50,000 to AED 500,000; and

- Failure to submit on the reporting date or failing to notify the Ministry of Finance on or before the reporting date of the intention to file for a certain accounting period: AED 1,000,000 and AED 10,000 daily until the failure is resolved, or the daily amount reaches ED 250,000.

The Ministry of Finance must notify the reporting entity in writing if the reporting entity violates any CbCR compliance requirements and should provide a grace period of fourteen business days for the reporting entity to rectify the contravention.

If the reporting entity fails to rectify, the penalties would apply, and the reporting entity must be notified of the penalties within six months of the date the penalty liability arises, or the violation comes to the attention of the Ministry of Finance.

Insufficiency of funds or lack of access to information are not cause for excuse against the imposition of a penalty.

Any penalty applied must be settled by the reporting entity within 30 business days from the notification date of the penalty, or the date of which a grievance against the penalty has been denied.

Grievance

If the reporting entity may submit a grievance if it has grounds to believe that; (i) it did not commit a violation that warrants the imposition of a penalty; or (ii) disagrees with the amount of the penalty imposed on it.

The grievance must be submitted to the Ministry of Finance within 30 business days from the date of notification of the penalty.

The Ministry of Finance must notify the reporting entity of

its decision within 60 business days. If no decision is provided to the reporting entity within 60 business days, then the grievance is deemed accepted, and the penalty imposed shall be canceled.

Litigation

Cabinet Resolution No. 32 of 2019 on the CbCR compliance regulations is silent on what occurs if the Ministry of Finance decides to reject the grievance.

In this case, the reporting entity may turn to the Civil Procedures Law which provides the reporting entity with an avenue to apply for the annulment of the Ministry of Finance's rejection of the grievance in its nature as an administrative decision.

The appeal would be lodged before the administrative circuit of the federal courts and must be lodged with 60 calendar days from the date the reporting entity is notified of the Ministry of Finance's rejection of the grievance, or the date on which the reporting entity is otherwise proved to have admittedly been informed of the rejection.

Grounds for Appeal

As a general matter, Emirati jurisprudence provides that administrative decisions by government bodies (or civil servants) may be appealed on five grounds;

- if a decision is outside the administrative powers of the government body;
- procedural issues in that the government body does not issue its decision pursuant to the steps and procedures provided for by law (e.g. Supreme Court Case No. 146/1985);
- lack of jurisdiction whereby the government body is not the competent body to issue the decision in dispute

(e.g. Supreme Court Case No. 258/1993);

- lack of reasoning whereby the decision issued does not provide the legal or factual grounds to support its action (e.g. Supreme Court Case No. 772/2004); and
- abuse of power in cases where an administrative decision is issued in an arbitrary manner, or in a manner that deviates from public benefit (e.g. Supreme Court Case No. 89/2001).

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