

GERMANY

Implementation of BEPS into German Transfer Pricing Legislation

On June 1, 2016 the Federal Ministry of Finance (Bundesministerium der Finanzen) published its draft for the "legislation of implementation of the modification of the EU mutual assistance directive and further acts against profit reduction and transfer of profits".

This draft should mainly include the recommendation of the BEPS-Project and modifications of the EU mutual assistance directive. The priority of the draft is a country by country reporting (CbCR)

Content of the draft:

- **Action plan 13 Revision of Offset price documentation and introduction of Country-by-Country-Reporting (CbCR)** This measure will become shortly due according to the „BEPS-Umsetzungsgesetz I" (BEPS-Transposition-law 1). For this, obligations of documentation are going to be codified in § 138a AO (Country related report).

Following the OECD-guidelines, CbC-Reporting only has to be conducted by concerns that have surpassed consolidated sales of over € 750 million in the prior year.

The CbC-Reporting is to be conducted and handed to the responsible tax administration by main affiliations only. Tax administration will then share this data with other states in line with the automatic information exchange. Filing in a state of a lower tier affiliation (Secondary Filing Obligation) may be required, if

- a) There is no such obligation in the state, where the main affiliation is located.
- b) No data has been filed in the state, where the main affiliation is located.
- c) No forwarding has been prompted in the state, where the main affiliation is located.

The CbC-Reporting may not be used for immediate adaption of offset pricing, there is however a risk (not only for the German financial administration), that, in case of other reasons given, adaption of the offset prices will be conducted by other states, as the prices may not be considered to be adequate. At this point it will be of high importance to agree on a compulsory arbitration with as many states as possible.

As a comparison, a verdict of the FG Cologne dating the 07.09.2015 - V 1375/15, EFG 2015 S. 1769 (specifically on the topic "taxpayer confidentiality").

- **Action plan 14 More effective settlement of dispute procedures:** The joint administration regarding mutual agreement and arbitration procedures will be improved. The number of mutual agreement procedures is increasing continuously; further increase is to be expected due to realization of CbC-Reporting (Action plan 13). So far 20 states ("Coalition of the Willing") have agreed on an effective and prompt solution of agreement conflicts through compulsory arbitration agreements. Therefore, a prompt realization could follow on a national base due the "BEPS-Umsetzungsgesetz I". Realization through internal administration could also be considered. As an example, sufficiency of personnel and equipping of the Federal Central Tax Office is mandatory.

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