

GOVERNMENT OF PAKISTAN
REVENUE DIVISION
FEDERAL BOARD OF REVENUE

Islamabad, the 16th November, 2017.

**NOTIFICATION
(Income Tax)**

S.R.O. 1191(1)/2017.- In exercise of the powers conferred by sub-section (1) of section 237 of the Income Tax Ordinance, 2001 (XLIX of 2001), the Federal Board of Revenue is pleased to direct that the following further amendments shall be made in the Income Tax Rules, 2002, the same having been previously published *vide* Notification No. S.R.O 421(I)/2017, dated the 5th June, 2017, as required by sub-section (3) of the said section, namely:-

In the aforesaid Rules,-

(1) after Chapter VI, the following new Chapter shall be inserted, namely:-

“CHAPTER - VIA

DOCUMENTATION AND COUNTRY-BY-COUNTRY REPORTING REQUIREMENTS

**PART-I
PRELIMINARY**

27A. Application of this chapter:- (1) This chapter shall apply for the purposes of sub-sections (3) to (5) of section 108.

(2) The purpose of this Chapter is to prescribe documents, information, files and reports which certain taxpayers are required to keep, maintain and furnish to the Commissioner under sub-sections (3) to (5) of section 108.

(3) Nothing in this Chapter shall preclude a taxpayer accounting for income chargeable under the Ordinance, from-

- (a) maintaining any books of account, documents or records in addition to those prescribed in these rules; or

- (b) maintaining the books of account, documents or records in the manner prescribed keeping in view the head of the income of the taxpayer and, wherever applicable, the nature of the taxpayer's business.

(4) Definitions.- In this Chapter,—

- (a) “consolidated financial statements” mean 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;
- (b) “competent authority agreement” means an agreement,—
 - (i) that is between authorised representatives of those foreign jurisdictions that are parties to an international agreement with Pakistan; and
 - (ii) that provides legal authority for the automatic exchange of country-by-country reports between the party jurisdictions;
- (c) “constituent entity” means,—
 - (i) any separate entity 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 to be traded on a stock exchange;
 - (ii) any such entity that is excluded from the MNE group’s consolidated financial statements solely on size or materiality grounds; and
 - (iii) any permanent establishment of any separate entity of the MNE group included in sub-clauses (i) or (ii), provided the entity prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes;

(d) “country-by-country report” means a report in respect of an MNE group, containing—

(i) the aggregate information in respect of the amount of revenue, profit or loss before income tax, amount of income tax paid, amount of income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets not being cash or cash equivalents, with regard to each country or territory in which the group operates;

(ii) the details and identification of each constituent entity of the group including the country or territory in which such constituent entity is incorporated or organised or established and the country or territory where it is resident; and

(iii) detailed description of the nature and details of the main business activity or activities of each constituent entity; and

(e) “entity” includes a company;

(f) “fiscal year” means-

(i) a tax year, in a case where the ultimate parent entity or surrogate parent entity is resident of Pakistan; and

(ii) an annual accounting period with respect to which the ultimate parent entity of the MNE group prepares its financial statements under any law for the time being in force or the applicable accounting standards of the country or territory of which such entity is a resident, in case the ultimate parent entity or surrogate parent entity is not resident of Pakistan;

(g) “group” means a collection of entities related through ownership or control, such that-

(i) it is either required to prepare consolidated financial statements for financial reporting purposes under any law for the time being in force or the accounting standards of the country or territory of which the parent entity is resident; or

- (ii) would have been required to be prepared had the equity shares of any of the entity were listed on a stock exchange in the country or territory of which the parent entity is resident;
- (h) “international agreement” means an agreement referred to in subsection (1) of section 107 and includes the Multilateral Convention for Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral tax convention or any Tax Information Exchange Agreement to which Pakistan 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;
- (i) “MNE group” means any group that-
 - (i) includes two or more entities the tax residence for which is in different jurisdictions or includes an entity 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
 - (ii) has a total consolidated group revenue equivalent to seven hundred and fifty million euros or more, or an equivalent amount in Pakistan Rupees, during the fiscal year immediately preceding the reporting fiscal year as reflected in its consolidated financial statements for such preceding fiscal year;
- (j) “reporting entity” means the constituent entity including the parent entity or the surrogate parent entity or any constituent entity under rule 27D, that is required to file a country-by-country report in its jurisdiction of tax residence on behalf of the MNE group;
- (k) “reporting fiscal year” means that fiscal year, the financial and operational results of which are reflected in the country-by-country report;

- (l) “surrogate parent entity” means any constituent entity of the MNE group that has been designated by such MNE group, in place of the ultimate parent entity, to file the country-by-country reports in the country or territory in which the said constituent entity is resident, on behalf of such MNE group;
- (m) “systemic failure” with respect to a country or territory means that the country or territory has a competent authority agreement in effect with Pakistan, for automatic exchange of country-by-country reports, but-
 - (i) has suspended automatic exchange, for reasons other than those that are in accordance with the terms of that agreement; or
 - (ii) otherwise persistently failed to automatically provide to Pakistan country-by-country reports in its possession of MNE groups that have constituent entity or entities in Pakistan;
- (n) “ultimate parent entity” means a constituent entity of an MNE group that meets the following criteria, namely:-
 - (i) it owns directly or indirectly a sufficient interest in one or more constituent entities of such MNE group such that it is required to prepare consolidated financial statements under any law for the time being in force or the accounting standards of the country or territory of which the entity is resident or it would have been required to prepare a consolidated financial statement had the equity shares of any of the enterprises were listed on a stock exchange in the country or territory of which the entity is resident; and
 - (ii) there is no other constituent entity of such MNE group that owns directly or indirectly an interest described in sub-clause (i) in the first mentioned constituent entity.

PART-II
COUNTRY-BY-COUNTRY REPORTING REQUIREMENTS

27B. For every fiscal year, every constituent entity resident in Pakistan, if the constituent entity is not the ultimate parent company or the surrogate parent entity, shall furnish to the Board, on or before the date the constituent entity is required to file return under section 118, the details of the ultimate parent entity or the surrogate parent entity of the MNE group and the country or territory of which the said entities are resident:

Provided that for fiscal year relating to tax year 2017, the information shall be provided by fifteenth day of February, 2018.

27C. For every fiscal year, every constituent entity resident in Pakistan, if the constituent entity is the ultimate parent company or the surrogate parent entity, shall furnish to the Board, on or before the date the constituent entity is required to file return under section 118, the information whether the constituent entity is an ultimate parent entity or the surrogate parent entity:

Provided that for fiscal year relating to tax year 2017, the information shall be provided by fifteenth day of February, 2018.

27D. (1) Every ultimate parent entity or the surrogate parent entity resident in Pakistan shall, for every reporting fiscal year in respect of the MNE group of which it is a constituent entity, furnish country-by-country report to the Board on or before the due date specified under rule 27G.

(2) The Board, for every reporting fiscal year in respect of every MNE group, whose ultimate parent entity or the surrogate parent entity resident in Pakistan is required to furnish country-by-country report under sub-rule (1) or the constituent entity under rule 27E, shall transmit and exchange country-by-country reports to the jurisdictions that are parties to the competent authority agreement as defined in clause (b) of sub-rule (4) of rule 27A, on or before the due date specified under rule 27G.

(3) The requirements under sub-rules (1) and (2) shall be for reporting fiscal years relating to tax year 2017 and onwards.

27E. A constituent entity resident in Pakistan, which is neither the ultimate parent entity nor the surrogate parent entity of an MNE group, shall file a country-by-country report to the Board with respect to the reporting fiscal year of an MNE group of which it is a constituent entity, on or before the date specified under rule 27G, if -

- (a) the ultimate parent entity of the MNE group is not obligated to file a country-by-country report in the country or territory of which the ultimate parent entity is a resident;
- (b) the country or territory in which the ultimate parent entity is resident has an international agreement to which Pakistan is a party but does not have a competent authority agreement to exchange country-by-country report;
or
- (c) there has been a systemic failure of the country or territory of which the ultimate parent entity is a resident and the said failure has been intimated by the Board to such constituent entity:

Provided that where there are more than one constituent entities of the same MNE group that are resident in Pakistan and one or more of the above conditions apply, the MNE group may designate one of such constituent entities to furnish the country-by-country report to the Board with respect to any reporting fiscal year on or before the date specified under rule 27G and to intimate in writing to the Board that the filing is intended to satisfy the filing requirement of all the constituent entities of such MNE group that are resident in Pakistan.

27F. The provisions of rule 27E shall not apply, if a surrogate parent entity of the MNE group has furnished a country-by-country report with respect to any reporting fiscal year with the tax authority of country or territory of which the surrogate parent entity is a resident on or before the date specified under rule 27G and satisfies the following conditions, namely:-

- (a) the surrogate parent entity is required to file the country-by-country reports in the country or territory in which such entity is resident;
- (b) the country or territory in which the surrogate parent entity is resident has a competent authority agreement with Pakistan;
- (c) the country or territory in which the surrogate parent entity is resident has not intimated the Board of a systemic failure;

- (d) the country or territory in which the surrogate parent entity is resident has been intimated in writing by the said entity that it is the surrogate parent entity designated by the MNE group; and
- (e) the Board has been intimated in accordance with rule 27D.

27G. (1) The country-by-country report required to be filed under this chapter shall be filed not later than twelve months after the last day of the reporting fiscal year of the MNE group, in the manner and as provided in Form A and Tables specified in the Schedule to this Chapter:

Provided that for tax year 2017 country-by-country report required to be filed under this chapter shall be filed by thirty first day of March, 2018.

(2) The country-by-country reports required to be transmitted and exchanged under rule 27D to the jurisdictions that are parties to the competent authority agreement as defined in clause (b) of sub-rule (4) of rule 27A shall be so transmitted and exchanged not later than fifteen months after the last day of the reporting fiscal year of the MNE group, in the manner and as provided in Form A and Tables specified in the Schedule to this Chapter:

Provided that for tax year 2017 country-by-country report required to be transmitted and exchanged by the Board under this chapter shall be transmitted and exchanged by thirtieth day of June, 2018.

27H. (1) The country-by-country reports shall be appropriately used.

(2) Appropriate use of country-by-country reports means that the data or information obtained from such reports shall only be used for purposes of —

- (a) conducting high level and informed transfer pricing risk assessment;
- (b) assessment of other base erosion and profit shifting (BEPS) related risks;
- (c) economic and statistical analysis, where appropriate.

Explanation.- For the purpose of clause (b), BEPS related risks refer to risks that may result in the erosion of Pakistan's tax base resulting from strategies adopted by the MNE groups that make use of tax rules and legislation of different jurisdictions to artificially shift profits to low or no tax jurisdictions where there is little or no economic

activity and consequently reduce the overall tax payable by the MNE group. The rules or legislation may include tax credits, carry-forward of losses, hybrid entities, hybrid financial instruments, conduit companies, the use of derivatives to avoid withholding taxes, and profit shifting using the contractual allocation of risk and the pricing of intangibles.

(3) The data in the country-by-country reports shall not be used for purposes of making transfer pricing adjustments on the basis of an income allocation formula or based on a global formulary apportionment of income.

Explanation.- For the removal of doubt it is hereby clarified that nothing in this rule shall prevent making enquiries into the MNE group's transfer pricing arrangements or into other tax matters in the course of a transfer pricing audit.

(4) Transfer Pricing risk assessment based on the data contained in country-by-country reports shall not be made by an authority below the rank of Commissioner or Director, as the case may be:

Provided that such authority shall obtain prior approval for conducting risk assessment from Director General of Transfer Pricing to ensure that data or information contained in country-by-country report has not been used inappropriately.

(5) To ensure that data or information contained in country-by-country report has been used appropriately in making transfer pricing risk assessment, Director General of Transfer Pricing, on its own or on a request, may issue a circular setting out the guidance or instructions on appropriate use of data contained in such reports and shall be binding on the tax authorities.

(6) Subject to the Ordinance, Director General of Transfer Pricing in issuing circulars referred to in sub-rule (5) shall also be guided by international standards and guidelines issued by the various tax-related internationally recognized organizations.

(7) Where the information or data contained in country-by-country report has not been used appropriately, the Board shall —

- (a) notify the breach of appropriate use, to the Co-ordinating Body Secretariat of Organization of Economic Cooperation and Development (OECD) or other competent authority; and

(b) concede inappropriate adjustments in competent authority proceedings that involve a tax adjustment using an income allocation formula or a global formulary apportionment of income based on information from country-by-country report.

(8) The Board may, from time to time, review and update any existing or additional requirements for appropriate use of data or information contained in country-by-country reports.

27I. The Board shall preserve the confidentiality of the information contained in the country-by-country report at least to the same extent that would apply if such information were provided to it under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

27J. On behalf of the Board, Director General of Transfer Pricing shall be the authority authorized to:

- (a) receive country-by-country reports as specified in rule 27D; and
- (b) transmit and exchange country-by-country reports to the jurisdictions that are parties to the competent authority agreement as defined in clause (b) of sub-rule (4) of rule 27A:

Provided that till the appointment of Director General of Transfer Pricing, the authority to receive, transmit or exchange country-by-country reports shall be the Member (Inland Revenue Policy).

PART-III

DOCUMENTATION REQUIREMENTS

27K. Notwithstanding the provisions of sub-clause (ii) of clause (i) of sub-rule (4) of rule 27A, every taxpayer, being a constituent entity of an MNE group and having a turnover of more than one hundred million Rupees, shall keep and maintain a master file.

27L. Master file as referred to in rule 27K, shall contain standardised information relevant for all MNE group members and must include -

- (a) chart illustrating the MNE's legal and ownership structure and geographical location of operating entities;
- (b) general written description of the MNE's business including -
 - (i) important drivers of business profit;
 - (ii) a description of the supply chain for the group's five largest products or service offerings by turnover plus any other products or services amounting to more than five percent of group turnover. The required description could take the form of a chart or a diagram;
 - (iii) a list and brief description of important service arrangements between members of the MNE group, other than research and development (R&D) services, including a description of the capabilities of the principal locations providing important services and transfer pricing policies for allocating services costs and determining prices to be paid for intra-group services;
 - (iv) a description of the main geographic markets for the group's products and services that are referred to in sub-clause (ii);
 - (v) a brief written functional analysis describing the principal contributions to value creation by individual entities within the group, i.e. key functions performed, important risks assumed and important assets used; and
 - (vi) a description of important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year;
- (c) information of intangibles, including -
 - (i) a general description of the MNE's overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management;
 - (ii) a list of intangibles or groups of intangibles of the MNE group that are important for transfer pricing purposes and

which entities legally own them including entities responsible for the Development, Enhancement, Management, Protection or Exploitation (DEMPE) functions with respect to such intangibles;

- (iii) a list of important agreements among identified associated enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and licence agreements;
 - (iv) a general description of the group's transfer pricing policies related to R&D and intangibles; and
 - (v) a general description of any important transfers of interests in intangibles among associated enterprises during the fiscal year concerned, including the entities, countries and compensation involved;
- (d) inter-company financial activities, including -
- (i) a general description of how the group is financed, including important financing arrangements with unrelated lenders;
 - (ii) The identification of any members of the MNE group that provides a central financing function for the group, including the country under whose laws the entity is organised and the place of effective management of such entities; and
 - (iii) a general description of the MNE's general transfer pricing policies related to financing arrangements between associated enterprises; and
- (e) annual consolidated financial statement for the fiscal year concerned if otherwise prepared for financial reporting, regulatory, internal management, tax or other purposes.

27M. Every taxpayer shall keep, maintain and make available, a local file for all transactions, exceeding fifty million Rupees, with the associates. The local file shall be made available, if required by the Commissioner under section 108, at any time after the due date of filing of return under section 118.

27N. Local file referred to in rule 27M, shall include -

- (a) local entity structure including its management structure of the local entity, a local organization chart and a description of the individuals to whom local management reports and the country or countries in which such individuals maintain their principal offices;
- (b) a detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity;
- (c) key competitors;
- (d) information for each category of controlled transactions in which the taxpayer is involved, including -
 - (i) a description of all the controlled transactions (e.g. procurement of manufacturing services, purchase of goods, provision of services, loans, financial and performance guarantees, licences of intangibles, etc.) and the context in which such transactions take place;
 - (ii) the amount of intra-group payments and receipts for each category of controlled transactions involving the local entity (i.e. payments and receipts for products, services, royalties, interest, etc.) broken down by tax jurisdiction of the foreign payer or recipient;
 - (iii) an identification of associated enterprises involved in each category of controlled transactions and the relationship amongst them;
 - (iv) detailed list of all inter-company agreements and copies of all such agreements concluded by the taxpayer;
 - (v) a detailed comparability and functional analysis of the taxpayer and relevant associated enterprises with respect to each documented category of controlled transactions, including any changes compared to prior three years;

- (vi) an indication of the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method;
 - (vii) detailed information on transfer pricing methods applied including comparable searches criteria, results of searches and application of transfer pricing method;
 - (viii) information regarding periodically updating and refreshing comparable searches and the period after which such comparable searches are updated and refreshed; and
 - (ix) list of all existing unilateral and bilateral or multilateral advance pricing agreements and copies thereof and other tax rulings to which Pakistan is not a party and which are related to controlled transactions described as aforesaid; and
- (e) financial information including -
- (i) annual local entity financial accounts for the fiscal year concerned. If audited statements exist they should be supplied and if not, existing unaudited statements should be supplied;
 - (ii) information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements; and
 - (iii) summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

270. Failure to maintain or furnish documents by the taxpayer required to be maintained under this chapter shall be subject to penalty or penalties under section 182 of the Ordinance.

Schedule
[see rule 27G(2)]
Country-by-Country Report

1. Is this an amended report? Yes No
2. Enter the last day of reporting tax year of the MNE group for which you are reporting (see instruction) Year Month Day
3. Does this report cover a full reporting tax year ? Yes No
4. If no, indicate the number of month for which you are reporting _____

Reporting Entity Section

Section 1
Reporting Entity Identification

Form A

Check one box only to indicate the type of reporting entity and complete the areas that apply			
Person (Company/Trust/AOP)			
Incorporation/Registration Number			
Enter the name of MNE group			
Reporting Entity's address			
Street Number	Street		
City	Province or territory	Country code	Postal code

Section 2
Role of the Reporting Entity

Check one box only to indicate the reporting role of the entity filing this report (see instructions)	
<input type="checkbox"/>	Ultimate parent entity
<input type="checkbox"/>	Surrogate parent entity
<input type="checkbox"/>	Constituent entity
If you selected constituent entity, is this report filed on behalf of all constituent entities of the MNE group in Pakistan for the reporting fiscal year?	
<input type="checkbox"/>	Yes <input type="checkbox"/> No
If you selected surrogate parent entity or constituent entity, provide the name and country of residence for tax purposes of the ultimate parent entity.	

Name of ultimate parent entity	Country code

Section 3
Certification

I certify that the information given on this form is, to my knowledge, correct and complete, and fully discloses the reporting entity's related information		If someone other than the reporting entity prepared this form, provide their;
Name of certifier		Name of contact
Sign here (it is a serious offence to file a false statement)		Address
Position/title of certifier		
Telephone number of certifier	Date (DD-MM-YYYY)	Telephone number of contact

COUNTRY-BY-COUNTRY REPORT

TABLE 1

Overview of allocation of income, taxes and business activities by tax jurisdiction

Name of the MNE group: Fiscal year concerned: Currency:										
Tax Jurisdiction	Revenues			Profit (Loss) Before Income Tax	Income Tax Paid (on cash basis)	Income Tax Accrued – Current Year	Stated capital	Accumulated earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)

TABLE 2

List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Name of the MNE group: Fiscal year concerned:															
Tax Jurisdiction	Constituent Entities resident in the Tax Jurisdiction	Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence	Main business activity(ies)												
			Research and Development	Holding/managing intellectual property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of services to unrelated parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding shares or other equity instruments	Dormant	Other ¹
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
	1.														
	2.														
	3.														
	1.														
	2.														
	3.														

¹Please specify the nature of the activity of the Constituent Entity in the “Additional Information” section.

TABLE 3

Additional Information

Name of the MNE group: Fiscal year concerned:
<i>Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the country-by-country report.</i>

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[F.No. 7(21) TPU/2017]


(Sajida Kausar)
Secretary (Transfer Pricing Unit)