Pursuant to Article 14f paragraph 4 of the Law on Tax Administration (Official Gazette of Republic of Montenegro No. 65/01 and 80/04 and Official Gazette of Montenegro No. 20/11, 28/12, 8/15, 47/17, 52/19 and 145/21), the Ministry of Finance passed

INSTRUCTIONS

ON DETAILED MANNER OF FILING BUSINESS RELATED DATA THAT MULTINATIONAL ENTERPRISE GROUP CONSTITUENT ENTITY SUBMITTS TO ADMINISTRATION AUTHORITY COMPETENT FOR TAX AFFAIRS

 1. These Instructions prescribe a detailed manner of filing business related data that Multinational Enterprise Group Constituent Entity (hereinafter: MNE Group Constituent Entity) submits to administration authority competent for tax affairs (hereinafter: Tax Authority).

2. MNE Group Constituent Entity shall be deemed to be:

- a MNE Group Constituent Entity that is included in reports including financial statements of an MNE Group in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and the Constituent Entity are presented as those of a single economic entity (hereinafter: Consolidated Financial Statement) of the MNE Group or it would be so included if equity interests in such an entity were traded on a public securities exchange.

- a MNE Group Constituent Entity that is excluded from the MNE Group's Consolidated Financial Statements solely on size or materiality grounds, or

- any permanent establishment of any MNE Group Constituent Entity referred to in indents 1 and 2 of this item, provided the permanent establishment has obligation to prepare separate financial statements in accordance to regulations of European Union Member States or other states, or states’ territories (hereinafter: Tax Jurisdictions)

3. A MNE Group Constituent Entity, resident in Montenegro for tax purposes, shall file a report for MNE Group of which it is a Constituent Entity to the Tax Authority on business activities of all MNE Group Constituent Entities with respect to the annual accounting period for which Ultimate Parent Entity has obligation to prepare its financial statements (hereinafter: Fiscal Year), given in Template 1 which is the integral part of these Instructions.

4. A MNE Group Constituent Entity, resident in Montenegro for tax purposes, which is not the Ultimate Parent Entity, shall file a report to the Tax Authority with respect for the Fiscal Year, if:

- the Ultimate Parent Entity of the MNE Group is not obligated to file that report to the competent authority of its jurisdiction of tax residence,

- the jurisdiction in which the Ultimate Parent Entity is resident has a current International Agreement to which Montenegro is a party, but provided that it does not have in effect a Qualifying Competent Authority Agreement to which Montenegro is a party by the expiration of the 12 months since the last day of a year in which the financial and operational results are generated (hereinafter: Reporting Fiscal Year) for which such report is being filed

- there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Tax Authority to the MNE Group Constituent Entity resident for tax purposes in Montenegro.

5. The Ultimate Parent Entity means a Constituent Entity of an MNE Group if:

- it owns or controls directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that it is required to prepare, file and publish Consolidated Financial Statements under the International Accounting Standards (hereinafter: IAS) or International Financial Reporting Standards (hereinafter: IFRS), or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence, and

- there is no other Constituent Entity of such MNE Group that owns or controls directly or indirectly that entity and has obligation in accordance with indent 1 of this item.

6. A MNE Group Constituent Entity, resident in Montenegro for tax purposes shall request its Ultimate Parent Entity to provide it with all information required for it to file a report referred to in item 3 of these Instructions.

7. A MNE Group Constituent Entity, resident in Montenegro for tax purposes shall notify the Tax Authority that the Ultimate Parent Entity has failed to provide it with necessary information referred to in Item 6 herein, within 12 months from the last day of the Reporting Fiscal Year.

8. The Tax Authority shall notify the tax jurisdiction competent authority on failure to provide information referred to in item 7 of these Instructions.

9. The multinational enterprise group means a collection of enterprises related through ownership or control under IAS or IFRS, and whose total consolidated group revenue of at least EUR 750 000 000 during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements and whose one or more Constituent Entities is either required to prepare, file and publish Consolidated Financial Statements under IAS or IFRS or would be so required if equity interests in that entity were traded on a public securities exchange, and that includes at least one Constituent Entity whose tax residence is different than that of other MNE Group Constituent Entities, 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 tax jurisdiction.

 10. If more than one Constituent Entities of the same MNE Group are resident in the European Union for tax purposes, when at least one condition set out in point 4 of these Instructions applies, the MNE Group may designate a MNE Group Constituent Entity, which is resident in Montenegro for tax purposes, to file the report referred to in point 3 of these Instructions on behalf of all Constituent Entities of such MNE Group.

11. A MNE Group Constituent Entity, referred in point 10 herein, shall file the report referred to in point 3 herein with the Tax authority.

12. The Tax authority shall communicate the report referred to in item 10 herein to the competent tax authority of jurisdiction in which, on the basis of the information in that report, at least one Constituent Entities of the MNE Group of the Reporting Entity is either resident for tax purposes or is subject to tax with respect to the business carried out through a permanent establishment.

13. Where the MNE Group Constituent Entity referred to in items 10 and 11 herein has not obtained or acquired the information required to file the report referred to in item 3 herein, then such Constituent Entity shall not be eligible to be designated to be the Reporting Entity for the MNE Group.

14. The MNE Group Constituent Entity referred to in items 10 and 11 herein notify the Tax Authority that the Ultimate Parent Entity has refused to make the necessary information available.

​ 15. The Systemic Failure with respect to the tax jurisdiction means either that the jurisdiction has a Qualifying Competent Authority Agreement in effect with a Member State but has suspended automatic exchange, or that a jurisdiction otherwise is not required to automatically provide to a Member State reports in its possession of MNE Groups that have Constituent Entities in that state.

 16. The MNE Group Constituent Entity, resident in Montenegro for tax purposes, which is not the MNE Group Ultimate Parent Entity, shall not be required to file the report referred to in item 3 herein if the MNE Group of which it is a Constituent Entity has designated Surrogate Parent Entity that files that report with the Tax Authority and that, in case the Surrogate Parent Entity is tax resident in a jurisdiction outside the European Union, satisfies the following conditions:

- the jurisdiction of tax residence of the Surrogate Parent Entity requires filing of reports referred to in item 3 of these Instructions,

- the jurisdiction of tax residence of the Surrogate Parent Entity has a Qualifying Competent Authority Agreement in effect to which Montenegro is a party within the 12 months from the last day of the Reporting Fiscal Year for which the report referred to in item 3 herein is filed,

- the jurisdiction of tax residence of the Surrogate Parent Entity has not notified Montenegro of a Systemic Failure,

- the jurisdiction of tax residence of the Surrogate Parent Entity has been notified no later than the last day of the Reporting Fiscal Year of such MNE Group by the Constituent Entity resident for tax purposes in its jurisdiction that it is the Surrogate Parent Entity,

- a notification has been provided to the Tax Authority in accordance with point 19 herein.

 17. A Surrogate Parent Entity is a MNE Group Constituent Entity designated as the only surrogate for the Ultimate Parent Entity to file reports referred to in item 3 herein, in the jurisdiction of its tax residence on behalf of that MNE Group, if the condition that the Ultimate Parent Entity is not required to file that report in the jurisdiction of its tax residence and the condition that the jurisdiction in which the Ultimate Parent Entity is resident has a current International Agreement to which Montenegro is a party, but provided that it does not have in effect a Qualifying Competent Authority Agreement to which Montenegro is a party by the expiration of the 12 months since the last day of the Reporting Fiscal Year for which such report is being filed or there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Tax Authority to the MNE Group Constituent Entity resident for tax purposes in Montenegro.

 18. A Surrogate Parent Entity, resident in Montenegro for tax purposes shall file the report referred to in item 3 herein.

19. The Constituent Entity of an MNE Group that is resident for tax purposes in Montenegro shall notify the Tax Authority whether it is the Ultimate Parent Entity, the Surrogate Parent Entity, or the Constituent Entity of the MNE Group no later than on the day of filing of the income tax return for the preceding fiscal year.

20. The Constituent Entity of an MNE Group that is resident for tax purposes in Montenegro which is not the Ultimate Parent Entity nor the Surrogate Parent Entity nor the Constituent Entity shall notify the Tax Authority of the identity and tax residence of the entity filing the report referred to in item 3, no later than on the day of filing of the income tax return for the preceding fiscal year.

21. The Constituent Entity of an MNE Group, that provided notification in accordance with items 19 and 20 herein shall not provide the new notification as long as there is no change of the identity and tax residence of the entity filing the report referred to in item 3 herein, on behalf of the MNE Group.

22. The Constituent Entity of an MNE Group filing the report referred to in item 3 herein, shall specify the tax jurisdictions where the MNE Group Constituent Entities are residents for tax purposes.

23. Where a Constituent Entity is resident in more than one tax jurisdiction, the agreement on double taxation avoidance shall be applied to determine the tax jurisdiction of residence.

24. Where there no agreement referred to in item 23 herein is concluded, it shall be deemed the Constituent Entity is the resident in the tax jurisdiction of the Constituent Entity's place of effective management, in accordance with internationally agreed standards.

 25. The permanent business establishment data shall be reported by reference to the tax jurisdiction in which it is situated and the entity that permanent business establishment belongs to shall be specified.

 26. Residence tax jurisdiction reporting for the business unit of which the permanent establishment is a part shall exclude financial data related to that permanent business establishment.

 27. Where the Fiscal Year of one or more MNE Group Constituent Entities is different from the Reporting Constituent Entity’s Fiscal Year that entity shall enter in the report referred to in item 3 herein the data for that entity’s Fiscal Year that ends within the 12-month period preceding the last day of the reporting period.

 28. The MNE Group Constituent Entity filling the report referred to in item 3 herein shall use the same sources of data from year to year in completing that report.

 29. The MNE Group Constituent Entity filling the report referred to in item 3 herein shall provide a short description of data sources it used to prepare that report, as well as the reasons for change on data, if it changes a source of data used in the report.

30. These Instructions shall come into force on the eight day from the date of its publishing in the Official Gazette of Montenegro, and shall apply from January 1, 2024.

**Number: 03-040/22-14385/1 MINISTER, Aleksandar Damjanović, MSci**

**Podgorica, June 30, 2022**

**TEMPLATE**

**REPORT ON BUSINESS RELATED DATA THAT ENTITY UBMITTS TO ADMINISTRATION AUTHORITY COMPETENT FOR TAX AFFAIRS**

**COUNTRY-BY-COUNTRY REPORT**

**Α. Template for the Country-by-Country Report**

**Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction**

|  |  |
| --- | --- |
| * 1. **Name of the MNE Group:**
 |  |
| * 1. **Fiscal Year concerned::**
 |  |
| * 1. **Official currency:**
 |  |
| **1.4.** **Tax jurisdictions**  | **1.5.**  **Revenues** | **1.6.** **Profit (loss) before tax** | **1.7.****Income tax accrued - current year** | **1.8.****Income tax paid**  | **1.9. Stated capital** | **1.10.****Accumulated earnings** | **1.11.****Number of employees** | **1.12.****Tangible assets** |
| **1.5.a) Unrelated party** | **1.5.b) Related party**  | **1.5.c) Total** |
|   |   |   |   |   |   |   |   |   |   |   |
|   |   |   |   |   |   |   |   |   |   |   |
|   |   |   |   |   |   |   |   |   |   |   |

**Table 2 List of all the Constituent Entities of the MNE Group per tax jurisdiction**

|  |  |
| --- | --- |
| **2.1. Name of the MNE Group:** |  |
| **2.2. Fiscal Year concerned:** |  |
| **2.3.****Tax Jurisdictions** | **2.4.****Constituent Entities Resident in the Tax Jurisdiction** | **2.5.****Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence** | **2.6. Main Business Activity(ies)** |
| **Research and Development**  | **Holding and Managing Intellectual Property** | **Procurement** | **Production** | **Sales,Marketing and Distribution** | **Administrative, Management or Support Services** | **Provision of Services to Unrelated Parties** | **Internal Group Finance** | **Financial Services [[1]](#footnote-1)** | **Insurance** | **Holding Shares or Other Equity instruments** | **Dormant** | **Other** |
|   | 1. |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| 2. |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
|   | 1. |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| 2. |   |   |   |   |   |   |   |   |   |   |   |   |   |   |

**Table 3: Additional information**

|  |  |
| --- | --- |
| **3.1. Name of the MNE Group** |  |
| **3.2. Fiscal Year concerned** |  |
| **3.3. Additional information** |
|  |

|  |
| --- |
| **Place \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **Date \_\_\_\_\_\_\_\_\_\_\_\_ Responsible person** |

**Instructions for filling the report:**

1. The reporting MNE Group Constituent Entity shall report the following information:

- the sum of revenues of all the Constituent Entities of the MNE Group in the tax jurisdiction generated from transactions with associated enterprises,

- the sum of revenues of all the Constituent Entities of the MNE Group in the tax jurisdiction generated from transactions with independent parties, and

- the total of the sums referred to in sub points (a) and (b) of this item.

2. Revenues shall include revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts. Revenues shall exclude payments received from other Constituent Entities that are treated as dividends in the payer's tax jurisdiction.

3. The reporting MNE Group Constituent Entity shall report the sum of the profit (loss) before income tax for all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction.

4. The profit (loss) before income tax shall include all extraordinary income and expense items.

5. The reporting MNE Group Constituent Entity shall report the sum of the accrued current tax expense recorded on taxable profits or losses of the year of reporting of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction.

6. The current tax expense shall reflect only operations in the current year and shall not include deferred taxes or provisions for uncertain tax liabilities.

7. The reporting MNE Group Constituent Entity shall report the total amount of income tax actually paid during the relevant Fiscal Year by all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction.

8. Taxes paid shall include cash taxes paid by the Constituent Entity to the residence tax jurisdiction and to all other tax jurisdictions.

9. Taxes paid shall include withholding taxes paid by other entities with respect to payments to the Constituent Entity.

10. The reporting MNE Group Constituent Entity shall report the sum of the stated (total) capital of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction.

11. With regard to permanent establishments, the stated capital shall be reported by the legal entity of which it is a permanent establishment unless the capital is defined for the permanent establishment according to regulations of other tax jurisdiction.

12. The reporting MNE Group Constituent Entity shall report the sum of the total accumulated earnings of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction as of the end of the year.

13. With regard to permanent establishments, accumulated earnings shall be reported by the legal entity of which it is a permanent establishment.

14. The reporting MNE Group Constituent Entity shall report the total number of employees.

15. A foreigner participating in the ordinary operating activities of the Constituent Entity may be reported as employee.

16. The reporting MNE Group Constituent Entity shall report the sum of the net book values of tangible assets of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction (the assets do not include cash or cash equivalents, intangibles, or financial assets).

17. With regard to permanent establishments, assets shall be reported by reference to the tax jurisdiction in which the permanent establishment is situated.

18. The reporting MNE Group Constituent Entity shall list:

- on a tax jurisdiction-by-tax jurisdiction basis all the Constituent Entities of the MNE Group which are residents in the relevant tax jurisdiction,

- the name of the tax jurisdiction under whose laws the Constituent Entity of the MNE Group is organised or incorporated if it is different from the tax jurisdiction of residence, and

 - the nature of the main business activity(ies) carried out by the Constituent Entity in the relevant tax jurisdiction.

19. The reporting MNE Group Constituent Entity may use data from its consolidation reporting packages, from separate entity financial statements, regulatory financial statements, or internal management accounts.

20. If financial statements are used for reporting, the amounts shall be stated in the currency of the reporting MNE Group Constituent Entity at the average exchange rate on the date of the report.

21. The amounts in the report shall be stated in the official currency.

22. For the purpose of filling the template, a separate line shall be included for all Constituent Entities in the MNE Group deemed by the reporting MNE Group Constituent Entity not to be resident in any tax jurisdiction for tax purposes

1. Financial services whose provision is regulated by tax jurisdictions’ regulations [↑](#footnote-ref-1)