



TRANSFER PRICING DOCUMENTATION AND THE CBCR UNDER BEPS ACTION 13: AN ANALYSIS OF THE TURKISH PRACTICE¹

BEPS 13 NO'LU EYLEM PLANI KAPSAMINDA TRANSFER FİYATLANDIRMASI BELGELENDİRME YÜKÜMLÜLÜĞÜ VE ÜLKE BAZLI RAPORLAMA: TÜRKİYE UYGULAMASINA İLİŞKİN BİR DEĞERLENDİRME

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ABSTRACT

The OECD's Base Erosion and Profit Shifting (BEPS) Project provides a solution for the transfer pricing problem through documentation and international exchange of information in BEPS Action 13, titled "Transfer Pricing Documentation and Country-by-Country Reporting". This documentation is founded on a three-tiered standardized approach; the master file, the local file, and the country-by-country report (CbCR). Türkiye also follows this progressive approach, and the necessary legal framework has recently

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been modified to align with BEPS Action 13. The documentation in Türkiye includes the Master File, the Annual Transfer Pricing Report, the Form on Transfer Pricing, Controlled Foreign Companies, and Thin Capitalization (Camouflaged Capital) as of today. However, the legislation diverges from the action plan in some aspects. This study aims to evaluate the idealized body of BEPS Action 13 and examine the applicability of this normative action plan (i.e., the Model Legislation) in positive law by analyzing the Turkish practice.

ÖZ

OECD'nin Matrah Aşındırma ve Kâr Kaydırma (BEPS) Projesi'nin "Transfer Fiyatlandırması Belgelendirme Yükümlülüğü ve Ülke Bazında Raporlama" başlıklı ve 13 No'lu Eylem Planı'nda, transfer fiyatlandırması sorunu bakımından belgelendirme ve uluslararası bilgi alışverişine dayanan bir çözüm önerilmektedir. Söz konusu belgelendirme yükümlülüğü; genel rapor, yerel rapor ve ülke bazlı rapor olmak üzere üç aşamalı standartlaştırılmış bir yaklaşıma dayanmaktadır. Bu yaklaşım Türkiye tarafından da takip edilmekte olup gerekli yasal çerçeve yakın zamanda BEPS 13 No'lu Eylem Planı ile uyumlu olacak şekilde değiştirilmiştir. Türkiye uygulamasında yer alan belgeler; genel rapor, yıllık transfer fiyatlandırması raporu, ülke bazlı raporlamaya ilişkin bildirim formu ve ülke bazlı rapor ile transfer fiyatlandırması, kontrol edilen yabancı kurum ve örtülü sermayeye ilişkin formdan oluşmakla birlikte, mevzuat bazı yönlerden eylem planından farklılık göstermektedir. Bu çalışma ile normatif nitelikteki BEPS 13 No'lu Eylem Planı'nın, diğer bir ifadeyle Model Mevzuatın, Türk uygulamasına ilişkin değerlendirme üzerinden ele alınmak suretiyle pozitif hukukta uygulanabilirliğinin incelenmesi amaçlanmaktadır.

Anahtar Kelimeler: Matrah Aşındırma ve Kâr Kaydırma, BEPS, Transfer Fiyatlandırması, Ülke Bazlı Raporlama.

Keywords: Base Erosion and Profit Shifting, BEPS, Transfer Pricing, Country-by-Country Reporting.

1. INTRODUCTION

The OECD's Base Erosion and Profit Shifting (BEPS) Project comprises 15 actions aimed at curbing harmful tax practices, preserving tax revenues, and addressing global tax issues. BEPS Action 13, titled 'Transfer Pricing Documentation and Country-by-country Reporting', requires multinational enterprises (MNEs) with significant income to report earnings, taxes, employee numbers, and undistributed profits in the countries where they conduct business, using standardized templates. This involves a three-tiered approach: master file, local file, and country-by-country report (CbCR).

In Türkiye, the initial step related to BEPS Action 13 was the Presidential Decree Amending the Decision on Disguised Profit Distribution through Transfer Pricing No. 2151 in 2020. Subsequently, the Turkish Directorate of Revenue Administration issued Communiqué No. 4 on Disguised Profit Allocation through Transfer Pricing in 2020. Turkish legislation currently includes the Master File, Annual Transfer Pricing Report, Form on Transfer Pricing, Controlled Foreign Companies, Thin Capitalization (Camouflaged Capital), and CbCR. MNE groups whose ultimate parent entity (UPE) or surrogate parent entity is located in Türkiye submitted the CbCR on March 31, 2021, while those not located in Türkiye presented it on June 30, 2021.

The recently implemented legislation in Türkiye for CbCR differs in some aspects from the action plan. This study assesses Turkish CbCR practice by comparing it with the action plan. It begins with a general overview of BEPS Action 13 and its significance within the broader BEPS Project. The study covers the historical context of documentation obligations and information exchange before and after BEPS Action 13. It also delves into the specific requirements outlined in the Model Legislation and related documents from the action plan. The subsequent section provides an in-depth analysis of how transfer pricing documentation and information exchange in Türkiye have evolved before and after BEPS Action 13. Section 4 summarizes the similarities and divergences between the Turkish practice and the BEPS Action 13. Finally, the study concludes with policy recommendations based on findings and OECD guidance. From an overall point of view, this study explores how Türkiye has implemented the CbCR requirements of BEPS Action 13 and analyzes the differences and similarities between the Turkish legislation and the action plan. It concludes with policy suggestions based on these findings and international guidance.

2. BACKGROUND OF TRANSFER PRICING DOCUMENTATION: BEPS ACTION 13 IN GENERAL

The OECD/G20 BEPS Project is a collaborative international effort to combat tax avoidance. It comprises 15 actions designed to prevent harmful tax practices that erode countries' tax bases and reduce tax revenues while establishing global standards for addressing tax risks (OECD, 2016; Brauner, 2014; Christians, 2016). BEPS Action 13 is a critical component of this project,

focusing on transfer pricing documentation and the CbCR (Brauner 2014: 104; Christians, 2016: 1623). Before getting into specifics about transfer pricing documentation in both the BEPS Action 13 system and the Turkish legislation, it would be appropriate to briefly mention the concept of transfer pricing.

In essence, tax-motivated transfer pricing is defined as the pricing of cross-border intra-firm transactions between related parties (Eden, 2009: 591). In the international arena, this concept can be regarded as the practice of MNE groups of arranging intra-firm sales such that the majority of the profit is made in a low-tax country (Hassett and Newmark, 2008: 208) (Klassen et al., 2017: 455). Within the scope of the Turkish legislation, transfer pricing is determined with the terms of “disguised profit distribution” in Article 13 of Corporate Income Tax Law no. 5520 (CITL). Under this article, disguised profit distribution through transfer pricing is the purchase or sale of goods or services by the owners of the corporation or undertaking with related parties at prices determined in violation of the arm’s length principle (Ateş, 2017: 165).

Transfer pricing affects countries’ tax revenues, and one of the measures brought to the forefront by the OECD with an emphasis on international cooperation in terms of this method is the transfer pricing documentation obligations (Rozas et al., 2019: 37). Empirical evidence indicates that intra-group financing and transfer pricing are the most prominent channels for MNEs to engage in profit shifting (Evers et al., 2014; Heckemeyer and Overesh, 2017). The most essential prerequisite for countries to act effectively and in cooperation to prevent tax losses arising from these actions is to have the necessary and sufficient information. Thus, such a documentation requirement represents countries’ consensus regarding the information needed for suitable transfer pricing examinations, risk assessment, and tax base protection (Lowell and Herrington, 2016: 355).

BEPS Action 13 mandates MNEs with significant revenues to provide standardized information about their incomes, taxes paid, employees, and undistributed profits in the countries in which they operate. This three-tiered approach includes master files, local files, and CbCR, which is pivotal in eliminating transfer pricing and global tax avoidance (OECD, 2017; Evers et al., 2016; Lowell and Herrington, 2016: 356; Klaassen and Bobeldijk, 2019: 1069).

BEPS Action 13 is one of the four minimum standards the BEPS Project sets, alongside Actions 5, 6, and 14. These minimum standards focus on enhancing transparency and information Exchange (Joshi, 2020: 334). They require participating countries to adapt their domestic laws and tax treaties accordingly, with the OECD monitoring these changes through peer review reports (Mosquera Valderrama, 2020: 720). The BEPS Project's key elements, transparency and information exchange, are addressed in this framework through BEPS Action 13.

In a globalized world where MNE mobility has grown, transfer pricing remains a significant issue that necessitates international cooperation. As international transactions can impact tax income, addressing transfer pricing is crucial (Kumar et al, 2021: 275-276; Kalra and Afsal, 2023: 172). BEPS Action 13 helps tax administrations detect and combat transfer pricing practices effectively through information exchange, thereby reducing the risk of tax avoidance (Lankhorst and van Dam, 2017: 69). This three-tiered documentation approach supports transparency and risk assessment, benefiting national and international tax administrations in their efforts against tax avoidance practices (Picariello and Chand, 2020: 2; Hanlon, 2018: 211-212; Brauner, 2015: 82; Lowell and Herrington, 2016: 356; Hugger, 2020: 42-43; Cockfield and MacArthur, 2015).

2.1. General Framework of the BEPS Action 13 on Documentation Obligations: Three-Tiered Approach

Transfer pricing documentation obligations primarily serve the purpose of demonstrating to tax administrations that transactions within a taxpayer group adhere to the arm's length principle (Ateş, 2018: 369). These obligations encompass various documents that provide tax authorities with extensive data for conducting transfer pricing risk analysis, encompassing aspects like the global operations of the MNE group, its UPE and subsidiary entity, revenues, and taxes paid (OECD, 2017: 9). Furthermore, these obligations have broader implications beyond transfer pricing, as they can be applied to analyze other tax risks within the scope of BEPS (Picariello and Chand, 2020: 11; Silberstein and Le Naourès, 2018: 3).

The motivation behind implementing transfer pricing documentation obligations stems from the escalating volume and complexity of international intra-group trade, intensified scrutiny by tax administrations on transfer pricing matters, and the need for internationally coordinated information for risk assessment in today's integrated global economic landscape (Ateş, 2018: 369). By adhering to these obligations, tax administrations access data crucial for assessing transfer pricing risks and making informed decisions about audit activities (OECD, 2018a: 237).

BEPS Action 13 addresses the challenges tax administrations face when responding to BEPS issues, primarily due to the knowledge gap between them and taxpayers, especially concerning transfer pricing (Ateş, 2018: 237). The action introduces a three-tiered framework consisting of the master file, local file, and CbCR. When combined, these documents provide tax authorities with valuable insights into taxpayers' positions on transfer pricing, risk assessment, and optimal resource allocation for audits (Ateş, 2018: 237; Lowell and Herrington, 2016: 355-356). A globally recognized standard is essential to ensure the effective operation of this three-tiered system, particularly in the context of information exchange.

The Master File, one of the three layers, offers tax administrations a comprehensive overview of the MNE group's global operations, income distribution, economic activities, and general transfer pricing strategies (OECD, 2015: 9). It includes information on the organizational structure, business descriptions, intangibles, internal financial activities, and financial and taxation positions within the MNE group. The Local File, the second layer, on the other hand, offers more detailed information on specific transactions within the group, focusing on the local business's management structure, organizational chart, financial data, controlled transactions with related parties, and financial accounts. Contrary to the master file, the Local File which is aims to establish taxpayers' positions on transfer pricing based on the arm's length principle within a particular country (OECD, 2015: 15; OECD, 2018a: 241).

These first two tiers of the documentation obligation create a reporting system that requires entities within the group to provide information about their transactions with related parties to their respective countries of residence. This system offers a wealth of information, ranging from the specific organizational structure of a local entity to the consolidated financial balance sheet of the

entire MNE group (Gücüyener, 2015: 69-76). The third layer, the CbCR, focuses on the locations of other corporations within the group, as well as the distribution of their income and taxes, in order to give a more comprehensive picture of the MNE group's worldwide operations (Lankhorst and van Dam, 2017: 68-69; Kurniawan and Saputra, 2020: 60; Sawyer and Sadiq, 2019: 573).

2.2. The Rules Governing the CbCR

The CbCR is a document that the UPE of MNE groups regularly submits to the tax administration of its country of residence. This report provides comprehensive details about how the group allocates its global income, the taxes it pays, and the distribution of economic activities within the group (OECD, 2017). The CbCR is then shared with the tax administrations of other countries where the MNE group operates, enabling the assessment of transfer pricing risks and other risks related to BEPS. Along with the master and local files, the CbCR forms the three-tiered structure of documentation obligations, facilitating effective analysis of transfer pricing and BEPS-related risks (Hugger, 2020; Yang, 2023).

Including the CbCR in documentation requirements addresses the substantial risk of tax evasion posed by MNE organizations. It provides relevant countries with information necessary to assess an MNE group's contribution to national welfare through tax payments (Joshi, 2020: 338; Rozas et al., 2019: 37). Because the affiliated companies within the MNE group should also be evaluated carefully, the limited liability privilege of being a group and a multinational organization benefits MNEs. Still, it is also frequently enjoyed by subsidiaries established in each country where the MNE conducts business. In this regard, the situation of MNE groups and their subsidiaries is referred to in the literature as 'limited liability within limited liability' (Murphy, 2016: 98). The CbCR aims to obtain important information about the MNE group directly from the UPE itself. In other words, this document is especially critical because it allows tax administrations to access previously unavailable data regarding MNE firms' local and international operations, enhancing tax compliance and accountability (Longhorn et al., 2016: 24; Grau Ruiz, 2014: 559; Knobel and Cobham, 2016: 1-2).

The introduction of the CbCR imposes substantial obligations on MNE groups, leading to practical and ethical considerations. The CbCR compels MNEs to provide comprehensive and globally consistent information on their financial,

regulatory, and managerial accounts, enhancing transparency (OECD, 2017: 9). This newfound availability of data significantly influences moral dimensions by promoting tax compliance at both national and international levels. It also improves risk assessment, facilitating the allocation of resources to taxpayers and transactions with higher tax risks, thereby increasing the likelihood of tax inspections and additional assessments on MNEs. However, the CbCR's requirement to disclose income from low-tax jurisdictions causes concerns about the cost of tax planning and reputational risks as the possibility of information leakage or public exposure (Lesage and Kaçar, 2013: 264; Joshi, 2020: 335) becomes a subject of debate in various countries (Knobel and Cobham, 2016: 11). Nevertheless, the OECD and the USA remain committed to maintaining the confidentiality of these reports (Noked, 2018: 151).

In light of this, the CbCR raises the possibility of tax audits and fines and can potentially alter MNEs' tax practices by lowering the actual or perceived net benefit of tax planning (Joshi, 2020: 335). Moreover, after the CbCR, it is seen that some of the large MNEs shared their CbCR information with the public in an effort to confirm that they had completed their tax obligations. For instance, some giants such as Vodafone, Shell, BP, Nestle, and Unilever disclose some or all of the information in the CbCR with titles such as 'Tax Contributions' or 'Tax Transparency'. Accordingly, it is clear that the CbCR is crucial for assuring tax compliance, enhancing transparency and accountability, and improving risk assessment (Murphy, 2016: 110). Many non-governmental organizations concerned with tax fairness claim that BEPS Action 13 is the most crucial component of the BEPS Project (Ateş, 2018: 373).

The three components of the minimum standard for the CbCR are (1) domestic adoption of procedures for a three-tiered reporting system of three documents, including the master file, the local file, and the CbCR; (2) adoption of the necessary international agreements and procedures to automatically exchange the CbCR, and (3) submission to periodic OECD monitoring (OECD, 2015: 9-10).

The CbCR contains a model legal framework created by the OECD specifically for this document, and countries can modify it to fit their domestic laws (OECD, 2018a: 252). The domestic legislation component was designed neutrally without regard to any specific country's constitutional law, legal system, or tax legislation (OECD, 2015: 525). It consists of eight articles covering

definitions, the obligation to declare, information, CbCR, time of declaration, use, privacy of the information contained in the CbCR, penalties, and effective date. Table 1 in the CbCR, titled 'Income, taxes, and distribution of business activities by country', provides a breakdown of the global revenues of the MNE group per operating country, specifying whether they were derived from related or unrelated parties (Martinez Tapia and Jalan, 2022: 3; Liske, 2017: 415-416). Table 2, titled 'List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction', lists MNE group member companies, their country of residence, and business activities. Table 3, 'Additional Information', allows additional details to enhance understanding (OECD, 2017: 9; Meijer et al., 2017: 435-436).

The UPE of an MNE group, defined based on its direct or indirect interests in member corporations and preparation of consolidated financial statements, submits the CbCR to the tax administration of its country of residence. A consolidated group income of at least €750 million is required to issue a CbCR, exempting smaller MNE groups (OECD, 2015: 21). While the CbCR is a valuable tool for assessing transfer pricing and BEPS risks, it does not substitute for an in-depth transfer pricing analysis (Grau Ruiz, 2014: 561; Picariello and Chand, 2020: 3). Instead, it can trigger tax audits or further investigations. Indicators within the CbCR, such as income ratios in low-tax countries, geographical income allocation, and discrepancies in taxes paid, are crucial for assessing BEPS risks.

Regarding penalties for non-compliance with CbCR obligations, it should be highlighted that the OECD recommends implementing penalties (Evers et al., 2016: 6). Still, the specific rules and structures are left to countries (OECD, 2015: 19, 43), typically as administrative fines based on missing documents, years under review, or a percentage of under-reported relevant amounts.

Penalties for non-compliance with the CbCR obligation vary by country and are typically administrative fines, which can be calculated as a fixed amount for each missing document or as a percentage of under-reported relevant income. The specifics of the penalties are determined by each country's legal framework (OECD, 2018a: 246).

2.3. Exchange of CbCRs

The CbCR serves a crucial role in international tax transparency by enabling the exchange of information regarding MNEs among tax authorities. Before the implementation of BEPS Action 13, international information exchange was quite limited (Joshi, 2020: 335). Under the CbCR regime, sharing CbCRs among countries has expanded, allowing tax authorities to access more comprehensive data for effective risk assessment concerning MNEs. From this point, it can be understood that the CbCR is designed to reduce the information asymmetry and increase tax transparency by offering tax administrations with different data sets about the MNE groups to conduct a high-level risk assessment (Martinez Tapia and Jalan, 2022: 1). The CbCRs provide significantly more information than is traditionally seen in transfer pricing documentations in most countries (Lowell and Herrington, 2016: 358). With the implementation of the CbCR within the context of BEPS Action 13, countries have access not only to information contained in CbCRs made available to them but also to information contained in CbCRs submitted to other countries, expanding the scope of data available to tax administrations. This is a significant advancement in international tax compliance and enforcement.

Competent Authority Agreements play a pivotal role in the international exchange of CbCRs. They provide the legal framework for sharing these reports among countries. There are several layers of such agreements, including the Multilateral Competent Authority Agreement (MCAA), which streamlines the bilateral exchange of CbCRs between multiple countries. Countries must ratify the MCAA to facilitate this process, making exchanging CbCRs with other signatory countries easier. In addition to the MCAA, various other agreements and tax treaties can be the basis for sharing CbCRs between countries (Ateş, 2018: 380). The requirements and processes for exchanging CbCRs are governed by competent authority agreements that are concluded in this manner.

Sharing CbCRs electronically is essential for accuracy and consistency. The CbC XML template is used to ensure that information is securely exchanged, and it helps standardize data presentation across all countries where the MNE operates (OECD, 2017: 33). However, it is crucial to use this data responsibly because misuse of shared CbCRs could result in the loss of information exchange privileges (Joshi, 2020: 335).

In cases where the country of residence of an MNE's UPE does not mandate CbCR submission, a subsidiary in a different country may be required to serve as a surrogate parent entity, sharing CbCRs as necessary (Knobel and Cobham, 2016: 10). This mechanism ensures that relevant tax authorities have access to the information they need for proper risk assessment. Overall, the international exchange of CbCRs has significantly enhanced transparency in international taxation (Picariello and Chand, 2020:17; Longhorn et al., 2016: 2) and is a key tool for tax administrations to assess and manage tax risks associated with MNEs.

3. TRANSFER PRICING DOCUMENTATION IN TÜRKİYE

As one of the member countries of the BEPS Inclusive Framework, Türkiye has implemented BEPS Action 13, one of the minimum standards, and has made arrangements in domestic law and international agreements within this framework. It should be noted that transfer pricing documentation obligations existed in Turkish legislation, albeit to a limited extent, before the BEPS Project was introduced. However, especially in terms of the CbCR, arrangements have been made following BEPS Action 13, and due to the formation of the administrative dimensions, implementation has yet to be realized in terms of only one accounting period. Accordingly, the new application has given the old practice a fresh dimension. In this regard, the period before the BEPS Action 13 should initially be examined to evaluate the existing or new practice.

3.1. The Period Before BEPS Action 13

Upon its initial publication in 2006, CITL lacked provisions addressing documentation requirements for transfer pricing. It had only a vague statement regarding transfer pricing procedures, stating that the Council of Ministers would determine these (Yaltı, 2020: 855), in the original Article 13, titled "Disguised Profit Distribution Through Transfer Pricing"⁴.

Transfer pricing documentation obligations were introduced with the publication of the Council of Ministers Decision no. 2007/12888 ('Decision on Disguised Profit Distribution Through Transfer Pricing') based on the provisions

4- See Corporate Income Tax Law no. 5520, Official Gazette no. 2625 (June 21, 2006), <https://www.resmigazete.gov.tr/eskiler/2006/06/20060621-1.htm> (Accessed: 10.08.2023).

of Article 13(7) of CITL⁵. As outlined in the decision, this documentation obligation aims to understand the transfer pricing process and provide detailed calculations, emphasizing compliance with the arm's length principle (Kaymaz et al., 2008: 60). Taxpayers were required to prepare or obtain information and documents demonstrating compliance with arm's length principles, which they were to keep and provide to the tax authorities upon request.

Initially, the "Annual Transfer Pricing Report" was the primary document required as part of this obligation. This report encompassed details about domestic and international transactions between taxpayers and related parties, regardless of their size, signifying its applicability to all corporate taxpayers. Subsequently, "The Form on Transfer Pricing, Controlled Foreign Companies and Thin Capitalization (Camouflaged Capital)" was added to the certification obligation by the General Communiqué on Disguised Profit Distribution through Transfer Pricing Serial no. 1 published in the Official Gazette dated 18.11.2007 and numbered 26704. It mandated that corporate taxpayers complete this form and submit it to the relevant tax office as an annex to their corporate tax returns. The form included transaction details with domestic and foreign related parties in the context of transfer pricing⁶. It should also highlighted that no taxpayer group or transaction type in terms of size has been excluded from these documentation obligations (Doğruyol, 2008: 120). This point is criticized in the literature. Accordingly, it is stated that exempting taxpayers who do not have a significant amount of transfer pricing transactions from these obligations by setting a lower limit on transactions with related parties will provide significant convenience to both the tax administration and taxpayers (Yetkiner, 2007: 37).

In addition, the Communiqué pointed out regarding the penalty in case of failure to fulfill the certification obligation that "The provisions of the Tax Procedure Law regarding penalties will also be applied to those who do not submit the information and documents required to be submitted to the Administration within the period specified in the Communiqué".

5- See Council of Ministers Decision no. 2007/12888 ("Decision on Disguised Profit Distribution Through Transfer Pricing"), Official Gazette no. 26722 (Dec 6, 2007), <https://www.resmigazete.gov.tr/eskiler/2006/06/20060621-1.htm>.

6- See Turkish Revenue Administration available at https://www.gib.gov.tr/sites/default/files/fileadmin/user_upload/Tebliğler/5520/Trans_Fiyat_Teb1/1_serno_tfyokd_genteb.pdf (Accessed: 20.07.2023).

The scope of the documentation obligation was further expanded for taxpayers with transactions in free zones beginning on January 1, 2008. Notably, the documentation requirements before BEPS Action 13 resembled local reports, including information on controlled transactions (Ateş, 2018: 384). However, it is essential to highlight that these requirements did not encompass practices similar to the CbCR during that period.

3.2. The Period After BEPS Action 13

The first step taken following the three-layered standard set forth with BEPS Action 13 was realized in 2016 by adding paragraph (8) to the 13th article of CITL⁷. The introduction of transfer pricing documentation obligations was initiated based on CITL's Article 13(7), and the purpose was to understand transfer pricing processes and demonstrate compliance with the arm's length principle. Taxpayers were required to prepare or acquire information and documents to support arm's length transactions and make them available for tax inspection.

As another step, a discount mechanism is added to the legislation in the case that the documentation obligation is completed in full and on time (Çelebi and Mastar Özcan, 2018: 283). With this amendment, the following provision has been added as paragraph (8): 'On the condition that the documentation obligations regarding transfer pricing are fulfilled in full and on time, tax loss penalty for taxes that are not accrued on time or incompletely accrued due to the disguised profit (except in the case of causing tax loss due to the actions written in Article 359 of the Tax Procedure Law (TPL) no. 213) applied at a 50% discount'. The tax deduction is not allowed if the administration or tax inspectors determine that the documentation requirement was not met in full and on time (Duran, 2023: 44).

Paragraph (8) was rearranged to become the new paragraph (9) as follows: "The Council of Ministers is authorized to reduce the ratios in the second paragraph by up to 1%, to increase them by up to 25%, and to remove the ratio requirement, either collectively or separately, in terms of natural persons, institutions, direct or indirect partners, or in accordance with how the partnership share is acquired, to extend the period in the fifth paragraph to five years, to impose an obligation to include information on the activities of related parties abroad in line with the documentation obligations, and to determine other relevant procedures and principles regarding the procedures about transfer pricing and mutual exchange of information with other countries".

7- See Official Gazette no. 29796 (Aug 9, 2016) <https://www.resmigazete.gov.tr/eskiler/2016/08/20160809-22.htm>.

This amendment increases the significance of the documentation by reducing the penalty for disguising profit distribution if the documentation obligations are met. Contrarily, it was emphasized that, with the amendment made, the authorization covers the documentation obligations and their contents as well as the exchange of information in the international arena, even though the subject of the authorization previously given to the Council of Ministers was expressed in a general way, such as “transfer pricing procedures”. It should be noted that with the implementation of Article 173 of Decree-Law no. 700 dated 02.07.2018, the term ‘Council of Ministers’ in this clause was later changed to ‘President’, and the current provision includes the authority given to the President.

Presidential Decree no. 2151 on “The Decree Amending the Decision on Disguised Profit Distribution through Transfer Pricing” published in the Official Gazette dated 25.02.2020 and numbered 31050, regarding the amendment of the Council of Ministers Decision no. 2007/12888 mentioned above, is the regulation issued regarding the documentation obligations based on this authority (Karakoç, 2020: 34). This decree modified the 19th article of the prior Council of Ministers’ Decision. The new title was ‘Documentation’ and stated that the documentation “consists of the Master File, Annual Transfer Pricing Report, and CbCR”. Thus, it is seen that the three-layered structure in BEPS Action 13 was adapted to the Turkish legislation for the first time. From this date on, the CbCR officially became a part of the Turkish legislation (Azat, 2020: 103).

It should be highlighted that Article 13 of CITL entrusted the authority to make regulations on certification obligations first with the Council of Ministers and then with the President today. Even though the President’s authority under Article 73(4) of the Turkish Constitution is restricted to exemption, exclusion, reduction, and rate issues, and the Ministry of Finance typically has the authority to decide on the procedures and guiding principles, it seems that the legislature has gone beyond this general tendency regarding documentation obligations (Ateş, 2018: 387).

The Communiqué Amending the General Communiqué on Disguised Profit Distribution through Transfer Pricing published in the Official Gazette dated 01.09.2020 and numbered 31231 was released following the Presidential Decree no. 2151 (Gedik, 2020: 44). Section 7 titled “Documentation” has been updated as “Documents to be Requested from Taxpayers” to reflect these

changes. New titles have been added to this section, such as “7.1- Definitions Related to Documentation”, “7.2- Master File”, “7.3- The Annual Transfer Pricing Report”, “7.4- The Country-by-Country Report”, and “7.5- The Form on Transfer Pricing, Controlled Foreign Companies, and Thin Capitalization (Camouflaged Capital)”⁸.

In addition to the documents, i.e., the master file, the annual transfer pricing report, the CbCR notification form, the CbCR and the Form on Transfer Pricing, Controlled Foreign Companies, and Thin Capitalization (Camouflaged Capital), various definitions related to the CbCR are also incorporated into the current Turkish legislation.

In this context, MNEs whose ultimate or surrogate parent entity is located in Türkiye submitted the CbCR for the first time on March 31, 2021, and MNEs whose ultimate or surrogate parent entity is not located in Türkiye on June 30, 2021. Although the CbCR has already been incorporated into our legislation as part of BEPS Action 13, its practice diverges from the Action in several points. The similarities and contrasts of the Action with the Turkish legislation are discussed in the next chapter.

3.3. Exchange of Information

Before the BEPS Project, international tax information sharing primarily relied on double taxation agreements and Article 26 of the OECD’s Model Tax Convention on Income and Capital, in particular. Türkiye has generally used this model as the foundation for the agreements it concluded with other countries regarding avoiding double taxation (Ferhatoğlu, 2018; Bilen, 2009). In this regard, Türkiye’s agreements during this period have an information exchange provision similar to the Model’s information exchange.

It should also be highlighted that Article 152/A, titled ‘Information exchange in accordance with international agreements’, was added to the TPL by Law No. 6487 published in the Official Gazette No. 28674, dated 11.06.2013. This article formed the legal basis for the exchange of information on transfer pricing documentation, allowing the Turkish Revenue Administration to gather information in line with the information exchange provisions of international agreements (Başaran Yavaşlar, 2015: 27). Within this context, Article 5 of the TPL states that “Information and documents requested regarding judicial and

8- See Turkish Revenue Administration, <https://www.gib.gov.tr/gibmevzuat> (Date Accessed: 09.06.2023).

administrative investigations made by public officials and the information regarding tax collection to be made can be provided to banks". It should be noted that there are two distinct views regarding the meaning of this provision. Although Başaran Yavaşlar (2015: 28) states that this provision will be accepted as a legal basis for the exchange of information, Yaltı (2015: 306-307) argues that the provision only authorizes the collection of information but does not contain an authorization for the exchange of information collected pursuant to secrecy provisions with other countries, and thus, a special regulation is needed in Article 5 of the TPL stating that the exchange of information with foreign country authorities will not be considered as a breach of secrecy obligations.

Regarding the information exchange agreements, there were only two agreements during this period. The agreements with Jersey and Bermuda went into effect in 2013 (Turkish Revenue Administration, 2023). On the other hand, Türkiye signed the Agreement on Mutual Administrative Assistance in Tax Matters on 03.11.2011 (Yaltı, 2015: 307) but has yet to ratify it.

It should be noted that even though there were different levels of basis for the exchange of information regarding international law over this time period, it is uncertain whether any of the information exchanged comprised documents that fall under the purview of transfer pricing documentation obligations.

When the double taxation agreements concluded after the release of the final report of the BEPS Project are examined, it is seen that all eight agreements⁹ implemented since 2016 feature an information exchange clause. Therefore, it can be concluded that all double taxation agreements Türkiye has signed and that are currently in force have a clause on information exchange.

Another step is the approval of the Agreement on Mutual Administrative Assistance in Tax Matters signed on 3.11.2011 through the Law no. 7018, dated 03.05.2017, and the Council of Ministers Decision numbered 2017/10969, dated 30.10.2017. This agreement, which entered into force in Türkiye, has been signed and implemented by 147 countries as of today¹⁰.

9- These eight agreements include double taxation agreements with Mexico and Kosovo in 2016, the Philippines in 2017, Vietnam in 2018, Gambia in 2019, Rwanda in 2021, and Venezuela and Chad in 2022. See https://www.gib.gov.tr/sites/default/files/uluslararasımevzuat/Turkiyenin_Sonuclandırıldığı_Vergi_Anlaşmaları_Listesi.pdf (Date Accessed: 11.12.2023).

10- See OECD, Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters Status (March 22, 2023) available at https://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf.

It should also be noted that Türkiye signed the MCAA on December 30, 2019 (Yaltı, 2020: 852), and it was approved by the Presidential Decree no. 3038, which was published in the Official Gazette No. 31261, dated 01.10.2020, (Repeated) (Işık, 2021: 23). The agreement's implementation date was set as 18.12.2020 to be applied to taxation periods beginning as early as 01.01.2019 with the Presidential Decree No. 4026, published in the Official Gazette No. 31498, dated 01.06.2020. Today, while the number of countries that have signed the OECD's MCAA is 97, the number of countries with which CbCRs from Türkiye are shared is 62, and the number of countries that share CbCRs with Türkiye is 76 (OECD, 2023a).

In addition, within the scope of automatic information exchange agreements, the "Agreement Between the Government of the United States of America and the Government of the Republic of Turkey to Improve International Tax Compliance Through Enhanced Exchange of Information" was signed on 29.07.2015 based on Foreign Account Tax Compliance Act (FATCA) of the United States of America (USA). This agreement was ratified with Law No. 6677 published in the Official Gazette No. 29655, dated 16.03.2016 (Ferhatoğlu, 2018).

This agreement permits automatic information exchange between the tax administrations of the two countries based on the information exchange clause of the double taxation agreement between Türkiye and the USA (Ateş, 2015: 676; Işık, 2021: 24). On the basis of the requirements of this clause, the "Arrangement Between the Competent Authority of the Republic of Turkey and the Competent Authority of the United States of America on the Exchange of Country-by-country Reports" was signed on November 17, 2021. Presidential Decree No. 5191 ratified this agreement and was published in the Official Gazette No. 31750 on February 14, 2022.

While Türkiye signed bilateral agreements with Guernsey, the Isle of Man, and Gibraltar for information exchange from 2017 to 2018, implementing these agreements was a notable development (Turkish Revenue Administration, 2023).

Despite these advancements, the OECD has highlighted the need for Türkiye to ensure consistent information exchange and establish protocols and written procedures, indicating room for further improvement in this area. Türkiye's sole bilateral agreement with the USA implies that more actions are

needed to address these recommendations fully (OECD, 2022: 210; OECD, 2021: 223; OECD, 2020: 416-419; OECD, 2019: 416; OECD, 2018b: 711-716). Nevertheless, the entry of the MCAA into force represents a positive step in this direction.

4. THE COMPARISON BETWEEN THE BEPS ACTION 13 AND THE TURKISH LEGISLATION

In order to evaluate Türkiye's CbCR practice in the context of international standards and determine whether coordination is possible in terms of realizing the exchange of information, it is necessary to examine the similarities and differences between the Turkish practice and the recommendations in BEPS Action 13.

First of all, while BEPS Action 13 focuses on the Master File, Local File, and CbCR (Knobel and Cobham, 2016:7), Turkish regulations include additional documents, such as the Form on Transfer Pricing, Controlled Foreign Companies, and Thin Capitalization (Camouflaged Capital) along with the CbCR.

In terms of defining the term "Group", Türkiye's General Communiqué and BEPS Action 13 are consistent. However, differences emerge when it comes to the terms "MNE Group" and "Excluded MNE Group". Turkish regulations specify the "MNE Group" criteria but do not include provisions for the "Excluded MNE Group".

Regarding the "Constituent Entity", both documents have the same broad concept. However, according to the definition adopted in the General Communiqué, "affiliates of the MNE group" are also included in the phrase "enterprise". However, the word "affiliated enterprise" is not used in BEPS Action 13. In addition, both documents use the phrase "Reporting Entity" broadly.

The General Communiqué defines the "UPE" as the dominant entity of the MNE group that is required to prepare consolidated financial statements, aligning with the accounting and financial reporting standards of the home country (OECD, 2015: 39-40). However, General Communiqué omits the second criterion from BEPS Action 13, which states that the MNE group should not have any other Constituent Enterprises with a direct or indirect stake in the Constituent Entity referred to in Article (i). Thus, the General Communiqué incorporates only the first criterion, offering a more straightforward interpretation of the UPE concept compared to BEPS Action 13.

The Turkish legislation has different provisions related to the “Surrogate Entity” when compared to BEPS Action 13. While BEPS Action 13 includes requirements for when the surrogate entity should prepare the CbCR (Veldhuizen and Teneketzis, 2016: 201), this is not the case for the Turkish regulations.

Regarding “Fiscal Year” and “Reporting Fiscal Year”, the Turkish regulations provide a more detailed framework than BEPS Action 13. This includes considerations for special accounting periods, resulting in a longer time frame for CbCR submission than the maximum period envisaged by BEPS Action 13.

In BEPS Action 13, “Fiscal Year” is defined as the annual accounting period during which an MNE group prepares its financial statements (OECD, 2017: 40). Additionally, it introduces the concept of the “Reporting Fiscal Year”, which pertains to the accounting period for the financial and operational results included in the CbCR (OECD, 2017: 40). However, these definitions and distinctions are not present in the General Communiqué.

The General Communiqué and BEPS Action 13 define terms like “Qualifying Competent Authority Agreement”, “International Agreement”, and “Systemic Failure” in the same way. However, there is a small discrepancy in the concept of “Systematic Failure”, where the General Communiqué lacks the word “often”, making the severity or frequency of delivery failures less relevant in Turkish legislation.

While the term “Consolidated Financial Statements” is a concept defined in BEPS Action 13 (OECD, 2017: 40), it is addressed under heading 7.4 of the General Communiqué, not in the definitions section. Instead, the term “Consolidated Group Income” is included in the definitions section of the General Communiqué.

BEPS Action 13 specifies that the UPE of each MNE group must submit a CbCR in accordance with the criteria outlined in different articles (Evers et al., 2016: 6; Rozas et al., 2019: 38). The reporting period, content, and timing of the CbCR are elaborated in separate articles (OECD, 2017: 40-43). The General Communiqué mirrors these elements and outlines a comprehensive framework for CbCR, considering distinct accounting periods and maximum durations.

The General Communiqué prescribes specific accounting periods, requiring the initial CbCR to be prepared for the accounting period starting after January 1, 2019. This report should be submitted electronically to the tax

administration within twelve months following the conclusion of the relevant special accounting period, provided the entity follows a special accounting period as specified in the General Communiqué. This provision goes beyond the scope of BEPS Action 13, which is primarily concerned with the maximum duration for document issuance.

Both BEPS Action 13 and the General Communiqué describe circumstances in which member entities must provide CbCR. In this regard, they align except for the residence requirements in the General Communiqué, where neither the UPE nor the surrogate entity may have a residence in Türkiye.

BEPS Action 13 requires member entities of an MNE Group to inform their tax administration on the final day of the reporting period and the deadline for filing a CbCR may be up to 12 months after the last day of the group's reporting fiscal year (OECD 2017, 17). In the General Communiqué, this obligation is referred to as the "notification form regarding the CbCR". Notably, the General Communiqué extends the deadline for meeting this obligation, allowing until the end of June of the year following the reporting period, providing a different deadline from BEPS Action 13. Apart from this form, the CbCR should be provided until the end of the twelfth month after the reporting fiscal year. On the other hand, the content of CbCR is detailed in Article 4 of BEPS Action 13 and divided into three tables in the General Communiqué, with both documents sharing similar items.

As another point, both instruments guide the appropriate use and confidentiality of CbCR information, allowing tax administrations to use it for specific purposes. The General Communiqué also emphasizes domestic laws and international agreements for maintaining confidentiality. More specifically, it has been stated that this information is subject to the confidentiality provisions of Article 5 of TPL and the pertinent international agreements, and the information shared by other countries is also subject to the confidentiality provisions of the relevant international agreements.

While Article 7 of BEPS Action 13 leaves the regulation of penalties to domestic legislation (OECD, 2015: 43; OECD, 2017: 33), the General Communiqué includes provisions on penalties, including possible corrections for errors. Unlike BEPS Action 13, it also reduces tax loss penalties for the timely and complete fulfillment of transfer pricing documentation obligations. Under the General Communiqué, if the notification has an error or defect, it may be

corrected by rearranging and delivering the notification form until the end of the month following the conclusion of the notification form submission period. If the correction notice is submitted after the deadline, however, penal action is taken in accordance with the rules of TPL. In such cases, it is considered that the penalty envisaged in Article 352 of TPL for second-degree irregularity, which includes the penalty for not making the written notifications regulated in the tax laws on time, should be applied (Nas, 2019: 47).

In addition, section 8.2 of the General Communiqué includes the provision that the tax loss penalty will be applied at a reduced rate for taxes that have not been accrued on time or that have been incompletely accrued due to the disguised profit, provided that the documentation obligations regarding transfer pricing are fulfilled fully and on time. In this respect, unlike BEPS Action 13, the timely fulfillment of the documentation obligations in the General Communiqué constitutes a reason for the reduction in case of a possible tax penalty based on transfer pricing adjustments.

It should be noted that the CbCR template is mostly consistent between BEPS Action 13 and the General Communiqué, with some differences in the Turkish version. Conversely, additional provisions in the General Communiqué, such as currency calculations, provide more technical details and guidelines for CbCR preparation and presentation. This comprehensive approach aligns with the standards of BEPS Action 13, promoting predictability for taxpayers in Türkiye. From this perspective, it can be stated that Türkiye incorporates technical aspects of CBCR in its legislation in substantial detail, sets the rules and guidelines, and therefore provides certainty and predictability for taxpayers. It is the predictable and necessary reflection of the standard solution already included in BEPS Action 13 on positive law.

5. CONCLUSION

BEPS Action 13, part of the BEPS project, is a set of international standards to address transfer pricing and tax transparency issues for large MNEs. These standards focus on ensuring that MNEs with substantial income provide comprehensive information to governments in the countries where they operate. The information includes various financial details, such as the amount of income, taxes paid, undistributed profits, and the number of employees, facilitating a better understanding of the MNE's global operations.

BEPS Action 13 introduces a three-tiered documentation obligation, including the master file, local file, and CbCR. The master file overviews the MNE group's global business and economic activities. It covers income distribution and transfer pricing policies, providing a broad understanding of the group's operations, while the local file complements the master file by offering specific information on transactions within the MNE group. This includes details about local management structures and controlled transactions with related entities, ensuring a more granular view of the group's activities. The CbCR, on the other hand, is a vital component. It reveals the geographical location of the MNE's businesses and the distribution of income and taxes. The CbCR is particularly important for assessing transfer pricing, base erosion, and profit-shifting risks. This report is subject to international exchange among countries.

It should be noted that the exchange of information on tax matters already existed before BEPS Action 13, but it was not as effective as now. In this respect, the role of BEPS Action 13 in ensuring transparency in the international arena is better understood.

The minimum standards in terms of CbCR are to regulate the procedures and principles regarding the three-tiered documentation obligation in the domestic laws of the countries, to accept the agreements necessary for the international exchange of the CbCR with their procedures and principles, and to submit the country practices to periodic OECD monitoring. In this framework, BEPS Action 13 contains a model legislation that serves as a guide for domestic law regulations. In addition, the legal framework for the exchange of CbCRs internationally has been identified as the MCAA, Conventions on Mutual Administrative Assistance in Tax Matters, DTA CAA, and TIEA CAAs.

It can be noted that BEPS Action 13 has been implemented and legal regulations have been set regarding domestic legislation and international agreements concerning transfer pricing documentation obligations in Türkiye, which already had a transfer pricing documentation obligation before BEPS Action 13. The information exchange mechanism also existed in Türkiye before BEPS Action 13, and it was generally carried out based on the information exchange provisions included in bilateral tax agreements. Türkiye signed the Agreement on Mutual Administrative Assistance in Tax Matters and MCAA. In this context, Türkiye shares CbCRs with 62 countries, while 76 countries share CbCR with Türkiye. On the other hand, FATCA was approved and began to be implemented

in 2016 within the scope of automatic information exchange agreements. Based on the information exchange article of this agreement, an agreement regarding the exchange of CbCRs was signed with the USA in 2015 and began to be implemented in 2022. The OECD has suggested actions be taken in this regard because there is no independent CAA in addition to this agreement. Türkiye should take specific steps to provide the legislative framework for international information exchange, which is one of the minimum standards of BEPS Action 13. In this regard, expanding the network of agreements is advised.

It is important to remember that the OECD periodically monitors the status of the transfer pricing documentation. In this regard, it has been determined that the only issue that requires attention is the international information exchange problem, one of the minimum standards of BEPS Action 13. In other words, international information exchange is the only minimum standard of BEPS Action 13 that necessitates positive action.

The following conclusions were reached after comparing the Action Plan and the local CbCR legislation. Before discussing these points, it should be mentioned that BEPS Action 13's three-tiered documentation approach has been incorporated into domestic legislation in Türkiye. However, there are differences compared to the international BEPS standards:

1. **Variations in Definitions and Terminology:** Definitions of terms like "UPE" in the Turkish practice do not precisely mirror BEPS Action 13, which might lead to interpretation challenges. Moreover, the criteria regarding when a "Surrogate Entity" may provide the CbCR, as outlined in BEPS Action 13, are absent in the Turkish legislation.
2. **Extended Timelines for Compliance:** Türkiye has extended timelines compared to BEPS Action 13, which could be more favorable for taxpayers. For example, the notification period in Türkiye ends on the last day of June of the year following the accounting period, whereas BEPS Action 13 specifies the last day of the accounting period.
3. **Legal Foundation for CbCR Information Use and Confidentiality:** Türkiye has provided a more extensive legal foundation for the use and confidentiality of CbCR information, referencing domestic laws and international agreements.

4. Differences in Penalties and Reporting Templates: While BEPS Action 13 leaves the issue of penalties to domestic legislation, Turkish legislation refers to the provisions of its domestic tax laws. Penalties regarding transfer pricing documentation in Türkiye apply to submissions.
5. The CbCR Template: The CbCR template in Turkish legislation differs slightly from the BEPS Action 13 model, requesting relatively less taxpayer information.

In summary, Türkiye has integrated BEPS Action 13 standards into its domestic legislation, albeit with some variations. These differences mainly concern definitions, timelines, and the legal foundation for CbCR information use. Türkiye largely complies with BEPS Action 13, but further efforts are required to expand international information exchange agreements, aligning more closely with global standards.

In conclusion, it is clear that Turkish legislation on the CbCR gives taxpayers certainty and predictability by providing technical specifics as well as several conveniences. To further strengthen principles like legality and predictability, it may be required to expand the regulations in more depth in some circumstances. On the other hand, Türkiye still has a long way to go regarding information exchange since the efforts regarding CAAs are insufficient, and there is a need to expand the agreement network. Consequently, although Türkiye can be regarded as meeting the minimum standards of BEPS Action 13 in general, it would be advisable to elaborate on the CbCR in the domestic legislation and to make substantial efforts to increase international information exchange.

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BEPS 13 NO'LU EYLEM PLANI KAPSAMINDA TRANSFER FİYATLANDIRMASI BELGELENDİRME YÜKÜMLÜLÜĞÜ VE ÜLKE BAZLI RAPORLAMA: TÜRKİYE UYGULAMASINA İLİŞKİN BİR DEĞERLENDİRME

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GENİŞLETİLMİŞ ÖZET

OECD'nin Matrah Aşındırma ve Kâr Kaydırma (BEPS) Projesi'nin, vergisel anlamda şeffaflık ve bilgi değişimi hedefleri üzerinde yükselen dört asgari standardından birini oluşturan 13 No'lu Eylem Planı (BEPS 13), belirli düzeyin üzerinde gelir elde eden çok uluslu işletme (ÇUİ) gruplarının, faaliyette bulunduğu ülkelerdeki gelirleri ve ödediği vergilerin yanı sıra çalışan sayıları ya da dağıtılmamış kârları gibi çeşitli bilgileri devlete sunması üzerine kuruludur. İlişkili kişiler arasındaki işlemlerin emsallere aykırı şekilde gerçekleştirilmesine bağlı olarak vergi yükünün azaltılmasını ifade eden transfer fiyatlandırmasına ilişkin risklerin ve kontrollü işlemlerin değerlendirilmesi bağlamında belgelendirme yükümlülükleri BEPS 13'ten önce de mevcut olmakla birlikte, ÇUİ grupları söz konusu olduğunda uluslararası bir iş birliğinin ortaya koyulması gereğinin anlaşılmasıyla konu OECD tarafından ele alınmıştır.

Bu kapsamda ortaya koyulan ve üç katmanlı bir belgelendirme yükümlülüğü içeren bu eylem planı, her ÇUİ grubunun tek tek işletme ve işlem bazında incelenmesi mümkün olmayacağı için, günümüzün küreselleşen dünyasında özellikle belirli büyüklüğü aşan ÇUİ gruplarının denetlenmesi açısından en mantıklı çözüm önerisi ve potansiyel olarak en etkin yoldur. Özellikle bilgi değişiminin sağlanması noktasında uluslararası kabul görmüş bir standardın varlığı, ayrıca transfer fiyatlandırması risklerini değerlendirme ve denetim kaynaklarının etkin kullanımı bakımından vergi idarelerine faydalı bilgiler sağlanması nedeniyle, ülke mevzuatlarında var olan belgelendirme yükümlülüklerinin yerine BEPS 13'ün takip edilmesinin daha etkin bir çözüm olacağı düşünülmektedir.

BEPS 13'teki üç katmanlı belgelendirme yükümlülüğü; genel rapor, yerel rapor ve ülke bazlı raporu (ÜBR) içermektedir. Genel ve yerel rapor, ÇUİ gruplarının hem yerel üyesi hem de grubun tamamına ilişkin çerçeve bir bilgiyi ortaya koyar. Grup içindeki diğer işletmelerin coğrafi konumu, gelir ve vergilerin bu işletmeler nezdinde tahsisi ise ÜBR ile anlaşılır. Bu bakımdan ÜBR, grup işletmelerin bilgilerini içermesi nedeniyle genel ve yerel rapor arasında bir köprü oluştururken, uluslararası bilgi değişimine konu olması nedeniyle bu iki belgeden ayrılır.

ÜBR bakımından asgari standart; belgelendirme usul ve esaslarının iç hukukta düzenlenmesi, uluslararası düzeyde bilgi değişimi için anlaşmaların kabul edilmesi ve ülke uygulamalarının periyodik olarak OECD tarafından izlenmesini içerir. BEPS 13, iç hukuktaki düzenlemelere rehberlik eden bir model mevzuat sunmakta ve uluslararası bilgi değişimine dayalı yasal altyapıyı vurgulamaktadır.

Bu bilgiler ışığında, Kapsayıcı Çerçeve'ye üye olan Türkiye'deki uygulamaya bakılacak olursa, 2007'den beri "Yıllık Transfer Fiyatlandırması Raporu" ve "Transfer Fiyatlandırması, Kontrol Edilen Yabancı Kurum Kazancı ve Örtülü Sermayeye İlişkin Form" özelinde belgelendirme yükümlülüğünün var olduğu ve bunların yerel rapor uygulamasına benzediği söylenebilir. BEPS 13 çerçevesinde atılan ilk adım ise 2016'da Kurumlar Vergisi Kanunu'nun 13'üncü maddesine eklenen fıkra ile belgelendirme yükümlülüklerine atıf yapılması olmuştur. 2020'de ise 1 Seri No'lu Transfer Fiyatlandırması Yoluyla Örtülü Kazanç Dağıtımı Hakkında Genel Tebliğ'de değişiklik yapılarak belgelendirmeye ilişkin ayrıntılı düzenlemeler yapılmıştır. Böylece BEPS 13'teki üç katmanlı yapı ilk kez mevzuatta yer bulmuş ve asgari şartlardan ilki sağlanmıştır.

Öte yandan BEPS 13 öncesinde bilgi değişiminin vergi anlaşmalarındaki bilgi değişimi hükümlerine dayanılarak gerçekleştirildiği, bilgi değişimi anlaşmalarının sayısının yalnızca iki olduğu görülmektedir. BEPS 13 sonrasında ise Vergi Konularında Karşılıklı İdari Yardımlaşma Anlaşması ve Çok Taraflı Yetkili Makam Anlaşması onaylanmıştır. Günümüzde Türkiye'nin ÜBR paylaştığı ülke sayısı 62 iken Türkiye ile ÜBR paylaşan ülke sayısı 76'dır. Otomatik bilgi değişimi anlaşmaları kapsamında ise ABD ile 2015'te imzalanan FATCA 2016'da onaylanmış ve ÜBR'lerin değişimine ilişkin sözleşme 2022'de uygulanmaya başlamıştır. Bunun haricinde müstakil bir yetkili makam anlaşması bulunmamakta olup her yıl yapılan değerlendirmelerde OECD tarafından bu konuda adımlar atılması tavsiye edilmektedir. Öte yandan belgelendirmeye ilişkin ilerlemelerin periyodik OECD izlemesine sunulması da söz konusu olup bu bakımdan da asgari standardın sağlandığı görülmektedir.

BEPS 13 ve Türk mevzuatı karşılaştırıldığında anlaşılmaktadır ki Türk uygulamasında sunulması gereken bilgiler daha azken bildirim süresinin uzun tutulması veya cezalarda indirim gibi mükelleflerin lehine düzenlemeler de bulunmaktadır. Bu açıdan değerlendirildiğinde ÜBR'ye ilişkin yerel mevzuatın teknik ayrıntılara yer vererek mükellefler için öngörülebilirlik ve belirliliğin

yanı sıra çeşitli kolaylıklar barındırdığı sonucuna ulaşılmaktadır. Buna karşın kanunilik ve öngörülebilirlik gibi ilkelerin pekiştirilmesi adına düzenlemelerin daha ayrıntılı bir şekilde genişletilmesine ihtiyaç duyulmaktadır. Öte yandan bilgi değişimi boyutunda ise yetkili makam anlaşmalarına ilişkin çabalar yetersiz kalmakta ve anlaşma ağının genişletilmesi gerekmektedir. Bu bakımdan mevzuatta bazı iyileştirmeler yapılması ve uluslararası bilgi değişimi konusunda daha fazla efor sarfedilmesi gereklidir. Diğer bir ifadeyle, Türkiye'nin genel hatlarıyla BEPS 13'ün asgari standartlarını yerine getirdiği söylenebilmekteyse de mevzuatta iyileştirmeler yapılması ve uluslararası bilgi değişimi hususunda ciddi adımlar atılması faydalı olacaktır.