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SUBJECT **Amendment of the Ordinance on the Application of the Fiscal Code (*Abgabenordnung*)**

REFERENCE Items 12, 14 und 15.3 of session AO II/2019;
Federal Finance Ministry circular of 26 August 2019
- IV A 3 - S 0325/19/10002 :002 -;
Item 4.5 of session ASt I/2019;
Item 7 of session AO III/2019
Items 2, 3 and 11 of session BP II/2019

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(Please quote file no. and reference no. in your reply)

With reference to the results of the consultation with the highest revenue authorities of the *Länder*, the Ordinance on the Application of the Fiscal Code (*Abgabenordnung*) of 31 January 2014 (Federal Tax Gazette I, p. 290), which was last amended by the Federal Ministry of Finance circular of 17 June 2019 (Federal Tax Gazette I, p. 518) is amended as follows with immediate effect:

2. The following new provision for **section 138a** will be inserted after the **Application Ordinance provision regarding section 138**:

Section 138a – Country-by-country reports by multinational enterprise groups

Cf. Federal Ministry of Finance circular of 11 July 2017, Federal Tax Gazette I, p. 974.

Under section 138a (4), first sentence, of the Fiscal Code, a covered domestic group company is required to submit to the Federal Central Tax Office the country-by-country report for a group with a foreign group parent which under the provisions of subsection (1)

would be required to submit a country-by-country report if its registered office or place of management were located in Germany, if the Federal Central Tax Office has not received a country-by-country report.

In addition to this, the requirement to submit a country-by-country report for the covered domestic group company applies only if the following conditions are fulfilled:

1. the covered group has its registered office or place of management in Germany,
2. and one of the following conditions is fulfilled:
 - a) the foreign group parent is not required to file a country-by-country report in its country of residence,
 - b) the foreign group parent's country of residence has a current international agreement to which the Federal Republic of Germany is a party, but does not have a current agreement concerning the exchange of country-by-country reports between the competent authorities by the time specified in section 138a (6), first sentence, of the Fiscal Code for filing the country-by-country report for the fiscal year; or
 - c) there has been a systemic failure of the country of residence of the foreign group parent of which the covered domestic group company has been notified by the Federal Central Tax Office.

Systemic failure means either that a jurisdiction has a current agreement with the Federal Republic of Germany concerning the exchange of country-by-country reports between the competent authorities, but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that agreement), or that a jurisdiction otherwise persistently failed to automatically provide to Germany country-by-country reports in its possession regarding covered domestic group companies in Germany.

The covered domestic group company is not required to submit a country-by-country report if the foreign group parent is not required to submit a country-by-country report in its country of residence due to the consolidated revenue in the preceding fiscal year falling below the applicable threshold in this other country, which was approximately €750 million in January 2015.

This circular will be published in Part I of the Federal Tax Gazette. It can be downloaded from the Federal Finance Ministry's website (<https://www.bundesfinanzministerium.de>)

Page 3 where it is now available under Themen - Steuern - Steuerverwaltung & Steuerrecht - Abgabenordnung - AO-Anwendungserlass (German Version).

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