



IC Advisors Transfer pricing Newsletter August 2015

India

On July 15th 2015, the Delhi Bench of the Income Tax Appellate Tribunal upheld a decision of the Commissioner of Income Tax (Appeals) to allow a taxpayer to use multiple-year data in determining the arm's length price.

The taxpayer had initially applied the Transactional Net Margin Method (TNMM) and used multiple-year data in its transfer pricing documentation for the provision of IT services to a related party. The transfer pricing officer rejected the application and made an adjustment on the basis that the taxpayer earned only 60% of the overall profit, whereas the related party the remaining 40%. This did not commensurate with the functions performed as the taxpayer performed the major functions while the related party was engaged in marketing and coordination activities.

The tribunal however rejected the transfer pricing adjustment as it was not a typical cost-plus service provider. The use of the multiple year was allowed to reflect the nature of the transfer prices as the taxpayer assumed risks, did not perform routine services and was exposed to business fluctuations. Hence, the taxpayer was not a risk-free service provider that would typically be compensated on a cost-plus basis and earned a low and consistent return on a year-to-year basis.

China

On June 16th 2015, China's State Administration of Taxation (SAT) issued Announcement 45 - "the Announcement on Standardizing the Administration of Cost Sharing Agreement". The announcement provides guidance on the administration of cost sharing agreements.

Announcement 45 repealed the requirement of reporting of cost sharing agreements with SAT and provided a new rule that requires enterprises to submit the agreements to the in-charge tax authorities instead. Taxpayers signing cost sharing agreements are also required to file Related Party Transaction Disclosure forms along with its corporate income tax annual tax returns, regardless of whether the cost sharing agreement is in effect or not. In addition, the process of examination of whether the cost of sharing agreement complies with the arm's-length principle has been repealed and in place is a strengthened follow-up administration on whether the costs and benefits commensurate with the arm's length principle.

Upcoming seminars:

Dr Sowmya Varadharajan will be presenting at the following seminars:

- a. Transfer Pricing for Intellectual Property, on 17 August 2015, organised by ISCA
- b. Managing Transfer pricing in Asia, on 21 August 2015, organised by ISCA
- c. Inter-company Loans and Financing – What you need to know, 4 September 2015, organised by ISCA
- d. Transfer Pricing Documentation Masterclass, on 17-18 September 2015, organised by CCH Singapore

If you would like to attend any of these seminars, please drop us an email at service@icadvisorsasia.com.