



## **IC Advisors Transfer pricing Newsletter July 2015**

### **BEPS Update – Discussion draft on hard-to-value intangibles**

On 4<sup>th</sup> June 2015, the Organisation for Economic Co-operation and Development (OECD) released a discussion draft on Action 8 under the base erosion and profit shifting (BEPS) project with respect to hard-to-value intangibles. Action 8 of the BEPS ensures that the transfer pricing outcomes are in line with value creation.

The revised guidance explains the difficulties faced by tax administrations in verifying the arm's length basis on which pricing was determined by taxpayers for transactions involving a specific category of intangibles due to information asymmetry. The proposed approach for determining an arm's length price includes contingent pricing arrangements designed to mitigate the effects of information asymmetry. The approach is only applicable when certain specific conditions are met.

Comments on the discussion draft has also been released.

On another note, comments on BEPS Action 8 on Cost Contribution Arrangements (CCAs) and Action 7 on Prevent the artificial avoidance of PE status have also been released.

### **BEPS Update – Implementation package for country-by-country reporting**

The OECD has also released the country-by country (Cbc) implementation package which allows tax administrations to gain an understanding of the international operations of enterprises holistically.

The Cbc reporting requirements requires entities to provide aggregate information annually in each jurisdiction which they operate. Information on the global allocation of income and taxes paid, location of economic activity within the group and the business activities engaged in each jurisdiction are to be disclosed. The package also requires the ultimate parent entity of the group to file the Cbc report in its jurisdiction of residence, including backup filing requirements when that jurisdiction does not require filing.

The package also contains three model competent authority agreements to facilitate the exchange of country-by-country reports among tax administration.

The model agreements are based on the Multilateral Convention on Administrative Assistance in Tax Matters, bilateral tax conventions and tax information exchange agreements (TIEAs).

### **India**

Rollback provisions relating to advance pricing agreements (APA) have been included in the Indian Income-tax Act with effect from 1<sup>st</sup> October 2014. In June 2015, the Indian Central Board of Direct Taxes (CBDT) provided clarifications on APA rollback provisions detailed in March 2015.

The clarifications with respect to rollback provisions are:

- Available in cases of revised return of income (ROI) excluding belated applications. The provisions apply to transactions with the same associated enterprise in which the underlying functions, asset and risk (FAR) is not materially different from the original transaction.
- Not applicable to cases in which a Tribunal authority has decided on an arm's length price determination
- Not applicable for transactions with an MAP concluded for the same rollback year. Taxpayer can however choose either an MAP or a rollback provision if the MAP is still pending

- An APA will be cancelled if the taxpayer fails to carry out any action as prescribed under the rollback rules for any of the rollback years
- Arm's length price determined could be different across years but consistent in terms of application
- The rollback years has to be applied to all years or not at all except in years when the transactions were non-existent or disqualified
- It is not possible to accept rollback provisions if the taxpayer does not accept a future APA
- Only the entity which applied/entered into an APA is eligible for rollback provisions in merger and de-merger cases.

The CBDT has issued prompt and clear clarifications on ambiguities to the rollback rules. Though there are several areas for improvement, the CBDT has taken a large step towards enhancing taxpayer confidence.

**Upcoming seminars:**

Dr Sowmya Varadharajan will be presenting at the following seminars:

- a. Understanding Transfer Pricing, on 16 July 2015, organised by Singapore Business Federation

If you would like to attend any of these seminars, please drop us an email at [service@icadvisorsasia.com](mailto:service@icadvisorsasia.com).