



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

### **China**

A release by the State Administration of Taxation (SAT) (2015) No. 16 on 18<sup>th</sup> March 2015 strengthens China's position on outbound expenses paid by Chinese enterprises for related party transactions.

As per the announcement, the following services were also explicitly excluded:

- Services that are “management” in nature for the purpose of protecting the direct / indirect investment interests
- Services that are duplicative in nature – i.e., where the Chinese taxpayer has purchased or carried out by itself the services rendered by the service provider / overseas affiliated party
- Services that are somewhat passive / ancillary in nature – i.e., there is no specific service that is carried out by the overseas related party specifically for the Chinese enterprise
- Services that do not bring about direct or indirect economic interests to the enterprise (in other words, there is no direct or indirect commercial benefit arising from the services that were provided)
- Services that are irrelevant to the risks / business that the Chinese taxpayers carries out;
- Services that have already been compensated for in other transactions

In order for the expense to be deductible in China, it is clear that the Chinese taxpayer making the payment has to demonstrate the substantial business activities of the overseas affiliate receiving payment. Further to these changes, subsidiaries operating in China to review their service fee transactions to ensure that they are in line with the current expectations of the SAT.

### **India**

On 14th March 2015, rollback provisions under the Indian Advance Pricing Agreement (APA) was introduced by the Central Board of Direct Taxes (CBDT). The rollback provisions are applicable to APAs signed after 1st October 2014. The rollback provisions allows the determining of arm's length prices of related party transactions up to 4 years preceding the first year covered in the APA.

The rollback rules require the international transactions covered to be the same as in the APA and across the rollback years in order for the rollback to be applied consistently. The rollback may not be applied if there is any slight variation in the transactions given the same functional analysis.

The rollback provision has been much awaited and provides India an opportunity to reduce its backlog of tax disputes. Enterprises expecting to capitalise on this development should file on or before 31st March 2015.

### **Taiwan**

On 6th March 2015, the Taiwan Ministry of Finance announced changes to its transfer pricing assessment rules.

The key changes were

- The need to document assessment on whether the related party transactions prior to and after business restructuring of a firm are at arm's length

- Allowing the use of the profit split method if the relevant entities make unique and valuable contributions to the controlled transaction
- Requiring merged and dissolved companies to prepare transfer pricing reports along with their final income tax returns
- Revision of the APA timeline and threshold for application
- Introducing the reverse calculation of revenue using the Profit Standard of the Same Trade (Profit Standard)

**Upcoming seminars:**

Dr Sowmya Varadharajan will be presenting at the following seminars:

- a. China vs. India – A battle of transfer pricing regimes, on April 15 2015, organised by ICPAS
- b. 2015 Singapore Transfer Pricing Guidelines: What You Need To Know, on April 17 2015, organised by AcClarity

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