



**IC Advisors Transfer Pricing Newsletter
August 2016**

Hong Kong adheres to BEPS recommendations of Country by Country Reporting

On 30 June, 36 countries and jurisdictions formally joined the inclusive framework on Base Erosion and Profit Shifting (BEPS), with a commitment towards the implementation of the BEPS package which increases the total number of BEPS members to 82. The new members are expected to adhere to the BEPS' minimum standards, namely harmful tax practices, tax treaty abuse, country-by-country reporting and dispute resolution mechanisms as well as the prevention of treaty shopping. In return, they would be able to work alongside Organization for Economic Cooperation and Development (OECD) and G20 members on the framework's mandate on equal standing.

One of the countries that joined this framework was Hong Kong. As a BEPS Associate, Hong Kong now has committed to adhering with BEPS' Country-by-Country Reporting (CbCR). This is an interesting development given Hong Kong's current transfer pricing regime, which is a transfer pricing framework in the form of Departmental Interpretation and Practice Notes (DIPN) No. 46 issued in 2009 which requires Hong Kong taxpayers to transact on an arm's length basis. Given that the arm's length standard is currently not legislated in the Income Tax Act, would it be possible for the Hong Kong Internal Revenue Department ("IRD") to reliably implement a CbCR framework? In addition, will additional changes to the transfer pricing framework be legislated?

China Announces Large-Scale New Transfer Pricing Rules

On 29 June, China's State Administration of Taxation (SAT) issued the "*Announcement on the Administration of Related-party Transactions and Contemporaneous Documentation (SAT Announcement [2016] No.42)*". This new announcement introduces a three-tiered framework – one that consists of the Masterfile, the local file and Special files - which replaces the current transfer pricing documentation rules and was released following an opinion-seeking draft which was publicized by the tax bureau back in September 2015.

Under the new transfer pricing regulations, the number of related-party filing forms has been increased significantly from 9 to 22, inclusive of information disclosures with respect to the CbCR. The filing report would need to be detailed, covering information ranging from basic to applicable tax rates faced by the overseas related-party as well as current coverage of relevant income tax incentives.

In addition, the form has to be filed in accordance with the information disclosure requirement stipulated by Action 13 of BEPS. The CbCR reports are required for the following taxpayers, who are required to submit them in both English and Chinese:

- Ultimate holding enterprise of multi-national corporation with consolidation revenue for previous accounting year exceeding RMB 5.5 billion
- Enterprises designated as reporting party of the CbCR which bears a similarity to Action 13 of OECD BEPS's Action Plan.

In summary, the new rules signify China's stance towards a more regulation business environment with an emphasis of increased supervision on intercompany/related party transactions. The Announcement provided more comprehensive rules to combat tax avoidance by the Chinese tax

authorities which demonstrates a greater commitment to greater scrutiny. These regulations would undoubtedly pose new demands and challenges for taxpayers.

Upcoming seminars:

Dr Sowmya Varadharajan will be presenting at the following full day seminars:

Transfer Pricing Documentation Masterclass, on 23rd & 24th Aug 2016, organized by CCH

Tax Considerations on Cross-Border Intercompany Services, 15th Aug 2016, organized by CCH