IC Advisors Transfer pricing Newsletter
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New Year Greetings to all our readers!

As we welcome 2016, we look at some notable developments in 2015 that will shape the transfer pricing landscape in 2016.

Globally, 2015 was packed with developments on the OECD/G20 base erosion profit shifting (BEPS) Action Plans. The OECD has released the final reports on all of the 15 action items of the BEPS Action Plan in October 2015. With this, the consultation / policy formulation phase of the BEPS project is largely completed although it is expected that additional work may be carried out in some specific areas. With the release of the Action Plans, the OECD has now shifted its focus to the implementation and monitoring of the BEPS Action Plans.

As part of the focus on implementation, the OECD released an implementation package for Action Plan 13 (Transfer Pricing Documentation) which includes model legislation which may be used by countries to require the Group Headquarter of a Group to implement the necessary changes suggested by the OECD into their tax legislation. In addition, the OECD also introduced model Competent Authority Agreements that may be used to facilitate implementation of information.

Despite the persistent efforts by the OECD on BEPS, responses from various countries (including members of the G20 and the OECD) have been mixed. Some countries believe that they are already broadly compliant with the OECD's proposed framework from an international and domestic tax standpoint, while others (e.g., China and Australia) have introduced draft legislation to implement some of the proposed changes suggested by the OECD. There are others who are adopting a "wait and see" approach.

Much of the changes that are expected in 2016 are likely to be BEPS related. Several governments have indicated that when more concrete details and recommendations are made, they will review the domestic tax regime, including the application of existing taxation principles, provision of tax concessions and enforcement of anti-avoidance mechanisms.

In Singapore, we expect additional guidance on transfer pricing documentation, in light of Action Plan 13, as well as clarifications on the definition of permanent establishment. In addition, it is likely that the IRAS may issue additional guidance on how intangibles should be treated from a transfer pricing perspective, as the current transfer pricing guidelines do not explicitly address hard to value intangibles / unique intangibles.

While Singapore supports the BEPS Initiative, a recent address from Senior Minister of State for Finance and Transport, Mrs Josephine Teo held the view that Singapore may still hold on its sovereign right to determine its tax policies to attract investments, support entrepreneurship and promote growth. Such a mention is particularly timely due to the scrutiny that tax-incentivised companies in Singapore have faced from overseas jurisdictions (e.g., Australia). While the IRAS has also been steadfast on its rule of 'substance over form', it will be interesting to observe how Singapore will align its substance criteria with the OECD notion of value creation.

With the sea change happening from an international tax and transfer pricing perspective, it is necessary for all taxpayers to understand what their obligations are – from a tax and transfer pricing perspective. For example, it is possible for tax authorities to adopt similar, but somewhat different standards, for the application of the country-by-country ("CbC") reporting. An example is the

Australian Tax Office which requires CbC reports to be submitted by a significant global entity, which may be different to OECD’s requirement that the parent entity should prepare the CbC. Associated with the increased reporting requirements, companies should also consider practical actions such as updating of accounting and IT systems, robust documentation, active engagement with tax authorities where needed and restructuring of permanent establishments and associated transfer pricing arrangements. The initial groundwork in complying with the new rules put forth by BEPS is time consuming and expensive, however there are greater benefits in mitigating possible risk audit cost and demonstrating that the company is paying its fair share in tax in the global sphere.