



IC Advisors Transfer pricing Newsletter March 2016

OECD

In a worldwide bid to narrow and close up the tax loopholes internationally, the OECD agreed on a new framework which would allow all interested countries and jurisdictions to be involved in efforts to update international tax rules for the 21st Century.

Subject to approval by the G20 Finance Ministers at their next forum, the new members also known as BEPs Associates will have equal say as the OECD and G20 members on standard setting, implementation and monitoring of the BEPs project.

The framework's mandate will concentrate on data gathering on the tax challenges in the digital economy, review of implementation of the BEPS minimum standards, in the areas of Country-by-Country (CbC) Reporting requirements, tax treaty abuse, harmful tax practices as well as improvements in cross-border tax dispute resolution.

Australia

Whilst the Australian Federal Government recognizes the pivotal role which foreign direct investment plays in growing the Australian economy, it also wants to make sure that foreign companies are not minimizing tax through profit shifting. In the past, the Federal Government has introduced tougher anti-avoidance laws to fight multinationals including mining giants, Rio Tinto, BHP Billiton as well as companies like Microsoft, Google and Apple.

The Australian Government Treasury released a Treasury Working Paper discussing Foreign Investment into Australia on 18 February 2016. In this regard, the Treasurer, Scott Morrison, has indicated that the Australian Tax Office is keen on imposing new requirements that would force foreign companies that do not pay their fair share of tax on Australian profits to sell their Australian assets. If this eventuates into reality, ATO will have greater authority to hold assets or put locks on foreign bank accounts if it thinks the investors are trying to avoid tax.

As part of the proposed changes, foreign investors and its associate companies must provide any documents or information requested (inclusive of existing transfer pricing and/or anti-avoidance measures) by the ATO within a specified timeframe. The foreign investors should engage in good faith with ATO to resolve any tax issues, potentially discuss as well as negotiate with the ATO about embarking on an Advance Pricing Agreement (APA) / obtain a private ruling (where need be) and also ensure that outstanding tax debt is settled immediately.

Another key development is the consultation that the Australian Tax Office has conducted in relation to the preparation of the local file, as part of the BEPS Action Plan. The ATO is one of the few countries in the Asia Pacific region that has implemented the Country-by-Country Reporting (CbCR) with effect from 1 January 2016. With this, the ATO is now focusing on collecting views from the taxpayer community on how it should structure the local file requirements, keeping in mind the guidance provided by the ATO under Action Plan 13, Annex 2.

Hong Kong Budget 2016/2017

The Hong Kong Budget 2016/2017 was announced by the Honourable John Tsang Chun-wah, Hong Kong Financial Secretary, on 24 February 2016. There was no explicit mention of any transfer pricing changes.

Although profits tax rates for companies at 16.5% and unincorporated businesses at 15% remain competitive and unchanged, it is interesting to note that the scope of tax deduction for capital expenditure incurred for the purchase of intellectual property rights to layout-design of integrated circuits, plant varieties and rights in performance has been expanded. This is in line with the Hong Kong Government's plan to allow the country to evolve into a regional premier intellectual property hub.

Coupled with Hong Kong's favourable business tax rates, the above scheme will continue to lead to an increased number of multinational corporations establishing regional offices that may also operate as IP management companies. Such structures will result in the adoption of business models that will result in increased related party transactions.

Upcoming seminars:

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

- a. Introduction to Transfer Pricing on 2nd March 2016, organised by TAKX Solutions;
- b. Transfer Pricing – an Introduction, on 16th March 2016, organised by Singapore Business Federation; and
- c. Handling Transfer Pricing Audits and Engaging in Dispute Resolution on 21st April 2016, organised by CCH Singapore

If you would like to attend any of these seminars, please send an email to sowmya@icadvisorsasia.com.