



IC Advisors Transfer Pricing Newsletter May 2017

OECD releases further guidance for tax administrations and MNE Groups on CbCR

The Inclusive Framework on BEPS has released additional guidance on the implementation of Country-by-Country Reporting (CbCR) as set out in Action 13 of BEPS, in order to provide information that will give certainty to tax administrations and MNE Groups. There are six specific issues newly addressed in the updated Action 13 report, specifically:

1. Further clarification on definition of Revenues to be reported in CBCR - Extraordinary income and gains from investment activities are to be included in "Revenues".
2. Definition of related parties - Constituent entities should be considered as associated enterprises for the purpose of Table 1 of the CBCR.
3. Accounting principles to be applied for determining existence of an membership of a group
 - If the Ultimate Parent Entity is listed on Stock exchange – the accounting standards used by the Group for preparing the consolidated financials should be used for application of Action 13 as well.
 - In other cases – the accounting standards that are used by the Group consistently over the years must be used,
4. Treatment of major shareholdings – The revenue of Constituent entities, where minority interests are held by unrelated parties, should be considered for the purpose of applying 750 million Euro threshold where the revenue of such entities are to be included in the consolidated financial statements as well based on the accounting standards.
5. Definition of total consolidated revenue – For the purpose of Action 13, the consolidated revenue infers the consolidated revenue reported as per the applicable accounting standards. In case of financial entities, if the revenue is reported on net basis then the same should be considered for application of Action 13 as well.
6. Transitional filing options for MNEs ("parent surrogate filing") – If the Ultimate Parent Entity is a tax resident of a jurisdiction which requires to file CBCR for a period later than 1 January 2016 than the Entity in the other tax jurisdiction may voluntarily file CBCR on behalf of its Parent Entity.

China releases rules on special tax investigations, adjustments as well as mutual agreement procedures

China's State Administration of Taxation (SAT) has released Administrative Measures on Special Tax Investigation Adjustments and Mutual Agreement Procedures in the Public Notice (2017) No.6 (Bulletin 6) on 17th March 2017. The rules will become effective as of 1st May and supersede the corresponding provisions under the Guo Shui Fa (2009) No.2 (Circular 2).

The primary purpose of Bulletin 6 is to amend and improve existing rules on special tax investigations, special tax adjustments and mutual agreement procedures in line with the general principle of aligning outcomes with value creation advocated by the OECD. In addition, it emphasises on transfer pricing methods and transfer pricing administration on service transactions and transactions involving

intangibles. With such new regulations, taxpayers are advised to revisit their transfer pricing policies and align with these transactions.

Key features of the bulletin are as follows:

- Encourage self-review and voluntary adjustment by taxpayers
- Expand the scope of taxpayers with high-risk features for special tax investigations
- Clarify the investigation procedures and burden of proof
- Revise guidelines as comparable analysis
- Revise guidelines on use of transfer pricing methods
- Include guidelines on assessment of intangible-related inter-company transactions
- Strengthen administration on inter-company services
- Clarify principles for working capital adjustment
- Clarify and standardize mutual agreement procedures

Our comments: This bulletin marks importance of transfer pricing and more importantly in line with Action Plan 8-10. Such regulations requires taxpayers to revisit their transfer pricing and ensure that such pricing is in line with revised regulations and that taxpayers maintain contemporaneous documentation.