



IC Advisors Transfer pricing Newsletter November 2015

OECD

The OECD released the final base erosion profit shifting (BEPS) reports on 5th October 2015. The package will be submitted to G20 leaders for final approval on November 15-16th. The final reports are:

Action 11 report concludes that because of BEPS, large multinationals have an effective tax rate that is 4–8 1/2 percent lower than their domestic firm competitors and between USD 100–240 billion in corporate income tax is lost annually, which erodes 4-10% of countries' corporate tax revenue. An OECD official quoted that if tax planning returns to being a "support function in companies instead of a profit center" BEPS reforms would be considered a success. Another sign of success would be if countries begin to lower their tax rates because BEPS measures have broadened the countries' tax bases, he said.

Australia

On 23rd October 2015, the Federal Court ruled in favour of the Australian Tax Office (ATO) over Chevron Australia Holdings Pty Ltd's (CAHPL's) interest payments to Chevron Texaco Funding Corporation (CFC), a newly incorporated subsidiary in the US. CFC borrowed at a 2% interest rate in the US capital markets which subsequently lent CAHPL USD 2.5 billion at a rate of AUD-LIBOR +4.14% (approx. 9%) in the years 2004-2008. As a result of the interest differential, CFC generated profits and it paid dividends to CAHPL, which were exempt from tax in Australia

The Federal Court ruled that the CAHPL received a scheme benefit such that the transaction enabled the company to maximise the borrowing amount and interest rate to achieve tax benefits. CAHPL did not provide any guarantee on the assets and was able to prepay the loan without penalty, terms which seemingly justified the high interest rate on the intercompany loan and the associated interest deductions. The credit facility agreement was ruled non-arm's length and that CAHPL is liable for a 25% penalty on the scheme shortfall amount.

On a separate note the ATO has been approached for discussions with about 80 multinational companies (MNCs) following the recent announcement of a bill targeting companies that artificially avoid tax by circumventing the permanent establishment (PE) rules. The ATO expects that the bill will bring about restructuring efforts by affected companies.

The recent drastic changes in the transfer pricing regulations and the first big transfer pricing court win by the ATO indicates that MNCs that have booked revenues offshore should maintain robust transfer pricing defence and restructure their operations if needed.

Malaysia

On 23rd October 2015, Malaysia released its 2016 budget with the theme of "Prospering the Rakyat" which reflects the Malaysia's goal of transforming the nation into a high income nation by 2020. Despite global headwinds and declining commodity prices in 2015, Malaysia's economy grew and reduced the fiscal deficit in the same year. Some of the initiatives announced in the budget concerning companies are:

- Value-added conditions for Small and Medium Enterprises (SMEs) to qualify for allowance for increased exports have been lowered by 10% from YA 2016 to YA 2018
- Automatic double deduction for R&D projects undertaken by SMEs
- Special reinvestment allowance (RA) incentives for companies involved in manufacturing and certain agricultural activities and have exhausted their investment allowance. The RA incentive provides for a tax deductible expense of a maximum 60% of capital expenditure against 70% (or 100% in some cases) of statutory business income.
- Extension of 10% withholding tax on real estate investment trust (REIT) distribution to 31 December 2019
- Unfavourable changes in the year of service income inclusion

The government also predicts a 4-5% increase in GDP and a decline of 0.1% of the fiscal deficit. Goods and Services (GST) collection, private investment and consumption are expected to be key drivers of the economy in 2016.

Upcoming seminars:

Dr Sowmya Varadharajan will be presenting at the following seminars:

- a. Understanding Transfer Pricing, on 6 November 2015, organised by the Singapore Business Federation
- b. Preparing Transfer Pricing Documentation, on 16 November 2015, organised by CCH Malaysia in Kuala Lumpur, Malaysia
- c. Optimising Transfer Pricing Models in Asia, on 18 November 2015, organised by CCH Singapore
- d. Managing Transfer Pricing in Asia, on 1 December 2015, organised by ISCA

If you would like to attend any of these seminars, please drop us an email at service@icadvisorsasia.com