



IRAS issues administrative guidance on Country-by-Country Reports

On 10th October 2016, the Inland Revenue Authority of Singapore (“IRAS”) published its e-tax guide on the implementation of Country – by – Country Reporting (“CbCR”) for Singapore headquartered companies. By issuing this e-tax guide, the IRAS has once again confirmed and moved one step towards adherence to the OECD’s Base Erosion and Profit Shifting (“BEPS”) Action Plan 13. In addition, the IRAS will introduce a Bill in the Parliament later this year to legislate the preparation and reporting of the CbC Report.

Details of the e-Tax Guide

Consistent with our earlier understanding, the CbC Report requirement will only apply to a Multinational Enterprise (“MNE”) whose ultimate parent entity is a tax resident in Singapore and where the Group consolidated revenues are in excess of S\$1,125 million (in the preceding financial year), which is slightly higher than the suggested threshold of € 750 million, and is effective for the financial year beginning on or after 1 January 2017.

While IRAS’ position is broadly consistent with the OECD requirements for CbCR, the IRAS has provided much needed guidance on how the CbC Reports should be completed, as part of the Frequently Asked Questions (“FAQs”). Several of our clients who have CbCR requirements have struggled with exactly the same questions: e.g., how should “employees” be defined? Should contract workers be included? How should entities with different year-ends be treated? What is included in revenues and profit? How should “deemed permanent establishments” be treated? As far as we know, the IRAS is the first tax authority that has provided such extensive, practical guidance on how to complete the CbC reports.

The IRAS also notes that working through CbC Reports is work in progress. Thus, based on additional consultation with Singapore based taxpayers, IRAS may issue further guidance that will be required for administrative purposes in relation to the CbC Report. The e-tax guide can be accessed [here](#).

Our comments:

At the outset of this e-tax guide, the IRAS has continued to reinforce the need to prepare and maintain transfer pricing documentation. The e-tax guide explicitly notes that CbC Reports are supplementary to transfer pricing documentation as has been detailed in Paragraph 6 of the Singapore Transfer Pricing Guidelines, 3rd edition. Thus, taxpayers are required to prepare robust transfer pricing analysis in support of their related party transactions. This is particularly necessary as the CbCR does not include any information on the setting of transfer prices or the transfer pricing methodology to provide a view on whether the related party transactions have been conducted in an arm’s length manner.

Furthermore, BEPS Action Plan 13 specifically requires a three tiered approach to transfer pricing documentation - A Masterfile, A Local file, and a Country-by-Country Report. This e-tax guide focuses solely on the Country-by-Country Report. In addition, the IRAS has clarified that the current Singapore Transfer Pricing Guidelines requires taxpayers to prepare both the “Masterfile” and “Local” files, as a single report, as taxpayers are required to organise their transfer pricing documentation at the Group level and the Entity level. However, the extent of information required for a Masterfile as stated in Annex 1 of the BEPS Action Plan 13 more detailed as compared to the information required at the “Group” level. For example, the Masterfile requires information on key contractual arrangements related to intercompany financing, intangible property development and ownership, as well as services.

Given that the Masterfile is not explicitly mentioned in this e-tax Guide, we believe that it is IRAS’ intention that all Singapore based taxpayers, irrespective of the threshold, are required to prepare the Group level information, in a manner consistent with the “Masterfile”. In addition, it is important to note that any



information listed within the CbC Report does not substitute or omit the requirements of detailed transfer pricing analyses of individual transactions and pricing policies as required by the current Singapore Transfer Pricing Guidelines.

Currently, Singapore has not signed the Multilateral Competent Authority Agreement on the Exchange of CbC Reports, and there is no clear indication within the guidance on the information exchange procedures, including with whom IRAS may share the information with, e.g. tax treaty countries or bilateral agreements between Competent Authorities etc. The first CbC Report is only due by 31 December 2018. This might seem like a long way away. However, our discussions with taxpayers regionally suggests that the data gathering process in relation to completing a CbC Report is likely to be onerous. Thus, we recommend that taxpayers get a head start in collating and analysing the information to be presented sooner rather than later to mitigate any potential data collection, infrastructure, reporting issues at the time of submission. Furthermore, this is probably the first time that taxpayers have been required to run these comparative statistics across all their entities / tax jurisdictions. Presenting data in the manner laid out by the IRAS couple possibly highlight various issues that may exist in the Group.

Finally, Singapore headquartered MNEs who operate globally need to be aware that the adoption of Country – by – Country Reporting by other jurisdictions. In some countries CbCR is effective from 1 January 2016, which is consistent with OECD's requirements. In addition, although the thresholds established for CbCR are broadly consistent with the initial threshold put forth by the OECD, exchange rate fluctuations may require Singapore headquartered companies to prepare CbC Reports, due to requirements in certain markets in which the Group operates, even though they may not be required to prepare them based on IRAS' requirements.

In conclusion, in light of these changes, we continue to reiterate the need for a coherent, robust transfer pricing strategy underpinned by accurate documentation and transfer pricing analyses.