



Transfer Pricing Switzerland Insights

Dear Sir or Madam,

We are pleased to present you the latest edition of Transfer Pricing Insights – Deloitte Switzerland’s bi-monthly newsletter focusing on ‘hot’ topics and economic related news.

Release of a Discussion Draft on BEPS Action 8 (Cost Contribution Arrangements)

The OECD on 29 April 2015 released a discussion draft on BEPS Action 8: Revisions to Chapter VII of the Transfer Pricing Guidelines on Cost Contribution Arrangements (“CCA”).

Action 8 (“Assure that transfer pricing outcomes are in line with value creation: Intangibles”) requires the development of “rules to prevent BEPS by moving intangibles among group members” and involves updating the guidance on cost contribution arrangements. The discussion draft sets out a proposed revision to Chapter VIII of the Transfer Pricing Guidelines and is intended to align the guidance in that chapter with the other elements of Action 8 already addressed in the Guidance on Transfer Pricing Aspects of Intangibles released in September 2014.

In particular, the draft requires contributions to be assessed based on the value, i.e. based on the arm’s length price, of the participants’ contributions rather than at cost. Several examples illustrating the guidance on CCA have also been included to the discussion draft.

Public written comments are invited to be submit by 29 May 2015.

[Read more](#)

Canada updates guidance on the role of multiple year data in TP analyses

In January 2015, the Canada Revenue Agency (“CRA”) released Transfer Pricing Memorandum (“TPM”) 16, whereby the CRA indicates that the determination of arm’s length prices used in related party transactions for Canadian taxpayers should be established for each individual tax year using the results obtained from comparable transactions in the relevant tax year.

While the recent Action 13 deliverable (Guidance on Transfer Pricing Documentation and CbC Reporting) by the OECD under the BEPS initiative was relatively silent on the use of multiple vs. single year data, the CRA stipulates that transfer prices for a given year should be determined based on the results of a single year of data from each of the comparable transactions. The relevant tax year of comparison is generally expected to be the year in which the controlled transactions were undertaken and, as a result, taxpayers should not average results over multiple years for the purpose of substantiating their transfer prices. CRA does maintain that multiple years of data may be useful to select, reject, or determine the degree of comparability of potentially comparable transactions.

In an audit context, the CRA indicates that it will look at the results for comparable data and apply them on a year-by-year basis.

However, in the context of an APA, the CRA acknowledges that the averaging of historical outcomes of comparable transactions over multiple years may be used to establish reasonable expectations of outcomes in future years for the application of a transfer pricing methodology.

[Read more](#)

China’s SAT Releases New Bulletin to Strengthen Transfer Pricing Administration on Intragroup Outbound Charges

China’s State Administration of Taxation (“SAT”) on 18 March 2015 released a bulletin (“Bulletin 16”) that formalizes several previously announced positions for dealing with service fees and royalties paid to overseas related parties.

Bulletin 16 eventually affirms the use of the arm’s length principle for intragroup service fees and royalties. There is also a clear emphasis on substantiating the authenticity and arm’s length nature of service and royalty transactions with intercompany agreements and other supporting information.

Whilst the SAT skips the need for a preapproval for intra-group payments for services or license fees to foreign group entities, it introduces the so called “six-test”



principle to analyse and review the reasonableness of intragroup service fees. The following provide some details on the SAT's approach.

- **Benefit test:** Payments for incidental benefits are non-deductible.
- **Necessity test:** Consideration should be given to whether the services are needed by the Chinese subsidiary or not.
- **Value creation test:** Services create value when they are able to bring in identifiable enhancements of economic and business value, improving the service recipient's operating performance.
- **Duplication test:** The SAT considers that often management services are likely to be duplicative activities or shareholder activities, and therefore should not be charged.
- **Remuneration test:** Consideration should be given to whether the provision of various services has already been remunerated through other related-party transactions.
- **Authenticity test:** Tax authority has the right to request relevant documents to substantiate the authenticity and arm's length nature of a service transaction.

In this changing legislative environment, and following the tax authorities' increasing focus on intragroup services charges and royalties, there are potentially large tax exposures in China if a tax adjustment is performed or entire service fees are treated as non-deductible as part of a tax audit. The classic way of mitigating transfer pricing risk by preparing contemporaneous documentation or ensuring that profitability falls within a reasonable range may no longer be appropriate. It is recommendable that taxpayers are more proactive in adapting to the new environment and should be prepared for possible inquiries and challenges from the tax authorities.

If you would like to explore the possible effects on your specific situation, please do not hesitate to contact us for further advice.

Increase in Unilateral Actions Against Profit Shifting

Some countries have recently taken unilateral moves to counter profit shifting. The UK diverted profits tax is in effect as from 1 April 2015 and Australia has announced the creation of a senior officials joint working group with the UK to address profit diversion.

According to the declaration of the Treasurer of Australia, Joe Hockey, the working group will go "one step further than what the OECD is doing".

These initiatives have received a lukewarm response from the OECD, which fears that it may seriously impede the progress of the BEPS project as other jurisdictions could follow a similar path, motivated by the protection of their tax revenue, and consequently increase the risk of double taxation on multinational companies.

We hope you have enjoyed this edition of Transfer Pricing Switzerland Insights. If you have questions in relation to one of the above topics or you would like to discuss your situation and receive a professional opinion on any transfer pricing related topics, please feel free to contact us directly via phone or email.

Best regards,

Hans Rudolf Habermacher
Transfer Pricing Practice Leader, Partner



Author



Hans Rudolf Habermacher
Transfer Pricing Practice Leader, Partner
T +41 (0)58 279 6327

[Send email](#)



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/ch/about for a detailed description of the legal structure of DTTL and its member firms.

Deloitte SA is a subsidiary of Deloitte LLP, the United Kingdom member firm of DTTL.

Deloitte SA is an audit firm recognised and supervised by the Federal Audit Oversight Authority (FAOA) and the Swiss Financial Market Supervisory Authority (FINMA).

This publication has been written in general terms and therefore cannot be relied on to cover specific situations; application of the principles set out will depend upon the particular circumstances involved and we recommend that you obtain professional advice before acting or refraining from acting on any of the contents of this publication. Deloitte SA would be pleased to advise readers on how to apply the principles set out in this publication to their specific circumstances. Deloitte SA accepts no duty of care or liability for any loss occasioned to any person acting or refraining from action as a result of any material in this publication.

[Home](#) | [Terms of Use](#) | [Privacy](#) | [Cookies](#)

© 2015 Deloitte SA. All rights reserved.

Not interested anymore? [Unsubscribe](#) from all email communications. Please be aware that this will unsubscribe you from all Deloitte marketing and events communications.