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OECD issues additional guidance on CbC reporting

The OECD on 5 December issued additional guidance on the implementation of the country-by-country (CbC) reporting requirement introduced in the BEPS Action 13 Final Report. This guidance updates and expands the additional guidance issued on 29 June 2016 [for prior coverage, see Global Transfer Pricing Alert 2016-023, July 1, 2016].
URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-023-1-july-2016.pdf

In an effort to support consistent implementation of CbC reporting, the OECD added guidance covering CbC reporting notification requirements for MNE groups during the transitional implementation phase. It also provides the expanded list of countries that have indicated they will allow parent surrogate filing (that is, voluntary filing in parent jurisdiction), including Hong Kong, Liechtenstein, Nigeria, and Russia, along with Japan, Switzerland, and the United States, which had previously declared their intention to allow voluntary filing.

The OECD's additional guidance covers:

- Transitional filing options for MNEs to address differences in effective dates *(updated)*
- CbC reporting notification requirements for MNE groups during the transitional phase *(new)*
- The application of CbC reporting to investment funds *(unchanged)*
- The application of CbC reporting to partnerships *(unchanged)*
- The impact of currency fluctuations on the agreed EUR 750 million filing threshold *(unchanged)*

Notification requirements during transitional phase

Approximately 20 countries have passed or introduced rules that may require local constituent entities of foreign-parented MNE groups to file CbC reports for fiscal years beginning on or after 1 January 2016, unless the CbC report is received by automatic exchange of information from a parent or surrogate parent jurisdiction. Several of these countries have indicated that local entities must identify their group's reporting entity by 31 December 31 2016, even though some of these jurisdictions have not finalized the procedures for providing this notification to the local tax authority. For further information regarding the status of the notification procedures in specific countries, please contact your local Deloitte Transfer Pricing professional.

Recognizing the practical difficulties for taxpayers that may not yet know the identity of their group's reporting entity, and the fact that some jurisdictions have not finalized their domestic legal framework, the OECD guidance provides that jurisdictions may allow some flexibility regarding the date for the notification requirement. Noting that the Action 13 standard does not require that notification be provided at the end of the reporting period, the OECD states that jurisdictions may want to choose a later date, such as the date for filing of the corporate tax return.

The OECD also suggests that jurisdictions that require notifications may provide administrative guidance to allow transitional relief by, for example, allowing constituent entities to provide notification based on a preliminary assessment of the identity and tax residence of the reporting entity, with the possibility of updating the notification prior to filing the CbC report. In addition, the OECD suggests that jurisdictions may also provide transitional relief from penalties in connection with MNE groups updating their notification.

The OECD also updated a chart that provides a high-level snapshot of CbC reporting implementation in 48 participating jurisdictions that have submitted information. The chart provides information on the first CbC reporting period, the availability of surrogate filing (including voluntary filing in the parent jurisdiction), and local filing.
URL: http://www.oecd.org/tax/automatic-exchange/country-specific-information-on-country-by-country-reporting-implementation.htm

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China's SAT issues new rules to improve advance pricing arrangement administration

China's State Administration of Taxation (SAT) on 11 October issued new regulations (SAT Bulletin [2016] No. 64,[1] or Bulletin 64) to improve the administration of advance pricing arrangements (APAs).

Bulletin 64 is released as the second significant revision to the relevant chapters of the Implementing Measures for Special Tax Adjustments (for Trial Implementation) (SAT Circular Guoshuifa [2009] No. 2 or Circular 2), following the previous issuance of SAT Bulletin [2016] No. 42 (Bulletin 42) in June 2016 on reporting of related-party transactions and contemporaneous documentation. It is another important rule regarding Chinese special tax adjustments. Bulletin 64 applies from 1 December 2016, and the applicable sections concerning APAs in the old regulations (Chapter 6 of Circular 2) will be repealed.

APAs are an effective method to resolve tax disputes in advance and improve taxation certainty. Specifically, bilateral or multilateral APAs may resolve in advance tax disputes among jurisdictions and effectively avoid double taxation. As one of the minimum standards, the OECD's Action 14 of the base erosion and profit shifting (BEPS) project, i.e., "Making Dispute Resolution Mechanisms More Effective," has listed "the implementation of bilateral APAs" as one of the best practices to improve the effectiveness and efficiency of mutual agreement procedures (MAPs). Bulletin 64 is another localized rule issued by the Chinese tax authorities to reflect the outcome of the BEPS actions, and represents the Chinese tax authorities' proactive attitude toward APAs and the emphasis on further normalizing relevant administration mechanisms. Bulletin 64 would also mark a significant improvement of the Chinese tax authorities' technical capabilities and efficiency of administration in the transfer pricing area.

Bulletin 64 also clarifies the relevant requirements on APA matters, such as the threshold for application, procedures for concluding APAs, the roll-back period, and application materials. The bulletin is expected to have a significant impact on APAs in China.

Changes and key points in APA applications

Under Bulletin 64, APAs generally will be available to enterprises with annual related-party transactions that reach RMB 40 million during the three years prior to the year in which the competent tax authorities issue the "Notice of Taxation Matters" to the taxpayer, notifying it of the acceptance of the taxpayer's letter of intent to apply for an APA.

All enterprises can present their intent to apply for an APA to the tax authorities; however, generally only enterprises that meet the following criteria may eventually conclude APAs with the Chinese tax authorities:

- The written letter of intent to apply for an APAs must be accepted by the Chinese tax authorities; and
- The annual related-party transaction amount must reach RMB 40 million during the three years prior to the year in which the competent tax authorities accept the intent to apply for an APA via a "Notice of Taxation Matters."

Compared to the old rules[2] in Chapter 6 of Circular 2, the threshold amount of related-party transactions remains the same, but the new rules introduce the consecutive three-year period criteria. In addition, Bulletin 64 provides that the tax authorities may reject the application if the enterprise fails to fulfill its obligations to report related-party transactions or prepare contemporaneous documentation.

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[1] See full text in Chinese: http://www.blxqds.gov.cn/art/2016/10/18/art_3232_118586.html
[2] According to article 48 of Chapter 6 of Circular 2, an APA generally applies to any enterprise that meets all of the following requirements: (1) annual related-party transactions amount reaches RMB 40 million; (2) the enterprise fulfils its obligation to make relevant related-party transaction filings in accordance with the regulations; and (3) the enterprise prepares, preserves, and submits contemporaneous documentation in accordance with the relevant regulations.

Bulletin 64 lists the situations in which the tax authorities may “prioritize” or “reject” APA applications:

<table>
<tr><th>“Prioritize”</th><th>“Reject (to accept the written intent)”</th></tr>
<tr><td rowspan="3">1. The enterprise submitted the full disclosures and comprehensive filings of related-party transactions and contemporaneous transfer pricing documentation
2. The enterprise’s tax compliance rating is an “A”
3. The enterprise was audited by tax authorities for special tax adjustment and the case was concluded
4. The enterprise applies for renewal of the APA after the execution period, and the facts and operating environment stated in the existing APA did not undergo any significant changes
5. The enterprise is able to submit the comprehensive materials required by the APA application, with a clear and complete analysis of the value chain or supply chain taking into consideration any location-specific factors such as market premium and cost savings, and the proposed transfer pricing method and calculation methods are reasonable
6. The enterprise proactively cooperates with the tax authorities to conduct the APA procedure
7. For a bilateral or multilateral APA, the competent tax authorities in other countries are eager to negotiate and conclude the APA, and consider the APA application to be of high importance
8. Other factors facilitating the conclusion of the APA.</td><td>1. The tax authorities have already initiated a special tax investigation or other tax investigation of the enterprise, which has not been concluded
2. The enterprise fails to submit “Annual Related Party Transactions Disclosure Forms” under the relevant regulations
3. The enterprise fails to prepare, preserve, and submit contemporaneous documentation according to the relevant regulations
4. The tax authorities and the enterprise fail to reach consensus during the prefiling meeting</td></tr>
<tr><th>“Reject (to accept the formal application)”</th></tr>
<tr><td>1. The proposed pricing and calculation methods in the draft APA application are not reasonable, and the enterprise refuses to negotiate and make any adjustment
2. The enterprise refuses to provide relevant information requested by the tax authorities, or refuses to provide additional and/or corrected information if the information originally provided does not meet the requirements of the tax authorities
3. The enterprise refuses to cooperate with the tax authorities to conduct on-site functional interviews
4. Other circumstances when it would be inappropriate to enter into an APA is inappropriate to reach.</td></tr>
</table>

For enterprises interested in applying for APAs, it will be important to consider how to increase the possibility that the APA application will be accepted by the tax authorities. In practice, the Chinese tax authorities will require quantitative analysis of location-specific advantages (LSAs) such as location savings and market premium, as well as value chain and supply chain analyses. Therefore, enterprises should reevaluate the feasibility of APA applications against the new rules, as well as the relevant impact on profitability arising from Chinese market factors and the contribution of Chinese enterprises in their global value chain within multinational groups.

Tax authorities involved in APA procedures

Bulletin 64 clarifies which tax authorities should be involved in the applications for each type of APA (unilateral, bilateral, or multilateral):

<table>
<tr><th rowspan="3"></th><th colspan="3">Whether involving tax authorities in multiple regions or both state tax and local tax bureaus</th></tr>
<tr><th rowspan="2">No</th><th colspan="2">Yes</th></tr>
<tr><th>Application stage</th><th>Signing stage</th></tr>
<tr><td>Unilateral</td><td>Competent tax authorities only</td><td>SAT and its designated tax authorities</td><td>The APA may be signed by the SAT (or its designated tax authorities) and the enterprise; alternatively, the APA may also be signed by each local tax authority involved and the enterprise*</td></tr>
<tr><td>Bilateral or multilateral</td><td>SAT and competent tax authorities</td><td colspan="2">Coordinated by the SAT</td></tr>
<tr><td colspan="4">* When a unilateral APA involves tax authorities in multiple locations but within the same province, the relevant work should be coordinated by the provincial tax bureau.</td></tr>
</table>

Changes and key points in APA process

In Bulletin 64, the APA process generally includes the following phases: prefiling meeting, intent to apply for APA, analysis and evaluation, formal filing, negotiation and signing, and monitoring and execution. Compared to the old rules[3] in Circular 2, Bulletin 64 renames the "examination and evaluation" phase as "analysis and evaluation" and reorders the phases, with "formal filing" now coming after "analyses and evaluation."

Practically speaking, the tax authorities generally prioritize the "analysis and evaluation" phase to improve efficiency in the "formal signing" phase. Therefore, Bulletin 64 makes the change accordingly. It clearly signals the importance of comprehensive analysis of the business operation and related-party transactions of applicants, as well as reasonable evaluation of the transfer pricing policy and calculation methodology adopted in the draft APA application, both of which would be critical for the tax authorities to determine whether to accept a formal filing.

Unlike the old rules in Circular 2, Bulletin 64 specifies the materials required for the prefiling meeting and draft APA application report for unilateral and bilateral (multilateral) APAs respectively, considering the differences for each type of APAs.

Procedures	Key Changes
Phase 1: Prefiling meeting	The "Application for APA Prefiling Meeting" must be submitted to the competent tax authorities and/or SAT; Increased information to be provided, e.g. market conditions, whether LSAs exist such as market premium and location savings; whether double taxation exists, together with relevant explanations
Phase 2: Intent for APA	The applicant must submit the Letter of Intent together with the draft APA application report; Increased information to be provided in the draft APA application report, including tax years to be covered, analysis of value chain or supply chain, and consideration of LSAs such as location savings and market premium
Phase 3: Analyses and evaluation	The arm's length principle is specified as the general analysis principle; Expanded scope of analysis and evaluation by tax authorities, such as analysis of related-party transaction data, and value chain and contribution analysis; The tax authorities may conduct on-site functional and risk interviews
Phase 4: Formal filing	The situations whereby the tax authorities may accept or reject formal applications are specified
Phase 5: Negotiations and signing	Removal of the requirement for unilateral APAs to be reported to the SAT for confirmation; Increased content of the APA file: renewal of the APA, information exchange for unilateral APAs, etc.; Changes in the manner of notification to the enterprise for bilateral and multilateral APAs: the SAT will forward the signed APA to the competent tax authorities, which will send the file to the enterprise; Articles are added regarding adjustments for over-/underpaid tax.
Phase 6: Monitoring and execution	The deadline for submission of the annual APA report is extended from five months to six months after the year end; Soft-copy reports are newly requested; The tax authorities will enhance relevant monitoring, and the profit level must be kept within the interquartile range during the APA's execution period; the tax authorities continue to require the submission of relevant files if there are any substantial changes affecting the APA.

According to BEPS action 14, participating countries shall commit to resolve bilateral MAPs within an average time frame of 24 months,[4] including processes for bilateral or multilateral APAs. The Chinese tax authorities have now adjusted the APA process and execution procedures to increase efficiency and shorten the time frame for concluding an APA. The bulletin would be regarded as one more step in adopting the BEPS actions into local Chinese law.

[3] An APA process may generally divided into six phases: prefiling meeting, formal filing, examination and evaluation, negotiation, arrangement signing, monitoring and execution (see article 46 of Circular 2).
[4] See paragraph 18 of the final report of BEPS Action 14: Make Dispute Resolution Mechanisms More Effective.

In addition, the enterprise should pay attention to the following in respect to the APA process and execution procedure mentioned above:

1. **Draft APA application report:** Bulletin 64 clarifies the value chain analysis and LSAs analysis required as part of the application report. If the applicant has made a comprehensive and sound analysis in relation to the value chain and LSAs in the draft application report, it may help facilitate negotiations and conclusion of the APA.

2. **Requirements on submission deadline and extension:** Bulletin 64 does not keep certain stipulations previously provided in Circular 2 regarding the extension of the time frame on documentation submission in the APA procedures (that is, there is no extension provided in Bulletin 64 for the submission of the "Formal APA Application"), except when extension is still allowed for an enterprise to report substantial changes during the APA execution period in certain circumstances. It suggests that tax authorities will keep control of the APA procedure and increase its efficiency. Enterprises are advised to plan proactively and manage their schedule well, as well as prepare robust materials. Timely communication with the tax authorities is also recommended to avoid missing the deadlines for submission of documentation.

3. **Monitoring of profit levels:** During the APA execution period, if the taxpayer's actual operating performance is outside the agreed range of prices or profit margins, Circular 2 required an adjustment to the profit level to the agreed range of price or profit margins. Bulletin 64 further stipulates that those adjustments should be made to the median of the agreed range of prices or profits. In addition, if the weighted average of the taxpayer's actual operating results for the APA covered years is below the median and is not adjusted to reach the median, the tax authorities will not accept a renewal application for the APA, according to Bulletin 64.

   In practice, renewal of an APA could be difficult when the taxpayer's profit level for the covered years is below the median of the agreed range of prices or profits. Now this requirement has been formalized in Bulletin 64. Therefore, taxpayers should manage carefully the transfer pricing of the related-party transactions covered by the APA, to ensure that the actual profit level of a single year reaches the median, and that the weighted average of actual operating results for the APA covered years is not lower than the median; otherwise, the APA renewal application will not be accepted.

4. **Payment / refund of under- / over-paid tax:** Historically, tax refunds were hardly seen in APAs, although technically tax refunds could be possible in bilateral APA. In the past, even if the bilateral MAP concluded the necessity for a tax refund, it could be difficult for the taxpayer to actually obtain a refund, given that there were no clear regulations in this regard. Bulletin 64 clarifies the relevant rules and makes it possible for taxpayers to obtain tax refunds through APAs.

Covered period and roll-back of APA

Bulletin 64 clarifies and updates the covered period and roll-back period of APA:

	Chapter 6 of Circular 2	**Bulletin 64**	**Key Changes**
Covered period	Related-party transactions occurring *during the three to five consecutive years after the year in which the formal APA application is filed*	Related-party transactions occurring *during the three to five consecutive years starting from the year in which the competent tax authorities issue "Notice of Taxation Matters" to the enterprise notifying the acceptance of the enterprise's intent to apply for an APA*	The starting year of the APA's covered period will be the year when the tax authorities accept the intent to apply for an APA, rather than the year following formal application

	Chapter 6 of Circular 2	Bulletin 64	Key Changes
Roll-back period	If the related-party transactions in the filing year or prior years are the same or similar to those covered in the APA, upon the enterprise's application and the tax authorities' approval, the pricing principle and calculation method applied in the APA may be applied to evaluate and adjust related-party transactions that occur during the filing year or prior years.	If the related-party transactions in the filing year or prior years are the same or similar to those covered in the APA, upon application by the enterprise, the tax authorities may apply the agreed APA terms in relation to the pricing principle and calculation method to evaluate and adjust the enterprise's related-party transactions in prior years. *The roll-back period shall not exceed 10 years*.	Bulletin 64 basically follows the previous rules, with clarification that the rollback period is limited to 10 years.

The clarification of the roll-back period in Bulletin 64 is in line with relevant guidance of BEPS action 14[5], which to some extent indicates that the Chinese tax authorities will fully accept the roll-back adjustment under an APA as an alternative to the special tax adjustment. From the perspective of ongoing practice, the roll-back of an APA could be considered a method for enterprises to improve the certainty regarding related party transactions and reduce compliance costs.

Information exchange for unilateral APAs

As stated in the final report on BEPS action 5, the enhancement of transparency would be treated as the primary mission to counter harmful tax practices. The framework to require a compulsory and spontaneous information exchange mechanism is the best approach to enhance transparency with regard to specific taxation rulings against taxpayers. Unilateral APAs involving cross-border transactions are also required as part of the information exchange as one of the six specific taxation rulings.

Bulletin 64 newly adds the content of information exchange for unilateral APAs. Except for information related to national security, the SAT will have the right to carry out information exchange with other countries' competent authorities regarding unilateral APAs that are signed after 1 April 2016. Such information exchange is also relevant to the requirements on contemporaneous transfer pricing documentation, especially the master file, which would require the disclosure of the multinational group's unilateral APAs in effect. Consequently, information exchange covering unilateral APAs can enable tax authorities to perform cross-verification of the information from different sources, which follows the trend of creating a more transparent tax environment globally, as advocated by the BEPS actions.

Miscellaneous

Suspension and termination of APA procedures: Bulletin 64 clarifies the situations whereby the APA procedure may be suspended or terminated in different phases. Specifically, if an enterprise does not provide necessary information for the APA procedure, provides false or incomplete information, or is considered to be taking other uncooperative actions, the tax authorities may suspend or terminate the APA procedures. Therefore, to avoid unnecessary losses caused by the suspension or termination of APA procedures, enterprises should be cautious in preparing the relevant application materials.

Renewal: Bulletin 64 basically follows the rules in Circular 2, and adds that if the enterprise's weighted average of actual operating results for the APA covered years is below the median of the agreed range and not adjusted to the median level, the tax authorities will not accept an APA renewal application.

APA and special tax adjustment: Bulletin 64 stipulates that the signing of an APA will not affect special tax adjustments, investigations, monitoring, and administration by the tax authorities on the enterprise in relation to its

[5] According to paragraph 33 of the final report of BEPS Action 14, an APA should be allowed to be applied to previous years when applicable in complying with the time limit.

related-party transactions not covered by the APA. Compared with the relevant rules of Circular 2,[6] the provisions in Bulletin 64 appear to be clearer, and provide more certainty.

Deloitte observation

As new guidance for Chinese transfer pricing administration, Bulletin 64 summarizes the Chinese tax authorities' practical experience in recent years in the area of APA management. The issuance of Bulletin 64 marks not only the focus of Chinese tax authorities on transfer pricing but also a signal of the authorities' interest in developing the APA practice in China and enhancing the quality of government service to taxpayers. The bulletin will prove to be another milestone regulation in China's APA practice, taking comprehensive considerations to China's specific economic environment and integrating the management standards of tax administration in developed countries, making a positive contribution to managing APAs in China.

From a practical perspective, the Chinese tax authorities have become more prudent and stricter in reviewing APA applications by applying higher standards, due to the sophistication and experience gained by Chinese tax authorities in handling APAs during recent years. As evidenced by Bulletin 64, the implementation of BEPS actions will be accelerated in China.

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Irish Revenue releases updated guidance on country-by-country reporting

The Irish Revenue on October 13 released updated guidance on country-by-country (CbC) reporting, including a step-by-step guide on notification requirements.

Background

Ireland has introduced CbC reporting legislation and regulations effective for accounting periods commencing on or after January 1, 2016.

Under the new provisions, an Irish-resident ultimate parent entity of a multinational group (broadly, one with annual consolidated revenue in excess of EUR 750 million in the immediately preceding accounting period) will be required to file a CbC report with Irish Revenue. The Irish legislative provisions provide for a secondary filing mechanism whereby a multinational group can designate an Irish-resident constituent entity of the group to act as a "surrogate parent" entity and file a CbC report with Irish Revenue on the group's behalf. If it is not possible for the ultimate parent entity or a surrogate parent entity to file a CbC report, there is a requirement for a local country filing with Irish Revenue – known as an "equivalent CbC report."

Updated Irish Revenue guidance

The updated guidance includes details on notification requirements for CbC reporting purposes. The guidance outlines which entities must notify Irish Revenue. Notification must be made via the Revenue Online Service (ROS), and Appendix III of the guide provides detailed, step-by-step instructions on notification. Notification is required on an

[6] According to article 49 of Circular 2, the signing of an APA will not affect the tax authorities' transfer pricing investigation and adjustments of related-party transactions occurring during the year in which the formal APA application is filed or during any prior years.

annual basis, with the first notification requirement due by December 31, 2016, for accounting periods ending on that date.

The following table outlines details of the notification requirements and CbC report filing for various classifications of constituent entities in Ireland.

Status of Irish resident constituent entity	**Information required**	**Notification deadline to Irish Revenue**	**CbC report or local filing deadline with Irish Revenue**
Ultimate parent of multinational group is an Irish entity	Notification that the company is the ultimate parent entity of a multinational group for the relevant reporting period	On or before the end of the relevant reporting period for the group (e.g., notification will be required to be made on or before December 31, 2016, for the December 31, 2016 financial year) via ROS	A CbC report is required to be filed with Irish Revenue within 12 months from the end of the accounting period (e.g., December 31, 2017, for the December 31, 2016 financial year). Report is shared with other tax authorities via information exchange protocols
Irish entity is appointed surrogate parent of multinational group	Notification that the company is an appointed surrogate parent entity of a multinational group for the relevant reporting period	On or before the end of the relevant reporting period for the group. (e.g., notification will be required to be made on or before December 31, 2016, for the December 31, 2016 financial year) via ROS	A CbC report is required to be filed with Irish Revenue within 12 months from the end of the accounting period (e.g., December 31, 2017, for the December 31, 2016 financial year). Report is shared with other tax authorities via information exchange protocols
Neither ultimate parent nor appointed surrogate parent but a local equivalent CbC report filing is required	Notification that the company is an Irish constituent entity of a multinational group and is a reporting entity for CbC reporting purposes	On or before the end of the relevant reporting period for the group (e.g., notification will be required to be made on or before December 31, 2016, for the December 31, 2016 financial year) via ROS.	An equivalent local report is required to be filed with Irish Revenue within 12 months from the end of the accounting period (e.g., December 31, 2017, for the December 31, 2016 financial year). It should be noted that an equivalent CbC report will not be exchanged with other tax authorities
None of the above (i.e., a foreign ultimate parent or surrogate parent is filing on behalf of the group in another jurisdiction)	The identity and jurisdiction of tax residence of the relevant reporting entity for the multinational group	On or before the end of the relevant reporting period for the group (e.g., notification will be required to be made on or before December 31, 2016, for the December 31, 2016 financial year) via ROS	CbC report gets shared with Irish Revenue automatically via information exchange protocols.

To the extent that there is more than one domestic Irish constituent entity for CbC reporting purposes, the group may nominate one Irish entity to make notification on behalf of all other Irish constituent entities on ROS. Irish Revenue also allows an Irish tax-resident ultimate parent or surrogate parent entity to provide notification on behalf of all Irish domestic constituent entities.

Other points to note from the guidance issued include:

- Guidance is included for scenarios whereby an ultimate parent entity of a group files a CbC report on a voluntary basis (for example, filing in the United States for periods commencing on or after January 1, 2016). Irish Revenue have confirmed, subject to satisfying a number of conditions, that Irish constituent entities will not be required to file an equivalent CbC report.
- When an equivalent CbC report is to be filed, Irish Revenue have stated that the Irish entity is best positioned to determine what information it can provide in the equivalent report.
- Regarding guidance on reporting for investment funds, Irish Revenue reiterate the guidance provided by the OECD in August 2016 that the content of the CbC report is dependent on the relevant accounting treatment applied.
- Confirmation by Irish Revenue that the data contained in a CbC report will not be used in isolation to make adjustments to a taxpayer's income.

Comments

The updated guidance provided by Irish Revenue is a timely reminder for affected companies that notification requirements for CbC reporting purposes is approaching for groups with a December 2016 year end. Companies also should be aware that other jurisdictions will have separate notification requirements in place, so it is important to consider those requirements as well.

With just over 12 months until the first filing of CbC reports at the end of 2017, companies should have a plan in place to readily collate CbC report data to compile the first reports. Companies also should undertake an analysis of (and fully understand) the CbC report output to consider how it may be interpreted by tax authorities. This analysis should be linked to a group's transfer pricing documentation strategy (master file and local file under Action 13 of the OECD BEPS project) so that the documentation provides support for the CbC report data filed and is sufficiently robust to withstand tax authority challenge.

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IRS announces position on unilateral APA applications by maquiladoras

The Internal Revenue Service on October 14 announced that US taxpayers with maquiladora operations in Mexico will not be exposed to double taxation if they enter into a unilateral advance pricing agreement (APA) with the Large Taxpayer Division of Mexico's *Servicio de Administración Tributaria* (SAT) under an elective framework that has recently been agreed to by the US and Mexican competent authorities.

Maquiladoras typically operate in Mexico as contract manufacturers of foreign multinationals. In 1999, a set of safe harbors was introduced in a transfer pricing agreement between the United States and Mexico that established what both governments determined was an arm's length result for a maquiladora operating in Mexico. Then, in 2014, the Mexican tax laws were reformed, and as part of that reform, maquiladora companies were essentially required to enter into a unilateral APA to receive income tax benefits. As a result, approximately 700 maquiladoras have requested unilateral APAs from the Mexican government, often in an effort to negotiate a profitability rate that is less than the rates included in the 1999 agreement.

The IRS's announcement – IR-2016-133 – represents the culmination of two years of collaboration between the competent authorities to address the current inventory of pending APA applications. The two governments believe this is an important step forward in strengthening ties between the IRS and the SAT and in providing certainty in the taxation of multinationals.

The centerpiece of the new maquiladora framework is an election the SAT would extend to "qualifying taxpayers" with unilateral APA requests pending with the SAT. The SAT has indicated that the term "qualifying taxpayer" will exclude the following two types of companies: (i) large taxpayers (Mexican maquiladoras with annual revenues in excess of

MXN 1,200 million or approximately $64 million); and (ii) maquiladoras with a principal company located in a country other than the United States. Those taxpayers will not be eligible for the new maquiladora framework.

Under the new agreement, taxpayers will have the following options:

- If a maquiladora meets the definition of a qualifying taxpayer, it may elect to apply the new maquiladora framework in a unilateral APA with the SAT. The US and Mexican competent authorities have agreed in advance that the method adopted pursuant to the new maquiladora framework and included in the unilateral APA will produce arm's length results.
- Qualifying taxpayers that decline to elect into the new maquiladora framework may either: (i) continue to apply for a unilateral APA using a method that is different than the one included in the new maquiladora framework; (ii) apply the safe harbors that were included in the 1999 agreement; or (iii) file a request for a bilateral APA with the US and Mexican competent authorities.
- Maquiladoras that do not qualify for the new framework but that have applied for a unilateral APA may continue with the unilateral APA application. If a nonqualifying maquiladora does continue its unilateral application with the SAT, the terms to which it will have to agree are not known. Presumably, the method will be different than the one applicable under the new maquiladora framework. As alternatives to a unilateral APA, the nonqualifying taxpayer may either apply the safe harbors from the 1999 agreement or apply for a bilateral APA between the United States and Mexico.

The new maquiladora framework updates and expands upon the 1999 agreement to reflect recent revisions to Mexican domestic tax law governing transfer pricing rules, documentation requirements, and other tax attributes of maquiladoras. The SAT will release details shortly about the election to use the new maquiladora framework, and will directly notify, via an invitation letter, qualifying Mexican taxpayers whose unilateral APA applications are pending with the SAT.

Qualifying taxpayers that receive an invitation letter will be able to finalize their pending unilateral APA through the method included in the new maquiladora framework. The invitation letter will include details on the steps the taxpayer must take regarding its pending unilateral APA request.

Because the transfer pricing framework adopted under the SAT's program was discussed and agreed upon with the US competent authority in advance, the transfer pricing results set forth in unilateral APAs executed between the SAT and Mexican affiliates of US taxpayers pursuant to this program generally will be regarded as arm's length under section 482 of the Internal Revenue Code.

As part of the US and Mexican competent authorities agreement, any adjustment to maquiladora revenues derived from the application of the new maquiladora framework to fiscal years 2014 and 2015 should be invoiced as part of the maquiladora's income for fiscal year 2016. The intent is to avoid the filing of amended returns for 2014 and 2015 and to eliminate interest, penalties, and surcharges on tax differences for those years.

In conjunction with the 1999 agreement, the new maquiladora framework will provide certainty for US taxpayers regarding double taxation, foreign tax credits, and permanent establishments regarding transactions with their maquiladoras. According to the IRS, further guidance on the US taxable years and tax consequences of these unilateral APAs will be included in a forthcoming IRS international practice unit (IPU).

It is unusual for the IRS to provide guidance on the unilateral APAs in an IPU, which are designed as job aids and training materials for IRS staff. The IPU page on the IRS website explicitly states that IPUs are "not official pronouncements of law or directives and cannot be used, cited or relied upon as such."[7]

There is some question as to how the IRS will enforce the new maquiladora framework. The SAT is expected to "spontaneously" exchange summaries of the unilateral APAs on a mandatory basis with the IRS pursuant to BEPS Action 5. In addition, we should expect that these unilateral APAs would be included in the master and local files pursuant to BEPS Action 13, and that the IRS on exam may ask for such documentation with respect to a company's Mexican operations even though the United States does not have (and is not expected to issue) master file and local

[7] See https://www.irs.gov/businesses/corporations/international-practice-units.

file requirements.[8] Presumably, it will be through these mechanisms that the IRS will be able to enforce the new maquiladora framework.

In addition to the new maquiladora framework, the SAT recently issued a new rule (Rule No. 2-12-8) that allows it to conduct on-site visits to a taxpayer's premises as a way to gather and corroborate information in a functional analysis. Maquiladoras are the companies most likely to be affected by this rule. The functional analysis will be performed at the taxpayer's place of business and will be scheduled by the SAT. It is not known when these visits will start taking place or whether they will apply to pending APAs. It is possible, for example, that these site visits will not begin until 2017 and that they might apply only to new APAs. More guidance is expected in the coming weeks on how these rules will be implemented.

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Deadlines to preserve taxpayer rights to request competent authority assistance to relieve double taxation

Transfer pricing continues to be the top enforcement priority of tax authorities around the world, and one of the major risks for many multinationals. With foreign tax authorities aggressively asserting transfer pricing deficiencies, many taxpayers are receiving proposed adjustments regarding intercompany transactions. For this reason, it is imperative that taxpayers understand the actions required to preserve the right to request competent authority assistance to relieve double taxation.

Competent authority assistance for double taxation is provided under the mutual agreement procedure (MAP) article of the relevant tax treaty. To obtain relief from double taxation, the United States and other countries' competent authorities must be notified of the proposed adjustments, or a request for MAP assistance must be filed, within specified deadlines under many US tax treaties. For example, in the case of an IRS-initiated adjustment, the foreign tax authority may require notification, and, in the case of a foreign-initiated adjustment, the IRS may need to be notified. Failure to make the appropriate filings can result in the IRS or foreign tax authority denying the taxpayer's request for competent authority relief to eliminate double taxation. In addition, taxpayers generally should not sign closing or similar agreements with the tax authorities if they intend to request competent authority assistance, because doing so may limit their ability to obtain relief from double taxation.

In 2015, 78 percent of new US competent authority requests received related to foreign-initiated adjustments.[9] Given the ever-increasing aggressiveness of foreign tax authorities, taxpayers must be vigilant regarding the treaty deadlines to protect their right to request competent authority assistance. These treaty deadlines can and do differ from domestic statutes of limitations, and taxpayers must take protective actions to keep recourse to competent authority open. The fact that the domestic statute of limitations may still be open for transfer pricing assessments in one or both of the affected countries is not determinative of the availability of competent authority assistance.

[8] See BEPS Action 5 (2015 Final Report) ¶¶ 91 and 107 et. seq. and BEPS Action 13 (2015 Final Report) Annexes I and II to Chapter V.
[9] Internal Revenue Service, Large Business and International Division, Competent Authority Statistics, April 27, 2016. Last year, 224 out of 289 of requests received in 2015 for the Advance Pricing and Mutual Agreement (APMA) Program and Treaty Assistance and Interpretation Team (TAIT), combined, related to foreign-initiated adjustments.

Taxpayers who are either subject to a foreign tax audit or who have a reasonable expectation that they may be subject to a foreign tax audit should review the relevant treaty timelines and consider taking all necessary protective measures. Taxpayers do not need to wait until the conclusion of a transfer pricing audit to take such measures.

Failure to notify the IRS (or foreign tax authority) within the specified time frames will likely preclude the taxpayer from seeking competent authority relief from double taxation, and may also give rise to issues regarding the creditability of foreign taxes. *See Procter & Gamble Co. v. US* (S.D. Ohio, Case No. 1:08-cv-00608, defendant's motion for summary judgment granted 7/6/10).

The table below summarizes the notification/filing requirements and applicable time limitations for requesting competent authority assistance between the United States and all of its current treaty partners. Some US treaties (those with Canada, Finland, Jamaica, Mexico, Netherlands, and Turkey) require notification to the tax authority that did not propose the adjustment within a certain number of years of the taxpayer's tax year end or the filing of a tax return. In addition to the original notification, the IRS requires annual notification updates. The recently issued updates to the IRS competent authority procedures – Rev. Proc. 2015-40 – changed the due date for such updates beginning in 2016. The new due date for notification updates is no later than the date on which the taxpayer timely files a tax return for such taxable year.

Taxpayers should consult with their tax advisors to evaluate the relevant provisions of the applicable treaty and their specific application to the taxpayer's facts and circumstances.

The contact persons listed below can assist you in preparing the required notifications and updates.

US Treaty Partner	Notification / Action Deadline per Treaty
Australia	The case must be presented within three years from the first notification of the tax authority action giving rise to taxation not in accordance with the provisions of the treaty.
Austria	No deadline.
Bangladesh	No deadline.
Barbados	No deadline.
Belgium	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Bulgaria	No deadline.
Canada	The competent authority of the country that did not propose the adjustment must receive notification that such a case exists within six years from the end of the taxable year to which the case relates.
China	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Cyprus	No deadline.
Czech Republic	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Denmark	No deadline.
Egypt	No deadline.
Estonia	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Finland	The competent authority of the country that has been requested to provide a refund must have received notification within six years from the end of the taxable year to which the case relates.
France	The case must be presented within three years of the notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Germany	The case must be presented within four years from the notification of the assessment giving rise to double taxation or to taxation not in accordance with the provisions of the treaty.
Greece	No deadline.
Hungary	No deadline.
Iceland	No deadline.
India	The case must be presented within three years of the date of receipt of notice of the action that gives rise to taxation not in accordance with the treaty.

US Treaty Partner	Notification / Action Deadline per Treaty
Indonesia	The case must be presented within three years of the first notification of the action giving rise to taxation not in accordance with the provisions of the treaty. Where a combination of decisions or actions taken in both countries results in taxation not in accordance with the provisions of the treaty, the three-year period begins to run only from the first notification of the most recent action or decision.
Ireland	No deadline.
Israel	No deadline.
Italy	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Jamaica	The taxpayer or the competent authority of the United States must give notice within the time limits established by the domestic law of Jamaica to the competent authority of Jamaica that there may be a claim for tax adjustments.
Japan	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Kazakhstan	No deadline.
Korea	No deadline.
Latvia	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Lithuania	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Luxembourg	No deadline.
Malta	No deadline.
Mexico	When a resident of one country presents his case to the competent authority of that country, the competent authority of the other country must have been notified of the case within four and a half years from the due date or the date of filing of the return in that other country, whichever is later. In any case arising under any article other than Article 9 (Transfer Pricing) of the treaty, it may be prudent to notify each country within four and a half years from the due date or the date of filing of the return in that other country, whichever is later. Please note that the statute of limitations for a tax adjustment may extend past the due date for notification under the US-Mexico tax treaty. Taxpayers should consider filing notifications with the IRS APMA program at the onset of any Mexican tax examination.
Morocco	No deadline.
Netherlands	The competent authority of the country that did not propose the adjustment must receive notification that such a case exists within six years from the end of the taxable year to which the case relates.
New Zealand	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Norway	No deadline.
Pakistan	No deadline.
Philippines	No general notification deadline, but there is a filing deadline with respect to the Philippines. The claim for refund or credit must be filed in the Philippines no later than two years from the close of the taxable year in which the United States imposed tax is paid, and such claim for refund or credit must be filed within five years from the close of the taxable year in issue.
Poland	No deadline.
Portugal	The case must be presented within five years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Romania	No deadline.
Russia	No deadline.
Slovakia	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Slovenia	The case must be presented within five years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.

US Treaty Partner	Notification / Action Deadline per Treaty
South Africa	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty (or in the case of tax collected at source, within three years from the date of collection).
Spain	The case must be presented within five years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Sri Lanka	No deadline.
Sweden	No deadline.
Switzerland	No notification deadline in Treaty; however, a formal request for competent authority assistance must be made within ten years after the final assessment of Swiss or US taxes, as applicable.
Thailand	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Trinidad and Tobago	No deadline.
Tunisia	No deadline.
Turkey	The competent authority of the country that did not propose the adjustment must receive notification that such a case exists within five years from the end of the taxable year to which the case relates.
Ukraine	No deadline.
United Kingdom	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.
Venezuela	No deadline; however, the statute of limitations must be "interrupted in accordance with the steps designated by domestic laws" to implement the mutual agreement.

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OECD issues guidance on Action 14 peer reviews

The G20/OECD and other countries participating in the 'Inclusive Framework' on base erosion and profit shifting (BEPS) published key documents on October 20 setting out the infrastructure for peer review and monitoring of mutual agreement procedures (MAP) under Action 14 ("Making Dispute Resolution Mechanisms More Effective") of the BEPS Action Plan.

Action 14 calls for effective dispute resolution mechanisms to resolve tax treaty-related disputes, and the October 2015 final report outlined the minimum standard and best practices for resolving treaty-related disputes under MAP. More than 100 countries that are members of the Inclusive Framework on BEPS have committed to the implementation of the Action 14 minimum standard and to have their implementation reviewed by their peers.

Peer review and monitoring package

The package released consists of four component documents:

- Terms of Reference to Monitor and Review the Implementing of the BEPS Action 14 Minimum Standard to Make Dispute Resolution Mechanisms More Effective;
- Assessment Methodology for the Monitoring and Review of the Implementation of the BEPS Action 14 Minimum Standard to make Dispute Resolution Mechanisms More Effective;
- MAP Statistics Reporting Framework; and
- Guidance on Specific Information and Documentation Required to be Submitted with a Request for MAP Assistance.

Terms of reference

The terms of reference assess a country's legal and administrative framework for dealing with treaty-related disputes under MAP. They translate the agreed minimum standard for dispute resolution into 21 elements under the four key areas of an effective dispute resolution mechanism:

- Preventing disputes;
- Availability and access to MAP;
- Resolution of MAP cases; and
- Implementation of MAP agreements.

As set out in the October 2015 final report on Action 14, the minimum standard is complemented by 12 best practices that do not form part of the minimum standard. The extent to which countries implement these will not form part of their peer review or assessment.

The terms of reference do not alter the minimum standard set out in the October 2015 final report. To the extent there is any perceived inconsistency between the two documents, the final report takes precedence.

Assessment methodology

Peer reviews will be performed by members of the Forum on Tax Administration MAP Forum (FTA MAP Forum) (a subsidiary body of the OECD's Committee on Fiscal Affairs (CFA)). Reviews will be undertaken in batches. The first reviews are due to take place in December 2016, and the intent to publish the first reports in the second half of 2017.

The assessment methodology sets out the two-stage process for the review. Stage 1 involves the review of the assessed country's implementation of the minimum standard based on its legal framework for MAP and its application in practice. Stage 2 involves the review of the measures taken by the country to address any shortcomings identified at Stage 1.

Stage 1 reviews will commence with a series of questionnaires based on the 21 minimum standard elements of the terms of reference. One questionnaire will be sent to the assessed jurisdiction, another to its treaty partners, and a separate questionnaire will be available to businesses and other taxpayers on the OECD website, covering MAP matters upon which taxpayers are best placed to comment (such as availability and ease of access to MAP).

Stage 2 will commence a year after a Stage 1 report has been approved. Each assessed jurisdiction must provide an update report setting out steps taken to address any shortcomings identified during the Stage 1 review and any plans for legislative changes to implement the minimum standard.

Statistics reporting framework

The minimum standard requires competent authorities to attempt to resolve disputes through MAP within an average of 24 months. The extent to which this requirement is being met will be reviewed by the FTA MAP Forum through information provided by countries in accordance with the agreed reporting framework. The reporting framework includes agreed milestones for the initiation and conclusion of a case under MAP, as well as other relevant stages in the process.

Guidance on specific information and documentation required

An element of the minimum standard is the requirement that access to MAP is not denied on the basis that taxpayers have provided insufficient information. To provide certainty and clarity to taxpayers applying for MAP, countries are required to publish clear rules and guidelines on access to and use of MAP. This requirement includes the requirement to include details of the specific information and documentation that should be included with any application for MAP assistance, together with the form in which such information should be provided. This document includes details of what information countries should provide, as well as information that could be of benefit to taxpayers.

European Union: Proposed council directive on double taxation dispute resolution mechanisms in the EU

On October 25, 2016, the European Commission proposed a new directive on double taxation dispute resolution. The proposed directive would improve the efficiency of the existing dispute resolution process (the EU Arbitration Convention) and extend its scope to matters beyond transfer pricing and attribution of profits to permanent establishments. In particular, the directive would apply to all instances of double taxation of business income, explicitly requires elimination of double taxation, and would require mandatory resolution of double taxation disputes through a binding arbitration or binding alternative dispute resolution process. In addition, the timelines for settlement (a major weakness of the existing Arbitration Convention) would be enforced. The proposal will be put forward for consideration by the European Council.

Next steps

Peer reviews of countries' implementation of MAP will begin in 2016, with the objective of finishing the first reports in the second half of 2017. Stage 1 reviews are to have been begun by the end of 2018. Stage 2 reviews are to be completed in 2020. As a practical matter, reviews of some developing countries will be deferred by request. The conditions for deferral are that the country must not be a member of the G20 or OECD, must have received a limited number of requests for MAP, and there must have been no feedback from other countries indicating shortcomings in the developing country's MAP process.

Comments

The ability to resolve disputes and effectively eliminate double taxation is a key component of a modern international tax system that promotes cross-border trade and economic growth.

The introduction of the peer review process and reports demonstrates the commitment of the G20/OECD and other participating countries to make changes to improve MAP processes, in practice as well as in policy, and to hold competent authorities and countries to account for their performance against the minimum standard and obligations under double tax treaties.

Key to this process will be for countries to find the necessary resources, particularly qualified people to act as competent authorities within the tax administration, to meet their MAP obligations.

The number of cross-border disputes requiring resolution under MAP has been increasing, and is expected to rise further in the short-to-medium term as some of the other changes under BEPS are implemented and interpreted by businesses and tax authorities. The G20/OECD work on dispute resolution under the BEPS Action Plan is a welcome and necessary development for businesses. At the same time, mandatory binding arbitration (which is not part of the minimum standard requirements but is being taken forward by 20 OECD countries including the UK, the United States, and 14 other European countries) remains the only guarantee for ensuring elimination of double taxation. Within the European Union, if it is agreed to, this will be supported by the proposed EU directive on dispute resolution, which complements the OECD's work. The G20/OECD work on dispute resolution under the BEPS Action Plan is a welcome and necessary development for businesses.

The recent publication of the "MAP Profiles" of OECD and G20 countries, including contact details for each country's competent authority, domestic guidelines for MAP, and other useful information for both tax authorities and businesses is a useful starting point. The profiles of non-G20/OECD member countries are expected to be made public in 2017, further facilitating the process for businesses.

The framework for peer review offers businesses, as the main users of MAP, the opportunity to provide input on their experience with a country's MAP process, which will assist with ensuring the reviews capture the full practical consequences.

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Performance audit of IRS concludes transfer pricing issues not being properly evaluated

The Treasury Inspector General for Tax Administration (TIGTA) in a final report issued November 3 concluded that transfer pricing issues are not being properly evaluated by the Internal Revenue Service because of various procedural barriers at the agency.

TIGTA's report was written at the conclusion of a performance audit conducted for the 2012-2014 calendar years. As discussed below, TIGTA has made seven recommendations to improve the IRS's evaluation of transfer pricing issues. The IRS agrees with some but not all of the recommendations and will implement various changes accordingly.

TIGTA's audit

TIGTA conducted a performance audit of the IRS because cross-border trade in goods and services has increased substantially over the past several decades. In addition, the IRS has designated transfer pricing as a key focus of its international compliance initiatives. Transfer pricing issues account for approximately 46 percent of the Large Business and International Division's (LB&I's) international issues inventory and 71 percent of the potential total dollar adjustment amounts of all international tax issues. TIGTA initiated this audit to identify and assess whether any barriers existed to the IRS efficiently evaluating transfer pricing issues.

Of particular note was the sustention rate of cases taken to IRS Appeals. In its survey, TIGTA analyzed 213 examinations that included at least one transfer pricing issue with appealed adjustments that was closed during calendar years 2012 through 2014. TIGTA determined that appealed cases were settled for amounts that were much smaller than what was proposed by LB&I's Examination function. Specifically:

- Of the 213 examinations, the total amount of proposed adjustments was approximately $10.5 billion during the time period under review.[10] In contrast, the total final examination assessment amount was only $2.0 billion. This shows that the originally proposed adjustment amounts were reduced by $8.5 billion through the Appeals process.
- Actual assessment amounts showed that only $321 million of the original proposed $10.5 billion in proposed adjustments were ever posted to taxpayer accounts.

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[10] Due to limitations on how the IRS captures the net assessment on each case, TIGTA was not able to differentiate whether the appealed adjustments related to transfer pricing or to the other adjustments in the examination assessment.

Examiners were not always aware that their proposed transfer pricing-related adjustments had been reduced by the Appeals function. One of TIGTA's survey questions to Transfer Pricing Practice (TPP) and the International Business Compliance (IBC) function employees asked if they were informed when their proposed transfer pricing adjustments were reduced by the Appeals function. Approximately 54 percent of the respondents said they were not informed. Another 14 percent said they were informed, but were unaware of the reason for the change.

TIGTA also made the following findings:

- The IRS has provided external stakeholders (including taxpayers and foreign governments) sufficient education and outreach related to the transfer pricing examination process. However, some IRS employees might not have been consistently following the Transfer Pricing Audit Roadmap, which was issued as a tool to help taxpayers and the IRS conduct transfer pricing audits.
- The IRS did not have a process to ensure that all transfer pricing issues were identified for specialized review. Only 20 percent of the transfer pricing inventory was received from the Specialist Referral System (SRS), an electronic, web-enabled referral routing system used to request international assistance on original filed returns. Further, employees of the TPP function did not have access to the SRS and needed to rely instead on management of another IRS function, the IBC function, to share any transfer pricing referrals with them. In addition, the rules of engagement between the TPP and the IBC function were not always followed.
- There were no separate performance measures related to quantifiable results to determine the success of the IRS's transfer pricing efforts. This included a lack of performance measures to evaluate IRS Appeals (Appeals) determination information, which could be used to refine the approach for identifying and working transfer pricing cases.

As a result of these findings, TIGTA recommended the following measures:

- The IRS should ensure that its employees follow the Transfer Pricing Roadmap and include this as an attribute of the quality review process.
- The IRS should ensure that TPP employees have full access to the SRS and that TPP and IBC function employees follow the rules of engagement between the two functions. This latter measure should be included as an attribute of the quality review process, too.
- The commissioner, LB&I Division, should develop a formal and comprehensive transfer pricing strategy, as well as implement a post-mortem review of examinations with transfer pricing issues that went through the Appeals process.

TIGTA organized these measures into seven recommendations. The IRS agreed or partially agreed with five of the recommendations, and disagreed with two of them.

Review more details of TIGTA's performance audit.
URL: https://www.treasury.gov/tigta/auditreports/2016reports/201630090fr.pdf

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Singapore issues new form for reporting related-party transactions

The Inland Revenue Authority of Singapore (IRAS) will introduce a new "Form for Reporting of Related-Party Transactions" with effect from year of assessment 2018.

The new form will have to be completed if the value of a company's related-party transactions disclosed in the audited accounts for the financial year exceeds S$15 million. The form would have to be endorsed by an authorized representative of the company and submitted together with Form C.

The related-party transaction categories to be reported in the new form cover tangible goods, intangibles, services, and financing transactions. Details on the company's top five foreign related customers and suppliers are also required to be reported.

Click here for more details on reporting requirements. A sample copy of the form can be found here.

Comments

This is not the first time IRAS has required reporting of related-party transactions in Form C. In earlier years, before year of assessment 2004, companies were required to disclose in Form C the value and counterparty of some related-party transactions, and whether arm's length prices were charged. That IRAS has reinstated, and enhanced, such disclosure requirement in Form C is an indication of IRAS's continuing focus on monitoring and auditing taxpayers' compliance with transfer pricing documentation and arm's length pricing requirements.

With the increase in cross-border transactions and global scrutiny of transfer pricing, the new Related-Party Transactions Form will be a tool for IRAS to collect data to improve its transfer pricing risk assessment of companies and to allocate resources to higher risk cases, with a view to improving enforcement of the arm's length principle.

Companies should thus take note of this new form for year of assessment 2018, and ensure that the form is duly completed and submitted if the value of related-party transactions exceeds S$15 million.

More importantly, companies should verify that they have prepared robust and adequate transfer pricing documentation to support the conclusion that the related-party transactions disclosed in the form are in line with the arm's length principle, as it is highly likely that IRAS will be requesting such documentation when reviewing the data collected from the Related-Party Transactions Form.

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Colombia introduces tax reform bill with transfer pricing elements

Colombia's Ministry of Finance on October 19 introduced a structural tax reform bill that would introduce changes to the current transfer pricing regime. A summary of the most important reforms follows.

Comparable uncontrolled price method (Art. 105)

In line with Action 10 of the OECD's Base Erosion and Profit Shifting (BEPS) Project, the proposed bill provides that for transactions involving the trading of raw materials or basic products (commodities), the comparable uncontrolled price (CUP) method could be considered (but is not mandatory) as the appropriate transfer pricing method to establish the arm´s length price in those transactions. Quoted prices in the open market may be used as a reference under this method. If necessary, comparability adjustments may be made to increase comparability. A relevant factor to be taken into account is the pricing date, which refers to a date or specific time period selected by the parties to establish the price of the transaction, which must be demonstrated by a duly registered contract with the terms established by the national government. If the taxpayer does not have such information or the pricing date is not clearly defined, the tax authority may assume that the correct pricing date could be the shipping date defined in the corresponded documentation.

Transfer pricing report (Art. 106)

Given Colombia's commitment to and active participation in the BEPS project, the tax reform bill considers changes in the formal transfer pricing duties of taxpayers that are aligned with BEPS Action 13. These proposed changes include the obligation to file a master file with comprehensive information regarding the multinational group, a local file with information on each type of transaction entered into by the taxpayer, and a country-by-country (CbC) report that must contain information regarding the global allocation of income and taxes paid for each and every one of the companies comprising the group, among other indicators regarding its global economic activity.

The threshold for the requirement to file a CbC report is 81,000,000 UVT (Tributary Units), equivalent to USD 800 million in consolidated income of the headquarters domiciled in Colombia.

Formal penalties regarding the support documentation and transfer pricing informative return (Art. 109)

The tax reform bill amends Article 260-11 of the Tax Code, and introduces a more aggressive penalty regime, including new type of penalty (i.e., correction of the supporting documentation) and clarifying the current regime.

Congress is expected to vote on the bill before the end of the calendar year; if approved, the measures would be enacted by January 1, 2017.

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OECD launches survey on business taxation

At the Hangzhou Summit in September 2016, the G20 leaders emphasized the benefits of tax certainty in promoting investment, trade, and balanced growth. Finance ministers actively participated in a frank and open exchange on the importance of "Increasing Tax Certainty to Promote Investment and Trade in a world where value creation is changing." Together with the IMF, the OECD was asked to continue working to enhance tax certainty.
URL: http://www.g20.org/English/

To this end, the OECD has launched an important survey to collect and understand business's views on the factors of tax uncertainty. The OECD will draw on the survey responses in the identification of concrete and practical solutions to enhance tax certainty. For this reason, widespread participation of the business community will be crucial.
URL: http://survey.oecd.org/Survey.aspx?s=0cf6dbb32c614022a1ee37e947ab8861

The survey consists of five parts:

1. General, broad information on the individual respondent (while preserving anonymity);
2. Characteristics of the firms (size, sector, and geographical location);
3. Economic factors affecting business decisions, including but not limited to taxation;
4. Sources of uncertainty in the tax system; and
5. Measures to enhance certainty in the tax system.

The survey should be completed by individuals working for private sector businesses and firms at a senior level who are involved in investment and location decisions and their tax implications. *The survey is located on the OECD's website and must be completed by 16 December 2016.*

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