

Malaysia International Commitments – Compliance with CbCR Requirements



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In the recent Budget 2017, the Malaysian tax authorities introduced the non-compliance penalty provisions pertaining to CbCR, as well as fees to be charged in relation to Advance Pricing Arrangements (“APA”). This article by Theresa Goh, Deloitte Malaysia Transfer Pricing Leader, addresses these changes.

Penalties for non-compliance with CbCR requirements

On 5 October 2015, the Organization for Economic Cooperation and Development (OECD) released the final reports under the Base Erosion and Profit Shifting (BEPS) project to address perceived gaps in the international tax and transfer pricing rules. OECD has recommended a Country-by-Country Report (“CbCR”) to form part of transfer pricing documentation prepared by multinational enterprises (“MNEs”). CbCR comprises three tables, and requires aggregate jurisdiction-wide information relating to the global allocation of income, taxes paid and certain indicators of the location of economic activity among tax jurisdictions in which the reporting MNE group operates. The purpose is to assist tax authorities in assessing whether MNEs have engaged in transfer pricing and other practices that have the effect of artificially shifting income to low or no tax jurisdictions. CbCR will require taxpayers to articulate consistent transfer pricing positions and will provide tax authorities with useful information to assess transfer pricing risks. This will be required of MNEs with annual consolidated group revenue equal to or exceeding EUR 750 Million.

Malaysia has signed the Multilateral Competent Authority Agreement (MCAA) on 27 January 2016 and the Inland Revenue Board of Malaysia (IRB) has announced that CbCR will apply to financial years commencing on or after 1 January 2017 and the due date for the first CbCR submission would be 31 December 2018.

The Finance Bill 2015 had earlier introduced the following amendments to the Income Tax Act (ITA) to enable implementation of CbCR:

Section 154 (1) (c)

- To empower minister to make rules for exchange of information with other countries through Mutual Administration Assistance Arrangement (MAAA)

The Finance Bill 2016 proposes two new sections 112A and 113A under *Part VIII - Offence and Penalties* of the Income Tax Act (Act 53). The proposed penalty provisions are summarized below.

Proposed new section	Proposal summary
Section 112A	<ul style="list-style-type: none">• Failure to furnish a country-by-country report shall attract (on conviction) a fine of not less than RM20,000 and not more than RM100,000, or imprisonment for a term not exceeding six months, or both;• In case of any prosecution the burden of proof shall be upon the accused person;• The court may require the convicted person to comply with the requirement within 30 days or such other specified period;• Effective upon coming into operation of the Finance Act 2016
Section 113A	<ul style="list-style-type: none">• Providing an incorrect return, information return or report (by omitting information) or giving any incorrect information, on behalf of the taxpayer himself or another person, shall attract (on conviction) a fine of not less than RM20,000 and not more than RM100,000, or imprisonment for a term not exceeding six months, or both;• If the taxpayer can satisfy the court that the incorrect return, information return or report, or the incorrect information was provided in good faith, he may not be held guilty of an offence.• Effective upon coming into operation of the Finance Act 2016

The prescribed form of CbCR and associated details are expected to be covered through CbCR rules/guidelines which IRB said will be issued in November 2016.

It is anticipated that the prescribed form will be consistent with the OECD template and Malaysia would put in place sufficient protections to safeguard the confidentiality of CbCR data.

Fees for Advance Pricing Arrangement

An Advance Pricing Arrangement (APA) is a contract, usually for multiple years between a taxpayer and at least one tax authority, specifying the pricing method that the taxpayer will apply to its related party transaction. An APA helps taxpayers voluntarily resolve actual or potential transfer pricing disputes in a proactive and cooperative manner as an alternative to the traditional examination processes.

Section 154(1)(ec) is amended to extend the power of the Minister to make rules prescribing fees charged in relation to any Advance Pricing Arrangement made under Section 138C. Currently fees are not charged in relation to any APA.

We expect the APA Rules and / or Guidelines to be revised to introduce fees for specific or all types of APA applications.

The proposed amendment comes into operation upon coming into operation of the Finance Act 2016.

How can Deloitte's Transfer Pricing team help you?

- Assist and advise on CbCR obligations in Malaysia, as well as compliance requirements in terms of necessary data and format.
- Assist with preparation of CbC report and Masterfile, as well as robust, consistent and defensible local files.
- Using its flexible and scalable technology solutions, Deloitte is able to take data from multiple sources and combine it to produce the reports needed, whether the local jurisdiction is following OECD recommendations or has developed its own local requirements.
- Assist taxpayers with the submission of advance pricing agreements to the Malaysian tax authorities with the required transfer pricing analysis.