

The Organisation for Economic Co-operation and Development (OECD)'s Base Erosion and Profit Shifting (BEPS) project has taken the tax world by storm in recent years. Transfer pricing (TP) and dispute resolution are two key areas dealt with by the BEPS project. Specifically, Actions 8 to 10 of the BEPS project deal with aligning TP outcomes with value creation; Action 13 deals with new documentation and reporting requirements, and Action 14 seeks to make dispute resolution mechanisms more effective.

Following the finalisation of the 15 BEPS Action Plans in 2016, the BEPS project has now moved into the implementation stage. As tax authorities around the world scramble to implement the BEPS actions in their respective countries, Luis Coronado, Partner and ASEAN International Tax and TP Leader, Ernst & Young Solutions LLP, provided a timely update on recent TP developments and dispute resolution alternatives at a *Tax Excellence Decoded* session by the Singapore Institute of Accredited Tax Professionals.

Recent TP Developments in Singapore

FUNCTIONAL ANALYSIS

In the latest edition of the [TP guidelines](#) published in January 2017 by the Inland Revenue Authority of Singapore (IRAS), IRAS emphasised the distinction between the assumption of risk and the capacity to bear and manage risk.

IRAS clarified that a taxpayer who assumes and mitigates risks will be expected to be entitled to greater returns compared to another taxpayer who either only assumes or mitigates risks. Accordingly, taxpayers who have Singapore-based headquarters may want to revisit and possibly re-calibrate the functional profiles of the relevant entities within the Group, taking into account the level of risks borne or managed by each entity.

ADDITIONAL INFORMATION REQUIREMENTS FOR TP DOCUMENTATION

The list of information and documents prescribed to be included in TP documentation has been expanded.

Companies are now required to include in their TP documentation the Group's existing unilateral Advance Pricing Agreements (APA) and other tax rulings relating to the allocation of income among countries, existing APAs and other tax rulings to which IRAS is not a party to, as well as documents relating to the justification of the pricing and comparability adjustments performed by the taxpayer.

ENHANCEMENTS TO APA AND MAP PROGRAMMES

Changes have been made to the unilateral APA and Mutual Agreement Procedure (MAP) programmes.

The most notable change under the unilateral APA programme is the compulsory spontaneous exchange of information (EOI) between IRAS and other tax jurisdictions, subject to conditions in the relevant tax treaties or applicable EOI instrument.

Given that foreign tax jurisdictions will now have access to unilateral APAs agreed with IRAS (and vice versa), businesses should evaluate how this change may impact them and manage the corresponding risks early.

For MAP, taxpayers are informed that accepting the outcome of a TP audit with a foreign tax authority will make it difficult for IRAS to have an unprejudiced negotiation with the foreign tax authority to eliminate double taxation arising from the said audit. Taxpayers should consider carefully the implications of their decisions and actions at each stage of the dispute resolution process, as each course of action may have an implication on the future availability and usefulness of other dispute resolution alternatives.

SAFE HARBOUR FOR RELATED PARTY LOANS

Since 1 January 2017, TP documentation is not required for related party loans below S\$15 million where the indicative margin is used. Such loans can be excluded from the aggregation of other related party transactions for which preparation of TP documentation is required. The indicative margin is published on the IRAS website and will be updated at the beginning of each year.

NEW REPORTING REQUIREMENT FOR RELATED PARTY TRANSACTIONS

With effect from Year of Assessment (YA) 2018, IRAS introduced a new form for the reporting of related party transactions (RPT Form). A company will need to submit the completed RPT Form together with its income tax return if the value of related party transactions in the company's audited accounts for the financial year exceeds S\$15 million.

Companies with significant related party transactions are encouraged to prepare a sample RPT Form to ensure that their accounting systems are able to generate the figures for disclosure in the subsequent formal submission of the RPT Form, if required.

There should be consistency between the related party disclosures in the company's audited accounts and RPT Form/ contemporaneous TP documentation. Where there are differences in the disclosures (for example, due to different definition of related party from an audit perspective and a TP perspective), companies must be able to reconcile and explain such differences.



Luis Coronado, Partner and ASEAN International Tax and TP Leader, Ernst & Young Solutions LLP, shared his insights on recent TP developments and dispute resolution alternatives.

CBC REPORTING

In keeping with Singapore's commitment to implement certain measures under the BEPS project, Singapore-headquartered tax resident multinational enterprises (MNEs) with consolidated group revenue in the preceding financial year (FY) of at least S\$1,125 million are required to prepare and file country-by-country (CbC) reports to IRAS for FY beginning on or after 1 January 2017.

As some jurisdictions have implemented CbC reporting for FY2016, to avoid the need for Singapore-headquartered MNEs to file their CbC reports with foreign tax authorities during the transitional period under the secondary mechanism¹, IRAS has clarified that Singapore-headquartered MNEs may voluntarily file their CbC reports for FY2016 to IRAS.

¹ Under a secondary mechanism, if the ultimate parent entity of a MNE group is in a jurisdiction that does not require CbC reporting, the responsibility of preparing the CbC report could automatically rest with the next-tier parent company in the group or with an appointed group company located in a jurisdiction that requires CbC reporting.

It is worth noting that certain jurisdictions have specific filing notification requirements which require the group companies of an MNE to inform them the location where the MNE will be filing its CbC report. As such, Singapore-headquartered MNEs need to monitor the notification requirements in their countries of operation and ensure that the relevant tax authorities are notified before the specific due dates, to avoid non-compliance issues or penalties.

MNEs which are required to file CbC reports should consider conducting readiness assessments to identify and resolve any information-gathering (and consistency thereof) issues early. One way is to prepare a mock-up of the CbC report based on existing data and evaluate the robustness of the tax and TP policies. In evaluating their existing policies, MNEs should ensure that the policies reflect the actual conduct of their group companies.

Dispute Resolution Alternatives and Trends

In a globalised economy, international double taxation may result where two jurisdictions seek to tax the same transaction or activities.

One of the most common mechanisms to resolve cross-border tax disputes is the MAP. While there are obvious benefits to the MAPs, taxpayers often have to devote significant resources as they are often long-drawn affairs that may stretch over a number of years. MAPs also do not appear to be widely used within the Asia-Pacific region, unlike in countries such as the United States and Germany.

As part of its vision to improve dispute resolution mechanisms, OECD has set minimum standards and best practices for tax authorities under its BEPS project. The minimum standards commit BEPS associate countries (including Singapore) to give access to MAP and to ensure a timely and principled resolution of MAP cases. In addition, OECD also provided for a peer review and monitoring system where tax authorities are rated by their foreign counterparts (as well as taxpayers) to ensure compliance to the minimum standards.

To tackle cases where the relevant tax authorities are unable to reach an agreement within a reasonable timeframe (say, two years), OECD has proposed for a mandatory binding arbitration regime for such situations. It remains to be seen whether arbitration will be widely adopted by countries as some may consider it as an impingement on sovereignty.

A surge in tax controversies is expected as tax authorities gain access to new sources of information through mechanisms such as the automatic EOI and CbC reporting. In managing tax controversies, businesses need to proactively analyse their global tax footprint and spot the red flags. It is also important that they are familiar with the various dispute resolution mechanisms available for different circumstances. As the stake gets higher and the challenge gets tougher, it is imperative for the tax function to continually evolve. It is also important to engage the relevant competent authorities at the onset of any cross-border enquiry and thereafter, proactively support the enquiry process with high-quality information.

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EY Worldwide Transfer Pricing Reference Guide: <http://www.ey.com/gl/en/services/tax/international-tax/transfer-pricing-and-tax-effective-supply-chain-management/worldwide-transfer-pricing-reference-guide---country-list>

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This technical event commentary is written by Felix Wong, Head of Tax, SIATP. This article is based on SIATP's Tax Excellence Decoded session facilitated by Luis Coronado, Partner and ASEAN International Tax and Transfer Pricing Leader, Ernst & Young Solutions LLP.

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