
Taiwan proposes to amend transfer pricing documentation requirements

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In brief

On July 27, 2017, the Taxation Administration of the Ministry of Finance (MOF) released for public consultation draft amendments to the Rules Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's Length Transfer Pricing (TP Assessment Rules) to introduce new transfer pricing documentation requirements. To align with Action 13 of the OECD Action Plan on Base Erosion and Profit Shift (BEPS), Taiwan proposes to adopt a 3-tiered standardized approach to transfer pricing documentation including the Master File, the Local File, and the Country-by-Country (CbC) Report, applicable for fiscal year 2017 and onward.

In detail

On July 27, 2017, Taiwan's MOF released for public consultation draft amendments to the TP Assessment Rules, introducing new transfer pricing documentation requirements. The draft amendments align to BEPS Action 13, and propose to adopt a 3-tiered standardized approach to transfer pricing documentation, including the Master File, the Local File, and the Country-by-Country (CbC) Report. Once finalised, the requirements will be effective for fiscal year 2017 and onward.

Thresholds for the Master File and the CbC Report have not yet been released, whereas the threshold for the Local File

remains unchanged from current levels.

Highlights of the draft amendments are summarized as below.

Master file

The Master File should provide an overview of the multi-national enterprise (MNE) group, including the group's organizational structure, overall business activities, intangible arrangements, intercompany financing transactions, and financial and tax positions. In line with BEPS Action 13, transfer pricing policies, copies of unilateral advanced pricing agreements, and analyses of profit-drivers and the supply chain must also be disclosed in the Master File.

Taxpayers should have a completed Master File in place when filing the corporate income tax return and must present it to the competent tax authority within 12 months after the fiscal year end. The Master File, if prepared in a language other than Chinese, must be translated to Chinese. A Master File prepared in English would be acceptable only with special approval from the tax authorities.

Although the details of the threshold for the Master File are yet to be announced, the draft amendment bases the threshold on the preceding year's consolidated group revenue.

Local file / transfer pricing documentation report (TP report)

Relative to existing requirements for the TP report, the proposed TP report requires significantly greater information disclosure and analyses, including but not limited to:

- business strategy pursued and key competitors;
- business restructuring and transfer of intangibles and their impact;
- organizational structure, including a description of the individuals to whom local management reports and the country in which such individuals maintain their principal offices;
- copies of all material intercompany agreements concluded by the Taiwanese entity;
- the amount of each category of controlled transactions involving the Taiwan entity, detailed by tax jurisdiction of the foreign payer or recipient;
- identification of associated enterprises involved in each category of controlled transactions and the relationship among them;
- an explanation of the reasons for performing a multi-year analysis, if relevant;
- an analysis of changes in functions and risks over prior years; and
- copies of unilateral advanced pricing agreements and tax rulings in relation to income allocation to which Taiwan is not a party and which relate to the

controlled transactions described in the TP report.

Taxpayers should have a complete Local File in place when filing the corporate income tax return and must submit it to the tax authority within one month after receipt of the tax authority's request. The Local File, if prepared in a language other than Chinese, must be translated to Chinese. There is no change in the threshold for the Local File. Taxpayers are required to prepare a Local File when total annual revenue (including operating and non-operating revenue) exceeds TWD 500 million. Taxpayers with the total revenue between TWD 300 million and TWD 500 million should prepare a Local File if meeting certain criteria stipulated in TP regulations. Taxpayers need only to have supporting documents in place if total revenue is less than TWD 300 million.

CbC Report

In accordance with BEPS Action 13, the CbC Report should provide aggregated tax information for each jurisdiction in which the MNE group operates, including revenue, profits or loss before tax, taxes paid, nominal capital, accumulated earnings, number of employees, and tangible assets other than cash and cash equivalents. It should also include a listing of all constituent entities, specifying the name, place of incorporation, and nature of the main business activities carried out by each entity.

The annual CbC Report should be filed electronically. The threshold is yet to be announced, but the draft amendments indicates such threshold will be based on the preceding year's consolidated group revenue. It is expected that the MOF will follow the OECD guideline of a minimum threshold of annual consolidated turnover of EUR750 million.

A Taiwanese-resident ultimate parent entity has an obligation to file the CbC Report with the tax authority within one year after the fiscal year end. A Taiwanese constituent entity of a foreign MNE group must also file the CbC report with the tax authority unless one of the following conditions is met:

1. The foreign ultimate parent entity is obliged to file the CbC Report and its jurisdiction has concluded an information exchange agreement with Taiwan; or
2. A foreign surrogate parent entity is engaged to file the CbC Report and its jurisdiction has concluded an information exchange with Taiwan.

In the event that the tax authority cannot successfully obtain the CbC Report via information exchange agreement mechanisms, the Taiwanese constituent entity of the foreign MNE group should submit the CbC Report within one month following receipt of the tax authority's written notice.

Tax return disclosure

A Taiwanese entity is required to disclose its related party transactions in the transfer pricing disclosure form attached to its corporate income tax return. Compared to the requirements of the existing form, the proposed form will include such additional information as the Taiwanese entity's legal ownership structure and rules governing the CbC Report in the foreign parent entity's or the foreign surrogate entity's jurisdiction.

The takeaway

BEPS initiatives signify a new era in the international taxation arena. The draft amendments to the TP Assessment Rules adopt the standards

as recommended by the OECD. Given the enhanced framework of international cooperation and information exchange mechanisms among various tax jurisdictions, it is important for MNEs to take a consistent and coordinated approach for group subsidiaries' transfer pricing compliance to avoid any potential conflicts and inconsistencies that

could potentially arise within their constituent entities spanning multiple jurisdictions. With the advent of additional documentation and local filing requirements, the burden on taxpayers will undoubtedly increase.

While Taiwan is expected to adopt BEPS Action 13 in 2017, many of the Taiwan MNEs operate in other

jurisdictions where BEPS Action 13 implementation begin in 2016. Taiwan MNEs should therefore be aware of the impact on their compliance obligations.

Let's talk

For a deeper discussion of how this might affect your business, please contact:

Transfer Pricing—Taiwan

Lily Hsu, Taiwan
+886 2 2729 6207
lily.hsu@tw.pwc.com

Elliot Liao, Taiwan
+886 2 2729 6217
elliot.liao@tw.pwc.com

Transfer Pricing—US and Global leaders

Isabel Verlinden, *Brussels*
Global Transfer Pricing Leader
+32 2 710 44 22
isabel.verlinden@be.pwc.com

Horacio Peña, *New York*
US Transfer Pricing Leader
+1 646 471 1957
horacio.pena@us.pwc.com

Tax Controversy and Dispute Resolution Global Leader

David Swenson, *Washington, DC*
+1 202 414 4650
david.swenson@pwc.com

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