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# *Roundup of Singapore's 2016 BEPS Developments and what these mean for enforcement efforts beyond?*

## *In brief*

2 February 2017

2016 marked several major developments in Singapore's tax landscape arising from the Organisation for Economic Co-operation and Development's ("OECD") Base Erosion and Profit Shifting ("BEPS") Project. Aligning with international tax practices aside, these developments also show Singapore's resolve in protecting its tax base in the face of an increasingly volatile international tax environment. These developments **will** have a significant impact on your business operations if you are an MNE Group which engages in cross-border transactions. If so, as part of your Group's sound corporate governance and enterprise risk management, you **must** assess the implications of these developments in relation to your Group's operations and take the necessary steps to further strengthen your Group's tax practices and control framework to ensure robust defences are in place in anticipation of the actions that **will** be taken by tax authorities in Singapore and elsewhere. Not doing so **will** expose your Group to double or multiple taxation exposure on the Group's cross-border transactions and operations.

We recapitulate below the key developments in Singapore for the past year. This should give a flavor of the Inland Revenue Authority of Singapore's ("IRAS") enforcement efforts moving forward.

- *4 January 2016:* The IRAS provided updated guidance - the 3<sup>rd</sup> edition of Transfer Pricing Guidelines ("TPG"), which tightens the dispute resolution framework for Advance Pricing Agreements ("APAs").
- *16 June 2016:* The Singapore Government committed to joining the OECD's Inclusive Framework for Implementing Measures against BEPS and the four minimum standards therein.
- *10 October 2016:* The Singapore Government introduced the requirement for Singapore multinational enterprise ("MNE") groups to file Country-by-Country Report ("CbCR") in Singapore from the financial year ("FY") 2017 onwards. The requirement was gazetted as law on 30 December 2016.
- *24 October 2016:* The IRAS announced the introduction of new disclosures for related party transactions ("RPT") as part of annual tax return filing with effect from Year of Assessment ("YA") 2018.
- *8 December 2016:* The Singapore Government enacted the Income Tax (International Compliance Agreement) (Common Reporting Standard) Regulations 2016.
- *19 December 2016:* The IRAS announced that it would allow voluntary CbCR filings for Singapore MNE groups for FY 2016.

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## ***In Detail***

### **Tightening of Singapore's APA process in Singapore**

On 4 January 2016, the IRAS released its 3<sup>rd</sup> edition of Transfer Pricing Guidelines ("3<sup>rd</sup> Edn TPG").

The 3<sup>rd</sup> Edn TPG tightens the APA process to allow the IRAS to undertake a thorough evaluation of the merits of an APA application before accepting it into the Singapore's APA program.

As a result, the IRAS now has up to five months to conduct more in-depth review before it indicates any inclination to accept an APA application. Nonetheless, the indication must be provided no later than four months before the first day of covered period.

An APA applicant should therefore ensure robust information and documentation to support the APA application are available on a timely basis. The IRAS strictly enforces such timelines and expects APA applicants to abide by these timelines

For more details, please refer to [PwC's News Alert on 7 Jan 2016 summarising the key updates of the 3<sup>rd</sup> Edn TPG.](#)

### **Singapore becomes BEPS Associate**

On 16 June 2016, the Singapore's Ministry of Finance ("MoF") announced that ["Singapore joins the Inclusive Framework for Implementing Measures against Base Erosion and Profit Shifting \("BEPS"\)"](#).

As part of this framework, Singapore is committed to implementing the four minimum

standards under the BEPS project, namely:

- TP documentation and CbCR;
- Enhancing dispute resolution;
- Countering harmful tax practices;
- Preventing treaty abuse.

#### *TP documentation*

The IRAS has implemented contemporaneous TP documentation requirements since January 2015. The information required under such TP documentation is broadly similar to the information required under the OECD Masterfile/ Local file approach.

Hence, MNE groups which adopt an OECD-based Master file /Local file approach for their TP compliance will generally adhere to these principles. However, care should be taken to ensure that information stipulated under the Singapore TP guidelines is included.

The IRAS has also been strictly enforcing such requirements. TP documentation is one of the common requests by the IRAS as part of a tax examination or TP consultation. Taxpayers with operations in Singapore should constantly monitor how well they are meeting TP compliance requirements and ensure that their TP documentation is robust and up-to-date. Non-compliance with this aspect may result in the IRAS taking punitive actions on the taxpayers concerned, including a disallowance of transfer pricing adjustments made and / or denial of access to assistance provided through the Mutual Agreement Procedure in tax treaties to resolve or avoid potential double taxation issues.

#### *Enhancing dispute resolution*

Singapore recognises the need of investors and businesses to have access to effective and expedient dispute resolution mechanisms. The IRAS remains committed to support taxpayers requiring assistance to resolve or prevent disputes through MAPs and APAs, subject to adherence to due process and taxpayers doing their part in having robust information and TP documentation to support the process. This is of particular importance to businesses and investors operating across borders and outside Singapore, given the rising number of incidents of cross-border tax disputes which are expected to increase as tax authorities globally apply different standards and/or have varying interpretations to the BEPS Action Plan items in enforcing tax collection in this challenging tax environment.

#### *Countering harmful tax practices*

MoF has reiterated that Singapore's incentive regime has been designed based on robust principles with the aim to encourage substantive operations and contribute meaningfully to the growth of Singapore's overall economy. This articulation serves to reaffirm Singapore's position that Singapore, like many other countries, will continue to selectively and appropriately use relevant tax measures to achieve important economic and social objectives. However, we expect that the Singapore authorities will continue to step up efforts, as they already do now, in enforcing the adherence to substance requirements, and to the arm's length principle by incentive awardees. These efforts may include, and therefore mean, more elaborate documentation and

reporting requirements going forward.

The IRAS has also reiterated on multiple occasions that taxpayers should ensure appropriate profit allocation in line with substance, value creation and commercial activities. The IRAS therefore commonly seek details around the commercial aspects of group transactions as well as the level of activities in the counter-party jurisdiction(s).

#### *Preventing treaty abuse*

MoF has reinforced Singapore's unchanging position that Singapore does not condone treaty shopping. Singapore has also worked with a group of jurisdictions to develop a multilateral instrument for incorporating BEPS measures into existing bilateral treaties to counter treaty abuse.

Singapore's bilateral tax treaties already incorporate a number of anti-treaty shopping provisions (e.g., the main purpose test ("MPT")). The MPT, similar to the OECD's Principal Purpose Test, is found in a number of Singapore's double tax treaties. The IRAS also already has measures in place to review requests for a Certificate of Residence ("COR") from taxpayers who wish to access the benefits of a tax treaty to ensure only Singapore resident taxpayers which carry out commercial activities in Singapore on their own or as part of a MNE

group may access the benefits of Singapore's tax treaty networks.

The IRAS has also increasingly questioned tax deduction claimed on payments made to certain low tax jurisdictions. It commonly seeks information on the commercial circumstances surrounding such payments as well as the level of activities carried out in the counter-party jurisdiction(s).

#### **Implementation of CbCR and other transparency requirements in Singapore**

The legislative framework giving effect to the implementation of CbCR was introduced on 10 October 2016. On the same day, IRAS released detailed implementation guidance on CbCR, where the IRAS confirmed a number of key principles. This has provided taxpayers with some level of certainty over the scope of CbCR filing in Singapore. These key principles are summarised in [PwC's News Alert on 11 Oct 2016 on CbCR implementation in Singapore](#)<sup>1</sup>. The Tax Bill containing these provisions were passed by the Singapore Parliament on 10 November 2016 and became law on 30 December 2016.

On 19 December, 2016, the IRAS further announced that it would allow voluntary filings for Singapore MNE groups for FY 2016, even though the requirement to file the CBC report takes effect from FY 2017 onwards. Details on

this will only be released at the end of March 2017.

Singapore has opted to engage in automatic exchange of CBC reports with jurisdictions which it has entered into bilateral agreements for this purpose. To date, Singapore has not signed any CbCR exchange agreements. We expect Singapore will do so shortly, as it has done so for other types of bilateral agreements for exchange of information.

Singapore announced in [November 2014 its commitment to implement automatic exchange of financial information by 2018](#). The Income Tax (International Compliance Agreement) (Common Reporting Standard) Regulations 2016 were enacted on 8 December 2016. To date, Singapore also signed 15 bilateral agreements<sup>1</sup> for automatic exchange of financial information pursuant to the Common Reporting Standard. On 30 December 2016, the IRAS also issued a notice to financial institutions on the implementation of the CRS with effect from 1 January 2017.

#### **RPT disclosure form from YA 2018**

On 24 October 2016, the IRAS announced that it will introduce a new RPT reporting requirement for companies with effect from the Year of Assessment ("YA") 2018. *This refers to financial information relating to FY 2017, where the annual tax returns are*

<sup>1</sup> These are bilateral agreements signed with Australia, United Kingdom, Japan, Republic of Korea, South Africa, Norway, Italy, Canada, Finland, Netherlands, Iceland, Malta, Ireland, Latvia and New Zealand. 9 of these (namely, United Kingdom, Japan, South Africa, Norway,

Finland, Netherlands, Iceland, Malta and Ireland) entered into force on 31 January 2017. These 9 jurisdictions are hence regarded as Reportable Jurisdictions. Singapore-based financial institutions will have to transmit to the IRAS the financial account information of

accounts held by persons that are tax residents of these Reportable Jurisdictions. The first submission is due by 31 May 2018.

<https://www.iras.gov.sg/irashome/CRS/>

*at the latest, to be submitted by 30 November 2018.*

The new RPT Form that will be filed with each year's tax return is expected to provide the IRAS with relevant information to better assess companies' transfer pricing risks and *improves* its current efforts in enforcing the arm's length pricing requirement. Singapore taxpayers are required to state in their annual corporate income tax form (i.e., Form C) whether the value of RPT as disclosed in the audited accounts exceeds S\$15 million. If the value of RPT exceeds such threshold, the company has to complete the RPT Form and submit it together with the Form C.

Mindful of the need to minimize additional compliance costs arising from this new reporting requirement, the IRAS has aligned the materiality threshold for completing such RPT Form with the safe harbor threshold for related party sales or purchases under Singapore's contemporaneous TP documentation requirements (i.e., only if the value of RPT exceeds S\$15 million).

The IRAS expects that the information necessary to complete the RPT Form can readily be obtained from the companies' audited accounts and accounting systems.

Please refer to [the IRAS' announcement](#) and a [sample RPT form](#) for more details.

**What these developments in 2016 mean for tax enforcement landscape in Singapore for FY 2017 and beyond**

These developments represent steps taken by the IRAS to better align with international tax developments and accepted practices, including those emanating from the OECD's BEPS initiative.

We expect that the IRAS, like other tax authorities, will continue to step up enforcement of the arm's length principle to protect the Singapore tax base in a responsible manner and fulfil Singapore's commitment as a BEPS associate. Towards this same direction, the IRAS also released on 12 January 2017, its 4<sup>th</sup> edition of Transfer Pricing Guidelines ("4<sup>th</sup> Edn TPG").

This latest edition TPG (please refer to [PwC's News Alert on 18 Jan 2017](#) summarising these updated guidelines) contains a number of important updates, the most significant of which relate to (i) the requirement of taxpayers to disclose relevant APAs to which the IRAS is not a party in contemporaneous TP documentation and (ii) the framework under which the IRAS will engage in exchange of information on cross-border unilateral APAs. This is in line with the overall commitment for mandatory spontaneous exchange of information of APAs and tax rulings spelt out in the BEPS Action 5 Final Report.

In summary, the IRAS will spontaneously exchange information on cross-border APAs with specified jurisdictions (which will include the jurisdictions of residence of the taxpayer's ultimate parent entity and the immediate parent entity) if the action will be reciprocated and safeguards are in place to ensure confidentiality and appropriate use of the information exchanged. Based on the schedule set out by

the IRAS, unilateral APAs issued in periods prior to 1 April 2017 may be shared with relevant foreign tax authorities by 31 December 2017 and those issued from 1 April 2017 will be shared within three months after the date of the agreement. The updates in the latest TPG edition mark the further step taken by Singapore in fulfilling its commitment towards tax transparency.

Unlike unilateral APAs, there is no mention in the latest TPG edition that APAs concluded on a bilateral or multilateral basis need to be shared with jurisdictions beyond the covered jurisdictions (e.g. the jurisdictions of residence of the taxpayer's ultimate parent entity and the immediate parent entity). This suggests that the scope of exchange of information for unilateral APAs is broader than that for bilateral / multilateral APAs and they may lead to unforeseen consequences that may need to be managed by a MNE group. MNE groups should therefore consider the implications of this development in determining their dispute prevention strategy going forward.

Together with the implementation of the requirement, in Singapore and elsewhere, for MNE groups which meet relevant thresholds to file CbC report and other disclosure requirements (for example, the RPT disclosure form in Singapore), taxpayers must brace themselves for increasingly stringent enforcement of TP aspects by tax authorities around the world.

Taxpayers in Singapore should expect more pointed questions from the IRAS in the course of tax examination and TP consultation, which are aimed at better establishing, the overall level of commercial substance, the group's



value chain and how these aspects coherently support profit allocation, treaty entitlements and overall tax and TP model. Robust tax and TP policies, appropriate TP documentation and relevant supporting documentation are now a must to mitigate cross-border tax risks as part of a MNE group's good corporate governance.

Taxpayers should also increasingly consider dispute prevention measures such as bilateral APAs to better manage potential double taxation exposure. Taxpayers

should also review any existing unilateral APAs that they have and assess the implications arising from the latest announcement by the IRAS to exchange unilateral APAs issued.

Given the implementation of various transparency requirements in Singapore and elsewhere, it is even more important that taxpayers take steps to ensure a coherent and consistent tax and TP model in line with business and commercial reality, is deployed and implemented in accordance with the arm's length

principle. More than ever before, tax authorities will have access to even more information to assess the adequacy of TP models and tax structures. Taxpayers will need to be conscious of this when planning and supporting their tax models - in line with operational substance and commercial realities.

For more details on PwC Singapore's views on how BEPS will affect MNE groups operating in Singapore, please refer to the PwC's News Alerts of [16th October 2014](#) and [3 November 2015](#).

## **Let's talk**

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

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