



April 2017

Enterprises will be required to file Transfer Pricing Documentation to IRD

Subject to legislation amendments, the Inland Revenue Department [“IRD”] will introduce Transfer Pricing Documentation (Master file, Local file and Country-by-Country report) requirements for enterprises to demonstrate their compliance with the arm’s length principle. The current plan is to introduce the relevant amendment bill(s) into the Legislative Council in mid-2017.

Enterprises will be required to submit Mater file and Local file to IRD if they satisfy any two of the following:-

- (1) Total annual revenue more than HK\$100 million;
- (2) Total assets more than HK\$100 million; and
- (3) More than 100 employees.

Multinational enterprises will be required to file CbC reports if annual consolidated group revenue equal to or exceeding HK\$6.8 billion.

企業將要提交轉讓定價文件予稅務局

一經通過立法程序，香港稅務局將規定企業須闡述其一貫的轉讓定價情況，提交轉讓定價文件的相關資料以證明其遵守獨立交易原則。轉讓定價文件包括主體檔案、本地檔案及國別報告。現時的目標是在 2017 年年中向立法會提交有關《稅務條例》的修訂建議。

企業符合以下其中兩項條件，須擬備主體檔案及本地檔案提交稅務局:-

- (i) 年度總收入多於 1 億港元；
- (ii) 總資產多於 1 億港元；以及
- (iii) 多於 100 名員工。

跨國企業每年集團總收入達 68 億港元須提交國別報告。

Please feel free to contact our partners/ officers you are familiar with if you have any questions on the above or anything else so related.

如有問題或想了解更多，歡迎聯絡本司的合伙人或任何同事。

Please refer to the following pages for the details of the above.

詳情請見後頁(只提供英文版)。



Consultation Paper on measure to counter Base Erosion & Profits Shifting [BEPS]

As an associate of the inclusive framework of Organisation for Economic Co-operation and Development [“OECD”] for implementation of BEPS package, which consists of 15 action plans, HK is committed to implementing the BEPS package.

The public consultation on measures to counter BEPS launched by the HK Government ended in December 2016. While pending the consultation result, companies should assess the impact of the proposals in the consultation paper on their business operations, including but not limited to, pricing arrangements with related parties, documentation of transfer pricing arrangements, potential adjustments made on future tax returns, etc.

Summarized below the proposals included in the consultation paper:-

1. HK will focus on the **4 minimum standards** for implementing the BEPS package as well as measures of direct relevance to their implementation:-

BEPS Action	
Action 5	Countering harmful tax practices
Action 6	Preventing treaty abuse
Action 13	Imposing Country-by-country [“CbC”] reporting requirement
Action 14	Improving cross-border dispute resolution mechanism

2. HK’s priority is to put in place the **necessary legislative framework** for transfer pricing rules covering:-

Relevant BEPS Action	Transfer pricing rules
Actions 8-10	Transfer pricing [“TP”] regulatory regimes
Action 13	CbC reporting requirement
Action 14	Cross-border dispute resolution mechanism
Action 15	Multilateral Instrument [“MLI”]
Action 5	Spontaneous exchange of information [“EOI”] on tax rulings



2.1) TP regulatory regimes (Actions 8-10)

- Propose to codify the international transfer pricing standard into HK domestic legislation such that enterprises are required to transact with associates at arm's length.
- Currently, Inland Revenue Department ["IRD"] relies on Inland Revenue Ordinance ["IRO"] (e.g. S.61A) and Departmental Interpretation and Practice Notes ["DIPN"] to deal with TP issues.
- Propose to provide for the fundamental TP rule which empowers Commissioner of Inland Revenue ["CIR"] to adjust profits/ losses of a non-arm's length dealing which has created a tax advantage.
 - Fundamental TP rule will:-
 - ◇ apply to (1) associated persons and (2) different parts of an enterprise, e.g. head office and a permanent establishment ["PE"].

Associated: one affected person directly/ indirectly participating in the management, control or capital of the other or a 3rd person is participating in the same of both.
 - ◇ cover transactions of assets and services as well as financial or business arrangements including making of loans and cost contribution arrangements e.g. employee stock incentive plan.
 - Also propose a mechanism to provide for corresponding relief resulting from TP adjustments made by CIR or CDTA partners.
 - Any non-compliance with TP rules will render the tax returns incorrect.
 - Penalties in respect of incorrect tax returns arising from non-arm's length pricing amongst associated parties will be similar to those provided under S. 80, 82, and 82A of the IRO.
- Propose to strengthen advance pricing arrangement ["APA"] regime by providing it with a statutory basis as S.88A of the IRO does not regulate the operation of APAs.



2.2) Transfer pricing documentation and CbC reporting (Action 13)

- Propose to mandate enterprises to comply with TP documentation requirements adopting the three-tiered standardized approach developed by OCED and enable the automatic government-to-government exchange of CbC reports.
- Three-tiered standardized approach requires enterprises to provide:-
(1) Master file; (2) Local file; and (3) CbC report.

	Application and exemption	Time frame	Penalty
Master file – gives a high-level overview of the group of enterprises, including global business operation, transfer pricing policies and global allocation of income.	All enterprises which carry on trades or business in Hong Kong and engage in transactions with associated enterprises are required to prepare the master and local files, exemption will be provided for “small private companies”.	<ul style="list-style-type: none"> ➤ To be prepared for each fiscal year; and ➤ retained for not less than 7 years after the year concerned. 	Failure to comply with requirements relating to master and local files without reasonable excuse, fine at level 6 (HK\$100,000).
Local file – provides detailed transactional transfer pricing information specific to the enterprise in each jurisdictions, including details of material related party transactions or arrangement and associated enterprises and amount involved as well as transfer pricing analysis.	Classified as <i>small private companies</i> if satisfy any 2 of the following:- (1) Total annual revenue of not more than HK\$100 million; (2) Total assets not more than HK\$100 million; and (3) No more than 100 employees.		
CbC report – sets out the amount of revenue, profits, tax paid, indicators of economic activity (e.g. No. of employees, stated capital, retained earnings and tangible assets) for each jurisdiction in which a multinational enterprise group operates.	Enterprises with annual consolidated group revenue of EUR750 million (about HK\$6.8 billion) or more will be required to file CbC reports.	<ul style="list-style-type: none"> ➤ To be filed within 12 months from the last day of fiscal year. ➤ Plan to require relevant enterprises to gather information in 2018. ➤ File 1st CbC report to IRD in 2019. 	<ul style="list-style-type: none"> ➤ Failure to submit CbC reports without reasonable excuse, fine at level 6 (HK\$100,000). ➤ Continuous offence after conviction, further HK\$500 each day of offence.



2.3) MLI (Action 15)

- MLI seeks to modify existing CDTAs to implement tax treaty-related BEPS measures.
- Actions 6 and 14 will be addressed in the context of MLI.
- Action 6 requires jurisdictions to include in the tax treaties one of the following rules to eliminate double taxation without creating opportunities for non-taxation or reduced taxation:-
 - (1) Principal purposes test [“PPT”] rule;
 - (2) Limitation-on-benefits [“LOB”] rule and the PPT rule; or
 - (3) LOB and a mechanism to deal with conduit arrangements.
- HK is inclined to adopt PPT rule only. Under **PPT rule**, benefit under a tax treaty will not be granted if obtaining such benefit is one of the principal purposes of the arrangements.
- If treaty partners prefer options other than PPT rule only, HK will accept symmetrical application of the anti-abuse provisions. If necessary, resolve the issue through bilateral negotiations with treaty partners.
- HK is prepared to sign MLI in early 2017 and will proceed with legislative exercise and modify the relevant provisions of existing CDTAs.

Cross-border dispute resolution mechanism (Action 14)

- Propose to introduce a full-fledged statutory mechanism to facilitate the handling of mutual agreement procedure [“MAP”] and arbitration cases to resolve cross-border treaty-related disputes.

2.4) Spontaneous exchange of information [“EOI”] on tax rulings (Action 5)

- Propose spontaneous EOI with our CDTA or Tax Information Exchange Agreement [“TIEA”] partners on a bilateral basis on tax rulings covering 6 categories of taxpayer-specific rulings:-



- (1) Rulings related to preferential regimes;
- (2) Unilateral APAs and any other cross-border unilateral rulings in respect of TP;
- (3) Cross-border rulings providing for downward adjustment of taxable profits;
- (4) PE ruling;
- (5) Related party conduit ruling; and
- (6) Any other type of ruling that, in the absence of spontaneous information exchange, could give rise to BEPS concerns.

2.5) Other – double taxation relief through tax credit

- Propose to enhance current **tax credit system** under S.50 of IRO, by extending the time limit for claiming tax credit from 2 years to 6 years (after the end of the relevant year of assessment).
- CDTAs prevail in case of conflicts between IRO and CDTAs.
- Taxpayers to make full use of other available relief before resorting to tax credit.
- Taxpayers to notify IRD of any adjustment to their foreign tax payment.
- No tax credit allowed if unilateral relief had been granted.

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