30 July 2019

Global Tax Alert

News from Transfer Pricing

Hong Kong Tax Authority clarifies requirements for transfer pricing documentation and Country-by-Country reporting

Executive summary

The Hong Kong Inland Revenue Department (HKIRD) issued, on 19 July 2019, Departmental Interpretation and Practice Note 58 (DIPN 58) providing detailed instructions on the preparation of transfer pricing documentation and Country-by-Country (CbC) reporting.

This Alert summarizes the key aspects of DIPN 58.

Detailed discussion

Transfer pricing documentation regulatory regime

DIPN 58 reiterates that Hong Kong has adopted the OECD's[1] three-tiered standardized approach to preparing and maintaining documentation. The approach comprises preparing transfer pricing documentation, consisting of a master file, local file and CbC report.

Transfer pricing examinations

Hong Kong taxpayers under a transfer pricing audit must provide all documents and information relevant to the transaction under audit. If information is omitted or lacking, taxpayers may be required to provide information on Hong Kong operations and functions, financial results of related-party transactions, and the financial and operational comparables.

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Transfer pricing documentation requirements

- All Hong Kong taxpayers must prepare master and local files, unless they meet a business size, related-party transaction or domestic transaction exception.[2]
- Entities and Hong Kong permanent establishments (such as branches, joint ventures or representative offices) are subject to the requirements.
- The master and local files must be prepared within nine months after the end of each accounting period.
- Noncompliance is subject to a fine of up to HK$100,000 (US$13,000).

CbC reports

- An entity is obligated to file a CbC report in Hong Kong if it meets any of the following criteria:
  - It is an "ultimate parent entity" (UPE)[3] of a group with annual consolidated revenue over HK$6.8b (US$870m) in the preceding year
  - It is a "surrogate parent entity" (SPE)[4] of a group with annual consolidated revenue over €750m (US$840m) or the local equivalent (reportable group), in the preceding year
  - It is a Hong Kong entity that is neither a UPE nor an SPE of a reportable group when it falls under certain conditions
- A Hong Kong entity of a reportable group is generally required to file a CbC reporting notification within three months after the year end of the reportable group.
- The filing deadline for the CbC report is generally 12 months after the end of the UPE's accounting period or on the requested date specified in a notice issued by the HKIRD.
- CbC reports filed for accounting periods beginning on or after 1 January 2019 by the Hong Kong UPE or Hong Kong SPE will be exchanged with other jurisdictions that have activated the Multilateral Competent Authority Agreements on the Exchange of Country-by Country Reports with Hong Kong.

Endnotes

1. Organisation for Economic Co-operation and Development.
2. Exemption based on the size of business (satisfying any two of the three conditions):
   - Total annual revenue not more than HK$400m (US$50m);
   - Total assets not more than HK$300m (US$40m);
   - Average number of employees not more than 100.

   Exemption based on related party transactions:
   - Transfer of properties (other than financial assets and intangibles): HK$220m (US$30m);
   - Transaction of financial assets: HK$110m (US$15m);
   - Transfer of intangibles: HK$110m (US$15m);
   - Any other transaction (e.g., service income and royalty income): HK$44m (US$5m).
3. A master file and local file is not required to be prepared to cover specified domestic transactions.
4. Being a resident for tax purposes in Hong Kong.

For additional information with respect to this Alert, please contact the following:

Ernst & Young Tax Services Limited, Hong Kong

- David Chan david.chan@hk.ey.com
- Paul Ho, *Financial Services* paul.ho@hk.ey.com

Ernst & Young LLP (United States), Hong Kong Tax Desk, New York

- Rex Lo rex.lo1@ey.com

Ernst & Young LLP (United States), Asia Pacific Business Group, New York

- Chris Finnerty chris.finnerty1@ey.com
- Kaz Parsch kazuyo.parsch@ey.com
- Bee-Khun Yap bee-khun.yap@ey.com

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