



創於 1913 年
Founded in 1913

香港華人會計師公會

The Society of Chinese Accountants & Auditors

(在香港註冊成立之有限公司)
(Incorporated in Hong Kong as a company limited by guarantee)

13 January 2017

Revenue Division
Financial Services and the Treasury Bureau
(Treasury Branch)
24/F, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Sir/Madam,

Re: Suggestions on
Consultation on Measures to Counter Base Erosion & Profit Shifting (BEPS)

In response to the Consultation on Measures to Counter Base Erosion & Profit Shifting (BEPS), the Society of Chinese Accountants & Auditors carried out a members' forum on 5 December 2016 to collect views from our members. We set out below our suggestions on the captioned issues.

1. Do you support codifying the transfer pricing rules in the tax laws to provide better clarity and certainty? (Chapter 3)

Majority of our members supports codifying the transfer pricing rules in the tax laws to provide better clarity and certainty.

2. Do you have views on the proposed level of penalty in respect of incorrect tax returns arising from non-arm's length pricing? (Chapter 3)

If a taxpayer has made an application for APA, it suggests that he has a genuine intention to comply with the statutory requirements. It would be unfair to the taxpayer if the Commissioner declines an APA application and subsequently imposes penalties on the taxpayer's transfer pricing arrangements.

We suggest that if the Commissioner has declined an APA application, it should constitute a reasonable excuse and the taxpayer should not be penalized for the subsequent transfer pricing adjustments.



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3. What are your views on the proposed key features of the statutory APA regime? (Chapter 3)

Since a taxpayer is liable to penalty for any transfer pricing adjustments, we suggest that it is mandatory for the Commissioner to make a ruling if a taxpayer has submitted an APA application under the law. In particular, we do not think it is appropriate for the Commissioner to decline an APA application for “resources” reasons [Paragraph 3.16(e) (vii) of the Consultation Paper].

We do not think it is appropriate for the Commissioner to charge a fee in respect of APA application since it is the duty of the Commissioner to help taxpayers to comply with the law.

4. To avoid imposing an undue compliance burden on enterprises, do you agree with our proposal of exempting certain enterprises from preparing the master file and local file? (Chapter 4)

Our members welcome the suggestion of exempting smaller enterprises from preparing master files and local files but feel that the proposed exemption threshold for preparation of documentation requirements is too low. In addition, it refers to the size of the company without any reference as to the size of the transactions. Although there were different views regarding the use of (i) TOTAL revenue and assets of the company and number of employees as suggested in the consultation paper or (ii) the amount of the TRANSACTIONS, there was a consensus that smaller companies should not be burdened with the onerous requirements of preparation of unnecessary documents.

The use of TOTAL assets/revenue/employees of a company may mean that a company, although fulfilling the criteria, may have only HK\$1,000 in related party transactions but will still be required to prepare all the documentation.

We therefore suggest that the amount of related party transactions should be used as criteria for requiring the preparation of the documents. Please refer to the attached Appendix for some of the thresholds used by our trading partners.



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Given the fact that OECD only mandates MNEs with annual consolidated group revenue equal to or exceeding EUR750 million to file CbC reports and the fact that most of our inter-jurisdiction transactions are made with the Mainland China, we therefore suggest that the same threshold as Mainland China's be used for a company carrying on business in Hong Kong.

5. Do you have views on the compliance issues of CbC reporting (i.e. time frame, language and penalty), as well as the surrogate filing mechanism? (Chapter 4)

We agree with the proposal mentioned in the consultation paper regarding compliance issues of CbC reporting. In addition, we hope the Authority would clarify the situation if Inland Revenue Department adopts Section 14 of IRO or the new policy suggested in this consultation, how will the reports be used in Hong Kong? Will the IRD consider it as offshore claims?

6. Do you support introducing a statutory dispute resolution mechanism so that cross-border treaty-related disputes could be resolved in a timely, effective and efficient manner? (Chapter 6)

We support introducing a statutory dispute resolution mechanism so that cross-border treaty-related disputes could be resolved in a timely, effective and efficient manner.

For the avoidance of doubt, we suggest that section 16 of the IRO should be amended simultaneously to allow deduction for the cost of resolving the related disputes.

7. Do you have views on the proposed features of the statutory dispute resolution mechanism? (Chapter 6)

We agree with the proposed features of the statutory dispute resolution mechanism.



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8. Do you have views on the proposed enhancement to the tax credit system?
(Chapter 6)

We agree with the proposed enhancement to the tax credit system.

Finally, we suggest all resolutions related to this consultation approved by the Legislation Council be included in the Laws of Hong Kong, and we suggest that all costs and expenses arising from the works involved in the preparation of tax reporting under Section 16 of IRO be tax deductible.

We also hope the Authority could provide more resources and guidelines for small-to-medium enterprises especially for the accounting profession to meet the challenges under the new ordinance.

Should you require more information, please do not hesitate to contact Ms. Elizabeth Law, Chairman of our Taxation Committee, or Mr. Chan Cheong Tat, Advisor to our Taxation Committee at (852) 2869 6680 or info@scaacpa.org.hk. Thank you very much.

Yours Faithfully,

Choi Kwok Wai, Ronnie

President

The Society of Chinese Accountants & Auditors

Encl.

Appendix: Brief Summary on the Criteria Companies Meet to Prepare Transfer Pricing Documentation

Appendix: Brief Summary on Threshold for Companies Preparing for Transfer Pricing Documentation

Mainland China	Japan	Germany	Australia
<p>over RMB200 million in transfers of tangible assets; or</p> <p>RMB100 million in transfer of financial assets; or</p> <p>RMB100 million in transfer of tangible assets; or</p> <p>RMB40 million in other transfers such as provision of services</p>	<p>Have transactions with a foreign related party exceeding JPY5 billion in the preceding fiscal year or</p> <p>Have intangible transactions exceeding JPY300 million</p>	<p>The current draft bill does not raise the existing local thresholds defining the requirements regarding transfer pricing documentation in Germany.</p> <p>Taxpayers with cross-border transactions with related parties remain obliged to prepare comprehensive transfer pricing documentation if the threshold of EUR5 million for intercompany goods transactions or EUR500,000 for other transactions is exceeded.</p>	<p>Short Form Local File criteria: the aggregate value of its international related party dealing (IRPDs) is less than \$2 million and it has no international related party dealings (IRPDs) on the Short Form Exceptions List; or</p> <p>the Simplified Transfer Pricing Record Keeping (STPRK) criteria for 'Small Taxpayers' and it has no IRPDs on the Short Form Exceptions List; or</p> <p>the STPRK criteria for 'Materiality' and it has no IRPDs on the Short Form Exceptions List.</p>

Reference:

Mainland China

<http://www.chinatax.gov.cn/n810341/n810755/c2208516/content.html>

Japan

[http://www.ey.com/Publication/vwLUAssets/Japan_releases_guidance_on_transfer_pricing_documentation_requirements/\\$FILE/2016G_01339-161Gbl_TP_Japan%20releases%20guidance%20on%20TP%20doc%20reqs.pdf](http://www.ey.com/Publication/vwLUAssets/Japan_releases_guidance_on_transfer_pricing_documentation_requirements/$FILE/2016G_01339-161Gbl_TP_Japan%20releases%20guidance%20on%20TP%20doc%20reqs.pdf)

Australia

[Country-by-Country reporting and transfer pricing documentation](#)

Germany

<https://www.pwc.com/gx/en/tax/newsletters/pricing-knowledge-network/assets/pwc-TP-Germany-BEPS-ministerial-draft-bill.pdf>