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WTS Transfer Pricing Newsletter

Editorial

Dear Reader,

It is our pleasure to present to you the second edition of our WTS Transfer Pricing 2019 Newsletter.

The global transfer pricing environment is changing in a dynamic way. Therefore in order to keep you up to date, our WTS Transfer Pricing Newsletter provides you with an overview of **current developments in the transfer pricing area in 11 selected countries.**

We hope you will find this newsletter useful and we would appreciate your feedback and suggestions.

If you have any questions regarding any aspects of this newsletter, our experts in the global WTS TP team will be happy to answer any questions you may have.

Yours sincerely,

WTS Global Transfer Pricing Team

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Contents

Austria: Limits of temporary relief in the MAP (Mutual Agreement Procedure) 3

China: Chinese taxation in the era of digitisation 3

Hong Kong: Hong Kong IRD issues guidance regarding TP Documentation and CbCR 4

Netherlands: The EU General Court's judgement in Starbucks' state aid case 6

Nigeria: Transfer Pricing in Nigeria – Navigating a Tax Dispute Resolution 7

Pakistan: A Paradigm Shift in the Approach to Transfer Pricing in Pakistan 9

Russia: Changes in Russian TP legislation effective as of 2020 10

Saudi Arabia: Recent developments in KSA transfer pricing 11

Switzerland: The Swiss Tax Reform coming into force on 1 January 2020 12

United Arabic Emirates (UAE): Transfer Pricing Regulations in the UAE 14

Vietnam: 2020 Tax audits in Vietnam for Foreign Invested Companies will focus on TP 15

Glossary 16

Please find the complete list of all contacts at the end of the newsletter.

Austria

Limits of temporary relief in the MAP (Mutual Agreement Procedure)

Prior to the EU Tax Dispute Resolution Act [EU-StbG], Section 48 of the Federal Fiscal Code (BAO) allowed for the unilateral elimination of international double taxation by means of the imputation method until 30 August 2019 within the framework of a discretionary decision. This was particularly important when it came to avoiding temporary double taxation for the duration of an ongoing bilateral procedure.

Once the EU Tax Dispute Resolution Directive takes effect on 1 September 2019, this procedure will only be possible in isolated cases. According to Section 48 Para. 5 of the Austrian Federal Fiscal Code (BAO), offsetting to avoid temporary double taxation is only an option if it is not possible to have a bilateral mutual agreement or hold arbitration proceedings. The explanatory remarks state that this is only the case if there is **no double taxation agreement** with the country concerned. Apart from these exceptional cases, **temporary double taxation can no longer be unilaterally avoided.**

This is relevant if, for example, more profits are generated in Germany and these have already been taxed in Austria, the country of residence. The lack of imputation opportunities means that the only option available to the taxpayer is to apply for temporary relief abroad (in this case Germany). As such, it is necessary to examine in each individual case abroad whether and what possibilities there are for avoiding temporary double taxation. This means that in cases in which no temporary relief can be obtained abroad, double taxation applies until the dispute has been resolved in the bilateral procedure.

Decisions issued before 1 September 2019 **under the former Section 48 BAO lose their validity as well.** Applications for extensions beyond 1 September 2019 will be rejected.

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China

Chinese taxation in the era of digitisation

Since the State Council's announcement of its "Internet + taxation" action plan in 2015, China has been making steady progress in upgrading its technology for data collection, information exchange and big data analysis for tax management and control. All these efforts have enlisted China as an early bird in the era of digitisation, which also brings challenges to multinational groups' tax risk management.

Several milestones suffice to demonstrate the Chinese tax authority's aim to set up the "Internet + taxation" structure. Since 2015, the data access code for all Chinese companies has been standardised as one "Unified Social Credit Code" allowing quick access to all the commercial and taxation data of taxpayers, which serves as a backbone for digitised taxation management. The e-tax system (Golden Tax III) has been upgraded to a powerful taxation database, which automatically analyses all financial data, invoices, tax filings and the like. An information exchange platform is being built across various departments including tax, commerce, statistics, banks, customs, public security and foreign exchange. On the basis of digitised data collection, the Chinese tax authority is also blending the concepts

of big data and cloud computing into taxation management, and gradually producing electronic filing, paperless submissions, online reviews and diversified clearance windows.

The Chinese tax authority is about to upgrade its approach to tax investigation in a more efficient and effective way. The tax officers can spot taxpayers' potential tax issues based on the risk alerts popping out from its systems and launch an inquiry into these matters.

A recent TP investigation case in China may well illustrate the Chinese tax authority's increasing ability to identify and investigate risks. An abnormal profitability alert for Company A (CIT rate at 25%) has caught the tax office's attention by comparing its comparable data. The taxation exchange platform also shows that Company A's subsidiary, Company B in another city (CIT rate at 15%), has outperformed the market rate. The tax office teams in the two cities started to investigate the company's function and risk profile and its transfer pricing policy. It was found that although Company A had assumed complicated marketing and control functions, it had purposefully kept more profits in Company B to enjoy an overall lower CIT burden. The tax office has therefore imposed an upward tax adjustment for RMB 27.8 million and a late payment interest at RMB 0.55 million for the past three years.

The Chinese tax authority has been active on the global international tax stage: e.g. conducting bilateral tax treaties with 110 countries; participation in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and BEPS plans. With the help of the more digitised taxation tools, the Chinese tax authority is catching up with the world's latest knowledge of and technology in taxation management and control.

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Hong Kong

Hong Kong IRD issues guidance regarding TP Documentation and CbCR

On 19 July 2019, the Hong Kong (**HK**) Inland Revenue Department (**IRD**) published three Department Interpretation and Practice Notes (**DIPNs**):

- DIPN 58: TP Documentation and CbCR which aligns the HK documentation requirements with the OECD's three-tiered standardised approach (i.e. MF, LF and CbCR), with specific HK thresholds for exemption
- DIPN 59: TP Between Associated Persons which elaborates on the IRD's approach to the application of the OECD TP principles
- DIPN 60: Attribution of Profits to PEs in HK which adopts the authorised OECD approach (AOA) in the allocation of profits to PEs

TP Documentation requirements

The MF and LF should be prepared on a contemporaneous basis by no later than the time the tax return is submitted (nine months after the accounting year-end). DIPN 58 helpfully sets out the exemption thresholds for MF and LF as follows:

- Size of business – Exemption from preparing MF and LF if they meet the following:
  - Total revenue <HKD400m*
  - Total asset value <HKD300m
  - Average number of employees <100

* 1 EUR is approximately 8.68 HKD

- Amount of related party transactions – Exemption from covering transactions under the following thresholds:
  - Transfer of moveable/immovable properties: HKD220m
  - Transfer of intangibles/Transactions with respect to financial assets: HKD110m
  - Other types of transactions: HKD 44m
  - Specified domestic transactions and transactions before 13 July 2018

Regardless of any exemptions, transactions still need to be conducted at arm's length. There is a useful roll-forward rule for certain elements of the LF (e.g. benchmarking study and descriptions of comparables) can be rolled forward for a maximum of three years if the conditions of the controlled transactions or operations remain unchanged. There are penalties, including a fine of HKD50,000 for failing to prepare MF and LF under Section 58C. Maintaining MF and LFs can reduce the likelihood of being audited and mitigate the risk of penalties when such audits do occur.

Substance over Form as Applied to TP

DIPN 59 provides guidance as to how the substance over form rule may be applied in a TP context in which the IRD has the power to recharacterise the transaction if it lacks commercial rationality. DIPN 59 explicitly states that where reliable data show that comparable uncontrolled transactions exist, it cannot be argued that such transactions between associated persons would lack commercial rationality.

In relation to the application of TP methods, the IRD provides specific guidance:

- Where a traditional transaction method and a transactional profit method can be applied in an equally reliable manner, the traditional transaction method is preferred
- Whilst there is no preference for the use of commercial databases, the IRD disclosed that it has subscribed to the Orbis/Osiris databases
- Local comparables are preferred and, in their absence, overseas comparables can be accepted if they are based on a similar market principle.
- The IRD rejects the use of statistical tools that do not increase the reliability of the data and cites the explicit rejection of pooled ranges.

Allocation of profits to PE

The HK definition of PE is consistent with that of the OECD Model Tax Convention and relies on the AOA to allocate taxable profits to the PE. This comprises two steps under DIPN 60. First, identify the related party dealings in which the PE is involved and determine the relevant functions, assets and risks of the PE. Next, the taxpayer must apply the arm's length principle to the recognised dealings, including the comparability analysis and application of the OECD TP methods.

CbC report

A HK taxpayer is part of a reportable Group if total consolidated group revenue exceeds certain threshold amounts for the immediately preceding accounting period as follows:

- If the Ultimate Parent Entity (**UPE**) is a HK tax resident, the specified threshold amount is HKD6.8m

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- If the UPE is not a HK tax resident and that jurisdiction requires a CbC report to be filed, the specified threshold amount is the amount as stipulated in the said jurisdiction
- If the UPE is not a HK tax resident and that jurisdiction does not require a CbC report to be filed, the specified threshold amount is an amount in the currency of that jurisdiction equivalent to €750 million as at January 2015

The filing deadline for a CbCR is 12 months after the accounting year-end. A HK taxpayer of a reportable Group is required to file a CbCR notification in electronic form via the CbCR Portal within three months after the accounting year-end (unless another HK taxpayer of the same Group has filed the notification).

Summary

While the HK DIPNs are largely consistent with OECD guidelines, it is worth noting the specific guidance around the use of TP methods, substance over form recharacterisation and the adoption of the AOA for PEs, which not all countries across Asia have adopted.

Groups with a HK presence should consider the following:
- Whether existing HK operations will trigger any TP documentation obligations. If so, instead of merely replicating pre-existing Group TP documentation, ensure that the TP documentation accurately reflects the functional profile of HK transactions.
- Regardless of exemptions, ensure that TP analyses supporting the related party pricing, allocation of profits to PEs, intercompany agreements and records of TP adjustments are properly kept in HK.
- For HK headquartered groups, whether it crosses the threshold and becomes liable to file a CbCR notification. For non-HK headquartered groups, the UPE or surrogate entity of which is subject to CbCR, the HK taxpayer needs to ensure that it files the annual CbCR notification with the IRD.
- As a major financial services hub, the adoption of the AOA will mean that HK branches must take a prudent approach and have their profit allocation analysis updated and documented. This also ties in with the recent queries raised by IRD on proper remuneration of HK entities and fund managers in the context of offshore fund structures.

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Netherlands

The EU General Court's judgement in Starbucks' state aid case

In the Starbucks case, the European Commission (EC) concluded an APA issued by the Dutch Tax Authorities in 2008, providing a selective advantage to a Dutch entity (SMBV) of the Starbucks group. According to the EC, the APA resulted in a reduced taxable profit for SMBV and, as such, in unlawful state aid, based on article 107 of the Treaty on the functioning of the European Union (the Treaty).

The EC considered that the TNMM, which was used to determine an arm's-length remuneration for SMBV, did not provide arm's length pricing and that the CUP method should have been used. The EC argues that, due to the incorrect application of the arm's length principle as included in the APA, SMBV's taxable profit is reduced in a way which is not in line with standalone companies, the taxable profits of which are determined by transactions concluded on market terms.

The Netherlands appealed against the EC's conclusion and disputed the finding that the APA resulted in a selective advantage for SMBV. In addition to challenging the detailed findings of the EC, they also argued that the EC was not entitled to assess the application of the arm's-length principle to conclude whether state aid had been provided, based on article 107 of the Treaty.

The Court's judgement

On 24 September 2019, the General Court (the Court) concluded that the EC was entitled to apply the arm's-length principle, as incorporated into the Dutch tax system, as a criterion for assessing the existence of state aid. The Court furthermore concluded that although the EC had criticised the transfer pricing methodology used, it had not demonstrated that this had resulted in a selective advantage for Starbucks. Since the EC has not been able to prove the existence of state aid, the Netherlands is not obliged to recover EUR 30 million in unpaid taxes due to the "benefits" as a result of the issued APA.

The Court stated that simply not applying the most appropriate transfer pricing method does not necessarily result in a reduction in taxable profit. Furthermore, the Court argued that the EC would have had to demonstrate that the methodological errors identified in the APA meant that a reliable approximation of an arm's-length outcome could not be reached and that they resulted in a reduction in the taxable profit.

The EC's conclusion in the Starbucks case was controversial, as some thought it had crossed the line into interfering with the application by a Member State of its own tax rules. As the OECD stated in the TP Guidelines, "transfer pricing is not an exact science", so there is no single correct answer.

Removal and next steps

The Court's judgement is partly good news for corporates as it should give greater certainty to those that have conducted a proper transfer pricing study and obtained an APA. It confirms that an APA cannot be challenged simply because the EC thinks a different methodology should have been used.

Both the EC and the Netherlands have the opportunity to appeal against the Court's judgement at the European Court of Justice. Given the response of the Dutch Minister of Finance to the Court's judgement, it seems unlikely that the Netherlands will take this opportunity. To date, the EC has not announced whether it will submit an appeal against the Court's judgement.

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Nigeria

Transfer Pricing in Nigeria – Navigating a Tax Dispute Resolution

Transfer Pricing (TP) is a relatively new concept in Nigeria, as it was introduced in 2012. TP is regulated by the Income Tax (Transfer Pricing) Regulations, 2018 (TP Regulations) created pursuant to the Federal Inland Revenue Service (Establishment) Act, 2007. The 2018 TP Regulations revoke the TP Regulations of 2012. They incorporate some of the revisions to the OECD Guidelines as well as provisions contained in the African Tax Administration Forum's Suggested Approach (ATAFSA) to drafting TP legislation.

The 2018 TP Regulations introduced significant changes that impact the conduct of intercompany transactions involving people operating in Nigeria and reduces the TP compliance burden for certain categories of taxpayer. Some of the changes to the TP Regulations include:

- introduction of significant penalties for non-compliance,
- restriction of tax deductions for IP royalty payments,
- guidelines for filing updated TP returns form,
- threshold for maintaining contemporaneous documentation,
- new Safe Harbour regime,
- specific criteria for determining the arm's-length nature of intra-group transactions,
- rules on commodity transactions,
- inclusion of procedures and documents required for the application of APAs etc.

While the TP Regulations allow the Federal Inland Revenue Service (FIRS) to grant extensions to filing deadlines under certain conditions, the full penalties will apply if a taxpayer is unable to meet the extended timelines.

Dispute Resolution

The FIRS commenced TP audits about three years ago, and they consistently demand TP documentation and other documents from taxpayers with respect to their related party transactions. These actions are in line with its powers under the 2018 TP Regulations, No. 10 and Federal Inland Revenue Service (Establishment) Act.

TP audits occasionally result in long drawn-out disputes between taxpayers and the tax authorities. These disputes could arise from adjustments in taxable profits resulting in increased tax liabilities; double taxation where adjusted profits have been taxed in other jurisdictions; different interpretation of provisions of the Regulations etc. Potential areas of dispute between the taxpayer and tax authority are not exhaustive. However, under Nigerian law a taxpayer has dispute resolution mechanisms available , each with its own implications. These are:

- Administrative/Internal procedures: The FIRS are allowed to set up a Decision Review Panel for the purpose of resolving any disputes or controversies which may arise;
- Litigation: Taxpayers are allowed to seek redress in court where there are disputes between the taxpayer and tax authority, starting from the tax appeal tribunal up to the Supreme court;
- MAPs under Double Taxation Treaties (DTTs): MAP is a procedure for resolving disputes between Treaty Partners/governments of two jurisdictions that are party to a double tax agreement. The aim of these double tax agreements is to eliminate the occurrence of double taxation with respect to taxes on income and on capital, without creating tax evasion or avoidance in the form of non-taxation and reduced taxation;
- APAs: APA is an agreement between a taxpayer and a tax authority of the State in which the tax authority determines, in advance, an appropriate set of criteria for the purpose of determining the taxpayer's transfer prices for a fixed period of time. An APA could be unilateral (involving a taxpayer and one tax authority, usually the tax authority of the State in which the taxpayer is resident), bilateral (involving a taxpayer and two tax authorities) or multilateral (involving more than two tax authorities).

An APA is not majorly a dispute resolution mechanism, but more of a dispute preventive measure as parties can agree beforehand on an appropriate set of criteria, which provides some certainty regarding the tax liability.

Conclusion

The Nigerian tax environment is evolving rapidly, and the continuous implementation of tax reforms is laudable, one example of which would be the proposed Finance Bill which includes changes to 7 existing tax laws in Nigeria. However, the successful and prompt closure of tax disputes will make dispute resolution more effective. Taxpayers and their consultants are encouraged to familiarise themselves with existing dispute resolution mechanisms in all areas of taxation, including TP, as this will minimise the risks of uncertainty and unintended double taxation.

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Pakistan

A Paradigm Shift in the Approach to Transfer Pricing in Pakistan

Historically, TP rules have not received sufficient attention from the tax authority since the introduction of the Income Tax Ordinance, 2001 - the “Tax Ordinance”. It was not until 2018 that the Federal Board of Revenue (FBR) issued notification S.R.O. 144(i)/2018 which prescribes Pakistan’s MF, LF and CbCR requirements. Also, the tax authority was empowered to examine TP of MNEs on modern lines.

Recent TP Developments

Rules on Documentation and CbCR

FBR has introduced rules relating to documentation and CbCR requirements for compliance with the provisions of domestic law dealing with the transactions between associates. The OECD’s model rules for TP documentation that provide for a three-tiered approach have been implemented. The thresholds for these requirements are as follows:

- CbCR for MNEs with consolidated revenue of more than EUR 750 million or an equivalent amount in PKR in the previous tax reporting year;
- MF preparation for MNEs with a group turnover of more than 100 million PKR*;
- LF preparation for related party transactions of more than 50 million PKR.

The CbCR submission is required within twelve months after the last day of the tax reporting FY of the MNE group. The CbC notification is required to be submitted by the Constituent Entity (CE) before the deadline for filing tax returns. The scope of the term CE has been enhanced so that it also includes the Permanent Establishment in Pakistan of the non-resident person.

Failure to furnish CbCR by the due date is subject to a penalty of PKR 2,000 for each defaulting day (minimum penalty of PKR 25,000). The penalty for not maintaining the MF or LF is 1% of the value of transactions.

TP Enforcements and Audit

A new Directorate, namely the “Directorate General of International Tax Operations” (DGIT) has been established with the Finance Amendment Act, 2019. DGIT will be mainly responsible for concluding agreements with different jurisdictions for exchanging information.

* 1 EUR is approximately 173.45 PKR

DGIT's most important function is to conduct taxpayers' transfer pricing audits involved in cross-border transactions. The selection criteria for transfer pricing audits are designed by the FBR after analysing the data made available under agreements for exchanging information. A paradigm shift in FBR's approach regarding TP is evident since, in the past, no significant TP audits/examinations were carried out. TP audits are separate from and in addition to the conventional tax audits. It is expected that the drive to improve TP compliance will gain momentum over the next few years. In this regard, the tax authority has empowered DGIT officials through a notification of 9 July 2019. Various programmes for building on officials' capacity are also being implemented with the cooperation of international institutions.

It is not surprising that FBR believes TP is the preferred tool of MNEs for shifting profits outside the country, which has the effect of not only eroding the tax base of the country, but also liquidating the country's hard-earned foreign exchange. Given the recent paradigm shift in TP, and the fact that Pakistan has not yet introduced APAs, the tax disputes involving transfer pricing adjustments are expected to rise in an unprecedented manner in future.

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Russia

Changes in Russian TP legislation effective as of 2020

1. Amendments to the TP control of transactions with intangible assets. Introduction of new criteria for analysis – DEMPE concept.

The new law provides recommendations for conducting the specialised functional analysis with respect to transactions with intangible assets. Such an analysis should contain information about:

- **DEMPE** functions and risks (development, enhancement, maintenance, protection and exploitation of intangibles) and
- Additional comparability criteria for intangibles (e.g. their exclusivity, legal protection terms, etc.).

These changes correspond to the latest international practice of price control in transactions with intangibles, but are quite complex from a methodological point of view because they will require a more detailed and in-depth functional analysis.

2. Amendments to the profit split method.

Previous rules provided for the fact that the profit split method could be applied, in particular when the ownership (usage) of the intangibles has a significant effect on profitability.

The new law proposes that any control over the use of intangibles should also be taken into account when deciding on the possibility of applying such a method.

3. Use of stock exchange quotations.

The new legislation brings clarification for the arm's-length price range calculation while using the CUP method (Article 105.9 of the Russian Tax Code - RTC). It is now determined as the range between the minimum and maximum price of transactions carried out in the same **period** under comparable circumstances.

The aim of these changes is to clarify the procedure for calculating the market price range, since it had previously been provided for as "registered by the stock exchange **on the date** of the transactions".

4. Amendments to the Tax Code of the Russian Federation (TCRF) containing new rules on conducting MAPs

MAPs should be understood as the procedure for resolving a person's disputes on taxation in respect of their income, profit and property by applying the provisions of the relevant double tax treaty (hereinafter – DTT) with the Russian Federation.

Key provisions:

- MAP can be initiated by the persons mentioned above, as well as by the competent authorities of a foreign state (party to the DTT).
- The procedure for carrying out the MAP will be determined by the provisions of the relevant DTT.
- The order and terms of submission of the application, as well as the consideration of such an application, will be determined by the Ministry of Finance of the Russian Federation in the by-laws.
- Features of carrying out adjustments by results of the MAP have been established. In particular, if the taxpayer has the right to a refund/set-off of taxes, such a refund/set-off should be carried out according to the general rules provided for by the tax code (Article 78 of the RTC).
- The general limitation of the set-off/refund period (three years from the date of payment) will not apply to cases where the set-off/refund is carried out due to MAP.

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It should be noted that on 17 September 2019, the OECD published statistics for MAP by the competent authorities of different States for 2018. According to the published data, as of the beginning of 2019, 24 mutually agreed procedures had been opened in Russia.

Saudi Arabia

Recent developments in KSA transfer pricing:

Introduction

- On 15 February 2019 the Kingdom of Saudi Arabia (KSA), a "G20 member", issued the final version of the TP bylaws, which is broadly in line with the OECD Guidelines. Also, respective FAQs (in both English and Arabic) were published as additional guidance. Given that the year ending 31 December 2018 is the first to be covered by the TP bylaws, taxpayers have started their preparatory phase for complying with TP documentation requirements as set forth in the introduced articles of the official TP bylaws.

Latest changes and updates

- The General Authority of Zakat & Tax (GAZT) assigned a corresponding account manager to each group of taxpayers to which he/she started sending notices via email from the taxpayer's manager at GAZT. Taxpayers and MNE's operation in the region should therefore constantly check the email registered in the GAZT ERAD system in order to be able to respond to these requests for further documentation that should be submitted to the tax authorities in 30 days' time (but not before 30 days).

- Moreover, GAZT updated the taxpayers' services catalogue in order to highlight the procedure for providing TP documentation, which includes uploading the required documents through the GAZT portal after logging in using the taxpayer's credentials and granting **30 business days** to provide the TP documentation that has been requested.
- It is unclear at present whether or not the GAZT will grant any additional extension to the taxpayers to provide such TP documentation. This should become more accurate during the next TP documentation review.

Common audit triggers from the Disclosure Form

- From our perspective, we believe that key audit "triggers" for GAZT within a specific disclosure form that may result in a request from the GAZT for submission of a local file seem to be as follows:

  - Poorly prepared disclosure forms,
  - CbCR disclosure showing low profits and taxes in Saudi Arabia compared to profits and taxes in other jurisdictions,
  - Losses reported in the disclosure form – as a large number of MNEs are seeing losses in KSA, this can be challenged by the GAZT, assuming that such MNEs may be seeing profits elsewhere within the same group,
  - Related party transactions with foreign entities located in zero/tax haven jurisdictions,
  - Affidavits not submitted as part of a TP disclosure form.

Therefore, it is better for taxpayers who still do not apply any TP policy in compliance with the bylaws and do not maintain inter-company agreements to govern their controlled transactions, to start preparing such documents, in addition to keeping MF and LFs as proper TP documentation, which would reduce the risk of a TP assessment.

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Switzerland

The Swiss Tax Reform coming into force on 1 January 2020

Switzerland's tax landscape was not a source of much news in the past. However, the Swiss public vote confirming the Federal Act on Tax Reform and AHV Financing on 19 May 2019 will now bring about a number of important changes! Changes that are in particular interesting in the context of cross-border transactions between related parties.

The implementation of the reform by 1 January 2020 will harmonise Swiss tax laws and practices with internationally accepted taxation standards and at the same time enable Switzerland to remain competitive within the increasingly narrow boundaries set for international tax competition.

Core elements of the reform are:

- **The abolition of tax privileges,** e.g. the cantonal tax statuses for holding, domicile and mixed companies and tax regimes for principal companies and financial branches;
- **The implementation of new, internationally accepted measures** that allow Switzerland to maintain an attractive corporate taxation system.

Essential and particularly important elements from a cross-border viewpoint

The recognition of hidden reserves (transitional measure)

Hidden reserves that are to be transferred from privileged to ordinary taxation will be taxed at a correspondingly lower rate (at cantonal and communal level).
Lower taxation is provided for by:

- **The recognition** and **depreciation over time of hidden reserves and/or goodwill that have been** built up during a privileged taxation scheme on the tax balance sheet (upgrading current law), and/or by
- **The recognition** and **separate taxation** over time **of profit from realising hidden reserves and/or goodwill** at a special tax rate (special tax rate solution).

The key element with these measures is the **valuation of the hidden reserves and/or goodwill** and its acceptance by the tax authorities as FY2019 comes to an end. Common past as well as future-oriented valuation methods are generally accepted.

Reduced ordinary corporate income tax rates

The ordinary combined effective corporate income tax rates are generally being reduced by a majority of cantons. In the case of Geneva by more than 10% to 13.99%, in other cases only by a few percentage points, but nevertheless reaching rates as low as about 12% to 15%. Internationally assessed and probably just about right for remaining within the expected band of tax rates, they are still accepted and not likely to be penalised in the future.

Notional interest deduction (NID)

Zurich as the only canton to do so has introduced a notional interest deduction (NID), which provides for an imputed interest deduction on equity capital which permanently exceeds the equity required for business operations.

Measures to support Switzerland as a research & development location

Patent box regime

The patent box allows income from patents and similar rights to be excluded in the tax base at cantonal and communal level (maximum reduction of 90%), provided there is a relevant connection to Switzerland and the modified nexus approach is met.

Additional R&D expense deduction

An additional deduction of up to 50% may be applied to expenses relating to R&D activities carried out in Switzerland.

Further measures include relief on capital taxes applied to equity that is attributable to participations, patents and similar rights, inter-company loans as well as a restriction on the disputed capital contribution principle for listed companies.

Minimum taxation to be 30%

The maximum tax reduction from the application of all new measures is limited to 70%, since the minimum taxation is to be 30%!

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United Arab Emirates

Transfer Pricing Regulations in the UAE

Following UAE's commitment as an inclusive framework member to endorse the minimum BEPS standards, the UAE Cabinet has issued CbC reporting regulations dated 30 April 2019 effective for financial years beginning on or after 1 January 2019. Prior to these regulations, large MNE groups with their headquarters in the UAE were filing CbC reports with the jurisdiction of the Surrogate Parent Entity (SPE) appointed for this purpose. In future, these groups will need to file their CbC reports with the UAE's Ministry of Finance (MoF). Additionally, UAE-based constituent entities of MNEs with headquarters overseas will have an additional CbC notification requirement in the UAE by 31 December 2019.

The UAE CbC reporting requirements are in line with the CbC legislations introduced by most countries and the BEPS report on Action 13. The regulations apply to UAE entities that are resident for tax purposes and are members of a multinational group having annual consolidated revenues of AED 3.15 billion or more (in line with the OECD prescribed threshold of EUR 750 million) in the preceding year. The regulations require the following compliances by qualifying entities resident for tax purposes in the UAE:

- Notification to the MoF regarding the details of the ultimate parent entity/reporting entity and constituent entities in the UAE by the end of the year (31 December 2019 for the year ended 31 December 2019); and
- Filing a CbC report by the Ultimate Parent Entity/SPE (if the UAE entity is appointed as an SPE by the group) with the MoF within 12 months from the end of the year (31 December 2020 for the year ended 31 December 2019).

The online portal for filing reports and notifications has been under construction since November 2019. The UAE CbC regulations allow for selection of a UAE entity as an SPE for the group, provided conditions for appointing an SPE are met.

The regulations also provide for administrative penalties in the event of default as follows:
- AED 1,000,000 + AED 10,000* (up to a maximum of AED 250,000) per day for failure to file a CbC report/notification on or before the prescribed due date;
- AED 100,000 for failure to retain the documentation and information required for a minimum period of five years after the reporting date;
- AED 100,000 for failure to provide information in the event of any inquiries; and
- AED 50,000 to AED 500,000 for failure to report information in a complete and accurate manner.

To facilitate the exchange of CbC reports filed in the UAE with other countries, the UAE signed the CbC Multilateral Competent Authority Agreement in June 2018 and currently has active relationships with 49 countries, which increases its attractiveness as a choice for SPE jurisdiction. Currently, the UAE is a non-reciprocal jurisdiction which means that it will not be receiving any CbC reports filed in other countries.

While the UAE does not currently have a corporation tax regime, other than for foreign oil and gas companies and branches of foreign banks, in the event that the UAE does introduce corporation tax, one can expect detailed transfer pricing regulations and a reciprocal exchange of CbC reports to be introduced.

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* 1 EUR is approximately 4.05 AED

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Vietnam

2020 Tax audits in Vietnam for Foreign Invested Companies will focus on TP

The Vietnamese Tax Authorities (**TA**) are being instructed to increase tax revenue by enforcing greater compliance on the part of taxpayers. For the 2018 Tax Audits, the General Department of Taxation[1] instructed the TAs to focus also on implementing a software-based Risk Analysis System and specifically to target Foreign Invested Companies (**FIC**). The basic principles outlined for the 2018 audits are also to be applied in the following years. For 2019, the Ministry of Finance (**MOF**)[2] instructed the TAs to focus additionally on tax evasion and fraud. For 2020[3], the MOF instructed TAs to focus on VAT, TP, and to combat smuggling and trade fraud. In addition, all three regulations are establishing a systematic approach to tax audits. The intention is to reduce the importance of the special relationship of the taxpayer to the local tax officer, which in the past was absolutely crucial.

Until now, TP issues of FICs have not been taken very seriously in many cases. The current regulation became effective as of 1 May 2017.[4] It is expected that a lot of work will be required of the TAs to identify some cases of non-compliance[5] in the 2020 audits.

The TP documentation must be available by the deadline for the final submission of **CIT** (the 90th day of the next financial year). The TP documentation must consist of a LF, MF and CbCR and should be prepared in Vietnamese. At the request of the TA, those reports must be filed within 15 working days.

No TP documentation must be prepared by companies that specifically have
- Total revenue below 50 billion VND (around USD 2.15 mil) and related party transactions below 30 Mio VND (around USD 1.29 mil);
- Signed an APA and have submitted the annual report insofar as the transactions are covered by the APA.
- A business with simple functions, with no revenue or expenses from the exploitation or use of intangibles, with revenue of less than 200 billion VND (around USD 8.59 mil) and the following pre-loan interest and pre-CIT net profit on turnover ratios in these sectors:
  - Distribution: 5% or more;
  - Production: 10% or more;
  - Processing: 15% or more.

It is highly recommended that all FICs should prepare well for a potential tax audit in 2020, particularly regarding TP requirements. For companies with the calendar year as their FY, the TP documentation must be ready before the end of March 2020. It must be submitted to TA within 15 working days at the TA's request.

The prime target for these audits will be companies with high risk alerts on tax and TP
- not being audited for a longer period;
- having a high revenue;
- making a loss or with unusually low profits;

1 Official Letter from the General Department of Taxation 5339/TCT-TTr, dated 20 November 2017
2 Official Letter from the Ministry of Finance 13185/BTC-TTr, dated 26 October 2018
3 Circular 38/2019/TT-BTC, dated 28 June 2019
4 Decree 20/2017/ND-CP, dated 24 February 2017
5 Official Letter No. 13288/BTC-TTr dated 4 November 2019

- enjoying tax incentives;
- enterprises in real estate, oil & gas, electricity, etc.
- banks and credit institutions;
- enterprises with capital assignment, franchise, and project transfer;
- **enterprises with new and special business lines;**
- VAT refund; or
- enterprises that appear to be using illegal invoices.

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Production costs and all high-value transactions such as interest, royalties and service fees of all kinds will be scrutinised in particular.

Glossary

APA	Advance Pricing Agreement
BEPS	Base Erosion and Profit Shifting
CbC	Country by Country
CbCR	Country by Country Reporting
CIT	Corporate Income Tax
CUP	Comparable Uncontrolled Price (Method)
EU	European Union
FY	Fiscal Year
IP	Intellectual Property
LF	Local File
MAP	Mutual Agreement Procedure
MF	Masterfile
MNE	Multinational Enterprise
OECD	Organization of Economic Cooperation and Development
OECD Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
OECD MTC	Model Tax Convention on Income and on Capital
PE	Permanent Establishment
TNMM	Transactional Net Margin Method
TP	Transfer Pricing
VAT	Value Added Tax

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