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# Roundup of Singapore's 2016 BEPS developments

February 23, 2017

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## *In brief*

Last year Singapore's tax landscape was marked with several major developments, arising from the Organisation for Economic Co-operation and Development's (OECD's) Base Erosion and Profit Shifting (BEPS) Project. Aside from aligning with international tax practices, these developments 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 multinational enterprises (MNEs) with operations in Singapore. To accomplish sound corporate governance and enterprise risk management, MNE's should assess the implications of these developments and, where necessary, take appropriate steps to strengthen their tax practices and control frameworks. Robust defences will need to be in place in anticipation of actions that will be taken by tax authorities in Singapore and elsewhere, to reduce potential exposure to double or multiple taxation on cross-border transactions.

We recap below the key developments in Singapore for the past year. These developments signal the likely direction of enforcement initiatives of the Inland Revenue Authority of Singapore (IRAS).

- *January 4, 2016:* The IRAS provided updated guidance - the 3<sup>rd</sup> Edition Transfer Pricing Guidelines (TPG), which tightens the dispute resolution framework for Advance Pricing Agreements (APAs).
  - *June 16, 2016:* The Singapore Government committed to joining the OECD's Inclusive Framework for Implementing Measures against BEPS and the four minimum standards therein.
  - *October 10, 2016:* The Singapore Government introduced the requirement for Singapore MNEs to file a Country-by-Country (CbC) Report in Singapore from the financial year (FY) 2017 onward. The requirement was gazetted as law on December 30, 2016.
  - *October 24, 2016:* The IRAS announced the introduction of new disclosures for related-party transactions (RPTs) as part of the annual tax return filing, with effect from Year of Assessment (YA) 2018.
  - *December 8, 2016:* The Singapore Government enacted the Income Tax (International Compliance Agreement) (Common Reporting Standard) Regulations 2016.
  - *December 19, 2016:* The IRAS announced that it would allow voluntary CbC Report filings for Singapore MNE groups for FY 2016.
  - *January 12, 2017:* The IRAS released its Fourth Edition Transfer Pricing Guidelines.
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## In detail

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

On January 4, 2016, the IRAS released its 3<sup>rd</sup> edition 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 Singapore's APA program.

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

**Observation:** An APA applicant should have strong information and documentation to support the APA application 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 Tax Insight from January 19, 2016 summarizing the key updates of the 3<sup>rd</sup> Edn TPG](#).

### **Singapore becomes BEPS Associate**

On June 16, 2016, 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:

- Transfer pricing documentation and CbC Reporting;
- Enhancing dispute resolution;
- Countering harmful tax practices; and
- Preventing treaty abuse.

### **Transfer pricing documentation**

The IRAS implemented contemporaneous transfer pricing documentation requirements from January 2015. The information required under such transfer pricing documentation is broadly similar to the information required under the OECD Master File/Local File approach.

**Observation:** MNE groups that adopt an OECD-based Master File/Local File approach for their transfer pricing compliance generally should conform to these principles. However, care should be taken to include information stipulated under the Singapore transfer pricing guidelines.

The IRAS also has been strictly enforcing such requirements. Transfer pricing documentation is one of the common requests by the IRAS as part of a tax examination or transfer pricing consultation. MNEs with operations in Singapore should closely monitor their compliance with Singapore's transfer pricing rules and have robust and up-to-date transfer pricing documentation. Non-compliance with the transfer pricing documentation rules may result in the IRAS taking punitive actions, including disallowing transfer pricing adjustments made and/or denying access to assistance through the Mutual Agreement Procedure (MAP) in tax treaties to resolve or avoid potential double taxation issues.

### **Enhancing dispute resolution**

Singapore recognises the need for investors and businesses to have access to effective and expedient dispute resolution mechanisms. The IRAS remains committed to supporting taxpayers requiring assistance to resolve or prevent disputes through MAPs and APAs, subject to adhering to due process and

taxpayers doing their part by having robust information and transfer pricing documentation to support the process. This is of particular importance to businesses and investors operating across borders and outside Singapore, given the rising incidence of cross-border tax disputes. Such disputes are expected to increase further, as tax authorities globally apply different standards and/or have varying interpretations of the BEPS Action Plan items in enforcing tax collection.

### **Countering harmful tax practices**

The MoF has reiterated that Singapore's incentive regime has been designed based on strong principles, with the aim to encourage substantive operations and contribute meaningfully to the growth of Singapore's economy. This articulation reaffirms 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.

**Observation:** We expect that the Singapore authorities will continue to step up efforts in enforcing adherence by incentive awardees to substance requirements and the arm's-length principle. These efforts may include more elaborate future documentation and reporting requirements.

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

### *Preventing treaty abuse*

The MoF has reinforced Singapore's unchanging position that Singapore does not condone treaty shopping. Singapore also has 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, such as 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 has measures in place to review requests for a Certificate of Residence (COR) from taxpayers that wish to access the benefits of a tax treaty, to ensure only Singapore resident taxpayers that 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 also has increasingly questioned tax deductions claimed on payments made to certain low-tax jurisdictions. It commonly seeks information on the commercial circumstances surrounding such payments and the level of activities carried out in the counter-party jurisdictions.

### **Implementation of CbC reporting and other transparency requirements in Singapore**

The legislative framework giving effect to the implementation of CbC

reporting was introduced on October 10, 2016. On the same day, the IRAS released detailed implementation guidance on CbC reporting, in which the IRAS confirmed a number of key principles. This has provided taxpayers with some level of certainty over the scope of CbC reporting in Singapore. These key principles are summarized in [PwC's News Alert dated October 11, 2016 on CbC reporting implementation in Singapore](#). The Tax Bill containing these provisions was passed by the Singapore Parliament on November 10, 2016 and became law on December 30, 2016.

On December 19, 2016, the IRAS announced 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 are expected to be released at the end of March 2017.

Singapore has opted to engage in automatic exchange of CBC reports with jurisdictions with which it has entered into bilateral agreements for this purpose. To date, Singapore has not signed any CbC reporting exchange agreements.

**Observation:** We expect Singapore will do so shortly, as it has done 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 December 8, 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 December 30, 2016, the IRAS also issued a notice to financial institutions on the implementation of the CRS with effect from January 1, 2017.

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

On October 24, 2016, the IRAS announced it would introduce a new RPT reporting requirement for companies with effect from YA 2018. *This refers to financial information relating to FY 2017, where the annual tax returns at the latest are to be submitted by November 30, 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 taxpayers' transfer pricing risks and improve its current efforts in enforcing the arm's-length pricing requirement.

Singapore taxpayers must state in their annual corporate income tax form (Form C) whether the value of RPTs as disclosed in the audited accounts exceeds S\$15 million. If the value of RPTs exceeds that threshold, the company must 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

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<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. Nine of these (namely, United Kingdom, Japan, South Africa,

Norway, Finland, Netherlands, Iceland, Malta, and Ireland) entered into force on 31 January 2017. These nine jurisdictions hence are 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 May 31, 2018. <https://www.iras.gov.sg/irashome/CRS/>

threshold for completing the RPT Form with the S\$15 million safe harbor threshold for related-party sales or purchases under Singapore's contemporaneous transfer pricing documentation requirements.

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.

### ***Observations on tax enforcement landscape in Singapore***

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. To this end, the IRAS also released on January 12, 2017, its 4<sup>th</sup> edition of Transfer Pricing Guidelines (4<sup>th</sup> Edn TPG).

This latest edition TPG (please see [PwC's Tax Insight dated February 14, 2017](#) summarizing 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 transfer pricing 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.

These APA disclosure measures — together with the implementation of CbC reporting and other disclosure requirements (for example, the RPT disclosure form in Singapore) — mean that taxpayers may face increasingly stringent enforcement of transfer pricing aspects by the IRAS and other tax authorities around the world.

Taxpayers in Singapore should expect more pointed questions from the IRAS in the course of tax examination and transfer pricing consultation, which are aimed at better establishing the level of commercial substance, the group's value chain, and how these aspects coherently support profit allocation, treaty entitlements, and the overall tax and transfer pricing model. Robust tax and transfer pricing policies, appropriate transfer pricing documentation, and relevant supporting documentation are now a must in seeking to mitigate cross-border tax risks as part of a MNE group's good corporate governance.

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 from [October 16, 2014](#) and [November 3, 2015](#).

### ***The takeaway***

Given the implementation of various transparency requirements in Singapore and elsewhere, taxpayers should take any needed steps to achieve a coherent and consistent tax and transfer pricing model in line with business and commercial reality, deployed and implemented in accordance with the arm's-length principle. Tax authorities now will have access to more information to assess the adequacy of transfer pricing

models and tax structures. Taxpayers should take this into account when planning and supporting their tax models in line with operational substance and commercial realities.

## Let's talk

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

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