



Ministry of Finance of Taiwan announced Latest Amendments of the Three-Tiered Transfer Pricing Documentation Rules

On November 13, 2017, Taiwan Ministry of Finance (MOF) announced the amendments to “Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm’s-Length Transfer Pricing” (“TP Assessment Rules”). The amended TP Assessment Rules had included the three-tiered transfer pricing documentation as suggested by OECD under Base Erosion and Profit Shifting (“BEPS”) Action 13. The latest amendments will apply to fiscal years of 2017 onward. The three-tiered transfer pricing documentation is composed of a transfer pricing report which is already implemented from 2005, two new additions are Country-by-Country reporting (“CbCR”) and Master File (“MF”). The compliance thresholds for preparing CbCR and MF are yet to be announced by MOF.

It is expected that the threshold of CbCR could be EUR 750 million (TWD 27 billion) which is following the OECD suggested, The due date for submitting CbCR is required within 12 months

after the last day of the reporting fiscal year of the Multinational Enterprises (MNEs). For MNEs with calendar year, the deadline for filing of CbCR for FY 2017 is before the end of FY 2018. Meanwhile, when filing annual income tax return, constituent entities of MNEs in Taiwan will be mandatory to disclose the relevant information of the ultimate parent entity (“UPE”) or the surrogate parent entity that will be responsible for submitting the CbCR.

In addition, the compliance threshold of MF is expected to be lower compared with the threshold of CbCR, which is expecting to be announced by MOF. If Taiwanese constituent entities of a MNEs group meet the compliance threshold, MF will be required to be prepared along with the annual income tax return and submitted within 12 months after the last day of the reporting fiscal year. For entities of MNEs group with calendar year, MF for FY 2017 is required to be prepared on or before 31 May,

2018 which is due to file the annual income tax return, and must be submitted before the end of FY 2018.

The main content of the three-tiered transfer pricing documentation rules is summarized as follows:

	Country-by-Country reporting	Master File	Transfer Pricing Report
Threshold	MNEs group with annual consolidated group revenue during the fiscal year immediately preceding the reporting fiscal year that does not exceed the threshold set by the MOF are exempted from preparing CbCR.	Taxpayer with annual revenue, cross-border related-party transactions or other related matters that do not exceed the threshold set by the MOF are exempted from preparing MF.	Taxpayer with annual revenue (NTD 300 million) and controlled transactions (NTD 200 million) that do not exceed the threshold set by the MOF can replace the transfer pricing report with other evidentiary documents proving the transaction results are at arm's length.
Reporting Entity	The UPE of a MNEs group is Taiwanese entity, the surrogate entity to file the CbCR or constituent entities of MNEs groups in Taiwan.*	Taiwanese constituent entities of a MNEs Group.	Taiwanese constituent entities with controlled transactions.
Prepared Deadline	Please refer to the Filing Deadline.	When filing income tax return.	When filing income tax return.
Filing Deadline	Within 12 months after the last day of the reporting fiscal year; If Taiwan tax authority followed the relevant tax information exchange agreement but is not able to actually obtain the CbCR, the constituent entity in Taiwan should submit the CbCR within one month upon Taiwan tax authority's notification (the extension can only be granted once and cannot exceed one month).	Within 12 months after the last day of the reporting fiscal year (the extension can only be granted once and cannot exceed one month).	Upon receiving the written notification from Taiwan tax authority, Taiwanese constituent entities shall submit the transfer pricing report or other evidentiary documents within one month (the extension can only be granted once and cannot exceed one month).

*The UPE of the MNEs Group is not obligated to file a CbCR in its jurisdiction of tax residence; or the UPE of the MNEs Group had filed a CbCR in its jurisdiction of tax residence, however, Taiwan tax authority was unable to obtain the CbCR based on the agreement.

	Country-by-Country reporting	Master File	Transfer Pricing Report
Language	The language has not been prescribed, however, according to the International trends, it is expected to be English or Chinese.	If it is reported in foreign language, a Chinese translation shall also be attached. If it is reported in English, taxpayer may submit Chinese translation within one month upon receiving the written request from Taiwan tax authority.	If it is reported in foreign language, a Chinese translation shall also be attached. However, if it is approved by the tax authority, taxpayer may submit the transfer pricing report in English.
Content	<ul style="list-style-type: none"> ● Aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNEs Group operates. ● The Reporting MNEs should determine the nature of the main business activity (ies) carried out by the Constituent Entity in the relevant tax jurisdiction. The main business activities include: Research and Development, Holding or Managing Intellectual Property, Purchasing or Procurement, Manufacturing or Production, Sales, Marketing or Distribution, Administrative, 	<ul style="list-style-type: none"> ● Group organizational structure ● Group business ● Group intangibles ● Group intercompany financial transactions ● Group financial and tax positions 	<ul style="list-style-type: none"> ● Company overview ● Group organization and management structure ● Summary information of controlled transactions ● Analysis of controlled transactions ● Associated enterprises statements and consolidated reports of the associated enterprises ● Other documents in relation to related parties or controlled transactions, which may affect pricing, if any.

	Country-by-Country reporting	Master File	Transfer Pricing Report
Content	<p>Management or Support Services, Provision of Services to Unrelated Parties, Internal Group Finance, Regulated Financial Services, Insurance, Holding Shares or Other Equity Instruments, Dormant</p> <ul style="list-style-type: none"> ● Specify the nature of the activity of the Constituent Entity in the additional Information section. 	<ul style="list-style-type: none"> ● Group organizational structure ● Group business ● Group intangibles ● Group intercompany financial transactions ● Group financial and tax positions 	<ul style="list-style-type: none"> ● Company overview ● Group organization and management structure ● Summary information of controlled transactions ● Analysis of controlled transactions ● Associated enterprises statements and consolidated reports of the associated enterprises ● Other documents in relation to related parties or controlled transactions, which may affect pricing, if any.



KPMG Observation

On November 13, 2017, Taiwan MOF announced the amendments to the three-tiered transfer pricing documentation in TP Assessment Rules. The amendments are in line with international trends, and the information of Taiwanese MNEs will be more transparency among different jurisdictions. MNEs groups will inevitably encounter the increases of regulatory compliance requirements and tax audit risk. Therefore, proactive actions are suggested as follows:

Notifying the filing deadline of each jurisdiction

The transparency of transfer pricing information disclosure in each jurisdiction have reached to the similar degree. The information for tax audit is no longer limited to merely obtain local transfer pricing documents. As the major countries in which Taiwanese MNEs groups operate including China, Southeast Asia and major European countries, these tax jurisdictions have already adopted the three-tiered transfer pricing documentation based on BEPS Action Plan 13 since FY 2016, and most of jurisdictions required MNEs to file or prepare the CbCR and MF by the end of this year (FY 2017). It is suggested that MNEs groups need to be fully familiar with the regulations of each jurisdiction in which they operate and prepare the CbCR and MF in accordance with the filing deadline.

Identifying the information and scope of the disclosure requirements of CbCR and MF in each jurisdiction

Given that the threshold, the disclosed information and reporting entity may be different

from jurisdiction to jurisdiction, Taiwanese MNEs groups shall govern the information centralized in order to identify the detailed regulations for CbCR and MF in each jurisdiction, as well as manage the differences regarding the disclosures of required information among different jurisdictions.

Systematizing information by the headquarters of MNEs group and further employing the three-tiered documentation as a transfer pricing governance tool

Comprehensive information of MNEs groups will be fully disclosed due to the international trends of transfer pricing development, therefore, MNEs groups shall take more proactive actions to re-assess group's existing transfer pricing policy to mitigate the related tax risk. It is suggested that the headquarters of MNEs groups shall centralized the information and take a systematic approach to prepare group's three-tiered transfer pricing documentation to avoid any inconsistency in transfer pricing policies or disclosures that may cause any disputes while tax authorities engage tax audit. In addition, it is also well advised that the MNEs groups shall efficiently employ the three-tier documentation structure as the tax governance tool to review the transfer pricing policy.

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