

45TH SGATAR MEETING

TOPIC 3

IMPLEMENTING AND USING COUNTRY-BY-COUNTRY REPORTING

WORKING PAPER

**PREPARED BY
CHINESE TAIPEI**

Implementing and Using Country-by-Country Reporting

1. INTRODUCTION

Base erosion constitutes a serious risk to tax revenues and tax fairness. The OECD has already started work on addressing base erosion and published "Action Plan on Base Erosion and Profit Shifting" in July 2014. In order to maintain tax fairness, prevent base erosion, and keep track of the international taxation trend, Chinese Taipei has organized "The Project for the Handling of the Response to the Action Plan on Base Erosion and Profit Shifting Published by OECD for Tax Administration and National Tax Bureaus." The project will be handled by the Taxation Administration and National Tax Bureaus. It started in April 2014 and will run until June 2016. The Taxation Administration is the main organizer, and the five National Tax Bureaus are co-organizers of the project.

Chinese Taipei expect results from the aforesaid project to be as follows:

- A. Assessment reports will be used to provide input for the amendment of inland tax law in line with the deadlines of BEPS Action Plan to protect our tax base.
- B. Checks will be made in regard to the functioning of tax incentives that Chinese Taipei has had and/or will be discussing as to whether they constitute harmful tax competition measures or not, in order to be in line with the trends in international taxation.
- C. Information will be published regarding developments in international taxation, especially with regard to anti-tax avoidance matters, to protect the legal tax rights and interests of enterprises.

2. PLANS FOR IMPLEMENTING CBCR DOMESTICALLY

Enterprises in Chinese Taipei quite commonly make investments via a third region, including via tax havens. We consider that Action 13, one of the transfer pricing related issues, would be a significant BEPS issue for Chinese Taipei. We recognize that to enhance transparency for tax administrations by providing them with adequate information to conduct transfer pricing risk assessments and examinations is an essential part of tackling BEPS problems. To prevent base erosion and protection of tax revenue, Chinese Taipei has set up "The Project for the Handling of the Response to the Action Plan on Base Erosion and Profit Shifting Published by OECD for Tax Administration and National Tax Bureaus." In regard to Action 13 "Re-examine Transfer Pricing Documentation," Chinese Taipei has carried out the project in stages with the released deliverables from OECD.

2.1 Assembling Output from OECD's BEPS Action Plan

The Taxation Administration and National Taxation Bureaus which are responsible for Action 13 prepared reports on the recent progress on work that Chinese Taipei is doing in line with the BEPS Action Plans, which the OECD had designed and for which the OECD has released the produced output reports "Guidance on Transfer Pricing Documentation and Country-by-Country Reporting" on September 16, 2014, "Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting" on February 6, 2014, and "Country-by-Country Reporting Implementation Package" on June 8, 2014.

2.2 Producing Assessment Reports for the Amendment of Inland Tax Law

Referring to the output of the OECD BEPS Action Plan, the National Taxation Bureau of Kaohsiung, responsible for Action 13, has continually reviewed the current TP guidelines and related income tax rules. In the case that the related tax rule could be corrected in a timely way, the National Taxation Bureaus proposed initial suggestions regarding amendments to the inland tax law.

2.3 Carrying Out Feasible Amendments

2.3.1 Holding a Workshop

The Taxation Administration invited scholars and experts to attend a workshop held on March 12, 2015 to collect public opinions extensively. The issues discussed at the workshop included examining regulations regarding transfer pricing documentation, considering the compliance cost to taxpayers and collecting cost of tax administrations such as safe harbor rules, the scope of constituent entities, and the timing of the preparation of the documentation, as well as penalties. The delegates fully expressed and exchanged their views on issues at the workshop. Chinese Taipei will take recommendations from delegates and reports delivered by OECD as references to revise regulations regarding transfer pricing documentation in the future.

2.3.2 Collecting Information from Countries

The Taxation Administration also designed a questionnaire concerning the contents of transfer pricing documentation, regulations of penalties, and whether to adopt the three-tiered approach to transfer pricing documentation for other countries to complete and return through their embassies and missions abroad as well as contact points of SGATAR members. We also sent an email to OECD to inquire as to any recent progress of other countries. We finalized the collated responses of the questionnaire from jurisdictions/countries and shared that information with the SGATAR task force in July 2015.

2.3.3 Formulating Amendments of Transfer Pricing Regulations

Reports delivered by OECD are the comprehensive outcome from the input of numerous seminars, workshops, and public consultation of non-members, such as academics, NGO, MNEs, lawyers, and accountants. The contents of the reports are valuable in practice. The documents mentioned in the reports will provide tax administrations with useful information to assess transfer pricing risks, make determinations about where audit resources can most effectively be deployed, and in the event audits are called for, provide information to commence and target audit enquiries. Furthermore, it will effectively reduce the MNEs' compliance costs if every country accepts the standard structure in transfer pricing documentation. Therefore, Chinese Taipei will adopt the three tiered-documentation and amend our "Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing" in line with the implementations that OECD has published.

The amendments in transfer pricing regulations are as follows:

A. Incorporating the "local file" and "master file"

The major items of the local file and parts of the master file have been included in current transfer pricing provisions of Chinese Taipei; hence, we will take into account the contents in the local file and master file released by OECD and revise the requested information of transfer pricing documentation that should be provided by the taxpayers.

B. Adding the contents of CBCR

a. Reporting entity of CBCR

The OECD proposal is for the CBCR to be filed by the ultimate parent of an MNE to the tax authority of the jurisdiction where it is resident. The CBCR is then provided by that tax authority to other tax authorities under appropriate exchange of information mechanisms. Nevertheless, the OECD proposal also indicates that if there are no rules to request a parent company to file the CBCR in its jurisdiction, or if the tax authorities of the constituent entities can not get the CBCR through the exchange of information mechanisms, the tax authority of the jurisdiction where the constituent entities reside can request the

constituent entity to file the CBCR. Therefore, there will be an amendment to request the parent of an MNE in Chinese Taipei to file the CBCR, but we still have not decided whether the CBCR should be filed by the subsidiary company of an MNE due to the increases in a taxpayer's compliance costs.

b. Timeline

BEPS implementation has a beggar-thy-neighbor dimension, as choosing to stay in one's status quo and not to utilize the new transparency tools may well disadvantage a country in the competition for tax revenues. Hence, all countries have a natural incentive to follow suit and implement Action 13 in some form suitable to them. That is the reason we will adopt CBCR. However, there are still few official public announcements from tax authorities in other countries regarding the implementation of CBCR, so we will keep focusing on the development of the CBCR implementation released by OECD and take into account the timeline of CBCR in other countries to decide the applicable timeline of CBCR in due course.

3. APPROPRIATE USE OF CBCR INFORMATION

3.1 Regulations and Confidentiality

In the operation of the collection of tax, in order to protect taxation data security, tax administrations, subcontractors, and tax agents must comply with regulations as follows.

3.1.1 Tax Collection Act

According to the first paragraph of Article 33 of the Tax Collection Act, “regarding the information about a taxpayer in connection with the property, income, business, and tax payment of said taxpayer, the tax officials shall keep such information strictly confidential without disclosing them to any other person except the following persons and institutions:

1. The taxpayer himself/herself/itself or his/her heirs.
2. The agent or advocate authorized by the taxpayer.
3. Tax collection authorities.
4. Supervising and controlling authorities.
5. Government agencies responsible for administrative appeals or lawsuits related to taxation affairs.
6. Government agencies investigating cases involving taxation affairs.
7. Government agencies and their personnel as approved by the Ministry of Finance.
8. Any creditor who has obtained a final judicial judgment or any other title for execution. Besides, the third paragraph of the same Article of the Tax Collection Act also mentioned that government agencies and personnel in Items 4 through 8 of the first paragraph who obtain data or information approved by the Ministry of Finance shall not use them for other purposes.

3.1.2 Personal Data Protection Act

In the light of Article 15 of the Personal Data Protection Act, a government agency should not collect or process personal information unless there is a specific purpose and should comply with one of the following conditions:

1. It is within the scope of job functions provided by laws and regulations;
2. A written consent has been made by the Party; and
3. The rights and interests of the Party may not be harmed.

According to Article 16 of the Personal Data Protection Act, the government agency should use personal information in accordance with the scope of its job functions provided by laws and regulations, and in compliance with the specific purpose of collection.

3.1.3 Tax Treaties

The governments should comply with the provisions of the tax treaties signed with other countries for information exchange.

3.1.4 Confidentiality Provisions

In regard to the outsourcing of business and work projects, the tax administration formulates the requirements of the specifications for inclusion into the contract, and clarifies the related penalty clause, so that the information service provider can make a preliminary review of the related regulations according to the ability of fulfilling obligations. For personnel safety needs, there are provisions of a background questionnaire on project personnel, and the project personnel should sign a Non-Disclosure Agreement.

3.2 Risk Assessments in MNEs

3.2.1 Computerized Case Selection According to the Risk of MNEs

The tax authority analyzes the data of the scale of sales, industry characteristics, and tax declarations of related enterprises and selects cases in which there are controlled transactions between associated enterprises within Chinese Taipei and related parties outside Chinese Taipei for investigation. The conditions for the investigation of cases are:

- A. The declaration of gross profit ratio, net operating ratio, and net income ratio are lower than in the same trade concerned;
- B. The global profit is positive but the declaration by the domestic enterprise is negative or lower than other enterprises in the same industry;
- C. The enterprise fails to report a transaction between the related parties on the stipulated form;
- D. The enterprise fails to appraise the controlled transactions in conformity with the arm's length principle, fails to determine the arm's length outcome of a controlled transaction, or fails to prepare and file the appropriate documents;
- E. The enterprise does not obtain a price or a reasonable price from the related entity in the transaction, such as for the transfer or use of tangible assets; the transfer or use of intangible assets; or the rendering of services, use of funds, or other types of transactions which fail to be in conformity with the arm's length principal.

3.2.2 Manual Selection According to the Risk of MNEs

We use computers as the main tool in selecting cases in order to maintain an objective and fair operation of case selection; however, we adopt manual case selection in association with the computer case selection when taking into account the timeliness of a levy or when there may be some special cases.

The cases which are selected by computer, but which are remaining and are not listed for management by the MOF at the first stage, go to the second stage for selection, which is manual case selection.

We list each risk index for the subject items of various financial statements and make analytical reviews, which are

- A. To file for several offshore interested parties but not for regulatory transaction and change the intangible assets on the account but not state the respective income,

- B. The corporation restructuring causes the business relationship to change among participants,
- C. The travel expenses of interested parties in tax shelters increase dramatically in the year of establishment,
- D. The operating incomes of offshore interested parties decrease sharply after establishment.

We then further compare case information with prospectuses issued by the Stock Exchange Corporation or information from the Intellectual Property Office, etc. Using these third-party data, we analyze whether there is any under-reporting, omission, or evasion of foreign taxable income.

3.3 Utilization of CBCR information

3.3.1 Assessing Risk and Auditing Transfer Pricing Cases

In light of OECD guidelines, jurisdictions could use CBCR information for assessing high-level transfer pricing, BEPS-related risks, and where appropriate, for economic and statistical analysis. Jurisdictions should not use the information as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. Jurisdictions should not propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on the data from the CBCR. On the other hand, Jurisdictions could use the CBCR data as a basis for making further enquiries into the MNE's transfer pricing arrangements or into other tax matters in the course of a tax audit.

Chinese Taipei will devote ourselves to follow the OECD proposal and maximize the effectiveness of CBCR information under appropriate use.

3.3.2 Access to CBCR Information

The departments who are responsible for risk assessment and transfer pricing audit in the five National Tax Bureaus, i.e., National Tax Bureau of Taipei, National Tax Bureau of Kaohsiung, National Tax Bureau of the Northern Area, National Tax Bureau of the Central Area, and National Tax Bureau of the Southern Area, will have access to CBCR information.

3.3.3 Compliance of Laws

The National Tax Bureaus will comply with the domestic laws and regulations regarding the information confidentiality mentioned in 3.1. Moreover, we will consider adding the appropriate use of CBCR information in the regulations of transfer pricing documentation.

4.DISPUTE RESOLUTION MECHANISMS

4.1 Existing Dispute Resolution Mechanisms

4.1.1 Legal Basis

The existing dispute resolution mechanisms in Chinese Taipei providing for tax disputes involving cross-border double taxation are based on the Avoidance of Double Taxation Agreements (ADTAs) concluded with other countries. Up to now, we have concluded ADTAs with 28 countries, and these ADTAs all include the Mutual Agreement Procedure (MAP) provisions. These provisions mainly follow the OECD Model Convention, except for the arbitration clause.

As regards to the MAP procedures, the Ministry of Finance issued “the Regulation Governing the Application of Agreements for the Avoidance of Double Taxation with Respect to Taxes on Income” (hereinafter referred to the ADTA Regulation) on 7 January 2010 to provide a detailed guidance for the taxpayers and tax authorities to follow with respect to the application for the ADTA cases. However, this ADTA Regulation contains only general guidance for the MAP process as follows: *“In the case that a resident of Chinese Taipei considers that the actions of one or both of the contracting parties result in him or her being subject to taxation not provided for in accordance with the provisions of the ADTAs, such person may present his or her case to the tax collection authority-in-charge. The tax collection authority-in-charge shall first check whether the appeal in the case is reasonable, whether the necessary actions have been conducted for the case, or whether the case may be resolved unilaterally by our side. If necessary, the tax collection authority-in-charge shall request the Department of International Fiscal Affairs, MOF to contact the ADTA’s competent authority of other contracting party to initiate the MAP to seek to settle the case.”*

4.1.2 Types of MAP Cases

Up till now, we have been requested to look into thirteen MAP cases in practice and have resolved eight cases. As regards to the types of these MAP cases, five cases related to Transfer Pricing (TP) and the other cases mainly related to the applications of the reduced tax rates to the dividend and interest income.

4.2 Existing MAP Process Related to the TP Cases

4.2.1 Legal Basis and Related Practice

Most of our ADTAs contain correspondent adjustment provision similar to paragraph 2 of Article 9 of the OECD Model Convention. When double taxation occurs between associated enterprises due to TP adjustment made by our ADTA partner, our tax authorities will make correspondent adjustment only when they consider the primary adjustment justified. If our tax authorities do not agree that such adjustment is justified, then the MAP process will be initiated if the concerned associated enterprises make such requests to both competent authorities of the two sides.

Our five MAP cases related to TP mostly applied for the bilateral advanced pricing agreement (BAPA). Our legal basis for the BAPA cases relies on the MAP provisions in the ADTA. We have detailed legislation on the advanced pricing agreement (APA) that can be found in Chapter 5 of “The Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm’s Length Transfer Pricing” and in “The Directions Governing the Application for an Advance Pricing Arrangement by a Profit-Seeking Enterprise.” However, there is no detailed guidance for BAPA process yet.

4.2.2 Related Issues

A few of our ADTAs do not contain the correspondent adjustment provisions, such as the ADTAs with Singapore, Malaysia, Paraguay, and Thailand. As a result of that, whether or not the economic double taxation caused by a TP adjustment meets the requirement of “taxation not in accordance with the Agreement,” pursuant to the provisions of MAP, still depends on the consultation with the other competent authority case by case.

Chinese Taipei has not yet provided formal regulations and publicized specific guidelines and procedures concerning use of the MAP (including BAPA). Some issues related to the relationship between MAP and our domestic laws (such as domestic remedies and the statute of limitation for assessment) still need to be clarified so as not to affect the implementation of the MAP (including BAPA) or lead to a lengthy and ineffective result.

Furthermore, under the organizational structure of our Ministry of Finance, Department of the International Fiscal Affairs is responsible for the negotiation and interpretation of the ADTAs and serves as the competent authority of the ADTAs concluded with other countries. The Taxation Administration is in charge of internal tax policies (including drafting or interpretation of TP-related laws and regulations) and the five National Taxation Bureaus are in charge of tax collection and auditing. Good coordination among these agencies and the training of their staff to deal with the MAP cases also poses a challenge to us.

4.3 Improving Existing Dispute Resolution Mechanisms

Chinese Taipei will establish administrative procedures for MAP (including BAPA) and build up human resources to deal with MAP cases to improve the efficiency, effectiveness, and timeliness of MAP. In addition, we will continuously expand our tax treaty network so as to provide more dispute resolution mechanisms for cross-border double taxation disputes.

4.3.1 Establish Administrative Procedures for MAP and BAPA

The Ministry of Finance of Chinese Taipei is going to draft administrative procedures for MAP and BAPA with reference to the OECD commentary and the Manual on Effective Mutual Agreement Procedures (MEMAP). The content will include criteria and time frames for applying MAP, the interactions of MAP cases with domestic remedies and the statute of limitation for assessment, opportunities for taxpayers to provide their opinions, etc. By providing taxpayers and tax authorities specific guidelines to follow, disputes may be solved more efficiently and effectively thereby minimizing divergent opinions.

4.3.2 Build Up Human Resources to Deal with MAP Cases

Considering that MAP cases tend to be more complicated, especially the cases related to TP correspondent adjustment and BAPA, good training of the relevant staff, and coordination among different responsible agencies is essential to reinforce the performance of functions by the competent authorities and facilitate a timely resolution of the MAP cases. Thus, we will actively build up human resource to deal with MAP cases.

4.3.3 Expand Our Tax Treaty Network

Up to now, we have 28 ADTAs in force. This means that we are able to resolve cross-border double taxation disputes with only 28 countries. In order to provide more dispute resolution mechanisms to such disputes, we will continue concluding ATDAs with other tax jurisdictions with which we have a close economic relationship, therefore ensuring that MAP and BAPA can be available to taxpayers for their benefits.

5. CONCLUSION

Because CBCR is a new and untested concept in transfer pricing documentation, according to collated results from our designed inquiry, some countries are still considering whether to adopt it, and some countries have but have not announced the ways they will implement it even though they have decided to adopt it. Besides, CBCR requires MNEs to report annually for each tax jurisdiction in which they do business the amount of revenue, profit before income tax, income tax paid and accrued, their total employment, capital, retained earnings, and tangible assets. It also requires MNEs to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities each entity engages in. The specific content of CBCR will substantially increase the compliance costs and burdens imposed on business. For these reasons, we are still considering the details of implementation such as the filing procedures of CBCR, the scope of constituent entities, and safe harbor rules for CBCR. We will keep focusing on the development of the CBCR implementation released by OECD and take into account the provisions of CBCR in other countries so as to plan the most optimal implementation in Chinese Taipei.