

## **Transfer Pricing Documentation Regime Implemented from the Year of Assessment 2018/19**

### **Introduction**

Further to our earlier “2018/19 Hong Kong Budget Commentary”, the Inland Revenue (Amendment) (No. 6) Ordinance 2018 (“Amendment Ordinance No. 6”) related to the new transfer pricing documentation requirement has been passed by the Legislative Council. Slight amendments have been made in comparison with the Inland Revenue (Amendment) (No. 6) Bill 2017 (“the Bill”) and the important points of the Amendment Ordinance No. 6 are highlighted below.

### **Transfer pricing documentation and Country-by-Country Reporting**

As the Amendment Ordinance No. 6 has already come into force, Hong Kong officially adopts the standardized three-tiered approach to transfer pricing documentation requirement developed by the Organization for Economic Co-operation and Development, which includes the Master File, the Local File and the Country-by-Country Reporting.

#### **Master File and Local File**

According to the Amendment Ordinance No. 6, exemption for the preparation of the Master File and the Local File would be available to Hong Kong taxpayers which satisfy any one of the two types of exemption thresholds:-

##### **A. Exemption based on size of business**

In comparison with the previously proposed thresholds in the Bill, the size-based exemption thresholds have been revised as follows:-

- 1) Total annual revenue not exceeding HKD400 million;
- 2) Total assets not exceeding HKD300 million; and
- 3) Not more than 100 employees.

If any two of the above three thresholds are met, the Hong Kong taxpayer is exempted from preparing the Master File and Local File for the relevant accounting period.

##### **B. Exemption based on value of related party transaction**

The value-based exemption thresholds remained the same as previously proposed in the Bill:-

- 1) Transfer of properties (other than financial assets and intangibles): HKD220 million;
- 2) Transaction of financial assets: HKD110 million;
- 3) Transfer of intangibles: HKD110 million; and
- 4) Any other transaction (e.g. service income and royalty income): HKD44 million.

If the total amount of a particular category of related party transactions of a Hong Kong taxpayer does not exceed the relevant threshold as specified above, that category of transactions would not be required to be covered in the Local File.

If the corresponding amounts of all categories of transactions do not meet with the thresholds as specified above, the requirement for preparing both the Local File and the Master File would be exempted.

As such, for the fiscal years starting on or after 1<sup>st</sup> April, 2018, any Hong Kong taxpayers not fulfilling the abovementioned exemption thresholds are required to prepare and retain the Master File and the Local File within nine months after the end of the relevant accounting period.

## Country-by-Country Reporting

Meanwhile, if the following conditions are met, ultimate parent entity (“UPE”) of multinational enterprise group (“MNE Group”) is required to file a Country-by-Country Return (“CbC Return”) in Hong Kong:-

- 1) The prior year annual consolidated group revenue of the MNE Group is more than HKD6.8 billion (“Reportable Group”); and
- 2) The MNE Group’s UPE is resident in Hong Kong.

However, if any of the following criteria are fulfilled, a Hong Kong entity of a MNE Group, whose UPE is not resident in Hong Kong but its annual consolidated group revenue is more than HKD6.8 billion, is subject to a secondary obligation of filing a CbC Return:-

- 1) The UPE is not required to file a CbC Return in its jurisdiction of tax residence;
- 2) The jurisdiction has a current international agreement with Hong Kong providing for automatic exchange of tax information but, by the deadline for filing the CbC Return, there is no exchange arrangement in place between the jurisdiction and Hong Kong for CbC Returns; or
- 3) There has been a systemic failure to exchange CbC Returns by the jurisdiction, which has been notified to the Hong Kong entity by the Commissioner.

Even if one of the above conditions is met, the Hong Kong entity is not required to file a CbC Return if:-

- 1) A CbC Return for the relevant accounting period is filed by another Hong Kong entity of the MNE Group; or
- 2) The MNE Group has authorized a constituent entity as its surrogate parent entity (“SPE”) to file CbC Return on behalf of the MNE Group, and the CbC Return is filed by the SPE in Hong Kong or a jurisdiction which has an exchange arrangement in place with Hong Kong.

Starting from accounting period that begins on or after 1<sup>st</sup> January, 2018, for any Hong Kong entity that is part of a Reportable Group (regardless of the tax residency of the UPE or SPE), a written notification containing information of the UPE, SPE and other members of the Reportable Group should be filed to the IRD within 3 months after the end of the relevant accounting period. In addition, for any Hong Kong entity that fully fulfills the abovementioned CbC reporting conditions, a CbC Return should be filed to the IRD within 12 months after the end of the relevant accounting period.

Multinational corporations or any companies with cross border activities should review their existing business to evaluate whether they would be subject to the new regulations, and consult their tax consultants for further information.

Should you need further explanation on the above matters, please kindly contact us at (852) 3929-4800 to seek our professional advice.

## Contact us:

For more information, please contact:

### **Edmond Poon**

CEO, Tax Director

Tel: (852) 3929 4912

Email: [edmond.poon@aoba.com.hk](mailto:edmond.poon@aoba.com.hk)

## About Aoba & Hopkins Group:

The Aoba & Hopkins Group consists of CPA firms and full service consulting firms located in Hong Kong, Guangzhou and Beijing that have been providing quality and efficient professional services to our valued clients aboard and at home since 1989.

Our Website: [www.aoba.com.hk](http://www.aoba.com.hk)

Hong Kong: 3/F, Sun Hung Kai Centre, 30 Harbour Road, Wanchai, Hong Kong  
Tel: (852) 2802 1092 Fax: (852) 2850 7151

Guangzhou: Unit B, 12/F, Goldsun Building, No.109 Tiyuxi Road, Tianhe District, Guangzhou, China  
Tel: (86) 20-3878 5798 Fax: (86) 20-3878 5337

Beijing: Room 605, 6/F, East Ocean Centre, No. 24 Jian Guo Men Wai Street, Chao Yang District, Beijing, China  
Tel: (86) 10-6522 8158 Fax: (86) 10-6512 7168

*This article describes only our general observations of the laws and regulations recently issued. All information contained in this article is provided for reference only. The release of this article does not surmount to the provision of professional advice or services. We make no guarantee as to the accuracy or completeness of such information. Readers should consult with their professional advisors before making use of the content. We accept no liability for any loss arising from the use of, or reliance upon, the content of this article.*

© 2018 Aoba Business Consulting Limited. All rights reserved.



**PrimeGlobal**

An Association of  
Independent Accounting Firms