

HONG KONG TAX

FIRST BATCH OF AMENDMENTS TO THE PROPOSED TRANSFER PRICING REGULATORY REGIME AND DOCUMENTATION REQUIREMENTS



The Hong Kong Government released in late April 2018 the first batch of amendments to, *inter alia*, the new transfer pricing regulatory regime and documentation requirements proposed in the Inland Revenue (Amendment) (No. 6) Bill 2017 (discussed in our earlier newsletter: [Hong Kong Introduces Tax Bill to Implement Minimum Standards of the Base Erosion and Profit Shifting - Transfer Pricing Regulatory Regime and Documentation](#)).

We highlight in this newsletter the key changes proposed in the first batch of amendments.

References to sections and schedules refer to existing or proposed new sections and schedules to the Inland Revenue Ordinance (IRO), unless otherwise stated.

WHAT IS CHANGED?

1. Master File and Local File Documentation Threshold and Timeline

(a) Exemption Criteria by Business Size

The revenue based and the asset based thresholds in the exemption criteria by business size have been relaxed. A Hong Kong entity is not required to prepare a Master File and Local File for an accounting period if any two of the three conditions below are satisfied:

Exemption Criteria by Business Size (2 out of 3)	Original Threshold	Revised Threshold
Total revenue for the accounting period	≤HKD 200m	≤HKD 400m
Total value of assets at the end of the accounting period	≤HKD 200m	≤HKD 300m
Average number of employees during the accounting period	≤100	≤100 (no change)

(b) Exemption Criteria by Size of Related Party Transactions

The thresholds in the exemption criteria by size of related party transactions remain the same as recaptured below:

Exemption Criteria by Size of Related Party Transactions (by Type of Transactions)	Threshold
Transfer of properties (excluding financial assets/ intangibles)	≤HKD 220m
Transactions in respect of financial assets	≤HKD 110m
Transfer of intangibles	≤HKD 110m
Any other transactions (eg service income/ royalty income)	≤HKD 44m

(c) Timeline

The timeline under which a Hong Kong entity is required to prepare both Master File and Local File if it exceeds the above thresholds has been relaxed from 6 months to 9 months after year-end.

2. Exemption for Domestic Transactions

The Government states that the amendments about the exemption for certain domestic transactions from transfer pricing rules and Master/Local File documentation requirements will be provided in the second batch of amendments to come.

3. A Range of Arm's Length Provision

Express note is now included to recognise that a range of provisions may be produced when applying the OECD transfer pricing rules where each provision constitute an arm's length provision. If a Hong Kong entity proves that its reported income or loss in a related party transaction is within an arm's length range (ie as equally reliable measure or a more reliable measure of the arm's length amount), the reported income or loss should be acceptable.

4. Change of Commencement Date for Certain Provisions

Authorised OECD Approach – The transfer pricing rules for the attribution of income or loss to a Hong Kong permanent establishment of a non-Hong Kong tax resident person (ie Section 50AAK) will apply in relation to a year of assessment beginning on or after 1 April 2019.

Taxation of DEMPE Functions – The deeming provision that deems taxable in Hong Kong a part of the profits derived by a non-Hong Kong tax resident from intellectual property to which its Hong Kong associate has made value creation contributions (ie Section 15F) will apply from the year of assessment beginning on or after 1 April 2019.

5. Country-by-Country Return Filing Threshold for non-Hong Kong Tax Resident Ultimate Parent Entity (UPE)

The meaning of the threshold amount for a multinational enterprise group whose UPE is tax resident outside Hong Kong is clarified to mean either the threshold as specified by the UPE's jurisdiction, or if there is no such specification the amount in the currency of the UPE's jurisdiction equivalent to EUR 750 million as at January 2015.

BDO'S SUPPORT AND ASSISTANCE

If you have any questions regarding this publication, please feel free to contact us:

25th Floor, Wing On Centre
111 Connaught Road Central
Hong Kong
Tel: +852 2218 8288
Fax: +852 2815 2239
info@bdo.com.hk

AGNES CHEUNG
Director & Head of Tax
Tel: +852 2218 3232
agnescheung@bdo.com.hk

ABIGAIL LI
Senior Manager
Tel: +852 2218 3372
abigailli@bdo.com.hk

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