



香港工業總會
FHKI

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Federation of Hong Kong Industries

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Industry News 業界新聞

MEMORANDUM TO ALL MEMBERS

1 November 2016

Consultation on Measures to Counter Base Erosion and Profit Shifting

The HKSAR Government has recently launched a two-month consultation exercise (will close on 31 Dec 2016) to gauge views on the implementation of measures by the Organisation for Economic Co-operation and Development (OECD) to counter base erosion and profit shifting (BEPS) of enterprises. For details of the consultation paper, please refer to the following website:

<http://www.fstb.gov.hk/tb/en/docs/BEPS-ConsultationPaper-e.pdf>

The consultation paper includes the following proposals:

1. codify the international transfer pricing standard into domestic legislation such that enterprises operating in Hong Kong are required to transact with their associated enterprises at arm's length. The scope of the fundamental rule will extend to cover transactions of assets and services as well as financial or business arrangements like the making of loans and cost contribution arrangements;
2. mandate the requirements for transfer pricing documentation based on a three-tiered standardised approach (i.e. master file, local file and country-by-country (CbC) report). All enterprises which satisfy any two of the following three conditions should be required to prepare the master and local files - total annual revenue exceeding HK\$100 million; total assets exceeding HK\$100 million; and workforce exceeding 100 employees;
3. enterprises with annual consolidated group revenue equal to or exceeding EUR750 million is required to file CbC reports. CbC reports will be exchanged with jurisdictions that Hong Kong has concluded a bilateral agreement including tax information exchange agreement and a competent authority agreement for such exchange;
4. strengthen advance pricing arrangement (APA) regime by providing it with a statutory basis;
5. implement an OECD-coordinated multilateral instrument (MLI) which addresses issues relating to hybrid instruments and entities, prevent the granting of treaty benefits in inappropriate circumstances; prevent artificial avoidance of permanent establishment status and enhance the dispute resolution mechanism in the context of tax treaties. Hong Kong is inclined to adopt "principal purpose test";
6. put in place a mutual agreement procedure (MAP) and arbitration to resolve treaty-related disputes;
7. allow for spontaneous exchange on past rulings and future rulings relating to preferential regimes, transfer pricing (APAs), downward adjustment of taxable profits, permanent establishment status, related party conduit ruling; and any other type of ruling that may give rise to BEPS concerns; and
8. enhance tax credit system by allowing a longer period for claiming tax credit (i.e. six years) and requiring taxpayers to make full use of all other available relief before resorting to tax credit.

Policy, Research & Communications Division



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2016年11月1日

致全體會員備忘錄

香港就打擊「侵蝕稅基及轉移利潤」措施展開諮詢

近日，政府展開兩個月諮詢(至2016年12月31日)，就落實經濟合作與發展組織(OECD)提出有關打擊企業「侵蝕稅基及轉移利潤」(BEPS)的措施收集意見。就諮詢文件，請參考以下網址：<http://www.fstb.gov.hk/tb/tc/docs/BEPS-ConsultationPaper-tc.pdf>

諮詢文件提出以下建議：

1. 將轉讓定價的國際標準納入本地法例，以規定在香港營運的企業與其關聯公司的交易須以獨立交易原則進行。基本規則的適用範圍涵蓋資產和服務交易，以及財務或商業安排，例如借貸及成本分攤協議。
2. 在香港營運的相關企業須遵守以三層標準模式(即主體檔案、本地檔案及國別報告)制訂的轉讓定價文件要求。符合以下三項條件其中兩項的企業，即i)年度總收入多於一億港元、ii)總資產多於一億港元、及iii)聘用100名以上的員工，均須擬備主體檔案及本地檔案。
3. 每年集團總收入達7.5億歐元或以上的企業須提交國別報告。交換國別報告涉及與香港有簽訂雙邊協議(包括稅務資料交換協定)的管轄區，並有簽訂規範交換安排的主管當局協定。
4. 強化本港的預先定價安排制度，賦予其所需的法律基礎。
5. 實施由經合組織統籌的多邊協議，以解決與「混合工具」、「混合機構」有關問題，防止在不恰當的情況下給予稅收協定優惠，防止人為規避構成常設機構的情況，以及在稅收協定的層面加強爭議解決機制。香港傾向採用主要目的測試規則。
6. 訂立相互協商程序及仲裁，以解決稅收協定的跨境爭議。
7. 就優惠制度、跨境轉讓定價、調低應課稅利潤、常設機構關、聯轉付公司以及在沒有自發交換資料情況下會引起BEPS關注的以往及日後的裁定，容許自發交換資料。
8. 給予較長的稅收抵免申請期(如六年)，以及要求納稅人在申請稅收抵免之前，須先盡量使用其他寬免措施，藉此優化稅收抵免制度。

政策、研究及傳訊科 謹啟
