

Hong Kong Transfer Pricing 2022 – Reminder of Deadlines and Action Point



The COVID-19 pandemic has caused disruptions to business operations in different industries over the world. In view of the pandemic, the Hong Kong Inland Revenue Department (“IRD”) has extended the due dates for taxpayers to complete certain tax returns under the Block Extension Scheme – please [click here](#) to view our Tax Update Snapshots.

Notwithstanding the above, please note that the deadlines for preparing/ filing the Transfer Pricing Documentation and Country-by-Country (“CbC”) reports have remained unchanged. In this regard, we take pleasure in providing you with this article to remind you of the relevant deadlines and the wide range of services that we can offer to you in relation to transfer pricing matters.

Master File and Local File

If your Hong Kong entity carries out significant amounts of cross-border related party transactions, it would be required to prepare the mandatory Master File and Local File in Hong Kong unless otherwise exempted under the business size test or the related party transaction size test (please refer to Appendix 1 for details). The applicable deadlines for preparing the Master File and Local File are as follows:-

Deadlines for Master File and Local File	
<u>Financial year-end date</u>	<u>Deadline</u>
Year ended 31 December 2021	30 September 2022
Year ended 31 March 2022	31 December 2022
Year ended 30 June 2022	31 March 2023

How We Can Help You

It is the obligation of your Hong Kong entity to work towards the above deadlines if it does not satisfy the relevant exemption criteria. Failure to prepare the above mandatory transfer pricing documentation by the statutory deadlines without a reasonable excuse may attract penalties from the IRD.

In particular, further to the BEPS (Base Erosion and Profit Shifting) Action Plans introduced by the OCED (Organization for Economic Co-operation and Development), the Hong Kong IRD and the tax authorities in overseas jurisdictions have become more stringent in reviewing the intercompany transactions and transfer pricing positions of multinational enterprises (“MNEs”). According to the Inland Revenue Ordinance (“IRO”) of Hong Kong, even if your Hong Kong entity is exempt from the above Master File and Local File documentation requirements, it is still required to maintain transfer pricing documents to justify that its intercompany transactions are in line with the arm's length principle.

In relation to the above, we highly recommend that you seek professional advice if your Hong Kong entity has conducted cross-border related party transactions.

Our transfer pricing and advisory teams are well-positioned to assist you in preparing transfer pricing documentation, reviewing your current commercial relationships and transfer pricing policies, and developing tax-efficient strategies for your MNE group.

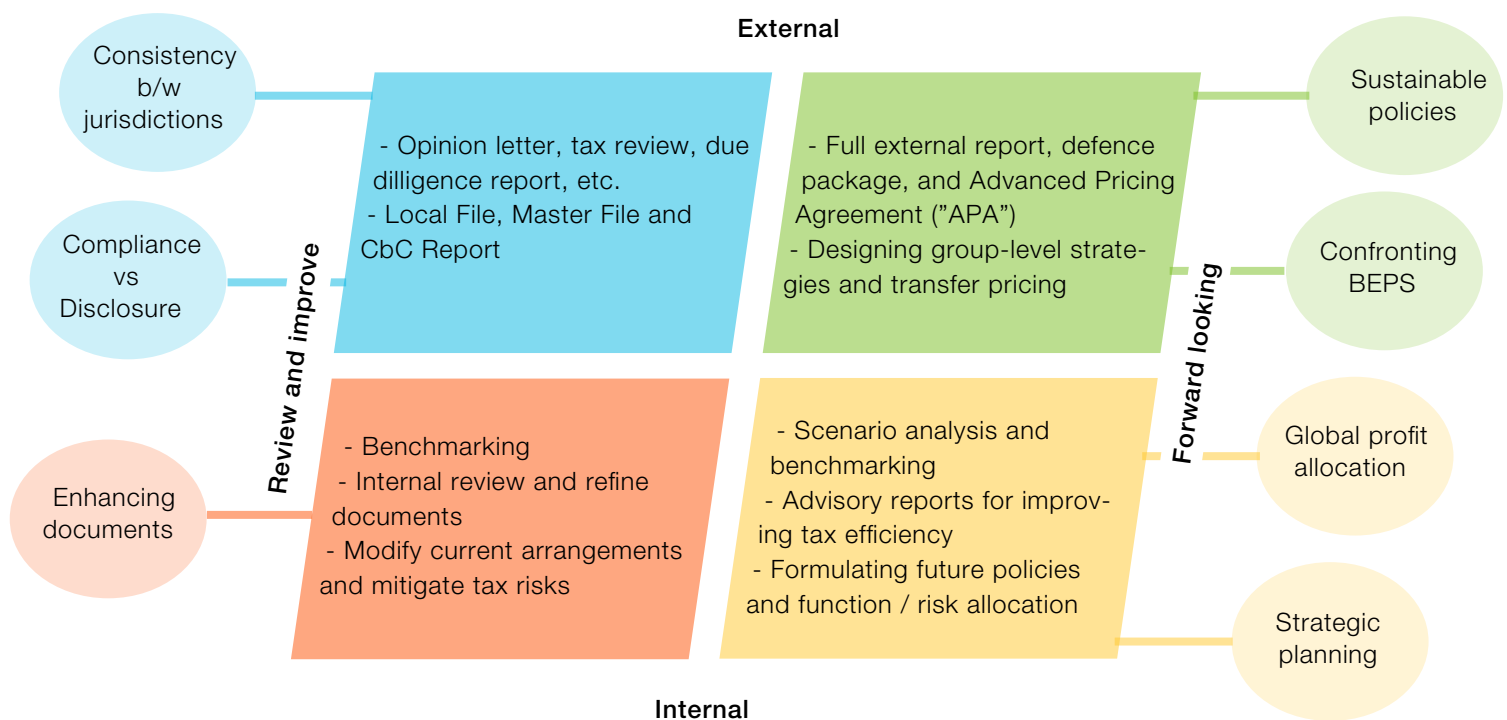
With our offices in over 150 countries and our experts from different sectors, we are able to track new laws, regulations and industry developments in each jurisdiction. Our experts have assisted various MNEs and listed groups to formulate proper transfer pricing strategies on a global basis that fit with their business circumstances and expansion plans.



Our Service Options

We understand that MNEs usually have their specific concerns and objectives in the course of carrying out a transfer pricing exercise. Whereas some MNEs focus more on reducing the extent of disclosures while meeting the minimal compliance standards, others put more efforts into improving the tax efficiencies through reallocating the functions and risks to respective group entities in a strategic manner under proper contractual and operating structures.

In order to provide tailor-made services to our clients, we take flexible approaches and offer different service options including the following:-



CbC Notification and Report

Apart from the above Local File/ Master File requirements and transfer pricing matters in relation to intercompany transactions, please note that your Hong Kong entity would need to file the Country-by-Country Notification ("CbCN") to the IRD for the relevant financial year if it belongs to an MNE group which reaches the following thresholds (unless another Hong Kong entity under the same group has already filed the CbCN):-

- the consolidated group revenue for the preceding accounting period is at least EUR750 million (or HK\$6.8 billion); and
- the group has constituent entities or operations in two or more jurisdictions.

If your Hong Kong entity is required to file the CbCN, the filing deadline is normally within 3 months after the relevant financial year-end. That said, in view of the disruptions caused by the pandemic, the IRD has extended the deadlines as follows:-

Deadlines for CbCN	
<u>Financial year-end date</u>	<u>Deadline</u>
Year ended 31 December 2021	Extended to 1 June 2022
Year ended 31 March 2022	30 June 2022 (same as before)
Year ended 30 June 2022	30 September 2022 (same as before)

Moreover, an MNE group in Hong Kong may also need to file the Country-by-Country Return ("CbCR") if relevant conditions are met. Please refer to Appendix 2 for the detailed rules in determining whether your Hong Kong entity is required to fulfil the CbCR filing obligations. The applicable deadlines for filing the CbCR are as follows:-

Deadlines for CbCR	
<u>Financial year-end date</u>	<u>Deadline</u>
Year ended 31 December 2021	31 December 2022
Year ended 31 March 2022	31 March 2023
Year ended 30 June 2022	30 June 2023

Our teams of tax experts have assisted various MNEs and listed groups to perform CbCR filings on a global basis and balance/ control the level of disclosures in different countries in accordance with the local practice and our experience. We have also assisted our clients in reviewing the consistency between the contents of CbCR and the Master Files or Local Files so as to minimize the risks of being challenged by tax authorities regarding any mismatch between functions/ risks and tax positions. We recommend that taxpayers seek comprehensive advice in this regard to cope with the increasingly stringent scrutiny from tax authorities.

Appendix 1

Master File and Local File - Exemption criteria

An MNE group entity which is carrying on a trade or business in Hong Kong and has engaged in related party transactions will be required to prepare the Master File and Local File, unless it is eligible for any one of the two exemptions as follows:-

Business size test	
Total revenue	Not exceeding HK\$ 400 million
Total assets	Not exceeding HK\$ 300 million
Number of employees (average)	Not exceeding 100
<p>If an enterprise meets any two of the above conditions (i.e. any two of the “total revenue”, “total assets” and “number of employees” are below relevant thresholds) for an accounting period, the enterprise will be wholly exempt from preparing the Master File and Local File.</p>	

Related party transaction size test (four categories of transactions)	
Transfer of tangible assets	Not exceeding HK\$ 220 million
Transactions of financial assets	Not exceeding HK\$ 110 million
Transfer of intangible assets	Not exceeding HK\$ 110 million
Transfer of intangible assets	Not exceeding HK\$ 44 million
<p>If the total transaction amount under a category is below the relevant threshold for the accounting period, the enterprise shall not be required to cover that category of transactions in the Local File. If the total transaction amount under each of the categories is below the relevant threshold, the enterprise will be wholly exempt from preparing the Master File and Local File.</p> <p>The Local File of an enterprise need not cover specified domestic transactions (i.e. where no overall tax advantage was derived) and is to be disregarded when determining whether the thresholds of the four categories of transactions above are exceeded.</p>	

Please note that the threshold for each type of related party transaction applies to the aggregate amount of the same type of transactions. A related party transaction can be a revenue item or an expense item. Each transaction should be considered separately without setting off each other (e.g. paying HK\$100 interest expense and receiving HK\$150 interest income will be counted as HK\$250). Furthermore, it is the arm's length amount of the transaction which should be aggregated for determining whether the threshold is exceeded.

Appendix 2

Who needs to file the CbC Notification and Return?

Overview of CbC Reporting Requirements

An MNE group is regarded as a “Reportable Group” for the financial year 2019 if its 2018 total consolidated group revenue, as shown in its consolidated financial statements, is of at least the following:-

1. if the ultimate parent entity (“UPE”) of the Reportable Group is a Hong Kong tax resident, the specified threshold amount is HK\$6.8 billion of total consolidated group revenue;
2. if the UPE of the Reportable Group is a resident for tax purposes in a jurisdiction other than Hong Kong and that jurisdiction requires the filing of a CbC Report in respect of an accounting period by an MNE group that has a total consolidated group revenue for 2018 of at least an amount stipulated under the laws or regulations of that jurisdiction, the specified threshold amount is the amount so stipulated; or
3. if the UPE is a resident for tax purposes in a jurisdiction other than Hong Kong which does not require the filing of a CbC report as mentioned in (2) above, the specified threshold amount is an amount in the currency of that jurisdiction equivalent to EUR750 million as at January 2015.

CbC Notification

The CbC notification contains information relevant for determining the obligation to file a CbC Return in Hong Kong. It requires a range of detailed information of the MNE group, its UPE, as well as each of its Hong Kong entities.

- A Hong Kong entity of a Reportable Group (even if its UPE is not a Hong Kong entity) must file with the Hong Kong Inland Revenue Department (“IRD”) a CbC Notification within 3 months after the end of its relevant accounting period.
- If a Reportable Group has multiple Hong Kong entities, only one CbC notification is required to be filed.
- The CbC notification must be filed with the IRD electronically via the CbC reporting portal designated by the IRD. A CbC reporting account and a specialized identification e-Certificate is required to be obtained before the CbC notification can be filed.
- Please note that even if a Reportable Group is exempt from filing the CbC Return and CbC Report, it is still required to file the CbC notification in Hong Kong.

CbC Return and CbC Report

The CbC Return and CbC Report contain aggregate tax jurisdiction-wide information such as the global allocation of the income, the taxes paid, certain indicators of the location of economic activity, etc. The CbC Return also requires a listing of all the Reportable Group entities for which financial information is reported, including their respective jurisdiction of incorporation (if different from the tax jurisdiction of residence) and principal business activity.

The rules for determining the obligation for filing the CbC Return and CbC Report are relatively complex. For the details on CbC Return and CbC Report requirements, please refer to the next page.

Primary CbC reporting obligation

Under the Ordinance, if the UPE of a Reportable Group is a Hong Kong entity, such UPE will have the “primary obligation” to file a CbC Return (which includes a CbC Report) with the IRD within 12 months after the end of the relevant accounting period for each accounting period beginning on or after 1 January 2018. Taxpayers which fail to file the CbC Return are potentially subject to penalties.

Secondary CbC reporting obligation

If the UPE of a Reportable Group is a non-Hong Kong tax resident, a Hong Kong entity of such Reportable Group would still have a “secondary obligation” to file a CbC Return (including a CbC Report) with the IRD if any of the following conditions is met:-

1. the UPE is not required to file a CbC Report in respect of the accounting period in its jurisdiction of tax residence;
2. the jurisdiction of tax residence of the UPE has entered into an international agreement which allows automatic exchange of information, but has no exchange arrangement in effect with Hong Kong by the time the CbC Return is due to be filed in Hong Kong; or
3. the jurisdiction of tax residence of the UPE has suspended or persistently failed to undertake the exchange of CbC reports with Hong Kong.

However, even if one of the above conditions is met, a Hong Kong entity of a Reportable Group can be exempted from filing a CbC Return if:-

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

The CbC reporting determination process is sophisticated and may depend on the status of execution of exchange arrangements between Hong Kong and relevant jurisdictions. Please contact us for more information.

Contact Us

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