Transfer Pricing in Asia-Pacific in 2023

Webinar summary

mazars

Contents

03 Introduction and foreword

05 Speakers

Latest transfer pricing developments in Asia Pacific

06 Singapore

07 Thailand

08 Indonesia

09 China & Hong Kong

11 Malaysia

13 Vietnam

14 Philippines

15 Updates on the Implementation of BEPS Pillar 2

Disclaimer:

Although the greatest possible care has been taken with this publication, there is always the possibility that certain information may become out of date or no longer be correct after publication. Neither publisher nor compilers can therefore be held liable for the consequences of activities undertaken based on the publication. Readers are advised to consult their tax advisors before making any business decisions.

Introduction

Mazars at a glance

Global coverage

1

global partnership

95+

countries & territories

47,000+*

professionals

* 30,000+ professionals in Mazars' integrated partnership, 17,000 via Mazars North America Alliance

1,200+

Partners

These figures are valid as of 1 January 2023.
For current up-to-date information, please visit:
www.mazars.com/keydata

Introduction

Foreword

With cross-border trade becoming the cornerstone of globalisation, understanding the nuances of transfer pricing within the Asia-Pacific (APAC) region has never been more vital.

The region's economic landscape is shifting, where the prominence of digital transformation and sustainability is steadily growing. Understanding the shifting transfer pricing scenario in the APAC region requires a thorough examination of the regulatory frameworks, recent changes, and best practices, as these differences are critical for enterprises operating in several countries, as they range from the well-established frameworks in Singapore to the emerging markets in Vietnam and the Philippines.

Transfer pricing presents challenges and opportunities for businesses in the Asia-Pacific region. Adapting to varied regulatory frameworks, embracing digitalisation, and promoting cooperation will be important in preserving compliance, minimising risks, and positioning firms for success in an ever-evolving global economic context. The key to successful transfer pricing plans that can weather the storm of legislative change is to be aware, flexible, and proactive.

On 22 November 2023, experts from Mazars across the region: Singapore, Thailand, Indonesia, Hong Kong/China, Malaysia, Vietnam, and the Philippines, came together to share updates and analysis on the regional transfer pricing landscape. The webinar was timely as transfer pricing schemes grow significantly as firms navigate the intricacies of conducting operations across borders.

This summary provides information on transfer pricing audit rules, adjustments, and implementing BEPS Pillar Two within the APAC region. We hope this will serve as a comprehensive guide and inspire further exploration and engagement in the exciting realm of transfer pricing in Asia Pacific. We are here to support your journey in navigating the dynamic transfer pricing environment in the region.

Elaine Chow
Partner, Tax
Mazars in Singapore

Transfer Pricing in APAC in 2023 webinar
Speakers

Mazars

Elaine Chow (Moderator)
Partner, Tax
(Singapore)

Jonathan Stuart-Smith
Partner, Tax
(Thailand)

Julia Yang
Partner, Tax and Transfer Pricing
(Indonesia)

Karen Lau
Director, Tax Advisory Services
(Hong Kong)

Yong Yong Khor
Partner, Tax
(Malaysia)

Ng Shu Min
Senior Manager, Tax - Transfer Pricing
(Singapore)

Hai Minh Nguyen
Partner, Head of Advisory Services
(Vietnam)

Ronald V. Bernas
Principal, Tax
(Philippines)

Latest transfer pricing developments in Asia Pacific
Singapore

Singapore has implemented a legislative framework on transfer pricing, particularly for enterprises generating revenues over S$10 million and engaging in related party transactions beyond S$15 million or S$1 million. These organisations are required to prepare annual transfer pricing documentation for compliance purposes if it exceeds the stipulated thresholds. A non-compliance penalty of S$10,000 will be imposed if this requirement is not fulfilled. Furthermore, it is imperative that any transactions between related parties adhere to the arm's length principle. A penalty of 5% will be imposed on any adjustments made to the transfer price because of non-compliance adherence.

The transfer pricing guidelines recently issued by the Inland Revenue Authority of Singapore (IRAS) incorporated additional provisions on the circumstances under which the 5% surcharge may be remitted. This encompasses activities such as collaborating with IRAS, furnishing requested documents based on stipulated timelines, maintaining proper transfer pricing documentation, and demonstrating a commendable compliance history through timely submission of tax returns and settlement of tax liabilities.

In addition to the extant 5% safe harbour rule on routine support services, IRAS is open to using the simplified method outlined by the Organisation for Economic Cooperation and Development (OECD). This approach entails the application of a 5% markup for low-value-adding services.

Recent Developments

Singapore has recently witnessed alterations in its transfer pricing framework, encompassing additional guidance on cost contribution agreements, related party loan transactions, and more precise guidelines concerning intragroup services. Implementing a 5% markup for low-value-adding services exemplifies Singapore's commitment to aligning with global patterns.For transfer pricing adjustments made by IRAS, a 5% surcharge is usually applied. However, adjustments related to year-end adjustments, Advance Pricing Arrangement (APA) agreements, mutual agreement procedure outcomes, or arbitration decisions may not attract this surcharge. Additionally, voluntary disclosure of non-arm's length transactions can lead to a remission of the surcharge.

Key Considerations for Businesses

It is imperative for companies engaged in business activities in Singapore to exercise utmost caution to prevent any potentially expensive errors. The preparation and timely submission of comprehensive transfer pricing documentation is not only a legal requirement but also a crucial strategic imperative. The adherence to the arm's length principle holds significant importance due to its potential financial implications, including the imposition of penalties and fees.

Enterprises involved in intragroup services or related party loan transactions must be current on the relevant requirements, considering the implementation of safe harbour rules and OECD methodology. Adopting a proactive and cooperative approach towards IRAS can yield benefits, such as the possibility of waiving surcharges in instances where a valid justification is presented. Singapore businesses should incorporate these essential factors into their operational frameworks to navigate the dynamic transfer pricing environment effectively.

Ng Shu Min
Senior Manager, Tax - Transfer Pricing
Mazars in Singapore

Latest transfer pricing developments in Asia Pacific **Thailand**

Recent Developments

Under Thai transfer pricing legislation, corporations with yearly revenues of at least 200 million Thai baht (equivalent to around 5 million euros) must maintain and prepare a disclosure form and a local file.

The local file adheres to the standards set by the OECD while also prioritising benchmarking using comparable Thai firms. The transfer pricing disclosure form further supplements the local file. The Revenue Department may anticipate a timely answer to its solicitation for the local file within 60 days. Corporate taxpayers must submit a transfer pricing disclosure form within 150 days after the conclusion of the fiscal year, which outlines all relevant global related parties and the various types of transactions involved.

From 2021 onwards, the local file must be prepared in the Thai language, marking a significant shift in Thailand's transfer pricing landscape. Entities under the purview of Country-by-Country Reporting (CbCr) must provide the Thai Revenue Department with information regarding their ultimate parent entity at the end of each calendar year after introducing the CbCr notification system.

Key Considerations for Businesses

When preparing a local file in the Thai language, it is imperative to adopt a systematic approach. This often entails initially documenting all information in English and subsequently subjecting it to a comprehensive review by all stakeholders before commencing the translation process.

Organisations currently subject to the CbCr notification system are advised to recognise the crucial need for timely reporting. Adding to the complexity on the transfer pricing disclosure form is the requirement to disclose all global entities involved, irrespective of their level of engagement in specific transactions. The widespread utilisation of Thai comparables in benchmarking exemplifies the significance of customising transfer pricing procedures to suit local preferences.

Additionally, cost-plus markups are being challenged, particularly in routine management services. As such, adding a reasonable markup when recharging costs is vital to avoid disputes with The Revenue Department Thailand.

Jonathan Stuart-Smith
Partner, Tax
Mazars in Thailand

Latest transfer pricing developments in Asia Pacific
Indonesia

Recent developments

The Indonesian government has introduced an aggressive transfer pricing regulation through the enactment of the Omnibus Law and the Tax Harmonisation Law, enacted on 29 October 2021. According to the statute, the Directorate General of Taxes (DGT) is now authorised to adjust taxable profit and deductible interest expense in related-party transactions.

Key highlights of the regulations include:

- **Industry Benchmarking for Poor Financial Performance**

When multinational corporations (MNCs) encounter unsatisfactory financial performance after five years of operation, the DGT will consider industry benchmarking outcomes as the basis of adjustment.

- **Secondary Adjustment as Dividend**

When the DGT adjusts a transaction involving related parties, the corresponding adjustment is treated as a dividend. This issue arises from a transfer pricing dispute, which is expected to be resolved by the adoption of globally standardised norms under BEPS Pillar Two.

- **Introduction of Fixed Ratio Rule**

In anticipation of the implementation of thin capitalisation restrictions, corporations can now deduct net interest expenses up to a certain ratio known as the benchmark net interest to EBITDA ratio. Maintaining a safe distance from competitors is a crucial aspect in many domains.

- **Broader Definition of Related Party Transactions**

The legislation broadens the scope of the The legislation broadens the scope of the term "related party transaction" to encompass commercial transactions among unrelated parties if the involvement of an associated party of either or both parties affects the counterparty and the transaction price.

In Indonesia, implementing a three-tiered transfer pricing documentation system is mandated, with the requirement that all documentation be prepared in the Bahasa Indonesia language. Annual filing of transfer pricing status declaration forms is required in conjunction with the Corporate Income Tax Return (CITR). Non-compliance may lead to adverse alterations in transfer pricing.

The annual threshold for transfer pricing documentation is set when the previous year's gross revenue exceeds US$3.3 million, or the related party transaction for tangible goods in the preceding year exceeds US$1.3 million, and US$350,000 for all other related party transactions or transactions with related parties in jurisdictions with a lower income tax rate than Indonesia.

Transfer pricing audit trends and adjustments

Over the past six years, there has been an increase in the level of rigour used in transfer pricing audits in Indonesia. Since 2016, the Indonesian Tax Authority (ITA) has prioritised an ex-ante approach for transactions involving related parties as opposed to the ex-post basis. Tax adjustments may be made based on industry benchmarks where there is a five-year history of inadequate financial performance.

Key Considerations for Businesses

The Tax Harmonization Law (HPP Law) has introduced a provision whereby enterprises with three years of consecutive losses in a five-year operation may have their tax liabilities adjusted based on industry benchmarks. A tax audit may arise by risk profiling by the tax authorities, taking into account various factors: three consecutive years of losses, significant transactions with related parties, engagements with counterparties in lower-tax jurisdiction or those in a tax loss position, reinvoicing through intermediary parties lacking economic substance in the value chain, and business restructurings. These factors contribute to the identification of potential transfer pricing risks.

Companies involved in related party transactions with annual revenues surpassing IDR 50 billion (about US$3.3 million) must prepare transfer pricing documentation, including both a local file and a master file. This requirement is contingent on whether their related party transactions from the preceding year exceeded IDR 20 billion (about US$1.3 million) for tangible goods transactions, or IDR 5 billion (about US$350,000) for all other transaction types, and transactions with related parties in countries where the income tax rate is lower than Indonesia's.

Julia Yang
Partner, Tax and Transfer Pricing
Mazars in Indonesia

Latest transfer pricing developments in Asia Pacific
China and Hong Kong

Hong Kong

The regulatory environment for transfer pricing in Hong Kong has demonstrated a stable trajectory since its inception in 2018.

Hong Kong functions as a distinct administrative territory within China, possessing its independent judiciary and system of taxes. Hong Kong has a three-tiered documentation system for transfer pricing: master file, local file, and Country-by-Country report (CbCR). The reports can be generated using either English or Chinese language. Compared to China, Hong Kong does not require a "special issue file". Regarding the reporting threshold for the master file and local file, it is not solely determined based on the related party transaction amounts but also considers the business size.

Recent developments

The transfer pricing regulations in Hong Kong have remained essentially unchanged since their inception in 2018. Nevertheless, transfer pricing concerns regarding offshore income have garnered renewed interest in the implementation of the refined Foreign Source Income Exemption (FSIE) regime since January 2023. The FSIE regime has brought about a significant transformation in Hong Kong's tax framework. Implementing this system has resulted in a potential change in the tax liability of formerly non-taxable overseas income, increasing the importance of conducting transfer pricing analysis in Hong Kong.

Key Considerations for Businesses

Related party transactions are currently under close scrutiny by the Inland Revenue Department (IRD). The IRD may seek to obtain more details on the transactions before acceding to the taxpayer's tax position. Therefore, it is important for the taxpayer to maintain sufficient documents and contemporaneous documentation to support that the related party transactions are commercially justifiable and conducted on an arm's length basis. The implementation of the FSIE regime in Hong Kong highlights the necessity of assessing intercompany transactions to ascertain adherence to the arm's length principle, whether it is onshore or offshore.

In addition, taxpayers should also pay attention to the transfer pricing documentation requirements in Hong Kong. The potential exemption from the requirement to establish a master file and a local file is contingent upon the scale of the business and the number of related party transactions it engages in. Although Hong Kong enterprises are not obligated to submit their master and local files when filing profits tax returns, the tax authority conducts regular desk-based checks to ensure adherence to the regulations. The assessments assess the accuracy and comprehensiveness of the transfer pricing documentation, among other criteria.

Karen Lau
Director, Tax Advisory Services
Mazars in Hong Kong

Latest transfer pricing developments in Asia Pacific
China and Hong Kong

China

The State Administration of Taxation in China mandates comprehensive verification of arm's length pricing for cross-border transactions involving affiliated enterprises. Corporations operating in China must comply with the arm's length principle. This measure aims to prevent tax fraud and ensure equitable pricing in transactions involving related parties.

Recent developments

The transfer pricing requirements in China have remained essentially unchanged since the announcement of STA Public Notice [2016] No.42 and STA Public Notice [2017] No.6 (Announcement 6). Chinese enterprises must file extensive documentation for related-party transactions. Multinational corporations that satisfy requirements must provide a CbCR, a Master File explaining the transfer pricing strategy of the group as a whole, and a Local File demonstrating arm's length pricing of the local entity. On top of the three-tiered documentation, China tax authorities also request a Special Issue File from taxpayers engaging in cost-sharing agreements or falling under thin capitalisation requirements. Any non-compliance may lead to thorough examinations and penal consequences.

In July 2021, the Chinese tax authority implemented a simplified approach for unilateral Advance Pricing Agreements (APAs). In contrast to the previous duration of one to two years, the process of applying for, evaluating, and concluding a unilateral APA is expected to be completed within nine months.

Key Considerations for Businesses

Companies engaged in business in China must adhere to the government's regulations on transfer pricing, which have been increasingly rigorously enforced in recent times. The audit focuses not only on intercompany buy-sell transactions but also on service and royalty arrangements. According to Announcement 6, enterprises exhibiting certain red flag factors are more closely scrutinised.

To mitigate transfer pricing risk in the present regulatory environment, businesses could minimise their exposure by conducting regular self-reviews, maintaining current documentation, choosing suitable transfer pricing methods, considering the connections between affiliated companies, exploring the use of APAs, and seeking expert advice. Please be reminded that any failure to comply may lead to targeted inspections and further interest fees on tax adjustment.

Karen Lau
Director, Tax Advisory Services
Mazars in Hong Kong

Latest transfer pricing developments in Asia Pacific
Malaysia

The Transfer Pricing (TP) landscape in Malaysia has experienced significant transformations with the implementation of the Income Tax (Transfer Pricing) Rules 2023, which will apply to assessments conducted from 2023 onwards.

Taxpayers must engage in transactions with affiliated entities based on the arm's length principle. As such, it is imperative that transfer prices among affiliated entities are commensurate with the rates that would have been applied by unrelated parties under similar market circumstances. To achieve arm's length outcomes, taxpayers must undertake a comparability study, choose an appropriate transfer pricing technique and tested party, and compute the resulting figures.

The process for selecting transfer pricing methods has now been streamlined. Taxpayers must now provide a rationale for the chosen method rather than evaluating all methods outlined in the transfer pricing guidelines. Additionally, the arm's length range has been redefined to a narrower band, specifically from the 37.5th to the 62.5th percentile of the compiled data set. The median is now determined as the value at the midpoint within this specified arm's length range.

Taxpayers engaging in business transactions with affiliated entities are required to establish and maintain comprehensive transfer pricing documentation. The newly implemented regulations emphasise the significance of possessing this proof in advance of the deadline for submitting a return for a certain assessment year. The documentation must now incorporate information regarding the individual's company and cost contribution arrangements, if any, completion date, as well as details about the Multinational Enterprise Group, which is comparable to the contents of the Master File.

Recent developments

The transfer pricing landscape in Malaysia has witnessed notable developments, encouraging taxpayers to proactively assess their intercompany transactions. Additionally, Malaysia has issued the Income Tax (Transfer Pricing) Rules 2023 as part of its attempts to regulate this domain.

The Special Voluntary Disclosure Program, which spans from 6 June 2023 to 31 May 2024, offers a comprehensive waiver of all tax penalties that may have been accrued.

Key Considerations for Businesses

- **Review of Intercompany Transactions**

It is recommended that Malaysian taxpayers thoroughly scrutinise their intercompany transactions to ensure that the results align with the arm's length principle. Prior to finalising the financial records, it is necessary to document any requisite adjusting entries, including debit and credit notes.

- **Impact on Indirect Taxes**

Transfer pricing modifications might impact indirect taxes, including sales tax and import duty. When formulating transfer pricing regulations, firms must consider the broader tax implications.

Latest transfer pricing developments in Asia Pacific
Malaysia

- **Special Voluntary Disclosure Program**

The Special Voluntary Disclosure Program, from 6 June 2023 to 31 May 2024, offers taxpayers the option to rectify any inaccuracies or understatements in their tax liabilities with a complete waiver of tax penalties. This provision creates a significant motivation for taxpayers to disclose any instances of tax understatements or omissions. The programme's primary objective is to enhance transparency and compliance in business transactions among affiliated entities.

- **Red Flags for Tax Audits**

Businesses should be aware of factors that may raise concerns and trigger a tax audit. Indicators include consistent financial losses, inadequate profit margins, significant transactions with related parties, intragroup service payments, a notable profit decrease after a tax holiday, and engagement in trade with entities in tax havens.

- **Contemporaneous Documentation**

The newly implemented regulations prioritise the importance of maintaining transfer pricing records that are as current as feasible. Taxpayers must ensure proper documentation before the deadline for tax return submissions.

- **Mutual Agreement Procedure (MAP)**

Taxpayers have the option to utilise the Mutual Agreement Procedure (MAP) provided by the tax authority's International Tax Department for issues related to transfer pricing adjustments in cross-border controlled transactions. While there may be a fee for engaging a consultant for the MAP, the application process is provided at no cost.

Yong Yong Khor
Partner, Tax
Mazars in Malaysia

Latest transfer pricing developments in Asia Pacific
Vietnam

Recent developments

The landscape of transfer pricing in Vietnam has experienced significant expansion, as shown by the introduction of Decree 20 in 2017, followed by Decree 132 in 2020, which superseded the previous Decree 20. Vietnam demonstrates its commitment to international norms by aligning its rules with the principles established by the OECD and participating in Base Erosion and Profit Shifting (BEPS) efforts.

The arm's length range, previously determined by the interquartile range, is now set between the 35th and 75th percentiles. According to local regulations, preference is given to local comparables. Additionally, taxpayers are required to submit transfer pricing declarations with the annual corporate income tax return to verify compliance. All transfer pricing arrangements must possess the three-tier paperwork, including a Local File, a Master File, and a Country-by-Country Report (CbCR).

Organisations that fall below the revenue thresholds outlined in the safe harbour rules are exempt from the obligation to uphold specific record-keeping requirements. The adoption of the OECD-recommended threshold of 30% of EBITDA for interest payments is noteworthy. Nevertheless, many small and medium-sized enterprises (SMEs) are often affected by the regulation, which considers transactions between companies and banks as related party dealings when the loan amount exceeds 25% of a company's equity and 50% of its total medium and long-term debts.

Key Considerations for Businesses

- **Transfer Pricing Compliance**

Tax authorities are vigilant in verifying transfer pricing documentation and compliance with declaration requirements. Should the documentation be inadequate, authorities are more inclined to make their own assessments and justifications regarding a company's transfer pricing stance. Tax officials often prefer the Comparable Net Profits Method (CNPM), with particular emphasis on the choice of comparable data.

Firms recording losses during an audit period must be prepared for intensive scrutiny and provide valid explanations. In terms of adjustments, Vietnamese regulations expect an upward adjustment when a company's profitability is below the arm's length range. However, there is no provision for downward adjustments when profitability exceeds the benchmark. Additionally, Vietnam's regulations do not offer clear guidance on adjustments for entities guaranteed profitability by their parent companies, thus requiring a tailored approach for each case.

- **Contemporaneous Documentation**

Businesses are obligated to provide Form 01 to showcase adherence to transfer pricing documentation regulations. This form necessitates the disclosure of related-party transactions and the use of arm's-length prices. Required contemporaneous documentation, such as Local File, Master File, and CbCR, serves as a valuable tool for ensuring compliance.

- **Advanced Pricing Arrangements (APA)**

Taxpayers possess the opportunity to actively manage and reduce the potential risks associated with transfer pricing by engaging in Advance Pricing Agreements (APAs) with tax authorities at the local level. The APA is seen as a proactive approach to risk management due to its ability to form a legally binding agreement governing the taxation of transfer pricing arrangements.

Business enterprises involved in transactions with related parties in Vietnam must be aware of the constantly evolving transfer pricing environment and adopt measures to ensure adherence to all relevant rules and regulations. Adherence to new legislation, including the fulfilment of documentation requirements for third parties and the evaluation of tax implications, is crucial for achieving effective risk management.

Hai Minh Nguyen
Partner, Head of Advisory Services
Mazars in Vietnam

Latest transfer pricing developments in Asia Pacific
Philippines

The current state of transfer pricing in the Philippines is characterised by ongoing development. According to the Bureau of Internal Revenue, there has been a shift in the Philippines' emphasis on transfer pricing, while comprehensive audits are still uncommon.

The Bureau of Internal Revenue (BIR) is currently focusing on transfer pricing, specifically related party transactions. This is particularly relevant for major taxpayers, firms that have been granted tax incentives, and entities that have reported consecutive losses for three years. The BIR can spot possible transfer pricing concerns with the help of the Related Party Transactions form that is included with annual tax returns.

Comprehensive transfer pricing audits are not widespread because of limited resources, but the BIR is focused on strengthening its capability in this area. Industries, such as business process outsourcing (BPOs) and contact centres, are singled out for more scrutiny during these intragroup services and interest payment transaction audits.

Recent developments

One key legislative development to monitor is the potential enactment of the digital services tax. Congress is considering a bill that aims to levy a 12% VAT on a range of digital services, including online marketplaces, subscription platforms, and the digital distribution of goods and services. This bill has made significant strides, was passed by the House of Representatives, and is now awaiting deliberation in the Senate.

Following the conclusion of public consultations by the Senate's Ways and Means Committee, there is an anticipation of action from the Senate, with the possibility of the bill being ratified within the year. The proposed legislation includes a provision for a one-year implementation delay, affording taxpayers time to prepare for the upcoming changes.

Key Considerations for Businesses

- **Related Party Transactions Form**

The Related Party Transactions form must be included in all annual income tax forms. Accurate and timely completion of this form is especially important for businesses that are significant taxpayers, get incentives, or record net losses.

- **TP Audits**

Although transfer pricing audits are not commonly conducted because of limited resources, companies should be ready for future inspection if they meet certain criteria, such as being a significant taxpayer, an entity with incentives, or a company that has consistently reported losses over multiple years. Essential areas of concentration include intragroup services and interest payment activities.

- **Submission Thresholds**

Submitting transfer pricing documentation is contingent upon reaching certain financial thresholds. Documentation becomes mandatory for entities with annual revenues surpassing 150 million pesos and engaged in related party transactions exceeding 90 million pesos, approximately US$1.9 million. Specific thresholds apply to the type of transactions: for sales of goods, documentation is required if the transactions exceed 60 million pesos, or about US$1.2 million, within the taxable year. For service transactions, interest payments, or the use of tangible goods, the aggregate amount must exceed 15 million pesos, or about US$0.3 million, within the taxable year to necessitate transfer pricing documentation.

Ronald V. Bernas
Principal, Tax
Mazars in Philippines

Updates on the Implementation of BEPS Pillar 2
Asia-Pacific

Indonesia

Indonesia is actively engaging in global tax reform under the inclusive framework and preparing to implement Base Erosion and Profit Shifting (BEPS) Pillar Two. With the corporate income tax currently at 22%, Indonesia's immediate impact from the global minimum tax may be minimal. However, the country is evaluating the implications of existing tax incentives, such as tax holidays and allowances, which could reduce effective tax rates below the 15% threshold proposed by BEPS Pillar Two.

The government is contemplating the Substance Carve-Out and the Qualified Domestic Minimum Top-Up Tax (QDMTT), among other provisions, to alleviate any adverse effects on revenue. The GloBE Model Rules are on track to be transposed into the national legislative framework within the year, although a precise timeline for this integration has not been established.

Malaysia

Malaysia is on course to adopt key components of BEPS Pillar Two, specifically the Domestic Top-Up Tax and Multinational Top-Up Tax, which include the Income Inclusion Rule (IIR), with a target implementation in 2025. Although the draft legislation remains silent on the timeline for the Undertaxed Profits Rule (UTPR), the current plan allows Malaysian taxpayers additional preparation time. However, this does not exempt the subsidiaries of multinational corporations in Malaysia from potential top-up taxes in jurisdictions that will enact the global minimum tax rules by 2024..

China and Hong Kong

China’s State Taxation Administration (STA) have indicated they are considering BEPS Pillar Two issues, but no specific announcement or timelines have been provided.

On the other hand, Hong Kong is actively preparing for the introduction of BEPS Pillar Two rules, targeting the year 2025 to be in line with other APAC nations like Singapore and Thailand. The Inland Revenue Department (IRD) of Hong Kong has set a public consultation for December 2023, with a three-month duration, to engage stakeholders and solicit input on the proposed enactment. This consultative phase is anticipated to shed more light on the intricacies of implementation and provide a clearer outline of the region's approach to the Pillar Two guidelines.

Philippines

The Philippines has maintained a relatively quiet stance on the enactment of BEPS Pillar Two, with no substantial movement or formal declarations on the initiative's implementation. The absence of specific legislation for BEPS Pillar Two reflects its current status outside the list of immediate priorities for the government, especially in the wake of recent tax reforms and legislation under the prior administration.

Given the country's strong reliance on foreign investment as a key driver of economic growth, there is a concern regarding how global tax reforms may influence these investments. The Department of Finance evaluates the potential repercussions of adopting BEPS Pillar Two, focusing on its impact on foreign capital influx. The Philippines appears to be adopting a 'wait and see' stance, carefully monitoring the rollout of these regulations in other nations to inform its future policy direction.

Singapore

In Singapore, the Minister of Finance plans to introduce the Income Inclusion Rule (IIR) and the Qualifying Domestic Minimum Top-Up Tax (QDMTT), effective 1 January 2025. This initiative is part of a broader international effort to standardise minimum corporate taxes for large businesses.

Although a public consultation has commenced, detailed guidelines from the Minister of Finance or the Inland Revenue Authority of Singapore (IRAS) have yet to be published. The timeline for the implementation of BEPS Pillar Two is expected to stay on course, with the anticipated legislative amendments slated for introduction in Parliament in the latter part of 2024.

Asia-Pacific

Thailand

Thailand is gearing up for the BEPS Pillar Two rules, targeting a 2025 timeline for embracing global tax reform. The legislation in the works includes the Income Inclusion Rule, the Undertaxed Payment Rule, and the Qualified Domestic Minimum Top-Up Tax, with a tentative 15% rate in view. This comes as Thailand's tax incentives could undergo significant changes due to Pillar Two regulations.

In response to these impending shifts, the Board of Investment (BOI) is adapting by proposing new policies, such as prolonging tax holidays while halving exemptions. This approach allows businesses to extend their tax holiday durations, for example, from three to six years but at a 10% corporate income tax rate instead of zero, helping to maintain an overall effective tax rate of 15%. The BOI also contemplates alternative non-tax incentives to preserve Thailand's attractiveness to investors.

Adding to this fiscal landscape is the potential implementation of the subject-to-tax rule. The OECD has proposed this tax treaty-based rule to act as a safeguard for the taxation of payments to overseas related parties, ensuring that income from such transactions is taxed at some level. If added to its tax treaty network, Thailand could impose a tax, likely at a rate of 9%, on payments to entities in low or no-tax jurisdictions. While this has not yet been formally adopted, it represents another facet of Thailand's strategic alignment with international tax standards, emphasising the nation's proactive measures to ensure the taxation of income and protect its tax base amidst the global shift towards more robust tax regimes.

Vietnam

Vietnam is currently considering a draft resolution pertinent to BEPS Pillar Two, a critical juncture given the country's reliance on foreign direct investment and the role of tax incentives in attracting such capital. The resolution is designed to reflect the OECD's frameworks, particularly integrating the Income Inclusion Rule (IIR) and the Qualified Domestic Minimum Top-Up Tax (QDMTT), with an anticipated effective date in 2024.

Despite the progressive nature of the draft, the precise timeline and ratification process is unclear. The successful adoption of this resolution is set to alter Vietnam's international taxation strategy significantly, as this change is expected to influence foreign investment strategies and will likely lead to adjustments within the current tax incentive schemes.

Contacts

Elaine Chow
Partner, Tax (Singapore)
elaine.chow@mazars.com.sg

Jonathan Stuart-Smith
Partner, Tax (Thailand)
jonathan.stuart-smith@mazars.co.th

Julia Yang
Partner, Tax and Transfer Pricing (Indonesia)
julia.yang@mazars.id

Karen Lau
Director, Tax Advisory Services (Hong Kong)
karen.lau@mazars.hk

Yong Yong Khor
Partner, Tax (Malaysia)
yong-yong.khor@mazars.my

Ng Shu Min
Senior Manager, Tax - Transfer Pricing (Singapore)
shu-min.ng@mazars.com.sg

Hai Minh Nguyen
Partner, Head of Advisory Services (Vietnam)
minh.nguyen@mazars.vn

Ronald V. Bernas
Principal, Tax (Philippines)
ronald.bernas@mazars.ph

Mazars is an internationally integrated partnership, specialising in audit, accountancy, advisory, tax and legal services*. Operating in over 95 countries and territories around the world, we draw on the expertise of more than 47,000 professionals – 30,000+ in Mazars' integrated partnership and 17,000+ via the Mazars North America Alliance – to assist clients of all sizes at every stage in their development.

*Where permitted under applicable country laws

© March 2023

www.mazars.com

mazars