



**TAXAND ASIA SEMINAR  
SERIES: RECENT  
DEVELOPMENTS AND  
THE REPERCUSSIONS  
OF THE CURRENT  
PANDEMIC ON  
TRANSFER PRICING**

---

**15 OCTOBER 2020**

**Your global tax partner**

© Copyright 2020 Taxand.

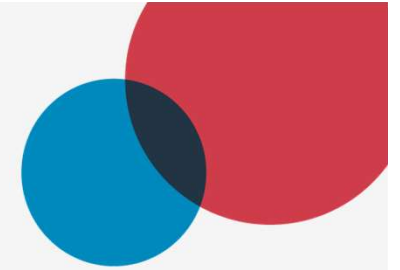


**CHINA**

Presented by  
**Eloise Pan**  
Senior Manager,  
Hendersen Taxand

October 2020

# CHINA



## ❖ Recent Tax Law Developments

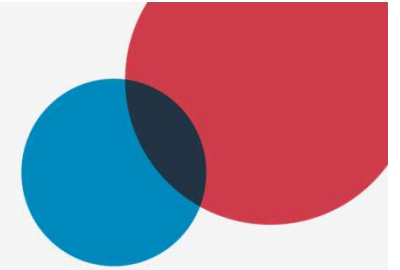
On June 2016, , the State Administration of Taxation (SAT) issued new regulations, Public Notice No.42 to improve **the reporting of related party transactions and contemporaneous documentation**.

On March 2017, the SAT issued Public Notice 6 which clarified certain key transfer pricing issues, as well as **the methodology and procedures for special tax audits** and adjustments.

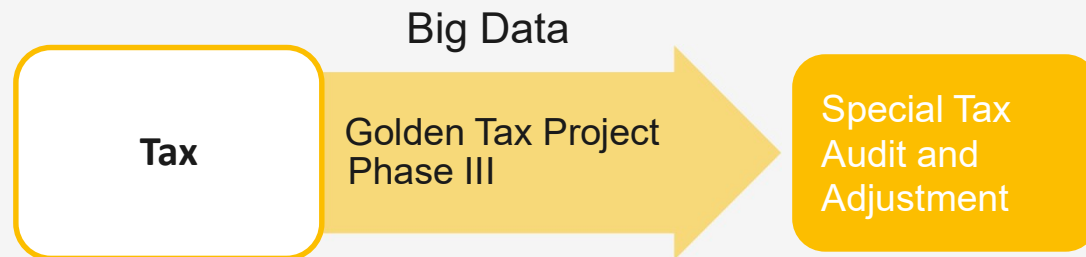
Since March 2016, China's General Administration of Customs (GAC) has announced several adjustments to the **customs declaration form reporting requirements**, requiring importers to disclose related party transactions and to confirm whether import prices have been influenced by **the relationship between the buyer and seller**.

On March 2019, China GAC issued guidance (Public Notice 58) on the declaration of **dutiable royalties** (i.e. royalties that must be included in the dutiable value of imported goods), an area that has been scrutinized by the Chinese Customs authorities and fraught with uncertainty.

# CHINA



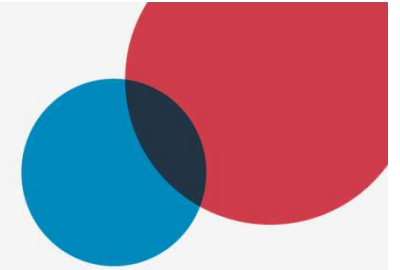
## ❖ Different Channels of Investigation



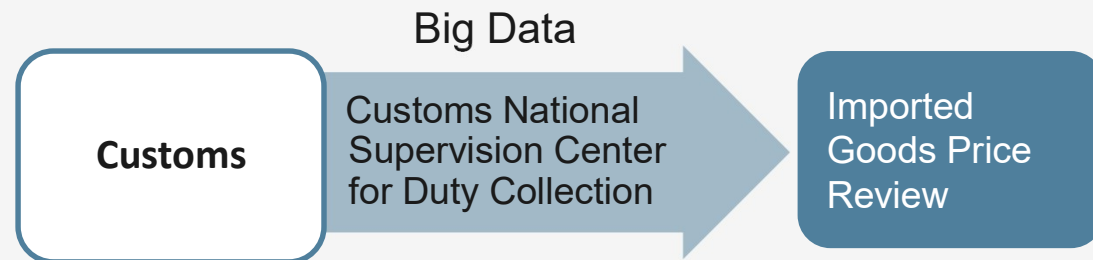
## ❖ Companies might trigger Tax authority's attention

- Companies suffering accumulated losses
- Companies with single function suffering loss
- Companies with low operating profit margin in the industry level
- Companies with declining local profitability

# CHINA



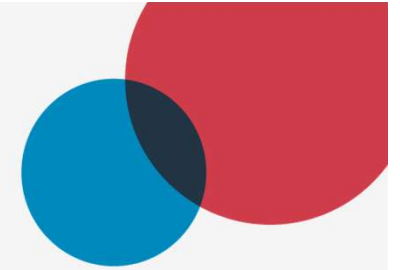
## ❖ Different Channels of Investigation



## ❖ Issues might trigger Customs' attention

- Obviously low price of imported goods
- Unchanged price of imported goods for a long time
- Price of imported goods < Market price in China - Local costs & expenses - Reasonable profit margin
- High gross margin in the industry level
- Price of imported goods < Purchasing price of the related party

# CHINA



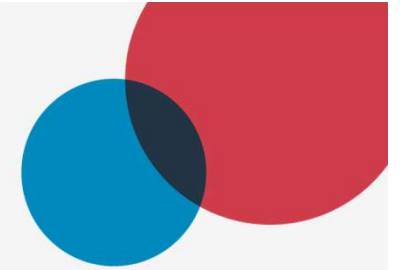
## ❖ Application of Transfer Pricing Policy

The laws and regulation adopted by Customs administrations when reviewing price of imported and exported goods is different from tax authority, i.e. "Tariff Regulations" and "Measures for Price Review".

If a company claims that the importing price is reasonable based on the assumption that the tax authority has approved its transfer pricing policy, the Customs administration may NOT accept it.

When reviewing the price of goods, the Customs officer will examine 1) the validity of transfer pricing method selected, and 2) the accuracy of data used to justify the transfer pricing policy.

# CHINA

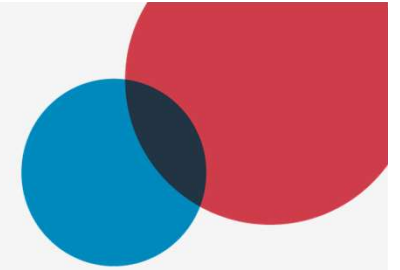


## ❖ General Commercial Practices

- The composition of declared price shall completely include **all price components**, i.e. manufacturing costs, research and development costs, sales costs and profit margin.
- The seller shall obtain **a reasonable profit margin**, which means the profit level should be close to the general profit level of the same industry in the international market.
- The declared price shall **be close to the price sold by a third party**.
- The profit obtained by the buyer when reselling in China shall be in line with **the general profit level of the same industry** in China.



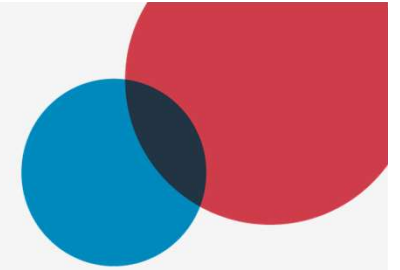
# CHINA



|                             | Customs   | Tax   |
|-----------------------------|---|---|
| <b>Focus</b>                | The price of tangible assets and its pricing model, whether the price has included the dutiable royalties and services. | transactions involving tangible assets, financial assets, intangible assets, capital financing, services, etc.                    |
| <b>Requirement</b>          | General Commercial Practices  | Arm's Length Principal  |
| <b>Risk indicators</b>      | Low import prices<br>High gross profits<br>Less Custom Duty/Import VAT  | High import prices and low export prices;<br>Declining local profitability<br>Less Enterprise Income Tax                          |
| <b>Valuation/TP Methods</b> | Transaction Value of Identical/Similar Goods<br>Deductible Value<br>Computed Value<br>Other reasonable methods          | Comparable Uncontrolled Price<br>Resale Price Method<br>Cost Plus Method<br>Transactional Net Margin Method & Profit Split Method |
| <b>Database</b>             | Customs National Supervision Center for Duty Collection<br>Internal International Market Price Database                 | Golden Tax Project Phase III<br>BvD Database  |



# CHINA



## ❖ Recommendations

- Closely monitor **changes of policies** and **business trends**. The **arm's length principle** is the basic foundation for customs valuation and transfer pricing, as well as a focus of both authorities when examining the related party transactions
- Well prepare the related documents, such as group transfer pricing policies, **transfer pricing documentation reports**, financial statements, **invoices** and **cost composition** of the imported goods, etc.
- When preparing transfer pricing documentation, consider the perspectives **both of the tax and customs** authorities, and in this context examine not only the group pricing policy but also **the status of implementation of local policy**.

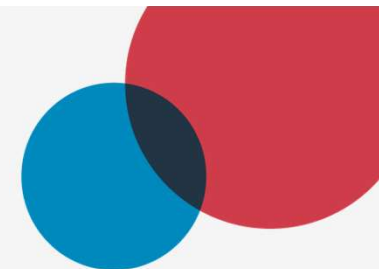


**INDIA**

Presented by  
**Mitesh Jain**  
Partner,  
Economic Laws Practice

October 2020

# TRANSFER PRICING – RECENT DEVELOPMENTS



Amid the COVID-19 pandemic, there have been various developments/announcements with respect to transfer pricing in India. We have highlighted below the key developments/announcements made:

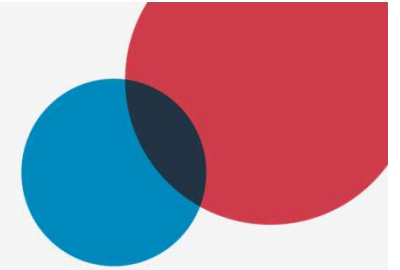
## Safe Harbour Rules

- The Central Board of Direct Taxes (**CBDT**) vide Notification No.25/2020 has notified changes to the Safe Harbour Rules.
- The rates which were earlier applicable from Financial Year (**FY**) 2016-17 to FY 2018-19 will continue to apply for FY 2019-20.

## Extension of statutory timelines

| Particulars  | Erstwhile due date | Revised due date  |
|--|--------------------|-------------------|
| Filing of return of income for FY 2018-19  | March 31, 2020     | November 30, 2020 |
| Extension of limitation period for completion of transfer pricing assessments for FY 2016-17 | December 31, 2020  | March 31, 2021    |

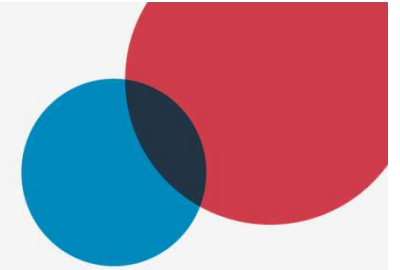
# TRANSFER PRICING – RECENT DEVELOPMENTS



## Mutual Agreement Procedure (MAP) Guidelines

- CBDT has released detailed MAP guidance in order to align its practices with the Base Erosion and Profit Shifting (**BEPS**) Action Plan 14.
- The said MAP regulations shall replace the existing regulations and shall apply to all cases pending before the Competent Authorities (**CAs**) as on May 6, 2020.
- The MAP guidance is presented in four parts viz.
  - Part A: Introduction & Basic Information – Outlines the process and timeframes of MAP application;
  - Part B: Access & Denial of Access to MAP - Prescribes the situations where MAP application may be accepted or denied by the CAs;
  - Part C: Technical Issues - Describes the issues which may arise while negotiation of the MAP application; and
  - Part D: Implementation of MAP outcomes - Outlines the process of implementation of MAP

# TRANSFER PRICING – RECENT JUDICIAL PRECEDENTS



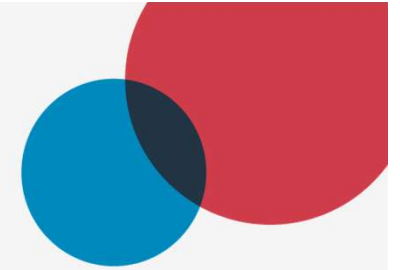
## **Corporate guarantee held as an international transaction; Arm's Length Price (ALP) restricted to extent of facility availed**

- Recently the Tribunal ruled on whether providing corporate guarantee is as an international transaction.
- The Tribunal held that corporate guarantee provided to Associated Enterprise (AE) is as an international transaction in view of the amendment introduced in the Income-tax Act, 1961 with retrospective effect from April 1, 2002 which includes payment of guarantee fee under the definition of 'international transaction'.
- The Tribunal observed that in the case of corporate guarantee, there is no commitment of financial or capital assets of the entity as a security, unlike in the case of a bank guarantee.
- Accordingly, the Tribunal held that ALP of corporate guarantee commission should be restricted to the extent of facility availed by taxpayer's AE.

## **Treats business advance to loss-making JV as capital contribution; Rejects re-characterization as loan**

- Recently, the Tribunal ruled on whether business advance given by taxpayer to its AE [a loss-making Joint Venture (JV) in which taxpayer is 50% partner] can be regarded as a loan.
- The Tribunal observed that advances were more in the nature of capital contribution.
- The Tribunal ruled out that the JV entity derived certain benefits out of such advance.
- The Tribunal, deleting the adjustment, held that the taxpayer would ultimately gain by continuing with the projects and taste the fruits of the success of the project.

# TRANSFER PRICING – REPERCUSSIONS DUE TO COVID-19



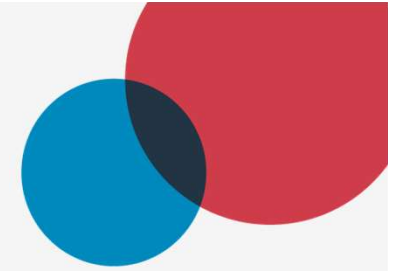
## Supply chain management

- Change in functional profile of entities due to performance of additional value-adding functions
- Bearing on entity's economic characterization
- Temporarily affect profit allocation between group entities in line with their FAR profile

## Availability of data

- Delay in ascertaining financial data of comparables on public domain
- Adjustments may be required to account for differences in capacity utilization, logistics costs, financing costs, cost for enabling work from home capabilities etc.

# TRANSFER PRICING – REPERCUSSIONS DUE TO COVID-19



## Revisiting pricing methodology

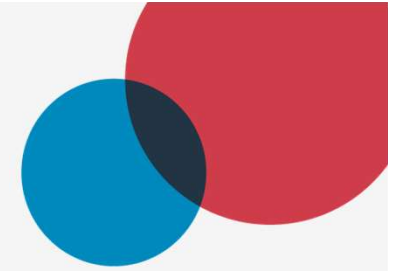
- Margins agreed in APAs may require re-evaluation and re-negotiation
- Impact on margins / no margins in limited risk entities may require revisiting ALP (esp. cost plus)

## Delayed/ Waiver of receipts from AEs

- High average credit period on delayed receipts from AEs could lead to imputation of interest on delayed payment of receivables
- Impact of complete waiver / moratorium on intra group loans



# TRANSFER PRICING – REPERCUSSIONS DUE TO COVID-19



## Personnel

- Impact on functional & risk profile due to activities of key employees who are stranded to new locations
- Impact on Permanent Establishment
- Adjustments may be required to deal with idle capacity or temporary redundancy of employees

## Other Issues

- Burden of secondary adjustment on companies which are unable to repatriate money in India arising on account of primary adjustment
- Due to the substantially reduced operations, adjustment required for use of multi year data to arrive at ALP

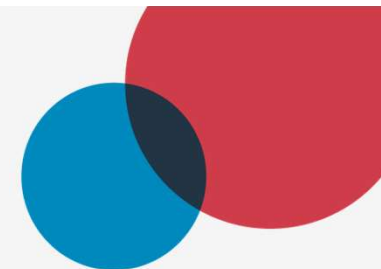


# INDONESIA

Presented by  
**Elviana Riyanto**  
Partner,  
PB Taxand

October 2020

# COVID -19 AND IMPACT ON ENTITIES



- During crisis due to COVID-19, most of companies incur losses or earn very low profit. How to substantiate the losses especially if the company is limited risk entity?

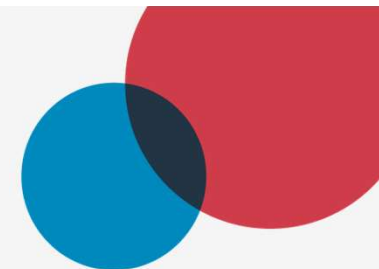
In order to keep the business going, need to revise TP policy. How to explain this change?

- ❖ Prepare revised agreements
  - ❖ Prepare very thorough reasoning and calculation for the new Transfer Price
  - ❖ Prepare a thorough documentation of COVID-9 related condition and action taken as part of Master File and Local File
- Based on current regulation, Local File should be prepared at the time of transaction (ex ante analysis), thus available benchmarking from previous years (pre-covid) would not be comparable.
  - When performing economic analysis in Local File, consider Comparability Adjustment to pricing or/and costs due to unfavourable economic condition (COVID-19) and recalculate Profit/Loss if no such condition occur.

*Par 1.129 OECD TP Guideline:*

*Of course, associated enterprises, like independent enterprises, can sustain genuine losses, whether due to heavy start-up costs, unfavourable economic conditions, inefficiencies, or other legitimate business reasons.*

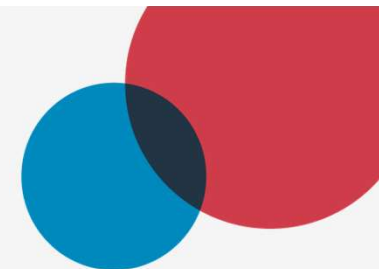
# UPDATE ON APA



In alignment with BEPS Action 14 and in order to simplify process and provide better legal certainty on Transfer Pricing matter, DGT issued a Minister of Finance Regulation 22 year 2020 (MoF 22) as an updated regulation on APA and this MoF replaces the entire MoF regulation number 7 year 2015

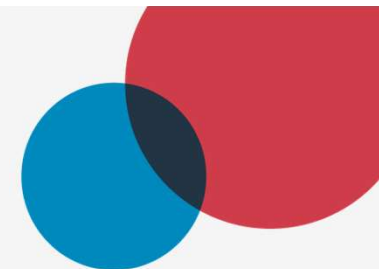
| Previous Regulation<br>MoF 7 year 2015                         | New Regulation<br>MoF 22 year 2020                               |
|--|--|
| No Rollback provision  | Rollback with certain conditions                                 |
| APA Period:<br>Unilateral APA 3 years<br>Bilateral APA 4 years | APA Period 5 years   |
| APA Implementation Documentation:<br>Annual Compliance Report  | APA Implementation Documentation: Transfer Pricing Documentation |
| No guideline on the Application of Arm's Length principle      | Provide extensive guideline in applying Arm's Length principle   |

# UPDATE ON APA



| Previous Regulation<br>MoF 7 year 2015  | New Regulation<br>MoF 22 year 2020  |
|---|---|
| Two steps Application (Prelodgement and formal application)                         | Single Step Application - Formal Application only   |
| No Specific format of APA application   | Use APA application forms attached on the MoF 22 and Written Statement stating that Taxpayer agrees to provide all necessary documents and agree to implement the concluded APA |
| Need to submit the same documentation twice   | Documentation submitted after DGT approves the application  |
| No Procedure for APA Revocation, Judicial Review and Cancellation is regulated      | Procedures for APA Revocation, Judicial Review and Cancellation are introduced  |
| APA renewal application is processed according to the new APA application procedure | APA renewal is processed with request letter and written statement  |

# UPDATE ON APA



This Mof 22 covers a broader explanation of Special Relationship under Common Control:

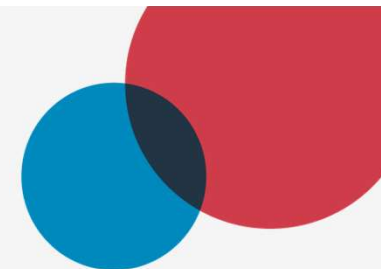
- a. one party controls another party or vice versa, directly or indirectly;
- b. two or more parties are under the direct control of the same party directly or indirectly;
- c. Same person(s) directly/indirectly involved in or participating in the managerial or operational decision-making of two or more entities;
- d. Parties who are commercially or financially known or declare to be in the same business group; (NEW)**

*E.g. Information on websites for marketing purpose ??*

- e. A party declares to have special relationship with another party. (NEW)**

*E.g. Notes of Related party on the Audited Report ??*

# UPDATE ON APA



Criteria of Special Relationship based on Income Tax Law 36 year 2008 (**ITL 36**):

- Taxpayer has capital ownership directly or indirectly a minimum of 25% of other Taxpayer.
- Taxpayer controls other Taxpayer or two or more Taxpayers under common control directly and indirectly

*Explanation of Art 18 par 4 ITL 36 mentions that special relation under common control may exist through management or use of technology even though there is no relation by ownership.*

- Family relation both biologically and by marriage in vertical and/or horizontal lineage of the first degree.



# UPDATE ON APA

The MoF 22 requires that Arms Length principle is applied not only to the related party transactions but also transaction influenced by special relationship.

- Related party transaction is defined as transaction conducted by Taxpayer and related party.
- Transaction influenced by Special Relationship is defined as transaction that includes:
  - ❖ Related Party Transaction and/or
  - ❖ Transactions conducted by party that do not have special relationship but the related party from one or both parties conducting the transaction determine the counterparty transactions and price of the transaction.

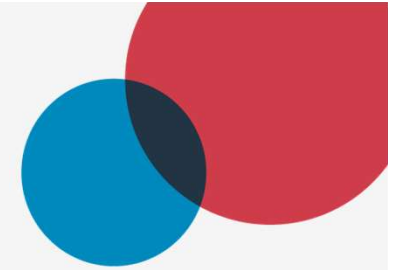


Art 18 par 3 ITL 36:

*The Director General of Taxes shall be authorized to re-determine the amount of income and deduction as well as to determine debts as capital to calculate the amount of Taxable Income for Taxpayer having special relationship with other Taxpayer in accordance with arm's length principle that is not influenced by special relationship using Comparable Uncontrolled Price Method, Resale Price Method, Cost-Plus Method, or other methods.*

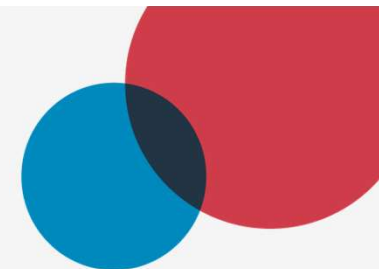
Based on ITL 36, the Authority of Director General of Taxes to make adjustment on related party transaction should be limited to related party transactions only.

# UPDATE ON APA



- The MoF 22 provide detail explanation of comparability factors and the use of Transfer Pricing methods.
- Method Selection based on hierarchy (the current guidance is based on The Most Appropriate Method)
- Valuation Method could be applied for certain transactions such as
  - ❖ Leases/Rental of Tangible Asset
  - ❖ Transfer of Tangible Asset/Intangible Assets
  - ❖ Transfer of Financial Asset
  - ❖ Use or Rights to use Intangible Asset

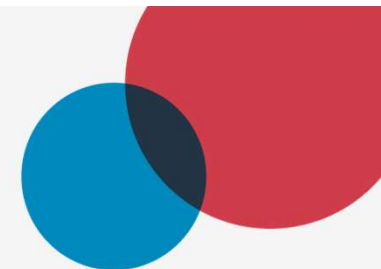
# UPDATE ON APA



Arm's length Price or Arm's length Profit may be determined by Arm's length single point or Arm's Length Range. MoF 22 elaborate the definition of arm's length of range.

| DGT Reg 32/PJ/2011<br>(Application of ALP)   | MoF 22 Year 2020   |
|--|--|
| The Arm's Length Range (ALR) would be the range between the <b>first quarter and the third quarter</b> | Arm's length range shall be a range of two or more comparables: <ul style="list-style-type: none"><li>a. Range of <b>minimum to maximum value (full range)</b> if only <b>2 comparables</b> available</li><li>a. Range of <b>First quartile to third quartile values (inter quartile range)</b> if there are <b>3 or more comparables</b>.</li></ul> |

# UPDATE ON APA



MoF 22 also provides guidance that in the event the Transfer Price does not fulfill the Arm's Length Principle, the Transfer Price shall be adjusted by using:

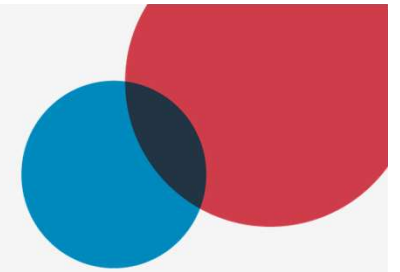
- a. arm's length point;
- b. the most precise point within the arm's length range according to the comparability; or
- c. the median value within the arm's length range in case no precise point could be determined as mentioned in point b.

Following the primary Transfer Pricing adjustment, the difference of transaction value and arm's length price/profit will result in secondary adjustment in the form of Constructive Dividend.

Currently, The Guideline for Tax Auditors in making Transfer Pricing adjustments can be found in DGT Reg number 22 year 2013 which generally using median value as the arm's length profit/price.

**It is interesting to note that MoF 22 provides guidance in making Transfer Pricing Adjustment and Secondary Adjustment**

# UPDATE ON APA



DGT Regulation number 17 year 2020 regarding Guideline for APA application and implementation provides that when applying for APA, Taxpayer whose profitability are negatively affected by the disaster due to COVID, may prepare projected P/L that shows profits that has been adjusted as if the Company is in normal condition. Adjustment could be made to Price or Cost.

This Guideline might be used by Taxpayers to perform adjustments to price/costs when calculating profit during COVID-19 in the Local File

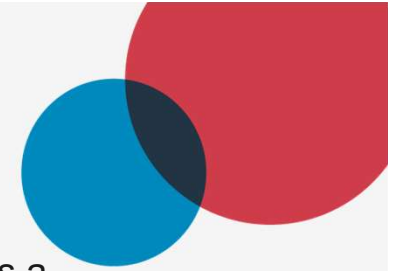


# MALAYSIA

Presented by  
**Sarah Chew**  
Director,  
Tricor Taxand Sdn Bhd

October 2020

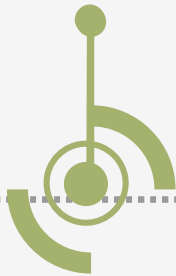
# MALAYSIA



The Movement Control Order (“MCO”) was introduced by the Malaysian Government as a measure to curb the spread of COVID-19, as follows:

## MCO

18 March 2020



- Closure of all businesses (except those providing essential services and items)
- Selected additional economic sectors were allowed to resume operations (under **Phase 3** of MCO)
- Local and overseas travel restrictions
- Quarantine imposed on individuals returning to Malaysia
- 6-month moratorium for loan/financing repayments, from 1 April 2020 onwards

## Conditional MCO

4 May 2020



- Conditional re-opening of certain businesses (with strict SOPs), excluding those requiring close contacts and crowding (e.g. entertainment-related businesses)
- Overseas travel restrictions
- Relaxation of local travel restrictions for work purposes
- Quarantine imposed on individuals returning to Malaysia

## Recovery MCO

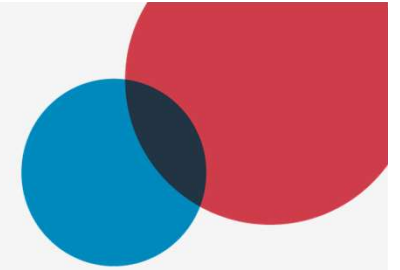
10 June 2020



- Re-opening of most business sectors (with strict SOPs)
- Overseas travel restrictions
- Lifting of local (i.e. interstate) travel restrictions
- Self quarantine for individuals returning to Malaysia



# MALAYSIA – IMPACT OF COVID-19



## Financial impact:

- Cash flow issues
- Inability to service existing loans



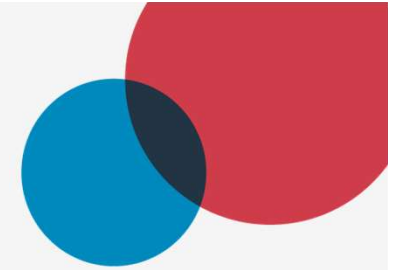
## Main industries impacted:

- Airline
- Retail
- Tourism
- Electrical and electronics
- Oil and gas
- Property
- Rubber glove/PPE

## Operational impact:

- Production cessation/disruptions
- Cost overruns due to production delays
- Disruptions in supply of key raw materials/delivery of services required
- Significant decrease in sales volumes/projects
- Insufficient capacity
- Increased operating expenses – PPE, sanitization, etc.
- Deferment of capital investments
- Retrenchment of employees
- Work-from-home arrangements for employees
- Increased reliance on technology tools

# MALAYSIA – AREAS OF TRANSFER PRICING CHALLENGE



1

**Losses/low margins**

2

**Payments for intragroup services and other transactions**

3

**Interest-free loans**

4

**Point for comparison in benchmarking study**

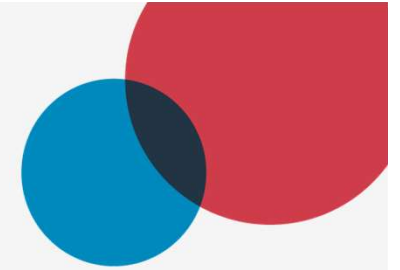
5

**Availability of benchmarking data**

6

**Preparation of contemporaneous transfer pricing documentation**

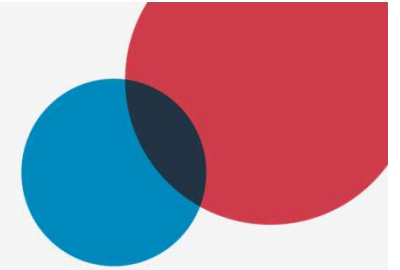
# MALAYSIA – HOW TO MITIGATE TRANSFER PRICING RISK



## 1 Losses/low margins

- Document details of operational and/or commercial reasons for losses/low margins
- Segregate and analyse financial results by period (pre, during and post COVID-19 periods) to demonstrate that any reduction in margins/losses suffered are primarily due to the pandemic
- Quantify impact of extraordinary expenses incurred (e.g. compensation paid to customers due to delivery delays, bad debts written off, retrenchment and cleaning/sanitation expenses)
- Document other factors which contributed to the losses (e.g. discounts provided to customers)
- Demonstrate low margins/losses incurred by the Group as a whole
- Remuneration for limited risk entities – tax authorities may still expect that such entities continue to earn a fixed margin despite impact of COVID-19 on their financial results

# MALAYSIA – HOW TO MITIGATE TRANSFER PRICING RISK



2

## Payments for intragroup services and other transactions

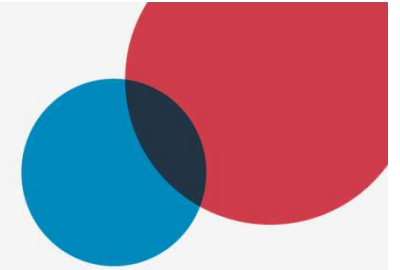
- Assess if the same level of intragroup services is required during the pandemic and if so, the arm's length remuneration for such services
- Assess quantum of royalty payments to related parties (in the event that sales decrease significantly)

3

## Interest-free loans

- Develop justification for interest-free arrangements, which are typically not allowed by the Malaysian tax authorities
- Demonstrate that interest-free arrangements are temporary in nature (similar to moratoriums granted by financial institutions)

# MALAYSIA – HOW TO MITIGATE TRANSFER PRICING RISK



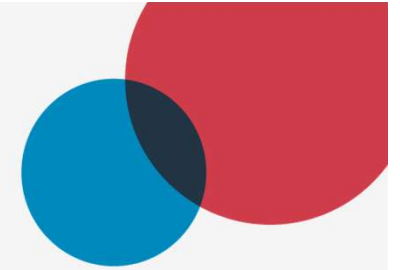
## 4 Point of comparison in benchmarking study

- Assess if company's financial results can be tested at a point lower than the median result (full range vs. interquartile range)
- Assess if loss-making companies should be included into the benchmarking set

## 5 Availability of benchmarking data

- Reliance on multiple year data in preparing benchmarking studies due to unavailability of current year data
- May result in inaccurate conclusion of arm's length nature of FY 2020 financial results
- Consider whether the benchmarking study can be updated once FY 2020 financial data is available

# MALAYSIA – HOW TO MITIGATE TRANSFER PRICING RISK



## 6

### Preparation of contemporaneous transfer pricing documentation

- Document and quantify the impact of COVID-19 on the company's financial results (during and post COVID-19 periods)
- Document details of new related party transactions, changes in existing related party transactions, changes to/deviations from transfer pricing policy, and any other changes to the company's operations as a result of the pandemic
- Outline different levels of business risks borne by period (pre, during and post COVID-19 periods), if applicable
- Testing of FY 2020 financial results on a year-on-year basis (once financial data is available)



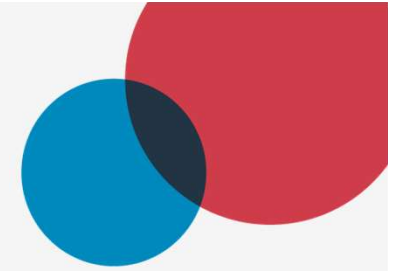
# PHILIPPINES

Presented by  
**Grace Molina**  
Partner,  
Salvador Llanillo & Bernardo

October 2020

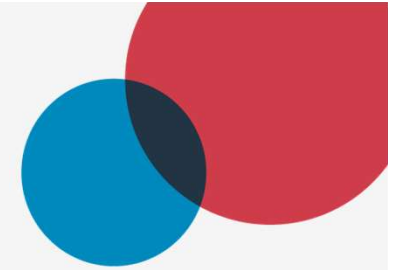


# AGENDA



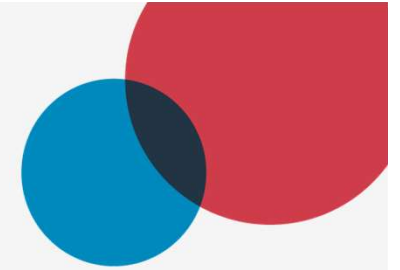
- ❖ Philippine transfer pricing regulatory landscape
- ❖ Revenue Regulations No. 19-2020 on the new transfer pricing disclosure form (BIR Form No. 1709)
- ❖ Outlook

# PHILIPPINE TRANSFER PRICING REGULATORY LANDSCAPE: TIMELINE



- ❖ Transfer pricing regulatory environment from 2013 to July 2019 (“silent/passive period”):
  - ❖ No strict enforcement of TP regulations (Revenue Regulations [RR] No. 2-2013) since its effectivity on 9 February 2013
- ❖ Transfer pricing regulatory environment from August 2019 onwards (“active” period)
  - ❖ Signals the start of a strict and aggressive transfer pricing regulatory environment
  - ❖ Revenue Audit Memorandum Order (RAMO) 1-2019 – detailed transfer pricing audit guidelines

# PHILIPPINE TRANSFER PRICING REGULATORY LANDSCAPE: TIMELINE



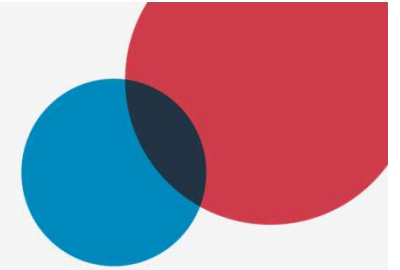
- ❖ Transfer pricing regulatory environment from August 2019 onwards (“active” period) – cont.

- ❖ Corporate Recovery and Tax Incentives for Enterprises (CREATE) Bill

- Package 2 of the current tax reform program; certified as urgent by the President on 9 March 2020; first-ever revenue-eroding tax reform package proposed by the DOF and the largest stimulus program for enterprises in the country’s history; outright drop in CIT rate from 30% to 25% up to 2022, followed by a 1% reduction yearly until 2027 (or up to 20% CIT rate); pending with Philippine Senate

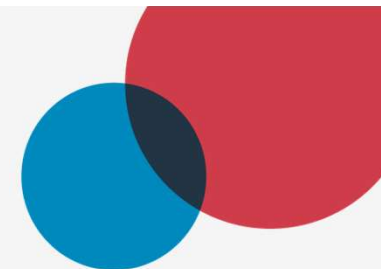
- Due to the impact of the Covid-19 pandemic on businesses, immediate passage of CREATE bill within 2020 is being pushed to to help businesses get back on their feet as quickly as possible

# PHILIPPINE TRANSFER PRICING REGULATORY LANDSCAPE: TIMELINE



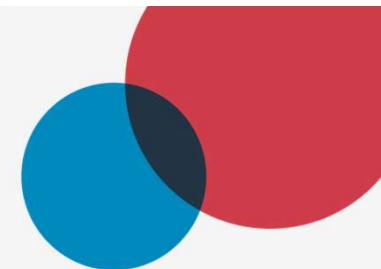
- ❖ Transfer pricing regulatory environment from August 2019 onwards (“active” period) – cont.
- ❖ Sudden release of transfer pricing-related issuances with tight deadlines for compliance in the middle of the pandemic:
  - **RR No. 19-2020**, effective 25 July 2020 - requires annual submission of a related party transaction (RPT) form (BIR Form 1709) with attachments, one of which is the TP documentation
  - Revenue Memorandum Circular (RMC) No. 76-2020 dated 29 July 2020 clarifying certain items in RR 19-2020
  - RMC No. 98-2020 dated 15 September 2020 extending submission deadlines of BIR Form 1709 and its attachments

# RR 19-2020 - KEY POINTS



- ❖ BIR Form 1709 – Information Return on Transactions with Related Party and its attachments should be submitted together with the annual income tax return (AITR) from taxable year 31 March 2020 onwards
- ❖ Detailed disclosures of related parties and related party transactions based on Philippine Accounting Standards (PAS) 24 criteria on related party transactions
- ❖ Clarified/expanded definitions or concepts broadly mentioned in RR 2-2013 such as “related parties”, “related party transactions”, “control” and added accounting concepts on “significant influence” and “key management personnel” to determine related parties, taking into account “substance over form”
- ❖ Penalties for non-compliance

# BIR FORM NO. 1709 - DISCLOSURES



## Part 1: Taxpayer information

## Part 2: Foreign and domestic related party transactions

- ❖ Names and addresses of related parties
- ❖ Nature of transactions
- ❖ Amounts of income/expense, tax withheld, tax treaty rates (if applicable)

## Part 3: Details of transactions per category of related party (parent, entities with joint control or significant influence, subsidiaries, associates, joint venturer, key management personnel (KMP) of the entity or its parent, other related parties)

- ❖ For KMP – names and addresses, short-term, post-employment, other

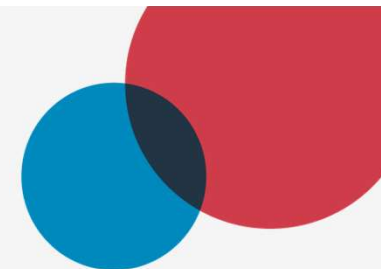
## Part 3 (cont.)

long-term, termination benefits, and share-based payments, others

## Part 4: Other information

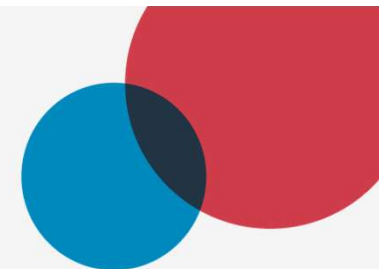
- ❖ Business overview of the taxpayer's and its ultimate parent's business activity
- ❖ Functional profile of the taxpayer
- ❖ Details of changes in functional profile and ownership structure of taxpayer
- ❖ Business restructuring during the year or last 5 years
- ❖ Any pending tax treaty relief application with the BIR or with another tax authority
- ❖ Advance Pricing Agreements

# BIR FORM 1709 - ATTACHMENTS



- ❖ The following are to be attached to the accomplished form:
  - ❖ certified true copy of the relevant contracts or proof of transaction;
  - ❖ withholding tax returns and the corresponding proof of payment of taxes withheld and remitted to the BIR;
  - ❖ proof of payment of foreign taxes or ruling duly issued by the foreign tax authority where the other party is a resident;
  - ❖ certified true copy of Advanced Pricing Agreement, if any; and
  - ❖ transfer pricing documentation, local or otherwise (*note: local TPD is preferred, TPD must include date of preparation, no materiality threshold, no safe harbor rules*).
  
- ❖ BIR Form 1709 and its attachments are to be submitted together with the Annual Income Tax Return.

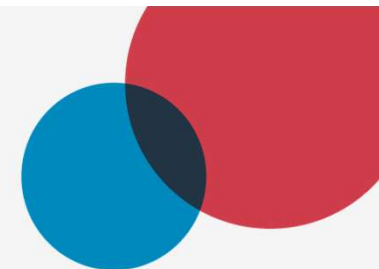
# BIR FORM 1709 - SUBMISSION DEADLINES FOR 2020 YEAR-END



| Taxpayer's Year-End                | Deadline         |
|------------------------------------|------------------|
| 31 March 2020, 30 April 2020       | 29 December 2020 |
| 31 May 2020, 30 June 2020          | 31 January 2021  |
| 31 July 2020, 31 August 2020       | 1 March 2021     |
| 30 September 2020, 31 October 2020 | 31 March 2021    |
| 30 November 2020, 31 December 2020 | 30 April 2021    |

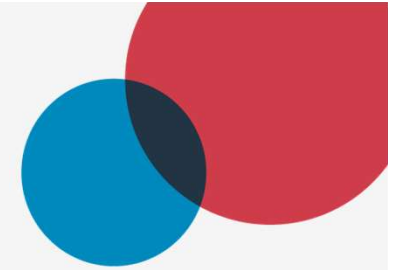


# BIR FORM 1709 - PENALTIES FOR NON-SUBMISSION



| Offense  | Penalty   |
|--|---|
| Failure to file RPT form and its attachments due to reasonable cause and not to willfull neglect | PHP 1,000 (approx. USD20) but not exceeding PHP 25,000 (approx. USD515)                               |
| Repetition of offense  | Maximum penalty of PHP 25,000 (approx. USD515)  |
| Failure/neglect to produce attachments after receiving valid summons (failure to obey summons)   | Fine of PHP 5,000 (approx. USD100) up to 10,000 (approx. USD200); and Imprisonment of 1 up to 2 years |

# OUTLOOK



- ❖ Strict enforcement of transfer pricing rules will continue as part of efforts to increase tax collection and especially in light of the forthcoming passage of a law that will lower corporate income tax rates and rationalize tax incentives in the Philippines (CREATE Bill)
- ❖ Next big wave: transfer pricing audits by BIR using RAMO 1-2019 framework and disclosures in BIR Form 1709
- ❖ Recent developments in the transfer pricing space (especially RAMO 1-2019 and RR 19-2020) underscore the importance of having a robust transfer pricing documentation in place.

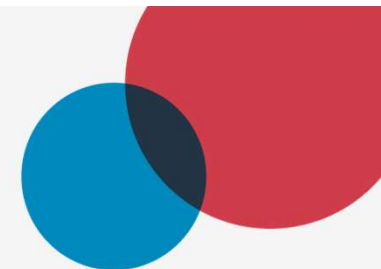


ITALY

Presented by  
**Stefano Bognandi**  
Partner,  
LED Taxand

October 2020

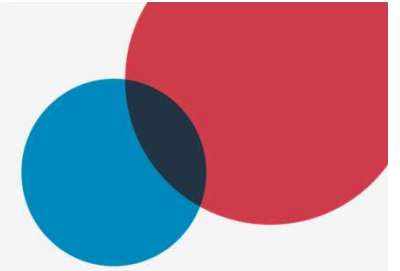
# COVID RELATED TP ISSUES



## No specific guidance issued so far in Italy (and in Europe)

- ❖ The Italian TP guidelines, taking into account the content of the OECD TPG, lay down in a few articles the basics to apply the arm's length principle
- ❖ Most of European practitioners agree that the current TPG do not provide a proper framework to assess the arm's length value in recession scenarios
- ❖ Urgent guidance would be valuable in many areas, among which
  - ❖ Benchmarking (lower quartile, one-year data, adjust benchmarked margins) and adjusting intercompany agreements (unrelated parties are granting breaks and exceptions)
  - ❖ Government stimulus (can be passed on in the supply chain?)
  - ❖ Business restructuring (when shifting of production facilities may become a long-term change?)

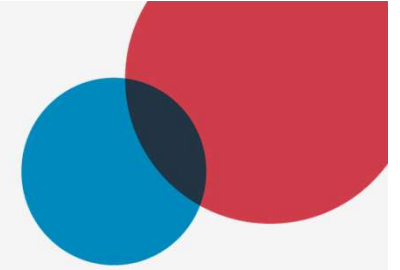
# OECD DEVELOPMENTS



Tax Talks, 12 October 2020

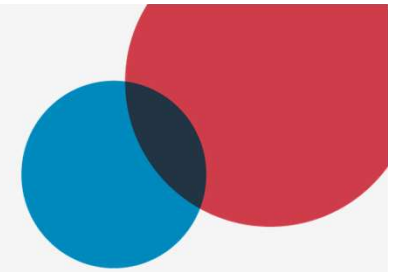
- ❖ The OECD recognizes that:
  - ❖ the pandemic is causing unique economic conditions, significant business disruption and unprecedented government intervention in the economies
  - ❖ the treatment of government assistance programs and the comparability analysis are significant TP challenges for taxpayers and tax administrations
- ❖ Guidance expected to be issued by the end of 2020

# EU DEVELOPMENTS



## Focus on dispute resolution and administrative cooperation

- ❖ MAP (Council Directive 2017/1852), entered into force in Italy on 25 June 2020
  - ❖ Binding and mandatory mechanism for the settlement of disputes between Member States
  - ❖ Relates to tax periods commencing on or after 1 January 2018
- ❖ DAC 6 (Council Directive 2018/822), entered into force in Italy on 30 July 2020
  - ❖ Mandatory disclosure of unilateral safe harbors, business restructurings and transfer of hard to value intangibles
  - ❖ Obligation also relates to intercompany transactions with extra EU countries
- ❖ DAC 7 (proposal to amend Council Directive 2011/16)
  - ❖ Introduces a legal framework for conducting joint audits
  - ❖ Request can be made also by the taxpayer; response is due within 30 days and rejections must be duly motivated
  - ❖ Final report with equivalent legal value of domestic instruments



Eloise Pan  
Hendersen Taxand,  
Taxand China  
T. +86 21 6447 7878  
E. [eloise.pan@hendersen.com](mailto:eloise.pan@hendersen.com)



Mitesh Jain  
Economic Laws Practice,  
Taxand India  
T. +91 22 6636 7000  
E. [miteshjain@elp-in.com](mailto:miteshjain@elp-in.com)



Elviana Riyanto  
PB Taxand,  
Taxand Indonesia  
T. +62 21 835 6363  
E. [elviana.r@pbtaxand.com](mailto:elviana.r@pbtaxand.com)



Sarah Chew  
Tricor Taxand Sdn Bhd,  
Taxand Malaysia  
T. +603 2032 2799  
E. [Sarah.Chew@my.tricorglobal.com](mailto:Sarah.Chew@my.tricorglobal.com)



Grace Molina  
Salvador Llanillo & Bernardo,  
Taxand Philippines  
T. +632 88112500  
E. [gvmolina@salvadorlaw.com](mailto:gvmolina@salvadorlaw.com)



Stefano Bognandi  
LED Taxand,  
Taxand Italy  
T. +39 02494864  
E. [sbognandi@led-taxand.it](mailto:sbognandi@led-taxand.it)

**THANK YOU FOR ATTENDING!**

Please email [taxand@taxand.com](mailto:taxand@taxand.com) with your enquiry.





# ABOUT TAXAND

Taxand is the world's largest independent tax organisation with more than 550 tax partners and over 2,500 tax advisors in 50 countries. Taxand focuses on delivering high quality, integrated tax advice, free from conflict creating audit work. Taxand advisors work together to deliver global tax services for clients.

[www.taxand.com](http://www.taxand.com)

Taxand is a global organisation of tax advisory firms. Each firm in each country is a separate and independent legal entity responsible for delivering client services.

© Copyright Taxand Economic Interest Grouping 2020  
Registered office: 1B Heienhaff, L-1736 Senningerberg  
– RCS Luxembourg C68