

Inland Revenue (Amendment) (No. 6) Ordinance 2018 gazetted

The Inland Revenue (Amendment) (No. 6) Ordinance 2018, which primarily implements the minimum standards of the Base Erosion and Profit Shifting (BEPS) package promulgated by the Organisation for Economic Co-operation and Development (OECD) and codifies the transfer pricing principles into the Inland Revenue Ordinance (Cap. 112) (IRO), was gazetted today (July 13).

"The Amendment Ordinance aligns the IRO with the latest guidance promulgated by the OECD. In meeting the international requirements, we also seek to minimise the compliance burden for the business sector," a government spokesman said.

"The codification of the transfer pricing rules provides greater clarity and certainty for taxpayers. Our long-established territorial source principle of taxation will continue to apply to determine the chargeability of income or profits to Hong Kong tax," the spokesman added.

Under the Amendment Ordinance, the ultimate parent entity of a multinational enterprise (MNE) group which is Hong Kong tax resident is required to file country-by-country (CbC) reports to the Inland Revenue Department (IRD) for exchange with other relevant jurisdictions if the annual consolidated group revenue is not less than HK\$6.8 billion.

The Amendment Ordinance also requires taxpayers to prepare master files and local files as part of the transfer pricing documentation, subject to certain exemptions. In addition, the Amendment Ordinance gives a statutory basis to the cross-border dispute resolution mechanism (i.e. mutual agreement procedure and arbitration) and advance pricing arrangement, which were previously implemented based on IRD's administrative rules.

In general, the provisions relating to transfer pricing (except for sections 15F and 50AAK), relief consequential on transfer pricing adjustment, advance pricing arrangement, tax credit and profits tax concessions will apply in relation to tax payable for a year of assessment beginning on or after April 1, 2018. The provisions relating to CbC reporting will apply in relation to an accounting period beginning on or after January 1, 2018, whilst those relating to master file and local file will apply in relation to an accounting period beginning on or after April 1, 2018. Sections 15F (taxation of income derived from intellectual property by non-resident associates) and 50AAK (attribution of income or loss to non-resident persons' permanent establishments in Hong Kong) will apply in relation to a year of assessment beginning on or after April 1, 2019 so as to give taxpayers a longer lead time to make preparation.

IRD will provide further implementation guidance to facilitate enterprises' compliance with the new requirements through its Departmental Interpretation and Practice Notes.

The OECD released a package of 15 action plans in October 2015 to counter BEPS. In June 2016, Hong Kong indicated its commitment to implementing the BEPS package.