Announcement on Improving Administration of Related Party Filings and Contemporaneous Transfer Pricing Documentation of the PRC

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Contents

Table of Contents 1

Chapter I — General Provisions 1

Chapter II — Related Party Reporting 2

Chapter III — Country-by-Country Reporting 3

Chapter IV — Contemporaneous Transfer Pricing Documentation 3

Chapter V — Special Issue Files and Master Files 4

Chapter VI — Supplementary Provisions 4

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Replaces: Guo Shui Fa [2009] No. 2 (Chapter II & III) and relevant provisions on related party reporting and contemporaneous documentation

Table of Contents

- Chapter I — General Provisions
- Chapter II — Related Party Reporting
- Chapter III — Country-by-Country Reporting
- Chapter IV — Contemporaneous Transfer Pricing Documentation
- Chapter V — Special Issue Files and Master Files
- Chapter VI — Supplementary Provisions

Chapter I — General Provisions

Article 1 — This Announcement is issued in accordance with the Enterprise Income Tax Law of the People's Republic of China and its Implementing Regulations, and the Law on the Administration of Tax Collection of the People's Republic of China and its Implementing Rules, for the purpose of improving the administration of related party transactions and contemporaneous transfer pricing documentation, and to align with the Base Erosion and Profit Shifting (BEPS) Action 13 Report recommendations issued by the OECD/G20.

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Article 2 — This Announcement applies to the management and filing of related party reports and the preparation, submission, and retention of contemporaneous transfer pricing documentation by enterprises.

Article 3 — Enterprises shall disclose related party transactions and report related party relationships in accordance with the relevant provisions when filing their annual enterprise income tax returns.

Chapter II — Related Party Reporting

Article 4 — An enterprise that is subject to enterprise income tax audit and settlement on an actual basis shall, when filing its annual enterprise income tax return, submit the Annual Related Party Transactions Report to the tax authority. The report shall include:

(1) The Report on Related Party Relationships, covering the basic information of the enterprise and its related parties;

(2) The Report on Related Party Transactions, covering the type, amount, and terms of each category of related party transactions during the tax year.

Article 5 — For the purposes of related party reporting, an enterprise has a related party relationship with another enterprise, organization, or individual where:

(1) One party directly or indirectly holds 25% or more of the shares of the other party; or both parties are directly or indirectly held as to 25% or more by a common third party;

(2) The total amount of borrowing or lending between the parties (excluding trade credit extended in the ordinary course of business) accounts for 50% or more of the paid-in capital of either party, or 10% or more of the total amount of one party's borrowings is guaranteed by the other party;

(3) More than half of the directors or senior management personnel of one party (including the board secretary and the manager) are appointed by the other party, or there is one or more directors or senior management personnel serving concurrently in both parties;

(4) One party's production and business activities must rely on the provision of industrial property rights, know-how or other proprietary technology by the other party;

(5) One party's purchase or sale activities are controlled by the other party in terms of the transaction parties, amounts, prices, or terms;

(6) One party receives or provides services that are controlled by the other party;

(7) Other relationships that result in an associated interest, including relationships with family members and relationships through key management personnel.

Article 6 — Categories of related party transactions to be reported include:

(1) Purchase, sale, transfer or use of tangible assets, including goods, products, buildings, structures, means of transport, machinery and equipment, tools and implements;

(2) Transfer or use of intangible assets, including patents, non-patented technologies, trademarks, copyrights, land use rights, exploration rights, mining rights, and other franchise rights;

(3) Transfer or use of financial assets, including equity interests, accounts receivable, and other financial assets;

(4) Provision or receipt of services, including labor services, technical services, management services, marketing services, and other services;

(5) Financing, including all types of debts and equity financing such as loans, advances, guarantees, advance payments, and deferred payments.

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Chapter III — Country-by-Country Reporting

Article 7 — An ultimate parent company of a multinational enterprise group that is a resident enterprise of China shall prepare and submit a Country-by-Country Report (CbC Report) where the consolidated revenue of the group for the preceding fiscal year exceeds RMB 5.5 billion (or its equivalent in foreign currency).

Article 8 — The CbC Report shall include the following information for each tax jurisdiction in which the MNE group operates:

(1) Revenue, split between related party and unrelated party transactions;

(2) Profit or loss before income tax;

(3) Income tax paid on a cash basis;

(4) Income tax accrued for the current year;

(5) Stated capital;

(6) Accumulated earnings;

(7) Number of employees;

(8) Tangible assets other than cash and cash equivalents.

The report shall also identify each constituent entity, its tax jurisdiction of residence, and its main business activities.

Article 9 — The ultimate parent company shall file the CbC Report within 12 months following the end of the fiscal year. Where the ultimate parent is not resident in China, the CbC Report may be submitted through a surrogate parent entity or the designated constituent entity in China under the relevant exchange mechanism.

Chapter IV — Contemporaneous Transfer Pricing Documentation

Article 10 — Enterprises shall prepare contemporaneous transfer pricing documentation in accordance with this Announcement, consisting of a Master File, a Local File, and a Special Issue File (as applicable).

Article 11 — An enterprise shall prepare a Master File where:

(1) It is the ultimate parent company of a multinational enterprise group that has prepared a consolidated financial report for the year and its total annual related party transactions exceed RMB 1 billion; or

(2) It is designated by the MNE group as the entity to prepare the Master File in China.

Article 12 — The Master File shall mainly contain:

(1) An organizational structure chart showing the global organizational, legal and ownership structure of the MNE group;

(2) A description of the MNE group's business, including key profit drivers, supply chain arrangements, and geographic markets;

(3) A description of the MNE group's intangibles, including the group's global strategy for the development, ownership and exploitation of intangibles;

(4) A description of the MNE group's intercompany financial activities;

(5) The MNE group's consolidated financial statements and a description of its financial and tax positions.

Article 13 — An enterprise shall prepare a Local File where its annual related party transactions exceed any of the following thresholds:

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(1) Related party purchases and sales of tangible assets exceeding RMB 200 million;

(2) Related party transfers of financial assets exceeding RMB 100 million;

(3) Related party transfers of intangible assets exceeding RMB 100 million;

(4) Other related party transactions exceeding RMB 40 million in aggregate.

Article 14 — The Local File shall mainly contain:

(1) An overview of the enterprise, including its organizational structure, management structure, business description, and industry analysis;

(2) Related party transactions, including a detailed description of each type of transaction, the parties involved, and quantitative data;

(3) Functional and risk analysis, describing the functions performed, assets used and risks assumed by the enterprise and its related parties;

(4) Comparability analysis, including the selection of tested party, transfer pricing method, and comparable data;

(5) Analysis of the enterprise's operating results and demonstration that the pricing of related party transactions complies with the arm's length principle.

Article 15 — A Special Issue File shall be prepared where an enterprise enters into a cost sharing agreement or is subject to thin capitalization rules requiring special documentation.

Article 16 — The Master File shall be completed within 12 months after the end of the fiscal year of the ultimate parent company. The Local File and Special Issue File shall be completed within six months after the end of the enterprise's tax year.

Article 17 — Contemporaneous documentation shall be provided to the tax authority within 30 days upon request. Where English-language documents are used, a Chinese translation shall be provided for key sections upon request.

Article 18 — An enterprise that fails to prepare or submit contemporaneous documentation as required shall be subject to a penalty of up to RMB 50,000 as prescribed by the Tax Collection Law, and the tax authority may investigate and make transfer pricing adjustments using estimation methods.

Chapter V — Special Issue Files and Master Files

Article 19 — Where an enterprise enters into a cost sharing agreement with related parties, it shall prepare a Special Issue File on the cost sharing agreement containing a description of the agreement, the expected benefits, the cost allocation methodology, and a comparability analysis.

Article 20 — Where an enterprise is subject to the thin capitalization rules due to related party debt financing exceeding the prescribed debt-to-equity ratio, it shall prepare a Special Issue File including an analysis of the group's financing structure, the commercial rationale for the debt financing, and an arm's length analysis of the financing terms.

Article 21 — The tax authority may require the adoption, supplementation or correction of the contemporaneous documentation where it considers the documentation to be incomplete, inconsistent, or insufficient to demonstrate compliance with the arm's length principle.

Chapter VI — Supplementary Provisions

Article 22 — Enterprises shall retain contemporaneous documentation for ten years from the date on which the documentation is prepared, commencing from June 1 of the year following the tax year to which the

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documentation relates.

Article 23 — The tax authority shall implement a classified management approach to contemporaneous documentation, incorporating the quality and timeliness of documentation into the enterprise tax credit rating system.

Article 24 — This Announcement shall be effective as of July 1, 2016. The provisions on related party reporting in Chapter II and the provisions on contemporaneous documentation in Chapter III of the Administrative Measures on Special Tax Adjustments (Trial) (Guo Shui Fa [2009] No. 2) shall be replaced by this Announcement.

Article 25 — The State Administration of Taxation shall be responsible for the interpretation of this Announcement.

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