Executive summary

On 10 July 2017, the Organisation for Economic Co-operation and Development (OECD) released the 2017 edition of the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (OECD TPG) in English and French. The 2017 edition of the OECD TPG (2017 edition) mainly reflects a consolidation of the changes resulting from the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project, but it also contains the revised guidance on safe harbors and a number of other consistency changes to produce this consolidated version of the OECD TPG.

Detailed discussion

Background

The OECD TPG provide guidance on the application of the “arm's length principle,” which represents the international consensus on the valuation, for income tax purposes, of cross-border transactions between associated enterprises. The OECD TPG were first published in their original version by the OECD in 1995, as a revision of the *OECD Report Transfer Pricing and Multinational Enterprises* that was published in 1979. The OECD TPG have periodically been updated since their first publication, and were last updated and published in book format in 2010.
Since the last update, the OECD has been carrying out work on a number of chapters of the OECD TPG. In May 2013, the revised wording of Chapter IV, Section E on safe harbors was approved. The revised guidance on safe harbors provides opportunities for countries to relieve some compliance burdens and to provide greater certainty for cases involving smaller taxpayers or less complex transactions.

In October 2015, the OECD published the Final Reports on the BEPS Action Plan, including the Final Reports on Actions 8-10 and 13. These reports recommended a number of amendments to Chapters I (the Arm’s Length Principle), II (Transfer Pricing Methods), V (Documentation), VI (Special Considerations for Intangibles), VII (Special Considerations for Intra-Group Services) and VIII (Cost Contribution Arrangements) of the OECD TPG. The amendments were formally adopted by the OECD Council on 23 May 2016, along with a Recommendation on BEPS Measures Related to Transfer Pricing, recommending that both the OECD member countries and non-member countries follow the guidance set out in the Actions 8-10 Report and the Action 13 Report.

2017 OECD TPG

On 10 July 2017, the OECD released the 2017 edition of the OECD TPG. This new version of the TPG consolidates the agreed changes to section on safe harbors and the various BEPS recommendations. As a result, the 2017 edition includes new guidance on applying the arm’s length principle (revisions to section D of chapter I of the OECD TPG); comparability factors in transfer pricing, including location savings, assembled workforce, and multinational enterprises (MNEs) group synergies (additions to chapter I); transfer pricing for commodity transactions (additions to chapter II); low-value adding intragroup services (revisions to chapter VII); new versions of chapter VI, addressing intangibles, chapter VIII, covering cost contribution arrangements, and chapter V on transfer pricing documentation.

Moreover, the 2017 edition includes the conforming changes to Chapter IX, transfer pricing aspects of business restructurings, addressing inconsistencies with the parts of the OECD TPG that have been revised as a result of the BEPS project, and which were approved by the OECD Council in April 2017, and a number of other consistency changes, that were approved by the OECD's Committee on Fiscal Affairs (CFA) on 19 May 2017.

The 2017 edition also includes the revised Recommendation of the OECD Council on the Determination of Transfer Pricing between Associated Enterprises (the revised Recommendation). The revised Recommendation, similar to the 2016 Recommendation, refers to the fact that all the countries participating in the BEPS project committed to follow the guidance of Actions 8-10 and Action 13. In the revised Recommendation, reference is made to the establishment of the Inclusive Framework on BEPS. All the members of the Inclusive Framework participate on equal footing in the CFA and the technical working groups, including the working group on the OECD TPG. The revised Recommendation strengthens the relevance of the OECD TPG beyond the OECD by inviting non-OECD members to adhere to the revised Recommendation. Finally, it includes a delegation by the OECD Council to the CFA of the authority to approve by consensus future amendments to the Guidelines which are essentially of a technical nature.

Implications

The release of the 2017 edition consolidates the changes to the OECD TPG that have been adopted since the last update in 2010. Individual countries take different approaches with respect to whether and how they incorporate the OECD TPG into their domestic tax systems. For example, in some countries, the domestic rules explicitly refer to the approved OECD TPG, while in other countries it requires some form of administrative or other action to incorporate a new version of the TPG into the domestic law. Most of the changes in the 2017 update had been approved by the OECD before. Changes that were approved by the OECD Council and the CFA in 2017 relate to the conforming changes in Chapter IX and the consistency changes.

MNEs should understand and analyze the implications of this development for each jurisdiction in which they operate. For example, MNEs should review the amendments to the OECD TPG with respect to their global operations and their current transfer pricing policies and approaches. There will likely be increased scrutiny by tax authorities from OECD member countries and non-OECD member countries applying the concepts of the amendments to cross-border intercompany transactions.

Further guidance and work in this area is being carried by the OECD and should be monitored. For example, on Hard-To-Value-Intangibles, transactional profit split, as well as financial transactions. A first discussion draft on the latter is expected to be released later this year.
Endnotes


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