

2016 Korea CFO Association Annual Conference

“BEPS Challenges to Multinational Companies and Planning Strategies”

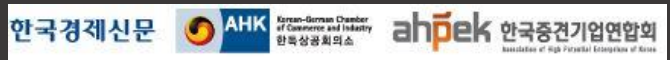
February 17 (Wednesday) ~ 18 (Thursday), 2016

# Seoul CFO Conference

Organizer:



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# Seoul CFO Conference

On 17 and 18 February 2016, Korea CFO Association and WTS have organized a two-day conference on the OECD BEPS project, country updates on BEPS related legislation, and planning strategies for multinational companies. Six representatives from WTS spoke in the conference on local BEPS engagement status, global alliance network including:

- Korea
- China
- Australia
- India
- Hong Kong
- Singapore

OECD's BEPS (Base Erosion and Profit Shifting) project received a final approval by G20 leaders at G20 Summit in Turkey on November 16, 2015. G20 nations have already legislated local tax laws or are in the process of the active tax reform reflecting the BEPS project's 15 Action Plan deliverable. The Korean government has recently confirmed the tax reform proposal of the Law for Coordination of International Tax Affairs (LCITA) announced in August 2015, which is to reinforce the multinational companies' information reporting requirements on their international transactions. As a follow-up measure, the Korean government has also released the reform proposal on the Presidential Enforcement Decree of the LCITA, which includes detailed requirements of applicable taxpayers to submit additional information. Thus, the international tax environment is changing rapidly around the globe.

Tax officials from the Ministry of Strategy and Finance's International Tax Division and National Tax Service's International Tax Resource Management Division also participated in the conference presenting the Korean government's perspective of the post-BEPS tax administration and recently amended LCITA's practical application.

**Note:**

A summary of each country speaker's presentation is provided overleaf. A copy of presentation slides can also be available by contacting the representatives listed on the last page.

# Participant Profiles



# Key Speakers

**Shin-Jong Kang**  
Tax Partner, WTS Korea  
(Yoon & Yang, LLC)

Mr. Kang has over 24 years of experience providing tax advisory services to major foreign and Korean multinational companies and financial services companies, focusing on corporate tax, transfer pricing, tax planning for cross-border transactions, M&A, tax audits, and disputes as well as the competent authority procedures and APA. Prior to joining Yoon & Yang, he founded the first transfer pricing team of Samil PwC and financial services transfer pricing team in Korea. He is the Korean Member of BIAC Committee on Tax and Fiscal Policy.

**Martin Ng**  
Managing Partner, WTS China

Mr. Ng has 26 years of China tax and customs advisory services. He is specialized in China-related inbound / outbound tax planning and group restructuring as well as business model and supply chain consultancy.

**Connie Lee**  
Head of Tax, WTS Hong Kong

Ms. Lee has 16 years of tax and business advisory experiences in Hong Kong. She has extensive experiences in providing tax restructuring, cross-border advisory, tax efficiency planning and tax dispute resolution.

**Sharon Arasu-Koh**  
Director, WTS Australia

Ms. Arasu-Koh has over 12 years of experiences advising in the areas of Corporate and International Tax and Transfer Pricing with significant experience in assisting clients with structuring offshore operations, setting up in Australia and planning for business succession. She enjoys taking complex tax concepts and turning them into practical, relevant and commercially focused solutions.

**Sudhir Nayak**  
Partner, WTS India  
(Dhruva Advisors LLP)

Mr. Nayak has over 20 years' experience in International Taxation, Transfer Pricing and Indian Exchange Control Regulations. Has extensive experience in tax audits / assessments at all levels across India. He regularly contributes articles in weekly magazines and professional journals. He is a frequent speaker in events organized by trade bodies or professional association.

**Sanjay Iyer**  
Director, WTS  
Singapore (Iyer Practice)

Mr. Iyer leads the firm's Tax practice and focuses on advising clients on international tax matters. The international tax services that he provides include but are not limited to international holding structures, advice on cross-border transactions, designing transfer pricing strategies, advice on appropriate documentation, and queries from the tax authorities.

### 1. New Release of FY2014 MAP Statistics

- On 23 November 2015, OECD released its annual statistical publication on the Mutual Agreement Procedure (MAP) caseloads of all OECD member countries and partner economies for the 2014 reporting period.
- At the end of 2014, there were 5,423 cases in ending inventory, a 19% increase over 2013 and a 131% increase compared to the 2006 reporting period. For Korea, 98 cases in ending MAP inventory, a 23% increase over 2013 and a 250% increase compared to 2006.
- The average time for the completion of MAP cases with other OECD member countries in 2014 was 23.79 months, a slight increase of the 2013 cycle time of 23.57 months.

### 2. Snapshot of Action 14. Dispute Resolution

- There is growing evidence that certain countries are increasingly making access to MAP difficult for taxpayers, such as asking taxpayers to waive their right to access MAP to settle audit issues.
- Many stakeholders have some concerns that Post-BEPS is likely to bring international tax world more uncertainty and controversy with a greater risk of double taxation.
- Final Report on Action Plan 14 is characterized by offering the taxpayer a more comprehensive and uniform application of the already existing rules in Article 25 of Model Tax Convention.
- Final report on Action Plan 14 is split into three parts; (1) Three Minimum Standard, (2) BEST practice, and (3) Monitoring Mechanism.

### 3. Overview of Three Minimum Standards

- Good Faith Implementation of Treaty Obligations related to the MAP
- Strengthening Administrative Process for Timely Dispute Resolution
- Ensuring Taxpayers who meet the requirement of Art. 25 (1) can access the MAP

### 4. Mandatory Binding Arbitration

- According to Article 25(5) in Model Tax Convention, arbitration procedure was introduced in 2008. This clause is applied upon taxpayer's request, NOT on mandatory basis.
- Need for consensus on mandatory binding arbitration as the best way to guarantee that treaty-related disputes are effectively and efficiently resolved through MAP.
- NOT full in agreement BUT 20 countries have committed to the inclusion of such provisions in their bilateral tax treaties.
- OECD notes that this is a significant achievement, given that these countries represent over 90% of outstanding MAP cases.
- Emerging countries such as Brazil, China and India did not commit to the mandatory binding arbitration as they consider that it undermines sovereignty and limit the ability to apply domestic law.
- Korea has its stance to monitor its implementation of other countries and will determine whether legislative action is necessary or not.
- Mandatory arbitration provision to be developed as part of multilateral instrument envisaged by Action 15.



## 5. Peer Monitoring Mechanism

- The BEPS final report on Action 14 recognizes that the implementation of minimum standard will need a peer-based monitoring mechanism to ensure that the minimum standard is indeed effectively satisfied. The peer-based monitoring mechanism will only relate to the minimum standard. Best Practices are NOT subject to the monitoring mechanism.
- Two documents – “Terms of Reference / Assessment Methodology” – will comprise the core documents for the peer monitoring process. Terms of Reference will include ROADMAP to ensure that assessment across all countries will be consistently applied while Assessment Methodology will establish procedure for peer monitoring by FTA MAP Forum and include a systematic process for assessing the implementation of minimum standard.
- It is expected that these core documents will be developed jointly by Working Party No.1 and FTA MAP Forum by the end of 1st Quarter in 2016.

## 6. Recent Development related to Transparency

- **EU Transparency Directive:** Starting in 2017, the European Union’s Transparency Directive will compel member states to exchange information on all rulings, including APAs, back to 2010. This increased transparency will affect not only EU resident companies but also all companies worldwide that do business within the EU.
- **MCAA for Automatic Exchange of CbC Report:** Data in CbC Report could increase controversy as tax authorities gain much broader views on companies’ global tax position so that tax authority can ensure equivalent part of organization are attributed equivalent profits in each jurisdiction.

## 7. Managing Controversy under Post-BEPS

- Companies can prepare to manage the implications of CbC reporting by conducting a readiness check and risk assessment for each of the three levels of disclosure and by determining your company’s documentation strategy and approach for CbC reporting.
- In summary, efficient ways of avoiding transfer pricing disputes and influencing the outcomes of any disputes that arise are:
  - Objectively assess dealings at time they are entered into and evaluate any perceived tax risks
  - Track information available in each jurisdiction – know what might be shared between revenue authorities
  - Assess relationships with revenue authorities – proactively engage and identify points of influence
  - Review internal resourcing with an eye to ensure adequate resources to manage global tax controversy in-house
- Steps to consider at minimum include:
  - Identifying potential areas of transfer pricing risk based on information that will be disclosed in country-by-country reports
  - Evaluating the risk of ‘hot spots’ in particular jurisdictions or in respect of particular transactions, taking account of the extent to which documentation supports the alignment of profits with value creation and the procedural options available to engage with local tax administrations
  - Develop a strategic plan which prioritizes the risks you should address first as well as addressing the global position over time.
- It will be better and safer to tackle controversy in advance through formal engagement (e.g. APA with MAP collaborative measures), rather than during a tax audit after filing.



### **1. Change of tax authority's administration approach**

Significant pre-approval items have been removed by the Chinese government, and more non-administrative approval items are expected to be abolished. There will be strengthened monitoring on taxpayers post-approval period.

### **2. Localized BEPS actions in China**

China tax authority have been participated in OECD's BEPS project actively and has issued a few circulars which recommendations suggested in BEPS action plans were adopted. In late 2014, the General Anti-Avoidance Rules was issued as the last resort for anti-avoidance activities. At the same time, the Chinese tax authority conducted a national tax audit on the substantial outbound payments made by domestic entities to overseas related parties. In 2015, a further circular on regulating deductibility of outbound service and royalty payment to overseas related parties was issued by the tax authority to strike the anti-avoidance by multi-national entities. In addition, in the latest tax treaty signed between China and Chile, an anti-treaty abuse clause was added. Amongst the circulars issued in late 2014 and 2015, the most significant BEPS localization action made by the tax authority was the discussion draft of Circular 2 (regarded as the China TP regulation). The key changes include expanded related party transaction scope, new TP documentation requirements, more complicated TP methodologies, enlarged TP audit scope, meticulous assessments for intangible assets, and incorporation of profit level monitoring. Taxpayers will bear more burdens of information disclosure as they will be required to submit TP master file and the Country by country report when necessary.

### **3. Practical challenges on APA after BEPS**

The annual advanced pricing arrangement (APA) report for 2014 was published recently by the Chinese tax authority. Fourteen APAs were concluded in 2014 and the most popular TP method used is Transaction Net Margin Method (TNMM). The Chinese tax authority will give priority to those APA applications with innovative TP methods, quality analysis, and effective savings in compliance costs.

### **4. China-Korea trade treaty and TP consideration**

The China-Korea Free Trade Agreement has been effective on 20 December 2015. The first tier tariff reduction and elimination took effect on 20 December 2015, the second-tier tariff reduction and elimination took effect on 1 January 2016. The reduced tariff may be subject to the adjustment of the transfer price by multi-national entities. The potential TP adjustment shall be properly designed to avoid the conflicts between the Customs and tax authorities.

### **5. Actions for taxpayers in China**

Taxpayers shall review their related party transactions carefully and make proper documentation for the possible challenges from the tax authority. In addition, sufficient communication with the tax authority are suggested for taxpayers when determining important transfer pricing arrangements.



## **1. Evolving International Tax Landscape in Hong Kong**

Hong Kong has been practicing a low and simple territorial-based tax regime. To fulfil the international obligation in enhancing tax transparency and avoid being labelled as uncooperative, Hong Kong has been very proactive in entering into double tax agreements (DTAs) and tax information exchange agreements (TIEAs) with its trading and investment partners. At present, Hong Kong is undertaking the exchange of information under DTAs or TIEAs with its treaty partners on a limited 'on request' basis.

## **2. Implementation of AEOI in Hong Kong**

The OECD released in July 2014 the Standard for Automatic Exchange in Financial Account Information in Tax Matters (AEOI). Under the AEOI, it calls on governments in all jurisdictions to obtain relevant financial account information from their financial institutions and exchange the information automatically with jurisdictions of residence of account holders on an annual basis. AEOI as a more efficient mode of international tax cooperation, designed to enhance tax transparency and combat cross-border tax evasion. So far, there are over 90 jurisdictions have committed to implementing AEOI standard. As a responsible member of the international community, Hong Kong has indicated its commitment to implement AEOI on a reciprocal basis and commence the first automatic exchanges by the end of 2018. The conference has addressed the benefits of AEOI for developing countries, the requirements for implementation of AEOI, and the latest implementation status of AEOI in Hong Kong.

## **3. Hong Kong's response to BEPS Project**

In response to the OECD's BEPS project, we see that there is no immediate call for the changes in Hong Kong tax legislations. However, with the increasing pressures inserted by the treaty partners of Hong Kong, the Hong Kong tax authority has tightening some of its tax administration and practices, in particular on the following areas:

- A. More stringent approach in assessment the application for Certificate of Resident status;
- B. More challenges in assessing the offshore claim in Hong Kong;
- C. Aligning transfer pricing outcome with value creation in reviewing offshore royalty income;
- D. Challenges on transfer pricing arrangement; etc.

The Hong Kong tax authority has indicated that when more concrete details and recommendations were made available by the OECD, the Government would need to review the current domestic tax regime. The immediate challenges to Hong Kong may include areas on (i) the incorporation of BEPS Actions 6 and 7 into Hong Kong tax treaties; (ii) reviewing the need of exchange Country-by-Country reports with other jurisdictions and (iii) participation in multilateral agreement for AEOI.





Australia has been on the front foot in dealing with cross-border transactions, having one of the most comprehensive international tax/foreign accruals regimes, and was the second country to adopt transfer pricing documentation and compliance since the early 1990s. It was heavily involved with G20/OECD BEPS project.

My presentation outlines Australia's response to the OECD's Final Reports, including a brief summary of actions arising from (or occurring in respect of) each of the key actions. It considers in detail the new Multinational Anti-Avoidance Law, which has been designed to counter the erosion of the Australian tax base by multinationals using artificial and contrived arrangements to avoid the attribution of profits to a permanent establishment in Australia. It also discusses the new Country-by-Country Reporting regime and provides an update on current and proposed information sharing activities designed to improved transparency around income taxes paid by multinationals both in Australia and globally.

It goes on to discuss the Chevron case (a recent transfer pricing case and significant win for the Australian Taxation Office) and the revised APA program. The presentation also touches on the need for and challenge of managing perception in light of increasing tax transparency and 'tax shaming' by the media and politicians.

Finally, in light of BEPS Action 7 and the artificial avoidance of permanent establishments (PE), the presentation touches on the difference between PEs and commissionaire arrangements, what changes have been proposed by the OECD in respect of widening the treaty definition of a PE to effectively capture such arrangements and what multinational companies should be doing To prepare for the adoption of the revised PE definition.



## 1. BEPS – An Indian perspective

We have enlisted few pointers on how the BEPS project can have an impact from an Indian perspective.

## 2. Indian transfer pricing landscape

We have given an overview of the Indian transfer pricing landscape with special focus on TP assessments in India and Advance Pricing Agreements (APA). More specifically, the following areas are covered in our presentation:

- Concept of international transaction
- Concept of deemed international transaction
- Specified Domestic Transactions
- Transfer pricing assessments in India
- Safe harbour rules
- Advance Pricing Agreements (APA)
- Impact of BEPS on future of APAs

## 3. Trends in transfer pricing and recent controversies

We have given a snapshot of typical transfer pricing issues faced by MNCs in India. More specifically, the following areas of TP disputes are covered:

- Marketing intangibles
- Corporate guarantee
- Intra-group services
- Interest on overdue receivables
- Issues for IT/ ITeS sectors and other issues

## 4. Recent measures taken by the Government to reduce litigation

We have enlisted the recent measures which the Government has taken in order to reduce tax litigation in India.

## 5. Relaxation of foreign investment norms

We have talked about the recent liberalisation in foreign investment norms with a special focus on use of Limited Liability Partnerships (LLPs) as an alternate entity structure for undertaking business in India.



## **Singapore tax background/updates**

Singapore has a partial-territorial taxation system with a headline 17% corporate tax rate. In addition, Singapore imposes withholding taxes on payments to non-residents for certain types of payments (e.g. interest, royalties, service fees). Singapore has a large tax treaty network (70 + signed so far) and offers tax incentives targeted at specific industries such as the financial and maritime sectors and at specific business activities such as global trading, regional headquarters, intellectual property acquisition/exploitation, mergers & acquisitions etc.

There were no major changes to the tax landscape during 2015, except for slight modifications/extensions of certain tax incentives and increases in personal income tax rates. The most significant development was the release of detailed Transfer Pricing (“TP”) Guidelines, by the Singapore tax authorities on 6 January 2015 (with a subsequent update on 4 January 2016). These guidelines are consistent with the OECD Guidelines and contain recommendations for TP documentation in line with the group file/local file approach proposed by BEPS Action Plan 13. It must be noted that relatively low transaction value thresholds have been prescribed for TP documentation.

There has been increased scrutiny from the Singapore tax authorities with regards to the taxpayers applying for the Certificates of Residence (in order to obtain treaty benefits) and transfer pricing arrangements with related parties.

## **BEPS and Singapore**

Singapore, though not an OECD member officially supports BEPS initiatives while at the same time remaining committed to maintaining its investment friendly and tax competitive status. Most of Singapore’s tax incentives explicitly link the granting of benefits to actual substance/people functions and do not feature in the OECD’s scrutiny list for harmful tax regimes under BEPS Action 5.



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