**AOTCA BEPS REPORT SUMMARY.**

**Action 1: Addressing the Tax Challenges of the Digital Economy**

**Malaysia**

* The reverse charge applies for B2B and no imposition on B2C.
* Income tax only on the basis of business carried on in Malaysia.
* Unlikely to change.

**Hong Kong**

* No VAT/GST.
* Income tax on the basis of business carried on in Hong Kong.
* Not likely to change.

**Australia**

* Adopting OECD position from 1 July 2017 applicable to all intangibles including digital services.
* No threshold for intangibles. For non-intangibles it is proposed that foreign suppliers with Australian turnover of AUD75,000 or more will be required to register and pay GST.
* Income tax is based on a PE.

**China**

* VAT is limited to the supply of software not digital supplies.
* Income tax is based on a PE.

**Taiwan**

* Digital supplies subject to VAT with a threshold of USD90.00 per sale. This may be reduced.
* For income tax withholding tax of 20% is imposed.

**Singapore**

* No GST on digital supplies (a reverse charge for B2B supplies is to be introduced).
* Income tax only on the basis of business carried on in Singapore.

**Japan**

* Consumption Tax is imposed on foreign digital B2C supplies.
* Threshold is JPY10 million. Reverse charge on B2B supplies.
* Income tax is based on PE.

**General Regional Observations**

* Australia, Japan and Taiwan only impose VAT/GST on foreign digital supplies consistent with the OECD recommendation.
* There is no overall move towards extending consumption taxes to capture digital supplies.
* Income tax is limited to the conduct of a business or PE in all jurisdictions.

**Action 2: Neutralize the Effects of Hybrid Mismatches**

**Malaysia**

* As domestic income only is taxed limited opportunities to exploit mismatches.
* Wait-and-see on OECD recommendations.

**Hong Kong**

* Exemption of dividend income and deductibility of interest may be exploitable.
* Domestic changes to the deductibility of income restrict the potential advantage.
* Unlikely to introduce OECD recommendations.

**Australia**

* A Board of Taxation Report provides guidance on how to introduce anti-hybrid rules consistent with the OECD recommendations.
* Government has not indicated what approach it will take or when.

**China**

* Constraints on foreign investment makes the use of hybrid instruments relatively limited.

**Taiwan**

* There are no obvious mismatch opportunities.
* No current proposal to introduce rules. The 'substance over form' approach of the legislation is likely to combat exploitation.

**Singapore**

* It is not clear that there has been exploitation of mismatches.
* The GAAR would be likely to combat mismatches.

**Japan**

* Near exemption of foreign dividends may be exploited by mismatches.
* No immediate intention to introduce anti-mismatch rules.

**General Regional Observations**

* Mismatches do not appear to be of wide concern in the region.
* Only Australia may go ahead with anti-hybrid rules but even that is not certain.

**Action 3: Strengthening CFC rules**

**Malaysia**

* No CFC rules and no indication that they will be introduced.

**Hong Kong**

* No CFC rules and not likely to be introduced.

**Australia**

* CFC rules are consistent with OECD standards.

**China**

* CFC rules introduced in 2008 and are in the process of being upgraded.

**Taiwan**

* Proposed to be introduced in 2013 but still in the legislative process.

**Singapore**

* No CFC rules and no apparent intention to introduce them.

**Japan**

* CFC rules are regarded as adequate.

**General regional observations.**

* As expected jurisdictions which impose tax only on domestic source income have no need for CFC rules.

**Action 4: Interest limitation rules**

**Malaysia**

* Intra-group interest charges (both domestic and international) are subject to thin capitalisation rules but which have been deferred in their application to January 2018.
* Fixed ratio rule has virtue of simplicity but difficult to compare with existing legislation as it has not yet been implemented.
* A group ratio rule may prevent leakage of revenue when debt is incurred for non-tax reasons.
* Problems in implementing fixed ratio or group ratio rules include ease of access to relevant financial information on a timely basis.

**Hong Kong**

* Existing rules limit tax deductions where borrowing from an entity other than a financial institution unless the interest is taxable in Hong Kong.
* Anti-avoidance rules apply to back-to-back loans.
* Fixed ratio rule does not fit into the existing limitation rules which require tax to be paid on the interest. Also regarded as inappropriate for highly leveraged entities for non-tax reasons (e.g. airlines).
* A group ratio rule is seen to be an amelioration of the fixed ratio rule.
* Access to relevant financial information on a timely basis is likely to be a problem for the group ratio rule.

**Australia**

* Thin capitalisation rules operate to limit interest deductions on international funding.
* There is a significant difference between the current ‘safe harbour’ approach and the fixed ratio approach and it is unlikely to change.
* Group ratio rules are unlikely to be introduced.

**China**

* Thin capitalisation provisions limit interest deductions for related party financing.
* Compliance with and administration of a fixed ratio rule would be more complicated than the existing provisions.
* The OECD recommendations would extend to third party debt which is not currently the case.

**Taiwan**

* Thin capitalisation rules have operated since 2015 for both domestic and foreign related party funding.
* A fixed ratio rule would facilitate tax audits.
* A group ratio may be more reasonable than the fixed ratio rule but more complicated to apply.

**Singapore**

* Interest is only deductible to the extent it funds domestic sourced income or assets to produce such income.
* A fixed ratio rule would be less ambiguous and simpler to apply.
* A group ratio rule would be appropriate as a back up to a fixed ratio rule. It would be more complicated to administer.
* Interest deduction limitations should not unjustly penalise MNCs that manage their global operations from Singapore.
* A de minimis level should be consistently applied across all countries.

**Japan**

* Thin capitalisation rules apply together with anti-avoidance rules which limit interest deductions disproportionate to income (this is a form of fixed ratio rule).
* A fixed ratio rule provides certainty for taxpayers.
* A group ratio rule is more complicated to administer.
* There is currently a de minimis provision exempting net interest payments of up to 10 million JPY to related parties.

**General Regional Observations**

* Thin capitalisation rules with ‘safe harbour’ features are found in those countries which tax world-wide income.
* Those countries which tax domestic income only have rules which limit interest deductions to the production of domestic income.
* Fixed ratio rules are regarded as simpler to implement and to provide greater certainty for taxpayers than group ratio rules.
* The difficulty of obtaining relevant and timely financial information is seen as an impediment to implementing group ratio rules.

**Action 5: Countering harmful tax practices**

**Malaysia**

* The application of a substantial activities requirement and spontaneous exchange of information may have relevance to Labuan transactions.
* Confidentiality requirements would need to be addressed apart from current EIAs in existing DTAs.
* No current suggestion that the OECD recommendations will be introduced.

**Hong Kong**

* No harmful preferential tax regimes.
* Current policy is not to provide spontaneous exchange of information. This may change if it becomes an international standard.
* Recently introduced bill for a reduced corporate tax rate for corporate treasury centres requires substantial activities in Hong Kong.

**Australia**

* No harmful preferential tax regimes.

**China**

* No harmful preferential tax regimes.
* The No. 5 Action Plan requires taxation results to be matched with the economic substance and substantial activities.

**Taiwan**

[INSERT]

**Singapore**

* Singapore is reviewing its tax incentives in the context of this Action item.
* The tax incentives require substantial activity to be carried out in Singapore.
* Committed to introducing automatic exchange of information from 2018.

**Japan**

* Tax sparing credits may satisfy the definition of harmful tax practices and the Government is committed to reducing their effect.
* The substantial activities regime would curtail the effect of tax preferences.
* Automatic exchange of information systems are already in place in bilateral treaties.

**General Regional Observations**

* There is a general perspective that the regions tax systems do not contain harmful preferential tax regimes.
* Overall there is a move towards introducing a substantial activities requirement.
* A few countries only (Japan and Singapore) have or are committed to spontaneous exchange of information.

**Action 6: Granting treaty benefits in inappropriate circumstances**

**Malaysia**

* No specific antitreaty shopping provision and the general anti-avoidance provision may apply.
* There is a PPT requirement in a limited number of treaties but limited to interest.

**Hong Kong**

* The general anti-avoidance provision would apply to treaty abuse.
* Some current treaties contain measures similar to PPT. Other treaties contain measures targeted at conduits or back-to-back arrangements.
* PPT is subjective and may create uncertainty for taxpayers. LOB is complicated.

**Australia**

* The general anti-avoidance provision may combat treaty abuse.
* Anti-abuse provisions will be subject to negotiation in new treaties.
* A PPT may work in Australia.

**China**

* The general anti-avoidance provision may apply. There is also a beneficial ownership requirement.
* Some recently updated treaties have anti-abuse provisions. The UK treaty has a PPT.
* LOB is regarded as complicated.

**Taiwan**

[INSERT]

**Singapore**

* The general anti-avoidance provision may apply.
* Some recent treaties include a requirement similar to a PPT.

**Japan**

* Japanese treaties contain both PPT and LOB requirements.

**Action 7: Prevent the artificial avoidance of PE status**

**Malaysia**

* Commissionaire arrangements are not common. There is no domestic or treaty provisions to address such arrangements.
* Currently there is an exemption for preliminary or auxiliary activities.
* Artificial fragmentation of contracts is a concern.

**Hong Kong**

* Commissionaire arrangements are not common. There are no domestic or treaty provisions to address such arrangements.
* Hong Kong taxes only profits sourced domestically and has an ‘operations test’ to determine source. Preparatory and auxiliary activities are not relevant to determining where the operations are carried out.
* A preparatory or auxiliary activities exemption could be contrary to the present testing requirement.
* Fragmentation of contracts is not common.

**Australia**

* Commissionaire arrangements are not common in Australia.
* The newly introduced multi-national anti-avoidance provision (“MAAL”) may combat such arrangements.
* There is a specific exemption for preparatory or auxiliary activities. It is not clear how large a problem is presented by the exemption.
* Not clear whether fragmentation of contracts is a material concern.
* There will be issues arising when treaties are being negotiated with reconciling the treaty provisions with the MAAL.

**China**

* Commissionaire arrangements are not common. Dependent agent arrangements are more frequently used.
* The OECD treaty provisions are widely adopted in China’s treaty network.
* There is an exemption for preparatory or auxiliary activities.
* There are some companies taking advantage of fragmentation of contracts and which may be resolved by adopting the OECD recommendation.

**Taiwan**

[INSERT]

**Singapore**

* Commissionaire arrangements are not common. Agency arrangements are more common.
* A commissionaire arrangement is likely to be treated as a principal carrying on business through a dependent agent/
* The issue in Singapore is whether the income is sourced there rather than the existence of PE.
* Treaties contain an exemption for preparatory or auxiliary activity (following the OECD model).
* A representative office can undertake preparatory or auxiliary activities under the domestic law without being treated as carrying on a business but limited to 2 to 4 years.
* Fragmentation of contracts is not a major concern.
* The subjective nature of the tests recommended by the OECD is likely to create greater uncertainty for taxpayers.

**Japan**

* Commissionaire arrangements are common.
* There is exemption for preparatory or auxiliary activities in the domestic law and most treaties.
* Fragmentation of contracts is a concern in Japan and may be addressed by the OECD recommendation.

**General Regional Observations**

* Commissionaire arrangements are not seen to be common place or of great concern in most jurisdictions apart from Japan [the accuracy of the Japanese observation needs to be checked].
* Preparatory or auxiliary activities are exempt in almost all countries and do not appear to raise great concerns.
* Fragmentation of contracts is not a concern in all countries apart from Japan. The OECD recommendations would, if adopted, alleviate the problem.

**Actions 8, 9 and 10: Aligning Transfer Pricing Outcomes with Value Creation**

**Malaysia**

* Arm’s length principle enshrined in legislation supported by a Transfer Pricing Study based on OECD guidelines.
* Significant variations
* Non acceptance of foreign tested parties where information is either incorrect or unreliable.
* When finding a price point in a range of prices the median point is used instead of the interquartile range.
* The arm’s length principle is paramount but if the transaction has no commercial reality then a comparison with uncontrolled third parties will not carry much weight.
* The proposed changes to the guidelines are not expected to have an impact on current practice.

**Hong Kong**

* There is a general provision in the Inland Revenue Ordinance which allows tax to be levied on associated non-resident profits diverted from Hong Kong. However the Inland Revenue Department (IRD) tends to use other provisions to disallow expenses or the general anti –avoidance provisions in transfer pricing cases.
* The proposed changes to the guidelines are generally acceptable however there is too little emphasis on location savings. This is important where Hong Kong acts as an intermediary between two countries.
* The distinction between a cost sharing agreement in developing intellectual property and a royalty is not recognised by the IRD.
* More clarity is required on the profit split method.

**Australia**

* A substantial division in the 1997 Tax Act is devoted to transfer pricing.
* Amendments have been made to domestic legislation to enshrine OECD guidelines and ensure the domestic legislation is consistent with the model treaty.
* The proposed guidelines don’t prompt any changes to the current transfer pricing rules but provide enhanced guidance.

**China**

* Transfer pricing methodology enshrined in legislation since 2008.
* Uses OECD guidelines.
* Propose changes provide useful guidelines.
* The final report does not emphasise the location benefits.

**Taiwan**

* Transfer pricing rules enshrined in domestic legislation. Do not follow OECD guidelines with respect to transfer pricing studies.
* Only the comparable profits method used rather than the OECD preferred transaction net margin method.
* General concern that the acceptance of the new guidelines will erode Taiwan’s tax base.

**Singapore**

* Transfer pricing rules enshrined in legislation.
* Does not use OECD guidelines but proposed guidelines provide useful guidance.
* Transfer pricing guidelines revised in 2015.
* True profit contribution and alignment with risk will be integrated into transfer pricing practice.
* Alignment of form over substance is not seen as a departure from the arm’s length principle.

**Japan**

* Transfer pricing rules enshrined in legislation.
* Uses OECD guidelines.
* Recommendations seen as useful guidance.
* Concern about adoption of guidelines unless the whole world does.

**General Regional Observations**

* All jurisdictions enshrine transfer pricing rules in domestic legislation.
* With Australia as the exception the prosed recommendations seen as only useful guidelines.
* Developing countries feel not enough emphasis on location advantages.
* Some departure from recommended OECD methodology in Singapore and Taiwan.

**Action 12: Mandatory Disclosure**

**Malaysia**

* No rules.
* Unlikely to be introduced.
* Concerns over compliance burden.

**Hong Kong**

* No rules.
* Unlikely to be introduced.
* Concerns over compliance burden.

**Australia**

* No rules.
* Large companies have to have a reportable tax position schedule attached to their annual tax return.
* The Common Standards have been adopted.

**China**

* No rules.
* Discussion draft on mandatory disclosure of special tax adjustments issued in 2015 – impact of the introduction as yet unknown.

**Taiwan**

* No rules.
* No intention to introduce.

**Singapore**

* No rules.
* If introduced (no intention to) more work for practitioners seen as a positive.

**Japan**

* No rules.
* No intention to introduce.

**General Regional Observations**

* There is no appetite to introduce these rules.

**Action 13: Country by Country Reporting**

**Malaysia**

* No domestic legislation but likely.
* Major difficulties expected in relation to the different accounting standards and the possibility of amendments to domestic law to comply.
* Concern over this action providing an impetus for multiple inter jurisdictional transfer pricing audits which may result in double tax.
* Timeline for introduction is appropriate.
* Turnover threshold should be complimented with a related party threshold.
* Clearly more burden on practitioners but concern in a developing country that transfer pricing documentation may centralise in head office.

**Hong Kong**

* No domestic legislation but likely.
* Suspected little impact as very few Multi National Enterprises (MNE’s) with headquarters in Hong Kong would have turnover exceeding the threshold.
* Hong Kong has very few treaties thus limiting the ability of the IRD to distribute data.
* Concern over possibility of multiple transfer pricing audits resulting in double taxation.
* Start date is inappropriate.
* Concern over difficulty with tax practitioners understanding the different accounting standards.

**Australia**

* Legislation in accordance with Action 13 introduced with a start date of 1st January 2016.
* Concern over the breadth of discretions given to the Australian Taxation Office (ATO).
* Difficulties with obtaining information if the head company is domiciled in a jurisdiction that is non-compliant.
* Timelines for lodgement follow OECD guidelines.
* Threshold different than OECD guideline, could result in inconsistency.

**China**

* Draft regulations have been produced.
* Concern over non-compliant head company and compliant subsidiary.
* Concern over multiple transfer pricing audits and potential double tax
* Concern over requirement for tax practitioners to possess comprehensive transfer pricing knowledge and documentation requirements.

**Singapore**

* No domestic legislation but likely.
* Problems with resourcing both at the tax practitioner level and the revenue level.
* Double tax an issue where more aggressive revenue authorities involved.
* Practitioners need to be cognisant with transfer pricing documentation and rules.

**Japan**

* Legislation has been introduced this year.
* Concerns over security of information.
* Double tax a problem.
* Tax practitioner’s knowledge issues.

**General Regional Observations**

* Two jurisdictions have introduced legislation Japan and Australia but others are likely to follow.
* Concern with compliant subsidiary and non-compliant head office in obtaining information.
* Double tax seen as real problem as reporting may lead to multiple transfer pricing audits.
* Knowledge levels of practitioners a concern.

**Action 14- Make Dispute Resolution Mechanisms More Effective**

**Malaysia**

* No mandatory arbitration.
* Tax is paid in both jurisdiction pending the outcome of the Mutual Agreement Procedure (MAP).
* No perceived difficulties with MAP process.
* No appetite for compulsory arbitration if BEPS minimum standard and best practices adopted.

**Hong Kong**

* Some treaties provide for a request for arbitration but not compulsory .MAP provisions in some treaties.
* No perceived difficulties with MAP process
* Tax paid in both jurisdictions during MAP process
* Concern with compulsory arbitrators from the West not understanding the issues in developing Asian countries.

**Australia**

* No mandatory arbitration provisions in treaties.
* No other comments.

**China**

* No mandatory arbitration provisions in treaties**.**
* MAP process let down by limited resources, difficult administration process ineffective exchange of information between competent authorities, lack of technical expertise.
* Tax paid in both jurisdiction pending outcome of MAP process.
* No appetite for compulsory arbitration.

**Singapore**

* No mandatory arbitration provisions in treaties.
* MAP not used very often seen as expensive and difficult to resource.
* Tax paid in both jurisdictions pending outcome of MAP process.
* Compulsory arbitration favoured but pessimistic about getting into treaties due to sovereignty issues.

**Japan**

* Mandatory arbitration clauses in 7 treaties.
* Difficulties with MAP lack of professional knowledge, conflicts with tax auditor and MAP personnel coming from same department.
* Problems with refund of additional taxes where tax paid twice pending outcome of MAP process.
* In favour of compulsory arbitration.

**General Regional Observations**

* No real appetite for compulsory arbitration.
* Where tax is paid twice need clear mechanism for refund.
* MAP process let down by poor competency.
* 24 months favoured as time frame for MAP process.

**Action 15: Development of a Multilateral Treaty**

**Malaysia**

* Unlikely to become a party to a multilateral instrument.
* Perceived difficulties with each jurisdiction having a different interpretation of a mulita lateral instrument.

**Hong Kong**

* Unlikely to become a party to a multilateral instrument.
* Concerns over confidentiality of exchanged information.

**China**

* May become a party to a multilateral instrument.
* Extensive levels of training at the practitioner and revenue level.
* Tax system will become more balanced and flexible under a multilateral system.
* The problem of double no tax would be solved.

**Australia**

* No comment.

**Singapore**

* Likely to become a party to a multilateral instrument.
* Reservations until document is drafted.
* The idea of using a multilateral instrument to swiftly implement the anti BEPS measures is appealing.
* Multilateral instruments should include and introduce a cost effective framework, involving the competent authorities for expeditious resolution of tax disputes which includes simplified MAP and APA procedures.
* Should be a transitional period for adoption to enable jurisdictions to adjust.

**Japan**

* Will become a party**.**
* Does not envisage difficulties.

**General Regional Observations**

* The idea has substantial merit in solving a number of BEPS issues and result in a more balanced system.
* The jury is out on whether Asian jurisdictions will become a party until a draft instrument is available.