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## RSM Tax Advisory (Hong Kong) Limited

羅申美稅務諮詢有限公司

Welcome to Tax Flash – RSM Tax Advisory (Hong Kong) Limited’s Newsletter Covering Technical Development in Taxation

### NEW TRANSFER PRICING CONTEMPORANEOUS DOCUMENTATION REQUIREMENTS IN CHINA

The China State Administration of Taxation (SAT) issued Public Notice [2016] No. 42 - “SAT Public Notice on the Enhancement of the Reporting of Related Party Transactions and Administration of Contemporaneous Documentation” 《国家税务总局关于完善关联申报和同期资料管理有关事项的公告》 (“PN-42”) on 29 June 2016. Echoing BEPS Action 13 Report<sup>1</sup> recommendations, PN-42 adopts a multi-tiered related party transactions reporting structure of which substantial changes have been introduced (e.g. Country-by-Country Report (国别报告), Master File (主体文档), Local File (本地文档) and Special Issues File (特殊事项文档)). “The PRC Annual Reporting Forms for Related Party Transaction (2016 version)” 《中华人民共和国企业年度关联业务往来报告表(2016年版)》 is also released.

PN-42 will be applied to fiscal years beginning from 1 January 2016<sup>2</sup>. Taxpayers should take immediate action to revisit their related party transactions and make preparation accordingly.

#### 1. SALIENT POINTS OF PN-42

Before the issuance of PN-42, Circular Guoshuifa [2008]114<sup>3</sup> and Circular Guoshuifa [2009]2<sup>4</sup> are the two major circulars governing the PRC disclosure and transfer pricing documentation requirements on related party transactions. According to the circulars, “The PRC Annual Related Party Transaction Report Forms” should be submitted together with the annual corporate income tax filing package to the in-charge tax bureau by 31 May following the tax year whilst transfer pricing contemporaneous documentation should be prepared and maintained by taxpayers if certain conditions are met.

<sup>1</sup> OECD/G20 Report “BEPS Action 13: Transfer Pricing Documentation and Country-by-Country Reporting” issued on 5 October 2015.

<sup>2</sup> Pursuant to Art. 27 of PN-42, Chapters 2, 3, Art. 74 and Art. 89 of Circular Guoshuifa [2009]2 will be repealed effective 1 January 2016.

<sup>3</sup> Circular Guoshuifa [2008] No. 114 - “SAT Public Notice on PRC Annual Reporting Forms on Related Party Transactions”, issued by the SAT on 25 December 2008.

<sup>4</sup> Circular Guoshuifa [2009] No. 2 - “Implementation Measures for Special Tax Adjustments (Trial Implementation)”, issued by the SAT on January 8, 2009.

To localise OECD’s BEPS Action Plan recommendations in China in respect of transfer pricing, the SAT released the public consultation draft on the “Implementation Measures for Special Tax Adjustments” on 17 September 2015. PN-42 was then issued on 29 June 2016 to enhance the reporting of related party transactions and administration of transfer pricing contemporaneous documentation.

Some of the significant provisions of PN-42 are summarized below:

Matters Covered	Major Issues	Remarks
Reporting of Related Party Transactions (Art.1)	<p>The following entities should report their related parties transactions in “The PRC Annual Reporting Forms on Related Party Transactions (2016 version)” and submit together with the annual corporate income tax filing package:</p> <ul style="list-style-type: none"> <li>• PRC resident enterprises whose taxes are assessed and levied based on accounting records; and</li> <li>• Non-resident enterprises with PRC establishments that file and pay PRC corporate income tax based on actual basis</li> </ul>	The number of forms has been increased from 9 to 22
Related Party Relationships (Art. 2 and 3)	<p>Related party relationship includes:</p> <ul style="list-style-type: none"> <li>• More than 25% shareholding relationship (direct or indirect) with another entity; or</li> <li>• There is commonality of shareholding (less than 25%) between two entities, and one of the following conditions apply: <ul style="list-style-type: none"> <li>- related party debt financing of more than 50% of the other party’s paid-in capital;</li> <li>- more than 10% of one party’s debt is guaranteed by the other party;</li> <li>- the business operations of one party depends on certain intellectual property provided by the other party; or</li> <li>- one party has effective control on the other party’s purchase/sales and/or services received or provided.</li> </ul> </li> <li>• Commonality of control or composition of Board of Directors or senior management between two parties;</li> <li>• Two parties have common interests in substance.</li> </ul>	<ul style="list-style-type: none"> <li>• Related party relationship includes natural persons with familial relationship (e.g. by blood, marriage, brothers or sisters, adoptive or step relationship etc.);</li> <li>• The shareholding of two parties (directly or indirectly) with familial relationship should be calculated on an aggregate basis.</li> </ul>
Related Party Transactions (Art. 4)	<p>Related party transactions principally include:</p> <ul style="list-style-type: none"> <li>• Transfers in ownership of tangible and intangible assets;</li> <li>• Transfers in right of use of tangible and intangible assets;</li> <li>• Financial asset transfer<sup>5</sup>;</li> <li>• Financing transactions; and</li> <li>• Service transactions</li> </ul>	

<sup>5</sup> Financial assets transfer is a new type of related party transaction specified in PN-42. Financial assets include accounts receivable, notes receivable, other receivables, equity investments, bond investments, and assets from derivative instruments, etc.

Matters Covered	Major Issues	Remarks
The reporting, exchange and submission of Country-by-country report (国别报告) (“CbCR”) (Art. 5 – 9)	<ul style="list-style-type: none"> <li>CbCR is incorporated in “The PRC Annual Reporting Forms on Related Party Transactions (2016 version)” 《中华人民共和国企业年度关联交易往来报告表(2016年版)》</li> </ul>	<ul style="list-style-type: none"> <li>Please refer to Section 2 below for details.</li> </ul>
Contemporaneous Transfer Pricing Documentation (Art. 10 – 26)	<ul style="list-style-type: none"> <li>Master File (主体文档), Local File (本地文档) and Special Issue File (特殊事项文档)</li> </ul>	<ul style="list-style-type: none"> <li>Please refer to Section 3 below for details.</li> </ul>

## 2. COUNTRY-BY-COUNTRY REPORT (国别报告) (“CbCR”)

CbCR is incorporated in “The PRC Annual Reporting Forms on Related Party Transactions (2016 version)” (G114010, G114011, G114020, G114021, G114030, G114031). Pursuant to Art. 5 of PN-42, CbCR should be prepared (in Chinese and English) and submitted by a PRC resident enterprise if:

- it is the group’s ultimate holding company<sup>6</sup> with consolidated revenues over RMB 5.5 billion in the previous fiscal year, or
- it has been designated by the group as the CbCR reporting entity.

For the group that should prepare CbCR in other tax jurisdictions, the PRC tax authorities may request the group’s PRC subsidiary to submit CbCR during a special tax investigation if:

- the group has not submitted CbCR to the tax authority of other jurisdiction; or
- the group has submitted CbCR to the tax authority of other jurisdiction, and:
  - no exchange of information mechanism has been established between China and that jurisdiction; or
  - although exchange of information mechanism has been established between China and that jurisdiction, the CbCR has not been exchanged with China.

CbCR<sup>7</sup> covers the following information of the group entities:

Matters Covered <sup>8</sup>	Form <sup>9</sup>
<b>Overview of allocation of income, taxes and business activities by jurisdictions</b> <ul style="list-style-type: none"> <li>Tax jurisdictions in which the entities operate</li> <li>Revenues from related and unrelated parties</li> <li>Profit (or loss) before income tax</li> <li>Income tax accrued and income tax paid</li> <li>Registered capital, tangible assets and number of employees</li> </ul>	G114010, G114011
<b>Details of the group entities</b> <ul style="list-style-type: none"> <li>Name of the entities</li> <li>Places where the entities are incorporated</li> <li>The business activities of the entities</li> </ul>	G114020, G114021

<sup>6</sup> Pursuant to Art. 5.1 of PN-42, ultimate holding company is an entity which (i) can consolidate the financial results of all entities under its umbrella; and (ii) its own financial result cannot be consolidated by another entity.

<sup>7</sup> Pursuant to Art. 6 of PN-42, if the information required to be reported by the ultimate Chinese holding company may affect national security, part or all of the CbCR can be exempted.

<sup>8</sup> No adjustment is required for the differences in accounting periods/accounting standards between the group entities.

<sup>9</sup> Form G114030 and G114031 is optional. Taxpayer may provide additional information (e.g. source of the data, nature of the business activities, factors that may affect the CbCR etc.) therein voluntarily.

Through CbCR, the tax authorities can obtain an overview of the group’s operations, the allocation of the group’s profit in each tax jurisdiction, as well as the functions performed and tax positions of each of the group entities in the value chain.

### 3. CONTEMPORANEOUS DOCUMENTATION

“Contemporaneous Documentation” under PN-42 includes Master File (主体文档), Local File (本地文档) and Special Issue File (特殊事项文档). Taxpayers are required to submit the documentation within 30 days upon being requested by tax authorities.

For companies which do not transact with overseas related parties (regardless of the percentage of foreign shareholding), they are exempted from preparing the contemporaneous documentation.

#### 3.1. Master File (主体文档)

Master File should be prepared if a company meets the following conditions (Art. 11 of PN-42):

- has conducted cross-border related party transactions during the year and its ultimate holding company has prepared Master File, or
- its annual total amount of related party transactions exceeds RMB 1 billion.

Master File covers the group’s global operation, including (i) organisational structure; (ii) business description; (iii) intangible assets; (iv) financing arrangement; and (v) financial and tax positions:

Matters Covered	Contents
Group’s Organizational Structure	<ul style="list-style-type: none"> <li>• The group’s global organization and shareholding structure; and</li> <li>• Geographical layout of all subsidiaries (including corporation, partnership, permanent establishment).</li> </ul>
Business Description	<ul style="list-style-type: none"> <li>• Business operation (including value-creation factors);</li> <li>• Information on major revenue contributors;</li> <li>• Information on intra-group services (qualification of the service provider, the relevant cost and the related transfer pricing policy);</li> <li>• Information on value contribution by entity (main function performed, risk undertaken and assets employed);</li> <li>• Information on business restructuring (including adjustment of business and industry structure, transfers of functions, risks or assets) in the reporting year; and</li> <li>• Information on legal restructurings (including debt restructuring, equity acquisition, asset acquisition, mergers and spin-off) in the reporting year.</li> </ul>
Intangible Assets	<ul style="list-style-type: none"> <li>• Global strategy, including function, risk, assets and employees of the principal research and development (R&amp;D) entities;</li> <li>• Information on the group’s important intangible assets and the related agreements (e.g. cost sharing agreement, R&amp;D agreement etc.);</li> <li>• Transfer pricing policy related to R&amp;D and intangible assets; and</li> <li>• Information on the transfer of ownership/user right of intangible assets during the year.</li> </ul>
Financing Arrangement	<ul style="list-style-type: none"> <li>• Information on the financing arrangement with related and unrelated parties;</li> <li>• Information on the group entities with centralized financing function; and</li> <li>• Transfer pricing policy for related party financing arrangement.</li> </ul>

Matters Covered	Contents
Financial and tax position	<ul style="list-style-type: none"> <li>• Latest annual group consolidated financial statement;</li> <li>• List and brief description of Advanced Pricing Agreements (预约定价安排)( APA) and cross border tax advanced ruling of profit distribution (if applicable); and</li> <li>• Information on the group entities filing CbCR.</li> </ul>

Master File should be completed within 12 months after the fiscal year end of the group's ultimate holding company.

### 3.2. Local File (本地文档)

The thresholds for preparing the Local File (Art. 13 of PN-42) are dependent on the types of related party transactions:

Related Party Transactions	Thresholds <sup>10</sup>
Transfers of Tangible Assets <sup>11</sup>	200 million
Transfers of Financial Assets	100 million
Transfers of Intangible Assets	100 million
Other transactions (e.g. services, interest on financing transactions etc.)	40 million (in total)

Local File includes information on (i) overview of the local entity; (ii) related party relationships; (iii) related party transactions; (iv) comparability analysis; and (v) selection and application of transfer pricing methods:

Matters Covered	Contents
(a) Overview of the Local Entity	<ul style="list-style-type: none"> <li>• Organizational structure</li> <li>• Management structure</li> <li>• Industry description</li> <li>• Business strategy and drivers of value creation</li> <li>• Segmental financial data (by business segment and product)</li> <li>• Information on business restructuring and transfer of intangibles.</li> </ul>
(b) Related Party relationships	<ul style="list-style-type: none"> <li>• Information on related parties (including those directly and indirectly hold shares in the company and those that transact with the company)*</li> <li>• The applicable tax rate, tax preferential treatment etc.</li> <li>• Information on change of related party relationship during the year</li> </ul>

<sup>10</sup> The amount of related party transactions covered by an APA should not be included when assessing the threshold.

<sup>11</sup> For processing/toll manufacturing, reference should be made to the customs declared value of imports and exports for the year.

Matters Covered	Contents
(c) Related Party Transactions	<p><u>Overview of related party transactions</u></p> <ul style="list-style-type: none"> <li>• Information on the transaction details, including the background of the parties involved, copies of agreements, the nature and terms of the transactions etc.</li> <li>• The information flow, logistic flow and cash flow of the related party transaction</li> <li>• Function and risk profile of the parties involved</li> <li>• Key factors to determine the transfer pricing (e.g. the effect of intangible assets, local specific advantages (LSA)* such as cost saving and market premium on pricing etc.)</li> <li>• Information on the revenue, cost and expense between related party transactions and unrelated party transactions</li> </ul>
	<p><u>Value chain analysis*</u></p> <ul style="list-style-type: none"> <li>• Business flow, logistic flow and cash flow of the group;</li> <li>• Financial statements of the entities in the value chain;</li> <li>• The calculation and allocation of local special factors on value contribution</li> <li>• The profit allocation policy within global value chain and the actual results</li> </ul>
	<p><u>Overseas Investment*</u></p> <ul style="list-style-type: none"> <li>• Information on the overseas investment (e.g. location, amount of investment, business and strategy);</li> <li>• Information on the project (e.g. holding structure, organization structure, senior management and the decision making authority etc.);</li> <li>• The project financial performance</li> </ul>
	<p><u>Related Party Equity Transfer*</u></p> <ul style="list-style-type: none"> <li>• Information on the equity transfer (e.g. background of the sellers and the buyers, the consideration, timing, payment method and other related items)</li> <li>• Other relevant information, e.g. the target's geographic location, the history of the shareholding, cost of the transfer, income arising from the transfer etc.; and</li> <li>• Due diligence report or the asset evaluation report on the target, etc.</li> </ul>
	<p><u>Intra-group Service Transaction*</u></p> <ul style="list-style-type: none"> <li>• Information on the service transaction (e.g. background of the service provider and service recipient, nature of the service, the pricing approach and benefit brought to the service recipient etc.);</li> <li>• The methodology for determining the cost and expenses, the related service items, service amount, allocation standards, calculation process and results, etc.; and</li> <li>• Comparison of the pricing policies and results between intra-group service transaction and third party service transaction.</li> </ul>
	<p><u>APAs and Tax Rulings*</u></p> <ul style="list-style-type: none"> <li>• Information on the signed APAs and tax rulings granted in other jurisdiction on the related party transactions;</li> </ul>
(d) Comparability Analysis	<ul style="list-style-type: none"> <li>• Factors being considered when performing the comparability analysis;</li> <li>• The function and risk as well as the assets used by the comparables;</li> <li>• The source of the comparables information, its selection criteria and the rationale;</li> <li>• The financial information of the comparables; and</li> <li>• Adjustments made on the comparable data and the rationale.</li> </ul>

Matters Covered	Contents
(e) Selection and application of TP method	<ul style="list-style-type: none"> <li>• The selection of tested party and the rationale</li> <li>• The selection of TP method and the rationale;</li> <li>• Information on the entity's contribution to the group's overall profit and the excessive profit*;</li> <li>• The assumptions and judgements made during the analysis</li> <li>• The result of comparability analysis;</li> <li>• The determination of the arm's length nature of the covered related party transaction(s);</li> <li>• Other useful information.</li> </ul>

\* newly added under PN-42

The Local File should be completed by 30 June following the tax year in question, i.e. 30 June 2017 for the 2016 fiscal year.

### 3.3. Special Issue File<sup>12</sup> (特殊事项文档)

Special Issue File should be prepared by companies<sup>13</sup> which are (Art. 15 of PN-42):

- entering or executing Cost Sharing Agreement (成本分摊协议 “CSA”); or
- thinly capitalised (资本弱化) (i.e. companies whose related-party thin capitalisation debt-equity ratio exceeds the thresholds: 5-to-1 for financial institutions and 2-to-1 for all other enterprises).

Content of Special Issue File (CSA)
<ul style="list-style-type: none"> <li>• Copies of the CSA and other relevant agreements;</li> <li>• Information on the use of the results of the CSA by non-participants, and the allocation method of the payment among the participants;</li> <li>• Information on the CSA participants, buy-in payments made by new participants and exit compensation received by the participants leaving the arrangement</li> <li>• Details on the amendment to the CSA, if any</li> <li>• Total costs and the shared cost incurred to date;</li> <li>• The expected and the actual benefits gained to date; and</li> <li>• The calculation of the anticipated benefits, including the selection of parameters, calculation method and reason of change.</li> </ul>

Content of Special Issue File (Thinly Capitalised)
<ul style="list-style-type: none"> <li>• Analysis of the borrower's repaying ability and debt-raising ability;</li> <li>• Analysis of repaying ability of the group and its financing structure;</li> <li>• Information on the changes in the equity investment of the enterprise;</li> <li>• Information on the nature, purpose of the related party debt and the market condition when the financing was made;</li> <li>• The currency, amount, interest rate, term and conditions of debt;</li> <li>• Analysis on whether an independent enterprise is capable and willing to accept the financing terms, amount and interest rate agreed between related parties;</li> <li>• Information on collaterals and guarantees;</li> <li>• Interest rates of comparable loans; and</li> <li>• Information on convertible bonds.</li> </ul>

<sup>12</sup> Special Issue File is not required for the related party transactions covered by an APA

<sup>13</sup> There is no threshold criterion for preparing the Special Issue File.

Same as Local File, Special Issue File should be completed by 30 June of year following the tax year in question.

**4. THE PRC ANNUAL REPORTING FORMS ON RELATED PARTY TRANSACTIONS (2016 VERSION)**  
《中华人民共和国企业年度关联业务往来报告表(2016 年版) 》

“The PRC Annual Reporting Forms on Related Party Transactions (2016 version)” (altogether 22 forms, including Chinese and English versions of the CbCR) should be submitted together with the annual corporate income tax filing package by 31 May following the tax year:

Matters Covered	Annual Reporting Forms (2016 version)
Corporate Information	<u>Corporation Information Form (G000000)</u> <ul style="list-style-type: none"> <li>• Corporate basic information (e.g. corporate details, in-charge tax authorities, accounting standards and accounting system, details of ultimate holding company, and the availability of contemporaneous transfer pricing documentation);</li> <li>• Information on the organisational structure (e.g. internal function of the departments, business processes, headcounts of each department);</li> <li>• Information on the senior management personnel; and</li> <li>• Information on the top five shareholders</li> </ul>
Summary of Related Party Transactions	<u>Summary of Annual Related Party Transactions of PRC Enterprises (G100000)</u> <ul style="list-style-type: none"> <li>• Summary of the information reported in other forms;</li> <li>• Disclosure of Debt-to-Equity Ratio;</li> <li>• Information on whether Cost Sharing Agreements has been entered into; and</li> <li>• Information on whether contemporaneous documentation has been prepared.</li> </ul>
Related Party Relationship	<u>Related Party Relationships Form (G101000)</u> <ul style="list-style-type: none"> <li>• Information on the related parties that have transactions with the filing party during the reporting year</li> <li>• Information on the date of establishment and the date of termination of every related party relationship</li> <li>• Information on the related party relationships relating to “natural persons” (familial relationships) is required to disclose*.</li> </ul>
	<u>Overseas Related Party Information Form (G112000)*</u> <ul style="list-style-type: none"> <li>• Information on the top 5 (by value of each type of transactions) overseas related parties (e.g. business scope, industry sector, registered and paid-up capital, effective tax rate and preferential tax treatment etc.)</li> </ul>
Related Party Transactions	<ul style="list-style-type: none"> <li>• Covers the following types of related party transactions: transfers in ownership of tangible and intangible assets, transfers in right of use of tangible and intangible assets, financial asset transfers, financing transactions and service transactions;</li> <li>• Except for the Financing Form and the Equity Investment Form, it requires the disclosure of top 5 in transaction amounts</li> </ul>

Matters Covered	Annual Reporting Forms (2016 version)
Related Party Transactions	<u>Tangible Assets Ownership Transaction Form (G102000)</u> <u>Tangible Assets Use Right Transaction Form (G104000)</u> <ul style="list-style-type: none"> <li>• Tangible assets cover both goods and fixed assets</li> <li>• Information on the transaction details of related parties with top five total amount of related party transactions</li> </ul>
	<u>Intangible Assets Ownership Transaction Form (G103000)</u> <u>Intangible Assets Use Right Transaction Form (G105000)</u> <ul style="list-style-type: none"> <li>• Similar to the disclosure requirement of Tangible Assets</li> </ul>
	<u>Financial Asset Transaction Form (G106000)*</u> <ul style="list-style-type: none"> <li>• Information on the transaction details of related parties with the top five domestic and cross border inbound and outbound related party financial asset transactions</li> </ul>
	<u>Financing Form (G107000)<sup>14</sup></u> <ul style="list-style-type: none"> <li>• Information on the details of related party financing transactions, including entrusted loans, secured financing (e.g. guaranteed loans, collateral loans and pledged loans), discount notes, finance lease, interest bearing prepayments and deferred payments, cash pools, and other financing transactions.</li> </ul>
	<u>Related Party Service Transaction Form (G108000)</u> <ul style="list-style-type: none"> <li>• Similar to the disclosure requirement of Tangible Assets</li> </ul>
	<u>Equity Investment Form (G109000)*</u> <ul style="list-style-type: none"> <li>• Information on equity investment (weighted average amount of owner's equity, paid-up capital, capital reserves and the average equity investment amount) and dividend declared.</li> </ul>
	<u>Cost Sharing Agreements Form (G110000)*</u> <ul style="list-style-type: none"> <li>• Applies to enterprises with CSA<sup>15</sup>.</li> <li>• Information on the details of the CSA (e.g. terms of the agreement, commencement and termination date, the actual costs incurred to date, the expected and the actual benefits gained to date, basic information of the participants, the shared costs, buy-in payments made by new participants and exit compensation received by the participants leaving the arrangement)</li> </ul>
	<u>Outbound Payment Form (G111000)</u> <ul style="list-style-type: none"> <li>• Information on the total and related party outbound payments (actual paid basis)</li> </ul>

<sup>14</sup> The average intercompany loans will be computed as the sum of all intercompany loans balances times the amount of actual days each intercompany loan balance is in place and then divided by 365 days.

<sup>15</sup> Taxpayers should provide copies of the CSA to the tax bureau within 30 days after signing the CSA.

Matters Covered	Annual Reporting Forms (2016 version)
Financial Analysis of Annual Related Party Transactions	<u>Financial Analysis Form of Annual Related Party Transactions (Entity Information) (G113010)*</u> <u>Financial Analysis Form of Annual Related Party Transactions (Consolidated Information) (G113020)*</u> <ul style="list-style-type: none"> <li>• Information on revenues, expenses and profits for domestic and cross-border related party transactions and non-related party transactions.</li> </ul>
CbCR (For details, please refer to Section 2)	<u>CbCR - Overview of allocation of income, taxes and business activities by tax jurisdiction (Chinese and English) (G114010 and G114011)*</u> <u>CbCR - List of all the constituent entities of the MNE group included in each aggregation per tax jurisdiction (Chinese and English) (G114020 and G114021)*</u> <u>CbCR - Additional Information Form (Chinese and English) (G114030 and G114031)*</u>

\* *New form under PN-42*

## POINTS TO NOTE

The issuance of PN-42 shows SAT's efforts and commitment in localising BEPS recommendations into domestic legislation. The newly introduced value chain analysis and LSA analysis require significant disclosure of information such as the financial statements for every entity within the value chain, the attribution of the group's global profits to the entities in different countries within the value chain and the attribution of profits arising from the LSA. There are also detailed disclosure requirements on outbound investments, related party equity transfers and information on changes in shareholding which demonstrate the SAT's focus on CFC rules and business restructuring. As the requirements set out in PN-42 are quite rigorous, taxpayers should invest more time and resources to comply with the contemporaneous documentation and reporting requirement.

The Jiangsu State Administration of Taxation issued "2016-2018 Compliance Plan on International Tax Administration" on 28 June 2016. According to the Plan, in future the tax authority will put more effort in the following areas:

- the legal compliance obligation on related party transactions reporting and filing;
- the quality of the transfer pricing contemporaneous documentation;
- whether a taxpayer's profit allocation matches with its group entities' functions performed, the risk assumed and the value creation e.g. the contribution of China's advantageous factors to the profits of group and the profit returns of localization of intangible;
- the commercial substance of business restructuring;
- Anti-avoidance investigation on transfer pricing, thin capitalization, CFC, profit shifting by using intangibles and financial instruments, permanent establishment, treaty abuse and aggressive tax planning arrangement etc.;
- "The Multilateral Convention on Mutual Administrative Assistance in Tax Matters", CRS and FATCA; and
- International tax compliance in the context of global value chain.

It can be expected that anti-avoidance investigation or transfer pricing audit would become more frequent and stringent in China. Taxpayers should take immediate action to revisit and assess their current transfer pricing policy to ensure that it reflects the principle "profit allocation matches with value creation" and the information to be disclosed will be consistent across the Master File, Local File, CbCR and related party transaction disclosure forms.

## RSM Tax Advisory (Hong Kong) Limited

RSM Hong Kong's dedicated and experienced tax specialists can:

- Advise on tax efficient holding and operational structures for new cross-border investment, including the formation of Hong Kong and Chinese business entities
- Review existing cross-border investment structures, advise on identified deficiencies, quantify any potential exposure from such deficiencies, and further advise on restructuring approach and procedures
- Assist clients to discuss and clarify matters with tax officials, including transfer pricing and advance rulings
- Act as client representative in tax audits and tax investigations
- Provide transaction support services on mergers and acquisitions, including tax due diligence, deal structure advice, tax health checks, related human resources arrangements and other tax compliance and consultation services
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