

OECD releases 14 additional country profiles containing key aspects of transfer pricing legislation

Summary

The Organisation for Economic Co-operation and Development (OECD) has on 9 April 2017 released transfer pricing country profiles for 14 countries, including India. A total of 44 country profiles are now available on the OECD website. The country profiles reflect the current state of transfer pricing legislation in various countries and their alignment with OECD's Transfer Pricing Guidelines including revisions post implementation of the Base Erosion and Profit Shifting project.

Basis of compiling transfer pricing profiles

The country profiles summarise the key transfer pricing principles of various domestic legislations, including:

- the arm's length principle,
- transfer pricing methods and comparability analysis,
- intangible property,
- intra-group services and cost contribution agreements,
- transfer pricing documentation,
- administrative approaches to avoiding and resolving disputes, safe harbours and other implementation measures.

The information compiled by the OECD is based on information provided by the respective countries themselves.

Key points captured in the India country profile

- Domestic vs Foreign Comparable

No specific preference for use of domestic or foreign comparables is provided in Indian transfer pricing legislation. Appropriate comparables are selected based on the tested party.

- Use of secret comparables

Reliance is placed on publicly available data and information in arriving at comparability data. However, Transfer Pricing Officers may seek third party information on financials from certain companies whose financials may not be publicly available for a particular year. The authorities also share the information so obtained with the taxpayer.

- Hierarchy of methods

No hierarchy of methods has been prescribed. India follows the “Most Appropriate Method” approach for application of transfer pricing method, which is arrived at after considering the nature and class of international transaction, the availability and reliability of comparable data and the extent to which reliable and accurate adjustments can be made.

- Comparability adjustment

Comparability adjustments such as working capital adjustment, risk adjustment, etc. are allowed to be undertaken if they can be made reliably to the financials of the comparables. However, the law does not mandate compulsory adjustment.

- Transfer pricing documentation

In line with OECD guidelines, India has adopted Master File and Country-by-Country Reporting requirements. Further, the existing local documentation requirements are consistent with Local File information requirement.

Our comment

The profiles summarise the key principles of transfer pricing legislations of various countries incorporating changes post implementation of the Base Erosion and Profit Shifting Project. This further reflects the extent to which OECD Transfer Pricing Guidelines have achieved acceptance globally.



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