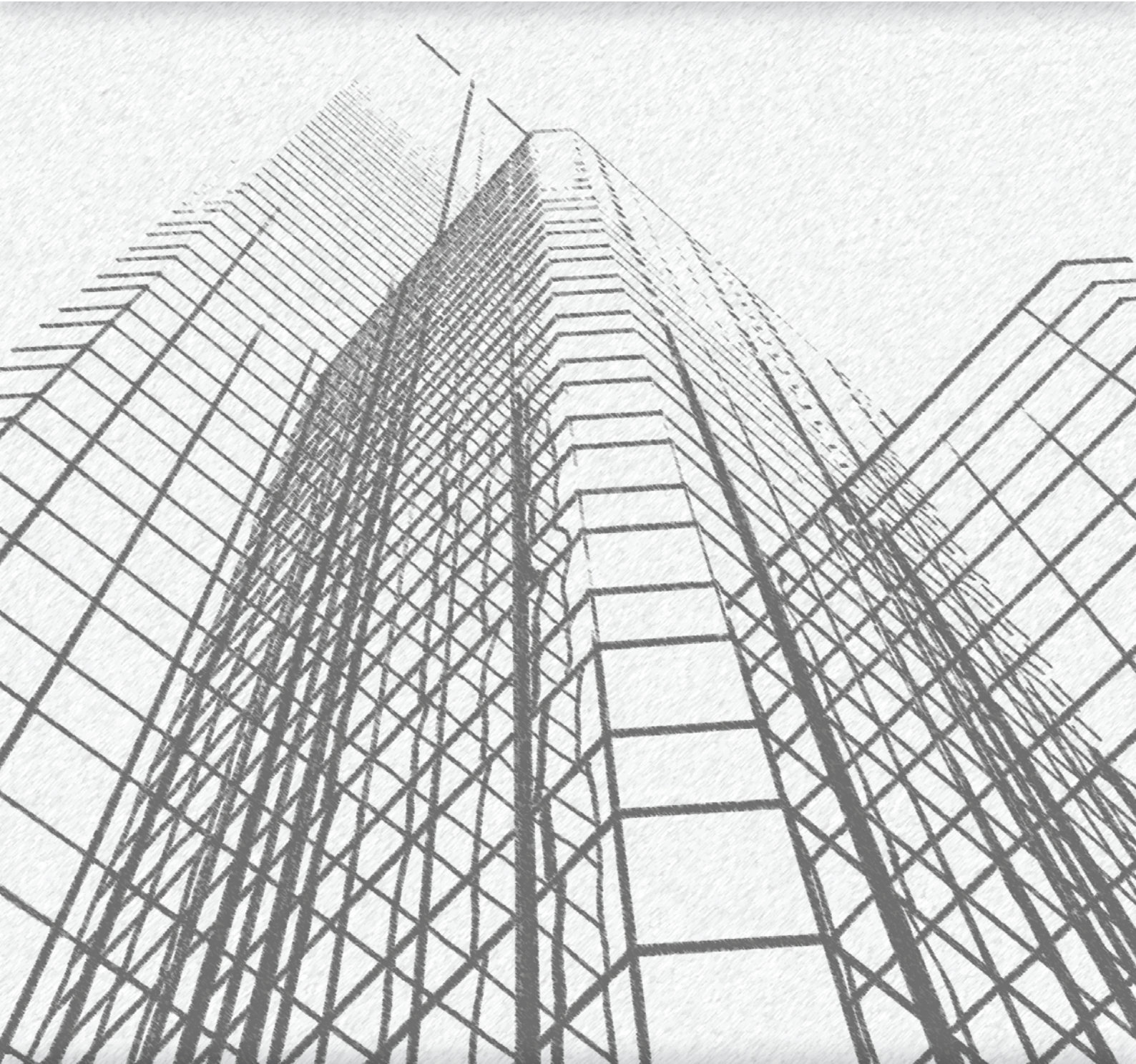


CFO & INTERNATIONAL TAX

A collaborative research project between
Singapore CFO Institute and Singapore Institute of Accredited Tax Professionals





Introduction

Every discussion with the tax function or senior tax executives of a Multinational Enterprise (MNE) will almost inevitably include transfer pricing issues. Following the draft Action Plan on Base Erosion and Profit Shifting (BEPS) by the Organisation for Economic Co-operation and Development (OECD) where transfer pricing was prominently featured as one of the areas of concern, transfer pricing has been elevated in priority in the board rooms of MNEs and governments of major countries of the world.

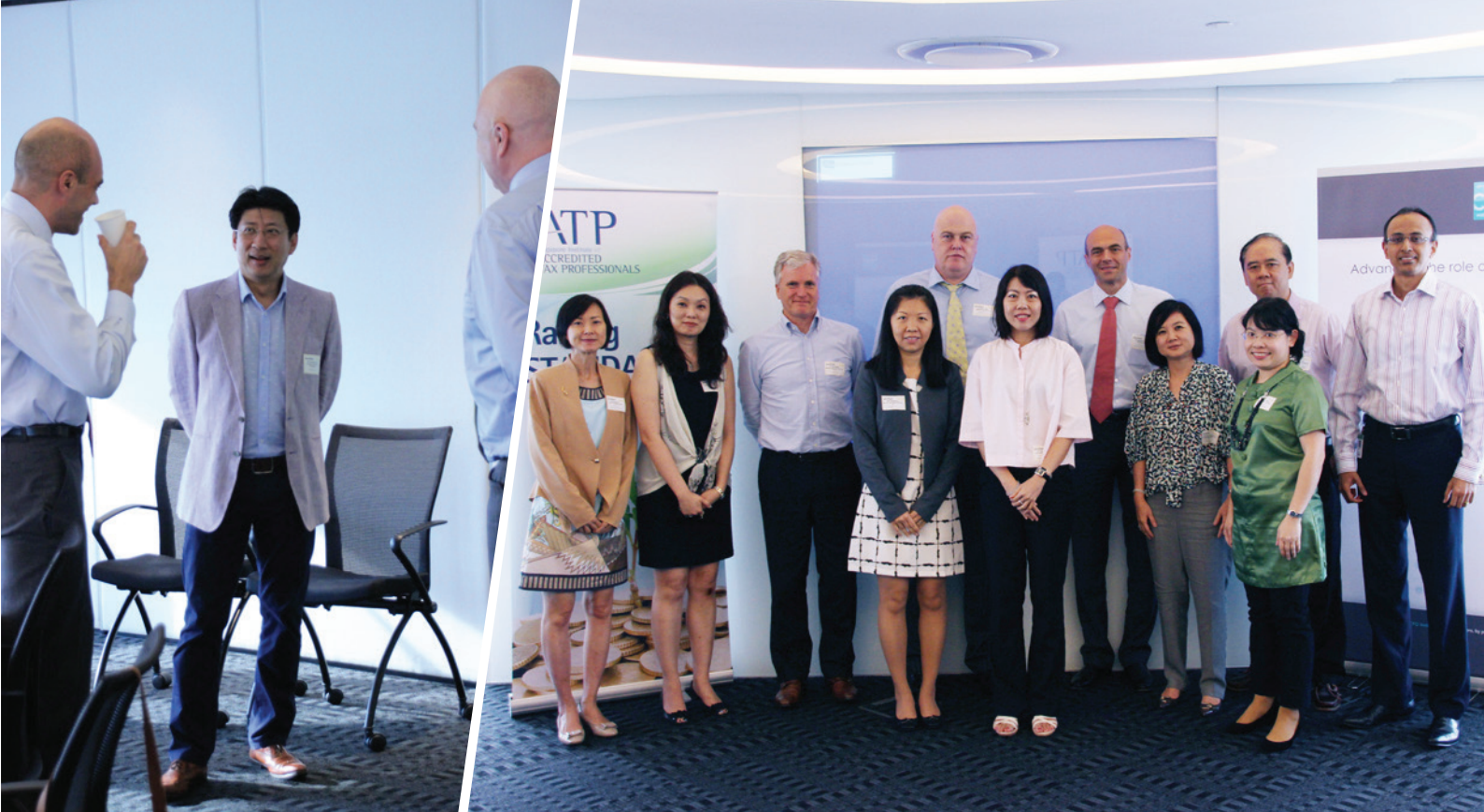
Set against this backdrop, the Singapore CFO Institute and the Singapore Institute of Accredited Tax Professionals (SIATP) have produced a white paper on international taxation, in particular on the developments in Base Erosion and Profit Shifting (BEPS), eCommerce and Transfer Pricing following a Special Interest Group (SIG) Roundtable discussion on 11 July 2014, comprising Chief Financial Officers (CFO), heads of tax and senior tax consultants.

Over a frank and open exchange of ideas and peer-inspired learning as well as to provide a structured peek into the future in anticipating any upcoming tax risks and opportunities CFOs should be aware of on the tax pulse resonating across the global tax landscape, Mr Renaud Isman, Managing Director – Equity Solutions Group, Barclays PLC and Mr Simon Clark, Regional Partner, KPMG Services Pte. Ltd. moderated the robust SIG discussion.

The two-hour roundtable of candor discussion sprinkled with a generous dose of humour was focused on blue sky thinking meshed with practical experience and pragmatic expectations to better manage this global development.

Participants at the Roundtable

NAME	DESIGNATION	COMPANY
Mr Renaud Isman (Moderator)	Managing Director – Equity Solutions Group	Barclays PLC
Mr Simon Clark (Moderator)	Regional Partner	KPMG Services Pte. Ltd.
Mr Santosh Kamat	Senior Manager, Asia-Pacific Tax Planning	Accenture Pte Ltd
Ms Sharon Tan	Tax Director, Asia	Bunge Agribusiness Singapore Pte Ltd
Ms Charlene Tan	Finance Controller, Asia Pacific	Trelleborg Sealing Solutions Singapore Pte Ltd
Mr Bart Welten	Chief Financial Officer	DSM Sinochem Pharmaceuticals Pte Ltd
Mr Simon Poh	Associate Professor (Practice)	National University of Singapore
Ms Priscilla Ng	Finance Manager	New Toyo International Holdings Ltd
Ms Sharon Tan	Senior Director, Geography Tax Operations	Nike Global Trading Pte Ltd
Ms Victoria Ko	Chief Financial Officer	Venture Corporation Limited



Impact of Base Erosion and Profit Shifting (BEPS)

Regardless of developments at the OECD level, transfer pricing and the other issues which form part of BEPS have always been on the radars of the tax authorities and the tax heads as well as CFOs.

Finance and tax C-suites of multi-national corporations (MNCs) would be all too familiar with stories of problems with multi-jurisdictional transfer pricing arrangements. The range of BEPS issues keeping CFOs awake at night also varies across industries and sectors. For example, executives in the financial sector may be more concerned about how BEPS would impact existing treaty arrangements and whether these would continue to be valid over the next few years.

In other sectors, CFOs and tax executives may be grappling with the finalisation of an agreed set of comparables to benchmark against, which are then applied across the span of the corporation's international footprint. This benchmarking would typically result in a range of comparable prices/margins that would form the arm's length pricing range.

Co-moderator Simon from KPMG Services Pte. Ltd. elaborated on comparables with the example that a tax authority in one country could be concerned with the price of labour while the pricing of intellectual property may be the focus of another authority. "This issue is especially relevant for corporations which may have back-office operations in low-cost developing countries where tax authorities may question the pricing and comparable models of the set-up."

The BEPS process has pushed these existing transfer pricing issues to new levels. **Now more than ever, multinationals will have to adopt a more focused and organised approach.** It is not uncommon for MNCs to start modifying their organisational structures to ensure more centralised risk management and aim for more consistency in terms of the areas of documentation, processes and controls. However, **there is no centralised tax authority and increasingly, corporations face the risk of dealing with multiple countries with no obvious means of aligning the outcomes.**

In terms of external engagements, MNCs are progressively engaging public accounting and tax consultancies at the global level to have the consultants assist in the centralisation and consistency efforts especially for companies with significant international and global operations. BEPS has raised the profile of international taxation and whilst tax has not been a Board issue in the past, it now is. **With these global tax landscape changes, tax compliance cost and reputational risks will also increase.**

Taking a different perspective, co-moderator Renaud from Barclays PLC opined that dispute resolution between countries would be a significant issue. Ever optimistic, he raised that the "OECD developments may result in a more efficient resolution to the onerous dispute resolution process between tax authorities. **A more consistent approach across tax authorities coupled with a streamlined process in dispute resolution and arbitration would be an impetus towards greater growth of MNCs.**" This would be ideal though the general sentiments reflect that the situation will get even more complex before the ideal is achieved.

Communication is vital and this was another aspect highlighted in the discussion. Companies have to invest in training across the organisation. Tax is not just a finance issue. **Communication to all business units and operations personnel have to increase to ensure consistency in communications with tax authorities and other external parties. Looking externally, MNCs can also seize this opportunity to enhance its brand and reputation on its proactive approach.**

Tossing in another area of complexity to the whole issue is customs valuation. The approaches between customs valuation and transfer pricing may be vastly different particularly in countries where free trade agreements are in place. Information between customs and the tax authorities do get shared. Communication across all functions has to be consistent.

Consequently, with tax authorities collecting so much information from the taxpayers, **there is also the apprehension of what and how the information will be used or worse, misinterpreted, resulting in a reputational risk for taxpayers as the media and other non-governmental organisations weigh in on the issue.**

Summing up the discussion on the overview of developments in transfer pricing and BEPS, it was noted that while Singapore takes a wait-and-see approach, Singapore has done a great job in ensuring a clear and consistent tax policy. On the other hand, massive changes and differing policies are observed across Europe as it leads the way forward in BEPs.

The United States (US) has been in neutral gear. With such a large domestic economy, it may even set its own BEPS-like framework which may result in another massive disruptive jerk to the global tax landscape.

Other than Europe and US, the rest of the world has generally not taken the plunge into BEPS although some have already taken on various aspects of BEPs as part of their domestic policy options. Australia is a clear leader in this regard.

All around the table, participants agreed that **with tax authorities moving at different pace and at different stages in their tax regime, it is only when there is more coordination between tax authorities that the global tax landscape will improve.** It remains to be seen if BEPS will prove to be an impetus towards a globally coordinated approach, if it is adopted across the globe at all.

Regardless of BEPS, tax competition across the various jurisdictions will continue to exist. Taxpayers will continue grappling with consistency and documentation issues whilst remaining vigilant on global developments to stay a step ahead.

Country-by-Country Reporting

One of the beliefs that forms the crux of this tsunami of developments is the conviction that each firm should pay their fair share of taxes in each country they operate in. While this may be the objective, achieving this may not be a walk in the park in reality. In fact, it is anything but.

Greater scrutiny by tax authorities and tax competition amongst revenue authorities are being observed across the world. As 'mindful leadership' is one of the latest buzzword in leadership concepts, it is reckoned that tax authorities need to exercise 'mindful scrutiny' as a fine line exists between requesting for required information and requesting for too much information by overzealous authorities. How much is too much?

Taxpayers may also find themselves in a predicament of having the obligation to produce extensive information country by country and not having control of how this information may be used.



Consequently, with this increase in disclosure of more information by the taxpayer to various tax authorities, the probability of such information being misinterpreted or construed wrongly by various stakeholders such as the media, non-governmental organisations or authorities, is heightened. This misguided interpretation and possibly unwarranted media attention may then have a significant adverse impact on the taxpayer's brand repute and financial position.

As such, **a holistic view needs to be taken in planning for the implementation of country-by-country reporting.** There is also a need to look into issues such as business confidentiality and the communication on the usage of the taxpayers information so that the taxpayers have an oversight of who has access to the information and what the information is used for.

From the taxpayers' perspective, **it may be wise of MNCs to take a 'back to basics' approach and get a firm grip on what data is needed and what relevant reports should be generated. With this information, corporations can then determine how the data should be collected and collated and achieve consistent documentation.**

With the need to retain extensive records and achieve an efficient process, many MNCs are leveraging on automation and technology. Some MNCs are also using outsourcing as a tool to better collate data and information. This frees up internal resources for higher value-adding activities.

To add to the complexity, there may also be instances where domestic laws contradict international rules. **This interaction of laws on reporting and requirements reflect an opposing stance between legal and tax.** International processes are in conflict with domestic processes and these may be increasing in occurrence across the world.

This being the case, international arbitration may be the only resolution moving ahead. However, tax laws are country specific. International arbitration may not work.

Looking at these developments from a macro perspective, **time will tell if taxpayers will progressively reduce tax planning activities and invest more resources in tax compliance.**

Treaty Shopping

Treaty abuse is one of the most important sources of BEPS concerns. It is identified as one of the issues to counter in OECD's Action Plan on BEPS. Tax treaties are not intended to be used to generate double non-taxation.

Moving ahead, model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances will be developed. In addition, there are also plans to identify the tax policy considerations that, in general, countries should consider before deciding to enter into a tax treaty with another country.

As an illustration of the proposed limitations of benefits (LoB) approach, a Singapore manufacturing company with plans to enter into the US may think it is wiser to enter the US through its United Kingdom (UK) operations as a tax treaty arrangement between the US and the UK. However, the US LoB clauses dictate that companies investing into the US have the same business form through the chain of companies. This essentially means the Singapore manufacturing company has to have manufacturing facilities in the US and UK. In today's global landscape of centralisation and outsourcing, this may not reflect reality. For example, the Singapore manufacturing company may not have manufacturing operations in the UK but may use the UK as a substantive base for all of its European and North American operations.



Another approach adopted in some treaties is to have a purpose approach when applying these limitation clauses. This means that as long as the market entry is not motivated by the aim of enjoying treaty benefits, the arrangement is feasible. An example where this approach is currently implemented is UK treaties.

While the US approach is objective driven, the UK approach is purpose-oriented. While the former is more rigid and does not take into consideration that a business may have more than one business form, the latter is more subjective.

Relating this issue back to Singapore, the US approach has significant impact on businesses wanting to invest there. Singapore encourages MNCs to set up their regional hubs in Singapore to oversee its network of spokes across Asia Pacific.

Many companies base their corporate functions such as the finance and treasury teams here while manufacturing is based overseas. As such a US-style LoB approach could materially impact on Singapore's ability to be a regional HQ destination. The purpose approach seems more practical.

Developments in this area indicate that rather having a model international standard to follow, countries will have a choice of which approach to adopt. This however means that countries will have to review each of its treaties and this will be a lengthy process.

It pays for MNCs to keep abreast of the developments in this space though everyone at the roundtable discussion agreed that corporations generally do not base their decision on business structures with the key aim of enjoying treaty benefits. Investments are usually based on a suite of factors and indicators.

Digital Economy

Singapore adopts the source rules in determine income. This conflicts with countries with the residency rule. With the explosion of online payments and business set-ups in what was still termed 'new media' in the recent past, the global business landscape has changed. Money is being transferred across borders but tracking this is an issue.

It was noted that **tax rules will always lag behind globalisation**. In addition, when such rules are in place, tax authorities will also have the added challenge of enforcement.

The rise in the digital economy will also give rise to review of the definition of source of income. If a person in Country A buys an app, is the source of income from Country A? The existing understanding of source rules needs to be reviewed as it doesn't apply in the digital era of today. This evolution of the business climate may result in a complete change in income recognition and consequently the tax implications.

The internet and mobile platforms will continue to be tools to facilitate trade. Technology will continue to evolve. It remains to be seen if countries which are more 'wired up' will consider defining income based on the recipient's location rather than where the source is. Alternatively, **countries may perhaps consider a more pragmatic approach of using the 'indirect' approach and the transaction will form the basis of tax obligation rather than for authorities and taxpayers to be hampered by determining the source** which, as noted, does not reflect the issues of the digital business climate. An example is the change in Japan's consumption tax to address the tax issues of digital imports.

The World in a New Universe

Thus, as the OECD embarks on the first ever attempt to synchronise the views of tax authorities and taxpayers, **companies will continue to explore opportunities to increase profits whilst tax authorities will look towards a bigger slice of the taxpayer's tax as well as increase taxes.**

It is hoped that this reform will result to a fairer distribution of wealth.

The world of economy will change dramatically and a new universe with new norms emerging fanned by a constant wind of change will exist.

As the world observes with anticipated breaths on how the various developments will pan out, sanity will prevail (hopefully). Interestingly, it was also noted that till today, the world operates on differing measurement systems, similar to fashion and shoe sizes. It remains to be seen if BEPS will achieve what no others have done.

The roundtable discussion ended with participants walking away with fresh perspectives on current issues CFOs and tax heads are facing. It certainly provided all with new insights and points of consideration that will equip everyone to engage in a more holistic analysis of their firms' transfer pricing and BEPs issues.



About Singapore CFO Institute

The Singapore CFO Institute aims to be a globally-recognised body of CFOs and CFO aspirants, and is dedicated to advancing the role of CFOs as strategic partners in business and the community, by driving thought leadership, promoting best practices and enabling their professional development.

For practitioners, by practitioners.

For more information about the Singapore CFO Institute, visit cfoconnect.sg



About Singapore Institute of Accredited Tax Professionals

Set up by the Institute of Singapore Chartered Accountants in partnership with the Tax Academy of Singapore, the Singapore Institute of Accredited Tax Professionals is a not-for-profit institution that aims to promote tax practice standards, heighten the recognition of the tax profession and cater to the market's need for competent tax specialists equipped with highly advanced technical knowledge, practical skills and industry-recognised credentials.

For more information about the Singapore Institute of Accredited Tax Professionals, visit www.siatp.org.sg

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