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International Tax Updates

1. The OECD released peer review results on exchange of information for seven jurisdictions including Hong Kong

   On 18 March 2019, the Global Forum on Transparency and Exchange of Information for Tax Purposes released the peer review results for seven jurisdictions (including Hong Kong) for the second round of peer reviews on compliance with the international standard on transparency and exchange of information on request. The second round of reviews assesses jurisdictions against availability of beneficial ownership information of all relevant legal entities and arrangements.

   Hong Kong received an overall rating of “Largely Compliant” in its assessment covering the period from 1 October 2014 to 30 September 2017.

   According to the summary of the review report on Hong Kong, Hong Kong’s legal framework is generally in line with the international standard, notably with recent improvements made on access to information and the extensive extension of its network of exchange partners. Hong Kong has also responded reasonably well to the steep increase in requests for information in the review period.

   However, some improvements are required to (1) ensure the availability of beneficial ownership information on all the entities and legal arrangements, (2) continue to ensure that the new obligation on companies to maintain a register of significant controllers is well monitored in practice and (3) ensure that obligations to maintain reliable accounting records by all relevant entities and arrangements (including those solely earning non-taxable income) are satisfactorily enforced.

   For more details and a copy of the review report on Hong Kong, please refer to these <link> & <link> to the OECD’s website.

2. The OECD proposed measures to enforce VAT/GST collection for e-commerce

   The OECD presented a report entitled “The Role of Digital Platforms in the Collection of VAT/GST on Online Sales” during the fifth meeting of the Global Forum on VAT held in Australia on 20-22 March 2019.

   The report includes new measures to make e-commerce marketplaces liable for the VAT/GST on sales made by online traders through their platforms. Other measures include data sharing and enhanced co-operation between tax authorities and online marketplaces.

Chapter 2 of the report considers regimes that impose a liability on digital platforms for the VAT/GST due on the online sales in which these platforms play a role. In particular, it includes an analysis of the key aspects and design considerations of the full VAT/GST liability regime, which makes the digital platforms fully and solely liable for assessing, collecting and remitting the VAT/GST due on the online sales facilitated by them.

Chapter 3 of the report focuses on other roles for digital platforms than the full VAT/GST liability regime to assist with collection of VAT/GST on online sales, including information sharing between such platforms and the tax authorities, education of suppliers and formal co-operation agreements between the tax authorities and these platforms.

For more details and a copy of the report, please refer to this <link> to the OECD's website.

3. The meeting of the OECD Forum on Tax Administration

The Forum on Tax Administration (FTA) held a meeting in Chile on 26-28 March 2019. During the meeting, 53 leading global tax administrations agreed an ambitious agenda focusing on tax certainty, enhanced tax co-operation and the collective challenges of digital transformation.

More specifically, the FTA members agreed:

- to ramp up work on tax certainty, including through 17 FTA members participating in the second phase of the pilot on the International Compliance Assurance Programme;
- to support policy makers in the development of new standardised reporting requirements to facilitate international exchange of information on those selling goods and services through the sharing and gig economy;
- to pursue collective work on the effective use of the vast amount of information on offshore accounts currently being exchanged under the OECD/G20 Common Reporting Standard; and
- to set out, in concrete and practical terms, a digital vision for Tax Administration 2030 and to help reduce compliance burdens for small and medium sized enterprises through the use of new technologies.

For more details and a copy of the report, please refer to this <link> to the OECD's website.

4. The European Union published a revised list of non-cooperative jurisdictions for tax purposes

   Subsequent to the original list of non-cooperative jurisdictions for tax purposes published by the European Union (EU) in December 2017, the European Council published a revised EU list on 12 March 2019.

   The revised EU list added 10 jurisdictions that did not implement the commitments they had made to the EU by the agreed timeline (i.e. by the end of 2018) to the blacklist. In addition to the five jurisdictions that were originally in the blacklist, the EU blacklist now includes the following 10 jurisdictions: Aruba, Barbados, Belize, Bermuda, Dominica, Fiji, Marshall Islands, Oman, United Arab Emirates and Vanuatu. The full list is contained in Annex I of the European Council conclusion dated 12 March 2019.

   In addition to the revised blacklist, Annex II of the European Council conclusion contains a watch list (or the grey list). The grey list consists of jurisdictions that have been given extension of deadline to pass the necessary reforms to deliver on their commitments. Notably, the British Virgin Islands (BVI) and the Cayman Islands are on the grey list. According to the information stated in the grey list, the BVI and Cayman Islands have committed to addressing the concerns relating to economic substance in the area of collective investment funds, engaged in a positive dialogue with the EU and remained cooperative, but require further technical guidance. As such, they have been granted an extension to adapt their legislation until the end of 2019.

   The European Council will continue to regularly review and update the EU list.

   For more details and a copy of the European Council conclusion dated 12 March 2019, please refer to this <link> to the website of the European Council.

5. The Cayman Islands issued guidance on the new substance requirements

   On 22 February 2019, the Cayman Islands Tax Information Authority issued the "Guidance on Economic Substance for Geographically Mobile Activities" (the Guidance) to provide more details on the implementation of the substance requirements introduced by the International Tax Co-operation (Economic Substance) Law, 2018. The Law became effective on 1 January 2019 in the Cayman Islands.

   The Guidance elaborates on (1) the definition of relevant entities that are subject to the substance requirements, (2) the types of relevant activities that are subject to the substance requirements, (3) the economic substance test (e.g. what are regarded as the core income generating activities and whether outsourcing of such activities is allowed), (4) special rules for holding company business and high risk intellectual property business, (5) the notification and reporting obligations and (6) sharing of information with other competent authorities, etc.

Entities formed on or after 1 January 2019 are subject to the substance requirement from the date they commence a relevant activity whereas existing entities (i.e. entities exist prior to 1 January 2019) must comply with the substance requirement by 1 July 2019.

For more details and a copy of the Guidance, please refer to this <link> to the website of the Cayman Islands government.