

Executive Overview and Update: OECD's BEPS (Base Erosion and Profit Shifting) Action Plans

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BEPS: A broad run-through

Mandatory!

Minimum Standards

No double non-taxation

PPT or LOB or both!

Corresponding adjustments

Either authority
Timely resolution
MAP Forum

Preamble

LOB/PPT

TP – 9(2)
(to an extent)

MAP
Changes

Options

Optional

PE Changes

Dividend holding period

Capital gains changes

Switchovers/Hybrids

Dual Residence

Savings clause

Arbitration

Third party-PE
Commissionaire
Splitting of contracts

365 day-period

365 day-period
Trust/partnerships

Exemption at source
→ Credit | Debt-equity mismatch

Not individuals
– MAP!

Right to tax residents!

Multilateral arbitration

Implemented through a Multilateral Instrument!

Text of instrument – adopted – signed June, 2017

Over 100 countries

Minimum Standards

- Preamble
- LOB/PPT
- Transfer Pricing (CbCR)
- MAP

Options

- PE Changes
- Dividend holding period
- Capital gains changes
- Switchovers/Hybrids
- Dual residence
- Savings clause
- Arbitration

MLI

- Allows jurisdictions to swiftly amend their tax treaties to implement BEPS
- Mandatory provisions
- Non-Mandatory provisions
- Flexibility for which DTAs and which provisions will be implemented

Singapore's position on BEPS

- Joined Inclusive Framework for Implementing Measures against BEPS

- Will implement four minimum standards
 - Countering harmful tax practices (Singapore's tax incentives?)
 - Preventing treaty abuse (LOB)
 - Transfer pricing documentation (CbCR ; ICAP)
 - Enhancing dispute resolution (MAP)

Singapore's position on MLI

- Both has signed MLI and both have agreed to amend the relevant MLI provision
- Article 6 (Purpose of a covered tax agreement) – No double non-taxation or reduced taxation through tax evasion or avoidance
- Article 7 (Preventing treaty abuse) – To include a general anti-abuse rule (PPT vs COR).
- Article 16 (Mutual agreement procedure) and Mandatory Arbitration

What does it mean Singapore RHQs?

- PPT – Abusive agreements?
- Double non-taxation?

What will happen next?

- Double taxation
- Disputes
- Uncertainty

Apple, Amazon State Aid

- Unlawful State aid to Apple estimated in the amount of up to EUR 13 billion++. Ireland needs to recover from Apple.
- Unlawful State aid to Amazon estimated in the amount of up to EUR 250 million++. Luxembourg needs to recover from Amazon

What is State Aid?

- Granting undue benefits to selected companies
- This is illegal under EU state aid rules, because it allowed selected companies to pay substantially less tax than other businesses

Apple

- Two rulings issued by Ireland to Apple have substantially and artificially lowered the tax paid by Apple in Ireland
- Rulings allowed Apple to shift profits from Ireland to a head office which did not correspond to economic reality.
- The head office existed only on paper and were not subject to tax in any country.

Amazon

- Ruling issued by Luxembourg to Amazon - lowered Amazon's tax burden without any valid justification.
- Rulings allowed Amazon to shift profits from Lux to an entity that was not subject to tax via a royalty arrangement.
- Level of royalty was inflated and did not effect economic reality.

Google Case – India and France

- India – lost
- France – won

Key messages

- BEPS will create collateral impact in Singapore
- Substance is key
- Significant behavioural shift and more controversy
- Risk analysis should be done now (PE and TP)
- Tax systems
- What does this mean for tax advisers/accountants etc?

Questions?