

How is BEPS likely to impact Singapore?

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20 YEARS IN PRACTICE

Background

- Singapore not an OECD member, but closely monitors BEPS
 - Singapore MoF officially supports BEPS
 - However, emphasizes Singapore's investment friendly and tax competitive status will not change
- Singapore has already addressed some of the BEPS issues within its domestic law.

Important Actions for headquarter / holding operations

- Action 2: Hybrid mismatch
- Action 4: Interest deductions
- Action 5: Harmful tax practices
- Action 6: Preventing treaty abuse
- Actions 8-10, 13: Transfer Pricing
- Actions 12 and 15

Action 2: Hybrid mismatch

- Potential use of Section 33 of Singapore Income Tax Act to disregard transactions structured with abusive intent
- May 2014 e-Tax Guide:
 - Discusses characterization/tax treatment of hybrid instruments
 - Provides for advance rulings
- Case e.g. Dividend income exempt in SingCo / Interest payment deductible in LuxCo - How would Action 2 apply if an advance ruling obtained?

Action 4: Interest deductions

2015 Singapore TP Guidelines

- Focus on “arm’s length” interest on related party loans
- Does not subscribe to formulaic interest deductions

Payments made to entities in haven jurisdictions will attract scrutiny

Action 5: Harmful tax practices

- Singapore tax incentive schemes
 - People requirements (see next slide)
 - Not featured in list of 43 preferential regimes reviewed by the OECD's Forum
 - How does for e.g. PIC scheme compare to UK patent box/Dutch innovation box?
- Automatic exchange of information (“AEOI”)
 - Singapore increasing its EOI agreements
 - Committed to implement AEOI by 2018

Action 5: Harmful tax practices

Singapore incentives	People	Activities	Other requirements
Headquarters award	75% skilled staff	At least 3 headquarter services	Minimum average remuneration per worker
Development and expansion incentive	--	Manufacturing or growing leading-edge activities in Singapore	Contribution to the innovation capabilities
Global trader program	Employ trading professionals	Substantial international physical trading activities	Local business spending; use local financial services
Financial sector incentive	Employ qualified professionals	Fund Management activities	--

Action 5: Harmful tax practices

- Case examples
 - Singapore IP owner/contract R&D activities to India – where does substance lie?
 - Acquire IP into Singapore, claim W/D allowance, license out and earn royalty income, obtain treaty benefits..

Action 6: Preventing treaty abuse

- Anti-abuse rules adopted in Singapore treaties
 - LOB (remittance) clause in many treaties: Korea, Japan, Netherlands;
 - Singapore – China: domestic anti-abuse rule can be applied/main purpose test for dividend, interest and royalties
 - Singapore – Japan: treaty benefits not granted in source country if tax exempt and no actual activities in residence country
 - Singapore – India: (Protocol) Primary purpose test / Conduit company clause

Actions 8-10, 13: Transfer Pricing

- 2015 release of Singapore TP Guidelines
 - OECD/BEPS aligned
 - Group file and local file recommendations
 - Focus on intra-group loans and services (including cost contribution arrangements)
 - 5% safe harbor for low value added services
- Will Singapore implement in CbCR?

Actions 12 and 15

- Action 12: Mandatory disclosure rules – if Singapore investment holdCo set up for treaty purposes, will this potentially need to be disclosed?
- Action 15: Multilateral instrument – Will Singapore participate?

Other action plans

- Action 1 – Digital economy
- Action 3 – CFC rules
- Action 7 – Permanent establishments
- Action 11 – BEPS data collection
- Action 14 – Dispute resolution



What will BEPS mean?

- Increased scrutiny
- More disclosure
- Substance!



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