



Hong Kong passes its Peer Review inspection by the Global Forum

On 26 October 2011, the Global Forum of the Organisation for Economic Co-operation and Development (OECD) issued a Peer Review report on Hong Kong's ability to comply with exchange of tax information. The report assessed Hong Kong's legal and regulatory framework for accessing and exchanging information with foreign tax authorities. Although the report concluded that Hong Kong has the necessary framework in place, it outlines some recommendations with respect to how the framework could be improved.

Background

The Global Forum of the OECD brings together jurisdictions committed to implementing the International Standard on Exchange of Information (the Standard).

The Standard is set out in article 26 of the OECD and UN Model Tax Convention on Income and on Capital and in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters (TIEA). The Standard provides for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. Effective exchange of information requires that jurisdictions ensure information is available, that it can be obtained by the tax authorities and that there are mechanisms in place allowing for the exchange of that information.

Prior to 2010, Hong Kong was only able to access information for exchange of information purposes where that information had a domestic tax interest. In 2010, new legislation was enacted to lift this domestic tax interest requirement so that Hong Kong could fully comply with the Standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed in two phases. The first phase assesses the quality of a jurisdictions' legal and regulatory framework for the exchange of information, while the second phase involves a review of the practical implementation of that framework.

Hong Kong was subject to a Phase 1 review earlier this year wherein the standards of transparency and exchange of information were reviewed under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information.

The review assessed Hong Kong's legal and regulatory framework against these categories and a determination made that either: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place.

Recommendations of the Hong Kong Peer Review

The Peer Review commented favourably with respect to Hong Kong's framework for its ability to obtain information. However, whilst it noted that the legal and regulatory framework for the exchange of tax information is in place in Hong Kong, certain recommendations for improvement were pointed out. The areas of improvement included:

- Currently, certain nominees are not required to maintain ownership and identity information in respect of owners of share warrants to bearer; shares of companies held by nominees and settlors; and trustees and beneficiaries of private express trusts where the trustee is resident in Hong Kong. The Peer Review recommends that steps should be taken to address these deficiencies.
- In the case of trustees of private express trusts and foreign trusts that do not carry on business in Hong Kong, the Peer Review found that there is currently no requirement for accounting records to be maintained. The Peer Review concluded that such records should be maintained in Hong Kong.
- Currently, it is Hong Kong's policy only to agree to exchange tax information in the context of a DTA instead of entering into specific TIEAs. The Report recommends that Hong Kong should enter into agreements for the exchange of tax information (regardless of their form) with all relevant partners – including TIEAs. This would, however, require a change in Hong Kong's tax laws to enable Hong Kong to enter into TIEAs only.

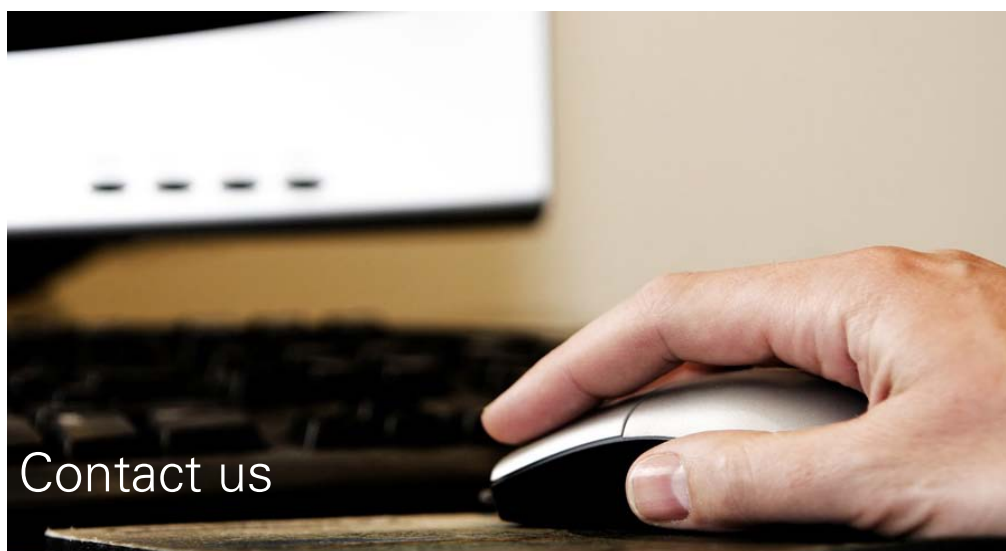
Comment

In the Report, Hong Kong re-affirmed its commitment to the international standards of tax transparency. However, the Report also notes that Hong Kong's laws do not currently allow for TIEAs to be concluded. Given Hong Kong's importance as an international financial centre, the Global Forum considers that it is essential that Hong Kong has agreements (regardless of their form) that meet the Standard with all relevant partners. Accordingly, it recommends that Hong Kong should continue to update and expand its network of agreements for international exchange of information in tax matters so that all of its "relevant" partners have access to full exchange of information.

Hong Kong, for its part, has responded that it will recommend legislation that would enable Hong Kong to conclude TIEAs with all relevant partners. This represents a departure from the Hong Kong government's position when the legislation enabling Hong Kong to adopt the Standard was enacted in 2010. The government's policy then was to only exchange information upon request from treaty partners pursuant to a DTA – not pursuant to a TIEA.

Phase 2 Peer Review

Hong Kong is scheduled to have the second phase review in the latter half of 2012. This will evaluate whether, from a practical point of view, Hong Kong provides information exchange under its network of agreements in a timely manner.



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