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HONG KONG TAX ALERT

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Hong Kong receives Global Forum report on Transparency and Exchange of Information for Tax Purposes Phase 2 Peer Review

The Global Forum recently completed its review of Hong Kong's compliance with the international standard on exchange of information (EoI) and its findings were handed down in November 2013. In a positive development for Hong Kong, the review concluded that Hong Kong was largely compliant in its implementation of the international standards of transparency and EoI for tax purposes. However, the Global Forum has made a number of recommendations designed to further strengthen Hong Kong's overall compliance with the EoI procedures.

In Jakarta last month, the Global Forum took further steps to implement a global call for greater international co-operation against tax evasion. A total of 50 jurisdictions were reviewed by the Global Forum in the Phase 2 peer review and were given a compliance rating.

The review covered ten essential elements that are considered conducive to effective information exchanges between jurisdictions, focusing particularly on the legal and regulatory framework and the effectiveness of the EoI in practice. Following the review undertaken of Hong Kong's EoI regime, it was assigned an overall rating of "largely compliant".

In line with many of Hong Kong's trading partners, the report confirmed that Hong Kong's EoI regime is largely compliant with best practice and Hong Kong is considered to be an efficient and co-operative partner when it comes to EoI practices. However, the report notes that some improvements are needed to Hong Kong's legal and regulatory framework to ensure an effective EoI. The areas of improvement are mainly in respect of the ability to obtain information with respect to bearer share warrants and companies held by nominees. The recommendations include:

- Hong Kong should continue its efforts to renegotiate comprehensive double taxation agreement (DTAs) as necessary so that they provide for effective EoI

- Hong Kong should monitor the application of its new legislation to ensure that information that precedes the effective date of the agreement can be exchanged, where it relates to a taxable period subsequent to the effective date of the EoI agreement

- Hong Kong should bring its existing DTAs that do not meet the standard up to the standard

- Hong Kong should enter into agreements for EoI (regardless of their form – that is whether a DTA or a tax information exchange agreement (TIEA) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement.

Hong Kong has been given 12 months to report the progress it has made in addressing the above recommendations.

Comment

Hong Kong's EoI procedures have been rated favourably following the Global Forum's review of its EoI regime. Of the 50 countries rated by the Global Forum, 18 were rated as compliant, 26 as largely compliant and two as partially compliant. Four were rated as non-compliant. Fourteen other jurisdictions were not given compliance ratings as their legal and regulatory frameworks for EoI in tax matters required further improvement. The countries rated along with Hong Kong as largely compliant included Brazil, Germany, Italy, the Netherlands, the United Kingdom and the United States.

As noted in the Hong Kong Tax Alert – Issue 14, July 2013, Hong Kong enacted legislation in 2013 which enables it to enter into TIEAs. This enactment was necessary to ensure that Hong Kong was in compliance with the Global Forum's requirements that all Hong Kong's relevant EoI partners have access to full exchange of information, whether through a DTA or a TIEA. The Report notes that a number of jurisdictions have expressed an interest in concluding a TIEA with Hong Kong. In particular, it is understood that a TIEA is to be concluded with the United States as part of an Inter-Governmental Agreement to be made in respect of FATCA.

Of particular interest, the Report noted that during the review period, Hong Kong received 61 requests for information, mostly from the Mainland. The requests comprised 36 inquiries for the identity or ownership information; 37 for accounting information; and 14 for banking information. Since June 2012, Hong Kong has also received a further 27 requests from a wider range of DTA partners, including Belgium, Hungary, Indonesia, Japan, Luxembourg, the Netherlands, New Zealand, Thailand and the United Kingdom.

In April 2013, the G20 Finance Ministers and Central Bank Governors endorsed automatic exchange as the expected new standard and asked the OECD working with G20 countries to report on progress in developing a new multilateral standard on automatic EoI.

Automatic EoI involves the systematic and periodic transmission of "bulk" taxpayer information by the source country to the residence country concerning various categories of income (e.g. dividends, interest, royalties, salaries, pensions) and can provide timely information on non-compliance where tax has been evaded either on an investment return or the underlying capital sum even where tax administrations have had no previous indications of non-compliance.

In this regard, the Global Forum has established a new Automatic EoI Group to prepare the move towards the implementation of automatic EoI and it is highly likely that Hong Kong will come under increased pressure going forward to "sign-up" to this initiative.

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