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HONG KONG TAX ALERT

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BEPS Update

The 2014 OECD International Tax Conference delivered an update on BEPS (Base Erosion and Profit Shifting) project and Common Reporting Standard

Highlights

- The BEPS project is on schedule with seven topics discussed and approved by the OECD Committee on Fiscal Affairs.
- Reports and recommendations will be discussed at the G20 Finance Ministers meeting in September 2014.
- Companies should monitor OECD and G20 BEPS developments.
- The consequences to business models should be carefully considered and, where necessary, companies should engage with both domestic and international authorities.

The OECD held its annual tax conference in Washington in June 2014 with the agenda focusing almost exclusively on the Base Erosion and Profit Shifting (*BEPS*) project. Participants included members of the OECD, tax officials from OECD and G20 countries (including United States, China and United Kingdom), business representatives and tax advisors.

Updates were presented on the BEPS project: examining the outputs scheduled for September 2014, further work required on the 2014 Actions and the current status of the 2015 Actions. There was also a presentation on FATCA developments and the OECD initiative on developing a global common reporting standard for information on financial accounts.

The over-arching message was that the BEPS project is on schedule with the following topics being discussed and approved by the OECD Committee on Fiscal Affairs (CFA) at the end of June 2014:

1. Tax challenges of the digital economy (Action 1).
2. Neutralising the effects of hybrid mismatch arrangements (Action 2).
3. Countering harmful tax practices (Action 5).
4. Preventing treaty abuse (Action 6).
5. Transfer pricing aspects of intangibles (Action 8).
6. Transfer pricing documentation and country-by-country reporting (*CbC*) (Action 13).
7. Development of a multilateral instrument (Action 15).

Upon approval by the CFA, the above reports will be discussed by the G20 Finance Ministers meeting in Cairns, Australia in September 2014. In addition, specific recommendations will be presented on hybrids (Action 2), tax treaty abuse (Action 6), transfer pricing of intangibles (Action 8) and CbC reporting (Action 13), while reports will be issued on the challenges of the digital economy (Action 1), progress on countering harmful tax practices (Action 5) and the feasibility of the multilateral instrument (Action 15).

The OECD has indicated that additional time will be required to complete work on some of the 2014 Actions and thus efforts in this regard will extend into 2015. It was also stressed that where there are significant overlaps between 2014 and 2015 Actions, then the 2014 Actions will not be concluded until work on the relevant 2015 Actions is completed.

The presentation on the OECD's global Common Reporting Standard for information on financial accounts (*CRS*) gave an overview of the work related to the report released in February 2014 (and endorsed by the G20). It was reiterated that the CRS was largely modelled on the US FATCA regime as the CRS is intended to be a global standard for automatic exchange of tax information. While the information to be collected and reported under the CRS is broader in scope than the information reported under FATCA, the CRS is intended to be compatible with FATCA and not to result in duplication. It is expected that the OECD will release a comprehensive CRS package by September 2014 that will include the automatic information exchange standards, commentary on the standards and specific technical solutions.

The Washington Conference reinforced the considerable significance of the reports and recommendations to be released by the OECD in September 2014.

It is evident that many countries are now actively addressing BEPS issues through a combination of legislative and administrative measures as well as interaction with the global community.

Given the significant implications of the anticipated changes in domestic tax legislation and global treaties being developed through the OECD process, it is critically important for companies to monitor developments within the OECD and G20 as well as in the countries in which they operate. Companies should consider the consequences of these developments for their business models and engage with both domestic and international authorities.

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