International Tax Updates

1. The OECD's consultation on tax certainty aspects of Amount A under Pillar One of BEPS 2.0

On 27 May 2022, the OECD/G20 Inclusive Framework on BEPS (IF) released two public consultation documents for Amount A under Pillar One, one on "Tax Certainty Framework for Amount A" and the other on "Tax Certainty for Issues Related to Amount A".

The **Tax Certainty Framework** aims to provide certainty for in-scope business groups on various aspects of Amount A, including the elimination of double taxation resulting from uncoordinated compliance activities in different jurisdictions from which the group revenue is derived. The Framework includes the following three elements to address the potential risks that may arise from the Amount A rules:

- **A Scope Certainty Review** to provide an out-of-scope group with certainty that it is not in-scope of the rules for Amount A for a given period and remove the risk of unilateral compliance actions.

- **An Advance Certainty Review** to provide certainty over an in-scope group's methodology for applying specific aspects of the new rules under Amount A for a number of future periods.

- **A Comprehensive Certainty Review** to provide an in-scope group with binding multilateral certainty over its application of all aspects of the new rules for a given period that has ended, building on the outcomes of any advance certainty applicable to the period.

Separately, the **Tax Certainty for Issues Related to Amount A** contains draft provisions to be included in the Multilateral Convention on Amount A. These provisions ensure in-scope groups would benefit from a mandatory and binding dispute resolution mechanism which could resolve transfer pricing and permanent establishment profit attribution disputes that cannot be resolved through the mutual agreement procedure (MAP) process.

It also provides an elective (instead of mandatory) binding dispute resolution mechanism for developing countries which are eligible for deferral of BEPS Action 14 peer review and have no or low levels of MAP disputes.

Future commentary will be issued by the IF to provide further guidance and clarifications on the tax certainty aspects of Amount A.

For more details and copies of the consultation documents, please refer to this Link 1 to the OECD's website.

2. The OECD's consultation on the Progress Report on Amount A under Pillar One of BEPS 2.0

On 11 July 2022, the IF released another consultation document under Pillar One, which is the Progress Report on Amount A of Pillar One (the Progress Report).

The Progress Report includes a consolidated version of the operative provisions on several building blocks of Amount A under Pillar One such as (1) scope test, (2) nexus and revenue sourcing rules, (3) tax base determination, (4) exclusions for extractive industry and regulated financial services, and (5) elimination of double taxation. The Progress Report however does not include the rules on the administration of the Amount A under Pillar One including the tax certainty related provisions, which are expected to be released in around October 2022.

For more details and a copy of the Progress Report, please refer to these Link 2 and Link 3 to the OECD's website.

3. Update from the OECD on potential deferral in implementing Pillar One and Pillar Two under BEPS 2.0

On 11 July 2022, the OECD issued the OECD Secretary-General Tax Report to the G20. Among various topics discussed in the report (e.g. tax transparency, implementation status on various actions of BEPS 1.0, etc.), the report contained an updated timeline for the implementation of both Pillar One and Pillar Two under BEPS 2.0.

For Pillar One, the report mentioned that the detailed provisions of the Multilateral Convention and its Explanatory Statement are expected to be finalised and signed in the first half of 2023 with an aim to enter into force in 2024 once a critical mass of jurisdictions have ratified it. In addition, the work on Amount B under Pillar One is expected to be delivered by the end of 2022.

With respect to the implementation of Pillar Two, the key updates set out in the report are summarized as follow:

- The technical work on Pillar Two is now close to complete. Implementation now lies in the hands of the IF members.
- It seems that most jurisdictions are now planning for an entry into force of Pillar Two in 2024.
- The likely 2024 implementation will provide sufficient time for the IF to develop the Implementation Framework for Pillar Two for the purposes of limiting the risks of double taxation and facilitating co-ordination between tax administrations.
- Relevant work to develop the draft model provision and related commentary for the Subject to Tax Rule under Pillar Two is still on-going.

For more details and a copy of the tax report, please refer to these Link 4 and Link 5 to the OECD's website.

4. Implementation of Pillar 2 in Hong Kong deferred to 2024 at the earliest

On 15 August 2022, the Secretary for Financial Services and the Treasury issued an open letter to provide the latest update on the implementation of Pillar 2 in Hong Kong. The key updates included in the letter are summarized as follows:

- The implementation of the Income Inclusion Rule has now been deferred from 2023 to 2024 at the earliest. The government now plans to introduce the necessary legislative proposal to the Legislative Council in 2023.

- Regarding the implementation timeline for the Undertaxed Payment Rule, the government will review Hong Kong's own implementation timeline based on the implementation status of other jurisdictions.

- The introduction of a domestic minimum tax-up tax (DMT) in Hong Kong will now also be subject to the implementation status of other jurisdictions despite the government originally announced in the 2022/23 Budget delivered in February 2022 that it would consider introducing a DMT in Hong Kong starting from the year of assessment 2024/25 (i.e. 1 April 2024).

- The government plans to launch a consultation towards the end of 2022 to collect views on the translation of the Pillar 2 rules into domestic legislation and relevant requirements.

For more details and a copy of the open letter issued, please refer to this Link 6 to the Financial Services and the Treasury Bureau's website.

5. China deposited the BEPS Multilateral Instrument with the OECD

On 25 May 2022, Mainland China (China) deposited the instrument of approval for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) with the OECD. The MLI also covers the double tax agreements (DTAs) of the Hong Kong SAR (Hong Kong).

In addition, a full list of Hong Kong's final reservations and notifications in respect of the MLI was deposited with the OECD by China on behalf of Hong Kong on the same date.

The MLI was developed by the OECD under Action 15 of the BEPS 1.0 Action Plan. It enables jurisdictions to update their tax treaties in one go to adopt the tax treaty-related measures recommended by the OECD under the BEPS 1.0 Action Plan without the needs to renegotiate each treaty on an individual basis.

The MLI entered into force on 1 September 2022 in both China and Hong Kong. However, the MLI will only become effective in Hong Kong after completion of the domestic ratification procedures to incorporate the MLI as subsidiary legislation in Hong Kong. The MLI is expected to take effect in Hong Kong in 2023 at the earliest, subject to the progress of the domestic legislative process.

When the MLI comes into effect in Hong Kong, a number of existing DTAs of Hong Kong will be modified by the MLI to incorporate the tax treaty related BEPS measures recommended by the OECD under BEPS Action 6 (preventing tax treaty abuse) and Action 14 (making dispute resolution more effective). Both BEPS Actions 6 and 14 are minimum standard under the BEPS 1.0 Action Plan.

For more details and a copy of the full list of Hong Kong's final reservations and notifications in respect of the MLI, please refer to these Link 7 and Link 8 to the OECD's website.

6. The revised foreign sourced income exemption regime in Malaysia

On 19 July 2022, the Malaysian government published the exemption orders for foreign sourced income received in Malaysia (the Orders) in the Gazette. The following foreign sourced income received in Malaysia by Malaysian resident taxpayers from 1 January 2022 to 31 December 2026 will continue to be exempted from Malaysian income tax:

- Foreign sourced **dividend income** received in Malaysia by (1) companies incorporated or registered under the Companies Act 2016, (2) limited liability partnerships registered under the Limited Liability Partnerships Act 2012 and (3) individuals who received the foreign sourced dividend income through a partnership business in Malaysia provided that:

  (i) the taxpayer receiving the foreign sourced dividend income does not carry on a banking, insurance, sea or air transportation business; and

  (ii) the foreign sourced dividend income has been subject to tax of a similar character to income tax under the law of the originating jurisdiction and the highest rate of that tax imposed by that originating jurisdiction is not less than 15%.

- All classes of foreign sourced income under section 4 of the Income Tax Act 1967 (e.g. interest, dividends, royalties, employment income, etc.) received in Malaysia by individuals resident in Malaysia (excluding the foreign sourced income received in Malaysia from a partnership business in Malaysia) provided that the foreign sourced income has been subject to tax of a similar character to income tax under the law of the originating jurisdiction.

For more details and copies of the Orders, please refer to these Link 9 and Link 10 to the website of the Malaysian government.

7. Amendments to the BVI Business Companies Act 2004

Various amendments will be made to the BVI Business Companies Act 2004 effective from 1 January 2023. The key revisions effected by the amended BVI Business Companies Act include the following:

- There will be changes to the accounting and record keeping requirements for BVI companies. In addition to the existing record keeping obligations, BVI companies will be required to provide certain financial information, in the form of an annual return, to their registered agent.

- The names of the directors of BVI companies (and any subsequent changes) will be made publicly available to the registered users of the online system maintained by the BVI Financial Services Commission.

- A streamlined process for the dissolution of BVI companies will be introduced and a simpler method for restoration of dissolved companies will be available.

8. The US will introduce a domestic 15% Alternative Minimum Tax

On 16 August 2022, the United States (US) enacted the Inflation Reduction Act 2022 (the Act) into law. The Act includes, among other measures, an Alternative Minimum Tax (AMT) of 15% on certain large corporations. The AMT will apply to tax years beginning after 31 December 2022.

Although the US is a member of the IF and has signed up to the OECD's two-pillar common approach under BEPS 2.0, the US AMT regime deviates from the Pillar Two rules under BEPS 2.0 in various aspects. Some of the differences between the US AMT regime and the Pillar Two rules are as follows:

- The US AMT regime uses a USD 1 billion consolidated income threshold that is based on an average annual adjusted financial statement income test over a three-consecutive-year period while Pillar Two rules use a EUR 750 million consolidated revenue threshold in 2 out of 4 preceding years;

- The US AMT regime will come into effect starting from 2023 while the Pillar 2 rules are expected to apply from 2024 in major jurisdictions; and

- The calculation methodology of the US AMT regime deviates from the Pillar 2 rules. For example, the US AMT regime adopts a globally blend calculation methodology which mixes high taxed and low taxed jurisdictions together in calculating the effective tax rate while the Pillar Two rules adopt a jurisdictional approach to calculate the effective tax rate.

For more details and a copy of the Act, please refer to this Link 11 to the US Congress' website.