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International Tax Updates

1. The OECD's consultation on the Draft Model Rules for Nexus and Revenue Sourcing under Pillar One of BEPS 2.0

   On 4 February 2022, the OECD/G20 Inclusive Framework on BEPS (IF) released the first public consultation document for Amount A under Pillar One of BEPS 2.0. The document contains the Draft Model Rules for Nexus and Revenue Sourcing, which is one of the building blocks of Amount A.

   The key points of the Draft Model Rules are summarised as follows:

   - consistent with the October 2021 Statement on the Two-Pillar Solution issued by the IF, a multinational enterprise (MNE) group has sufficient nexus to a market jurisdiction if it derives at least EUR 1 million in revenue in a measurement period (i.e. normally a financial year of the MNE group) from that jurisdiction (or at least EUR 250,000 for a jurisdiction with annual GDP less than EUR 40 billion);

   - an in-scope MNE group must source all revenue, generally on a transaction-by-transaction basis, according to the category of revenue earned from the transaction. The Draft Model Rules contain revenue sourcing rules specific to the following categories of transactions: (1) sales of finished goods; (2) sales of digital goods; (3) sales of components; (4) the provision of services; (5) transactions for the licensing, sale, or other alienation of intangible property or user data; (6) transactions involving real property; (7) government grants and (8) a catchall for non-customer revenue.

   - once a transaction has been categorised, revenue from that transaction is sourced according to one of the "Reliable Indicators" identified for that category of revenue;

   - "Allocation Keys" could be used to source the revenue of a transaction if specifically permitted in the relevant sourcing rules or if the in-scope MNE group could not identify a "Reliable Indicator" after taking "reasonable steps" to do so; and

   - revenue from Supplementary Transactions may be sourced according to the revenue from the Main Transaction.

   Future commentary will be issued by the IF to provide further guidance and clarifications on the Nexus and Revenue Sourcing Rules.

   For more details and a copy of the Draft Model Rules, please refer to this link 1 to the OECD's website.

2. The OECD's consultation on the Draft Model Rules for Tax Base Determination under Pillar One of BEPS 2.0

On 18 February 2022, the IF released another public consultation document on Amount A. under Pillar One of BEPS 2.0. The document contains the Draft Model Rules for Tax Base Determination under Amount A (the Tax Base Determination Rules).

The Tax Base Determination Rules set out how to compute the profit (or loss) before tax of an in-scope MNE group that will be used for the Amount A calculation purpose (i.e. Amount A tax base).

The key features of the Tax Base Determination Rules are summarised as follows:

- the tax base determination rules will be used to determine the profit / loss of an in-scope MNE group that will be used for the Amount A calculation to reallocate a portion of its profits to market jurisdictions;

- the adjusted profit / loss before tax will be calculated based on the total profit / loss presented on the consolidated financial accounts of the ultimate parent entity, with a limited number of book-to-tax adjustments;

- restatements of profit / loss in the financial accounts of prior periods are generally attributed to the Amount A tax base in the period the restatement is identified and recognised by an MNE group (with the adjustment limited to 0.5% of the revenue of the MNE group in the period where the adjustment is made);

- unrelieved losses from prior years can generally be carried forward and deducted in the calculation of the adjusted profit / loss before tax in the current year, subject to certain time limitations (which are still under discussion); and

- the tax base rules for in-scope MNE groups that are subject to segmentation for Amount A purpose are not included in the draft model rules and will be released later.

Future commentary will be issued by the IF to provide further guidance and clarifications on the Tax Base Determination Rules.

For more details and a copy of the Tax Base Determination Rules, please refer to this link 2 to the OECD's website.

3. The OECD published peer review results on nine preferential regimes under BEPS Action 5

On 24 January 2022, the OECD published the peer review results on nine preferential tax regimes reviewed by the OECD's Forum on Harmful Tax Practices (FHTP) as part of the implementation of the BEPS Action 5 minimum standard. This brings the total number of reviewed preferential regimes to 317 since the start of the BEPS Project.

Among the nine reviewed tax regimes, the profits tax concession for carried interest in Hong Kong is regarded as a non-harmful tax regime and a tax regime designed in compliance with the FHTP standards.

For more details and the peer review results of the nine preferential regimes, please refer to these link 3 and link 4 to the OECD's website.

4. The OECD released the latest edition of the Transfer Pricing Guidelines

On 20 January 2022, the OECD released the 2022 edition of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (the OECD Transfer Pricing Guidelines).

The 2022 edition of the OECD Transfer Pricing Guidelines mainly incorporate the changes resulting from:

- the report on Revised Guidance on the Transactional Profit Split Method;
- the report on Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles; and
- the report on Transfer Pricing Guidance on Financial Transactions.

For more details, please refer to this link 5 to the OECD's website.

5. Update to the EU list of non-cooperative jurisdictions for tax purposes

On 24 February 2022, the European Union (EU) issued a press release on its update of the list of non-cooperative jurisdictions for tax purposes (the EU tax list). The EU tax list consists of the blacklist list and the grey list.

The EU decided to add Bahamas, Belize, **Bermuda**, **the British Virgin Islands**, Israel, Monserrat, the Russian Federation, Tunisia, Turks and Caicos Islands and Vietnam to the grey list. There was no change to the blacklist. For more details on the reasons of the EU's decisions to add the above jurisdictions to the grey list, please refer to the report in this link 6.

The updated grey list consists of 25 jurisdictions (including Hong Kong which has been put on the grey list since October 2021) whereas the blacklist continues to include 9 jurisdictions.

The next round of update of the EU list is scheduled in October 2022.

For more details, please refer to this link 7 to the EU's website.

6. Implementation of BEPS Pillar Two in the European Union

On 22 December 2021, a proposed EU Directive was published to incorporate the BEPS Pillar Two rules into the EU law. According to the proposed Directive:

- the Pillar Two rules in the EU generally model the GloBE model rules issued by the OECD on 20 December 2021, but with a wider scope that includes large-scale domestic groups as well (with specific transition rules for the first five years in which these groups come within the scope of the Directive);

- the proposed Directive also clarifies the relationship between the Income Inclusion Rule under BEPS Pillar Two and the existing EU legislation on controlled foreign companies; and

- the proposed Directive does not include provisions to implement the Subject to Tax Rule (STTR) under BEPS Pillar Two. As clarified in the Explanatory Memorandum of the proposed Directive, the STTR would be addressed in the future amendment of bilateral tax treaties.

For more details and a copy of the proposed Directive, please refer to these link 8 and link 9 to the EU's website.

7. The proposed EU Directive to prevent the misuse of shell entities for tax purposes

On 22 December 2021, a proposed directive was published by the EU with an aim to prevent the misuse of shell entities for tax purposes in the EU. According to the proposed EU Directive:

- a list of three features (referred to as "gateways") will be used for assessing whether an entity is regarded as at risk of lacking substance;

- entities meeting all of the three features based on a self-assessment and not qualifying for any of the specific carve-outs mentioned in the proposed Directive will be required to report their substance through an annual tax return;

- entities that fail to meet the required substance indicators set out in the proposed Directive would be deemed as a "shell entity" and denied certain tax benefits under tax treaties and the relevant EU Directives, unless the entities can rebut this presumption; and

- the information reported would be covered by automatic exchange of information and may be subject to a tax audit.

For more details, please refer to this link 10 to the EU's website.

8. The 2022 Singapore Budget

On 18 February 2022, the Singapore government announced the 2022 Singapore Budget. Some of the tax-related key points announced in the Budget are summarised as follows:

- as a response to Pillar Two of BEPS 2.0, a domestic 15% Minimum Effective Tax Rate Regime (METR) will be explored and industry consultation will be conducted on the design of the regime;

- the Singapore government will closely monitor international developments before making any decisions on the METR and announce changes in the corporate tax system when ready;

- the property tax rates for both non-owner-occupied residential properties (including investment properties) and owner-occupied residential properties will be increased;

- the increase in the Goods and Sales Tax (GST) will be delayed to 2023 and the increase will be staggered into two steps i.e. an increase from 7% to 8% effective on 1 January 2023 and a further increase from 8% to 9% effective on 1 January 2024;

- carbon tax will be increased to $S25 per tonne in 2024 and 2025, $S45 per tonne in 2026 and 2027 and may be further increased to $S50 to $S80 per tonne by 2030;

- businesses are allowed to use high-quality and international carbon credits to offset up to 5% of their taxable emissions starting from 2024; and

- Personal income tax - effective from the year of assessment 2024, the portion of chargeable income in excess of $S500,000 and up to $S1 million will be taxed at 23%, while that in excess of $S1 million will be taxed at 24%. Incomes at these levels are currently taxed at 22%.

For more details and a copy of the Budget Statement, please refer to this link 11 to the Singapore Government’s website.