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Tax Transparency and Risk Management

The global outcry over hidden wealth sparked by the Panama Papers leak has increased the focus of the public and governments on the tax practices of the affluent and corporates as well as the amount of taxes that they pay. As such, the debate on “fair” taxation has led to calls for greater tax transparency and demands for more disclosure of tax information to the tax authorities.

Increased tax transparency is inevitable

Many countries and global organisations including the Organisation for Economic Co-operation and Development (OECD) have introduced new initiatives and legislation aimed at stopping companies and individuals from using tax havens and offshore entities to hide income and assets to evade tax.

These initiatives and legislation aim to block artificial tax arrangements, identify where the money of individuals and corporates reside globally and who are the ultimate beneficial owners of the money, and plug legal loopholes that allow income to be shifted to low or no tax jurisdictions.

Some examples of global transparency efforts include the US Foreign Account Tax Compliance Act (FATCA), UK Disclosure of Tax Avoidance Schemes (DOTAS), OECD’s Base Erosion and Profit Shifting (BEPS) Action Plan including requirements for Country-by-Country Reporting (CbCR), the Automatic Exchange of Information (AEOI) based on the Common Reporting Standard (CRS), etc.

Among the growing number of global transparency initiatives, the one which should concern most high net worth individuals is the AEOI. AEOI, based on the CRS, refers to the regular exchange of financial account information between jurisdictions for tax purposes, with the objective of detecting and deterring tax evasion by taxpayers through the use of offshore bank accounts. More than 100 jurisdictions, including major financial centers such as Singapore, Dubai, Hong Kong, Luxembourg and Switzerland, have endorsed the CRS and will commence AEOI in either 2017 or 2018.

In furtherance of this effort, the OECD has launched a new facility for the disclosure of CRS avoidance schemes. This allows whistleblowers to alert the OECD about avoidance schemes on an anonymous basis. This is a change in attitude from the past, where whistleblowers might have previously been concerned of being prosecuted, as was the case in Luxleaks. If effective, this new facility may increase the likelihood of CRS avoidance schemes being disclosed.

Substance

The increased transparency is likely to shine a spotlight on the structures used by many corporates and individuals in aggressive tax planning. Many countries are now empowered to tackle tax avoidance schemes not covered by specific anti-avoidance rules (i.e. general anti-abuse rules). Increasingly, tax authorities now have the power to tax profits moved to low or no tax countries where corporates do not have any genuine economic activity or business substance.

What potential impact could I face?

We expect the tax compliance burden on taxpayers to grow due to the potential increase in the number of tax audits and disputes with the tax authorities on “grey” tax positions. There will also be more pressure to manage the potential tax, business and reputational risks associated with many of the transparency initiatives.

While most investors and corporations who use tax havens and offshore entities have legitimate reasons to use these structures, it is likely that there will be increased scrutiny by tax authorities on these offshore structures.

Therefore, it would be prudent for taxpayers to seek tax certainty on their tax positions and structures.

What can I do?

Companies and individuals should plan strategically and act proactively to address the tax risks including:-

- Reviewing their business/value chain model and corporate structure for high risk areas;
- Documenting uncertain tax positions;
- Rethinking unsustainable tax structures;
- Seeking advanced rulings to obtain tax certainty.

Key takeaways

- Enhanced tax transparency is the new standard for doing business globally.
- There will be an increased focus on tax certainty.
- Tax planning should be based on transparency, substance and coherence.

How we can help

At BDO, we have the expertise and experience in a broad range of services including but not limited to efficient tax planning, reviewing of structures and resolving tax disputes. Please feel free to contact us and let us know how we can assist you.

YOUR BDO PCS TAX CONTACTS

KYLIE LUO

kylieluo@bdo.com.sg
+65 6828 9157

POK SIM HOONG

simhoong@bdo.com.sg
+65 6829 9615

ZOE WONG

zoesamanthawong@bdo.com.sg
+65 6829 9646

CAZ WONG

cazwong@bdo.com.sg
+65 6828 9166

TEO YI LUN

yilun@bdo.com.sg
+65 6828 9118 (ext. 702)

BDO Tax Advisory Pte Ltd

600 North Bridge Road #23-01 Parkview Square
Singapore 188778
Tel: +65 6828 9118 | Fax: +65 6828 9111

www.bdo.com.sg

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