

PRISM

Tax Newsletter

3rd Quarter 2017

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China

Measures of international tax environment

Under the strategic guidance of One Belt and One Road, step by step China has developed from a capital importing nation to a capital exporting nation with the increasing development of reform. In the reformation process, company needs to pay attention to the changing international tax environment to have better control of tax risk.

目前，中国改革开放不断深入，在“一带一路”战略指引之下，中国已从一个资本进口国逐渐发展为一个资本出口国。在“走出去”的过程中，企业需要对不断变化的国际税收形势给予关注，未雨绸缪，控制税收风险。

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Cyprus

Cyprus signs off a Double Taxation Avoidance Agreement (DTAA) with Barbados

Cyprus and Barbados have concluded and signed a Double Taxation Avoidance Agreement (DTTA) on 3 May 2017 in London. The DTTA generally complies with the provisions of the OECD Model Convention and will come into force as from the 1st January next following the year in which each country completes the ratifications process.

塞浦路斯和巴巴多斯于2017年5月3日在伦敦签署了避免双重征税协定。该协定将于两国完成确认程序年度之后的1月1日生效。

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Hong Kong

The Multilateral Convention to implement BEPS in Hong Kong has been signed!

On the 7th of June 2017, Mainland China on behalf of Hong Kong, signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. Corporate groups with cross-border business activities should carefully review their existing structures and assess the potential impacts.

中国代表香港于2017年6月7日签署了《实施税收协定相关措施以防止税基侵蚀和利润转移的多边公约》。具有跨境商业活动的企业集团应仔细审视其现有业务结构并评估潜在影响。

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India

BEPS - An Indian perspective

BEPS is a tax avoidance strategy used by multinational companies, wherein profits are shifted from jurisdictions with high taxes to those with lower (or no) taxes (so-called tax havens). Taxation is at the core of countries' sovereignty, but the interaction of domestic tax rules in some cases leads to gaps and frictions. When designing the domestic tax rules, sovereign states may not sufficiently take into account the effect of other countries' rules. The interaction of independent sets of rules enforced by sovereign countries creates frictions, including potential double taxation for corporations operating in several countries. It also creates gaps, in cases where corporate income is not taxed at all.

BEPS概论是跨国公司，其中将利润转移从司法管辖区与那些较低（或无）高税收税（所谓避税）用税避障策略。税收处于核心地位的国家的主权，但在某些情况下国内税收规则的相互作用导致差距和摩擦。在设计时国内税收规则，主权国家可能没有充分考虑到其他国家的规则的影响。相互作用的独立的主权国家所执行的规则集合创建摩擦，包括潜在的双重征税，在几个国家经营的企业。它还创建了差距，在企业所得税税负并不在所有的情况下。

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Korea

Increased penalty for Violation of foreign exchange transactions act

The upper limit of penalties imposed by foreign exchange transaction laws rose from 50 million won to 100 million won, Reduction rate for penalty will be increased from 20% to 50% or up to 75%. Penalty may be reduced for voluntary declaration , small and medium sized company , minor negligence etc.

据关税厅公布，违反外汇交易法的罚款被上调。外汇交易法的罚款上限也由5千万增至1亿。罚款的减轻率由20%增至50%（减轻到罚款金额的75%）。减轻理由是主动申报，中小企业，其他轻微过失等。

由于这次的外汇交易法罚款的上调，期待能引导在韩国的进出口企业自觉遵守法规。

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Macau

Identify tax resident of other jurisdictions

Effective July 1 2017, Macao SAR financial institutions will request information from clients to identify if they are tax resident of other jurisdiction and supply the information of relevant accounts to Macao Financial Services Bureau (Macao Tax Authority DSF) in order to engage in automatic exchange of information.

澳门特区的金融机构会于2017年7月1日开始根据《金融账户信息的通用报送标准及尽职调查程序》进行尽职调查，以识别出境外税务居民持有的金融账户，并将按有关机制把境外税务居民持有账户的信息账户信息报送到财政局，由财政局与澳门特区已签有协议的相关管辖区进行交换，作为税务用途。

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China




Measures of international tax situation

FIRST, economic essence. After BEPS plan has been implemented by various countries, the number of conduit companies with no economic essence will be reduced and more source countries will refuse to offer collective preference to the countries with no economic essence.

SECOND, transparency. On the initiative of OECD, consolidated standards of reporting has been gradually implemented by various countries. Financial institutions are required to confirm their clients' tax identities and offer deposit and some income information to the countries of their clients residence. Accounts with no real names will be reduced and subsequently diminished.

THIRD, government subsidies. The international tax code also includes EU tax guidelines. Government subsidies rules decided by EU have extraordinary impacts on international taxes. Tax breaks given by the state may be seen as illegal government subsidies, in violation of EU law, and the result may be that preferential treatment is eliminated, and the risk of tax rises and fines increases.

FOURTH, Brexit. After Brexit, England will no longer be constrained by EU indirect taxes, tariff laws and cases decided by EU courts. Therefore, Chinese enterprises should know fairly well about the influences of Brexit if their overseas investment includes investments in England.

FIFTH, American tax reform. The "border adjustment tax", once implemented, would raise the tax burden on imports from the United States, while exports would actually be subsidized by the U.S. state. Countries such as China, which are dependent on American exports, should study the proposal to predict the consequences for China and take corresponding actions. 

Cyprus



Cyprus signs off a Double Taxation Avoidance Agreement (DTAA) with Barbados

Cyprus and Barbados have concluded and signed a Double Taxation Avoidance Agreement (DTTA) on 3 May 2017 in London. The DTTA generally complies with the provisions of the OECD Model Convention and will come into force as from the 1st January next following the year in which each country completes the ratifications process.

The treaty sign off was well received by the business communities of the two countries and it further

enhances Cyprus position as an international business center, since some of its provisions are deemed to be significantly favorable. The DTTA's main provisions are analyzed below:

Permanent Establishment

Based on the new treaty the definition of permanent establishment also includes a building site or construction or installation project or any supervisory activities in connection with such site or project constitutes a permanent establishment only if it lasts more than 6 months (definition in compliance with OECD model).

Dividends

The withholding tax rate on dividends is set at 0%.

Interest

The withholding tax rate on interest is set at 0%.

Royalties

The withholding tax rate on royalties is set at 0%.

Capital gains

Gains from the disposal of immovable property are taxed in the country where the immovable property is situated. Capital gains arising from the disposal of shares deriving more than 50% of their value directly or indirectly from immovable property in the other Contracting State may be taxed in that other State. Other capital gains from the alienation of any other property are taxable only in the place of residence of the alienator.

Amendment in Cyprus Tax Resident Individual term

On 14 July 2017, the House of Representatives unanimously voted and approved an amendment to the definition of the "Cyprus Tax Resident Individual" term in the Income tax law.

In detail, an individual who does not remain in any other jurisdiction for one or more periods which altogether exceed 183 days in the same tax year and is not a tax resident of another jurisdiction within the same tax year, can be considered a Cyprus Tax Resident Individual if the following conditions are satisfied:

1. he should remain in Cyprus for at least 60 days during the tax year;
2. he should pursue any business in Cyprus and/or to work in Cyprus and/or to be a director in a company resident in Cyprus at any time during the tax year and
3. he should maintain a permanent residence in Cyprus, which can be either owned or rented

It should be clarified that if the employment/business or holding of an office as per the condition (ii) is terminated, then the individual shall cease to be considered a Cyprus tax resident for that tax year under these extended rules.

Advantages of Cyprus Tax Residency

Cyprus tax residents are liable to Cyprus tax on their worldwide income. The current Cyprus income tax rates are the following:

Tax Base (EUR)	Tax rate (%)
Up to €19,500	0%
€19,501 to €28,000	20%
€28,001 to €36,300	25%
€36,301 to €60,000	30%
Over €60,000	35%

These tax incentives exist for individuals employed in Cyprus who were not previously Cyprus tax residents:

- The lower of €8,550 or 20% of the remuneration from any office or income from employment in Cyprus is exempted from income tax for a period of 5 years. This incentive will expire in 2020.
- For individuals with employment income exceeding €100,000 per annum there is a 50% tax exemption which can be applied for a 10 year period.

Any individuals which are only Cyprus tax residents but not Cyprus domiciled are exempted from the Special Defence Contribution which is imposed on certain types of income such as dividends, interest and rents. 🇨🇵

Hong Kong

The multilateral convention to implement BEPS in Hong Kong has been signed!

On 7 June 2017, Hong Kong (represented by Mainland China) has become a party to the Multilateral Convention ("Multilateral Instrument" or "MLI") to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("BEPS").

Many of the treaty-related measures as recommended by the international community can only be implemented by amending existing tax treaties. There are more than 3,000 tax treaties across the world. The MLI is orchestrated by the Organisation for Economic Cooperation and Development ("OECD"), aiming to assist participated jurisdictions to amend tax treaties efficiently without having to negotiate amendments on a one-to-one basis. The MLI generally covers the following key treaty-related areas:

- (i) Treaty abuse
- (ii) Treaty dispute resolution
- (iii) Hybrid mismatches (e.g. transparent entities, dual resident entities, etc.)
- (iv) Permanent establishment (e.g. rules for determining whether a permanent establishment exists or not)

Hong Kong's tentative and provisional position on MLI can be accessed via this link: <http://www.oecd.org/tax/treaties/beps-mli-position-hong-kong.pdf>

In view of the above key development, corporate groups with cross-border businesses and investments should review their existing structures and assess the potential impacts of Hong Kong's provisional MLI position. Additionally, when handling treaty benefits/protection claims made by a Hong Kong entity, the Hong Kong tax authority may put more and more emphasis on factors like having business substance and commercial purposes of setting up. 🇭🇰

India



BEPS - An Indian Perspective

IMPLEMENTATION OF BEPS ACTION PLAN IN INDIA (to the extent made applicable out of the 15 Action Plans)

1. ACTION PLAN 1: Tax Challenges of the Digital Economy

Adoption of Equalization Levy: India has introduced Equalization Levy through Finance Act, 2016 which is made applicable on specified services i.e. Online Advertisement, Provision of digital advertising space or any other facility for online advertisement. Every person, being a resident carrying on business or profession in India or a non-resident having permanent establishment in India, shall deposit the levy at 6% on the considerations payable to non-resident not having permanent establishment in India. Such levy does not apply where the aggregate amount payable to non-resident does not exceeds INR 100,000 in a year.

2. ACTION PLAN 4: Limit base erosion via interest deductions and other financial payments.

The deduction for any expenditure by way of interest or of similar nature incurred (whether paid or payable) by an Indian company or the PE (Permanent Establishment) of a foreign company in respect of debt borrowed from: Its non-resident associated enterprises; or Third-party non-resident lender if an associated enterprise provides an implicit or explicit guarantee to such lender would be restricted to 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA). Further threshold of interest expenditure of INR 1 crore is provided to carve-out entities which have a low level of interest expense. The interest expense which is disallowed can be carried forward up to 8 immediately succeeding tax years.

3. Action Plan 6 Prevention of Treaty Abuse- The General Anti Avoidance Rules (GAAR)

The GAAR has been introduced in the Indian tax law, and is to be implemented from 1 April 2017. The Indian GAAR overrides tax treaties, which is consistent with the OECD commentary on anti-avoidance rules.

The GAAR would allow the revenue authorities to analyze and go deeper into the transactions and/ or arrangements (e.g. judging their ownership structures, beneficial ownerships, voting rights, etc.). The GAAR and Limitation of Benefit/ Principle purpose test rule may impact intermediate holding companies for investing into India, which lack substance and have been interposed only to avail tax treaty benefits.

4. ACTION PLAN 13: Transfer Pricing Documentation and Country-by-Country Reporting

I. Master File: It is intended to provide a high-level overview of the MNE groups' business, including the nature of its global business operations, value drivers, supply chain analysis, intangibles employed, financial arrangements, overall transfer pricing policies, and financial and tax positions.

II. Country-by-Country (CbC) report:

A snapshot of the CbC regulations is provided below

Who Files the CBC	Threshold Limit	Timeline for filing	Penalty
<ul style="list-style-type: none"> • Ultimate Parent entity • In few circumstance by the Indian entity, being either the alternate reporting entity or a part of international group/ MNE group 	€750 mn (INR 53.95 billion) on consolidated group revenue for preceding accounting year for CbCR	To be filed by the due date of filling income tax return, i.e., November 30	Penalty ranging from INR 5,000/- to INR 50,000/- for Non-furnishing of CBC report or non-furnishing of required information. Penalty of INR 500,000/- for furnishing of inaccurate particulars or non-furnishing of Master File data.

5. ACTION PLAN 15 : Developing a Multilateral Instrument (MLI) to Modify Bilateral Tax Treaties

MLI is a single convention where modification of existing bilateral tax treaties to efficiently implement measures developed by BEPS. MLI does not need individual renegotiating of each bilateral treaty. On June 7, the MLI was signed by India. As provisional list India has notified all its 93 double tax avoidance treaties indicating the intention of applying the selected MLI provisions to all these treaties. MLI is a single convention where modification of existing bilateral tax treaties to efficiently implement measures developed by BEPS. MLI does not need individual renegotiating of each bilateral treaty. On June 7, the MLI was signed by India. As provisional list India has notified all its 93 double tax

avoidance treaties indicating the intention of applying the selected MLI provisions to all these treaties. 🇮🇳

Reference

1. Beps-reports-2015-executive-summaries

2. Action Plan on Base Erosion And Profit Shifting.

Website:(http://www.oecd-ilibrary.org/taxation/action-plan-on-base-erosion-and-profit-shifting_9789264202719-en)

3. Income Tax Act, 1961.

Korea



Increase penalty for foreign exchange transactions act violation

According to the Korea Customs Service, the violation of foreign exchange law is revised and the adjustments were implemented on July 18, 2017.

The details of the amendments of the penalty are as below.

1. The upper limit of penalties imposed by foreign exchange transaction laws rose from 50 million won to 100 million won,
2. The revised penalties according to the act of violation are as below

Foreign exchange law	Amendment	Previous
Violation of Article 32 section 1 of the Act	100 Million Won	50 Million Won
Violation of Article 32 section 2 of the Act	50 Million Won	10 Million Won
Violation of Article 32 section 3 of the Act	50 Million Won	N/A
Violation of Article 32 section 4 of the Act	10 Million Won	N/A

1) Violation of Article 32 section 1 of the Act

Who didn't report following to Article 8 section 4 (A Presidential decree) of the Act for declaration of change

2) Violation of Article 32 section 2 of the Act

Who didn't report following to Article 9 section 1 of the Act for declaration of change

3) Violation of Article 32 section 3 of the Act

Who didn't report following to Article 16 of the Act (Methods of payment or receipt) for declaration of change

4) Violation of Article 32 section 4 of the Act

Who didn't report following to Article 18 section 1 of the Act (Capital transaction) for declaration of change

5) Reduction rate for penalty will be increased from 20% to 50%; or up to 75%. Penalty may be reduced for voluntary declaration , small and medium sized company , minor negligence etc. 🇲🇴

Reference:

1. Samil commentary, www.pwc.com

Macau



Identify tax resident of other jurisdictions

Automatic Exchange Portal is a global new requirement underlined by the Organization for Economic and Co-operation Development OECD. More that 100 jurisdictions have committed to the exchange of information. Macao Special Administrative Region SAR has committed to the first Automatic Exchange of Information in 2018.

Effective July 1 2017, financial institutions engaging in financial services in the Macao SAR will acquire information from their existing and new account holders, to identify whether they are the tax residents of other jurisdictions. Financial institutions shall supply the information of relevant accounts to the Financial Services Bureau (Macao tax authority DSF) in order to engage in the automatic exchange of information with relevant tax jurisdiction in accordance with the provisions of tax treaties.

(Automatic Exchange Portal) is not applicable for a Macao resident individual generates income from Macao and he is a tax resident of Macao only with no tax residence in other tax jurisdictions. A company is resident in Macao if it is incorporated in Macao SAR. A Macao incorporated limited company, tax resident in Macao, generates revenue from commercial or industrial activities, is subject to worldwide profit. A foreign company that incorporated outside Macao is not considered a Macao tax resident and it is subject to Macao tax for income derived from business or activities in Macao. Macao financial institution will identify tax residents of other jurisdictions and fulfill obligation of automatic exchange of information for international cooperation. 🇲🇴

Reference:

1. <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/>

2. [tax-residency/#d.en.347760](http://www.dsf.gov.mo/pt/legislacao/legislacao_geral/legislacao_geral_dsf/#d.en.347760)

3. <http://www.gov.mo>

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