Client Alert

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Singapore Joins International Framework for Implementing BEPS

The Ministry of Finance has announced that Singapore will be joining the inclusive framework for the global implementation of the Base Erosion and Profit Shifting ("**BEPS**") Project as a BEPS Associate.

Under the framework and as a BEPS Associate, Singapore will participate in developing and monitoring the implementation of the BEPS measures, along with other BEPS Associates. In this capacity, Singapore has committed to implementing the four BEPS minimum standards in the areas of:

1. **Countering harmful tax practices (BEPS Action 5)** – This looks at jurisdictions that offer preferential regimes for enterprises that may be weak on substantial presence or value. Singapore has awarded tax incentives to promote the economic growth of the country but these incentives are legislated and come with substantial conditions for the enterprises to locate significant business presence and investment for their businesses in Singapore. These incentives are also limited to specific qualifying income of the business and have a definite prescribed period. Singapore will continue to use tax incentives to promote the growth of its economy. The emphasis will continue to be on anchoring substantive business operations in Singapore. Existing tax incentive regimes are reviewed regularly and left to expire or revised depending on their relevance and competitiveness.

2. **Preventing tax treaty abuse (BEPS Action 6)** – Many of the tax treaties concluded by Singapore already contain provisions against inappropriately accessing the use of tax treaty benefits. Singapore is currently participating in the development of a multilateral instrument that will introduce measures against tax treaty abuse and countries that sign this multilateral instrument will adopt the measures in their tax treaties. Such measures may also include amendments to the definitions of certain terms in the tax treaties. Singapore will consider whether to adopt the measures in the multilateral instrument after the instrument is finalised.

3. **Country-by-Country Reporting ("CbCR") for transfer pricing documentation (BEPS Action 13)** – This report shows the global financial and operational footprint of a group and is intended to be used for assessing high-level transfer pricing risk on cross-border transactions between related entities. Singapore will implement CbCR for financial years beginning on or after 1 January 2017 and will apply to multinational enterprises whose ultimate parent entities are in Singapore and whose group turnover exceed S$1.125 billion.

Enterprises will have 12 months from the last day of the relevant financial year to file their CbCR reports with the Inland Revenue Authority of Singapore ("**IRAS**"). These reports can be shared with the tax authorities of other countries which have a treaty with Singapore for the automatic exchange of such reports, subject to certain conditions being met.

IRAS will consult Singapore-headquartered multinational enterprises further on the implementation details of CbCR, and plans to release these details by September 2016.

4. **Improvements in cross-border tax dispute resolution (BEPS Action item 14)** – Singapore will work with other countries to monitor the implementation of minimum standards on dispute resolution mechanisms developed under the BEPS Project. This is to ensure that taxpayers have access to effective and expedient dispute resolution mechanisms under Singapore's bilateral tax treaties.

<u>What these commitments mean for multinationals with operations in Singapore?</u>

Singapore has awarded tax incentives to enterprises which bring substantial business operations and investments to Singapore and which are strategic to the economic growth of the country. The incentives are in any case reviewed from time to time and refreshed, removed or replaced as seen fit. BEPS Action 5 which seeks to counter harmful practices should not affect this and whether the bar for the incentives will be changed and by how much are different issues. The government's objective appears to be to ensure that Singapore’s tax incentive regime will be consistent with the implementation of measures under the BEPS Project.

The changes in relation to CbC reports will likely have a significant impact on all multinational companies with operations in Singapore. The responsibility to prepare the CbC reports normally lies with the global parent company. As a BEPS Associate, Singapore will have access to the CbC reports of multinational companies. Ultimate parent companies in Singapore will be required to prepare and submit a CbC report to IRAS. The CbC reports provide global and in-country information that will be shared among the BEPS Associates where the multinational has business operations. This provides immediate transparency of the multinational’s operations and tax globally and may thus increase the risk of tax scrutiny and audits. As such, it would be prudent for companies to undertake a thorough risk review to look into any areas susceptible to such audits.

Cross border tax disputes can be resolved by the Mutual Agreement Procedure (“**MAP**"). BEPS Action 14 seeks to make this process more effective as it promotes the adoption, use and administrative accessibility of the MAP across bilateral tax treaties. We can also expect the Singapore government, in particular IRAS, to take a more proactive role in facilitating the resolution of cross-border disputes with other tax authorities. This is in view of the possibility that the implementation of changes recommended under the BEPS Project is likely to create instances of uncertainties and double taxation for taxpayers in practice, and this may result in an increase in the number of cross-border tax disputes.

While not part of the minimum standard, certain countries (e.g., Australia, Canada, France, Germany, Japan, the Netherlands and the United Kingdom) have made a further commitment to provide for binding MAP arbitration in their bilateral tax treaties. It remains to be seen whether Singapore will go beyond the minimum standard and pursue mandatory arbitration.