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RSM Tax Advisory (Hong Kong) Limited

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Welcome to Tax Flash – RSM Tax Advisory (Hong Kong) Limited’s Newsletter Covering Technical Development in Taxation

RECENT DEVELOPMENT IN HONG KONG FOR ENHANCEMENT OF TRANSPARENCY

As the governments of various jurisdictions around the world have each taken steps to enhance transparency in their own jurisdictions as well as to improve international tax cooperation, Hong Kong has also been preparing itself for such move in terms of transparency and disclosure.

Hong Kong has committed to support the implementation of automatic exchange of financial account information (AEOI). With the Inland Revenue (Amendment) (No. 3) Ordinance 2016 comes into effect, financial institutions (FIs) in Hong Kong will start collecting the required information from account holders in relation to periods that start on or after 1 January 2017. Hong Kong will commence the first information exchanges by the end of 2018. Please refer to our October 2016 Tax Flash for details.

Hong Kong has also committed to the comprehensive base erosion and profit shifting (BEPS) Package. The Hong Kong Government launched a two-month consultation in October to December 2016 to collect views on implementation of measures by OECD to counter BEPS of enterprises. In the consultation paper, Country-by-Country (CbC) reporting was proposed to be implemented in Hong Kong. Subject to necessary legislative amendments, a multinational enterprise group (MNE Group) will be required to file CbC reports in Hong Kong for the accounting periods commencing on or after 1 January 2018.

Recently, the Financial Services and the Treasury Bureau (FSTB) completed the public consultation on corporate beneficial ownership and released the conclusion on 13 April 2017. The consultation paper sets out the framework to enhance the transparency of Hong Kong company ownership in an effort to meet prevailing international standards to combat money laundering and terrorist financing.

1. BEPS

As one of the BEPS measures to be implemented in Hong Kong, MNE Groups will be required to file CbC report in Hong Kong for the accounting periods commencing on or after 1 January 2018, subject to necessary legislative amendments.

General requirements

An MNE Group is required to file a CbC report in relation to an accounting period where:

- the consolidated group revenue for the preceding accounting period is at least EUR750 million (or HK\$6.8 billion); and
- the group has constituent entities or operations in two or more jurisdictions.

The CbC report requires:

- information related to the global allocation of the income, the taxes paid, and certain indicators of the location of economic activity among tax jurisdictions in which the MNE Group operates; and
- a list of all the group entities for which financial information is reported, including the jurisdiction of incorporation of each of the group entities (if different from the jurisdiction of tax residence) and the main business activities carried out by that entity.

For MNE Groups of which the ultimate parent entities are tax residents in Hong Kong (“Hong Kong MNE Groups”), the ultimate parent entity is required to file the CbC report within 12 months after the end of the relevant accounting period. Where the ultimate parent entity is resident in another tax jurisdiction which neither requires the filing of CbC report nor has qualifying competent authority agreements (QCAAs) with other tax jurisdiction, the group’s entity in Hong Kong may be required to file the CbC report locally.

CbC reports are to be exchanged automatically between tax administrations under QCAAs.

Transitional Arrangement

To facilitate Hong Kong MNE Groups to fulfil their CbC reporting obligations in jurisdictions which have introduced CbC reporting since the accounting period commencing on 1 January 2016, the Inland Revenue Department (“IRD”) is setting out the procedures for a transitional arrangement.

Under the transitional arrangement, the IRD allows a Hong Kong MNE Group to file its CbC reports for the accounting periods commencing between 1 January and 31 December 2017 for exchange with other tax jurisdictions. For Hong Kong MNE Groups seeking parent surrogate filing in Hong Kong, the ultimate parent entity should submit a notification, duly signed by its director, secretary or responsible officer, to the IRD with the following information:

- the name of the ultimate parent entity;
- the Hong Kong business registration number of the ultimate parent entity;
- the accounting period(s) for which the group's CbC report(s) will be filed to the IRD;
- a list showing the name, tax identification number and jurisdiction of tax residence of each of the constituent entities to be included in the CbC report; and
- a consent given to the Department to inform the relevant jurisdictions of the ultimate parent entity's agreement to perform parent surrogate filing in Hong Kong.

Updates on CbC reporting implementation may be found [here](#).

2. BENEFICIAL OWNERSHIP REGISTERS

The increasing complex ownership and control structures in companies have posed international concerns over the misuse of companies in order to disguise crime proceeds, facilitate money laundering as well as serve other purposes such as tax evasion and terrorist financing.

With an aim to help combat terrorist financing and money laundering, the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 were published on 15 November 2015 by the Department of Finance of Ireland. Cayman Islands also introduced new regime for beneficial ownership (BO) register in early April 2017. Consultation on similar framework is underway in the UK. Proposals in other jurisdictions are also expected in the near future.

The prevailing laws in Hong Kong focus on the disclosure of legal ownership and do not require a company to maintain information about its ultimate beneficial owner, except for certain listed companies cases. To enhance transparency of beneficial ownership, the Hong Kong government sees the need to enable beneficial ownership information of companies be captured and maintained by putting in place a regime under the Companies Ordinance.

As a result, Hong Kong has completed a public consultation on enhancing transparency of beneficial ownership of Hong Kong companies in March 2017 and issued the result on 13 April 2017. The proposal is for all companies incorporated under the Companies Ordinance in Hong Kong to maintain a register of people with significant control ("PSC Register") over each company. It is proposed that the PSC Register should contain the required particulars of registrable individuals (i.e. beneficial owners) and registrable legal entities (i.e. vehicles through which beneficial owners exercise control of a company), including:

- (a) the name of the registrable individual or registrable legal entity
- (b) the number of the identity card, or the number and issuing country of any passport, of the registrable individual
- (c) the legal form of the registrable legal entity (including the law by which it is governed) and the company registration number or the equivalent in its place of incorporation or formation
- (d) the correspondence address (excluding post office box number) of the registrable individual, and the address of the registered or principal office of the registrable legal entity

- (e) the date when the person became a registrable individual, and the date when the legal entity became a registrable legal entity
- (f) the nature of the control of the registrable individual or of the registrable legal entity over the company

We have summarized in the following table the key features of the regulations/proposals in Ireland, Cayman Islands and Hong Kong:

	Ireland	Cayman Islands	Hong Kong (proposed)
Scope	All Irish companies (except listed companies on regular markets and companies that are required to disclose BO information under equivalent international standards)	All Cayman Islands limited liability companies and Cayman Islands companies (except listed companies on approved stock exchange and companies registered or licensed under Cayman Island regulatory law)	All companies incorporated in Hong Kong (except listed companies)
Requirements	<ul style="list-style-type: none"> - Create an internal register of BO - Gather and record BO information in the register - Enter names of directors / senior managers of the relevant entity as BO if no BO can be identified 	Maintain a BO register at its Cayman Islands registered office with a licensed corporate service provider	<ul style="list-style-type: none"> - Identify and keep BO register (in English or Chinese) - Verify BO information by sending notice to persons seeking confirmations of ownership
Information required	<ul style="list-style-type: none"> - Name, date of birth, nationality and residential address - Statement of nature and extent of interest held - Date of entry as a BO on the register - Date of entry of ceasing to be a BO 	<ul style="list-style-type: none"> - Name, date of birth, residential address and verification of identification (e.g. passport or drivers licence) - Date of entry as BO on the register 	<ul style="list-style-type: none"> - Name, correspondence address or registered address, identity card or passport details or company registration number - Date of becoming registrable and the nature of the control
Publicly available	Currently No; Centralised register to be created by June 2017 by each EU member state*	No	Yes on payment of a fee

Consequence of non-compliance	A criminal offence which can result in a fine of €5,000 on summary conviction	<ul style="list-style-type: none"> - The entity will be liable and fined accordingly; - Directors and officers may also be personally fined and/or imprisoned 	Criminal sanction similar to those apply to maintenance of the existing statutory registers
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**Central register will be accessible by 1) competent authorities and financial intelligence units, 2) entities required to carry out customer due diligence, and 3) others who can demonstrate a "legitimate interest" in the information. Public access to the centralised register is uncertain.*

3. POINTS TO NOTE

While we are still awaiting the IRD to issue the implementation details on the transfer pricing documentation requirement in Hong Kong, it is clear that the worldwide trend is moving towards greater transparency and increased disclosure.

A MNE group where the ultimate parent entity is resident in a jurisdiction other than Hong Kong or a listed company in Hong Kong whereas the listing vehicle is a non-Hong Kong incorporated company, may designate its Hong Kong group entity as the reporting entity for CbC report purposes because of the relatively simple tax regime in Hong Kong.

It would be recommendable to perform a value chain analysis and to compare the results with the existing profit allocation within the group to consider any changes in transfer pricing policy would be required. A new transfer pricing policy, if necessary, could then be put in place in 2017 such that the *ex post* transfer pricing documentation (such as master file, CbC report and local file) would reflect financial results of group entities in line with the value chain analysis.

In terms of enhancing transparency, to be in line with the international standards, the Hong Kong Government is considering to introduce a new regime in existing legislation to enhance transparency of beneficial ownership. Notwithstanding the need for increasing disclosure for compliance and enforcement purposes, there should be measures to prevent any unnecessary spread of sensitive information on beneficial owners on implementation. Companies and taxpayers should closely monitor any new development to be announced by the Government to ensure proper compliance in terms of the documentation or disclosure requirements.

RSM Tax Advisory (Hong Kong) Limited

RSM Hong Kong's dedicated and experienced tax specialists can:

- Advise on tax efficient holding and operational structures for new cross-border investment, including the formation of Hong Kong and Chinese business entities
- Review existing cross-border investment structures, advise on identified deficiencies, quantify any potential exposure from such deficiencies, and further advise on restructuring approach and procedures
- Assist clients to discuss and clarify matters with tax officials, including transfer pricing and advance rulings
- Act as client representative in tax audits and tax investigations
- Provide transaction support services on mergers and acquisitions, including tax due diligence, deal structure advice, tax health checks, related human resources arrangements and other tax compliance and consultation services
- Advise on human resources and structuring employment arrangements in a tax-efficient manner
- Advise on tax equalization schemes
- Provide tax compliance services for individual and corporate clients in Hong Kong and China

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