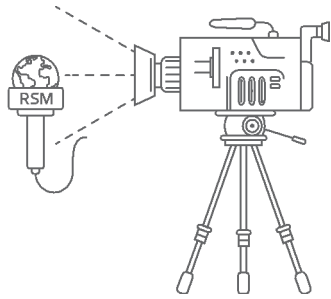


## The End of Tax Planning

*In recent months a series of international agreements have been signed by the Government and regulations issued directed at minimizing tax evasion. These provoke the question – “Is this the end to tax planning?”*



The short answer is yes and, well, no. “Yes”, if your concept of tax planning involved setting up a company in an exotic Caribbean location, transferring income to this and then living the life of Riley using a credit card from a helpful financial institution. The answer is “no”, however, if the planning was a consequence of and supportive to your commercial activities.

Compared to the usual drip-drip of regulations and their amendments, there has been a recent deluge of announcements, signings, laws and regulations targeting tax evasion. The first and foremost was the tax amnesty that provided a genuine carrot for taxpayers to resolve past non-compliance, with the stick that incomplete declarations would expose the taxpayer to significant additional sanctions, whilst those that did not follow the tax amnesty might need to prove that any asset acquired during 1 January 1985 –

31 December 2015 was not acquired using untaxed income.

As promised throughout the tax amnesty period, the Government is now taking action to detect non-declared offshore assets. It has recently signed a bilateral agreement with Hong Kong on the Automatic Exchange of Financial Account Information (“AEOI”) and it is working with Singapore to facilitate information sharing following Singapore’s signing of the Multilateral Competent Authority Agreement on the AEOI on 21 June. Singapore is committed to this, whilst noting that finalization is subject to Indonesia passing the necessary laws to implement AEOI and ensuring the required confidentiality and data protection safeguards are in place. In this regard, PERPPU 1/2017, recently approved by the House of Representatives on 27 July, was an important step to establish a legal basis for financial institutions to provide

account data to the Tax Office without risk of this being a breach of other laws.

Although the provision of assurance regarding confidentiality and data protection might take time, no one should assume that AEOI will not commence with Singapore. And when it does 2017 information will be the first data to be exchanged.

To address concerns regarding abuse of tax treaties through aggressive planning, on 19 June the Director-General of Taxation issued PER-10, which replaced the existing anti-abuse regulations. Of particular note is the addition of a principal purpose test consistent with OECD best practice. This test requires that any tax structuring should not have inappropriate access to tax treaty benefits as one of its principal purposes. If this does occur then the foreign taxpayer will not be eligible to access the benefits under that tax treaty.

As a consequence of these changes (with more likely to come) taxpayers should review their existing transactions and structures to ensure these reflect the commercial activities being undertaken rather than the structuring is driving the commercial activities. In addition because a company’s tax position will reflect its operations it is crucial that relevant non-finance managers are aware of the need to act within the established structure and not create accidental tax risk by acting contrary to the agreed and documented processes. It is not unusual for Tax Offices to deem a taxable Permanent Establishment exists because the local managers went beyond their permitted activities – unfortunately “going the extra mile” for a customer might cost Head Office an “extra mill”.

### KEY POINTS

- Singapore and Indonesia will eventually share financial account data.
- PER-10/2017 introduces a principal purpose test to attack non-commercial tax planning.
- Successful tax planning will be based around a company’s business; not vice versa.

### THE POWER OF BEING UNDERSTOOD

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