Hong Kong Monetary Authority – Anti–Money Laundering Seminar 2013

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Session Agenda

Section 1
Introduction

High Profile "Tax Evasion" in the Media

A **Swiss bank** reached a landmark US$780 million settlement with the US authorities after admitting it sheltered the US tax cheats

2009

An **International bank** allowed over 2,000 bearer share accounts (1,600 in Miami, US$2.6 billion) without adequately mitigating risks

2012

A **Swiss bank** pleaded guilty in a New York court to allowing more than 100 US citizens to hide US$1.2 billion from the IRS over a 10-year period.

2013

Tax Evasion vs. Tax Avoidance vs. Tax Planning

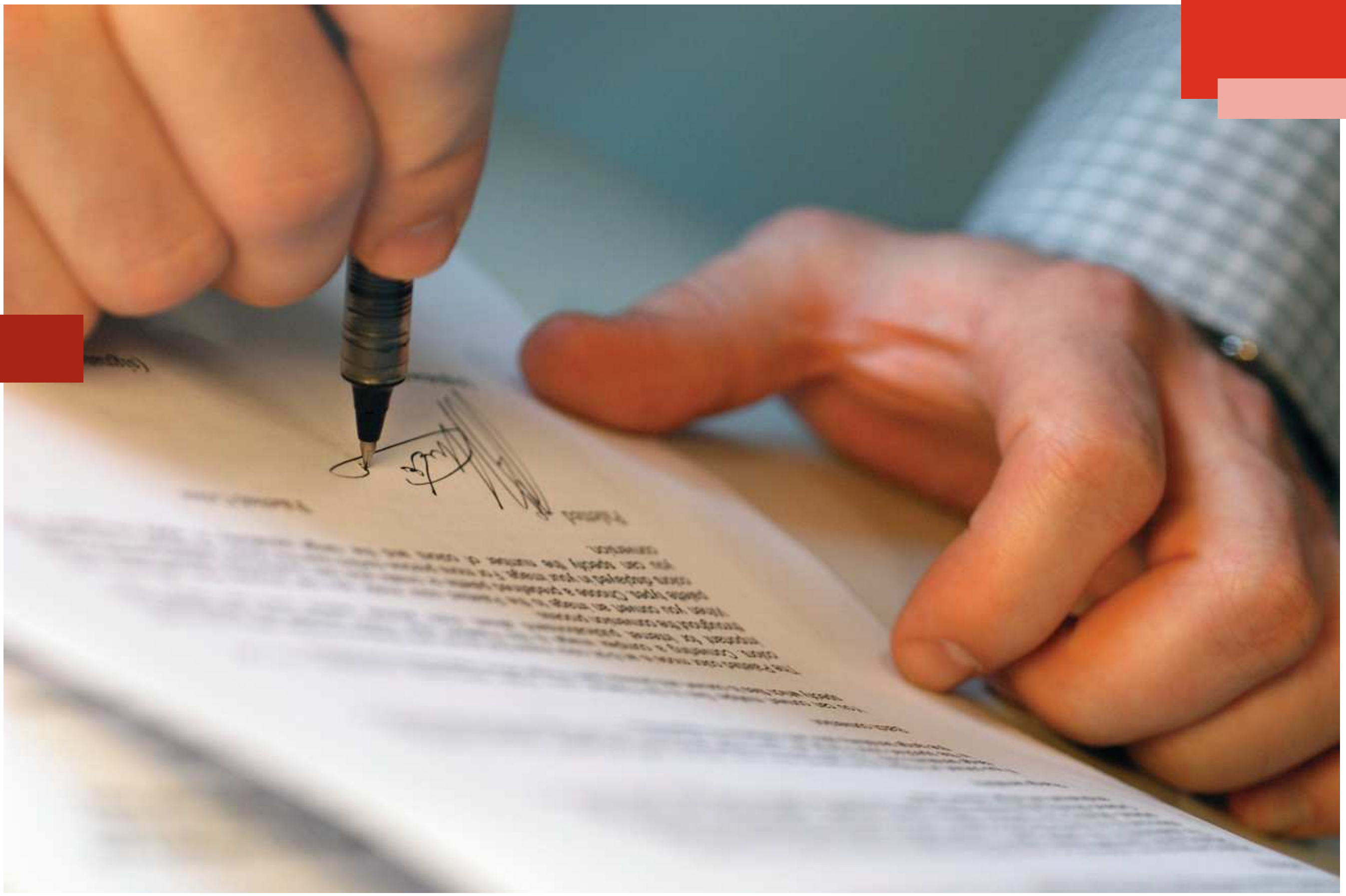
- Is there a definition?
- Concept of "evasion"
- Are there any differences among "tax evasion", "tax avoidance" and "tax planning"?

1 Tax Evasion

2 Tax Avoidance

3 Tax Planning

Sharing of Tax Evasion Cases in HK, PRC and the US



Section 2
Greater Cooperation against Tax Crimes

The G8 Summit

- Held in Northern Ireland, June 17 – 18 of 2013
- Progress on the "three Ts": Trade, Transparency and Tax
- Leaders agreed to a series of commitments to promote transparency and to fight "the scourge" of tax evasion
- Work with OECD to develop a global model for tracking tax evaders
- Significant pledges on tax in the final communiqué

The OECD’s BEPS project

What is BEPS? - “Base Erosion and Profit Shifting”

What is Base Erosion?

- Shifting profits in ways that erode the taxable base to locations with favorable tax treatment
- No or unduly low tax

Why does BEPS arise?

- Domestic and International tax rules fail to keep pace with changing business models and technological development (e.g. business globalization, digital economy and IP as a value driver)

Who is driving the BEPS project?

- Commissioned by G20 and devised by the OECD

How to address BEPS?

- Countries to team up and take collaborative actions
- OECD issued a report in Feb 2013 and released an action plan in July 2013

The OECD's BEPS Report

The BEPS Report issued on 12 Feb 2013

Background / History

- A continuation of the work on harmful tax practices in 1998
- High on the political agenda since 2010
- The G20 declarations in June and November 2012

Existence & magnitude of BEPS

- Inconclusive on how much BEPS actually occurs

Factors affecting corporate taxation

- Global business models adopted by MNEs
- Competitive tax regime to attract foreign investments
- Corporate governance - disclosure of aggressive tax schemes

Key tax principles & BEPS opportunities

- Jurisdiction to tax
- Transfer pricing
- Leverage
- Anti-avoidance

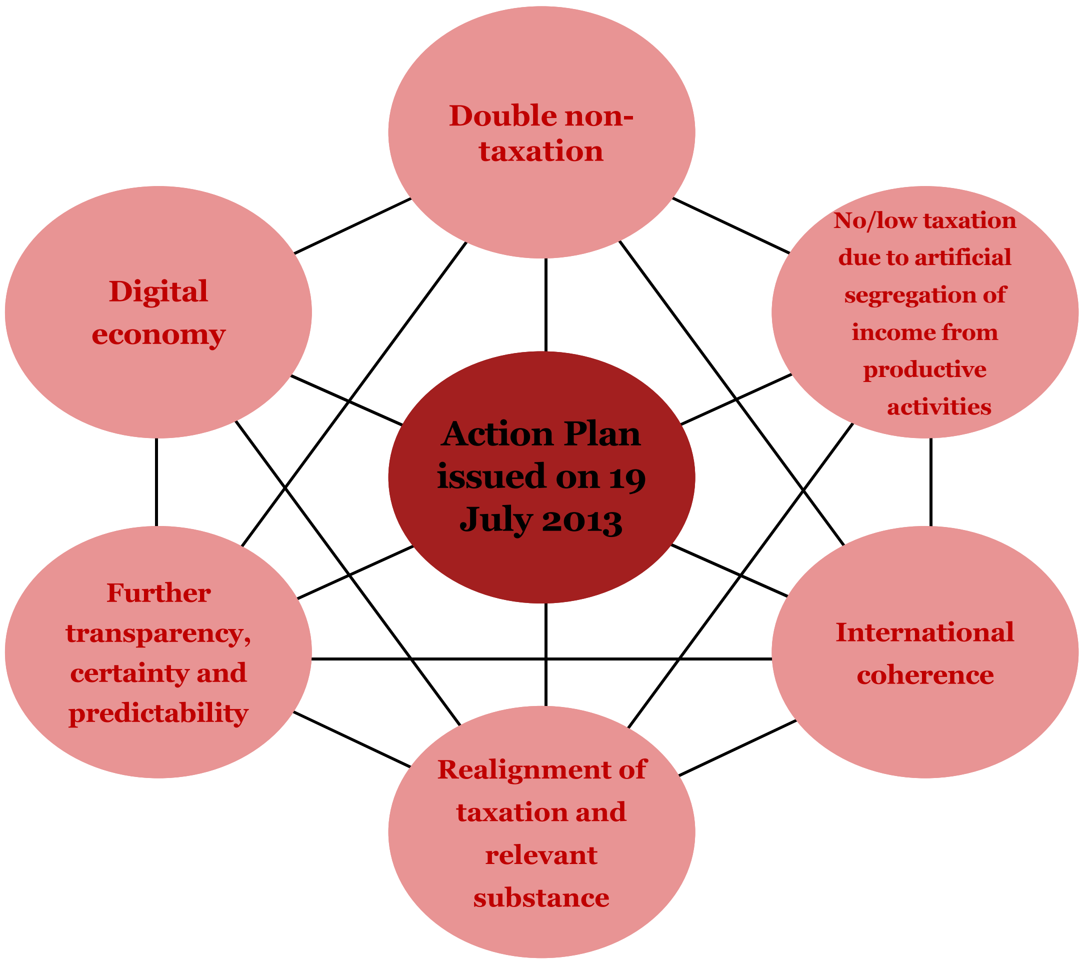
Key pressure areas

- Mismatch of hybrid entities and instruments
- Treaty application to digital goods and services
- Tax treatment of inter-group financial transactions
- Transfer pricing
- Effectiveness of anti-avoidance measures
- Availability of harmful preferential regimes

Action required

- Developing a global comprehensive action plan to address BEPS

The BEPS Action Plan



The BEPS Action Plan by Timeline

September 2014

- Address the tax challenges of the digital economy
- Neutralize the effects of hybrid mismatch arrangements
- Counter harmful tax practices more effectively, taking into account transparency and substance (Phase 1)
- Prevent treaty abuse
- Assure that transfer pricing outcomes are in line with value creation: intangibles (Phase 1)
- Re-examine transfer pricing documentation
- Develop a multilateral instrument (Phase 1)

September 2015

- Structure CFC rules
- Limit base erosion via interest deductions and other financial payments
- Counter harmful tax practices more effectively, taking into account transparency and substance (Phase 2)
- Prevent the artificial avoidance of PE status
- Assure that transfer pricing outcomes are in line with value creation: intangibles (Phase 2)
- Assure that transfer pricing outcomes are in line with value creation: risks and capital
- Assure that transfer pricing outcomes are in line with value creation / other high-risk transactions
- Establish methodologies to collect and analyze data on beps and the actions to address it
- Require taxpayers to disclose their aggressive tax planning arrangements
- Make dispute resolution mechanisms more effective

December 2015

- Limit base erosion via interest deductions (Phase 2)
- Counter harmful tax practices more effectively, taking into account transparency and substance (Phase 3)
- Develop a multilateral instrument (Phase 2)

The G20 Summit

- Held in St. Petersburg, September 5 – 6 of 2013
- Pledged to help developing nations fight tax evasion
- Member states of G20 (including China) are expected to begin exchanging tax information automatically **by the end of 2015**
- Backed the OECD action plan on tackling corporate tax avoidance
- Will result in far-reaching compliance obligations

Section 3
Development and Response from Different Jurisdictions

Anti-Money Laundering in EU

Adopted two new proposals in Feb 2013

- √ Improve clarity and consistency of the rules
- √ Extend its scope to address new threats and vulnerabilities
- √ Promote high standards for anti-money laundering

A Risk-Based Approach

FATCA in the US

Non-US financial institution ("FFI") is required to perform :

Enhanced customer due diligence procedures

Collect more information on new accounts if US indicia identified for individual account owners

Create a new US information reporting regime **globally enforced**

China's Position

Singapore's Commitment for Combating Tax Evasion

The Monetary Authority of Singapore (MAS) proposed designation of tax crimes as money laundering predicate offences on 9 Oct 2012

Criminalization of laundering of proceeds from tax offences effective from 1 July 2013

More legislative amendments to be implemented by the end of 2013

Hong Kong

- Approach to BEPS
- Impact on domestic tax system
- The Inland Revenue (Amendment) (No.2) Ordinance 2013 become effective on 19 July 2013
- Pressure on cooperation
- Tolerance for tax planning
- Possible future developments
- Treaty benefit claims

Section 4
Challenges for Banks

Challenges for Banks

- Knowledge management
- Understanding your clients
- Internal control environment

Section 5
Q&A

THANK YOU

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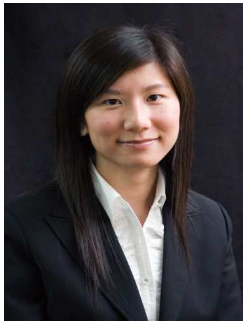

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