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Global Tax Dispute Resolution and Controversy Services

Tax Dispute and Controversy Update – Exchange of Information

Thursday 23 October 2014



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Welcome

Exchange of Information

Speaker:

Sharon Katz Pearlman
Global Head, Tax Dispute
Resolution & Controversy
KPMG International
National Principal in Charge
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Polling Question #1

Has your company ever received a request from a revenue authority which was made on behalf of another jurisdiction?

- a) Yes
- b) No
- c) Don't know

Polling Question #2

In how many countries are you currently involved in a tax examination or other dispute with a revenue authority?

- a) 1-5
- b) 6-10
- c) 11-20
- d) Over 20

Exchange of Information

Common Observations

Increasing global cooperation

- OECD
- G20 leaders
- BEPS

Transparency is the tool of choice

- Increased reporting targeting tax avoidance and tax evasion
- Increased exchange of information – double-taxation agreements and Tax Information Exchange Agreements
- Global Forum on Transparency and Exchange of Information for Tax Purposes – Peer Reporting

Growing pains for data collection and data exchange to be expected

- Domestic interests
- Country by Country reporting
- Multilateral working groups, joint audits, etc. in place – tax authorities to build on these platforms



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United Kingdom

Tax Dispute and Controversy Update – Exchange of Information

Speaker:

Chris Davidson
Director, Tax Management Consulting
KPMG in the UK



Spontaneous exchanges

Double Taxation Agreements (DTAs) and Tax Information Exchange Agreements (TIEAs)

- Approx 120 DTAs / 39 TIEAs
- Bulk data: UK both sent and received 1,000,000+ data records last year
- Average 6,000 spontaneous exchanges annually

Common Reporting Standards

- Bank information
- Will increase volumes significantly

OECD Aggressive Tax Planning Directory

- Anonymized explanations of tax avoidance arrangements

Bilateral requests

Double Taxation agreements

- Average 2,000 requests answered annually

Various objectives

- Additional “pieces of the jigsaw”
- Establish purpose of transaction
- Test consistency of explanations

Developing methodology

- Sharing “pieces of the jigsaw”
- Solving the puzzle together

Multilateral activity

EU

- Joint audits

Joint International Tax Shelter Information Centre (JITSIC)

- Established April 2004 in Washington DC – USA, UK, Australia and Canada
- Objectives – response to “abusive tax schemes”
- London office opened 2007 – Japan joined
- Korea, China, France and Germany joined later

JITSIC in practice

- Competent authorities working side by side
- Formal exchange plus informal discussions/explanations
- Seeking shared understanding – solving the jigsaw puzzle together

Polling Question #3

How do you view the increase in intergovernmental information sharing and exchange of information?

- a) Positive – It will help ensure more consistency in reporting
- b) Negative – It will complicate things even further
- c) Don't know



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United States

Tax Dispute and Controversy Update – Exchange of Information

Speaker:

Michael Plowgian

Principal, Washington National Tax
KPMG LLP in the US



Global Push for Transparency and Exchange of Information

Multilateral Initiatives

- Global Forum on Transparency and Exchange of Information for Tax Purposes
- FATCA / OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters (CRS)
- OECD/G-20 BEPS Project

U.S. Has Initiated and/or Supported These Efforts, But Faces Challenges (Including Turnover)

- Re-evaluation of automatic and spontaneous exchange
- Resource constraints

Global Forum (Exchange Upon Request)

- According to GAO, U.S. responds to more than 4 times as many exchange requests as it makes
- But lack of information about disregarded LLCs with a single foreign owner, no U.S. income or operations
- Division of information among IRS, FinCEN (FBAR, SARs), State governments
- Lengthy summons process and delays in obtaining bank information

Global Push for Transparency and Exchange of Information

FATCA/CRS (Automatic Exchange)

- U.S. initiated and supported
- Need to ensure that partner jurisdiction has in place adequate protections to ensure confidentiality and proper use
 - Enormous resource commitment
 - Automatic exchange cannot proceed without it
- Inability to require reporting of account balances or entity ownership

BEPS (Potential Automatic Exchange)

- Action 13 calls for Master File and Country-by-Country Reporting template to be shared with every country in which a multinational group does business
- U.S. position is for this to occur via filing with parent country and exchange of information
- Would impose tremendous challenge for IRS resources

Polling Question #4

Will the new practices around exchange of information and intergovernmental information sharing change the manner in which you manage your examinations?

- a) Yes
- b) No
- c) Don't know



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Canada

Tax Dispute and Controversy Update – Exchange of Information

Speaker:

Paul Lynch
Partner, Tax
National Leader, Tax Dispute
Resolution & Controversy Services
KPMG in Canada



Exchange of Information: Canada

Data gathering and exchange

Power to collect information and types of information already provided to Canada Revenue Agency

- Broad powers to have information brought forward, as long as the information requested is relevant for administration and enforcement purposes
- For domestic purposes Canada already gathers significant information regarding activities or transactions that may be relevant to other jurisdictions, including
 - Information returns relating to foreign affiliates, foreign income verification statements, information returns in respect of transfers or loans to a non-resident trust, information returns in respect of distributions from and indebtedness to a non-resident trusts and information returns of non-arm's length transactions with non-residents
 - Canada also requires withholding taxes (subject to treaty exemptions) and reporting for payments to non-residents including for pensions, interest, dividends, rents and royalties
 - Further, Canada requires withholding and reporting for individuals or businesses performing services in Canada, even if treaty-exempt non-residents are providing the services

Authority to exchange information

- 92 Bilateral tax treaties currently in effect
- 21 Tax Information Exchange Agreements currently in effect
- No Canadian tax interest is required for the application of the exchanges of information provisions

Practical aspects

Canada's participation in exchange of information endeavours

- “Canada has an extensive history of exchanging information for tax purposes, during which time it has established a strong framework to ensure the elements for effective availability and access to relevant information are in place” - Pascal Saint-Amans, OECD
- Extensive automatic exchanges, primarily with the US, on payments to non-residents
- Spontaneous exchanges:
 - “information which [Canada] supposes to be of interest to the other State”
 - “it is not out of the question for [Canada] to communicate the tenor of an advance ruling to a foreign jurisdiction, if some aspects of the series of transactions may be of interest to that foreign jurisdiction”

Examples of spontaneous exchanges seen in practice

- BEPS type structures (e.g. hybrids)
- Responses to Canadian tax authority indicating structure/steps was undertaken for tax planning purposes in another jurisdiction

Polling Question #5

Would you like someone from the Global Tax Dispute Resolution & Controversy Services network to contact you after this webcast?

- a) Yes
- b) No



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France

Tax Dispute and Controversy Update – Exchange of Information

Speaker:

Laurence Mazevet
Tax Partner, Fidal,
Direction Internationale



Exchange of Information: France

A longstanding and growing practice

- France has exchange of information relationships with 150 jurisdictions through 114 DTTs, 29 TIEAs and 1 multilateral mechanism
- The FTA also take advantage of the increasing number of Tax Information Exchange Agreements signed since 2008 by low tax countries which wanted to avoid being black-listed
- The focus is on the French list of Non Cooperative Countries or Territories (i.e., jurisdictions that do not meet exchange of tax information standards), resulting in the application of a 75% WHT and additional TP obligations
- The updated FY2014 list now includes only Botswana, the British Virgin Islands, Brunei, Guatemala, the Marshall Islands, Montserrat, Nauru and Niue.
- The exchange of information is used mainly and traditionally as an additional source of information during a tax audit:
 - Substance, level of profits and tax, headcounts...
 - Crosschecking of the information provided by the taxpayer during the audit.
- The FTA also use the procedure to extend the statute of limitations by 3 years

Exchange of Information: France

A longstanding and growing practice

- A recent increase in the number of information requests by the FTA outside the scope of a tax audit.
 - Information requests are now used to prepare the tax raids which are now frequently conducted by the FTA.
- Joint tax audits within the EU are still limited
- Negotiation of specific agreements with sensitive countries such as Switzerland (agreement signed on June 25, 2014)
- France is pushing in the OECD and in the EU for a fast implementation of BEPS
- FTA will likely face an issue with the analysis of the data

Q&A

Thank You

If you are interested in speaking
with a KPMG professional, please
feel free to contact us at:
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