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Welcome

Exchange of Information

Speaker:
Sharon Katz Pearlman
Global Head, Tax Dispute
Resolution & Controversy
KPMG International
National Principal in Charge
Tax Controversy Services
KPMG LLP (US)
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
United Kingdom

Tax Dispute and Controversy Update – Exchange of Information

Speaker:

Chris Davidson
Director, Tax Management Consulting
KPMG in the UK
Exchange of Information: 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
Exchange of Information: UK

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
Exchange of Information: UK

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
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
- 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
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
Exchange of Information: Canada

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
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
Thank You

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