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ASIA PACIFIC REGIONAL TAX CONFERENCE

“GLOBALISATION OF TAX RULES IN A DE-GLOBALISING WORLD”

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Competition: is there a shift in the incentive landscape?

Panellists

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Introduction

- Relevance of issue for non-covered taxpayers
- Incentives are not specifically addressed in the GloBE rules
- OECD and IMF papers dealing with incentives
- Change in attitudes towards tax incentives

Outline of this session

- What is the goal of today's session?
  - Is there a future for tax incentives?
  - What about non-tax incentives?
  - How can tax incentives regimes be redesigned and utilized to remain effective under the GloBE regime?

Why have tax incentives been popular?

- Different perspectives of investor v investee jurisdiction
- Promotion of inward investment
- Encourage development of targeted economic sectors
- Some types of tax incentives
  - Expenditure-based incentives v tax rate incentives
  - Targeted v general incentives
    - Eg, r&d, green transition, export regimes
- Some local experiences in Asia

Why are tax incentives under attack?

- Where is the harm?
- Do they encourage a “race to the bottom” on tax rates?
- Is such tax competition “unfair”?
- Are incentives regimes successful?
- Lack of transparency?
- Do they allow LDCs to be bullied by MNEs?
- Are they well-designed?
- Is the foregone tax revenue disproportionate?
- OECD & EU initiatives on preferential tax regimes
    - Economic substance, transparency, anti-ring-fencing
- What about non-tax incentives?

Interaction between incentives & GloBE

- Tax incentives can reduce local ETR below 15%
- Top-up taxes will counteract the benefits of tax incentives
- The effect of a DMT/QDMTT
- Is this the end of tax competition?

Features of GloBE that impact incentives

- Covered v non-covered MNEs
- Generally v specifically targeted incentives
  - Local blending of tax rates
- Substance-based income exclusion
  - Encourages investment in labour & tangible assets
  - Encouragement of expenditure-based incentives
- Treatment of deferred taxes
- Treatment of immediate expensing and accelerated depreciation of tangible items

What are clients asking?

- What does this mean for me?
- Is it going to be worthwhile to apply for incentives?
- Will this affect the amount of tax I pay?
- What will happen to existing incentives?
- What will be the quid pro quo for the loss of incentives?
- Will existing incentives be grandfathered?
- What should clients do in absence of clear guidance?
- Can I claim a credit for top-up taxes?

Can taxpayers challenge a DMT?

- Impact of bilateral investment treaties/investment protection agreements/government contracts
- Can a new tax be challenged?
- What is the forum for a dispute - ICSID?
- Is this really a problem? What is the practical effect?

Can top-up tax be "reimbursed"?

- Is the tax a "covered tax" if it's reimbursed?
  - A "tax" must be an *unrequited* payment to the government
- Will a DMT be a QDMTT to qualify as a "safe harbour"?
- What about non-tax benefits?
  - Subsidies for r&d, labour training, reimbursement of property taxes and payroll taxes, etc
- OECD's position
  - Is a tax incentive, grant or subsidy related to the top-up tax?
  - Does it benefit only covered taxpayers?
  - Is it marketed as part of the GloBE regime?
  - Was it introduced after the Inclusive Framework started discussing the GloBE rules?

How are countries responding?

- The Vietnam experience
- Thailand
- Singapore? Malaysia?
- Hong Kong
- What about higher-tax jurisdictions – Japan?

Redesigning a tax incentives regime

- Change is needed, otherwise countries will forego tax revenue
- Is a QDMTT the answer?
- Tax rate competition is effectively dead (for covered MNEs)
  - Can we have bifurcated incentives regimes?
- Focus should be on targeted sectors to assist tax rate blending
- Focus on tax incentives that reduce GloBE income, not taxes
  - Expenditure on labour and tangible assets
  - Qualified refundable/marketable tax credits – funding issues?
  - Deferred tax arrangements (less than 5 years)
  - Immediate expensing & accelerated depreciation schemes
- Consider subsidy schemes and other non-tax incentives
- Will non-tax incentives and "subsidy competition" be challenged by the OECD?

Cash grants v tax credits

- Assume profits = $100 and tax rate is 10%, so tax is $10
- If tax rate is reduced to 5% (or a $5 non-qualified tax credit is given), the tax rate becomes 5%
  - So top-up tax is 10% (or $10)
- BUT: if government gives a cash subsidy of $5, the tax rate remains $10.50/$105 of 10%
  - So top-up tax is 5% or $5
- Qualified refundable and marketable tax credits are treated the same as a cash grant

Planning for incentives

- Non-covered taxpayers (included independent domestic businesses)
- Utilize incentives where you already have high-taxed profits
- Aim to invest in high-intensity labour and equipment businesses
- Look at deferred taxation opportunities
- Utilize accelerated depreciation and immediate expensing of items
- BUT: is this just playing around the edges?
- Focus on non-tax incentives and non-tax features

Examples of non-tax incentives

- Improvement in infrastructure
- Liberalization of forex controls
- Labour & training subsidies
- R&D subsidies and other cash grants
  - Funding issues?
- Rent subsidies
- Reductions/reimbursement of indirect taxes (eg, sales tax, import duties, VAT, excise tax, stamp duty, payroll tax, stamp duty)
- Enhancing immigration and visa procedures
- Etc

Panel conclusion

- Is there a future for incentives regimes?

THANK YOU