# Hong Kong Monetary Authority – Anti–Money Laundering Seminar 2013

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# Session Agenda

1	Introduction
2	Greater Cooperation against Tax Crimes
3	Development and Response from Different Jurisdictions
4	Challenges for Banks
5	Q&A



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"?

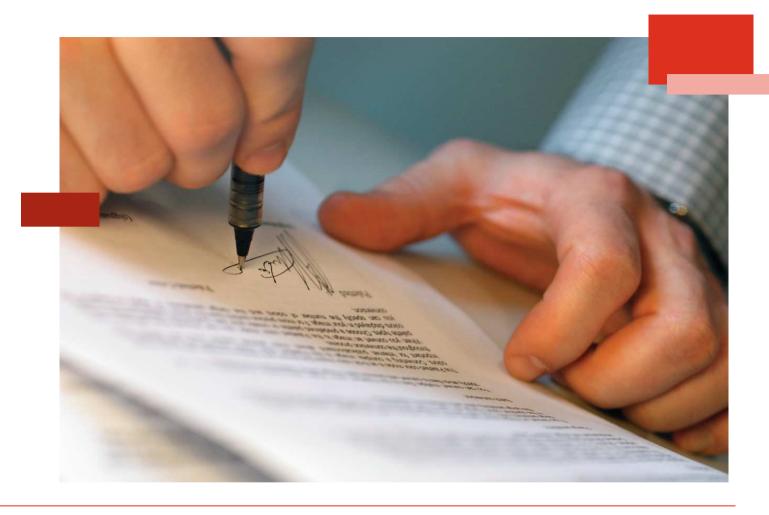


2 Tax Avoidance

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

**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

taxation The BEPS **Report** 

**Factors** affecting corporate

**Key tax** principles & **BEPS** opportunities

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

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

Key pressure areas

Action required

- 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

• Developing a global comprehensive action plan to address BEPS

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issued on

12 Feb 2013



#### The BEPS Action Plan





## The BEPS Action Plan by Timeline



- 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)

# September 2014

- 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)



#### • 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



September

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

- $\sqrt{1}$  Improve clarity and consistency of the rules
- √ Extend its scope to address new threats and vulnerabilities
- $\sqrt{}$  Promote high standards for anti-money laundering

# A Risk-Based Approach



#### FATCA in the US

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

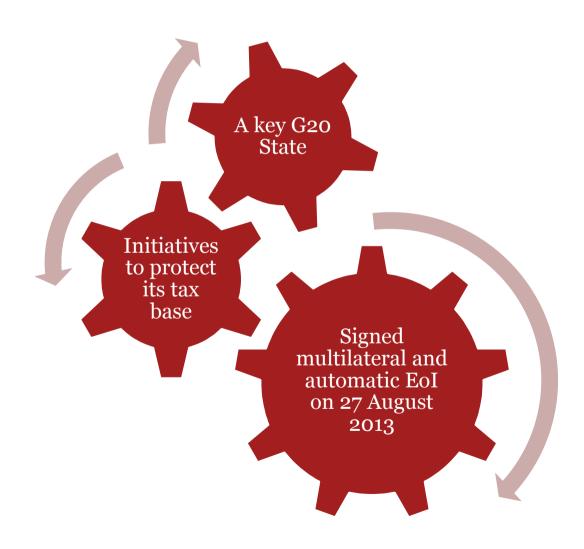
Enhanced customer due diligence procedures

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

More legislative Criminalization of amendments The Monetary Authority of laundering of to be Singapore (MAS) proposed proceeds from tax implemented designation of tax crimes as offences effective money laundering predicate by the end of from 1 July 2013 offences on 9 Oct 2012 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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