Seismic shift in international tax landscape

What does this mean for Jersey?

BEPS

OECD led changes to the global international tax framework, including new rules/guidance on:

- Permanent establishments
- Availability of treaty benefits
- Hybrid instruments/entities
- Substance

Impact on Jersey businesses

- Greater scrutiny on the substance in intermediary holding companies
- Uncertain ability to continue to obtain benefits from PECs/CPECs and similar hybrid instruments
- Likelihood for a greater focus of tax authorities on fund structures

FATCA / CRS

Continuing developments in the area of automatic exchange of tax information:

- US FATCA reporting due by 30 June 2015
- UK FATCA reporting due by 30 June 2016
- CRS reporting (for early adopters like Jersey) due by 30 June 2017

Impact on Jersey businesses

- Ongoing compliance challenges with meeting requirements and collecting information
- Use of FATCA information by HMRC and IRS to raise enquiries

Diverted Profits Tax

UK unilateral action focused on situations where:

- A foreign company has avoided creating a permanent establishment
- A UK company has its profits diverted to a low tax jurisdiction where there is insufficient substance

Impact on Jersey businesses

- Likelihood of challenge from HMRC where there is a significant UK presence
- Uncertainty about what activities can be performed in the UK without paying tax
- Increased pressure on transfer pricing arrangements

Transfer Pricing

Increasing pressure from tax authorities worldwide on transfer pricing arrangements and stronger disclosure rules, including:

- A global transfer pricing master file and local files for each country
- Country-by-Country reporting to all relevant tax authorities

Impact on Jersey businesses

- Increased compliance burden relating to meeting the new requirements
- Likelihood for greater number of enquiries by tax authorities using country-by-country report
- Focus on substance over form

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Key messages for Jersey businesses

1	Recent international tax changes are not specifically targeted at the Channel Islands - however there will be consequences for Jersey businesses to consider, directly arising from changes in approach, interpretation or legislation. **Expect collateral impact.**	Monitor OECD output and domestic impacts, and input into the process as needed
2	Substance is key – to obtain treaty benefits, defend transfer pricing positions and mitigate risks of other anti-abuse rules, taxation should follow the substance and functional arrangements of the group. **There will be an increased focus on functions and less on legal arrangements, risk and capital.**	Review operation model and transfer pricing policies to assess potential for substance risks
3	The risk areas highlighted by BEPS (in particular PE threshold and transfer pricing related to risks and capital) and DPT are current issues, not ones to leave for the future. Tax authority behaviour is already changing, with existing structures and transactions coming under scrutiny **– businesses should be reviewing their positions now.**	Review operational guidance, transactions and any non-Jersey activities to identify risks
4	As FATCA/CRS develops and the BEPS agenda progresses, tax authorities will have an unprecedented level of information and there will be greater documentation and disclosure requirements – tax systems need to be configured to meet these requirements. **The right strategy needs to be implemented to tackle issues.**	Prepare a test country-by-country report and ensure robust documentation is maintained
5	A significant amount of the BEPS Action Plan approach is consistent with the current attitude of fiscal authorities – this will only serve to increase fiscal authorities' confidence. Unilateral changes will continue to be a challenge. **There will be significant behavioural shift and likely more controversy.**	Consider engagement strategy with tax authorities and potential for APAs or other rulings