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Global Tax Alert

Namibia joins BEPS Inclusive Framework

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Namibia joined the Base Erosion and Profit Shifting (BEPS) Inclusive Framework on 9 August 2019, becoming the 134th jurisdiction to do so since the launch of the BEPS Inclusive Framework. BEPS is a collaborative project between the Organisation for Economic Co-operation and Development (OECD) and the G20.

The BEPS agenda focuses on equipping governments with domestic and international instruments to address tax avoidance to ensure that profits are taxed where economic activities generating the profits are performed and where the economic value is created. In part it is focused on closing the gaps in international tax rules that allow multinational enterprises to legally, but artificially shift profits to low or no-tax jurisdictions.

By joining the BEPS inclusive framework Namibia have not only committed to comply with the BEPS minimum standards going forward (discussed in broad terms below), but also to participating in peer reviews in respect of implementation. Namibia will also participate in the remaining standard setting and review and monitoring of the implementation of the BEPS framework.

BEPS is comprised of 15 actions items, while the minimum standards to which Namibia is now bound are related to the following four items:

- Action 5 - countering harmful tax practices
- Action 6 - preventing tax treaty abuse
- Action 13 - transfer pricing documentation
- Action 14 - enhancing dispute resolution

Building a better working world

Action 5 is aimed at countering harmful tax practices. This will inter alia entail a peer review of Namibia's preferential tax regimes to determine whether these may be considered to be harmful as well as the disclosure of taxpayer specific rulings. Taxpayer specific rulings relating to preferential regimes, transfer pricing, downward adjustment of taxable profits and permanent establishment (PE) rules must now be disclosed for peer review under the so-called transparency framework to ensure that these are not harmful or give rise to base erosion and profit shifting.

Action 6 is aimed at preventing tax treaty abuse and members are expected to adopt a minimum standard before entering into tax treaties. These may include the introduction of the so-called limitation of benefit clause to avoid income not being taxable in either of the signatory states, beneficial ownership requirements to prevent mere intermediaries being entitled to relief and specific anti-abuse rules based on the legal nature, ownership and general activities of tax treaty residents. Tax treaties may also need to be renegotiated to comply with the minimum standard and this will be a focus area of the Ministry of Finance.

Action 13 is aimed at countering transfer pricing abuse and broadly entails requiring multinationals to prepare country-by-country reports with aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which it operates. The ultimate parent company of a multinational group is required to prepare the relevant report which will then be shared with the tax administrations in the relevant jurisdictions, including Namibia for use in high level transfer pricing and BEPS risk assessments.

Action 14 is aimed at increasing efficiencies and timeliness of the resolution of double taxation disputes between members. As a starting point, the jurisdiction's legal and administrative framework will be assessed in key areas against a minimum standard to prevent disputes and improve the availability and access to the mutual agreement procedure (MAP).

While the full impact of Namibia joining the BEPS Inclusive Framework will only become clear over time it is expected to not only impact the Ministry of Finance, but also multinationals operating in Namibia. An increased focus on the applicability of tax treaty relief and transfer pricing may follow as Inland Revenue will have increased access to information on the activities and substance of offshore group companies as well as the global allocation of income, profits and taxes paid in other countries compared to Namibia.

It is also likely that Inland Revenue will issue guidelines on local requirements to be imposed on taxpayers in order to comply with the BEPS Inclusive Framework.

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