

## **Summary: Update on Tax Issues and the Policy on the Use of Offshore Financial Centers in World Bank Group Private Sector Operations**

On July 14, 2016, IFC and MIGA presented an update to the World Bank Group (“WBG”) Board on tax issues and the Policy on the Use of Offshore Financial Centers in World Bank Group Private Sector Operations (the “OFC Policy” or the “Policy”). The update addressed the OFC Policy as well as developments and discussions in the international tax policy environment, given that a period of ongoing rapid change over the near- to medium-term is expected.

Substantial cross-border investment is made through intermediate jurisdictions (also referred to in the OFC Policy as Offshore Financial Centers (“OFCs”)) in a manner that is both lawful and appropriate. A significant number of IFC investments and MIGA guarantees involve intermediate jurisdictions. Legitimate reasons for using an intermediate jurisdiction may include, but are not limited to: i) legitimate and lawful tax planning; ii) an appropriate investment vehicle may not exist under the laws of the host country; iii) the host country may lack an effective environment for the enforcement of contractual terms; iv) internationally accepted shareholder protections may not be clearly recognized under the laws of the host country; v) parties to a joint venture or partnership may be from different jurisdictions and want neutrality in selecting the jurisdiction for their venture (including equal legal and tax treatment); and vi) for sponsors in some jurisdictions, offshore structures facilitate public listings.

IFC and MIGA require due diligence to confirm the beneficial ownership of their projects, including where the projects involve intermediate jurisdictions. Both organizations carefully assess the integrity and business reputation of prospective clients, which is one of the most important tools to help ensure that IFC and MIGA projects are actually implemented with integrity. By virtue of the WBG OFC Policy, offshore structures with a controlling interest in IFC projects (or guarantee holders in a MIGA project) must be domiciled in an intermediate jurisdiction that is compliant or largely compliant with the standards for tax transparency of the Global Forum on Transparency and Exchange of Information for Tax Purposes (the “Global Forum”) for exchanges of tax information on request (EOIR). IFC and MIGA require due diligence to confirm that the structure of the transaction is legitimate and is not designed for tax evasion.

IFC and MIGA will continue to:

- Require clients to pay taxes due in the host country.
- Track development indicators, including fiscal contributions to the host countries, including corporate income taxes, payroll taxes, VAT, concession or operating fees, and other fiscal transfers to the host country.
- Require project companies to covenant that they will comply with applicable law. This includes tax laws as they might change from time to time, including changes arising from the Base Erosion and Profit Shifting (“BEPS”) initiative of the Organisation for Economic Cooperation and Development (“OECD”) or other tax reform.
- Review the integrity and litigation background of clients (including sponsors). Both IFC and MIGA have staff that are trained on integrity due diligence, have access to multiple databases, conduct research and due diligence to satisfy themselves on integrity issues, and hire expert consultants on as-needed basis.
- Include for IFC restrictions on the investee company entering into transactions with related parties, or restrictions on transactions except on the basis of arm's-length arrangements. MIGA adds similar covenants and representations in its guarantee contracts as deemed necessary to deal with intermediate jurisdiction and tax compliance issues.

- Review the overall terms of the investment, including the overall economic and fiscal contribution to the host country. Project structures vary, and the principal benefit-sharing with the host country may be in the form of royalties, production sharing, carried equity or other economic transfers, rather than or in addition to corporate income tax.

Reflecting the allocation of roles among WBG institutions with respect to tax policy advice and support to member states and private sector investing, the most effective and appropriate overall World Bank Group approach is to deliver policy advice to Governments through the World Bank, and prudential investing with the market through IFC's and MIGA's operations with their private sector clients.

It is recognized that a period of uncertainty and multiplicity of standards and standard setting bodies might be anticipated in coming months and years, and that IFC's and MIGA's private sector clients will face increasing challenges in selecting intermediate jurisdictions that are compliant from time to time under the various standards.

IFC and MIGA will continue to monitor the evolving policy discussions on intermediate jurisdictions and international tax matters, including:

- the implementation of the Global Forum's new methodology for the second round of EOR reviews (reviews expected to begin in the second half of 2016);
- the Global Forum's work on AEOL, including development of a methodology for assessing jurisdictions and assessments (methodology possibly to be approved by the Global Forum in October 2016, with assessments possibly beginning 2019);
- tax transparency calls by the G20 in connection with OECD and the Global Forum (anticipated in the second half of 2016 through 2017); and
- developments in the OECD BEPS project, including implementation of legislation and market practices and possible assessment of jurisdictions (2016 through approximately 2020).