

PRISM

Tax Newsletter

2nd Quarter 2018

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China

Interpretation on Issues Concerning “Beneficial Owners” in Tax Treaties

“Beneficial owners” have been one of the issues in international taxation. This Interpretation of the State Administration of Taxation has, in addition to clarifying the standards for determination of the capacity of “beneficial owners”, made amendments to the prior Notice, specifying that evidence shall be provided to certify the capacity of “beneficial owners”, and efforts shall be made to prevent risky arrangements under tax treaties.

“受益所有人”一直是国际税收中的焦点问题之一，此次总局该解读明确“受益所有人”身份标准同时对之前的告进行了部分修订，明确应当提供证明“受益所有人”身份的资料，有效防范协定风险较高的安排。

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Cyprus

New tax incentives granted for investment in innovative SMEs

Cyprus and Saudi Arabia have concluded and signed Cyprus’ House of Representatives approved the introduction of revised tax incentives for investment in innovative businesses.

The new incentives granted for investment in innovative SMEs are effective from 1 January 2017 for a three-year period and replace the previous incentives that were available to investors until 31 December 2016.

塞浦路斯议会批准了关于修改投资创新型商业的税务激励介绍。

给予投资创新型中小企业的新的税务激励于2017年1月1日生效，有效期为3年，且取代之前于2016年12月31日到期的税务激励。

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Germany

Transfer pricing methods for loans and other financial transactions

With the persistent rising of prices in the German real estate market, more investments by international companies are made. These investments are financed and managed by affiliated companies abroad. With the steadily rising amount of loans between related companies the German tax authority set a focus on the pricing of loans and financial transaction in tax audits. Therefore, it is essential that investors deal with the applicable pricing methods and their functionalities. The principle of dealing at arm's length has to be applied. When it comes to the pricing of loans, certain requirements and obligatory documentations have to be met and prepared.

随着德国房地产市场价格的持续上涨，越来越多的国际公司投资房地产领域。而且这些投资都由海外附属公司提供资金和进行管理。随着贷款数量的稳步增加，德国税务机关将把重点放在贷款定价和金融交易税务审计上。因此，投资者必须掌握适用的定价方法及其功能。特别是必须应用公平处理的原则。关于贷款定价，则必须符合相关要求和强制性文件的规定。

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Hong Kong

Hong Kong signed a tax treaty with India

The newly signed tax treaty sets out the allocation of taxing rights between the two jurisdictions and will help investors better assess their potential tax liabilities from cross-border economic activities.

新签的税务协定阐明双方的征税权，有助投资者更有效评估其跨境经济活动的潜在税务负担。

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Malta

Malta's taxation system

Companies in Malta are taxed at a rate of 35%. However, a full imputation system applies to the taxation of dividends, whereby the tax paid by the company is imputed as a credit to the shareholder receiving the dividend. Following the distribution of a dividend, shareholders are also entitled to claim a tax refund on the tax paid by the company.

Malta's tax system has been deemed by the European Commission to be compliant with EU non-discrimination principles and has also gained approval from the OECD.

马耳他公司的税率为35%。但是，完全归责制度适用于股息税收，即公司支付的税款被归类为收到股息的股东的信贷。分配股息后，股东也有权要求公司支付的税款退税。马耳他还有一个非常有吸引力的双重税制，这使得它成为国际税务规划的理想选择。

欧盟委员会认为马耳他的税收制度符合欧盟的不歧视原则，并已获得经合组织的批准。

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Malaysia

Tax Audit and Investigation in Malaysia

The self-assessment system (SAS) for taxpayers was implemented in stages, since year of assessment (YA) 2001 for companies; and, since YA 2004 for individuals (include salaried employees and sole proprietors) and partnerships. The main objective of implementing SAS is to encourage tax compliance by the taxpayers and reduce administrative burden of the Inland Revenue Board (IRB). The responsibility of computing the taxpayer's liability is shifted from the IRB to the taxpayers.

马来西亚自行估税制度的实施为分阶段进行，其中私人公司自2001估税年起已进行自行估税，而个人（包括受薪人士与独资经营者）以及合伙公司的合伙人，则自2004估税年起开始自行估税。实施自行估税制度的目的，乃鼓励纳税人士自动遵守税法，并减轻税收局的行政工作。此外，也将计算税务的责任从税收局转移至纳税人本身。

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Portugal

Connecting China – Fiscal Differences, highlights and conventions!

Over the last three decades, China has been experiencing an impressive economic expansion in its growth rate, with an average annual rate of 9%, stand out with references like Singapore, South Korea, Thailand and India with the among grew over the same period.

With growing cross borders as well, China has a strong presence in a number of PALOP countries where the differences from the integration of cultures and economies is what makes this process complex from the fiscal point of view.

In this text, we present briefly some of the major advantages, disadvantages and differences between the various markets such as Portugal, Brazil, Cape Verde, Angola and Mozambique.

在过去的三十年里，中国经济增长速度惊人，年均增长率达到9%，与新加坡、韩国、泰国和印度等国家相比，同期增长率较高。

随着越来越多的跨国界，中国在许多葡语系国家中有着强大的影响力，与文化在经济一体化的差异使这一过程从财政角度来看变得复杂。

在本文中，我们主要介绍葡萄牙、巴西、安哥拉和莫桑比克等不同市场之间的一些主要优势，劣势和差异。

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Singapore

Singapore Budget 2018: Brief Highlights

Budget 2018 is a strategic and integrated plan to position Singapore for the future. It supports our transformation into a vibrant and innovative economy, and a smart, green and liveable city. It also fosters a caring and cohesive society while ensuring a fiscally sustainable and secure future for Singapore. It is also to address the problem of rising education, healthcare & security and other social costs. Singapore expects an overall budget surplus of \$9.6 billion or 2.1% of GDP for the financial year 2017 which will be used to save ahead for future spending in infrastructure, education and healthcare in 2018 and beyond.

新加坡2018年财政预算案是一套具有战略性用于定位新加坡的综合财政规划。2018年财政预算案引导新加坡往欣欣向荣的创新经济，宜居的绿色智慧城市转型。它在促进温馨和谐社会的同时保障国家稳定且可持续发展的财政未来。该财政预算案也将用于解决日益严峻的教育、医疗、安保以及其他社会保障问题。

新加坡预计2017财政年度的总预算盈余为9.6亿新加坡元，占总GDP的2.1%。这些储蓄盈余将被用于2018年及未来的基础设施建设、教育和医疗所需。

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UAE

A new era of indirect taxation in UAE

After the introduction of Excise Tax from 1st October 2017 it was almost certain that the UAE government would introduce Value Added Tax (VAT) and as expected VAT has been introduced and implemented with effect from 1st January 2018 in the UAE. UAE is the second GCC country to implement VAT along with Saudi Arabia.

The implementation has been embraced by the business community comfortably within a short span of time with extra-ordinary support and guidance from the Federal Tax Authority (FTA). The Laws, rules and regulations have been structured, regulated and enacted like a matured economy and well accepted by the understandable business society.

Generation of Excise Tax and VAT revenue would add a new chapter in the revenue stream of UAE which would be utilized for the development of UAE and would be undoubtedly inculcated and contributed for the society and residents of UAE.

阿联酋自2017年10月1日起开征消费税后，继而开征增值税（VAT）则成为理有固然的事情，VAT亦如预期于2018年1月1日起在阿联酋开始实施。阿联酋是第二个实施VAT的海湾合作委员会国家，沙特阿拉伯也同时开征VAT。

这一实施方案短时间内就迅速得到了商业界的拥护，联邦税务局（FTA）也对其提供了特别支持和引导。相关法律、法规和条例已按成熟经济体系的标准进行构建、监管和执行，并得到了商业界的广泛认可。

消费税和增值税产生的收入为阿联酋增加了一项新的收入来源，这些收入将被用于阿联酋的发展，且必然会将其反复灌输给阿联酋社会及其居民，并为他们做出贡献。

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UK

Changes to taxation of non-UK pensions in the UK

Finance Act 2017 made several changes to the taxation of lump sums and foreign pension income as there is a desire to align the tax treatment of UK registered pension schemes with non-UK pension schemes. This article gives a summary of how the taxation of non-UK pensions have altered due to changes in the legislation.

These changes are relevant to clients who have been living overseas but are considering a retirement in the UK. They should be made aware of the new tax treatment of non-UK pensions before they re-establish UK tax residences so correct retirement planning can be advised.

“2017年金融法案”对总金额和国外养老金收入征税进行了多项修改，因为有意将英国注册养老金计划的税务处理与非英国养老金计划结合起来。本文简要总结了非英国养老金收入的税收如何因立法的变化而发生变化。

这些变化与在海外居住但正在考虑在英国退休的客户有关。应该让他们在考虑是否重新变成英国税务意义上的居民之前，知道这些非英国养老金的新税收政策，以便合理建议正确的退休计划。

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What is a Trust and how does it help as a structure for your business? Part I

PREAMBLE

This article is prepared in two parts and at the most basic level for readers to appreciate what does a "Trust" mean in commercial transactions and how it is used(i).

Part One of this article

1. What is a trust?

From the Oxford dictionary, the definition of the word Trust (信) is "a firm belief in the reliability, truth, or ability of someone or something" (ii).

For a Trust to exist, there must be a person who is a "firm believer" in another person.

Trust is therefore a relationship between two separate entities, these entities can be an individual or any other legal person (including an incorporated body).

A Trust must therefore involve two or more people before it can exist. It is common to form a Trust in the commercial world i.e. a Trust Fund (信托资金或基金). However, there are mandatory requirements for a Trust Fund to be legally recognised, as mentioned below.

2. What elements are required to form a valid trust structure?

A trust structure must have these three basic elements:

- (a) Trust Property;
- (b) Trustee; and
- (c) Beneficiary

Trust Property – is an asset capable to be held by a person on behalf of another(iii). The Trust Property must be kept at all time for the Trust to exist(iv). Some Trusts can be settled with Trust Property in the form of a nominal value known as a Settled Sum and must be preserved at all time for the Trust to exist.

A Trustee – is an entity who holds a legal or equitable interest in the Trust Property. However, the Trustee must consent to deal with the Trust property for the benefit of the Beneficiary.

The power of the Trustee is usually stipulated in a trust instrument usually known as a Trust Deed. The Trustee must act within that given set of power when dealing in the Trust Property(v).

The Trustee can be one of the beneficiaries however the Trustee cannot be the sole Beneficiary as there is a merger of legal and equitable interest in the Trust Property(vi).

A Beneficiary – is the individual or group of individuals for whom the trust is created and who will eventually receive the benefits of said Trust.

3. How does trust integrate with the legal framework?

A Trust (as mentioned previously) is a relationship between the Trustee and Beneficiary. This relationship is not a contractual relationship and therefore cannot be recognised by contract or other laws.

A Trust is not a legal entity, it cannot enter into any contracts nor any lawsuits. The Trustee is the legal owner of the Trust Property, the Trustee is solely responsible for any legal liabilities incurred from the Trust transactions(vii).

The Trust is governed by the Equity Law and an enacted Statute. These laws govern the Trustee's performance. The actions available to Beneficiaries to protect its equitable interests in the Trust Property can be directed against the Trustee(viii).

Part Two in the next PRISM publication will cover these topics

4. How trust differs from other business structures?
5. Why using a trust?
6. How does a trust end?
7. What taxation implications or advantages from the use of a trust structure?

In the next PRISM article, we will briefly touch on "Anstalt" (establishment of representatives) or "Stiftung" (a foundation) that operate in most of those German speaking countries. 🇩🇪

Reference

- (i) Words used in this article in the singular text, where the context so permits, shall be deemed to include the plural tense and vice versa.
- (ii) Oxford dictionary definition of the word Trust <https://en.oxforddictionaries.com/definition/trust>
- (iii) Public Curator of Queensland v Union Trustee Co of Australia Ltd (1922) 31 CLR 66 at 74-5 per Higgins J; Port of Brisbane Corporations v ANZ Securities Ltd [2003] 2 Qd R 661 at [29]
- (iv) Herdegen v Federal Commissioner of Taxation (1988) 84 ALR 271 at 277-80
- (v) Lutheran Church of Australia South Australia District Inc v Farmers' co-operative Executors and Trustees Ltd (1970) 121 CLR 628; [1970] ALR 545

- (vi) *Middleton v Pollock* (1876) 2 Ch D 104 at 106; *Rose v Rose* (1986) 7 NSWLR 679 at 686
- (vii) [1980] Ch 515; [1980] 1 All ER 139; *Doyle v Blake* (1804) 2 Sch & Lef 231; *National Trustees Co of Australasia Ltd v General Finance Co of Australasia Ltd* [1905] AC 373
- (viii) *Truthful Endeavour Pty Ltd v Condon (Trustee); Re Rayhill (Bankrupt)* (2015) 321 ALR 483 at [84]

China



Interpretation on Issues Concerning “Beneficial Owners” in Tax Treaties

Main content of the Notice

In accordance with the Notice of the State Administration of Taxation on the issuance of the “Administrative Measures on the Treatment under Tax Treaties for Non-resident Taxpayers” (Notice of the State Administration of Taxation Document [2015] No. 60, hereinafter referred to as “Notice No. 60”), any resident of the other party to any tax treaty who claims any treatment under the treaty (the Applicant) shall submit relevant evidence to the tax authority.

(I) Expansion of the scope of safe harbor provided for in Notice No. 30

Article 3 of Notice No. 30 provides that, when certain conditions are met, an Applicant is directly determined to have the capacity of a “beneficial owner”. A safe harbor is provided for the determination of the capacity of “beneficial owners”, without comprehensive analysis. In Article 4 of the Notice, restrictions on the safe harbor are relaxed, and the scope of safe harbor is expanded.

(II) Opportunity to enjoy the treatment under tax treaties are given to Applicants who do not meet the conditions for “beneficial owners” in spite of meeting certain criteria

As provided for in Document No. 601 and Notice No. 30, if an Applicant neither meets the conditions for “beneficial owners” nor meets that for the safe harbor, the Applicant may not claim any treatment under any tax treaty in respect of the earnings it derives from China.

Article 3 of the Notice provides that, where the earnings derived by an Applicant are dividends, it shall be deemed that the Applicant has the capacity of a “beneficial owner” if it conforms to the provisions hereof. Two circumstances are provided for in Paragraph 1, Article 3 of the Notice. Under the circumstances set forth in Item (I), Paragraph 1, Article

3 of the Notice, if any person meeting the conditions for a “beneficial owner” is a resident in the resident country (region) where any Applicant belongs to, there are no requirements for the intermediary holding shares indirectly; whereas under the circumstances set forth in Item (II), Paragraph 1, Article 3 of the Notice, if any person meeting the conditions for a “beneficial owner” is not a resident in the resident country (region) where any Applicant belongs to, such person and the intermediary holding shares indirectly shall be persons meeting certain requirements.

Different from the rules on safe harbor provided for in Article 4 of the Notice, the Applicant may not be determined directly to be a “beneficial owner” under circumstances set forth in this Article, and comprehensive analysis shall be conducted to determine whether the person holding 100% shares of the Applicant directly or indirectly have the capacity of a “beneficial owner” based on the factors listed in Article 2 of the Notice.

(III) Time restriction on the shareholding percentage in Articles 3 and 4 of the Notice

To prevent any scheduled time point for obtaining dividends to reach the shareholding percentage as required in Articles 3 and 4 of the Notice, Article 5 of the Notice specifies that the shareholding percentage as required in Articles 3 and 4 of the Notice shall be maintained at all times within 12 consecutive months prior to obtaining dividends.

(IV) Modification to the adverse factors in determination of the capacity of “beneficial owners” provided for in Document No. 601

Of the seven adverse factors in determination of the capacity of “beneficial owners” as listed in Article 2 of Document No. 601, two are modified and another two are deleted in the Notice:

1. Modification to the first adverse factor in Article 2 of Document No. 601

As stated in Article 2 of the Notice, the first adverse factor in Article 2 of Document No. 601 is modified as: “the Applicant shall have the obligation to pay, within 12 months of receipt of the earnings, not less than 50% thereof to a third country (region) resident, in which case the term “have the obligation” shall include circumstances under which the obligation has been agreed to or the payment has become a fact although no provisions have been made on the obligation.”

2. Modification to the second adverse factor and deletion of the third and fourth adverse factors in Article 2 of Document No. 601

As stated in Article 2 of the Notice, the second adverse

factor in Article 2 of Document No. 601 is modified as:

“The operating activities in which the Applicant is engaged do not constitute substantive operating activities. Substantive operating activities shall include manufacture, distribution, management and other activities of a substantive nature. Whether any operating activity in which any Applicant is engaged is of a substantive nature shall be determined based on the functions it actually performs and the risks involved therein.

The investment and management activities of a substantive nature in which any Applicant is engaged in as a controlling shareholder may constitute substantive operating activities. Where the investment and management activities in which any Applicant is engaged in as a controlling shareholder do not constitute substantive operating activities, and the Applicant is concurrently engaged in other operating activities, such other operating activities shall not constitute substantive operating activities to the extent that they are not prominent enough.”

Cyprus



New tax incentives granted for investment in innovative SMEs

Tax incentive

According to the new provisions of Article 9A of the revised income tax law, a “**qualifying investor**” that makes a “**risk-finance investment**” in an “**innovative small and medium-sized enterprise (SME)**” may deduct the costs of the investment from his/her taxable income.

A qualifying investor can invest either directly in the innovative SME or indirectly via an “investment fund” or an “alternative trading platform” (ex. Emerging Companies Market of Cyprus Stock Exchange). Both terms are explicitly defined in the law and needs to hold his/her investment for a minimum period of three years, otherwise the Commissioner of Taxation may disallow the tax deduction.

Limitations


- The tax deduction is limited to 50% of the investor's taxable income in the year in which the investment is made
- The total deductible amount may not exceed EUR 150,000 per year
- The remaining investment cost not claimed as tax deductible may be carried forward and deducted

from the taxable income of the subsequent five years, subject to the aforementioned restrictions

Definitions

- **Qualifying investor:** qualifying investor is an individual that is deemed to be independent from the enterprise. An investor is deemed to be independent, if he/she is not an existing shareholder of the enterprise, unless he/she is a founder of a new enterprise
- **Risk-finance investment:** risk-finance investment is an “equity investment” or a “quasi-equity investment” or a “loan”, or a combination thereof, and includes finance leases and guarantees. A risk finance investment may be the initial investment in the enterprise or a “follow-on investment”.
- **Follow-on investment conditions:**
 - The total amount of risk finance investment may not exceed EUR 15 million (A business will automatically lose its innovative SME status, if at any time, the total amount of risk-finance investment received exceeds EUR 15 million)
 - The possibility of a follow-on investment must have been foreseen in the original business plan submitted to the authorities
 - The enterprise receiving the follow-on investment may not be linked with another undertaking as outlined in Article 21(6)(c) of the EU state aid rules (Regulation 651/2014).
- **Innovative small and medium-sized enterprise (SME):** an SME will qualify as an innovative SME if it meets the following requirements:
 - It operates in the Republic of Cyprus
 - It has been approved by the Cyprus Ministry of Finance or other authority as a qualifying innovative SME
 - At the time of the investment, it is an unlisted SME (unless it is listed on an alternative trading platform) that has a business plan for its risk-finance investment and fulfils at least one of the following conditions:
 - It has not been operating in any market
 - It has been operating in any market for less than seven years following its first commercial sale
 - It requires an initial risk-finance investment which, based on a business plan prepared in advance of a new product offering or the entering of a new geographical market, is higher than 50% of its average annual turnover in the preceding five years

Process for obtaining approval as a qualifying innovative SME

To be approved as an innovative SME, the company must submit an application to the authorities, along with a statement from an independent auditor confirming that the R&D expenses (which may also include any capitalized R&D expenses) represent at least 10% of the total operating expenses of the enterprise in at least one of the three tax years preceding the tax year in which the investment was made; or, in the case of a start-up enterprise without any financial history, based on the audited financial statements or in the absence of audited financial statements, in accordance with a business plan that the authorities are entitled to request. 

Germany



Transfer pricing methods for loans and other financial transactions

The latest developments in the real estate market are showing rising prices and larger numbers of international investors. In combination with the latest developments in the OECD BEPS publications regarding prices between related companies, the German tax administration is focusing more attention on the transfer pricing methods. The following article shows some facts which should be taken into account on the pricing of loans and management services.

First of all, the central feature of the pricing of loans is the dealing at arm's length principle and an appropriate documentation. In general, there are two applicable transfer pricing methods for interest rates. On the one hand the cost-plus method, especially for back-to-back-financial transactions; and, on the other hand the price comparison method. The latter method is recommended by the OECD, due to higher reliability.

One way to obtain comparative prices is to analyze interest rates between two external third parties (external price comparison). Another way is to compare interest rates between the company and an external third party (internal price comparison).


Generally, real estate companies not only secure loans from affiliated companies but also from financial institutions. Therefore, an external price should be available. The German tax authority accepts interest rates which are comparable to interest rates a bank would have set. There are several circumstances a bank will take into account when it comes to pricing a loan.

The first step is to calculate a credit rating of the borrower by analyzing debt ratio, capital structure,

cash flow, earnings, repayment modalities, market positioning and quality of investment assets. It is recommended to use either group- or stand-alone-rating.

Thereafter, it is necessary to obtain comparable transactions through access to a specialized database. The database will compare specified properties. The guideline published by the German tax authority recommends comparing loan amount, duration, type, purpose, collaterals, credit rating, currency, currency risks, costs of exchange cover and other significant terms of the loan. The software or database will analyze similar transactions and provide a range of possible interest rates. Within this range small individual adjustments may be necessary. For example, it may be necessary to find a reasonable Loan to Value (LTV) rate. The higher the LTV ratio the higher the interest rate has to be. In some countries the LTV ratio is more important than in others.

Foreign shareholders of real estate companies often need fund and asset management services. If these services are done by affiliated companies, transfer pricing methods have to be taken into account. Generally, it is possible to use the comparable uncontrolled price method, cost plus method or profit split method. Similar to the pricing of loans, services can be priced by finding comparable prices. If there isn't enough information the other methods could be applicable. Cost plus method is taken at low risk and minor value added services. For pricing all expenses plus an appropriate profit surcharge are taken. If the services have high risk and add a high value, the profit split method is more suitable.

The whole process of pricing should be documented in detail and proofed by evidence for tax audit purposes. 

Reference

1. S.-E. Bärsch/C. Engelen: „Ermittlung eines fremdüblichen Zinssatzes bei Darlehensgewährung im Konzern“, in: Internationales Steuerrecht 2018, page 120 - 124.
2. J. Hülshorst/A. Ackerman/A. Angerstein: “Angemessene Verrechnungspreise für Darlehen und Asset-Management-leistungen in der Real-Estate-Branche“, in: Internationale Steuer-Rundschau 2018, page 19 - 25.
3. BMF v. 23.02.1983 - IV C 5-S 1341-4/83, BStBl I 1983, page 218.

Hong Kong



Hong Kong signed a tax treaty with India

Hong Kong and India signed a comprehensive double tax agreement (DTA) on 19 March 2018. It's the 39th DTA signed by Hong Kong.

Salient points of the DTA for a Hong Kong tax resident company includes:

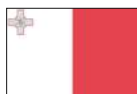
- (a) India's withholding tax rate for Hong Kong residents on interest (currently at 20 per cent in general) will be capped at 10 per cent, subject to satisfying the beneficial ownership test;
- (b) Hong Kong airlines operating flights to India will be taxed at Hong Kong's corporation tax rate, and will not be taxed in India; and
- (c) Profits from international shipping transport earned by Hong Kong residents arising in India and subject to tax there will enjoy 50 per cent reduction in tax in India.

The DTA has also incorporated an article on exchange of information, which enables Hong Kong to fulfil its international obligations on enhancing tax transparency and combating tax evasion. 🇭🻜

Reference

1. <https://www.ird.gov.hk/eng/ppr/archives/18031901.htm>

Malta



Malta's taxation system

Malta offers a highly efficient fiscal regime which avoids double taxation on taxed company profits distributed as dividends.

Shareholders' refunds on profits paid by the company – 5% rate of tax

The Maltese taxation system is based on a particular major concept, namely the "Imputation System". This means that taxes paid by the company are imputed as having been paid by the shareholder. As a result, no further tax is levied on profits distributed to shareholders in the form of dividends. Every Maltese company is subject to income tax at the rate of 35%. However, the shareholder is then entitled to a fractional (6/7ths, 5/7ths or 2/3rds) refund on the tax paid by the company. This means that the global net tax rate may go down from 35% to 5%.

Participation Exemption – 0% rate of tax

Moreover, a Malta holding company, as the shareholder of a foreign subsidiary, may have its dividend income received from the foreign subsidiary exempted from tax (0%) by virtue of the application of the "participation exemption". When these qualify

as a 'participating holding', the company has a right to apply for "participation exemption" on the dividend, once the anti-abuse provisions are adhered to. This means that the Maltese company is exempt from tax on such dividends received.

Double Taxation Treaties

Successive Maltese governments have sought to conclude double tax treaties with important trading partners as well as with emerging countries, in order to encourage the growth of international trade including that of financial services. To date, treaties are in force with over 70 countries and this policy is expected to continue in the future.

Most of Malta's double tax treaties are based on the OECD model. Once concluded, a tax treaty becomes law by Ministerial order and overrides any provisions to the contrary under Maltese domestic tax legislation. Double taxation relief is available in the terms of the relative tax treaty. For more information on Malta's double tax treaties see below.

Malta is amongst the most tax compliant countries

Malta does not offer shelter from tax and is not a tax haven, as it had been dubbed several times by misinformed speakers. The Maltese tax system is in line with current international and European Union (EU) standards. Malta has transposed EU rules and respects the Organisation for Economic Co-Operation and Development (OECD) standards in terms of transparency, fight against tax fraud and money laundering.

Way back in 2006 the taxation system in Malta had been discussed in detail with European Commission and with Member States within the Code of Conduct Group which evaluates taxation measures. These concluded that the tax system in Malta is completely transparent and based on statutory regulations, and not on administrative discretion as is the case in certain countries. Additionally, Malta's offshore legislation had been repealed in 1994, and all companies have to publish their audited financial statements.

OECD indicators portray Malta as a tax compliant jurisdiction. These indicators show the absence of harmful tax practices in relation to Base Erosion and Profit Shifting (BEPS) as well as a strong commitment in relation to tax cooperation in general. Moreover, Malta is ranked as being largely compliant when it comes to the Exchange of Information on Request. 🇭🻜

Reference

1. <https://www.tvn.com.mt/en/news/entities-welcome-pana-committee-confirmation-that-malta-is-not-tax-haven/>

Malaysia



Tax Audit and Investigation in Malaysia

The self-assessment system (SAS) for taxpayers was implemented in stages, since year of assessment (YA) 2001 for companies; and, since YA 2004 for individuals (include salaried employees and sole proprietors) and partnerships. The main objective of implementing SAS is to encourage tax compliance by the taxpayers and reduce administrative burden of the Inland Revenue Board (IRB). The responsibility of computing the taxpayer's liability is shifted from the IRB to the taxpayers. The income tax returns filed by the taxpayers are deemed assessment and no supporting documents are required to be submitted to the IRB. Tax audit and investigation are the main enforcement tools of the IRB under the SAS.

A tax audit is carried out to examine the taxpayer's books and records in order to ensure the income tax return submitted is correct and comply with the tax laws and rulings. There are two types of tax audit, i.e. a desk audit and a field audit. A desk audit usually takes place at the IRB's office, where the IRB officer may request for tax computation and supporting documents to perform a routine checking on the documents to ascertain the tax liability of the taxpayer. A field audit is an examination of the taxpayer's books and records at the taxpayer's premises, with prior notice of 14 days from the IRB officer. It may take two to three days depending on the nature and the complexity of the business of the taxpayer.

The IRB has issued a Tax Audit Framework on 1 January 2007, which was subsequently replaced by the Tax Audit Framework 2013, 2015 and 2017. In 2018, the IRB updated the Tax Audit Framework effective from 1 April 2018. The Tax Audit Framework is a guideline on how a tax audit is carried out, the rights and responsibilities of the IRB, taxpayer and tax agent, offences and penalty. It creates awareness and understanding of the taxpayer on the IRB's approach, process and practice in respect of tax audit.

Generally, where a taxpayer is suspected of tax evasion, a tax investigation is carried out without prior notice to the taxpayer. In 2007, the IRB has issued a Tax Investigation Framework. In 2013, the IRB has revised the Tax Investigation Framework effective 1 October 2013. The Tax Investigation Framework outlines the rights and responsibilities of a taxpayer, tax agent and the IRB Officer in respect of a tax investigation.

The tax audit and investigation are essential under the SAS to ensure the taxpayers are paying taxes responsibly. It should be carried out in a just and fair manner, and aim at educating the taxpayers to comply with tax laws and rulings. 🇲🇾

Reference

1. Official Portal of the Inland Revenue Board of Malaysia www.hasil.gov.my

Portugal



Connecting China – Fiscal Differences, highlights and conventions!

Expansion, internationalization and migration are without a doubt three concepts that are part of today's China. Its growth, production capacity, innovation and implementation are characteristics that the actual markets have become familiar with, becoming an integral part of the circuit in varied areas of business [services, trade, construction and engineering].

The markets of the PALOP's, where Chinese communities are growing, are based on economies with a major fiscal component, each with its own specificity [despite the similar bases to the policies practiced in Portugal] and so **the constant updating /information is the first step to make a great idea in a big business!**



Portugal

After the strong recession and after the intervention of the international institutions Portugal has presented since last year several very encouraging indicators that, although they are not enough, are the beginning of the recovery and stabilization of the growth and bet in the national economy.

The increase in the state's needs led to changes in the tax burden to which the companies operating in Portugal were subject, changing not only the applicable taxes but also the mechanisms for their collection and control.

Let us take as examples the following aspects:

- Resident taxpayers are taxed on their overall income / income obtained in Portuguese territory, and some obtained outside it while non-resident taxable persons are only taxed on the income obtained in Portugal.

- The accounting results of the companies are deducted to determine the results subject to taxes.
- In addition to the so-called normal tax, cumulative taxes are added, such as tax and autonomous taxation, which make Portugal one of the countries with the highest tax burden in Europe.

At the same time, it is also one of the countries with the greatest development in matters related to tax benefits and investment support programs that have borne fruit in recent years.

Brazil

Brazil was one of the economies most affected by social and political instability, entering an economic recession in 2015, where inflation of around 7.5% has drastically reduced consumption.

From the fiscal point of view we are faced with an enormous complexity, with about 92 tributes with different specificities.

As far as corporate taxation is concerned, corporate income tax is divided into three regimes:

- Real profit: billing above 78.000 reais; financial companies and that they obtain profits, income of capital coming from the outside;
- Presumed profit: for companies excluded from the aforementioned regime and where taxation is based on billing;
- Simple national system: special scheme for SMEs through the unification of taxes with the application of a fixed percentage to gross revenue, taking into account the level of billing and activity.

Angola

With high economic growth, Angola is also one of the markets most affected by inflation. Its economy with a tax revenue of around 2,000,000,000 Kuanzas [about 9,300,000 USD] depends mainly on the oil sector and its oscillations.

The tax system is also of Portuguese origin and can distinguish the main taxes as industrial tax, royalties, labor and property and also the consumption and stamp duty. At the level of specific taxation it should be noted that the consumption tax [6.5%] is of direct application on the billing of services to residents and on all the billing of non-residents.

For foreign investment, through the values and location of the investment, it is possible through the national agency for private investment [ANIP] to get some tax benefits.

Mozambique

Mozambique is one of the emerging economies, which

in spite of the socio-political instability with which it has lived shows growth averages around 7% a year, thus highlighting among the rest of southern Africa.

The potential for development is particularly noteworthy, with special emphasis on ore exploration projects and energy production where the first stones have already been laid.

The high deficits due to foreign dependence and historical debt are factors that were on the agenda in 2017, but with the intervention of international organizations, some of the confidence of the investors was restored, improving the economic ratios as early as 2018.

From the fiscal point of view it is also very similar to the Portuguese tax system but we highlight:

- Incidence of the tax in the same way with the adjustments to the accounting results for the calculation of the results subject to tax;
- Fixed rate of tax on corporate income highest and where only undocumented expenses are taxed autonomously;
- Simplified scheme available to companies, restricted to some business areas, with annual turnover of less than 2,500,000 MZN [about 40,500 USD] do not have requirements like organized accounting and have a billing tax rate of only 3%.

It is also possible through investment plans to get the approval of a CPI and benefit from tax reductions, ease of exporting capital invested and even contracting above the established quota in order to boost and develop the local economy.

Finally, we present a summary table with taxation in each one of the economies presented above:

	PT	BR	AO	MZ
Tax rate	21%	24%	30%	32%
Tax losses carried forward	12 Years	5 Years	3 Years	5 Years
Autonomous Taxation	Between 5% and 70%	N/A	Yes since 2017 - Between 2% and 30%	Fixed 35%
Advanced tax payments	Until 8	N/A	2	Until 6

To promote globalization and markets with greater relationships, some conventions have been created to avoid double taxation and allow to exempt or materially reduce the taxation of some transactions such as services, distribution of dividends and payments of royalties that have made the economies more attractive to external investors!

Singapore



Singapore Budget 2018: Brief Highlights

The following are some selected highlights of the Singapore Budget 2018.

Individuals and Businesses

- a) Singapore’s personal income tax rates for resident individual taxpayers are progressive, ranging from 2% to the current highest personal tax rates of 22%. A non-resident individual is generally subject to tax at flat rates, depending on the type of income. For employment income, tax is charged at a flat rate of 15% or at the resident rates, whichever is higher. Other income of a non-resident individual such as director’s fees and rental earned are generally taxed at 22%
- b) The 250% tax deduction for qualifying donations will be extended for donations made on or before 31 December 2021, to continue to encourage Singaporeans to give back to community.

Businesses

- a) There is no change to the Singapore corporate tax rate of 17% since YA 2010, and continues to be one of the lowest headline corporate tax rates in the world.
- b) The Corporate Income Tax Rebate for **Year of Assessment (“YA”) 2018 will be enhanced to 40% of tax payable, with enhanced cap of \$15,000. It is an increase from the previously announced rebate of 20% of tax payable, capped at \$10,000. It will be extended to YA 2019 at a rate of 20% of tax payable, capped at \$10,000.
- c) Tax exemption scheme for new start-up companies (where any of the first 3 YAs falls in or after YA 2020) will be as follows:-

#	Chargeable Income	Percentage exempted from Tax	Amount exempted from Tax
First	\$100,000	75%	\$75,000
Next	\$100,000	50%	\$50,000
Total	\$200,000		\$125,000

- d) Tax exemption scheme for companies (from YA 2020) will be as follows:-

#	Chargeable Income	Percentage exempted from Tax	Amount exempted from Tax
First	\$10,000	75%	\$7,500
Next	\$190,000	50%	\$95,000
Total	\$200,000		\$102,500

Chargeable income refers to taxable income less deductible expenses and other allowances.

With the above tax exemptions and enhanced corporate tax rebates, the effective corporate tax rate for some companies can be lower than the headline tax rate of 17%.

- e) The tax deduction for staff costs and consumables on qualifying research and development (“R&D”) projects performed in Singapore will be increased from 150% to 250%, which will take effect from YA 2019 to YA 2025.
- f) The tax deduction for qualifying intellectual property (“IP”) registration cost will be enhanced from 100% to 200% for the first \$100,000 per year till YA 2025.
- g) The tax deduction for qualifying IP in-licensing cost incurred will be enhanced from 100% to 200% for the first \$100,000 each YA, which will take effect from YA 2019 to YA 2025.
- h) The tax deduction cap for qualifying expenses without prior approval from International Enterprise Singapore or Singapore Tourism Board will be raised from \$100,000 to \$150,000 per YA. It will apply to qualifying expenses incurred on or after YA 2019.

**** Year of Assessment (YA) refers to the preceding financial year in which income tax is calculated and charged.** In tax terms, using the example, income earned in the financial year **2017** will be taxed in **YA 2018**.

OTHER TAX CHANGES:-

Good and Services Tax (GST)

As from 01 Jan 2020, the following regimes will be implemented to tax imported services:-

- a) Reverse charge regime for Business-to-Business (“B2B”) supplies* of imported services; and
- b) Overseas vendor registration regime for Business-to-Consumer (“B2C”) supplies* of imported digital services.

*B2B supplies refer to supplies made to GST-registered persons, including companies, partnerships and sole-proprietors. Whereas B2C supplies refer to supplies made to non-GST registered persons, including individuals and companies that are not registered for GST.

[Enhance the Enhanced-Tier Fund Scheme](#)

Tax exemption under the Enhanced-Tier Fund Scheme is for companies, trusts and limited partnerships, subject to qualifying conditions. To cater for more diverse fund structures, it will be extended to all fund vehicles constituted in all forms if they meet qualifying conditions.

[Income derived by primary dealers from trading in Singapore Government Securities \(SGS\)](#)

Tax exemption granted on income derived by primary dealers from trading in SGS which is scheduled to lapse after 31 December 2018, will be extended till 31 December 2023.

[Capital expenditure incurred on submarine cable systems landing in Singapore](#)

Investment allowance will be extended to capital expenditure incurred between 20 February 2018 and 31 December 2023, inclusive of both dates on newly constructed strategic submarine cable systems landing in Singapore, subject to qualifying conditions.

[Withholding Tax \(WHT\) exemptions on container lease payments made to non-resident lessors](#)

WHT exemption is allowed on lease payments to non-resident lessors (excluding permanent establishment in Singapore) for the use of qualifying containers for the carriage of goods by sea. Unless the scheme is extended, such payments accruing to a non-resident lessor under any lease or agreement entered into on or after 01 January 2023 will be subject to WHT.

[Withholding tax \(WHT\) exemptions for the financial sector](#)

The WHT exemptions will be withdrawn for the following payments:-

- a) Interest from approved Asian Dollar Bonds; and
- b) Payment made under over-the-counter financial derivative transactions by companies with Financial Sector Incentive-Derivatives Market awards that were approved on or before 19 May 2007.

The change will take effect for payments under agreements entered into on or after 01 January 2019.



UAE



A new era of indirect taxation in UAE

After the introduction of Excise Tax from 1st October 2017 it was almost certain that the UAE government

would introduce Value Added Tax (VAT) and as expected VAT has been introduced and implemented with effect from 1st January 2018 in the UAE. UAE is the second GCC country to implement VAT along with Saudi Arabia.

Excise tax has been levied on three categories of goods which covers tobacco and tobacco products, energy drinks and carbonated drinks and there are only two applicable excise tax rates 100% and 50% on the taxable goods produced or imported into UAE.

VAT has been imposed on most of the supplies of goods and services if the place of supply is UAE. The standard rate of VAT is 5% however some specific industries and transactions have been kept Out of scope, Zero rated or Exempt from VAT.

Federal Tax Authority (FTA) under the umbrella of Ministry of Finance has articulated and laid down the well-defined provisions for different businesses and locations termed as free zones, mainland and designated zones. The law has recognized some free zones as designated zones and extended some special provisions for the businesses established in designated zones treating most of their transactions as out of scope.

The implementation has been embraced by the business community comfortably within a short span of time with extra-ordinary support and guidance from the FTA. The Laws, rules and regulations have been structured, regulated and enacted like a matured economy and well accepted by the understandable business society.

Generation of Excise Tax and VAT revenue would add a new chapter in the revenue stream of UAE which would be utilized for the development of UAE and would be undoubtedly inculcated and contributed for the society and residents of UAE. 🇦🇪

UK



Changes to taxation of non-UK pensions in the UK

Tax legislation regarding the UK tax treatment of overseas pension schemes has changed since 6 April 2017 with the removal of the tax-free treatment for payments of lump sums relating to "foreign service", as well as aligning the UK tax treatment of foreign pension income with that of UK pension income.

This article sets out in brief detail the tax changes for lump sum payments and pension income from overseas pension schemes.

Pre-6 April 2017 rules

Lump sums

Lump sum payments from non-UK registered foreign pension schemes were fully taxable when received by a UK resident taxpayer. However, where individuals were non-UK tax resident and had performed their employment duties outside the UK, foreign service relief (similar to that which applies to termination payments) could be obtained. This meant UK resident taxpayers could receive lump sum payments from non-UK pension schemes and not have to pay any or some UK tax.

Pension income

UK resident taxpayers used to receive a 10% abatement from income tax in relation to foreign pension income, which meant that only 90% of the pension income (i.e. not lump sums) was taxable.

What's changed after 6 April 2017?

Lump sums: There have been significant changes implemented by HMRC, namely that they have removed foreign service relief for pension lump sums received after 6 April 2017.

By way of softening the blow on individuals who have overseas pension fund entitlements, HMRC have confirmed that an individual who receives a lump sum from a non-UK pension scheme after 6 April 2017, is able to take relief on the element of the lump sum that was earned overseas prior to 6 April 2017. The individual can use the same relief that would have been obtained had the lumpsum been taken prior to the introduction of Finance Act (FA)2017.

In addition, where a foreign pension is registered with HMRC, members will be able to receive a tax-free lump sum of up to 25% of the fund value, in the same way as a UK registered pension. A 25% tax-free lump sum is also available for overseas pensions where the contributions have received UK tax relief.

It should also be noted that where these lump sum payments from overseas pensions are taxable then, depending on the circumstances, there may also be a liability for National Insurance Contributions (NICs) on the payments, and the tax liabilities on the payments may also need to be reported and paid to HMRC under the PAYE system.

Pension income


The 10% abatement rule has been removed by FA 2017 so that 100% of foreign pension income is subject to income tax.

Conclusion

While this article does not go into great detail it

highlights the need for advisers to maintain their awareness of the changes as they may affect those clients who have been living overseas but are potential retiring to the UK. 🇬🇧

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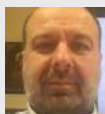
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