PRISM

Tax Newsletter

1st Quarter 2014

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REANDA

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Australia

Australian Taxation Office issues draft ruling on Permanent Establishment for the purposes of applying the foreign branch income exemption under Australian Tax Laws

The Australian Taxation Office (ATO) released a draft taxation ruling TR 2013/D8 on 11 December 2013. The draft ruling will have potential impact on Australian companies with overseas permanent establishments ("PE") which satisfy the definition of PE under the relevant double tax agreements but do not carry out real business activities. This appear to contradict with the ATO's previous views as expressed in its Interpretative Decision (ATO ID 2011/34) which has been withdrawn as a consequence of the release of this draft ruling.

澳大利亚税务局(ATO)于2013年12月11日公布一份税务条例草案(TR2013/D8)。此税务条例草案将会影响一些已设立了能够符合相关双重征税协议中所定义但并不参与真实营运的海外"常设机构"的澳大利亚公司。此税务条例草案与ATO原有的法律观点并不一致因此在公布草案的当天，ATO撤回先前所颁发的解释性决策文章(ATO ID 2011/34)。

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China

The VAT and income tax bearing ratio of different industries in China

Chinese tax authority has recently emphasized on efficient corporate tax declaration, and enterprises are also required to provide principal financial statements by way of electronic to tax bureau. Tax collectors will analyze those financial information in order to detect any significant abnormal variations, and the "tax bearing ratio" may indicate abnormal tax payment or tax evasion.

税务机关对企业的税收监管力度日益加强，逐步实现地企业财务信息的连网监控。当企业各项财务指标，特别是税负率出现异常时，当地税务机局的将会启动评估程序，判断企业是否存在纳税异常，因此，企业税负率是企业税务管理的重要指标，本文介绍目前各行业税负率参考值。

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Cyprus

Cyprus financing companies and minimum acceptable profit margins

A Cyprus company that earns interest in the normal course of its business/operations, including interest closely associated with its normal business/operations, is subject to income tax at the rate of 12.5%. Due to this beneficial corporate tax rate a large number of Cyprus companies have been used in international tax structures to provide financing to other group companies. The Institute of Certified Public Accountants of Cyprus has recently reached an agreement with the local tax authorities in relation to the minimum acceptable profit margins regarding transactions of a tax resident company in Cyprus, in respect of the raising and the granting of loans from and to associated companies. Profit Margin in this case represents the difference between the interest rate on the loan granted and the interest rate on the loan received. Based on this development, investors that choose Cyprus companies for their group financing needs may end up being taxed with a rate lower than 2% (margin 0.125% X 12.5% tax rate).

一家塞浦路斯公司在其普通商业/运营活动中获得的收入，包括与其日常商业活动紧密联系产生的收入，应缴纳12.5%的收入税。因为优惠的公司税率，大量的塞浦路斯公司在国际税务策划中被用做给集团其它公司提供金融财务的公司。最近，塞浦路斯注册公共会计师协会和塞浦路斯税务当局就一个塞浦路斯纳税公司交易的最低利润率，即塞浦路斯公司和其关联公司互相借贷的最低利润率达成协议。此类情况下的利润率指的是贷款的借贷利率差。据此协议，选择用塞浦路斯公司作为其集团财务公司的投资人需支付的税率将低于2%（利率差0.125% X12.5%税率）。

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Hong Kong

The case of Nice Cheer Investment Limited (II)

The case of Nice Cheer Investment Limited (Nice Cheer) has been decided by the Court of Final Appeal in favour of the tax payer. For further details and analysis on the CFA's decision, please refer to the full length article.

在Nice Cheer一案中，终审法院已作出有利纳税人的判决。有关判决之详细内容及分析，请参照内文。

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Japan

Tax credit for renewable energy

Public concerns over the replacement of atomic power with renewable energy increased after the Tsunami disaster occurred on 11 March 2011 which led to the explosion of Fukushima nuclear plant (3.11 disaster). Japan government has geared up to introduce renewable energy as one of the economy recovery measures. Amongst the energy sources, solar PV, or energy with potentially large amount or easy to use is most expected to serve as alternative energy. Two years have passed since the 3.11 disaster, high-efficiency solar panel or mega solar power plant with leading clean energy technology became popular in Japan and tax break for solar power equipment was offered.

2011年3月11日，东日本大地震造成日本福岛第一核电站1-4号机组发生核泄漏事故发生后，日本对可再生能源非常重视。其中太阳能发电有着无限广阔的前景，在日本政府的大力推动下，正在为越来越多的日本人所接受。现在影响太阳能普及的难题是，太阳能发电成本偏高。为此，日本政府一方面对太阳能发电提供补助，另一方面提高太阳能发电的性能，以节约成本。东日本大地震以来2年，太阳能发电已引起人们广泛的关注。以下是关于太阳能发电设备税务上的优惠政策。

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Malaysia

Malaysia 2014 National Budget- Tax updates

The 2014 National Budget with the theme "Strengthening Economic Resilience, Accelerating Transformation and Fulfilling Promises" was tabled on 25 October 2013 by our Prime Minister, YAB Dato' Sri Mohd. Najib Tun Haji Abdul Razak.

以 "强化经济韧性，加速转型，兑现承诺" 为主题的2014年财政预算案，由我国首相拿督斯里纳吉在2013年10月25日公布。

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New Zealand

Non-resident contractor withholding tax

Where an overseas company performs contract services in New Zealand (not through a New Zealand subsidiary), the question to be answered is how it will be taxed on the payments it receives from its New Zealand customer.

当一间海外公司在新西兰(并非通过新西兰子公司)从事商业活动, 首先要了解的问题是该海外公司在新西兰所获取的收入将会如何被征税。

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Russia

Review of special tax regimes of Russia

Special tax regime is a system of special rules of taxation which can be applied, for some categories of companies, permanently or temporary according to tax code of Russian Federation. There are 5 special tax regimes in Russia. They are: simplified taxation system, unified agricultural tax, unified imputed earnings tax, patent tax system and production sharing agreements.

根据俄联邦税法，特殊税制乃是永久或暂时适用于某类企业的特殊税制。俄罗斯共有5个特殊税制，包括简化税制、统一农业税、统一估算收入税、专利税制及产量分成协议。

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Singapore

Corporate Income Tax - Objection and Appeal process

To expedite the finalization of taxpayer's corporate income tax matters, the Inland Revenue Authority of Singapore ("IRAS") has reviewed the Objection and Appeal Process and will be appealing some changes to the administrative procedures with effect from 01 January 2014.

为加快落实纳税之企业所得税事项，新加坡国内税务局（IRAS）已审阅异议及上诉程序，并对一些行政程序作出更改，相关更改将于2014年1月1日起正式生效。

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Australia

Australian Taxation Office issues draft ruling on Permanent Establishment for the purposes of applying the foreign branch income exemption under Australian Tax Laws

On 11 December 2013, the Australian Taxation Office released, for public comment by 14 February 2014, a draft Taxation Ruling TR 2013/D8 ("**draft Ruling**") that states that having a permanent establishment ("**PE**") does not necessarily mean a business is carried in that PE.

Background

In brief, section 23AH of the Income Tax Assessment Act 1936 ("the Act") treats certain foreign branch income derived directly or indirectly by Australian resident companies as non-assessable non-exempt for income tax purposes, it also provides similar rules for foreign branch capital gains, and contains rules to ensure that foreign branch capital losses are not taken into account.

According to section 23AH(2) of the Act, for Australian tax purpose, an entity may have a permanent establishment overseas either under paragraph (b) of section 6(1) of the Act or under a tax treaty.

Often, there is a discrepancy between paragraph (b) of subsection 6(1) of the Act and some tax treaties, in determining when a company is deemed to 'carrying on a business' at or through a permanent establishment because it has substantial equipment.

An issue therefore arises as to whether having a permanent establishment by virtue of the presence of substantial equipment, either under paragraph (b) of subsection 6(1) of the Act or under Australia's tax treaties, means that the 'carrying on a business' requirement in section 23AH of the Act is automatically satisfied.

The draft Ruling

Accordingly, the draft Ruling considers the application of the requirement in section 23AH(2) of the Act.

Position where subsection 6(1) definition of PE applies

In particular, the draft Ruling considers whether a company that has a PE, under paragraph (b) section 6(1) of the Act, in a place because it is using or is installing substantial equipment of substantial machinery satisfies the 'carrying on a business' requirement in section 23AH of the Act.

The definition of PE in subsection 6(1) of the Act when construed jointly with section 23AH of the Act means a place at or through which the person carries on any business. This is the primary meaning of the expression PE. However, the definition expressly includes some other cases, without limiting the generality to the primary meaning such as circumstances arising from paragraph (b) of subsection 6(1) of the Act.

With the vast majority of cases it is likely to argue that having, using or installing substantial equipment or substantial machinery at a place will also entail the carrying on of business at or through that place so that the primary meaning of the term is met. However, where the presence of substantial equipment or machinery does not involve actual business activity, the expanded meaning of paragraph (b) of subsection 6(1) of the Act will apply. In this way, it enlarges the scope of the term to include as a permanent establishment, something that would not otherwise come within its primary meaning that is where no business is being carried on at or through the place. Nevertheless, there is no basis to read into the extended meaning of permanent establishment that a business must also be treated as being carried on at or through that place.

Accordingly, a company that has a PE because it satisfies paragraph (b) of subsection 6(1) of the Act does not thereby meet the carrying on a business requirement for the purpose of section 23AH of the Act. The requirement will only satisfied by the actual carrying on of business at or through the PE.

Position where a tax treaty definition of PE applies

Further, the draft ruling considers whether a company that is taken to 'carry on business' through the PE under an applicable tax treaty satisfies the 'carrying on a business' requirement in section 23AH of the Act.

Unlike the definition of PE in subsection 6(1) which includes the matters covered by paragraphs that follow, the tax treaties relevantly provide that an enterprise is 'deemed' to have a PE if it uses substantial equipment in the contracting state. Accordingly, where a tax treaty 'deems' there to be a PE merely because of substantial equipment is used in that contracting state, no inference can be drawn that a business must also be treated as being carried on at or through that place for the purposes of section 23AH of the Act.

Even where the applicable tax treaty also deems a company to 'carrying on business' through a 'deemed' PE, this has effect only in the context of the interpretation of the treaty and not for the purposes of section 23AH of the Act.

From the abovementioned Commissioner's view, the draft Ruling concludes that the domestic exemption for foreign branch income in section 23AH of the Act will not apply merely because a company has a permanent establishment overseas, regardless of the presence of any treaty deeming provisions. The domestic exemption will apply only if the company is actually carrying on a business through a permanent establishment.

The Commissioner recognised that the view expressed in TR 2013/D8 contradict with his previous view as expressed in Interpretative Decision ATO ID 2011/34. Accordingly, one the same day, the Commissioner withdrew ATO ID 2011/34 and proposes not to undertake active compliance activities so as to apply that view in the current income year and for earlier years. The draft taxation ruling is open for public comment until 14 February 2014.

China

The VAT and income tax bearing ratio of different industries in China

Chinese tax authority has recently emphasized on efficient corporate tax declaration, and enterprises are also required to provide principal financial statements by way of electronic to tax bureau. Tax collectors will analyze those financial information in order to detect any significant abnormal variations, and the "tax bearing ratio" may indicate abnormal tax payment or tax evasion.

Illustration:

Accounting tax bearing ratio
= gross sales revenue × 17% ÷Sale

The actual tax bearing ratio
= actual taxes paid ÷ Sales

Why tax bearing ratio ≠17%

The VAT is 17% where a product is sold at the price of RMB 2000 with the cost of RMB 1000, then seller has to pay RMB 170 tax for the profit made. However, due to timing difference, one may not actually pay RMB 170 tax immediately when profit is made. Therefore, a manufacturer may not settle its VAT at the same time upon its receipts and payments.

What is "tax bearing ratio" for?

Timing difference results from the difference between actual and accounting tax and hence, China's tax authority faces immense difficulties to determine whether a taxpayer pays sufficient taxes. Therefore it introduced the concept of "tax bearing ratio" as an industry benchmark to estimate appropriate amount of tax to be payable by an enterprise.

How it works?

As an example, tax bearing ratio is 5% for car manufacturing industry, and a car manufacturer may pay RMB 30 VAT in cash for an annual profit of RMB 1000. This indicates that it does not pay sufficient tax for its profit made as the actual tax bearing ratio is only 3% (=RMB 30/ RMB 1000) which is much lower than industry average tax bearing ratio of 5%.

Following list is tax bearing ratio of main industries at present:

VAT bearing ratio

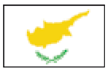
Industry	Tax bearing ratio (%)
Agricultural and sideline products	3.5
Food & beverage	4.5
Textiles	2.25
Clothing & manufacturing	2.91
Logging, timber & paper mills	5
Building materials & equipment	4.98
Chemical & related manufacturing	3.35
Pharmaceutical manufacturing	8.5
Tobacco	12.5
Plastics manufacturing	3.5
Nonmetallic mineral products	5.5
Metallic products	2.2
Transportation equipment	3.7
Communications/Electronics	2.65
Arts and crafts	3.5
Manufacture of electrical machinery & equipment	3.7
Electric utilities	4.95
Wholesales	0.9
Retail sales	2.5
Others	3.5

Tax contribution rate (Income tax bearing ratio)
= Taxable income ÷ sales × 100%

Industry	Tax bearing ratio (%)
Leasing industry	1.5
Technical services	2.5
Machinery manufacturing	2
Logging, timber & paper mills	1
Printing industry	1
Food & beverage	2
Pharmaceutical manufacturing	2.5
Stock farming	1.2

Industry	Tax bearing ratio (%)
Communications/Electronics	2
Plastics manufacturing	3
Food products manufacturing	1
Business services	2.5
Other manufactures - Pipes	3
Other manufactures	1.5
Other builders	1.5
Other service industry	4
Other mining industry	1
Clothing & manufacturing	1
Wholesales	1
Farm & sideline product processing	1
Agricultural services	1.1
Timber industry	1
Retail sales	1.5
Residential services	1.2
Metallic products - Bearings & bushings	6
Metallic products - Spring	3
Metallic products	2
Building materials & equipment - Cement	2
Building materials & equipment	3
Builders/General contractors	1.5
Furniture	1.5
Computers	2
Chemical & related manufacturing	2
Arts and crafts - Pearl	4
Material recyling	1.5
Nonmetallic mineral products	1
Textiles	1
Real estate	4
Manufacture of electrical machinery & equipment	2
Electric utilities	1.5
Transportation	2

Cyprus



Cyprus financing companies and minimum acceptable profit margins

A Cyprus company that earns interest in the normal course of its business/operations, including interest closely associated with its normal business/operations, is subject to income tax at the rate of 12.5%. Due to this beneficial corporate tax rate a large number of Cyprus companies have been used in international tax structures to provide financing to other group companies. The Institute of Certified Public Accountants of Cyprus has recently reached an agreement with the local tax authorities in relation to the minimum acceptable profit margins regarding transactions of a tax resident company in Cyprus, in respect of the raising and the granting of loans from and to associated companies. Profit Margin in this case represents the difference between the interest rate on the loan granted and the interest rate on the loan received. Based on this development, investors that choose Cyprus companies for their group financing needs may end up being taxed with a rate lower than 2% (margin 0.125% X 12.5% tax rate).

Specifically, the following minimum profit margins have been agreed in the case of back to back loans:

Loan amount (in millions)	Minimum acceptable profit margin
Up to €50	0.35%
€50 to €200	0.25%
Over €200	0.125%

There are some minimum conditions in order for the above rates to be allowed, such as:

1. The interval between the time the company receives the loan and the date it grants the loan can not exceed 6 months.
2. The said profit margins will apply for each separate loan the Cyprus resident company receives and grants.
3. In case there is a non-interest bearing amount within the transaction, the minimum acceptable profit margin is 0.35%, irrespective of the loan amount.
4. A loan write off (receivable or payable) cannot result, directly or indirectly, in any tax liability or benefit. In case a Cyprus company writes off a loan receivable the only implication will be that any interest expense on the loan received to grant the specific loan written off will not be allowed for tax computation purposes.
5. The acceptable profit margins need to take into account charges related to the loans under the scheme in a way that the resulting taxable income will be net at the above rates.
6. Foreign exchange differences will not be taken into account for company tax computation purposes.
7. The above provisions also apply in cases where the Cyprus tax resident company receives a loan from a third party (e.g. a bank institution) and then finances a group company.

Practical example

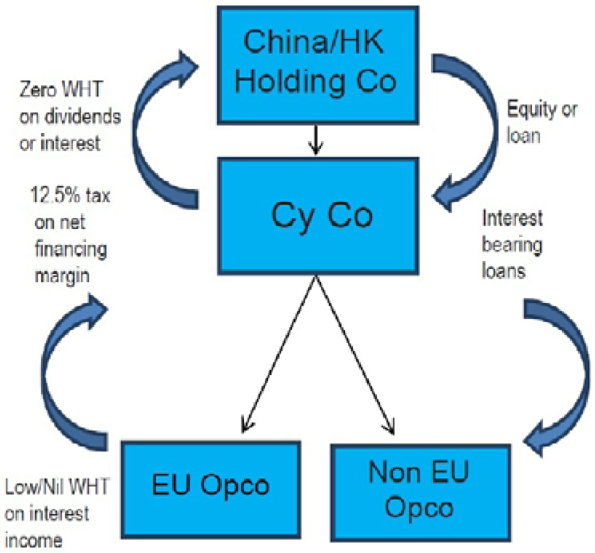
A Cyprus company receives a Euro 20 million loan from a group company with an interest rate of 5% per annum. The loan is granted 1 January 2013. The Cyprus company then lends the Euro 20 million to another group company at the same day. The company has no other transactions.

The Cyprus tax authorities will accept a rate as low as 5.35% for the loan receivable even if the loan agreement states a lower rate, meaning that the net profit to be taxed for 2013 is Euro 70,000 (Euro 20m X 0.35%) and tax payable will be Euro 8,750 (Euro 70,000 X 12.5%).

Other considerations – Withholding taxes

Understanding the implications of cross border transactions and withholding taxes involved (where applicable) is essential in international tax planning. The application of Double Taxation Avoidance Agreements and the relevant EU directives (if the transaction is within the European Union) are additional factors that need to be analyzed and taken into account for each scenario.

Sample Structure



Plan

- Establish Cyprus company to be the Group finance company of EU/Non EU operations, capitalized by Equity or Loan

Benefit

- Tax on net finance margin of 12.5% minus expenses incurred wholly and exclusively for the productions of the income
- Access to EU directives and DTT network regarding interest
- Interest deductibility in borrowing

Hong Kong

The case of Nice Cheer Investment Limited (II)

The case of Nice Cheer has been decided by the Court of Final Appeal in favour of the tax payer.

The Court of Final Appeal held that accounts drawn up in accordance with the ordinary principles of commercial accounting must nevertheless be adjusted for tax purposes if they do not conform to the underlying principle of taxation enunciated by the courts even if these are not expressly stated in the statue. In particular, principles of commercial accounting must give way to the core principles that profits are not taxable until they are realized and that profits must not be anticipated.

This means that unrealized profits are not taxable.

We are of the view that clients can claim under Section 70A to correct prior years' tax returns, where unrealized gains have been taxed. This question has already been asked in the Legislative Council and in a written reply, the IRD has stated that they will not accept such claims. Presumably that was on the basis of the wording of the proviso to Section 70A, which states that a correction cannot be made if the assessment in prior year was based on the prevailing practice at that time.

However, we have reservation about the IRD's stance. The reason is that Section 70A only prohibits reopening of prior years on the basis of prevailing practice, but not on an error of law.

In the present case, the Court of Final Appeal has firmly established that unrealized profits are not taxable. That is law, and not practice. Therefore in our opinion, there are strong grounds for making a claim to re-assess back years' returns.

However, since the IRD has already made public their stance, it is very unlikely that such a claim will be accepted by the IRD itself. This means that the case must at least go to the Board of Review before there can be a resolution.

Be that as it may, as a matter of protection of your own interest, we think that there is no harm to lodge Section 70A claims now and if later it is determined to be not worthwhile, to withdraw the claim, since there is no downside risk to lodging such a claim.

The reason is that there is a time limit to Section 70A claims. It only applies to the previous six years of assessment. At this time, the year of assessment 2007/2008 will no longer be claimable after 31 March this year. Therefore as a tactical move, client should seriously consider lodging Section 70A claims before 31 March of this year.

Japan

Tax credit for renewable energy

Overview

Public concerns over the replacement of atomic power with renewable energy increased after the Tsunami disaster occurred on 11 March 2011 which led to the explosion of Fukushima nuclear plant (3.11 disaster). Japan government has geared up to introduce renewable energy as one of the economy recovery measures. Amongst the energy sources, solar PV, or energy with potentially large amount or easy to use is most expected to serve as alternative energy. Two years have passed since the 3.11 disaster, high-efficiency solar panel or mega solar power plant with leading clean energy technology became popular in Japan and tax break for solar power equipment was offered.

The scheme of purchasing renewable energy

As a measure to promote the nationalwide use of renewable energy sources (solar power, wind power, hydro power, geothermal power, biomass), Japan government launched a scheme which required electric utilities to purchase excess electricity generated by renewable energy sources at a fixed price. It was anticipated that renewable energy sources will be adopted by many companies and households; therefore, tax break has made available as soon as the scheme being launched.

General tax credit

Expenses for the purchase of solar power equipment to serve the business within one year from the purchase date, will be wholly deducted in the business year in which the equipment is placed into use. However, in order to be deducted as expense, there are certain conditions to be fulfilled. For instance, the solar power equipment that is qualified under the scheme must generate over 10 kilowatt. Moreover, the equipment must be certified by Ministry of Trade and Industry as well as having a leasing agreement with electric utilities.

Special tax credit

For small to medium sized company (company with capital of 100 million yen or below), 7% of the purchase price of the solar equipment will be allowed to deduct against the income tax if it satisfied the conditions mentioned above.

A company cannot enjoy both general tax credit and special tax credit at the same time, however it can choose to either general tax credit or special tax credit, whichever is preferable. Further, a company cannot claim for either general tax credit or special tax credit if the purchase of solar power equipment was subsidized by the local government's grants.

Fixed asset tax deduction

Qualified solar power equipment which can generate power of or above 10 kilowatt according to the renewable energy source scheme are allowed to pay lower fixed asset tax, which is 2/3 of the taxable amount of the payable fixed asset, in other words, 1/3 of the taxable amount is deducted within three years starting from the first year the equipment become taxable. Moreover, besides solar power equipment, wind power equipment, geothermal equipment or hydro power equipment can also claim for fixed asset tax deduction.

Malaysia

Malaysia 2014 National Budget- Tax updates

The 2014 National Budget with the theme "Strengthening Economic Resilience, Accelerating Transformation and Fulfilling Promises" was tabled on 25 October 2013 by our Prime Minister, YAB Dato' Sri Mohd. Najib Tun Haji Abdul Razak.

Five key thrusts of the Budget is:

- Invigorating economic activity,
- Strengthening fiscal management,
- Inculcating excellence in human capital,
- Intensifying urban and rural development, and
- Ensuring the people's well-being,

The government revealed that a total of RM264.2bil would be allocated under Budget 2014 to implement programmes and projects for national development, with RM217.7bil for operating expenditure and RM46.5bil for development expenditure.

The Federal Government fiscal deficit will further decline from 4% of GDP in 2013 to 3.5% in 2014. This indicates the Government's commitment towards fiscal consolidation to further strengthen the financial position of the nation, and as part of the Government's fiscal consolidation measures, Najib also announced the implementation of goods and services tax (GST) from April 1, 2015, at 6% to replace the existing sales and services tax.

The 2014 Budget tax highlights are as follows:

Real Property Gains Tax (RPGT)

Effective from 1 January 2014:

- For gains on properties disposed within the holding period of up to 3 years, RPGT rate is increased to 30%.
- For disposals within the holding period up to 4 and 5 years, the rates are increased to 20% and 15%, respectively.
- For disposal made in 6th and subsequent years no RPGT was imposed on citizens, whereas companies are taxed at 5%.
- Non-citizens will be subjected to RPGT at a flat rate of 30% for disposals within 5 years and 5% thereafter.

Goods and Sales Tax (GST)

- Sales Tax and Service Tax to be abolished and to be replaced by GST at the rate of 6% from 1 April 2015.
- Basic food items, transportation services, highway tolls, water and first 200 units of electricity for domestic users per month to be exempted from GST.
- Sale, purchase and rental of residential properties as well as selected financial services are exempted from GST.
- Training grant of RM100 million will be provided to businesses that send their employees for GST training in 2013 and 2014.
- Financial assistance amounting to RM150 million will be provided to small and medium enterprises for the purchase of accounting software in 2014 and 2015

Corporate Tax

Effective from YA 2016

- Corporate income tax rate be reduced by 1 percentage from 25% to 24%.
- Income tax rate for small and medium companies will be reduced by 1 percentage point from 20% to 19%.
- Accelerated Capital Allowance (ACA) with an initial allowance of 20% and an annual allowance of 80% on information technology and communication (ICT) equipment is extended to YA2016.

Personal Tax

- Special tax relief of RM2,000 for tax payers with monthly income of up to RM8,000 (aggregate income up to RM96,000 a year) received in 2013.
- Individuals who have been subjected to monthly tax deduction ("MTD") are not required to file tax return if such MTD constitute their final tax from YA2014.
- Reduction of resident individual tax rate of 1% to 3% across various income bands from YA 2015
- The maximum resident individual tax rate on chargeable income exceeding RM400,000 from YA 2015
- Non-resident individuals income tax rate is reduced by 1% from 26% to 25% from YA 2015

New Zealand

Non-resident contractor withholding tax

Where an overseas company performs contract services in New Zealand (not through a New Zealand subsidiary), the question to be answered is how it will be taxed on the payments it receives from its New Zealand customer.

1. Business profits that are sourced in NZ by reason of performing contract services for more than 92 days in NZ will only be exempt from NZ income tax if overseas contractor ("OC") does not have, nor is deemed to have a permanent establishment ("pe") in NZ as determined under the relevant Double Tax Agreement with NZ i.e. the country of its residence.
2. A pe is usually defined under Article 5 of a DTA as including a fixed place of business through which the business of OC is carried on in NZ. It is not necessary that OC has a separate business location or office in NZ (place) but it is sufficient for OC to be deemed to have a fixed place within NZ customer at which it can be identified and located, especially over a contract period greater than 6 months.
3. Where the 4 employees provide services that reflect the business activities of OC, such services will generally not be "preparatory or auxiliary" services that are exempted from a deemed pe under the relevant paragraph of Article 5.
4. Showed OC be deemed to have a permanent establishment in NZ it will be liable for NZ income tax (currently 28%) on the net income after related expenses have been deducted. Initially NZ customer as the payer will be obliged to deduct "non-resident contractors withholding tax" (NRCWT) from the gross "contract payments" made to OC for services performed in NZ, that are neither

"royalty payments" for the use of the software license (through customization) or expense reimbursements.

5. NRCWT is an initial but not a final tax and is neither a minimum or maximum tax. It is a withholding tax but set at the high rate of 15% of the gross contract payment, increasing to 20% if the payee (OC) does not have a NZ IRD registration number. An application for an exemption certificate may be filed where:

   (a) OC does not have a pe, or

   (b) OC posts a bond equal to 15% tax, or

   (c) OC has 24 months prior good tax behavior in NZ.

6. Alternatively OC may apply for a lower tax rate certificate based on a forecast of contract receipts and expenses i.e. a proforma tax return

e.g.	Gross receipts	$1,000,000
	Expenses 4 staff	(600,000)
	Head Office Administration	(100,000)
	Taxable Income	300,000
	28% tax	$ 84,000

= 8.4% tax rate certificate from IRD

7. A final income tax return needs to be filed. An application to the IRD for approval of the company's balance date may be made, in lieu of 31 March (the standard NZ tax year end).

8. GST registration will generally be required where the contract period exceeds 12 months so that will be required. The return period will be 2 months (standard) and aligned with the income tax year end. The return can be made on payments based where annual taxable supplies (invoices) are less than $2,000,000; otherwise on invoice basis.

9. Registration of Place of Business with NZ Companies Office is required and currently audited financial statements of the NZ "branch" and the company itself must be filed annually within 5 months and 20 working days of year end. However legislation is currently being processed through Parliament to remove this filing requirement for "non-large companies" with turnover of less than $20 million.

Russia

Review of special tax regimes of Russia

Special tax regime is a system of special rules of taxation which can be applied, for some categories of companies, permanently or temporary according to tax code of Russian Federation. Management of companies usually has a choice whether to apply these rules or use a standard system of taxation. If the company will apply special rules of taxation then automatically it receives exemption from some taxes, which are mandatory in a context of standard tax system (for example exemption from income tax, VAT or property tax).

There are 5 special tax regimes in Russia. They are: simplified taxation system, unified agricultural tax, unified imputed earnings tax, patent tax system and production sharing agreements.

First regime is called simplified taxation system. It can be applied by small and medium enterprises in order to stimulate its growth and development. Tax rules of this regime are not as harsh as standard tax system, but there are lots of restrictions and criteria which company should maintain in order to use it.

Here is brief overview of this regime.

1. Company qualify for full exemption of VAT, income tax, payroll taxes, transport tax, excise duty, land tax.

2. Company pays only 6% tax from all its revenues or 15% tax from profit, the management should decide which one is better for the company. If the company elect for 15% tax from profit than minimal mandatory tax cannot be less than 1% of revenue. This 1% tax is payable even company incur losses.

3. In order to apply for it, company's revenue for last 9 months should be less than 45 million rubles (1.5 million dollars approximately). There are lots of other restrictions. Most significant are: organization should have less than 100 employees, net book value of fixed assets should be less than 100 million rubles, and organization should be 75% controlled by physical persons (25% can belong to other organizations). So such organization cannot be a subsidiary, but can be an associate of foreign corporation.

Second tax regime is unified agricultural tax. This tax regime is for organizations in the business of producing or processing grain, milk or other agricultural produce. However size of company or capital structure is not clearly defined, main restrictions are number of employees (less than 300) and revenue structure (70% of revenue should be generated from sale of own agricultural produce). The term 'own agricultural produce' refers to produce as a result of biotransformation of assets controlled by company, and not merely purchase and resale.

Brief overview of this regime is as follow:

1. Company qualifies for full exemption of VAT, income tax, property tax.
2. Company pays only 6% tax from all its profits. In case of losses, company can accumulate it for tax purposes and set-off against future profits for 10 years.
3. Company can be a subsidiary of foreign enterprise

Third and fourth tax regimes (unified imputed earnings tax and patent tax system) are for small businesses of certain business activities. These include taxi drivers, professional teachers, cleaning services, guide services etc. Such businesses enjoy exemption of all taxes but pay a tax from potential income called 'imputed earnings'. Patent tax system and unified imputed earnings tax differs in accordance to nature of business activity and method of computation which refer as 'imputed earnings'. Tax rate is 6% which is 'imputed earnings' in a patent system and 15% in a unified imputed earnings tax regime.

Last tax regime is called product sharing agreements (PSA). This tax regime is for foreign companies which involve in exploration and development of mineral recourses in Russia. In order to be in this tax regime, the foreign company should conclude special agreement with government of Russian Federation. New business entity will be incorporated and jointly controlled by Russian government and foreign investor. Such business entity will enjoy receive a lot of tax preferences among others the exact tax rates, tax base calculation methods and exemptions are stipulated in the agreement.

Singapore

Corporate Income Tax – Objection and Appeal Process

To expedite the finalization of taxpayer's corporate income tax matters, the Inland Revenue Authority of Singapore ("IRAS") has reviewed the Objection and Appeal Process and will be appealing some changes to the administrative procedures with effect from 01 January 2014.

The Comptroller of Income Tax will extend the deadline to file a Notice of Objection from 1 month to 2 months from the date of income tax assessment issued by IRAS as an administrative concession.

TAX TREATIES

A Double Taxation Agreement ("DTA") between Singapore and another jurisdiction is to prevent double taxation of income earned in one jurisdiction by a resident of the other jurisdiction and makes clear the taxing rights between Singapore and treaty countries on incomes arising from cross-border economic activities between the two jurisdictions and provide for reduction or exemption on certain types of income.

Comprehensive Avoidance of DTA Agreements

In year 2013, Singapore's agreement with Belarus, Guernsey, Isle of Man and Jersey for the avoidance of DTA while the protocol signed with Belgium, South Korea, Malta, Portugal and Turkey were all entered into force.

Limited Treaties

Singapore and Brazil signed an Agreement for the Avoidance of Double Taxation on profits derived from international air and shipping transport and entered into force on 20 December 2013.

The Agreement provides for mutual income tax exemption of profits derived from the operation of aircraft and ship in international traffic by air and shipping enterprises of the other country.

Agreements which are signed but not ratified

In year 2013, Singapore signed agreements with Barbados, Ecuador, Liechtenstein and San Marino while protocol signed with Czech Republic, Kazakhstan and Luxembourg. It will enter into force after its ratification between Singapore and respective countries.

With the above updates, Singapore has signed DTA with73 countries, limited treaties with 8 countries, Exchange of information agreement with 1 country, DTA or protocol with 10 countries.

GOODS AND SERVICES TAX ("GST")

In Singapore, GST (known as Value Added Tax (VAT) in some countries) is levied at 7% on sales of goods and services consumed unless the sale can be zero-rated or exempted in accordance with provisions of GST Act. GST that the businesses charge and collect is known as output tax, which to be paid to the Comptroller of GST. GST on purchases and expenses is known as input tax to be claimed from the Comptroller of GST.

GST on Reimbursement and Disbursement of Expenses

Prior to 31 May 2013, a recovery of expense is considered as a separate supply (i.e. reimbursement) and hence, subject to GST, as long as it does not meet the following conditions for disbursements:

<u>Conditions for disbursements</u>

a) The other party is responsible for paying the supplier

b) The other party knows that the goods and services would be provided by that supplier

c) The other party authorized the business to make payment on their behalf

d) The other party is the recipient of the goods and services

e) The payment is separately itemized when the business invoiced the other party

With effect from 31 May 2013, for any recovery of expenses, the business will first have to establish the recovery is a reimbursement or disbursement. To determine this, the business should look at whether they have acted as a principal or agent in purchasing the goods and services and incurring the expenses in the first place.

The term "reimbursement" refers to the recovery of an expense that the business incurred as a principal from another party. The recovery of a payment made on behalf of another party is "disbursement". A disbursement does not constitute a supply and is not subject to GST. A reimbursement, on the other hand, may be subject to GST if it is consideration for a supply of goods or services.

Indicators on whether the business is a principal or an agent

a) Contractual liability and assumption of responsibilities

b) Legal obligations to make payment or payment arrangement

c) Alternation to the nature and value of supplies

d) Identities of parties and transactions involved

e) Ownership of goods (if the recovery relates to goods)

These indicators will apply to differentiate between a disbursement and reimbursement.

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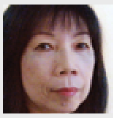

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