

PRISM

Tax Newsletter

1st Quarter 2018

Australia: Non-Compliance with Laws and Regulations (NOCLAR)

Cyprus: Cyprus signs off a Double Taxation Avoidance Agreement (DTAA) with Saudi Arabia–January 2018

Germany: Changes and additions of the German regulations regarding the documentation of Profit Allocations

Italy: 2018 Italy Budget Law

In this issue:

Australia

Non-Compliance with Laws and Regulations (NOCLAR)

- What is NOCLAR?
- What does NOCLAR mean?
- How do professional accountants apply NOCLAR standards?
- What is expected from professional accountants?
- How does NOCLAR reconcile with professional confidentiality?
- What actions are expected from the relevant Governments in the implementation of NOCLAR?
- What actually changed in the ethical Code to allow for NOCLAR?
- How does NOCLAR affect your local professional standards?
- NOCLAR 是什么？
- NOCLAR 是什么意思？
- 如何将专业会计师的 NOCLAR 适用的标准？
- 从专业会计师的将是我们的期望是什么？
- 我们如何处理NOCLAR 与专业保密呢？
- 有关各国政府反应在实施 NOCLAR？
- NOCLAR 如何变化道德标准？
- NOCLAR 如何影响您的本地专业的标准呢

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China

Distributed profits generated from resident enterprises of China and directly invested in encouraged investment projects by foreign investors after 1st January 2017 are temporarily exempted from withholding tax

The Chinese government has successively issued documents to clarify that distributed profits generated from resident enterprises of China and directly invested in encouraged investment projects by foreign investors after 1st January 2017 are temporarily exempted from withholding tax, for the sake of further utilizing foreign capital actively, promoting foreign capital growth, increasing foreign capital quality and encouraging sustaining expansion of foreign investment in China.

2017年以来，中国政府陆续颁布不同文件，对境外投资者在2017年1月1日（含当日）以后从中国境内居民企业分配的利润直接投资于鼓励类投资项目暂不征收预提所得税政策有关问题加以明确，进一步积极利用外资，促进外资增长，提高外资质量，鼓励境外投资者持续扩大在华投资。

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Cyprus

Cyprus signs off a Double Taxation Avoidance Agreement (DTAA) with Saudi Arabia–January 2018

Cyprus and Saudi Arabia have concluded and signed a Double Taxation Avoidance Agreement (DTTA) on 3rd January 2018 (based on Deloitte Cyprus, please advised) and will be effective from 1st of January 2019.

塞浦路斯和沙特阿拉伯已签署避免双重征税协定。该协定将在2018年内确定并最终确认，并将从2019年1月1日起生效。

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Germany

Changes and additions of the German regulations regarding the documentation of Profit Allocations

The German legislature expanded the cooperation duties for all participants in the tax process. Therefore the German tax authority published updated Regulations Regarding the Documentation of Profit Allocations (short: GAufzV) for international and related companies. The Documentation has to be split into a country-specific local file about the company-individual price calculations and a master file with detailed information about the whole group. For small Groups and companies some exceptions are made. The necessary records should be done completely and in a timely manner. Otherwise the tax authority is allowed to estimate the taxable profit.

德国立法机构扩大了所有参与者在纳税过程中的合作职责因此，德国税务机关发布了关于国际和其关联公司利润分配文件（简称：GAufzV）的最新规定。文件必须分成一个特定国家的关于公司个体价格计算的本地文件和一个包括整个集团详细信息的主文件。对于小团体和公司，则有一些例外。必要的记录应该完整和及时地完成。否则允许税务机关估算应纳税利润。

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Hong Kong

The new two-tier profits tax rates regime

Hong Kong is proposing to adopt a competitive two-tier profits tax rates system to promote economic development while maintaining a simple tax regime and low tax rates.

香港建议引入具竞争力的利得税两级制度，旨在维持简单低税制的同时，促进经济发展。

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Italy

2018 Italy Budget Law

Italy 2018 Budget law is published in Official Gazette on the 29th of December 2017. The most relevant tax measures contained in the Law related to:

- Super-amortization and hyper-amortization: it is directed to entities investing in new assets or new hi-tech tangible assets or certain intangible assets. The benefit consists an extra deductible cost of 30%, 40% or 150% on the amount of investments producing a deductible extra amortization.
- New definition of Permanent Establishment (P.E.): it is introduced according to OECD BEPS Action 7. The new provision implies the possibility of having a PE presence in Italy even where a company does not have a physical presence into the Italian territory.
- Web Tax: It is a new Tax on digital transactions.
- Tax regime of certain capital income: income arising from disposal of qualifying participations such as dividend and capital gain were issued to individuals.
- Dividend and income arising from participations in companies resident in the so called "tax haven countries": tax regime for dividend received from companies resident in low tax jurisdictions.

意大利于2017年12月29日在“官方公报”发布了关于通过2018年《预算法》的决议。该法中包含最为重要的税收措施涉及以下方面：

- 超级折旧摊销和极度折旧摊销：针对投资新资产或新高科技有形资产或某些无形资产的企业实体。益处存在于一项额外可扣除的成本中，即为这些投资额的30%、40%或150%而产生的一项可扣除的额外折旧摊销额度。
- 常设机构(PE)的新定义：其引入是依据经合组织(OECD)发布的关于税基侵蚀和利润转移(BEPS)的第7项行动计划。新条款意味着即使企业在意大利境内没有实体存在的情况下，该企业在意大利也可能拥有一个常设机构。
- 万维网税：这是一项关于数字化交易的新税。
- 若干资本性收入的税收制度：收入源于符合条件的参股的处置，如派发给个人的股息/红利和资本利得。
- 由参股位于所谓“避税天堂国家”的公司而获得的股息/红利和收益：从在低税收司法管辖区注册的公司获得股息/红利的税收制度。

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Malaysia

Tax incentives in Malaysia

The Government of Malaysia has been generous in giving a great number of tax incentives, aiming at attracting foreign direct investments (FDIs) to set up or relocate their operations in Malaysia. The tax incentives are available for various industry sectors, which include manufacturing and agricultural sectors, tourism sector, research and development (R&D) sector, education and healthcare sector, high technology and multimedia sector and service sector.

为了吸引更多外国投资到马来西亚营业，马来西亚政府给予多项的税务奖掖。这些税务奖掖涉及多个领域，包括制造与农业、旅游业、研究及发展业、教育及保健业、高科技及多媒体业以及服务业。

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Nepal

'Permanent Establishment' – Nepalese Aspect

Section 2(ka daa) of Income Tax Act, 2002 of Nepal defines "Permanent Establishment" as follows -

"Permanent Establishment (PE)" means a place where a person wholly or partly carries on a business, and includes the following places;

- 1 A place where a person wholly or partly carries on a business through an agent, other than a general agent of independent status acting in the ordinary course of business as such,
- 2 A place where a person has, is using, or is installing substantial equipment or substantial machinery,
- 3 One or more places within a country where a person furnishes (whether through employees or otherwise) related services (including technical, professional, or consultancy services) for a period or periods aggregating more than 90 days within any 12 months' period, or
- 4 A place where a person is engaged in a construction, assembly, or installation project for 90 days or more, including a place where a person is conducting supervisory activities in relation to such a project.

尼泊尔2002年“所得税法”第2条(卡达)对“常设机构”的定义如下 -

“常设机构”是指一个人全部或部分经营业务的地点，包括以下地点；

- 1 一个人通过代理人全部或部分经营业务的地点，而不是在正常业务过程中作为一般业务经营的总代理人，
- 2 有人正在使用或正在安装大量设备或大量机器的地方，
- 3 在任何一个国家内，一个或多个地方在任何12个月内提供(无论是通过员工还是其他方式)相关服务(包括技术，专业或咨询服务)一段或多于90天的时间，
- 4 一个有人员从事建设，装配或安装工程达90天或以上的地方，包括有人对该工程进行监督活动的地点。

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Australia



Non-Compliance with Laws and Regulations (NOCLAR)

I came across the acronym “NOCLAR” earlier last year in one of the conversation at the office of the Institute of Chartered Accountants Australia New Zealand (CAANZ) office in Sydney. I was wondering what it all means, surely as an accountant we are not “Nuclear Scientists” looking at world peace particularly at the time when much controversial news came from North Korea.

What is NOCLAR?

NOCLAR stands for Non-Compliance with Laws and Regulations.

What does it mean?

It is a set of standard pronouncements from the International Ethics Standards Board for Accountants “IESBA”. IESBA produces the entire Code of Ethics for Professional Accountants (the Code) and the Code is applicable to all professional accountants (PA) working in professional practices and also those who work in commerce, i.e. PA working for an enterprise in business. NOCLAR ethical standard applications therefore are not limited to just professional auditors.

The Chairman of IESBA has an address to the public, which is available in YouTube, The primary aim for NOCLAR is to address the past corporate frauds that affected many innocent bystanders however the early detection of these frauds would have reduced the financial impacts of many innocent people who lost money from these frauds.

Particular examples of NOCLAR aims are in the area of:

- Tax frauds
- Securities frauds
- Money laundering frauds
- Terrorist financing
- Bribery and corruption
- Non-compliance with environmental or health regulations, and so on

NOCLAR is a standard that looks at very serious and harmful non-compliance such as:

- Breaching legal and regulatory framework
- Urgency and pervasiveness of the non-compliance matter
- Creditable evidence of substantial harm to stakeholders

There are three objectives the NOCLAR ethical standards try to achieve:

- To enable PA to comply with their ethical duty to respond to NOCLAR in public interest
- To stimulate actions that mitigate the effects of NOCLAR or better deter non-compliance altogether
- To stimulate increased reporting of significant NOCLAR to appropriate public authorities.

How do PA apply the NOCLAR ethical standards?

This standard provides guidance for PA on how to respond to encountered cases of non-compliance during the accountant’s performance of his/her duties.

The requirements of this standard graduates in accordance with the role of the PA, such as higher standards apply to auditors and senior members of management then diminishes in expectations for mid-level of management and so forth.

What is expected from PA?

NOCLAR ethical standards establish a pathway enabling PA to disclose non-compliance to the relevant public authority.

The pathway is the PA must:

- First inform management or those charged with governance in the organisation where non-compliance is noted
- When the management or those charged with governance do not respond effectively to the non-compliance matter, the professional is to disclose the matter to the relevant public authority.

How does NOCLAR deal with the possible conflict with professional confidentiality?

NOCLAR ethical standards remove the principle of confidentiality for the PA when there is a strong public interest on the matter of non-compliance.

What actions are expected from the relevant Governments in the implementation of NOCLAR?

It is expected that Governments install financial stability in the sector that it is responsible for introducing strengthened legislation to address NOCLAR, legislation would include:

- Providing safe harbours for “whistle-blowers”
- Taking effective action on reports of NOCLAR from PA
- Fighting non-compliance and mitigating negative effects from non-compliance

What actually changed in the ethical Code to allow for NOCLAR?

The Code has added new sections to address PA's responsibilities when they become aware of non-compliance or suspected non-compliance with laws and regulations committed by a client or employer.

This NOCLAR ethical standard applies to all PA, its application does not limit to just professional auditors.

These NOCLAR ethical standards for IESBA were finalised and effectively operational as from 15th July 2017.

The International Auditing and Assurance Standards Board (IAASB), in response to IESBA releasing of the NOCLAR ethical standards, IAASB had amended its International Standard on Auditing (ISA) ISA250 to incorporate these ethical standards and was effective as from 15th December 2017.

How does NOCLAR affect your local professional standards?

Many Organisation for Economic Cooperation and Development (OECD) countries have adopted NOCLAR in their Auditing and Assurance Standards with the view of incorporating these ethical standards throughout all other professional standards.

China becoming a member of the IFAC is in progress at present. Once it became a member of IFAC then it is expected China will progressively adopt the International Accounting Standards which will include NOCLAR.

Brazil however has resisted the adoption of NOCLAR due to its domestic environment and situation. 🇧🇷

Reference

1. An overview of NOCLAR: Q&A with IESBA Chairman Dr, Stavros Thomadakis
2. Final Pronouncement issued in July 2016 by IESBA – Responding to Non-Compliance with Laws and Regulations
3. IESBA NOCLAR power point overview

China



Distributed profits generated from resident enterprises of China and directly invested in encouraged investment projects by foreign investors after 1st January 2017 are temporarily exempted from withholding tax

The Chinese government has successively issued documents such as the Notice Regarding Measures on Promoting the Growth of Foreign Capital in China

(Guofa [2017] No.39), the Notice Regarding the Provisional Deferral Treatment for Withholding Tax on Direct Re-investment by Foreign Investors Using Profits Distributed from Tax Resident Enterprises in China (Caishui [2017] No.88), and the Announcement Regarding the Execution of Provisional Deferral Treatment for Withholding Tax on Direct Re-investment by Foreign Investors Using Profits Distributed from Tax Resident Enterprises in China (SAT[2018] No.3) since 2017 to clarify that distributed profits generated from resident enterprises of China and directly invested in encouraged investment projects by foreign investors after 1st January 2017 are temporarily exempted from withholding tax, for the sake of further utilizing foreign capital actively, promoting foreign capital growth, increasing foreign capital quality and encouraging sustaining expansion of foreign investment in China.

Foreign investors who are not subject to withholding tax must satisfy the following conditions simultaneously:

1. Invest directly, which includes equity investment by foreign investors in the form of capital increase, new establishment and equity acquisition with distributed profits. However, increase or transfer or purchase of shares of listed companies are not included (except qualified strategic investment);
2. The nature of the distributed profits that foreign investors received should be income from equity investment such as stock dividends and bonus, which are derived from retained earnings realized by resident enterprises, including retained undistributed profits from previous years;
3. Investment capital (assets) must be transferred directly to the investee's or equity transferor's account, intermediate turnover is not permitted;
4. The scope of encouraged projects refers to the list of industries enumerated in the Catalog of Industries for Encouraging Foreign Investment or the Catalog of Advantageous Industries for Foreign Investment in Central and Western Regions.

It is important to note that there are clauses stipulated in the documents above that: if foreign investors de facto recoup direct investment entitled to withholding tax deferral treatment through equity transfer, repurchase and liquidation, etc., deferral tax should be declared according to prescribed procedures within 7 days after receiving corresponding payments. 🇨🇳

Reference

1. Notice Regarding Measures on Promoting the Growth of Foreign Capital in China (Guofa [2017] No.39) can be accessed via this link:

http://www.gov.cn/zhengce/content/2017-08/16/content_5218057.htm

2. Notice Regarding the Provisional Deferral Treatment for Withholding Tax on Direct Re-investment by Foreign Investors Using Profits Distributed from Tax Resident Enterprises in China (Caishui [2017] No.88) can be accessed via this link:

http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201712/t20171228_2789812.html

3. Announcement Regarding the Execution of Provisional Deferral Treatment for Withholding Tax on Direct Re-investment by Foreign Investors Using Profits Distributed from Tax Resident Enterprises in China (SAT[2018] No.3) can be accessed via this link:

<http://www.chinatax.gov.cn/n810341/n810755/c3033019/content.html>

Cyprus



Cyprus signs off a Double Taxation Avoidance Agreement (DTAA) with Saudi Arabia–January 2018

The treaty is based on the OECD Model Tax Convention framework with some modifications. For Saudi Arabia, the treaty covers the Zakat (religious obligation of Muslims) and the income tax (including the natural gas investment tax). For Cyprus, it covers corporate and personal income tax, defence tax and capital gains tax.

Dividends

The withholding tax rate on dividends is set at 0%, as long as there is at least 25% participation by a tax resident company. In any other case, the withholding tax rate on dividends is set at 5%.


Interest

The withholding tax rate on interest is set at 0%, as long as the recipient of the interest is the beneficial owner of the income.

Royalties

The withholding tax rate on royalties is set at 5% in relation to royalties paid for the right to use industrial, commercial or scientific equipment. For any other royalties the withholding tax rate is set at 8%, as long as the recipient of the royalties is the beneficial owner of the income.

Capital gains

Gains from the sale of shares in companies are taxed in the country where the company is located, as long as the participation is at least 25% of the capital of that company, at any time within twelve months prior to the disposal of shares. 

Germany



Changes and additions of the German regulations regarding the documentation of Profit Allocations

With the enacting of the Base Erosion and Profit Shifting Implementing Act (BEPS-I-Umsetzungsgesetz) the German legislature expanded the obligation to cooperate for all participants in the tax process. Therefore the German tax authority published updated Regulations Regarding the Documentation of Profit Allocations (short: GAufzV).

The GAufzV describes the requirements for the documentation between related enterprises.

In the future the documentation has to be split into a local file for country and company based information as well as a master file for facts about the whole group of related enterprises.

The necessary content of the local file was completely redone by the government. In general it has to contain all facts about the pricing. This includes not only the civil but also the economic relations between the companies. A description of the areas of activity, the management and organization structure has to be done. Changes throughout the financial year should also be traceable.

The obligation to create an analysis about the distribution of functions and risks is becoming more important. An explanation not only in numbers but also verbal explanation has to be included. If the pricing is based on a method like profit splitting a description of the measurable facts shall be done. The tax authority must be able to retrace the functions, risks and production steps of each participating company. As one of the objectives of the BEPS project is to develop transfer pricing guidelines that align pricing outcomes with value creation, the requirement increases to review how profits and functions are mapped to the organizations overall value chain. The documentary must be based on facts. If possible assumptions should be avoided.

The document regarding the date of the price calculation has to be recorded. This will provide additional information, whether the documentation was done before or after a specific deal.

Databases used for the determination of transfer prices have to be completely transparent. Every calculation has to be documented in detail. The auditor of the tax authority must be able to recreate the research with the same search results, so even different database versions should be held available.

The master file is newly implemented. It has only to be done by corporate groups with locations in different countries and revenue of 100 Mio EUR or more. The German tax authority made an annex with all the information that need to be documented. For subsidiaries it is possible to assume the records of the mother company. Then only the missing details have to be added.

Small companies with deliveries of goods of 6 Mio EUR or less and services with 600 K EUR or less to related companies, are not obligated to create a written documentation about their profit allocations. If demanded they have to give the German tax office the same necessary information like mentioned above.

Documentation not available, insufficient or not created in a timely manner will result in a fine by the tax authority with an estimated and higher taxable profit and penalty surcharges. 🇩🇪

Reference

1. Wilke, K.-M. in: Die neue Gewinnabgrenzungsaufzeichnungsverordnung (GAufzV 2017), in: Praxis Internationale Steuerberatung, 11th issue of 2017, Page 299 - 303.
2. Seer, R. in: Tipke/Kruse, Abgabenordnung - Finanzgerichtsordnung, § 90 AO, 10/2017, Rz. 38 - 58.
3. Neumann-Tomm, A. in: Die Erleichterungen der Aufzeichnungspflicht nach § 6 GAufzV, in: IWB Internationales Steuer- und Wirtschaftsrecht, 19th issue of 2017, Page 742 - 745.
4. Hüning, C., Hennemann-Raschke, V. and Kampes, R. in: Änderungen der Gewinnabgrenzungsaufzeichnungsverordnung (GAufzV), in: IWB Internationales Steuer- und Wirtschaftsrecht, 20th issue of 2017, Page 779 - 786.

Hong Kong

The new two-tier profits tax rates regime

The Inland Revenue (Amendment) (No. 7) Bill 2017 (Amendment Bill) was gazetted on 29 December 2017. The Amendment Bill seeks to implement the two-tiered profits tax rates for corporations announced in the Chief Executive's Policy Address.

Assessable Profits	Proposed tax rate	Current tax rate	Maximum tax saving under the proposal
The first HK\$2m of assessable profits	8.25%	16.5%	HK\$165,000
Remainder	16.5%	16.5%	N/A

The proposed two-tiered profits tax rates regime will be effective from year of assessment 2018/19 and it will benefit all eligible enterprises with assessable profits irrespective of their size. As an anti-avoidance measure, the Hong Kong Government proposes to introduce restrictions to limit the application to only one enterprise nominated from among those which are connected.

The proposed two-tier system shows that the Hong Kong Government is committed to adopt a competitive taxation system to promote economic development while maintaining a simple tax regime and low tax rates. Introducing a two-tiered profits tax rates regime will reduce the tax burden on enterprises, especially small and medium enterprises (SMEs) and startup enterprises. 🇭🇰

Reference:

1. <https://www.ird.gov.hk/eng/ppr/archives/17122701.htm>

Italy



2018 Italy Budget Law

1a. Super amortization

The regime sets a 30% additional cost on the investments made from 1st January 2018 to 31st December 2018 (or 30th June 2019, provided that the purchase orders are accepted by the seller by 31 December 2018 and at least 20% of the price is paid by the same date). The additional cost of the investments produces a correspondent deductible depreciation. Such regime would not apply to buildings, assets with a depreciation rate of less than 6.5%, cars (except heavy vehicles such as trucks, buses, etc.). The super amortization is applied for both purchase and leasing agreement.

1b. Hyper amortization

The Law states a 150% hyper amortization for purchase costs of new high-tech tangible assets correct specific digital and technological transformation processes

under the model promoted by the Italian Government plan for industrial growth named "Industry 4.0 Plan". The investments have to be made by 31st December 2018 or by 31st December 2019, provided that orders are accepted by seller by 31st December 2018 and at least 20% of the price is paid by the same date.

Investments of certain intangible assets are closely linked to these high-tech assets and the Law extends facilitation to these assets. However these intangible assets are facilitated with a 40% bonus when they operate as "stand alone", that is when they are not intrinsically linked to the operation of the tangible assets. In presence of an "embedded" software purchased together with a good "Hyper", the whole cost of the source (comprehensive that of the software) will benefit from the 150% incentive.

With regard to the additional 40% extra-amortization, the intangible assets are: supply chain system aimed at e-commerce drop-shipping and other software and platforms related to 3D reconstructions.

2. New definition of Permanent Establishment (P.E.)

The Law, according to OECD BEPS Action 7 introduces, the possibility of having a PE presence in Italy even when a company does not have a physical presence into the Italian territory.

The "anti-fragmentation rule" has been introduced, to avoid that a business be split between several companies connected for the sole purpose of avoiding the existence of a P.E.

3. Web tax

It is a new tax on digital transactions, levied at 3% rate on the value of each digital transaction, imposed on Italian residents and non-Italian residents business rendering more than 3,000 digital business to business transactions in a calendar year, paid by the buyers of the services.

It will be applied from 2019.

4. Tax regime of certain capital incomes for individuals


Incomes from disposal of qualifying participations realized by individuals, acting as non-entrepreneurs, with regard to ownership and transfer of corporate participations are to be subjected to the substitutive 26 % tax rate.

Such provision applies to income from capital earned from 01/01/2018 (provisional measures have been introduced) to the capital gain realized starting from 1/01/2019. In addition, the compensation between "qualified" capital gains and "unqualified" capital losses (and vice versa), previously excluded, is also allowed.

5. Dividend and income arising from participations in companies resident in low tax jurisdictions

The Law introduces taxation of 50% on the dividend distributed by a foreign entity carrying out its main activity in industrial or commercial activity in the market of the country that previously were fully taxed.

When 50% of dividend is taxed, an undertaking tax credit is allowed for any taxes paid abroad by the subsidiary.

The law partially modified the "black list" dividend regime which states that dividend matured during the previous fiscal years when the subsidiary was resident in country is not included in the list of the Decree issued on 11/21/2001, and distributed starting from FY 2015 are not considered as black list. 

Malaysia



Tax incentives in Malaysia

The Government of Malaysia has been generous in giving a great number of tax incentives, aiming at attracting foreign direct investments (FDIs) to set up or relocate their operations in Malaysia. The tax incentives are available for various industry sectors, which include manufacturing and agricultural sectors, tourism sector, research and development (R&D) sector, education and healthcare sector, high technology and multimedia sector and service sector.

The main incentives are as follows:-

- Pioneer Status (PS)

Generally, PS incentive is a partial exemption of up to 70% of a company's statutory income from the payment of income tax for a period of 5 years. The period of tax exemption commences from the "production date" determined by the Minister of International Trade and Industry (MITI). Some PS companies enjoy 100% tax exemption over a period of 5 or 10 years.

Companies engaged in promoted activities or producing promoted products are eligible for PS incentive. The Malaysian Investment Development Authority (MIDA) has identified a list of "promoted activities" and "promoted products", which is available on MIDA's website at <http://www.mida.gov.my>.

- Investment Tax Allowance (ITA)

The ITA is an allowance (in addition to capital allowance) on qualifying plant and equipment acquired by a company during the ITA period. Generally, ITA is 60%

on the qualifying capital expenditure which can be set off against up to 70% of a company's statutory income, for ITA period of 5 years. Some companies enjoy 100% ITA over a period of 5 or 10 years.

Similar to PS, Companies engaged in promoted activities or producing promoted products are eligible for ITA incentive. The list of "promoted activities" and "promoted products" is available on MIDA's website.

The ITA incentive is an alternative incentive to PS. ITA and PS are mutually exclusive. The ITA incentive is preferred for companies engaging in projects which are capital intensive and not expected to generate large profits in a short time.


- Reinvestment Allowance (RA)

RA, is an allowance of 60% on the qualifying capital expenditure granted in addition to capital allowance, set off against up to 70% of statutory income of the company. A company can claim RA up to 100% of its statutory income in a particular year of assessment if it could demonstrate that the level of process efficiency ratio exceeds the industrial average for the year.

RA is available to manufacturing companies that reinvest their capital to embark on a project in expanding, modernizing or automating its existing business in respect of manufacturing of a product or any related product within the same industry or in diversifying its existing business into any related product within the same industry.

RA is also available to company which undertakes an agricultural project in expanding or modernizing or diversifying its cultivation and farming business, excluding the business of rearing chicken and ducks.

The incentive period for RA is 15 years from the first year of claim by a company. RA incentive cannot be claimed in the same basis period when a company is enjoying PS or ITA incentives.

Other incentives offered by Malaysia are allowance for increased exports, automation equipment allowance, group relief of adjusted losses, double deduction of expenses, special deduction of expenses, exemption of import duty and excise duty, etc. 

Reference

1. Official Portal of the Malaysian Investment Development Authority (MIDA) www.mida.gov.my
2. Public Ruling No. 6/2012 Reinvestment Allowance
3. Public Ruling No. 9/2017 Reinvestment Allowance Part I – Manufacturing Activity
4. Public Ruling No. 10/2017 Reinvestment Allowance Part II – Agricultural and Integrated Activity

Nepal



'Permanent Establishment' - Nepalese Aspect

Section 2(ka daa) of Income Tax Act, 2002 of Nepal defines "Permanent Establishment" as follows

"Permanent Establishment (PE)" means a place where a person wholly or partly carries on a business, and includes the following places;

- (1) a place where a person wholly or partly carries on a business through an agent, other than a general agent of independent status acting in the ordinary course of business as such,
- (2) a place where a person has, is using, or is installing substantial equipment or substantial machinery,
- (3) one or more places within a country where a person furnishes (whether through employees or otherwise) related services (including technical, professional, or consultancy services) for a period or periods aggregating more than 90 days within any 12 months' period, or
- (4) a place where a person is engaged in a construction, assembly, or installation project for 90 days or more, including a place where a person is conducting supervisory activities in relation to such a project.

Key Points

1. A fixed place where a person does his business is called Permanent Establishment (PE).
2. If a non-resident person establishes a place to perform his business transaction, such place is called Permanent Establishment. Such establishment includes branch, factory, workshop, management place, extraction of minerals, agriculture, vegetable firm etc. It is to be noted that it is not necessary to take into consideration the residential status of such establishment in order to test whether the establishment of such non-resident is PE.
3. PE is an establishment where a person wholly or partly carries on a business through an agent, when the agent is not a general agent of independent status. The work performed by any independent agent is not considered as PE.
4. If one or more establishments within a country where a person furnishes, whether through employees or otherwise, technical, professional or consultancy services for a period or periods aggregating more than 90 days within 12 months, such establishment is called PE. This is also called as "Service PE".
5. An establishment where a person is engaged in a

construction, assembly, or installation project for 90 days or more, including a place where a person is conducting supervisory activities in relation to such a project. This is also called as "Construction PE".

6. PE is further defined in 'Avoidance of Double Taxation and Prevention of Fiscal Evasion Treaties' which Nepal Government has entered into with different countries. The definition and other provisions of charging income tax on a Foreign Permanent Establishment (FPE) covered by the treaties are governed by the provisions in the treaties with the country of which the FPE relates.

An Illustration of PE

Singapore Construction Company has been awarded 100 man-days for drying the soil in a project in Nepal. Such company has sent 5 employees in order to perform such task and the employees have completed such task within 90 days.

Singapore Construction Company has provided service more than 90 days onsite through its employees and hence, shall be considered as "Permanent Establishment". 🇳🇵

International Tax Panel



Malaysia

LL KOONG

Tel: +603 2166 2303

ITP Chairman



China

HUANG XIAOHONG

Tel: +86 1370 3000 484

ITP Vice-Chairman



Hong Kong

LORANCE CHAN

Tel: +852 3182 2429

ITP Vice-Chairman



Cambodia

NEOH BOON TOE

Tel: +855 17 363 303



China

LIU JIHONG

Tel: +86 10 8588 6650 8531



China

ZHANG SONG

Tel: +86 8588 6680 - 8205



Cyprus

ADONIS THEOCHARIDES

Tel: +357 22 670680



Germany

ACHIM SIEGMANN

Tel: +49 7132 968 58



India

HEMANT JOSHI

Tel: +91 22 4221 5362



Indonesia

HERU PRASETYO

Tel: +6221 2305569



Japan

HIROYUKI YAMADA

Tel: +81 3 3519 3970



Kazakhstan

DANIYAR NURSEITOV

Tel: +7 (727) 275-22-39



Korea

JUNG IL CHOI

Tel: +82 2 566 8401



Macau

JACKSON CHAN

Tel: +853 2856 2288



Mauritius

JAMES HO FONG

Tel: +230 210 8588



New Zealand

GEOFF BOWKER

Tel: +649 522 5451



Russia

BORIS FEDOSIMOV

Tel: +7 905 754 4551



Singapore

IRENE CHAN

Tel: +65 6323 1613



Taiwan

KEN WU

Tel: +886 2 8772 6262



UAE

MAHAVIR HINGAR

Tel: + 971 4 355 9993



United Kingdom

PETER McMAHON

Tel: +44 (0)20 8458 0083

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