PRISM

Tax Newsletter

2nd Quarter 2015

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Australia

Intergenerational Issues regarding Company Loans for Family Business

In Australia, the commercial legislation allows a shareholder or shareholder's associate to borrow monies from their company provided that it is a private company. However, the tax legislation, Division 7A of the Income Tax Assessment Act 1936 (Cth) imposes certain restrictions on the shareholder or shareholder's associate on such commercial arrangements. The discrepancy between commercial and tax legislation often creates issues in estate planning for family business, typically involving a private company and loans to a shareholder or a shareholder's associate.

澳大利亚允许股东或与股东有关联的人士，从他们的私营公司借用资金。无论如何，1936年所得税评估法第7A项(Cth)，对相关的业界安排施加一定的限制。然而，业界的相关举止与国家税务法令之间的差异，对家族企业的遗产规划往往造成问题。

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China

The Challenges of Taxing Cross-border Third Party Payment

Cross-border e-commerce companies create broader market for international businesses, which includes third-party payment. Due to the complexity of the transactions, taxing cross-border third-party payment is a real challenge that requires tax legislation to be enacted.

跨境电子商务，包括由第3方付款，以全新的贸易方式开拓了一个更广阔的国际市场。鉴于其交易的复杂性，第3方跨境付款的方式，成为了税务政策面对的强大挑战。

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Cyprus

Double Taxation Agreement Between Cyprus and Iceland

The Cyprus Ministry of External Affairs and Ministry of Finance have announced that Cyprus has concluded and signed a new Double Taxation Agreement (DTA) with Iceland. On November 13, 2014 the two countries signed the Cyprus and Iceland DTA which was published in the Official Gazette of the Republic of Cyprus on December 19, 2014. This is the first DTA between the two countries.

塞浦路斯外交部和财政部宣布塞浦路斯已经和冰岛签署避免双重征税协定。两国于2014年11月13日正式签署该协定并于2014年12月19日在塞浦路斯官方报纸发布。这是两国首次签署避免双重征税协定。

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Germany

Taxation of Foreign Investment in Germany

Germany has the largest economy in Europe and foreign investors will benefit from the developed infrastructure, advanced technology and highly specialized as well as educated workforce. Germany offers a very competitive taxation system in respect of the taxation of foreign investment.

德国为欧洲最大的经济体，外国投资者能从德国先进的基建、科技以及知识型员工中获益。针对外国投资税务方面，德国也提供非常具竞争力的税务系统。

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Hong Kong

China has stepped up its participation in the G20's fight against international tax avoidance by passing a law targeting at the offshore indirect sale of China assets

Public Notice [2015] No. 7 has been issued to revamp the Chinese tax rules on offshore indirect transfer taxation. Many overseas investors currently invest into China via offshore intermediate holding vehicles. The new law would have a wide-spread impact on such vehicles by setting out more detailed requirements on their "economic substance". Overseas investors should review their plans on investing, holding and divesting of China assets so as to mitigate their PRC tax exposures.

中国发布了国家税务总局公告[2015年] 7号，重整了针对境外间接转让的税务规定。目前，许多海外投资者是通过境外中间控股公司来中国投资。新税务规定对如何评定境外中间控股公司的 "经营实质" 提供了更为详细的要求，因此势必会对该等公司造成广泛的影响。海外投资者应审视其对中国资产的投资，持有和剥离计划，从而使他们的中国税務风险得以减轻。

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Indonesia

The Elimination of Tax Administrative Sanctions

The Government of Republic Indonesia has introduced measures to stimulate tax revenue collection in the country. The issuance of the Minister of Finance Regulation No. 29/PMK.03/2015 on the Elimination of Tax Administrative Sanctions in the form of interest based on the Article 19 Paragraph (1) of Law No.6 of 1983 on General Provisions and Tax Procedures (KUP) granted taxpayers waiver on penalty for late payment of tax debts. In addition, the re-introduction of the Sunset Policy provides the Elimination of Tax Administrative Sanctions in the form of interest under Article 37A of Law No.28 of 2007 on KUP to encourage taxpayers who may have not reported their taxes for years to comply.

印尼政府已采取一些措施以刺激国家的税收。其中由财政部长发出的第29条/PMK.03/2015条例，取消1983年第6条法令第19条文第 (1) 段的普通条规与税务程序 (KUP) 下，豁免迟缴税务罚款的利息。此外，印尼也重新推出"日落政策"，即取消2007年第28条法令第37A条文的普通条规与税务程序 (KUP) 下的利息，以鼓励多年没有缴税的纳税人遵循税务法令。

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Japan

The 2015 Tax Reform

The Japanese Diet passed on 31 March 2015 a set of tax reform bills centering on corporate tax cuts. Japan has just embarked on corporate tax reform to be more growth-oriented with the aim of reduction of the effective corporate tax rates to the internationally-comparable level. To that end, Japan will reduce the percentage level of the effective corporate tax rate down to the twenties in several years, and start the first phase reduction from this fiscal year (FY2015).

日本國會於3月31日通過2015年度稅制改革相關法案，除正式決定再度提高消費稅率之時程延後外，主要係調降與國際相較為高的企業所得稅，成為本次稅制改革的最大特點。經濟再生相甘利明對媒體表示 "爭取在數年以內將企業實效稅率儘早下調到20%至30%"。

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Malaysia

Resolving International Tax Disputes

Shaped three decades ago by the then Prime Minister, Tun Dr. Mahathir bin Mohamad, Vision 2020 outlined Malaysia's goals in becoming a fully developed nation. With the country's move towards achieving this 'Malaysian dream', more Malaysian companies are venturing and investing outside of Malaysia. The increase in trade transactions outside of Malaysia results in the increased tax controversies that would have an impact on Malaysian companies when investing outside of Malaysia. As such, these Malaysian companies are relying on the Mutual Agreement Procedure (MAP) to resolve the tax disputes encountered when investing in a foreign country.

三十年前，马来西亚时任首相敦马哈迪医生，为国人设定了2020年宏远，以推动马来西亚成为一个发达的国家。为了实现这个 "马来西亚的梦想"，越来越多的大马企业勇闯海外投资发展。然而，这也导致这些公司的税收争议也随着更多的对外贸易递增。有鉴于此，国内税收局颁布了最新的国与国之间的相互税务协定程序(MAP)，以协助投资者解决对外投资所面对的税务纠纷。

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Russia

Changes in Tax Legislation

Recently, Russia has introduced some changes in its tax legislation. Amendments include tax legislations with regards to Controlled Foreign Companies, Tax Administration, Value Added Tax, Desk Audit, E-document and Property Tax.

目前俄罗斯税制通过一系列的修正，其中包括监控外国公司、税务行政、增值税、税务审查、电子文件及产业税的制度。

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Australia

Intergenerational Issues regarding Company Loans for Family Business

Introduction

The commercial law and corporate law in many countries prohibit a shareholder or a shareholder's associate to borrow money from their company. In Australia, the legislation allows a shareholder or a shareholder's associate to borrow money from their company, provided it is a private company.

Nevertheless, one should be aware of the taxation implications that relate to such a commercial arrangement. Namely, Division 7A of the Income Tax Assessment Act 1936 (Cth) imposes certain restrictions and results in certain taxation implications on the shareholder or shareholder's associate.

Division 7A

Division 7A exists as an integrity measure and prevents private companies making tax free profit distributions to shareholders and their associates. Such transactions include payments and loans to a shareholder or their associate and certain debts the business forgives. In the event such transactions do not comply with the criteria and guidelines in Division 7A, such transactions are treated as assessable unfranked dividends to the shareholder or their associate and taxable as their personal income.

The definition of 'Associate' is wide and includes family members and related entities. Therefore, any payment or loan from the private company to the shareholder or someone that is related to the shareholder would trigger Division 7A. In order to comply with the criteria and guidelines in Division 7A, such transactions must be entered into on an arm's length basis. To demonstrate that the loan is indeed at arm's length, a loan agreement must be prepared to set out:

1. Interest rate, which is usually the benchmark interest rate for that year; and
2. Loan tenure, which does not exceed the maximum term of 7 years.

Division 7A and Intergenerational Issues

With all the legislative issues surrounding Division 7A, it is not very difficult for a shareholder or shareholder's associate to comply with Division 7A by preparing a loan agreement on arm's length basis.

However, Division 7A may become an issue when a family decides to cease family business for the purpose of intergenerational estate planning, in particular the transfer of Division 7A loan between the shareholders and shareholders' associates due to family issues.

In Australia, it is commercially viable for a debtor (i.e. the shareholders and shareholders' associates) to assign his/her debt to another person by way of a written assignment with consent from the creditor (i.e. the company). For example, if 'Associate A' wants to effectively transfer its debt to 'Shareholder B', 'Associate A' must obtain the assignment consent from the company. However, such consent to assign debts would be treated as the company forgiving the debt owed by 'Associate A' under Division 7A and the debt forgiven treated as dividend taxable under personal income tax of the debtor. A forgiven debt is not treated as a dividend in circumstances when the debtor is bankrupt or the debtor can satisfy the Commissioner that repaying the debt would cause undue hardship to the debtor.

When the forgiven debt is deemed as a dividend, it would have been included in the debtor's personal income tax return subject to distributable surplus of the company. The dividend is unfranked, i.e. no franking credits available to the debtor, unless the Commissioner of Taxation exercises his discretion to allow franking credits to be attached.

Final Thoughts

In short, the shareholder or the shareholder's associate must consider the tax implication of Division 7A in intergenerational estate planning.

China

The Challenges of Taxing Cross-border Third Party Payment

In line with the rapid growth of e-commerce, cross-border third-party payment transactions increase accordingly. Hence, the growing demand for international payment has created a spacious international market for cross-border third-party payment.

One of the cross-border third-party payment platforms, Alipay has captured its significant market of international trade payments with its unique advantages where it serves as an intermediary who offers credit assurance to the seller.

The process of Alipay is detailed as follow:

(1) Buyer transfers money to Alipay's account

(2) Buyer and seller agreed a deal on the internet

(3) Alipay deducts money from buyer's account after receiving buyer's paying notification, and sends Notice of Payment Received and Delivery Permit to seller (the notices)

(4) Upon receipt of the notices, seller delivers goods to buyer

(5) Buyer sends payment instruction to Alipay upon receipt of goods

(6) Alipay then transfers money to Seller's account

The same process applies to the cross-border payment, although buyer and seller are in different countries or regions.

In the past, e-commerce companies declare its income under the tax item "Service Industry – Other Service". However, in accordance with the Third Article of "Management Method of Payment Services in Non-financial Institutions", any non-financial institutions or individuals shall not engage in or disguised engage in payment business without obtaining approval from People's Bank of China. Thus, third-party payment is grouped into the financial service category and the correct tax item for cross-border third-party payment is "Finance and Insurance Industry".

Third-party payment should be declared and taxed in place where the service is provided. Since third-party payment is a network server based service, the location of the network server can be easily moved thereby shifting the place where the service is declared and taxed. This results in the uncertainties of where third-party payment should be declared and taxed. In this situation, the principle "Substance over Form" is applied, i.e. third-party payment should be declared and taxed in accordance with its "substance" hence in China.

Due to the complexity of the transactions, taxing cross-border third-party payment is a real challenge that requires tax legislation to be enacted.

Cyprus

Double Taxation Agreement Between Cyprus and Iceland

The Cyprus Ministry of External Affairs and Ministry of Finance have announced that Cyprus has concluded and signed a new Double Taxation Agreement (DTA) with Iceland.

On November 13, 2014 the two countries signed the Cyprus and Iceland DTA which was published in the Official Gazette of the Republic of Cyprus on December 19, 2014. This is the first DTA between the two countries.

The DTA is based on the OECD Model Convention and is expected to further improve the business cooperation between Cyprus and Iceland. The DTA was well received by the local and foreign business communities as well as international investors thus shall further enhance Cyprus' position as an international business center, in view of the provisions deemed to be significantly favorable. The main provisions are analyzed below:

Permanent Establishment

The definition of permanent establishment also includes a building site or construction or installation project or any supervisory activities in connection with such site or project constitutes a permanent establishment only if it lasts more than 12 months (definition in compliance with OECD model).

Dividends

In cases where the recipient of the dividend is a company and it holds at least 10% of the total shares of the company paying the dividend, the withholding tax rate is imposed at 5%. In all other cases, the withholding tax rate is 10%.

Interest

No withholding tax on interest payments.

Royalties

Withholding tax rate is 5%.

Capital Gains

Gains from the disposal of immovable property are taxed in the country where the immovable property is situated. Capital gains arising from the disposal of share deriving more than 50% of their value directly or indirectly from immovable property in the other Contracting State may be taxed in that other State. Other capital gains from the alienation of any other property are taxable only in the place of residence of the alienator.

Important Notes for Tax Planning

1. Cyprus unilaterally does not withhold taxes on outbound dividends and interest payments but only applies withholding tax on royalty payments to non-Cyprus tax residents for rights used within Cyprus.

2. The continuously expanded number of DTAs Cyprus has signed and ratified, together with the application of the EU Directives (Parent-Subsidiary and Interest-Royalties) increase the options for international investors to channel investments in the most tax efficient way.

The DTA with Iceland will enter into force as from 1st of January 2016.

Germany

Taxation of Foreign Investment in German

Germany has the largest economy in Europe. Along with the developed infrastructure, investors will also benefit from the advanced technology that will ease integration in many industrial sectors, and the highly specialized as well as educated workforce. In terms of the taxation of foreign investment, the taxation system in Germany is very competitive compared to other EU member states.

Common types of German holding companies are Limited Liability Company and Joint Stock Company; for foreign entities investing in Germany, they may choose holding companies in the form of Subsidiary, Branch Office and Partnership. Amongst these, Limited Liability Company is most favorable due to minimal share capital investment requirement of 25,000 Euros.

Shareholders are taxed separately in Germany. The distinction is made between shareholders as individuals and shareholders as legal entities. At individual level, the shareholder is required to pay a flat rate tax on dividends of 25% and an additional solidarity surcharge of 1.37%. In case of partnerships with individuals and German-resident partners as shareholders, 40% of the dividends is tax-exempted. For dividend income from shares held by another corporation, 95% of the dividend is tax-exempted if the shareholding is 10% or more.

Generally, the German withholding tax including solidarity surcharge on dividends paid by the holding corporation is 26.37%. In cases which Double Taxation Agreement (DTA) applies, the withholding tax rates are reduced in accordance with the respective DTA.

The capital gain resulting from a transfer or sale of shares of a German corporation is 95% tax-exempted if the seller is a corporation; and 40% tax-exempted if the seller is an individual that holds or has held 1% or more of the shares within the last five years or holds the shares as business assets. If the seller is a partnership, the tax exemption depends on the whether the partner is an individual or corporation.

Recently, new regulation is proposed in respect of the capital gain from the sale of shares received by a corporation i.e. the 95% tax exemption only applies if the shareholding is 10% or more, in line with the requirement on exemption of dividend income received by a corporation. Therefore, foreign investors with shareholding of less than 10% may re-structure their investments to mitigate this exposure before the new regulation come into force. Apart from the competitive taxation system, there is no discrimination between national and foreign investors with regards to company registration in Germany. In addition, foreign investors can also buy and own properties in Germany without the risk of being expropriated.

Hong Kong

China has stepped up its participation in the G20's fight against international tax avoidance by passing a law targeting at the offshore indirect sale of China assets

The PRC State Tax Administration of Taxation has recently issued Public Notice [2015] No. 7 (Announcement 7) to revamp the current Chinese tax rules on offshore indirect transfer taxation.

Announcement 7 addresses cases where an investor indirectly sells China assets by selling its stake in an offshore intermediate holding vehicle. PRC tax authorities have been empowered to disregard the intermediate holding vehicle if it is considered as a lack of reasonable commercial purpose and the transaction will be re-characterised as a direct sale transaction with PRC capital gain tax liabilities arise.

Major provisions	**Details**
Applicable scope	"Indirect transfer" includes: - Non-resident enterprises transfer the share equities or similar rights/ interests of overseas companies which directly or indirectly own China taxable assets "China taxable assets" includes: - Equity investments in PRC resident enterprises; - Assets of Chinese establishments of a foreign company; - Immovable properties in China; and - Other China assets.

Major provisions	Details
Commercial purpose test	Seven general criteria for determining "reasonable commercial purpose": i. Whether the value of share equities of the overseas intermediate company being transferred (INTCo) is primarily (directly or indirectly) derived from China taxable assets ii. Whether the value of assets or income of INTCo is primarily (directly or indirectly) derived from China iii. Whether the economic substance of a structure can be demonstrated by the actual functions performed and the risks assumed by INTCo and its affiliated enterprise which directly or indirectly holds China taxable assets iv. The duration of existence of INTCo's shareholders, business model and related organizational structure v. The situation regarding foreign income tax payment for the offshore indirect transfer vi. Whether the indirect investment/ transfer can be replaced by direct investment/ transfer vii. The applicability of any treaty protection
Safe harbour transactions (Green Zone)	The transaction will be directly recognised as having reasonable commercial purpose if either (A) or (B) is satisfied: (A) Either one of the following two conditions are met: i. The seller buys and sells the shares of the same listed INTCo through public stock exchanges; OR

Major provisions	Details
Safe harbour transactions (Green Zone) (Continues)	ii. Where the seller would otherwise directly hold and transfer the China taxable assets, the income from such direct transfer would be exempted from China tax under the applicable tax treaty. (B) All of following conditions (internal group restructuring relief) are met: i. The shareholding relationship of the seller and buyer should be 80% or more (100% would apply if the transaction involves property-rich INTCo, deriving more than 50% of its value from immovable properties in China); ii. The internal group restructuring transfer would not result in the reduction in China tax burden on the gain arising on the subsequent potential indirect transfer; AND iii. The transfer consideration is totally settled in the form of equity of the buyer or its affiliated enterprises (equities of listed companies are excluded).
High-risk transactions (Red Zone)	The transaction will be directly deemed as without reasonable commercial purpose if all of the following conditions are met: i. 75% or more of the value of share equities of INTCo is derived from China; ii. 90% or more of the value of assets or income of INTCo is derived from China; iii. INTCo and its affiliated enterprises undertake limited functions and risks that are not sufficient to substantiate their economic substance; AND

Major provisions	Details
High-risk transactions (Red Zone) (Continues)	iv. The foreign income tax payable associated with the offshore indirect transfer of China taxable assets is less than the potential China tax burden associated with the direct transfer of such China taxable assets.
Self-assessment by seller	The foreign seller is required to conduct self-assessment and decide whether to pay tax or report the transaction to the tax authority for determination. Where the foreign seller fails to file and pay tax on time, and where the buyer fails to withhold the tax, interest levy on a daily basis may be imposed.
Self-assessment and tax withholding by buyer	The buyer (a foreigner or domestic party) is required to conduct self-assessment and decide whether to withhold tax on the transaction. Failure to fulfil the withholding obligation may trigger penalties upto three times of underpaid tax.

Indonesia

The Elimination of Tax Administrative Sanctions

Minister of Finance Regulation No. 29/PMK.03/2015

2015 begins with a good news for the taxpayers, when the Government of Republic Indonesia issued the Minister of Finance Regulation No. 29/PMK.03/2015 on the Elimination of Tax Administrative Sanctions in the form of interest based on the Article 19 Paragraph (1) of Law No.6 of 1983 on General Provisions and Tax Procedures (KUP).

The Minister of Finance is providing the said Elimination of Tax Administrative Sanctions in encouraging taxpayers to pay their tax debts immediately. Prior to this, tax debt due and remains unpaid after the deadline will attract 2% penalty on the amount of tax payable.

In order to enjoy the Elimination of Tax Administrative Sanctions, the taxpayer is required to:

1. Pay off tax debts incurred prior to January 1, 2015; and repayment is done prior to January 1, 2016.
2. Submit a written request written in Indonesian to the Director General of Taxes.
3. 1 (one) application only for 1 (one) Tax Collection Letter; except when the Tax Assessment Letter, the Letter of Correction Decision, the Objection Decision, the Appeal Verdict or Reconsideration Decision was issued more than 1 (one) Tax Collection Letter ("STP"), then 1 (one) application letter may be submitted to more than 1 (one) STPs.
4. Tax Payment Slip of tax payable should be enclosed with the Application Letter.
5. The Application Letter is submitted to the Tax Office where the taxpayer is registered.
6. The Application Letter must be signed by the taxpayer; in cases which Application Letter is not signed by the taxpayer, the Application Form must enclose a Special Power of Attorney referred to in Article 32 paragraph (3) of the KUP Law.
7. The Application Letter may be filed not more than two (2) times. Second Application Letter should be submitted no later than 3 months from the date of decision of the Director General of Taxes on the first letter of application.

Sunset Policy

According to the Director General of Taxation, the tax revenue collection as at the end of March 2015 is Rp 170 trillion, i.e. only 10 percent of tax revenue target of Rp 1,489.3 trillion set out in the 2015 revised budget.

In view of the above, the Government of Republic Indonesia has re-introduced the Sunset Policy which provides the Elimination of Tax Administrative Sanctions in the form of interest under Article 37A of Law No.28 of 2007 on KUP for taxes not reported.

This Elimination of Tax Administrative Sanctions allows greater opportunities for the public to begin fulfilling tax obligations voluntarily and in accordance with the tax laws. Both personal taxpayers and corporate taxpayers who may not be reporting their taxes for years can start complying with the tax law or amending their annual income tax return beginning from 1 April 2015.

Conclusion

The Government of Republic Indonesia expects its tax collection to increase in line with the above Elimination of Tax Administrative Sanctions.

Japan

The 2015 Tax Reform

Japan has just embarked on the 2015 Tax Reform to be more growth-oriented with the aim of a reduction in the effective corporate tax rates to allow corporations to pay higher wages to existing employees as well as increase overall employment thereby increasing economic consumption and investment. On 31 March 2015, a set of tax reform bills centering on corporate tax reductions has been enacted. The key provisions relevant to multinational corporate taxpayers are as follows.

Corporate tax rate

- The national corporate tax rate will be reduced from 25.5% to 23.9% for taxable years beginning on or after 1 April 2015
- The local enterprise tax rate applicable to income base will be reduced from 7.2% to 6% for taxable years beginning on or after 1 April 2015 but before 31 March 2016
- An additional enterprise tax reduction from 6% to 4.8% will apply for years beginning on or after 1 April 2016
- The combined national and local effective corporate tax rate will be reduced from 34.62% to 32.11%
- A further reduction in the combined effective tax rate to 31.33% is planned in taxable years 2016
- The Government plans to reduce the combined effective tax rate to below 30% over several years

Net operating loss (NOL)

- Limitation for annual NOL deduction is reduced from 80% to 65% for taxable years beginning on or after 1 April 2015 and before 31 March 2017
- A further reduction of the limit to 50% will apply to taxable years beginning on or after 1 April 2017
- Carryover period for NOLs incurring for taxable years beginning on or after 1 April 2017 is extended from 9 years to 10 years
- Small and medium enterprises are eligible for a 100% NOL deduction and a 9-year or 10-year carryover period
- Newly established corporation and a corporation emerging from bankruptcy are allowed a 100% NOL deduction for 7-year period

Income tax base (local enterprise tax)

- Income base percentages over a total enterprise tax are expected to be reduced from 75% to 62.5% and 50% for 2015 and 2016 respectively

International taxation

- Effective tax rate is reduced from 20% or less to less than 20% when determining a foreign tax haven subsidiary status
- A 95% participation exemption for dividends paid by a foreign subsidiary will no longer be available for dividends that are deductible in the country where the foreign subsidiary is located

Research and development (R&D) tax credit

- The R&D tax credit limitation will be reduced from 30% to 25% of national corporate tax liability of a taxable year
- A new R&D tax credit limitation of up to 5% of national corporate tax liability will be introduced for special experiment and research expenses
- The carryover of unused creditable amount will be repealed

Consumption tax

- The second phase of the consumption tax rate increase (from 8% to 10%) will be postponed to 1 April 2017
- With effect form 1 October 2015, provision of digital services (e.g. e-books, internet-delivery of music, advertisement, etc.) by a foreigner to Japanese customers will be subject to consumption tax

The 2015 Tax Reform is the "first step" in a two-step process mainly relates to large corporations. A second step is expected to be enacted primarily effecting small to medium size corporations in years to come.

Malaysia

Resolving International Tax Disputes

Introduction

Shaped three decades ago by the then Prime Minister, Tun Dr. Mahathir bin Mohamad, Vision 2020 outlined Malaysia's goals in becoming a fully developed nation. With the country's move towards achieving this 'Malaysian dream', more Malaysian companies are venturing and investing outside of Malaysia. The increase in trade transactions outside of Malaysia results in the increased tax controversies that would have an impact on Malaysian companies when investing outside of Malaysia. As such, these Malaysian companies are relying on the Mutual Agreement Procedure (MAP) to resolve the tax disputes encountered when investing in a foreign country.

Mutual Agreement Procedure

The Inland Revenue Board of Malaysia (IRBM) has uploaded the Guideline on Mutual Agreement Procedure (Guideline) on 28 January 2015.

Where a Malaysian resident or in some cases a national considers that the actions of either or both Malaysia's and its Treaty Partner's tax administrations result or will result in taxation not in accordance with the provisions of the Tax Treaty, the person may request assistance from the Malaysian Component Authority (CA) under the MAP Article of an applicable Tax Treaty. Examples of taxation not in accordance with a Tax Treaty that may warrant a request for assistance to the CA include but not limited to transfer pricing, resident status, withholding tax, permanent establishment, and characterisation or classification of income.

The time limit for presenting a case for CA assistance is as specified in the applicable Tax Treaty, or if not specified, the Malaysian CA will apply the limit stated in Article 25 (MAP) of the OECD Model Tax Convention on Income and on Capital.

A request for a pre-filing meeting prior to making a formal request for MAP can be made. If the outcome of a pre-filing meeting merits consideration for MAP, the Office of MAP shall inform the taxpayer to submit a formal request.

After receiving a request for MAP, the Tax Division and the Office of MAP will jointly evaluate the said request. The Office of MAP may request the taxpayer to submit additional documents necessary for the purpose of the MAP.

The Office of MAP shall notify the taxpayer when a proposal for MAP is not to be initiated with the CA of the Treaty Partner and provide reasons for the rejection of the taxpayer's request. If the MAP is to be initiated, a proposal will be conveyed by the Tax Division to the CA of the Treaty Partner; the Office of MAP shall notify the taxpayer with regard to the commencement of MAP negotiations.

MAP negotiations between the Malaysian CA and the CA of the Treaty Partners are a government-to-government process in which there is generally no direct taxpayer involvement. However, taxpayers are expected to cooperate fully with the Malaysian CA by providing information and documents when requested.

If it is recognised that agreement will be reached with the CA of the Treaty Partner, the taxpayer will be informed in writing of the contents of the proposed agreement. The taxpayer must then confirm his acceptance in writing, after which the Malaysian CA will reach agreement with the CA of the Tax Treaty Partner. Where an agreement has been reached, the taxpayer will be notified in writing of the date and contents of the agreement. If the taxpayer is not satisfied with the proposed agreement, he may reject it, in which case the CAs will consider the case closed and the taxpayer will be informed accordingly.

The Malaysian CA may propose to the CA of the Treaty Partner for the case to be terminated under specific circumstances. If this is accepted by the CA of the Treaty Partner, the taxpayer will be informed of the termination.

The taxpayer may make a written request, stating reasons, for the application to be withdrawn before a MAP agreement has been reached. Upon receiving such a request, the CA of the Treaty Partner will be notified of the withdrawal by the taxpayer.

Conclusion

The issuance of the Guideline would assist in a more transparent method of applying the MAP, hence a more effective dispute resolution process for settling increasing international disputes.

Russia

Changes in Tax Legislation

Russia has since 2015 introduced the following changes in tax legislation.

Controlled Foreign Companies

- The concept of "controlled foreign company" and "supervisor" was introduced.
- Supervisor is responsible for notifying tax authorities their participation in a foreign entity. Failure to comply with this rule will result in penalty of up to 100,000 Rubles being imposed.
- Supervisor declares and pays taxes from retained profit of controlled foreign companies (tax rates: 13% and 20%). Tax allowances are available.

Tax Administration

- Any tax office can block taxpayer's accounts if the taxpayer fails to comply with the requirements to submit documents, requirements to submit explanations and the notice to appear to a tax office.

- From January 1, 2015 the decision to suspend operations on bank accounts and e-Remittance service can be made within three years.

Value Added Tax (VAT)

- The tax authority has the right to request additional files for verification purposes, if:

  (i) There are some discrepancies in transactions reported in a VAT return;

  (ii) There are some discrepancies between transactions reported in a VAT return submitted by a taxpayer, and transactions reported in a VAT return submitted by some other taxpayers or a person liable for submission of the VAT returns;

  (iii) There are some discrepancies between transactions reported in a VAT return submitted by a taxpayer, and transactions reported in an invoice register (special register) submitted to the tax office by an authorized person

Desk Audit

- In the course of a desk audit, the tax authority has the right to inspect premises, if:

  (i) Tax refund is declared in a tax return;

  (ii) Controversies and discrepancies resulted in underestimation or overstatement of tax liability.

E-document

- E-document flow was extended to include submission of electronic VAT returns and e-reporting to government by tax agents.

Property Tax

- All entities applying special tax regimes are liable to pay property tax.

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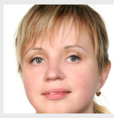

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