

# PRISM

**Tax Newsletter**

4th Quarter 2015

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## China

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### Attention to Five Changes for Application of Bilateral Tax Agreement

1st November, 2015, the State Administration of Taxation ("SAT") promulgate the Regulation of Non-resident Taxpayers Applying for Bilateral Tax Agreement (hereinafter referred to as Public Notice [2015] No. 60). Compared with former regulation, there are great changes in five aspects.

2015年11月1日，国家税务总局发布了《非居民纳税人享受税收协定待遇管理办法》的公告（以下简称60号公告），规定了非居民纳税人享受协定待遇的程序和应提交的资料，与原相关规定比较，在五个方面有较大的变化。

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## Cyprus

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### Cyprus signs off a Double Taxation Avoidance Agreement (DTAA) with Iran

Cyprus and Iran have concluded and signed a Double Taxation Avoidance Agreement (DTAA) on 4 August 2015. The DTAA, is based on the OECD Model Convention and will come into force as from 1st January the year following the date upon which both countries complete the ratification procedures.

The treaty sign off was well received by the business communities of the two countries and it further enhances Cyprus position as an international business center, since some of its provisions are deemed to be significantly favorable.

2015年8月4日，塞浦路斯和伊朗签署了避免双重征税协定，该协定以经济合作和发展组织范本为基础，将在双方政府完成批准程序后下一年度的1月1日生效。两国商界对该协定的签署表示欢迎。该协定部分规定被认为是非常受欢迎的，相信协定的签署将进一步加强塞浦路斯作为国际商业中心的地位。

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## Germany

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### Possible personal tax obligation in Germany for employees from Japan - Retirement Allowance and secondment to Germany

If Japanese are entitled to a "Retirement Allowance" and they usually get a one-off payment. In case of being delegated to Germany during their working life, there is a possibility to personal tax liability in Germany.

The classification of the one-off payment is decisive – is it a compensation for the loss of the job or is it a payment for accomplished work? These criteria would affect the interpretation of either Japan or Germany has the right to assess the Japanese employee concerned.

For the taxation of the payment claims it will be of considerable importance to differentiate between the time of working in Germany or in Japan. 有权领取“退休年金”的日企雇员一般也会同时获得一笔一次性支付的退职金。如果雇员在工作期间被外派至德国，那么其在德国可能负有缴纳个人所得税的义务。

问题的关键在于一次性支付的退职金的性质到底是对雇员离职的补偿还是对其完成工作的报酬。究竟是德国还是日本有权征税要具体情况具体分析。

在所得税的征收问题上最重要的是要把该雇员在德国和在日本的工作年限分清。

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## Hong Kong

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### Improved access for Hong Kong tax residents to PRC treaty benefits based on the new self-assessment procedures in China

The PRC State Administration of Taxation in China has recently issued Public Notice [2015] No. 60, introducing a new system for non-resident taxpayers to claim benefits under the tax treaties of China.

Although the new streamlined procedures would be advantageous for promoting cross-border business and investment activities between China and Hong Kong, the above changes would also increase compliance responsibilities for Hong Kong tax residents in claiming PRC tax treaty benefits.

中国国家税务总局最近颁布了国家税务总局公告 2015年第60号，对非居民纳税人享受中国税收协定待遇制定了一套全新的机制。

虽然新的简化程序有利于促进中港跨境贸易和投资活动，上述变化亦加重了香港税收居民对享受中国税收协定待遇的遵从责任。

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# Indonesia

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## Tax Incentive – Government Policy Package Volume 5

The Indonesian government has issued a five-volume economic policy package to boost the domestic economy. Policy package that focuses on government incentives related to the reduction of taxes.

印尼政府已经出台了五卷经济一揽子政策以刺激国内经济。一揽子政策，主要聚焦可降低税务的政府奖励。

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# Korea

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## 2016 Value Added Tax Law Revisions

On August 6, 2015, the Korean Ministry of Strategy and Finance released its 2016 tax law revisions that would generally become effective from January 1, 2016. The major VAT related Tax revisions that might be of interest to foreigners doing business in Korea are summarized below.

韩国的企划财政部在2015年8月6日发布了2016年1月1日起开始有效的、新改正的税法。我们为您整理了在韩国做生意的外国人应知道的与附加税有关的新税法。

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# Malaysia

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## Budget 2016 – Strengthening Growth, Enhancing Inclusiveness, Ensuring Fiscal Sustainability

The Budget 2016 was tabled on 23 October 2015 by Prime Minister, YAB Dato' Sri Mohd Najib Tun Abdul Razak. The Budget 2016's theme is "Prospering the Rakyat" and focus on 5 priorities i.e. Strengthening Economic Resilience, Increasing Productivity, Innovation and Green Technology, Empowering Human Capital, Advancing Bumiputera Agenda, and Easing Cost of Living of the people.

马来西亚首相纳吉于2015年10月23日向国会提呈2016年国家财政预算案。2016年财政预算案的主题为“提高人民生活福祉”，并聚焦在5大重要领域，包括强化国家经济、提高生产力、创意及绿色工艺、提高人力资本、强化东马土著经济以及降低人民生活成本

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# Russia

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## Tax changes in year 2016

There are no major changes in taxation in 2016. The main changes are in respect of tax holidays for entrepreneurs, tax report for personal income, development of special zones. On 28 July, the Russian Ministry of Finance (MinFin) published the final version of the "Main Tax Policy Priorities for 2015 and the 2016-2017 Planning Period" which are effective in 2016.

俄国在2016年的收税政策方面没太多改变。主要更改部分与商业免税、呈报个人所得税及特别经济区发展有关。俄罗斯财经局于7月8日发布《2015年的主要税务政策重点和2016-2017年的计划》，并将于2016年实行。

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# China



## Attention to Five Changes for Application of Bilateral Tax Agreement

### Range Extension

Public Notice [2015] No. 60 provides non-resident taxpayers enjoying bilateral tax agreement and the international transport agreement with applicable unified, standardized management processes. Specific changes include: signed agreements for the avoidance of double taxation signed tax provisions of airlines, shipping and car services, tax agreement for the mutual exemption of international transport income or exchange.

### Cancel Approved

Public Notice [2015] No. 60 rules qualified non-resident taxpayers can enjoy bilateral tax agreement when they file tax returns. In addition, non-resident taxpayers accept the follow-up tax authority management.

### Simplified Documents

Public Notice [2015] No. 60 rules non-resident taxpayers to submit two tables: the form of non-resident taxpayers' tax resident identity information and the report regarding non-resident taxpayers enjoying bilateral tax agreement.

### Simplified Treatment

Public Notice [2015] No. 60 is so concise and explicit, which ease its enforcement.

- (1) Non-resident taxpayers should voluntarily declare duty exemption to the competent tax authorities when they found they should not have enjoyed the benefits of the agreement.
- (2) Non-resident taxpayers can prescribe for refund and submit relevant certificates to tax authorities within the stipulated timeline when they realized they should have enjoyed the benefits of the agreement.
- (3) Non-resident taxpayers should submit relevant documents in the next tax returns when their situations change while they still meet the conditions of the benefits of agreement. On the other hand, non-resident taxpayers should pay taxes according to the domestic laws when they no longer enjoy the benefits of enjoying the treatments stipulated in taxation agreement when situations changed.

### Consciously Checking

Non-resident taxpayers shall be responsible for the

documentation in view of accuracy of information and other materials by themselves. Specially attention: enjoying bilateral tax agreement involves many tax laws, regulations and documents. 🇨🇳

# Cyprus



## Cyprus signs off a Double Taxation Avoidance Agreement (DTAA) with Iran

### Permanent Establishment

Based on the new treaty 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 beneficial owner of the dividend is a company (other than partnership), which owns at least 25% of the shares of the company paying the dividend, the withholding tax rate is set at 5%. In all other cases the withholding tax rate is 10%.

### Interest

The withholding tax rate on interest is set at 5%.

### Royalties

The withholding tax rate on royalties is set at 6% (e.g. for patents, trademarks, copyrights, secret formulas/processes relating to scientific, commercial and industrial experience, artistic or scientific work including films).

### 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 shares 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 note

The DTAA rates are deemed very favorable for international investment flows through Cyprus, given that with proper structuring withholding tax rates can be limited to a maximum of 6%, while gain from the disposal of shares is exempted from income and any other taxation in the island.

## Limitation of benefits clause

The DTAA does not include a limitation of benefits clause.

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# Germany



## Possible personal tax obligation in Germany for employees from Japan - Retirement Allowance and secondment to Germany

If Japanese are entitled to a "Retirement Allowance" they mostly get a one-off payment in addition to an old-age pension. In case of being delegated to Germany during a part of their working life, there is a possibility to personal tax duty in Germany.

First of all both components of the "Retirement Allowance" have to be distinguished from one another. In the main case of an old-age pension article 18 DTA Germany-Japan assigns the right of taxation to the country of residence of the payment recipient. In this case Japan is the country of residence so Germany does not have any right of taxation for the old-age pension. A different rule applies to the one-off payment. Basically it is paid as a compensation for the untimely ending of the employment. The Japanese employer pays it to his Japanese employee for the loss of his job.

If nevertheless the Japanese employee receives the one-off payment during his secondment to Germany, it is mostly subject to taxation in Germany on basis of article 15 section 1 sentence 2 DTA Germany-Japan. Occasion for the one-off payment during the secondment can be e.g. a group-internal transfer to another German company. Then the employer would have to check if there is any obligation to withhold and transfer income tax to the German tax office.

The classification of the one-off payment is decisive – is it a compensation for the loss of the job or is it a payment for accomplished work? According to interpretation either Japan or Germany has the right of taxation.

The differentiation between settlement and wage is regulated in Germany as follows: For the presentation of a settlement it has to be a replacement for escaped

or escaping income because of the loss of the job of the employee or for non-exercise of work (§ 34 section 2 in conjunction with § 24 no. 1 of German Income Tax Act). In case of a compensation of accomplished work, the one-off payment would be classified as wage.


As far as the following conditions are accumulated, the tax duty in Germany can be avoided, provided that the one-off payment is classified as wage:

- The Japanese employee stays less than 183 days per year in Germany
- The one-off payment is paid by the Japanese employer with headquarter in Japan
- The one-off payment is not paid by a permanent establishment in Germany

In this case the one-off payment would be released from the German tax with regard to article 15 section 2 DTA Germany Japan.

If it is a payment for the loss of the job there would be the same result – no German right of taxation according to article 22 DTA Germany-Japan.

Since very recently in the Asian region also the financial administration of China has its focus on Chinese employees who are seconded abroad. Increasingly far-reaching examinations are carried out to private individuals with foreign source income. Till the end of 2015 effective, internationally coordinated regulations against profit shortenings and profit misalignments should be compiled by the OECD with an action plan.

All in all the possibility to personal tax duty in Germany cannot be underestimated. If Japanese are entitled to a "Retirement Allowance" it is very important that the reason of the one-off payment is clearly regulated! As long as possible it would be better not to receive the one-off payment while the Japanese employee is sent to Germany. 

# Hong Kong



## Improved access for Hong Kong tax residents to PRC treaty benefits based on the new self-assessment procedures in China

To introduce a new system for claiming benefits by non-resident taxpayers under China's double tax treaties, the PRC State Administration of Taxation issued Announcement [2015] 60 (Announcement 60) on 27 August 2015 with an effective date of

1 November 2015. Announcement 60 supersedes the existing system under Guoshuifa [2009] No. 124 which relies on “pre-approvals” by the PRC tax authority to claim reduced tax or tax exemption under tax treaties.

Under Announcement 60, pre-approval or record-filing acknowledgement by PRC tax authority is no longer required before non-resident taxpayers could enjoy the tax treaty benefits (e.g. claiming reduced withholding tax rates for dividends/ interest/ royalties/ capital gains; seeking permanent establishment protection or other treaty protections). Instead, non-resident taxpayers and withholding tax agents are only required to make self-assessment and file certain prescribed forms and supporting documents for purposes of making tax treaty benefit claims.

### **Tax filing obligations of non-resident taxpayers and withholding agents**

For cases where payments from China are subject to withholding taxes and a withholding agent is administering the treaty benefit claim, the withholding agent shall assess whether the tax treaty benefit is applicable based on the forms and supporting documents supplied by the non-resident taxpayer (albeit the non-resident taxpayer remains responsible for the authenticity and accuracy of the information and documents submitted to the PRC tax authority).

The withholding agent may submit the following documents to the PRC tax authority:

- (i) Resident Status Form
- (ii) Form re the entitlement of tax treaty benefits
- (iii) Tax Resident Certificate issued by the tax authority of the tax treaty partner jurisdiction
- (iv) Other relevant documents (e.g. contracts, directors’ resolutions, shareholders’ resolutions, etc.)


For cases where no withholding agent is involved (e.g. seeking permanent establishment protection) or a non-resident taxpayer is seeking refund of withholding tax, the non-resident taxpayer shall assess their eligibility on tax treaty benefits.

The non-resident taxpayer may directly submit the abovementioned documents to the PRC tax authority.

### **Impacts of the new procedures for claiming tax treaty benefits**

In time, the new streamlined procedures will be advantageous for promoting cross-border business and investment activities between China and Hong Kong.

Nevertheless, Hong Kong resident taxpayers should note that the changes will require themselves

as well as withholding agents (if any) to possess sufficient knowledge of tax treaty when performing self-assessment. In addition, a significant amount of information will have to be submitted to the PRC tax authority to support the tax residency and entitlement of the non-resident taxpayers for the tax treaty benefits. Furthermore, tax treaty benefit claims may be scrutinized by PRC tax authority after tax filing submission. Where necessary, the PRC tax authority may invoke the General Anti-Avoidance Rules in the relevant tax law and regulations to investigate the claims, and the statute of limitation can be extended to ten years in such cases. 

## **Indonesia**



### **Tax Incentive – Government Policy Package Volume 5**

The first policy is a matter of tax relief incentives in the revaluation of company assets, both in the State Owned Enterprises (SOEs or “BUMN”) and private parties. Currently, companies are reluctant to do the revaluation of assets because the tax rate is too high.

Revaluation of asset is a readjustment of the value of the company’s assets in accordance with the current fair value. Revaluation of assets will increase capital reserves and financial performance in a significant amount.

Generally, income tax (“PPh”) for the purpose of revaluation of assets is 10 percent. However, the tax rate of 10% is reduced to 3%, 4% and 6% for revaluation of assets until Dec 31, 2015, Jan 1 until June 30, 2016 and July 1 until Dec 31, 2016 respectively.

For taxpayers, when filing the revaluation of assets until December 31, 2015, the amount of the special rate of Final income tax with regards to the revaluation of assets will be reduced from 10% to 3%. When revaluation of assets submitted in the period January 1 through June 30, 2016, the amount of the charge is 4%. When filing during July 1 until December 31, 2016, the final amount of the special rate of income tax to 6% revaluation.

The second policy in package volume 5 is the elimination of double taxation for collective investment contract of real estate investment funds or commonly known as REITs (Real Estate Investment Trust). This policy covers the usual securities issued by the company on bail or underlying assets such as property or infrastructure.

Based on the Regulation of the Minister of Finance,

the double taxation especially for companies with a special purpose will be eliminated. It is expected that the presence of this instrument, DIRE KIK can appear more attractive in the Indonesian capital market, and to attract the foreign investment. 🇮🇩

# Korea



## 2016 Value Added Tax Law Revisions

### Deferment of import VAT payment for export SME

Under the current Value Added Tax Law (“VATL”), a taxpayer is required to pay import VAT to the customs office upon declaration for import of goods. Under the proposed revision, export SME satisfying certain conditions (to be regulated in the Presidential Decree of VATL) will be entitled to the deferment of the import VAT payment upon the import declaration and can settle the payment by offsetting import VAT against input VAT credit when filing the VAT returns.

This proposed revision will be applied to goods imported on or after July 1, 2016.

### Zero-rate VAT on supply of goods or service for earning of foreign currency

Under the current VATL, a taxpayer can apply zero-rate VAT on supply of certain goods or services to a non-resident or foreign company for earning of foreign currency. With the proposed revision, zero rate VAT on professional services (e.g., legal, accounting and tax services, advertising, market research, management consulting services, etc.) or business supporting services (e.g., employment agency, administrative support services, etc.) provided to the non-resident or foreign company, which may be viewed to be used/ consumed in Korea, will be applicable only if similar favorable tax treatments are granted to domestic residents in the country of the non-resident or foreign company, based on the reciprocity principle.

This proposed amendment will be applied to transactions made on or after July 1, 2016.

### VAT on supply of cross-border electronic services

From July 1, 2015, supply of electronic services (such as games, audio or video files, electronic documents, software, etc. activated through mobile communication devices or computers) in Korea by foreign suppliers, overseas open market operators, etc. (the “foreign digital suppliers”) using information communication network would be subject to 10% VAT in Korea. The current VATL does not specify that the above provision is not applicable to B to B

transactions; thereby domestic business operators receiving electronic services, subject to Korean VAT under the current VATL, from the foreign digital suppliers cannot claim input VAT credit on the electronic services, since the foreign digital suppliers are not required to issue VAT invoices.

Hence, the proposed revision to the VATL clearly states that supply of electronic services by the foreign digital suppliers will not be subject to VAT in Korea if the services are provided in relation to a business of the domestic business operators. The proposed revision will be applied from a taxation period to which the promulgation date of VATL belongs. 🇮🇩

# Malaysia



## Budget 2016 – Strengthening Growth, Enhancing Inclusiveness, Ensuring Fiscal Sustainability

### Improving the Goods and Services Tax (GST)

- Zero-rated GST for all types of Controlled Medicines totaling 8,630 under the Poisons List Group A, B, C and D for 30 types of illness such as cancer, diabetes, hypertension & heart disease
- Additional GST zero-rated goods proposed:
  - Soybean and organic-based infant and children milk formula;
  - Chickpeas, mung beans and white beans Dhal (Parpu);
  - Lotus root and water chestnut;
  - Mustard seeds;
  - Brown sugar; and
  - Dry mee kolok.
- Annual sales turnover threshold for registration of Flat Rate Scheme under GST for small-scale farmers is reduced to RM50,000 compared with RM100,000.
  - Small-scale farmers can impose an additional 2% on sales value.
- GST relief for re-importation of goods that were exported temporarily for the purpose of promotion, research or exhibition.
- GST relief on oil and gas industries qualified re-import of equipment that was temporarily exported for the purpose of rental and lease such as oil platform equipment and floating platforms.
- GST relief for the procurement of teaching materials and equipment by skills and vocational

training providers under the National Skills Development Act 2006.

- Rebates equivalent to the amount of GST paid on prepaid mobile phones cards will be credited directly to consumers for activation effective from 1 January 2016 to 31 December 2016.

### Strengthening the Economic Growth

- Introduction of Special Reinvestment Allowance for existing companies in the manufacturing and agriculture sectors whose Reinvestment Allowance incentive has expired.
- Small and Medium Enterprise (SME) will be able to claim income tax exemption for exported manufactured goods that attain at least 20% or 40% of value added as compared to 30% or 50% previously for years of assessment 2016 to 2018.
- Full income tax exemption on statutory income for tour operators will be extended for a further 3 years i.e. years of assessment 2016 to 2018.
- Tax incentives for food production will be extended until 2020, with the scope of the incentives widened to include deer rearing, cultivation of mushroom, coconut, seaweed, honey bees and stingless honey bees and planting animal feed crops such as sweet potato and tapioca.
- Double tax deduction can be claimed by SME that incurs expenditure on Research and Development projects up to an amount of RM50,000 for each year of assessment from 2016 to 2018. 🇲🇾

residents are liable to tax at flat rate of 30%, generally withheld at source. No deduction or allowances are available for non-resident.

Individuals conducting private activities including individual entrepreneurs, individuals who received income from which Russian income tax was not withheld and other specific categories of individuals are obligated to file a tax return. The main amendment in tax return is regarding disposal of property, i.e. individuals have to own property more than 5 years, excluding situations when individuals sell property to close relatives.

### Advanced Development Zones

Russian Federation Presidential decree was released concerning the establishment of "Advanced Development Zones, ADZ" in the country.

The law stipulates that over the first three years, ADZ has to be set up in the Far East regions of the country, then only they can be established in other regions. At the first stage, 14 zones are planned to be established in the Far East regions.

The law foresees a lower corporate tax for ADZ residents, including a zero federal rate for five taxation periods after the first profit, and a regional rate not exceeding of 5% during the five taxation periods and no higher than 10% in the next five taxation periods.

The mineral extraction tax in the zones will be calculated with a deduction coefficient varying from 0 to 1 during a 10-year period.

### Tax priority

On 28 July, the Russian Ministry of Finance (MinFin) published the final version of the "Main Tax Policy Priorities for 2015 and the 2016-2017 Planning Period".

This clause in the document now comments on a slowdown of excise indexation on alcohol, alcohol-based products and beer. It also states that it is necessary to harmonise excise rates on tobacco products with other Customs Union states, as well as increase the added-value component of the excise rate on cigarettes and other smokeable products gradually (up to 10% of the maximum retail price). This would increase the tax burden on expensive tobacco products than that on inexpensive products.

Instead of specific alternatives for changing the rules of taxing a consolidated group of taxpayers (primarily with respect to accounting for losses of specific CGT members), the document now mentions the mere requirement of monitoring the application of this regime in order to identify systemic shortfalls when using this tool. 🇲🇾

# Russia



## Tax changes in year 2016

### Tax holidays for entrepreneurs

Federal law from 29 December 2014 N 477-FZ introduced tax holidays for entrepreneurs. According to article 346.50 the Russian regions can fix the tax rate of 0 per cent for entrepreneurs registered for the first time, and doing business in the field of industrial, social and (or) scientific.


### Tax report for personal income

Companies have to submit the tax report for personal income to Tax authority quarterly.

Tax rate remains the same as in 2015. Generally, tax rate is 13 % for resident. To be considered a Russian resident, residence must be established of at least 183 days in Russia during any calendar tax year. Non-



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