PRISM

Tax Newsletter

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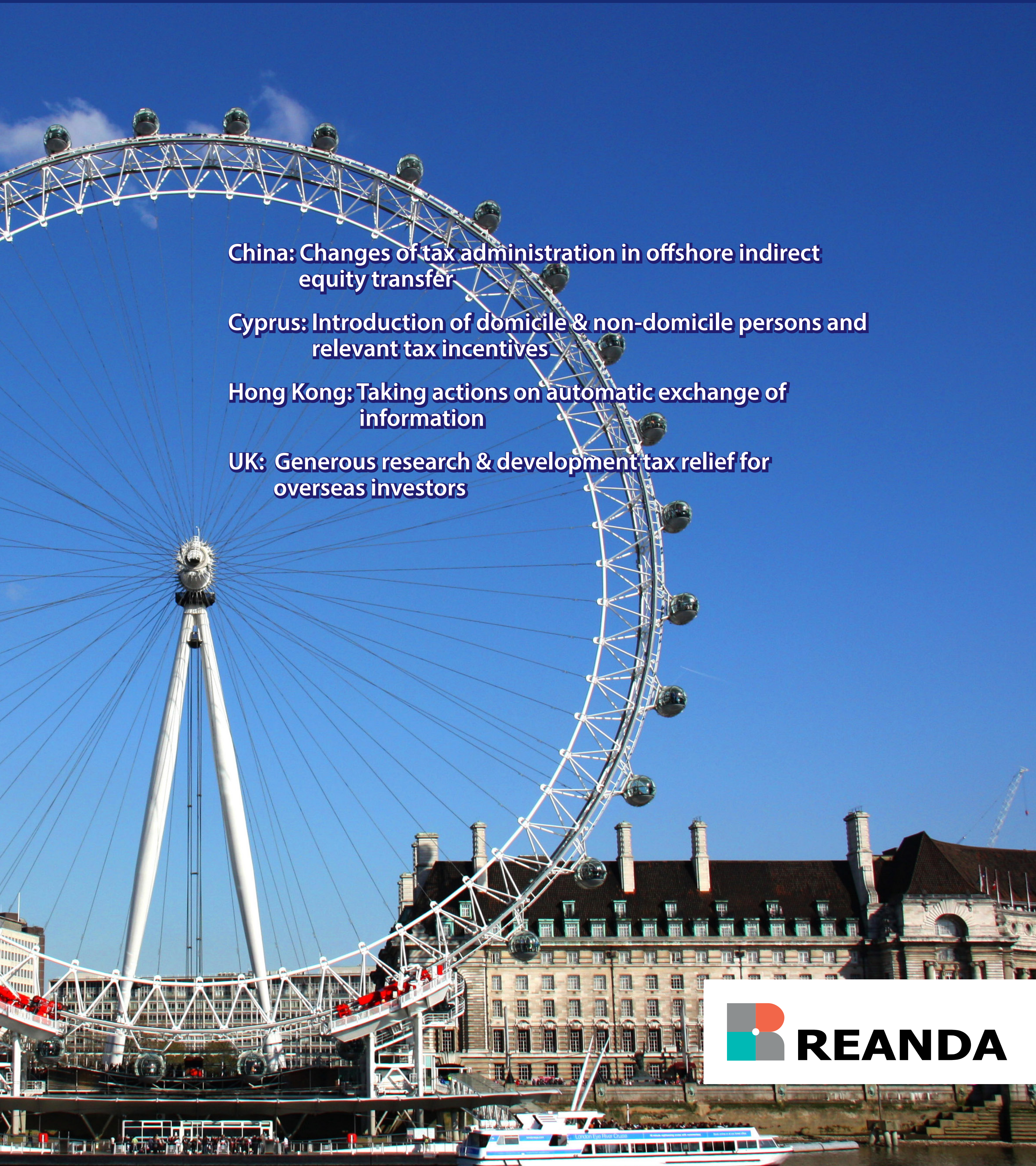

China: Changes of tax administration in offshore indirect equity transfer

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REANDA

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Changes of tax administration in offshore indirect equity transfer

Since the announcement of the statement on non-resident enterprises indirect transfer (hereinafter referred to as Public Notice [2015] No. 7), its tax risk has drawn great attention of the tax authorities at all levels and the taxpayer. From the experience of the taxation authority at the grass-roots level, there are challenges and risks in the daily management of the offshore indirect equity transfer.

自《国家税务总局关于非居民企业间接转让财产企业所得税若干问题的公告》（国家税务总局公告2015年第7号，以下简称7号公告）发布以来，间接股权转让行为隐含的涉税风险引起了各级税务机关和纳税人的高度重视。从基层税务机关的经验看，我国对非居民企业间接转让股权的日常管理中存在挑战 。

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Cyprus

Introduction of Cyprus domicile and non-domicile persons and relevant tax incentives

Cyprus has introduced the non-domicile principle ('non-dom') in its tax laws in order to give further incentives to foreign investors and high net worth individuals to move and relocate their business to the island. Before the introduction of the Non-Domicile principal, all tax residents of Cyprus, whether domiciled or not, who run their business through a Cyprus company had to suffer a 17% withholding tax on dividends. In addition, Cyprus tax residents are liable for a 30% and 2.25% withholding tax on interest and rental income respectively. After the amendment of the tax legislations, non-domiciled individuals are exempted from any of the above withholding taxes.

为进一步鼓励外国投资人及高净值个人移居到塞浦路斯并将他们的商业带至塞浦路斯，塞浦路斯政府已经在税法里推行了非住所原则。在推行非住所原则前，所有的塞浦路斯纳税居民，无论是其住所在或不在塞浦路斯，对于其通过一个塞浦路斯公司运营商业活动而取得的股利应缴纳17%的预提税。此外，塞浦路斯纳税居民应对利息收入缴纳30%，租赁收入缴纳2.25%的预提税。在塞浦路斯修改了税法规定后，非住所自然人将无需缴纳上述提及的任何预提税。。

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Hong Kong

Hong Kong is taking actions on automatic exchange of information

In 2014, Hong Kong has indicated its support for implementing automatic exchange of financial account information on a reciprocal basis with appropriate partners with a view to commencing the first exchanges by the end of 2018. Following several rounds of engagement with stakeholders over past two years and the public consultation exercise, the relevant tax law has become effective on 30 June 2016.

在二零一四年，香港表示支持根据互惠原则，与合适伙伴实施自动交换资料，以期在二零一八年年底前进行首次自动交换财务帐户数据。经过过去两年数次联系相关持份者，以及进行公众咨询后，有关税务条例已于二零一六年六月三十日生效。

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Malaysia

Transfer Pricing in Malaysia

The Inland Revenue Board of Malaysia (IRB) has introduced transfer pricing (TP) legislation under Section 140A of the Income Tax Act, 1967 (the Act) in 2009 and subsequently issued the Income Tax (Transfer Pricing) Rules 2012 (the TP Rules) and the Transfer Pricing Guidelines 2012 (the TP Guidelines) in 2012 with a retrospective effect from 1 January 2009.

马来西亚内陆税收局其实已经在2009年实行转让定价规定，并与2012年颁布所得税法令（转让定价）法规，并在同年推出转让定价指南，让纳税人了解与遵守相关的法规。

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United Kingdom

Generous UK research & development tax relief for overseas investors

- Available for large companies to claim relief for their R&D expenditure in the UK.
- For the first time for large companies, there is the opportunity for large (non-SME) loss-makers to claim the credit as a cash receipt from HMRC.
- Relief is 11% of qualifying expenditure.
- Relief is "Above The Line" – shown in accounts as other income, and subject to CT – net relief currently 8.8%.
- Tax credit paid after other tax liabilities discharged.
- New advantages for overseas companies with UK R&D Cost Centres.

- 对在英投资做研发项目的大型企业税务减免的重大利好。
- 这是有史以来第一次，一些亏损的大型企业（不包括中小型企业）可以从税务局得到税金返还。（过去，这项税务优惠政策只可以减少当年的企业所得税，而不能获得现金返还。）
- 税务局将按照符合‘研发费用’要求的总支出的11% 来进行减免。
- 这项税务减免所得，应该记入其他收入帐目，并需要缴纳企业所得税（今年是20%），所以实际上的税务减免为8.8%。
- 扣除其他税费后，剩余的税收金额可以以现金形式返还企业。
- 这项新的规定对在英国有研发项目的海外公司据有很大的吸引。

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China

Changes of tax administration in offshore indirect equity transfer

First, the lag of information acquisition of equity transfer and the low of timeliness in dealing with cases. According to Public Notice [2015] No. 7, both parties that indirect transfer of property and Chinese resident enterprise that indirect transfer its equity can actively or report the transfer to the tax authorities in accordance with the requirementof tax authority and submit relevant documents. However,in practice few enterprises actively report related transfer issues to the competent tax authority. There are three reasons. First, The domestic enterprise whose equity is transferred is low-level, the competent tax authority can't learn timely; Second, the overseas trading partners are not familiar with the Chinese tax law; Third, Overseas non-resident enterprises deliberately evade tax obligations. Above these reasons increase the difficulty of tax administration.

Second, single source of evidence, the large difficulty of determining a reasonable business purpose. At present, the rational business purpose of indirect equity transfer decision is still the difficulty in the practice, facing two main problems: one is the decision based on information and data provided by both parties and transferring resident enterprise offer, single source of information and inadequate access to information determination. The second is the judge has a high requirement on the professional competency. Especially, the determination of the value of equity structure, the function of risk and economic substance, alternative trading and other important factors are more complex.

Third, the complex mechanism of the transfer, the dispute over actual tax to determine. Although Public Notice [2015] No. 7 is clear about the equity transferor by direct transfer of the same overseas enterprise equity lead to indirect transfer of two or more China taxable property, declaration and payment enterprise income tax should be made to the local competent tax authorities. . In practice there are many complicated conditions. For example, the difference location of transferring Chinese enterprises' actual management organization and function organization. Transferring enterprise headquarters in Beijing, and its subordinate functions of institutions in many second-tier cities. It is not clear which entity should be liable to tax in this circumstance.

Cyprus

Introduction of Cyprus domicile and non-domicile persons and relebant tax incentives

Cyprus has introduced the Non-Domicile principle in its tax laws in order to give further incentives to foreign investors and high net worth individuals to physically move and relocate their business to the island.

Before the introduction of the Non-Domicile principal, all tax residents of Cyprus, whether domiciled or not, who run their business through a Cyprus company had to suffer a 17% withholding tax on dividends. In addition, Cyprus tax residents are liable for a 30% and 2.25% withholding tax on interest and rental income respectively.

After the amendment of the tax legislations, non-domiciled individuals, even if they are tax residents of the Republic, are exempted from any of the above withholding taxes regardless of whether such income is derived from sources within Cyprus or not.

Any person who is physically present in Cyprus for at least 183 days during a calendar year is considered to be a tax resident of the Republic. An individual can be considered as domiciled in Cyprus either:

(a) by domicile of origin (given at birth); or

(b) by domicile of choice (establishing a home with the intention to reside in Cyprus permanently or indefinitely).

The concept of "domiciled in Cyprus" is based on the Wills and Succession Law Cap. 195.

According to the law, non-domiciled is:

(a) an individual who has obtained and maintained a domicile of choice outside Cyprus in accordance with the Wills and Succession Law, provided that such an indiidual has not been a tax resident of Cyprus for a period of 20 consecutive years preceding the current tax year; or

(b) an individual who has not been a tax resident of Cyprus for a period of 20 consecutive years prior to the introduction of this law.

Notwithstanding the above, an individual who has been a tax resident of Cyprus for at least 17 years out of the last 20 years prior to the current tax year will be considered to be domiciled in Cyprus and as such will be subject to withholding tax regardless of the domicile of origin.

The new non-dom rules strategically enhance the competitiveness of the Cyprus taxation system and are expected to attract and further encourage high net worth individuals, international investors and corporate executives to relocate to the island.

Hong Kong

Hong Kong is taking actions on automatic exchange of information

On 30 June 2016, the new tax law on implementing automatic exchange of information (AEOI) in Hong Kong has become effective. AEOI is the international standard for automatic exchanging of financial account information in tax matters as published by the Organization for Economic Co-operation and Development (OECD) in July 2014.

Hong Kong targets to identify appropriate jurisdictions as its potential AEOI partners, conclude negotiations with them and start the first exchanges by the end 2018.

Briefly, AEOI requires financial institutions (FIs) to perform due diligence procedures to identify financial accounts held by tax residents of reportable jurisdictions. AEOI also requires FIs to collect and submit the reportable information of these accounts to the Hong Kong tax authority, which will in turn exchange the information with the tax authorities of AEOI partner jurisdictions on an annual basis.

"Tax residents of reportable jurisdictions" refer to those who are liable to tax by reason of residence in the jurisdictions with which Hong Kong has entered into an AEOI arrangement.

The salient points of the new tax law are as follows:

- Scope of FIs (FI is widely defined), reporting FIs and reportable financial accounts
- Obligations of reporting FIs
- Scope of reportable information to be maintained, submitted and exchanged
- Enforcement powers of the Hong Kong tax authority

Information to be furnished by reporting FIs include:

(1) The name, address, jurisdiction of tax residence, tax identification number and the date and place of birth (for individuals) of the account holder

(2) The account number

(3) The account balance or value

(4) The income (e.g. interest) paid to the account

FIs may request account holders to provide self-certifications on their personal information including tax residence, so as to enable FIs to identify those accounts which should be reported under the AEOI regime. To facilitate the checking of tax residency by account holders, the OECD has established a portal which provides information on tax residency rules in jurisdictions which have committed to implementing AEOI. The website address is as follows: http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/#d.en.347760

Malaysia

Transfer pricing in Malaysia

The Inland Revenue Board (IRB) has introduced transfer pricing (TP) legislation under Section 140A of the Income Tax Act, 1967 (the Act) in 2009 and subsequently issued the Income Tax (Transfer Pricing) Rules 2012 (the TP Rules) and the Transfer Pricing Guidelines 2012 (the TP Guidelines) in 2012 with a retrospective effect from 1 January 2009.

Based on the said legislations, effective 1 January 2009, taxpayers with related party transactions are required to determine and apply the arm's length price for the acquisition or supply of goods or services. Therefore, it is mandatory for all taxpayers with related party transactions to prepare transfer pricing documentation for the purpose of determining the transfer price based on arm's length principle.

Since 2012, the IRB has been more active in monitoring taxpayers' compliance with the applicable transfer pricing legislation. With effect from year of assessment 2014, companies are required to confirm the availability of transfer pricing documentation to substantiate their related party transactions in the income tax return (Form C). Besides that, companies are also required to disclose the quantum of transactions with related companies in the Form C. As such, transfer pricing documentation has become more important in line with the IRB's footsteps.

Generally, companies are considered to be related if there is a shareholding relationship of more than 50 percent. However, the TP Guidelines also consider a relationship to exist if one party participates directly or indirectly in the management, control, or capital of the other party or the same person participates directly or indirectly in the management, control and capital of both companies.

Basically, transfer pricing applies wholly to all taxpayers meeting the following conditions:

- Taxpayers carrying out business with a gross income of more than RM25 million, and a total amount of related party transactions of more than RM15 million; and
- For taxpayers providing financial assistance and such financial assistance is more than RM50 million. Transactions involving financial institutions are excluded.

Types of related party transactions may involve:

- Sales or purchases of raw materials, stock in trade or other tangible assets;
- Royalties / license fees / other types of considerations in connection with use of intangible assets;
- Management fees including charges for financial, administrative, marketing and training services;
- Research and development;
- Any other services not previously mentioned;
- Rents / lease of assets;
- Interests; or
- Guarantee fees.

The TP Rules provide that persons entering into a related party transaction must prepare documentation when developing or implementing the related party transaction. The documentation must include specific information and be updated for any material changes prior to the due date for filing a tax return that includes the affected transaction.

The following methodologies can be used in determining arm's length price:

- Comparable uncontrolled price method;
- Resale price method;
- Cost plus method;
- Profit split method; and
- Transactional net margin method.

Taxpayers are required to select and apply the most appropriate transfer pricing methods to the related party transaction in determining the arm's length nature of such transaction.

Transfer pricing documentation does not have to be submitted with the tax returns. However, it should be made available to tax authorities within 30 days upon request.

The TP Guidelines specify the following penalty rates:

If there is no contemporaneous transfer pricing documentation	35%
If there is transger pricing documentation prepared, but not according to requirements in the Guidelines	25%
If the taxpayer does not fall under the scope of the Guidelines, and does not prepare a contemporaneous transger pricing documentation	25%

The Guidelines also mention that the penalty rate shall be increased by 20% as compared to the last penalty rate imposed for the previous offence but limited to a sum not exceeding 100% of the amount of tax undercharged, where:

- The taxpayer obstructs or interferes with a transfer pricing audit; or
- The taxpayer fails to comply with the arm's length principle after previous transfer pricing audits.

Transfer pricing audits have gradually increased in recent years, hence taxpayers shall prepare transfer pricing documentation ready for the Inland Revenue Board.

UK

Generous UK research & development tax relief for overseas investors

Research and development tax update - RDEC

Enhance tax relief for qualifying R&D expenditure has been a feature of the uK tax system for companies since its introduction in 2000 for small and medium-sized enterprises ("SME"s). and 2002 for large companies. A company is large if it has annual turnover of over €100 million, and a balance sheet exceeding €86 million.

April 2016 saw the Research & Development Enhanced Credit (RDEC) become the only route available for large companies to claim relief for their R&D expenditure in the UK.

What is R&D?

The relief enables companies to claim an enhanced tax deduction for expenditure on "Qualifying Research and Development Activity".

Qualifying activity for this purpose is work carried out on a new or improved product or process, which resolves a scientific or technological uncertainty, provided the solution is not available to, or readily deducible by a competent professional working in the field.

Qualifying expenditure includes staff costs, payments made for the services of subcontractors or personnel supplied by other group companies, consumable items including materials utilised in the R&D process, software licenses and utilities, and payments to qualifying bodies.

The "Old" Regime

The Under the previous regime for large companies, the relief was only practically of use to companies with taxable profits in the UK, as there was no repayable credit attached to the deduction. Those with unused trading losses would see no immediate benefit and so many chose not to prepare a claim.

Also, for overseas parented groups with UK subsidiaries, the benefit of the old style R&D relief claim was often offset by a loss of double taxation relief at the parent company level, making claims unpopular.

RDEC - What's new

Companies making an RDEC claim can record an 'Above the Line' taxable credit calculated as 11% of their qualifying R&D spend. A net 8.8% cash benefit is delivered to the bottom line after accounting for UK corporation tax at the current rate of 20%. The credit can then be offset against existing tax liabilities or, if there are no tax liabilities, can be recovered as a cash payment from HMRC.

Because RDEC involves the credit being available for offset against other duties, or being payable as a cash sum where no liabilities exist, large companies with taxable losses can now obtain a cash flow benefit from claiming the relief.

Also, from April 2016 companies where the cost centre for R&D work is in the UK, but whose profit centres are overseas, can now receive a cash-based benefit on their qualifying activities, without complications that previously may have arisen with regard to effective tax rates.

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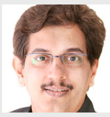

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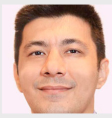

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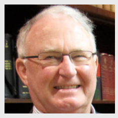

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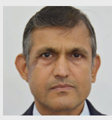

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