



**TAXAND ASIA
SEMINAR SERIES:
RECENT TAX
DEVELOPMENTS
INCLUDING GST
CHANGES**

8 OCTOBER 2020

Your global tax partner

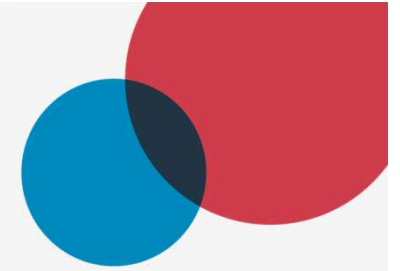


AUSTRALIA

Presented by
Kieran Egan
Special Counsel,
Corrs Chambers Westgarth

October 2020

AUSTRALIA



Federal budget update

Australian Taxation Office practice updates

- Taxpayer alert 2020/4 – MEC groups
- Thin capitalization - Practical compliance guideline 2020/7 (thin capitalization and arm's length debt test) and TR 2020/4
- PCG 2017/4 – transfer pricing and interest free loans
- R&D incentive guideline

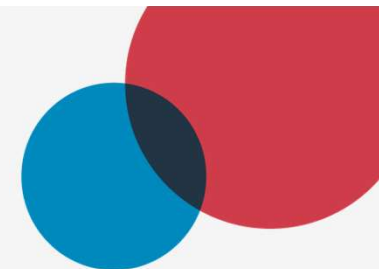


INDIA

Presented by
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Economic Laws Practice

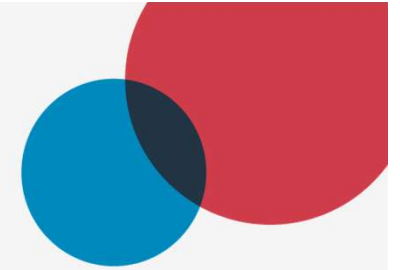
October 2020

INDIA CONTENT



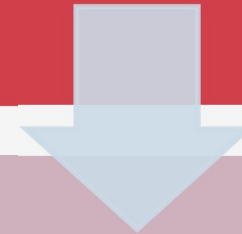
Sr. no.	Particulars
1	Abolition of Dividend Distribution Tax
2	Beneficial Tax Regime
3	Equalisation Levy
4	Benefits under Trade Agreements
5	GST so far

1. ABOLITION OF DDT



Abolition of dividend distribution tax (DDT)

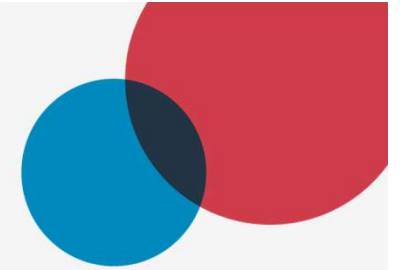
- Pre April 2020, Indian companies declaring dividend were subject to DDT @ 20.56%
- Dividend received was exempt in the hands of the shareholders
- Credit of DDT generally not available in shareholders' resident jurisdiction



Levy of DDT resulted in a high tax cost on repatriation of profits by the Indian subsidiary to overseas parent. This resulted in significant cash accumulation with the Indian subsidiaries

Current pandemic has caused cash crunch, requiring companies to identify avenues for garnering cash flow through various means including repatriation from their subsidiaries

1. ABOLITION OF DDT



Abolition of DDT

The Finance Act, 2020 abolished DDT and re-introduced the classical regime of taxing dividend received in the hands of the shareholders

Taxation in the hands of non-resident shareholders

Under the domestic tax laws, dividend income is liable to tax @ 20% (plus surcharge and cess)

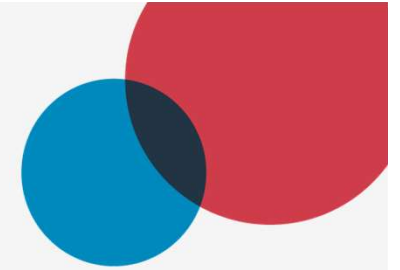
Availability of treaty benefit

Treaty benefit, if any, now available in relation to dividends earned by non-resident shareholders

In case dividend is received from an associated enterprise (AE), the non-resident shareholder would be required to undertake necessary transfer pricing documentation and compliance

Treaty benefits to be explored to reduce tax burden on dividend from India to as low as 5% with eligibility to avail credit in the jurisdiction of residence of the shareholders

1. ABOLITION OF DDT – OPPORTUNITIES



India treaty position for Asian Countries

- 5-15% tax rate on dividend under tax treaties with Asian countries
- Alternate holding structures to facilitate lower taxability in India – favorable tax jurisdictions to be identified

Beneficial treaty rates for dividends

Rate	Asian Treaty countries
5% subject to satisfaction of certain conditions	Hong Kong, Malaysia, Myanmar, Nepal, Qatar, Saudi Arabia, Syria, Tajikistan

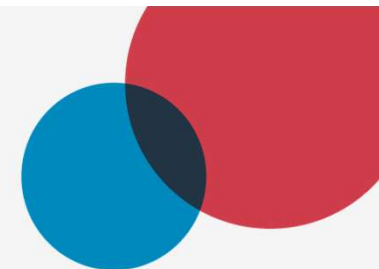
What needs to be done ?

Identifying cash blockage and need for efficient repatriation

Structuring repatriations with marginal (as low as 5%) withholding tax impact

Creation of adequate substance necessary to substantiate 'beneficial ownership'

2. BENEFICIAL TAX REGIME



Section 115BAA and Section 115BAB introduced to provide an optional tax regime to certain domestic companies (includes subsidiaries of foreign companies)

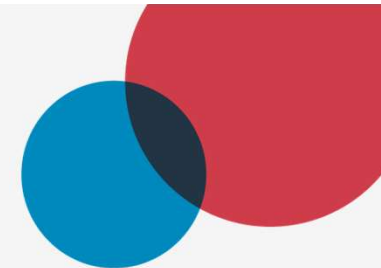
Beneficial tax regime announced to incentivise companies for setting-up manufacturing base in India

Available corporate tax rates

Particulars	Base tax rate	Maximum ETR*
Existing domestic companies with turnover less than USD 57 million in FY 2018-19	25%	29.12%
Existing domestic companies with turnover more than USD 57 million in FY 2018-19	30%	34.94%
Optional tax regime for existing domestic companies (Section 115BAA)	22%	25.17%
Optional tax regime for newly incorporated manufacturing domestic companies (Section 115BAB)	15%	17.16%

Structures identifiable to avail beneficial tax regime for existing operations, especially where expansion contemplated, subject to mitigating the anti-abuse provisions

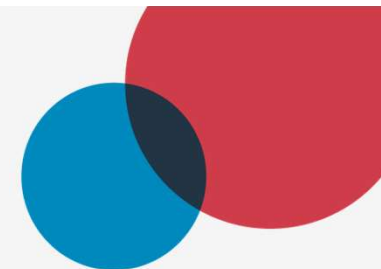
3. EQUALISATION LEVY



Scope of equalisation levy expanded by Finance Act, 2020

Existing provisions	Expanded provisions
<p>Equalization levy is charged @ 6% on the consideration for specified services received or receivable by a non-resident, not having PE in India, from a person resident in India and carrying on business or profession or a non-resident having a PE in India.</p> <p>Specified services include online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement</p>	<p>Equalization levy is charged @ 2% on the consideration received or receivable by a non-resident e-commerce operator from e-commerce supply of goods or services made or provided or facilitated by it to specified persons -</p> <ul style="list-style-type: none">• A person who is resident in India;• A person who buys such goods or services or both using internet protocol address located in India;• A non-resident person in the following circumstances:<ul style="list-style-type: none">• Sale of advertisement which targets a customer who is resident in India or a customer who accesses the advertisement through internet protocol address located in India; and• Sale of data collected from a person who is resident in India or from a person who uses internet protocol address located in India
<p><i>Need to ensure unintended coverage of transactions not considered as e-commerce, though carried out through digital mode</i></p>	

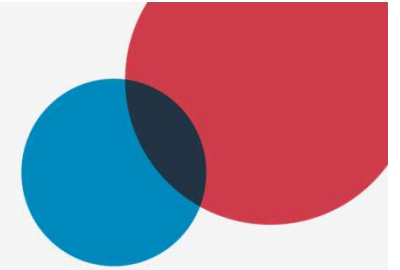
4. BENEFITS UNDER TRADE AGREEMENTS (TAS)



- Benefits to importers under TAS have historically been granted on the basis of Certificate of Origin ('COO') issued by an authority of the exporting country
- In a unilateral move, the Indian Government has recently brought about amendments, expanding the compliance requirement in the hands of the importer beyond the traditional COO
- Amongst others, the Indian importers are now required to obtain and possess sufficient additional information to confirm compliance with the origin criteria as per the TAS
 - This in turn requires the exporters to share information (confidential or not) with the Indian importers
 - Mitigation avenues are being identified to enable such exchange of information between the exporters and the importers without compromising confidentiality
- Exporters also face the risk of suspension of duty benefits on further supplies to India, where origin criteria is found not met by the Indian Customs authorities with regard to any consignment

Impacted exporters would need to walk the tight rope between sharing adequate information to secure Indian business and preserving confidentiality of sensitive information

5. GST SO FAR- A MIXED BAG



- The introduction of GST in July 2017 aimed at achieving major long-range benefits:
 - A single and simplified tax
 - Eliminating tax cascading
 - Making India a single market
- GST has been a key contributor in India's increasing ranking in the World Bank's Ease of Doing Business report (63 among 190 countries)
- Speed breakers- While GST was structured to also achieve complete digitization of business processes and compliances, the GSTN continues to be riddled with technical glitches. On a purely legislative front-
 - Inconsistencies in the approach of the different advance ruling authorities
 - Improper administration of anti-profiteering provisions
 - Significant activity before Courts both by the Department and the taxpayers on the correct interpretation of the statute
- Business sensitive approach- Reasonable relaxation, including monetary in some cases, to support business cope with the challenges throw up by the current pandemic

GST implementation- A classic case of 'don't make best enemy of the better'

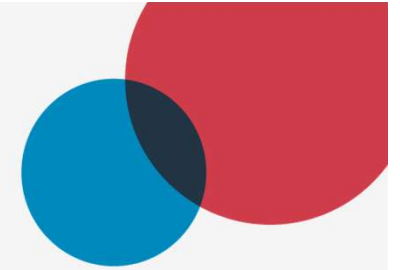


INDONESIA

Presented by
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PB Taxand

October 2020

COVID-19 TAX INCENTIVES UPDATES



Minister of Finance (MoF) Regulation No. 110 Year 2020
effective on 14th August

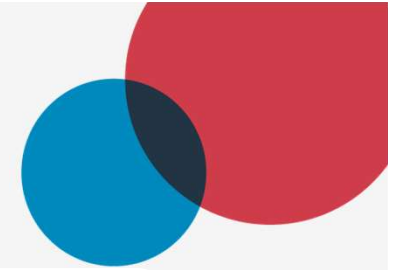
Further Reduction on Monthly Income Tax Instalments

- From 30% to 50% reduction;
- For the tax period of July – December 2020;
- Applies to 1,013 taxpayers with specific business classifications and other taxpayers.

Final Income Tax Incentive for Certain Construction Service

- Final income tax will be borne by the government → only applies to construction activities under a specific government irrigation program for farming.
- Applicable from 14 August – December 2020.

VAT ON OFFSHORE E-COMMERCE TRANSACTIONS



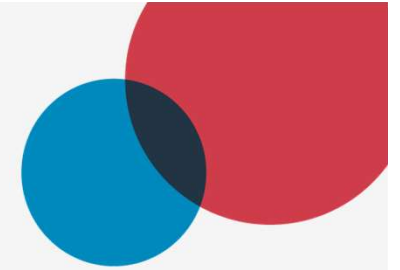
Government Reg. in Lieu of Law No. 1 Year 2020 (“Perppu-1”) → Law No. 2 Year 2020 effective on 31st March 2020

- The imposition of VAT on online intangible goods and services to Indonesian customers from offshore (“Offshore e-commerce transactions”).

MoF Regulation No. 48/PMK.03/2020 (“MoF Reg. 48”) effective on 1st July 2020

- Scope of Intangible Goods and Services & the determination factor.
- Authorization to appoint the VAT Collector is given to the DGT.
- E-commerce VAT Subject → “foreign e-commerce vendors” and domestic e-commerce platforms.
- VAT imposed at 10% on the payment received.
- Administration procedures on VAT collection, payment and reporting are further regulated by the DGT.

VAT ON OFFSHORE E-COMMERCE TRANSACTIONS



DGT Regulation No. PER-12/PJ/ 2020 (“DGT-12”)
effective on 1st July 2020

01| Specific threshold of the e-commerce as VAT collector determine based on:

- Transaction value to Indonesia
> USD 40,400/year or USD 3,365/month;
or
- Traffic access from Indonesia
> 12,000 users/year or 1,000 users/month.

02| Appointed e-commerce VAT Collector

- VAT Collector ID & Tax Registration Letter.
- Voluntary - notification.

03| E-commerce VAT Collector must activate their account in the DGT system, prior to the effective date of their appointment.

for DGT billing code, currency selection & VAT online reporting

04| Criteria of creditable VAT collection slip

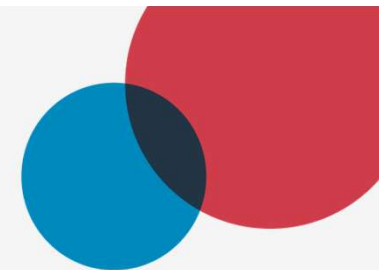
Commercial Invoice, billing, receipts, etc.

- Name & Tax ID of Indonesian Customer; or
- The registered email of the Indonesian Taxpayer.

05| Quarterly VAT reporting and detailed VAT collector report

- Reporting deadline & detail of information;
- Detailed VAT report;
- Online submission.

APPOINTED VAT COLLECTOR



No.	PMSE (E-Commerce) Business Enactor	Effective Date
1.	Netflix International B.V.	1 st Aug 2020
2.	Amazon Web Services, Inc.	1 st Aug 2020
3.	Google Asia Pacific Pte. Ltd.	1 st Aug 2020
4.	Google Ireland Limited	1 st Aug 2020
5.	Google LLC	1 st Aug 2020
6.	Spotify AB	1 st Aug 2020
7.	Facebook Ireland Limited	1 st Sep 2020
8.	Facebook Payments International Limited	1 st Sep 2020
9.	Facebook Technologies International Limited	1 st Sep 2020
10.	Amazon.com Services LLC	1 st Sep 2020
11.	Audible, Inc.	1 st Sep 2020
12.	Alexa Internet	1 st Sep 2020
13.	Audible Limited	1 st Sep 2020
14.	Apple Distribution International Limited	1 st Sep 2020

No.	PMSE (E-Commerce) Business Enactor	Effective Date
15.	Tiktok Pte. Ltd.	1 st Sep 2020
16.	The Walt Disney Company (Southeast Asia) Pte. Ltd	1 st Sep 2020
17.	LinkedIn Singapore Pte. Ltd.	1 st Oct 2020
18.	McAfee Ireland Ltd.	1 st Oct 2020
19.	Microsoft Ireland Operations Ltd.	1 st Oct 2020
20.	Mojang AB	1 st Oct 2020
21.	Novi Digital Entertainment Pte. Ltd.	1 st Oct 2020
22.	PCCW Vuclip (Singapore) Pte. Ltd.	1 st Oct 2020
23.	Skype Communications SARL	1 st Oct 2020
24.	Twitter Asia Pacific Pte. Ltd.	1 st Oct 2020
25.	Twitter International Company	1 st Oct 2020
26.	Zoom Video Communications, Inc.	1 st Oct 2020
27.	PT Jingdong Indonesia Pertama	1 st Oct 2020
28.	PT Shopee International Indonesia	1 st Oct 2020

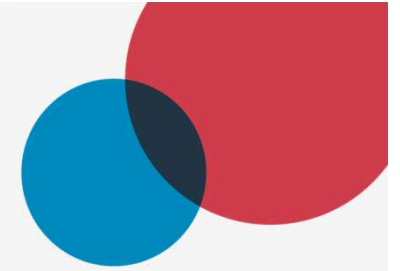


SINGAPORE

Presented by
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October 2020

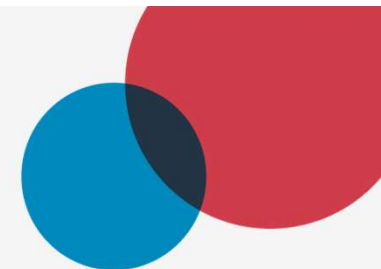
SINGAPORE



Overview of key tax developments in 2020 of interest to businesses:

1. 2020 Budget (Unity, Resilience, Solidarity, Fortitude)
2. Business-related proposed income tax changes
3. The Variable Capital Companies ('VCC') Act came into operation 14 Jan 2020
4. GST: Overseas Vendor Registration came into effect 1 Jan 2020
5. GST: Reverse Charge came into effect 1 Jan 2020

SINGAPORE – KEY BUSINESS-RELATED INCOME TAX CHANGES (1)



S. 13Z “Safe harbour” for trading gains on disposal of shares

Current

- Trading gains from the disposal of ordinary shares in a company exempt from tax if immediately before the disposal, the divesting company
 - legally and beneficially owns at least 20% of the ordinary shares in the target co; and
 - for a continuous period of 24 months
- Sunset date: 31 May 2022

Exclusions

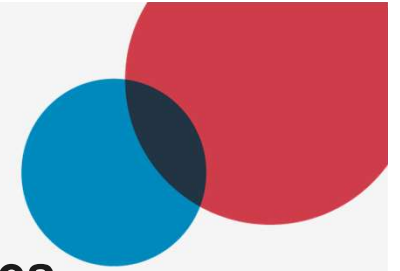
- Trading gains from disposal made by a s. 26 insurance company
- Trading gains from disposal made via a partnership, LP or LLP
- Where the target co is an unlisted company that trade or hold Singapore immovable property (but not incl. property developing companies)

SINGAPORE – KEY BUSINESS-RELATED INCOME TAX CHANGES (1)

S. 13Z “Safe harbour” for trading gains on disposal of shares

Current	Proposed change
<ul style="list-style-type: none">Trading gains from the disposal of <u>ordinary shares</u> in a company exempt from tax if immediately before the disposal, the divesting company<ul style="list-style-type: none"><u>legally and beneficially owns at least 20% of the ordinary shares</u> in the target co; andfor a continuous period of <u>24 months</u>	<ul style="list-style-type: none">No change
<ul style="list-style-type: none">Sunset date: 31 May 2022	<ul style="list-style-type: none">Extend to 31 December 2027
<p><u>Exclusions</u></p> <ul style="list-style-type: none">Trading gains from disposal made by a s. 26 insurance companyTrading gains from disposal made via a partnership, LP or LLPWhere the target co is an unlisted company that trade or hold Singapore immovable property (but not incl. property developing companies)	<p>Where the target co is an unlisted company that</p> <ul style="list-style-type: none">Trading in or mainly carries on activity of holding immovable property whether in Singapore or outside SingaporeHas undertaken property development (unless developed for its own business, and did not develop property for least 60 consecutive months before the disposal of shares)

SINGAPORE – KEY BUSINESS-RELATED INCOME TAX CHANGES (1)

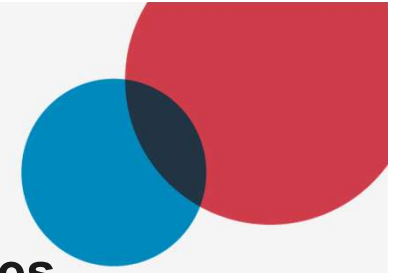


S.13Z “Safe harbour” for trading gains on disposal of shares

Implications of proposed change

- Investment holding structures that invest into a company that holds immovable property outside Singapore (continues to get the foreign-dividend exemption) but will no longer get the s. 13Z safe harbour for exiting the investment at the holdco level

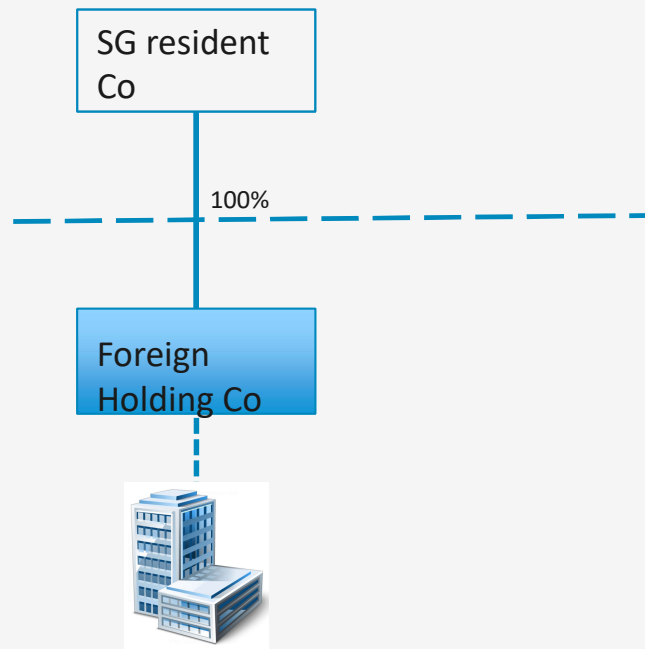
SINGAPORE – KEY BUSINESS-RELATED INCOME TAX CHANGES (1)



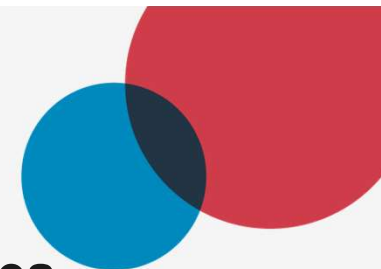
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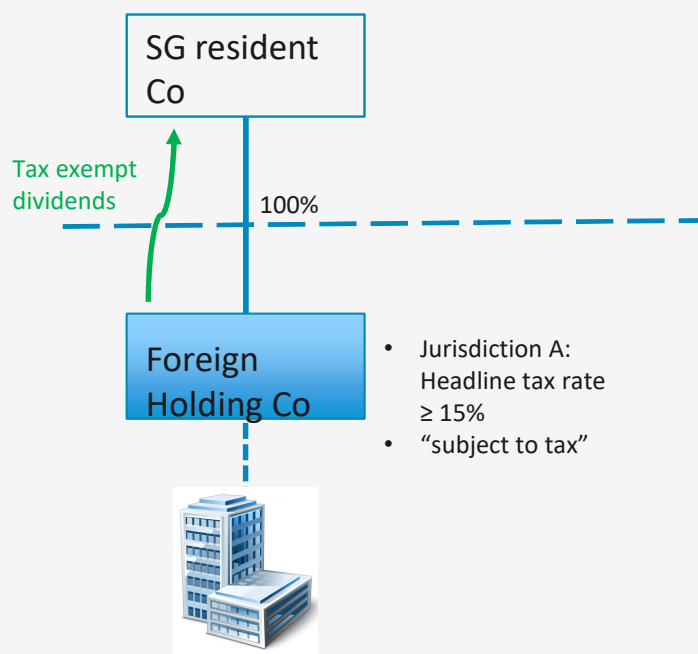
SINGAPORE – KEY BUSINESS-RELATED INCOME TAX CHANGES (1)



S.13Z “Safe harbour” for trading gains on disposal of shares

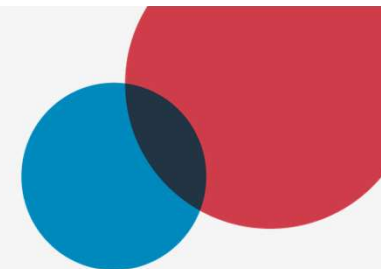
Implications of proposed change

- Investment holding structures that invest into a company that holds immovable property outside Singapore (continues to get the foreign-dividend exemption) but will no longer get the s. 13Z safe harbour for exiting the investment at the holdco level



- Jurisdiction A:
Headline tax rate
≥ 15%
- “subject to tax”

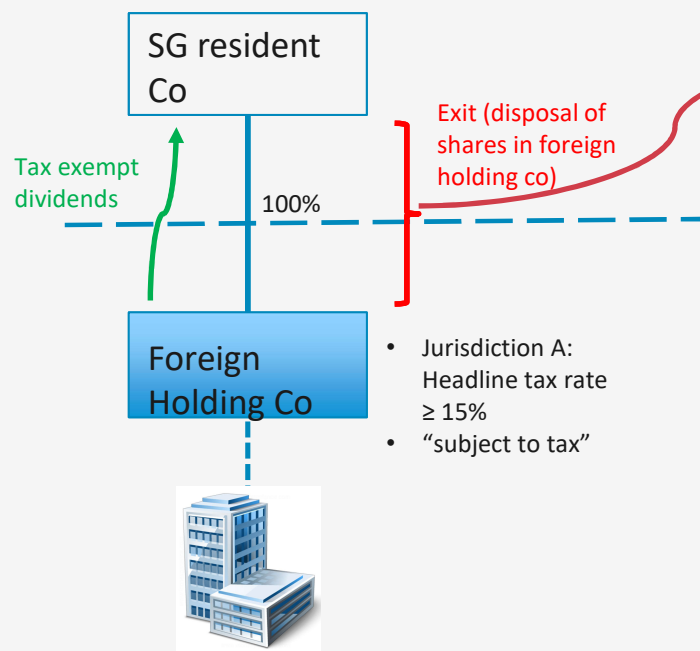
SINGAPORE – KEY BUSINESS-RELATED INCOME TAX CHANGES (1)



S.13Z “Safe harbour” for trading gains on disposal of shares

Implications of proposed change

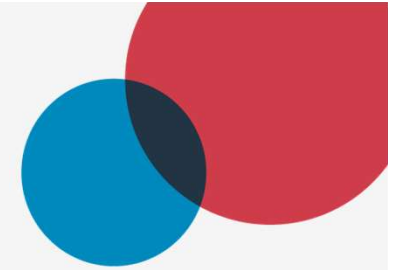
- Investment holding structures that invest into a company that holds immovable property outside Singapore (continues to get the foreign-dividend exemption) but will no longer get the s. 13Z safe harbour for exiting the investment at the holdco level



Whether the gains on the disposal will be subject to tax?

- Traditional analysis of **capital** vs. **trading** gain; or
- SG resident Co enjoys s. 13R or s. 13X tax incentive;
- SG resident Co [going forward no longer can] avail itself to s. 13Z safe harbour

SINGAPORE – KEY BUSINESS-RELATED INCOME TAX CHANGES (2)



Proposed changes to General Anti-Avoidance provisions

3 key proposed changes:

1. Any tax advantage obtained or obtainable by a company incorporated in Singapore, **includes** a qualifying deduction of that company that has been transferred to another company under **group relief**.
2. **Remove the discretion** currently vested in the CIT to disregard or vary an arrangement and make any adjustment that the CIT considers appropriate where he is satisfied that tax avoidance has occurred. Instead, the CIT **must** disregard/vary arrangement and make adjustment if tax avoidance has occurred.
3. **Imposition of surcharge** = 50% of the tax charged

OBSERVATIONS:

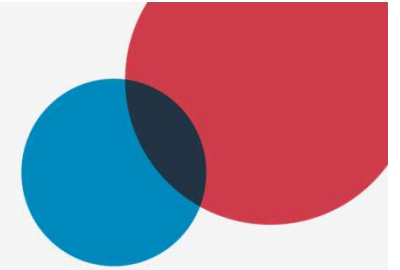


SOUTH KOREA

Presented by
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October 2020

KOREA



General tax developments – 2020 tax law amendment proposal

1. Improvement of Mutual Agreement Procedure (“MAP”)

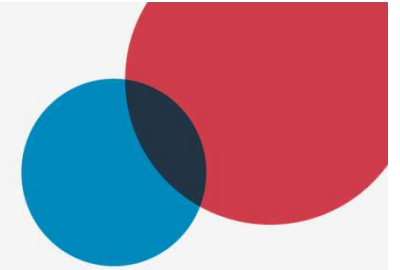
Partial amendment of the requirements for initiation and termination of MAP

- a. Under the current law, once a final court decision is rendered, the taxpayer cannot request initiation of MAP on the same issue, and any MAP that is in process is automatically terminated upon a final court decision.
- b. The proposed amendment introduces an exception to this rule: even if a court issues a final judgment, taxpayers will be able initiate MAP and MAP that is in process will not be terminated.
- c. It should be noted that the proposed amendment is not likely to apply to cases where a Korean court renders its final judgment and a corresponding adjustment has to be made by reducing Korea’s taxing rights.

Prevention of conflicts between court judgments and MAP implementation

- a. Under the current law, even if Korea’s competent authority reaches an agreement with the competent authority of the other contracting state through MAP, it is possible for the taxpayer to implement the mutual agreement and still go through a judicial tax appeal at the same time.
- b. Under the proposed amendment, once an agreement is reached through MAP, as a condition for implementation of the mutual agreement, taxpayers will be required to accept the agreement and withdraw any judicial appeal proceeding relating to the relevant MAP case.

KOREA (CONT'D)



General tax developments – 2020 tax law amendment proposal

1. Improvement of MAP (cont'd)

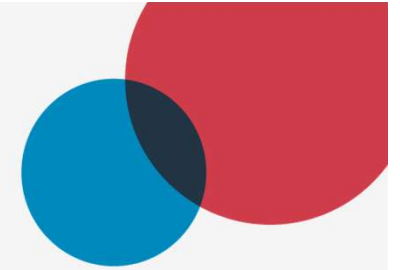
Providing a basis for delegation to arbitration for MAP

- a. The proposed amendment will introduce a new provision in the Law for Coordination of International Tax Affairs (“**LCITA**”), which will allow arbitration, upon application by a taxpayer, of a MAP case that is not finalized within a prescribed period (in the relevant tax treaty) from its commencement.
- b. Currently, none of Korea’s tax treaties includes an arbitration clause. As the new provision will provide a basis for delegation to arbitration, it is expected that an arbitration clause will be introduced in Korea’s tax treaties in the future.

2. Expansion of the scope of passive income in the controlled foreign corporation (“CFC”) regime

- a. Under the current CFC rules, if 5%-50% of the total income of a foreign corporation is investment income derived from holding shares or bonds/receivables, providing intellectual property rights, leasing ship/airplanes/facilities, or investing in investment trusts/funds (i.e., passive income), the CFC rules apply to such passive income.
- b. The proposed amendment will expand the scope of “passive income” in the CFC regime to include not only income derived from holding assets that generate passive income but also income derived from a sale of such assets.

KOREA (CONT'D)



General tax developments – 2020 tax law amendment proposal

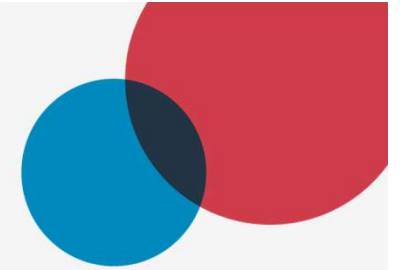
3. Expansion of the scope of foreign related parties

- a. Under the current law, two companies are deemed to be related parties if a third party owns 50% or more of the voting shares in both companies. In applying this criterion for foreign related parties, family affiliation is not taken into consideration.
- b. The proposed amendment will take into consideration not only shares owned by a particular third party but those directly and indirectly owned by families and relatives (such as lineal ascendants and descendants, and spouse) of the third party, for the purpose of counting the indirect shareholding of such third party.

4. Extension of the retroactive application period for Advance Pricing Agreements (“APA”)

- a. Under the current law, the retroactive application period for APAs is limited to a maximum of five years for bilateral APAs and three years for unilateral APAs.
- b. Under the proposed amendment, the retroactive application period will be extended to seven years for bilateral APAs and five years for unilateral APAs.

KOREA (CONT'D)



General tax developments – 2020 tax law amendment proposal

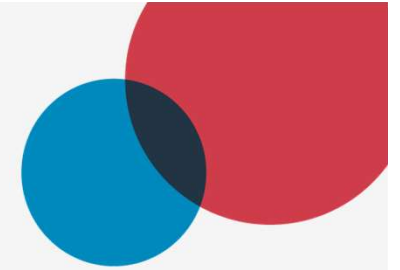
5. Improvement of the hybrid mismatch prevention regime

- a. Under the current law, where a Korean corporation pays interest to a foreign related party in relation to a financial instrument that is treated as debt in Korea but as equity in the foreign related party's country, the Korean corporation cannot claim a tax deduction for the interest paid in the tax year of payment, if the foreign related party is not taxed on the relevant interest income in its country of residence.
- b. Under the proposed amendment, if the foreign related party is not taxed on the interest income in its country of residence, the interest paid by the Korean corporation will first be recognized as a deductible expense in the tax year of payment, and be subsequently included as taxable income in the following tax year.

6. Streamlining documentation requirements & extension of deadlines for submission

- a. The LCITA currently provides that (i) a taxpayer who is obligated to submit a master file and a local file shall be deemed to have submitted a statement of international transactions if a written confirmation of exemption is submitted, (ii) the statement of international transactions, summary income statement, etc. shall be submitted by the filing date of corporate income tax returns, and (iii) the report on foreign financial accounts shall be submitted by the end of June each year and the master file within 12 months from the end of each tax year.

KOREA (CONT'D)



General tax developments – 2020 tax law amendment proposal

6. Streamlining documentation requirements and extension of deadlines for submission (cont'd)

- b. Under the proposed amendment, (i) a corporation submitting a master file and a local file shall be exempt from the obligation to submit a statement of international transactions without separately submitting a written confirmation of the exemption and (ii) the statement of international transactions, summary income statement, etc. will need to be submitted within six months from the end of each tax year.

7. Re-organization of the foreign tax credit system

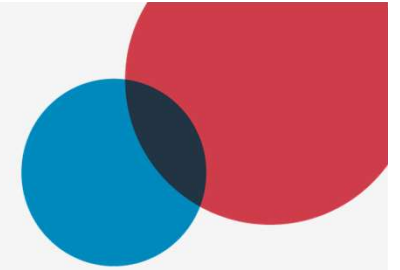
Abolishment of the deduction method for foreign tax paid

- a. Under the current law, taxpayers have an option of receiving a tax credit or tax deduction for foreign tax paid.
- b. The proposed amendment will abolish the deduction method for corporate taxpayers.

Extension of the carryforward period for foreign tax credits & inclusion of unutilized carried forward foreign tax credits in deductible expense

- a. Under the current law, the amount of foreign taxes paid in excess of the foreign tax credit limit (for the relevant year) can be carried forward for up to five years.
- b. The proposed amendment will extend the carryforward period to 10 years, and any foreign tax credits not utilized may be included in deductible expenses in the following year.

KOREA (CONT'D)

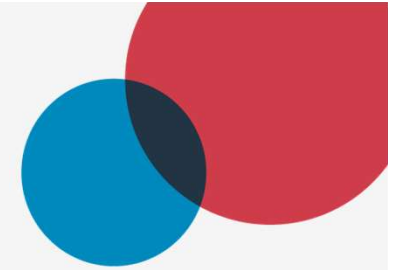


General tax developments – 2020 tax law amendment proposal

- 8. Extension of the obligation to submit a statement of payment (for payment of domestic source income to foreign corporations)**
 - a. Under the current law, only those who pay domestic source income to foreign corporations have an obligation to submit a statement of payment to the tax authority.
 - b. Under the proposed amendment, the list of persons required to submit a statement of payment (for payment of domestic source income to foreign corporations) will include the share issuer in cases where the already issued shares are transferred in the process of stock listing.

- 9. Providing a basis for imposing a penalty for failure to file payment statements on foreign corporations**
 - a. Under the current law, only Korean domestic corporations that have an obligation to submit payment statements are subject to a penalty for failure to file payment statements.
 - b. However, under the proposed amendment, the scope of application of such penalty will be expanded to include a permanent establishment of a foreign corporation that makes payment of domestic source income.

KOREA (CONT'D)



General tax developments – 2020 tax law amendment proposal

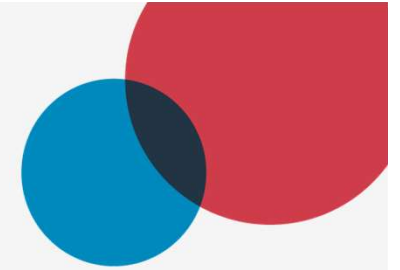
10. Taxation of income derived by foreign corporations from crypto assets

- a. Under the proposed amendment, income derived by foreign corporations from transferring or lending crypto assets will be taxed as “other income.”
- b. The payer of such income will be treated as the withholding agent who will be obligated to withhold the lesser of (i) 11% of the transfer value, or (ii) 22% of the transfer gain (equivalent to the transfer value less the acquisition value), upon payment of such income (withdrawal of the crypto asset or payment).

11. Inclusion of overseas crypto asset transaction accounts in the scope of the foreign financial account report (“FFAR”)

- a. Under the current law, the scope of foreign financial assets covered by the FFAR obligation includes bank accounts,, securities accounts and financial derivatives accounts.
- b. The proposed amendment will add to the above scope accounts created for transactions involving crypto assets and other similar assets.

KOREA (CONT'D)



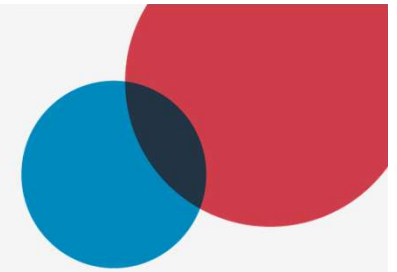
General tax developments – 2020 tax law amendment proposal

12. Re-organization of the special tax regime for foreign engineers

- a. Under the current tax law, a person who is a non-Korean national and is employed by an R&D center of a foreign invested company as an engineer is eligible for a 50% reduction in income tax for five years.
- b. The proposed amendment tightens this benefit by adding the following requirements: eligible engineers will need to hold at least a Bachelor's degree in science and technology and have at least five years of work experience at a foreign science and technology research institution.
- c. On the other hand, the proposed amendment will also expand the scope of employers to include R&D centers of Korean domestic corporations, and government-funded research institutions.

13. Change of the record date for calculation of interest on national tax refund

- a. Under the current law, where a national tax refund is paid to a taxpayer pursuant to an application for tax refund, the interest accrued on national tax refund is to be calculated from the date of application (claim) for the refund.
- b. The proposed amendment will change such record date (i.e. interest accrual starting date) to be the date of original tax payment regardless of the date of claim.



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THANK YOU FOR ATTENDING, SEE YOU NEXT WEEK!

Please email taxand@taxand.com with your enquiry.



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