

**ASIA UPDATES
WEBINAR**

THURSDAY 21 JANUARY

Your global tax partner

INDIA

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INDIA - DIRECT TAXES



Further Extension of due date for tax and other compliances

Relaxation in filing of return of income

Particulars	Existing extended due-date	Revised due-date
Furnishing return of income for Assessment Year (AY) 2020-21	31 January 2021	15 February 2021
Furnishing of tax audit/ transfer pricing report	31 December 2020	15 January 2021

Relaxations in filing of withholding tax return

Particulars	Existing due-date	Revised due-date
Withholding tax return for quarter ending June 2020/ September 2020	31 July 2020/ 31 October 2020	31 March 2021
Withholding tax return for quarter ending December 2020/ March 2021	31 January 2021/ 30 May 2021	No extension

Other Compliances

Particulars	Existing due-date	Revised due-date
Completion/compliance of actions under the 'Vivad Se Vishwas' Scheme	31 December 2020	31 January 2021
Payment of disputed tax	31 December 2020	31 March 2021

INDIA - DIRECT TAXES



Recent Circular and Notifications

Tax deduction and collection – clarificatory guidelines

- ❖ CBDT has issued guidelines to provide clarity on the applicability of TDS provisions on e-commerce operators under Section 194-O and TCS provisions on sale of goods under Section 206(1H)

TDS

- ❖ TDS not applicable on transactions in securities and commodities undertaken through stock exchange
- ❖ Payment gateway not liable to TDS, if e-commerce operator has deducted TDS
- ❖ For subsequent years, insurance agent or aggregator not liable to TDS, if there is no involvement from them

TCS

- ❖ TCS not applicable on transactions in securities and commodities undertaken through stock exchange
- ❖ TCS under Section 206C(1H) not to apply to sale to consumer on receipt of consideration exceeding INR 10 lakhs, if such sales are subject to TCS under Section 206C(1F)
- ❖ TCS under Section 206C(1H) shall not apply to sale consideration received for fuel supplied to non-resident airlines at airports in India
- ❖ For TCS, no adjustment is required for sales return, discount, GST

INDIA - DIRECT TAXES



❖ Faceless Assessment Scheme

- Government of India has issued a series of notifications/ press release to implement the faceless assessment scheme. Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA) has legislated these provisions vide new Section 144B which has been inserted with effect from 1 April 2021.
- The scope of the faceless mechanism has been widened to conduct other income-tax proceedings, which *inter alia* includes transfer pricing proceedings, DRP, rectifications, giving effect to an appeal order, TDS proceedings, etc. Faceless Appeal Scheme 2020 has also been notified.
- Faceless Penalty Scheme 2021 dated 12 January 2021 has also been notified. The scheme is intended to impart greater efficiency, transparency and accountability by eliminating the interface between the tax authority and the taxpayer or any other person to the extent technologically feasible.

CBDT notifies Equalisation Levy (Amendment) Rules, 2020

- ❖ Amends the Equalization Levy Rules, 2016 to consider the changes brought by the Finance Act, 2020 i.e., applicability of Equalisation Levy on e-commerce supply of goods or services by non-resident e-commerce operators

INDIA - DIRECT TAXES



Recent judicial precedents

Discount on issue of shares under ESOP scheme is allowable as a business expenditure

- ❖ Recently, the Karnataka High Court (**HC**) in case of *Biocon Ltd* dealt with the issue of allowability of discount (i.e. difference between the grant price and market price of the shares on the date of grant of options) on the issue of ESOPs as a business expenditure.
- ❖ The HC observed that the expression 'expenditure' will also include a loss and therefore, issuance of shares at a discount where the taxpayer absorbs the difference between the price at which shares were issued and the market value of the shares should be treated as an expenditure incurred for the purpose of Section 37(1) of the IT Act.

Mastercard not required to pay Equalisation Levy (EL)

- ❖ Delhi HC disposed off *Mastercard Aisa Pacific Pte Ltd's* application seeking stay of EL payments in view of the affidavit filed by the TO wherein it categorically accepted that
 - No EL is payable by the taxpayer, as it has a PE in India;
 - The department has no desire of collecting the EL in respect of income tax already been paid by the taxpayer, either by way of TDS or advance tax; and
 - In case taxpayer succeeds in the writ petition, it would be eligible to receive income-tax refund along with statutory interest and at that time, Mastercard would be liable to pay EL with interest.

INDIA - DIRECT TAXES



Recent judicial precedents

Mauritius company did not constitute a fixed or an agency permanent establishment (PE) in India

- ❖ The Mumbai Tribunal in case of **Overseas Transport Co Ltd** held that none of the conditions specified under Article 5(1) of the tax treaty were satisfied. Further, the taxpayer did not have permanent infrastructure, office, supervisory office, tangible and intangible assets in India so as to constitute a fixed placed PE under Article 5(1) of the tax treaty.
- ❖ The Tribunal rejected TO's allegation of constituting fixed place PE under Article 5(1) as its place of effective management is in India, in absence of cogent evidence.
- ❖ Tribunal held that the taxpayer did not constitute an agency PE in India since the Indian agents were not exclusively working for the taxpayers and services rendered were in the ordinary course of their business.

Dividend distribution tax (DDT) cannot exceed the tax treaty rate

- ❖ The Delhi Tribunal in case of **Giesecke & Devrient (India) Pvt Ltd** held that DDT cannot exceed the rate for taxation of dividend as specified under Article 10 of the India-Germany tax treaty in respect of dividend paid to a German shareholder.
- ❖ The Tribunal noted that DDT is levied on the dividend income of the shareholders, despite it being a tax 'on the company' and not 'on the shareholder', which was introduced only for the purpose of convenience.
- ❖ The Tribunal took note of plethora of judicial precedents and Memorandum to Finance Bill 1997, 2003 and 2020 and held that the tax rates specified under the India-Germany tax treaty in respect of dividend must prevail over rate of DDT under Section 115-O of the IT Act.

INDIA - DIRECT TAXES



Recent judicial precedents

Non-voluntary gift of shares is liable to capital gains tax

- ❖ Recently, Madras HC in case of *Redington (India) Limited* held that an inter-company gift of shares made as part of a corporate restructuring exercise was not a valid gift and should be subject to capital gains tax under Section 45 of the IT Act.
- ❖ HC noted that that neither in the board resolutions, nor in the deeds of share transfer, was there any mention of the word 'gift' or any other terms to indicate that the parties intended for the 'transfer to be a gift' instead the words used in the resolution were 'with or without consideration'
- ❖ The Court also found that along with the requisite element of voluntariness, the element of absence of consideration was also missing as the transaction was structured to accommodate the third-party investor, who had placed certain conditions even prior to effecting the transfer.
- ❖ Based on chains of event, HC affirmed the finding of the TPO that incorporation of companies in Mauritius and Cayman Island was only to serve as conduit companies for the purpose of avoiding tax in India. The HC also held that the transaction is a circular transaction and a measure adopted to avoid tax.
- ❖ HC rejected taxpayer's contention that in the absence of any consideration, capital gains tax could not be levied due to failure of computation mechanism, thereby distinguished reliance on SC judgment in case of *B.C.Srinivasa Shetty*.

INDIA - DIRECT TAXES



Other updates

CBDT releases tax treaties with multilateral instrument ('MLI') synthesised text

- ❖ CBDT released MLI synthesized text for India's tax treaties with Portuguese, Netherlands and Cyprus to implement measures for the prevention of Base Erosion Profit Shifting (BEPS).

India challenges Vodafone Arbitration ruling in Singapore Court

- ❖ The Indian government has challenged the International Arbitral Tribunal's verdict in favour of *Vodafone International Holdings B. V* in the retrospective tax dispute case in Singapore Court. The tax dispute involves an amount of approximately \$2 billion.

Cairn wins international arbitration under India- UK Bilateral Investment Treaty (BIT)

- ❖ The International Arbitral Tribunal has ruled in favour of Cairn and has held that Indian government had breached its obligations under the India-UK BIT. The Arbitral Tribunal has directed the Indian government to compensate Cairn the total harm suffered as a result of its breaches of the Treaty.



INDONESIA

Novilia Bunaidi
Partner
PB Taxand, Indonesia



**JOB CREATION LAW
– TAXATION CLUSTER**

BACKGROUND

5 October 2020 → Officially passed as law by Indonesian Parliament
2 November 2020 → Signed into Law by President Joko Widodo becoming
Job Creation Law No. 11 Year 2020
(commonly known as “**Omnibus Law**”)

Job Creation Law – Taxation Clusters (Chapter VII)
Comprising changes on:

1

General Provisions and Tax Procedures Law No. 6 Year 1983 last amended through General Provisions and Tax Procedures Law No. 16 Year 2009

2

Income Tax Law No. 7 Year 1983 last amended through Income Tax Law No. 36 Year 2008

3

VAT Law No. 8 Year 1983 last amended through VAT Law No. 42 Year 2009

BACKGROUND

Job Creation Law was prepared to simplify the prevailing Laws including Taxation Laws in order to improve ease of doing business in Indonesia, which is eventually expected to:

1

Strengthen the Indonesian economic condition

2

Create more job opportunities for Indonesian people



OBJECTIVE IN TAXATION CLUSTER

1

To boost investments in Indonesia, which will eventually impact the total of tax collection

2

To Increase tax compliance level

3

To increase legal certainty for Taxpayers

4

To create fairness/ level playing field



1. TO BOOST INVESTMENT IN INDONESIA



Law No. 2/2020 (16 May 2020)

Stipulation of Government Regulation in Lieu of Law Number 1 Year 2020 regarding State Financial Policy and Financial System Stability for Handling Corona Virus Disease 2019 (Covid-19) Pandemic and/or in the Context of Facing Threats that Harm National Economy and/or the Financial System Stability to Become Law

1. Lowering CIT rate gradually

- 22% (2020 and 2021)
- 20% (2022 onwards)

2. Lowering CIT rate for listed companies by 3% of regular CIT rate

1. TO BOOST INVESTMENT IN INDONESIA



1

No Income Tax imposed on onshore dividend

2

Offshore dividends and income after tax **will be exempted** from Income Tax as long as it is **invested or used for business purposes in Indonesia**

3

Additional Non-Taxable Income Object : Cooperative profit sharing, Hajj Funds managed by BPKH, Surplus earnings received / obtained from Social and/or Religion Institutions

4

Possibility for **adjustment on Article 26 Income Tax on interest**

5

Capital Injection in the form of assets will not be a VAT Object

INCOME TAX

Tax on Dividend

Onshore Dividend

There will be no Income Tax imposed on Onshore Dividend if the dividend is received by:

- a. A corporate Indonesian Taxpayer
- b. An Individual Indonesian Taxpayer, as long as it is invested in Indonesia for a certain period

Offshore Dividend

There will be no Income Tax imposed on Offshore Dividend **and income after tax of an offshore PE**, if it is invested in Indonesia for a certain period and derived from:

- a. An offshore **Go Public** company
- b. An offshore **Private** company

IF the amount of dividend invested is equal to a minimum 30% of the total net income after tax

INCOME TAX

Tax on Dividend

Illustration 1

Net Income after tax of an offshore private company = \$ 1000
The company only has 1 Indonesian Taxpayer as the shareholder (100%)

Condition I

- Dividend = \$ 300
- It is invested in Indonesia

- All dividend amounting \$ 300 will be exempted from Income Tax

Condition II

- Dividend = \$ 300
- Amounting \$ 100 invested in Indonesia

- \$ 100 will be exempted from Income Tax.
- \$ 200 will object to Income Tax

Condition III

- Dividend = \$ 200
- It is invested in Indonesia

- \$ 200 will be exempted
- \$ 100 which *should have been paid* as dividend will be object to Income Tax (30% threshold)

INCOME TAX

Tax on Dividend

Illustration 2

Net income after tax of the offshore private company = \$ 1000
Dividend distributed = \$ 200
The Indonesian shareholder only owned **70%** of the company's shares
Only \$ 120 is invested in Indonesia

Dividend amounting to \$ 120 is exempted from Income Tax

Income Tax will be imposed on a total of \$ 90

Dividend payable – Distributed Dividend

$$(30\% \times 70\% \times \$1000) - (70\% \times \$200) = \$ 70$$

Distributed Dividend – Invested Dividend

$$(70\% \times \$200) - \$120 = \$ 20$$

INCOME TAX

Tax on Offshore Income from a Non-PE

Offshore Income

There will be **no Income Tax imposed on Offshore Income from a non-PE** if:

- it is invested in Indonesia;
- for a certain period; and
- meet the following criteria:
 - a. Income is derived from a business activity offshore; and
 - b. The income is not from an offshore company owned by the domestic taxpayer

2. TO INCREASE TAX COMPLIANCE LEVEL

1 Relaxation on right to claim Input VAT for VAT Entrepreneurs



- ## 2
- Adjustments on
- Tax Administrative Sanctions
 - Interest Compensation

GENERAL PROVISIONS AND TAX PROCEDURES



Adjustments on Tax Administrative Sanction

Administrative sanction for **monthly interest** will refer to a reference of interest rate set by Minister of Finance, plus an “***Uplift Factor***”, divided by 12 months depending on the wrongful actions made by Taxpayer, for a **maximum of 24 months**

Administrative sanction fine 2% of Tax Base for Taxable Entrepreneur who is not issued Tax Invoice or not fill out the Tax Invoice completely **decreasing to 1% of Tax Base**

Administrative sanction in the form of an increase amounting 50% Article 8 paragraph (5) **changes to interest sanction**

Administrative sanction in the form of an increase amounting 200% from the underpaid amount stipulated through the issuance of Tax Underpayment Assessment Letter (Article 13A) **is deleted**

GENERAL PROVISIONS AND TAX PROCEDURES



Adjustments on Tax Administrative Sanction

Administrative sanction for **disclosure of wrongful actions** based on Article 8 Paragraph (3) of Tax Law No. 28 Year 2007 is decreased to 100% of total Tax Payable

(previously 150%)

Administrative sanction to stop a **Tax Criminal Investigation** is now 300% of tax payable/underpaid/ should not be refunded

(previously at 400%)

Adjustment Interest Administrative Sanction and increase on VAT/VAT on luxury goods investigation, **now only 1 (one) type of sanction is applied for highest value**

3. TO INCREASE LEGAL CERTAINTY FOR TAXPAYERS



1 Criteria of Tax Subjects for Individuals

2 Sale of coal is considered as a delivery of Taxable Goods

3 Consignment will not be considered as delivery of Taxable Goods

4 Surplus earnings of Social and/or Religious Institutions are not Income Tax objects

3. TO INCREASE LEGAL CERTAINTY FOR TAXPAYERS



5

Tax Assessment Letter shall not be issued on **tax criminal cases** which already have **final decision from the Court**

6

Statute of limitation for issuance of **Tax Collection Letter** is **5 years**

7

Tax Collection Letter will be issued to collect **Interest Compensation** which should have not been received by a Taxpayer

INCOME TAX

Criteria of Tax Subject for Individuals

Individuals
(Indonesian
citizen and
Foreigners)
who stay in
Indonesia
> 183 days

Will be considered as **Domestic Tax Subject**

Foreigners with special expertise, who are considered as Domestic Tax Subjects, only have to **pay Income Tax** on **Income received in Indonesia** for the first **4 Fiscal Years**.

INCOME TAX

Criteria of Tax Subject for Individuals

Individuals
(Indonesian
citizen and
Foreigners)
who stay in
Indonesia
< 183 days

May be considered as **Offshore Taxpayer**,
if meet certain requirements

Certain requirements as follows:

1. Residence;
2. Center of vital interest;
3. Habitual abode;
4. Status of Tax Subject; and/or
5. Other requirements to be regulated in MoF Regulation



4. TO CREATE FAIRNESS / LEVEL PLAYING FIELD

pbTaxand

LIST OF THE 46 FOREIGN DIGITAL COMPANIES that are 10% VAT Collector in INDONESIA

AS OF AUGUST 1, 2020
PRESS RELEASE NO. SP-29/2020

1. Amazon Web Services Inc.
2. Google Asia Pacific Pte. Ltd.
3. Google Ireland Ltd.
4. Google LLC
5. Netflix International BV
6. Spotify AB

AS OF OCTOBER 1, 2020
PRESS RELEASE NO. SP-41/2020

1. LinkedIn Singapore Pte. Ltd.
2. McAfee Ireland Ltd.
3. Microsoft Ireland Operations Ltd.
4. Mojang AB
5. Novi Digital Entertainment Pte. Ltd.
6. PCCW Vuclip (Singapore) Pte. Ltd.
7. Skype Communications SARL
8. Twitter Asia Pacific Pte. Ltd.
9. Twitter International Company
10. Zoom Video Communications, Inc.
11. PT Jingdong Indonesia Pertama
12. PT Shopee International Indonesia

AS OF NOVEMBER 1, 2020
PRESS RELEASE NO. SP-43/2020

1. Alibaba Cloud (Singapore) Pte. Ltd.
2. GitHub, Inc.
3. Microsoft Corporation
4. Microsoft Regional Sales Pte. Ltd.
5. UCWeb Singapore Pte. Ltd.
6. To The New Pte. Ltd.
7. Coda Payments Pte. Ltd.
8. Nexmo Inc.

AS OF SEPTEMBER 1, 2020
PRESS RELEASE NO. SP-35/2020

1. Facebook Ireland Ltd.
2. Facebook Payments International Ltd.
3. Facebook Technologies International Ltd.
4. Amazon.com Services LLC
5. Audible, Inc.
6. Alexa Internet
7. Audible Ltd.
8. Apple Distribution International Ltd.
9. Tiktok Pte. Ltd.
10. The Walt Disney Company (Southeast Asia) Pte. Ltd.

AS OF DECEMBER 1, 2020
PRESS RELEASE NO. SP-47/2020

1. Cleverbridge AG Corporation
2. Hewlett-Packard Enterprise USA
3. Softlayer Dutch Holdings B.V. (IBM)
4. PT Bukalapak.com
5. PT Ecart Webportal Indonesia (Lazada)
6. PT Fashion Eservices Indonesia (Zalora)
7. PT Tokopedia
8. PT Global Digital Niaga (Blibli.com)
9. Valve Corporation (Steam)
10. beIN Sports Asia Pte Limited

SOURCE: DJEN PAJAK RI

4. TO CREATE FAIRNESS/ LEVEL PLAYING FIELD



ID Number (called as “NIK”) should be stated in Tax Invoices if the buyer of Taxable Goods and/or services has no Tax ID Number (“NPWP”)



MALAYSIA



Thisha Gunasilan
Director
Tricor Taxand, Malaysia



**2021
MALAYSIAN
BUDGET**

BUDGET 2021 ANALYSIS

Largest budget in Malaysian history at RM322.54 billion



- ❖ An increase of RM7.8b from Budget 2020 (RM314.7)

Key backdrop to Budget 2021



- ❖ Covid-19 impact on economy
- ❖ Challenging global economic environment

Debt ceiling raised from 55% to 60%



- ❖ Part of temporary measures to mitigate economic fallout due to the Covid-19 pandemic

GDP growth of 6.5% - 7.5% in 2021



- ❖ Is this a realistic forecast in view of the on-going Covid-19 pandemic?

BUDGET 2021 HIGHLIGHTS



01
Special incentive package for high value-added technology (RM1bil)

02
Comprehensive study of existing tax incentives (c/f from 2020)

03
Tax incentive for non-resource based R&D product commercialisation activities

04
Focus on digital economy

05
Extension for tax incentives under PENJANA

06
Preferential tax rate of 0 to 10% for pharmaceutical manufacturers to invest in Malaysia

07
Tax rate of 10% for Global Trading Centre for a period of 5 years and renewable for another 5 years

08
Principal Hub extended for another 2 years

09
Increased personal tax relief



**TAX
INCENTIVES**

APPROVED INCENTIVE SCHEME (AIS)



REVIEW OF TAX INCENTIVES – RELOCATION OF MANUFACTURING OPERATIONS TO MALAYSIA & UNDERTAKING NEW INVESTMENTS



Existing

- ❖ Special tax incentive introduced under the National Economic Recovery Plan (PENJANA) to attract investors to relocate their **manufacturing facilities*** to Malaysia



* Except for selected industries

New Companies	Existing Companies
Investment in fixed assets of RM300m – RM500m : 0% tax rate for 10 years	Investment in fixed assets > RM500m : 100% Investment Tax Allowance for 5 years
For capex > RM500m : 0% tax rate for 15 years	

REVIEW OF TAX INCENTIVES – RELOCATION OF MANUFACTURING OPERATIONS TO MALAYSIA & UNDERTAKING NEW INVESTMENTS (CONT'D)



Proposed

- ❖ Scope of incentive **widened** to include the following services:



Technology solution



Research & development / design and development activities



Infrastructure & technology for cloud computing



Medical devices testing laboratory & clinical trials



Any services or manufacturing related services determined by MOF

- ❖ Tax incentives are **reviewed** as follows:
 - New companies – 0% to 10% tax rate for 10 years
 - Existing companies with new services segment – 10% tax rate for 10 years
- ❖ Manufacturing sector: Applications received by MIDA until **31 December 2022**
- ❖ Selected services sector: Application received by MIDA from **7 November 2020 until 31 December 2022**



TRANSFER PRICING

FAILURE TO FURNISH CONTEMPORANEOUS TP DOCUMENTATION



Existing

- ❖ **No** specific penalty for failure to furnish TP Documentation

Proposed

- ❖ Failure to furnish TP Documentation:

On conviction:

- ❖ Fine of **RM20,000 – RM100,000** /prison term up to 6 months/both; and

- ❖ Furnish TP Documentation within period / period decided by Court

If no prosecution:

- ❖ Penalty of **RM20,000 – RM100,000**

May appeal to SCIT

Effective from 1 January 2021

POWER TO DISREGARD & RE-CHARACTERISE A CONTROLLED TRANSACTION



Existing

Rule 8 of the Income Tax (TP Rules) 2012

DG has the power to **disregard and re-characterise structure** in a controlled transaction, where:



economic substance of transaction \neq form



arrangements made in relation to controlled transactions \neq that which would have been adopted by third parties behaving in a commercially rational manner

Proposed

Insertion of **Rule 8** into ITA

DG can make **adjustments to the structure as he thinks fit**

Effective from 1 January 2021

SURCHARGE ON TP ADJUSTMENT



Existing



- ❖ Penalty under S113(2) based on **tax undercharged** resulting from TP adjustments



- ❖ For non-taxable cases, **no** penalty can be imposed (despite TP adjustments)

Proposed

- ❖ **Surcharge** imposed on TP adjustments on all cases **whether taxable or not**

- ❖ Rate: $\leq 5\%$ of total TP adjustment

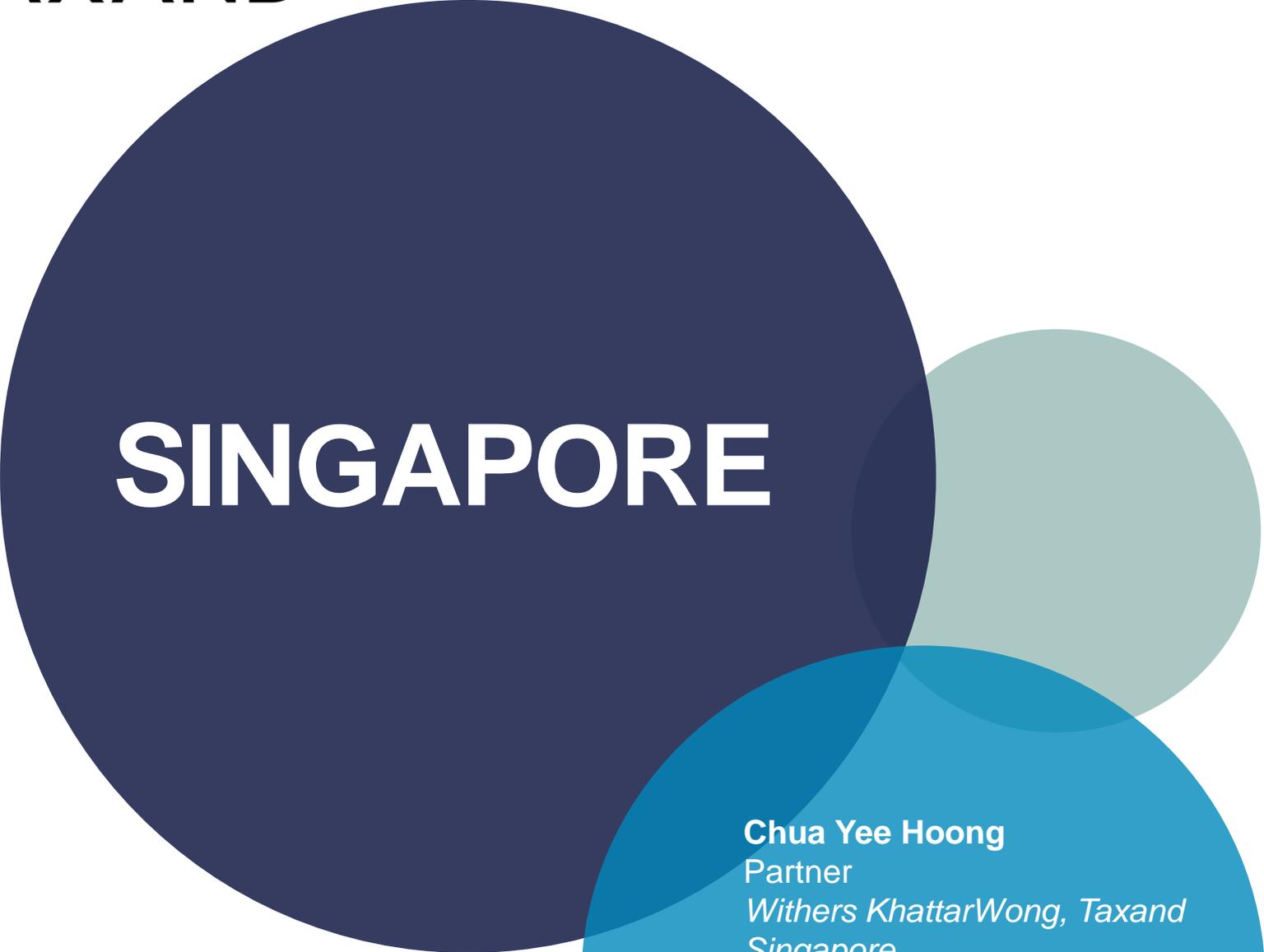
DG has power to abate/remite surcharge

Effective from 1 January 2021

ILLUSTRATION



Description	Existing	Proposed
	(RM'000)	(RM'000)
Adjusted income	80,000	80,000
Add: TP adjustment [A]	20,000	20,000
	100,000	100,000
Less: Capital allowance	(60,000)	(60,000)
Less: Investment tax allowance	(50,000)	(50,000)
Chargeable income	NIL	NIL
Tax payable @ 24%	NIL	NIL
Penalty rate @ 30% [S 113(2)]	NIL	NIL
Surcharge @ 5% on TP adjustment [A x 5%]	-	1,000
Total additional tax + surcharge	NIL	1,000



SINGAPORE

Chua Yee Hoong

Partner

*Withers KhattarWong, Taxand
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SINGAPORE



Today's session focuses on 2 topics:

- Changes to the “safe harbour” tax exemption on trading gains and its impact on Singapore as an investment holding company jurisdiction.
- Whether transfer pricing adjustment necessitates a GST (indirect tax) adjustment.

SINGAPORE

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

Previous

- 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

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

Previous	Current (effective 7 Dec 2020)
<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">Sunset date extended 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 <u>Singapore immovable property (but not incl. property developing companies)</u>	<p><u>Exclusions (starting on 1 June 2022)</u></p> <p>Where the target co is an unlisted company that</p> <ul style="list-style-type: none">Is trading in or principally carries on activity of holding immovable property <u>whether in Singapore or outside Singapore</u>Has undertaken property development <u>unless</u><ul style="list-style-type: none">the property developed is for use by it to carry on its own business (e.g. letting, but not the business of trading in properties), andthe target co did not develop property for least 60 consecutive months before the disposal of shares)

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Implications

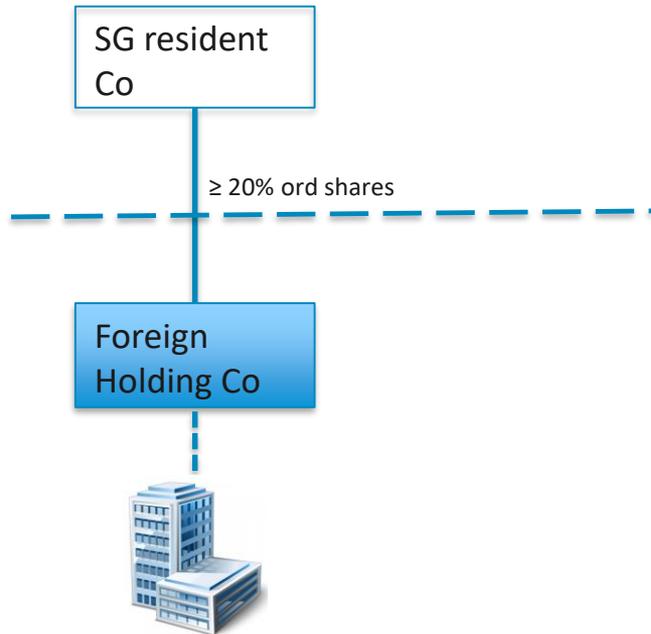
- ❖ Generally, Singapore's position as a viable holding company jurisdiction is still intact:
 - One-tier tax exempt dividend to SingCo's shareholders.
 - Tax exemption for certain foreign-sourced income received in Singapore by a resident SingCo (e.g. foreign dividends) subject to certain conditions
 - Tax treaty network
 - Others: ease of incorporation (or possibility of inward domiciliation), stable environment.
- ❖ Insofar as investment in foreign entities that hold real estate is concerned, all the above still hold true. 13(8) tax exemption for certain foreign-sourced income (e.g. foreign dividend) remains intact.
- ❖ The change of s. 13Z 'safe harbour' only affects the tax analysis re exiting the investment in the real-estate holding foreign entity.

See illustration in the next slides.

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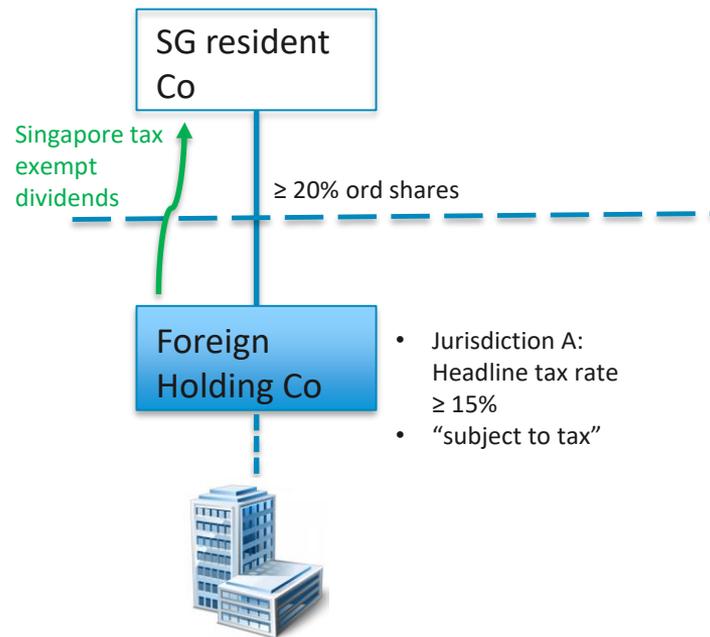
S.13Z “Safe harbour” for trading gains on disposal of shares



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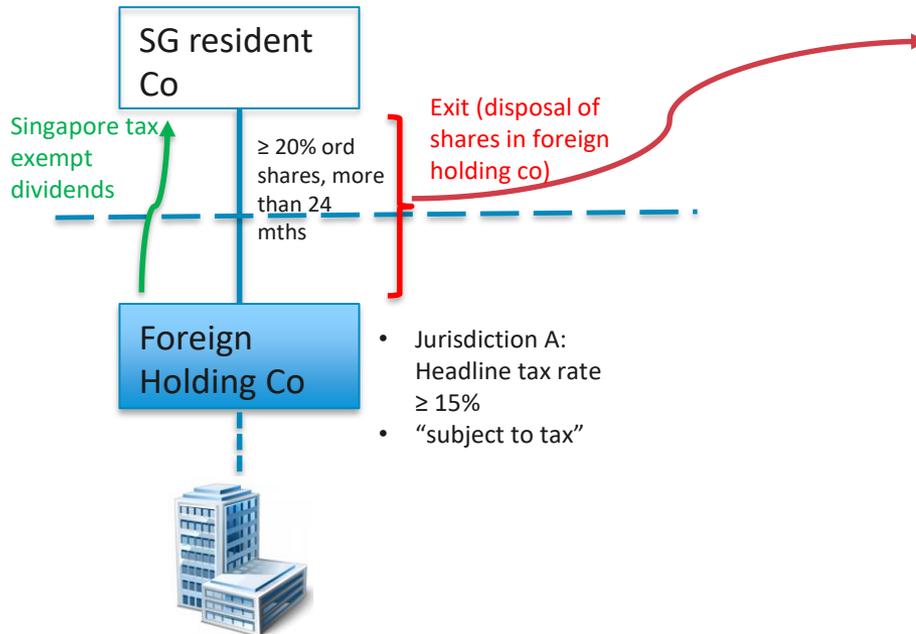
S.13Z “Safe harbour” for trading gains on disposal of shares



SINGAPORE



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

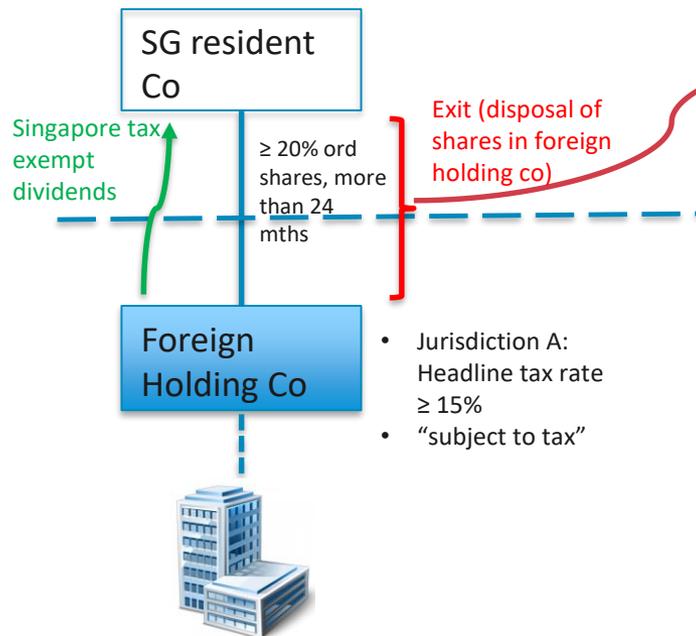


Whether the gains on the disposal of shares in Foreign Holding Co will be subject to tax?

SINGAPORE



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



Whether the gains on the disposal of shares in Foreign Holding Co will be subject to tax?

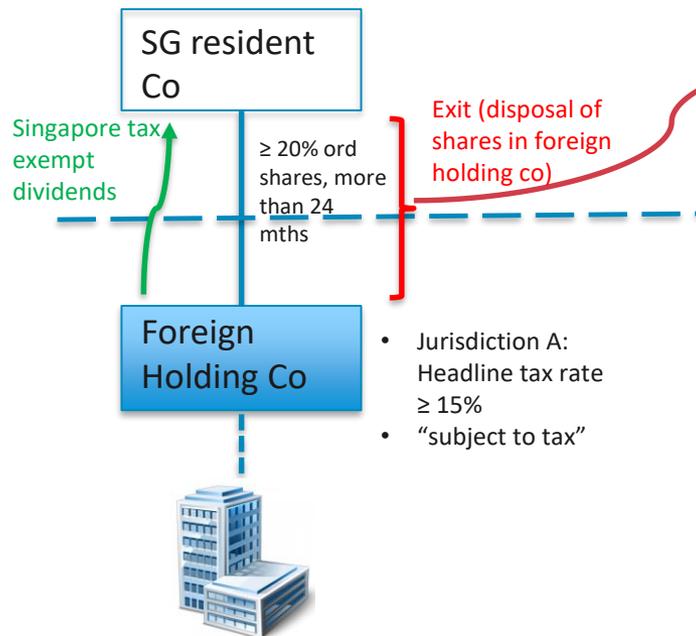
- Traditional analysis of **capital** vs. **trading** gain;

If capital gain -> no Singapore tax.

SINGAPORE



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



Whether the gains on the disposal of shares in Foreign Holding Co will be subject to tax?

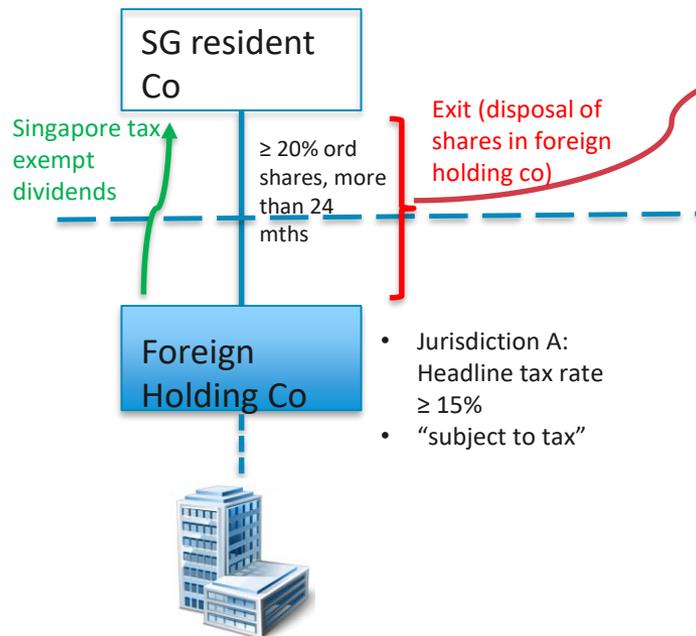
- Traditional analysis of **capital** vs. **trading** gain;

If capital gain -> no Singapore tax.
If trading gain -> whether s. 13Z provides the safe harbour exemption.

SINGAPORE



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



Whether the gains on the disposal of shares in Foreign Holding Co will be subject to tax?

- Traditional analysis of **capital** vs. **trading** gain;

If capital gain -> no Singapore tax.

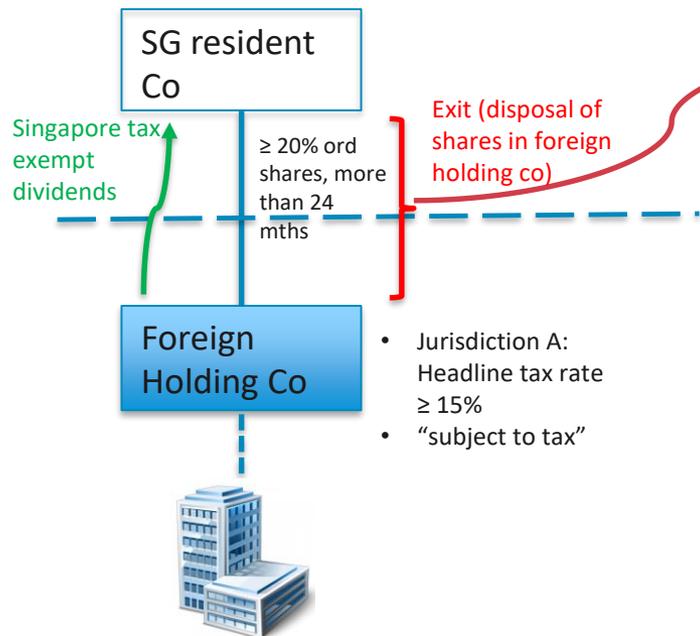
If trading gain -> whether s. 13Z provides the safe harbour exemption. -> will not be exempt under s. 13Z if Foreign Holding Co is:

- (a) in the business of trading immovable properties; or
- (b) principally carries on the activity of holding immovable properties; or
- (c) has undertaken property development (except if the property is developed for the company’s use in carrying on its trade (e.g. letting, but not the trading of immovable properties) and it has not undertaken property development for at least 60 consecutive months prior.

SINGAPORE



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



Whether the gains on the disposal of shares in Foreign Holding Co will be subject to tax?

- Traditional analysis of **capital** vs. **trading** gain;
If capital gain -> no Singapore tax.
If trading gain -> whether s. 13Z provides the safe harbour exemption- > will not be exempt under s. 13Z if Foreign Holding Co is:

- (a) in the business of trading immovable properties
- (b) principally carries on the activity of holding immovable properties
- (c) has undertaken property development (except if the property is developed for the company’s use in carrying on its trade (e.g. letting, but not the trading of immovable properties) and it has not undertaken property development for at least 60 consecutive months prior.

Other possible tax exemptions: whether SG resident Co enjoys s. 13R or s. 13X tax incentive

INTERACTION BETWEEN TRANSFER PRICING AND GST?



Background:

- **Corporate income tax** and **goods and services tax (GST)** are different types of taxes, designed for different purposes.

INTERACTION BETWEEN TRANSFER PRICING AND GST?



Background:

- **Corporate income tax** and **goods and services tax (GST)** are different types of taxes, designed for different purposes.

Briefly:

Corporate income tax	GST
<ul style="list-style-type: none">• tax on the assessment of overall profit and loss,• of <u>a taxpayer</u>,• taking into account the risks and functions assumed,• at standard corporate tax rate	<ul style="list-style-type: none">• tax on <u>each supply</u> (time, place and value of supply)• In-scope supplies, out-of-scope supplies, exempt supplies• invoicing-focused• Input GST credit system• Standard-rate vs. zero-rate



Income Tax Act

- CIT empowered to adjust where **related parties** do not transact at **arms-length**
- **‘Arms-length’**: i.e. dealing as how unrelated parties would in comparable circumstances
- **‘Related parties’** in relation to a person, means any other person who, directly or indirectly, **controls** that person, or **is controlled**, directly or indirectly, by that person, or where he and that other person, directly or indirectly, are under the **control** of a common person
- Transfer pricing (TP) documentation mandatory in certain cases
- TP adjustments to meet arms-length requirement

Goods and Services Act



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Goods and Services Act

- **Value of supply**: s. 17
 - = amount (plus GST) that is equal to the consideration (for non-reverse charge supplies, and supplies where consideration is wholly in money); or
 - = open market value
- Third Schedule: CGST is empowered, subject to a time bar of 3 years, to direct value to be open market value if the supplier and recipient are **'connected persons'**
- **'Open market value'**
 - Amount as if the supply were for consideration in money as would be payable by a person who has no relationship with any person which would affect that consideration
- **'connected persons'** – broader.
 - Eg. family members, trustee and settlor, in a partnership a partner can be 'connected' to another partner or partner's spouse. In the context of company – company is connected to another person if that person has control of it, or persons connected with him have control of it. 'Control' is properly defined in the context of companies

INTERACTION BETWEEN TRANSFER PRICING AND GST?



Question: Whether transfer pricing (TP) adjustments for income tax purposes requires a corresponding adjustment for Goods and Services Tax (GST) purposes?

GST – TRANSFER PRICING ADJUSTMENTS



- **The IRAS administrative position** (IRAS e-Tax Guide published on 9 November 2020):
 - Generally need to make corresponding GST adjustments if
 - the TP adjustment results in an increase in price of supply or import, and
 - The TP adjustment is effected through the FS, OR
 - the TP adjustment is taxable or allowable for income tax purposes
 - the TP adjustment results in a decrease in the price of supply or import, and
 - The TP adjustment is effected through the FS, AND
 - The TP adjustment is taxable or allowable for income tax purposes
 - **Exceptions (termed ‘administrative concession’)**: if the TP adjustments relate to
 - Taxable imports other than dutiable motor vehicles (if importer entitled to input tax credit or imported service is not subject to reverse charge at the time TP adjustment is made)
 - Standard rated supplies (if the recipient is entitled to full input tax credit on the supply made and the supplier is entitled to full input tax credit on its purchases and expenses at the time the TP adjustment is made)
 - Zero-rated and exempt supplies (if the supplier is entitled to full input tax credit on its purchase and expenses at the time when the TP adjustment is made)



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