PRISM

Tax Newsletter

3rd Quarter 2019

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Single Touch Payroll for All Businesses in Australia

Single Touch Payroll (STP) is reporting tax and superannuation information to the Australian Taxation Office (ATO), for all Australian businesses that employ staff. It commenced for all larger businesses from 1 July 2018. For smaller businesses with less than 20 employees, it starts from 1 July 2019. However, the closely held businesses have a further defer start from 1 July 2020.

Each business using a Software solution, will need to send employees' tax and super information to the ATO every time it processes its payroll and pays its employees.

Furthermore, non-compliant payroll payments are not tax deductible for the business.

澳大利亚企业可以用一键式薪酬系统（Single Touch Payroll，简称STP）向澳大利亚税务局上报纳税和退休金信息。該系统自2018年7月1日及2019年7月1日起分别在所有大型企业及员工人数少于20人的小型企业开始推行。闭锁型企业则延迟至2020年7月1日方开始推行。使用软件解决方案的企业在每次支付員工的薪水的同时，都需要向税务局上报员工纳税和退休金信息。此外，不合规的工资支付不能用於扣除企业税款。

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Cambodia

The Promulgation of Concessional Tax Incentives for Securities Sector and E-Tax Service

2019 is a year of reformation in terms of tax regulations in Cambodia. Two of the highlights being the promulgation of the new tax incentives offered to public listing companies and investors which is more favorable than ever before in Cambodia, under the Sub-Decree No.01 ANKr.BK ("Sub-Decree No.01"), issued by Royal Government of Cambodia on 4 January 2019. In the same year, the tax authority has launched a new e-Tax Service system that is expected to improve the management of tax collection and boost convenience for taxpayers in various ways.

2019年是柬埔寨税务的改革年。其中有两件最为引起投资者关注的是柬埔寨王国政府于2019年1月4日发布的"第01号总理令"，向上市公司及证券投资者提供比以往都要优惠的税务待遇，以及为了增强税收管理及使纳税者更有效的执行税务申报事宜而推行的网上税务系统。

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China

Q&As between the Ministry of Finance and the State Taxation Administration of PRC and Journalists on Standards for Determining the Individual Income Tax Residency Threshold as 183 Days

In March 2019, the Chinese government released an Announcement on the Standards for Determining the Length of Residence of Non-PRC-domiciled Individuals as jointly issued by the Ministry of Finance(MOF) and the State Taxation Administration(STA). Following are the Q&As between the MOF, the STA and journalists on standards for determining the length of residence in China as 183 days .

2019年3月，中国政府相关部门印发《财政部税务总局关于在中国境内无住所的个人居住时间判定标准的公告》。以下为财政部、税务总局与记者就个人所得税之183天居住天数判定标准的问与答。

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Cyprus

Adoption of Rules Against Tax Avoidance Practices

Following the publication of the EU Anti-Tax Avoidance Directive (ATAD I) on 12 July 2016, the House of Representatives voted into Cyprus Law its provisions on 5 April 2019.

The three measures explained below are applicable from 1 January 2019. Additional measures based on ADAD II are expected to be voted by the House of Representatives by 1 January 2020. These measures apply to all companies and entities that are subject to Cyprus tax, including entities that while are not Cyprus tax residents, they have a Cypriot permanent establishment.

随着2016年7月12日发布的欧盟反避税指令（ATADI），塞浦路斯议于2019年4月5日通过将该指令规定融于塞浦路斯法律。

以下三个措施自2019年1月1日开始实行。预计塞议会将在2020年1月1日前就以欧盟反避税指令II为基础的附加措施进行投票。这些措施将适用于所有需向塞浦路斯纳税的公司和实体，包括那些不是塞浦路斯税务居民但拥有塞浦路斯常设机构的实体。

The Erosion of Member States (MS) Tax Sovereignty in the European Union (EU)

In its 2019 European Semester the European Commission (Commission) communicated to the European Parliament, the European Council, the Council and other bodies, its country specific recommendations. In the area of taxation the Commission states <The transposition of EU legislation and of international agreed initiatives will help curtail aggressive tax planning practices. Certain features of some Member States' tax systems, i.e. Cyprus, Hungary, Ireland, Malta and the Netherlands however may be used by companies that engage in aggressive tax planning>.

欧盟委员会在2019年和欧盟议会、欧盟理事会及其他组织就其国家具体建议进行了讨论。在税务领域，委员会认为"欧盟立法的改变和国际约定的措施将有效削减进攻性税务策划，惟某些成员国—塞浦路斯、匈牙利、爱尔兰、马耳他和荷兰的税务体制特点有可能被进攻型税务策划公司加以利用。"

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Hong Kong

Hong Kong Inland Revenue Department (IRD) Revises Practice Notes on Deduction of Foreign Taxes

In July 2019, the Inland Revenue Department has published an update version of Department Interpretation and Practice Notes (DIPN) No. 28 (Revised) on the provisions relating to deduction of foreign taxes. The changes were made in light of the enactment of Inland Revenue (Amendment) (No. 6) Ordinance 2018. IRD would provide more guidance in DIPN No. 28 (Revised).

2019年7月，税务局就有关扣除外地税项公布了《税务条例释义及执行指引第28号（修订本）》。有关修订配合《2018年税务（修订）（第6号）条例》的实施。税务局在《税务条例释义及执行指引第28号（修订本）》中提供了更多指引。

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Macau

Macau SAR Financial Service Bureau ("DSF") issued Mutual Agreement Procedure ("MAP") Guidelines

In May 2019, the Financial Service Bureau has published a set of guidelines for Mutual Agreement Procedure ("MAP") – a procedure to resolve disputes for Double Tax Agreements for the Avoidance of Double Taxation ("DTA") with respect to Taxes on Income. The purpose of these guidelines is to provide practical information regarding the MAP whose request for initiation may be submitted before the Financial Service Bureau ("DSF").

2019年5月，财政局公布了相互协商程序指引，以解决收入税项避免双重征税协定中之争议。此指引旨在提供向财政局提出启动相互协商程序的相关实用信息。

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Malaysia

Restriction on Deductibility of Interest

Restriction on deductibility of interest under Section 140C of the Income Tax Act 1967 and Income Tax (Restriction on Deductibility of Interest) Rules 2019, has been introduced to restrict deductions for interest expenses or any other payments which are economically equivalent to interest, to ensure that such expenses commensurate with the business income.

马来西亚近期在"1967年所得税法令"第140C条和2019年所得税法规（限制可抵扣利息）下，推出限制利息支付的可抵扣性，以确保可抵扣利息支付必须是用作营业用途。

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UK

BREXIT

The article is a discussion of Brexit and the implications it may have on the UK from a tax perspective. The tax team at Reanda UK have discussed the possible indirect and direct tax implications of Brexit on the UK. They also discuss the harmonious EU directive and the movement of employees within the EU which could potentially be impacted by the UK's exit from the EU.

本文将从税收角度讨论脱欧对英国可能产生的影响。利安达英国的税务团队研究了英国退欧所可能对税务产生的间接和直接影响，并讨论了英国退出欧盟可能会对和欧盟达成的协议以及欧盟内部员工的流动造成影响。

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Australia

Single Touch Payroll for All Businesses in Australia

On 12 February 2019, the Australian Government officially passed legislation that expands Single Touch payroll to ALL employers. Single Touch Payroll (STP) became mandatory on 1 July 2018 for all employers with 20 or more employees.

This is the second phase of Single Touch Payroll and will be mandatory for all employers with 19 or less employees from 1 July 2019.

1. STP represents one of the biggest changes to the way all businesses employing staff in Australia will be reporting salary and wage payments to the Australian Taxation Office (ATO).
2. STP is an ATO compliance regulation that requires employers to send employee payroll information including salary, wages, PAYG withholding and superannuation to the ATO at the same time as their standard pay run.
3. STP is a significant change that will require many employers to upgrade or replace their payroll systems this financial year in order to meet their payroll reporting obligations.
4. The ATO have announced special rules for STP micro employers 1-4 employees.
5. Software suppliers have worked closely with the ATO to offer a low-cost or no-cost payroll solution to small businesses so they are in total compliance with the law.

Quarterly reporting for closely held payees and seasonal employers

1. What about employers running seasonal operations or who only intermittently have staff?
2. What about those closely held payees, who employ staff members who are not 'held at arm's length' such as family members in a family business?
3. ATO has stated that small employers that include closely held payees are exempt from STP for the 2019-20 financial year.
4. What are closely held payees? According to the ATO, they include family members of a family business, directors or shareholders of a company and beneficiaries of a trust.
5. For these employers, STP can be reported quarterly from 1 July 2020.
6. Businesses with seasonal or intermittent operations, there are some concessions according to business size.
7. If, at a maximum, they employ 19 or fewer short-term employees, then there is a concession automatically available by application via the business's registered tax or BAS agent.
8. For seasonal businesses who employ more than 19 short-term staff during peak periods, the ATO is saying they will review their application (via registered agent) on a case-by-case basis.

With STP, employers no longer need to complete payments summaries and group certificates at the end of the financial year. That will now be taken care of every time employees are paid, as their tax and super information is sent to the ATO and available to the employee through their digital myGov account, that they must set up to receive this information.

Reference

(ATO Website – Single Touch Payroll in Australia) & various Software Providers MYOB & Reckon QuickBooks & Intuit QuickBooks

Cambodia

The Promulgation of Concessional Tax Incentives for Securities Sector and E-Tax Service

The Cambodian public securities sector has been at its early development stage. To help with its growth, the General Department of Taxation (GDT) has been working on creating policies to promote the sector. After two previous attempts in 2011 and 2015, the GDT has published a new Sub-Decree 01 ANKr.BK dated 4th January 2019 which offers more attractive favorable tax incentives towards entities having their stocks and debt securities listed on the Cambodian Stock Exchange (CSX), as well as to resident and non-resident investors.

According to the Sub-Decree, qualified entities are entitled to 50% reduction on the Annual Tax on Income rate of 20% for three tax years with different commencement year based on the applicable conditions.

Entities having their stocks and debt securities listed on the CSX, are also entitled to have their historical tax liabilities of the past ten years waived, However certain number of years are still subject to tax audit by the GDT.

(i) Public listed companies which has fulfilled the requirements to register on the Main Board of CSX shall have their initial two historical years of tax liability undergo the tax re-assessment;

(ii) while the number of historical tax years liability for SMEs qualified to register on the Growth Board, is set to be one

The tax liabilities covered under these aforementioned incentives are: Tax on Income, Withholding Tax, Value Added Tax, Specific Tax, Accommodation Tax, and Public Lighting Tax.

Resident and non-resident investors are eligible to three years of 50% reduction of Withholding Tax that applies on interest payment, dividends derived from the holding and trading of government stocks and debt securities. It is important to note that, all the above-mentioned tax incentives are valid from the effective date of the Sub-Decree.

The Release of e-Tax Service

Apart from the concessional tax incentives established for the public securities sector, the GDT has taken a big leap-forward in terms of the tax system improvement with the objective of shifting towards more electronic based system in the near future. An online tax filing system called "e-Tax Service" has been introduced in the early of 2019. The newly released system was designed to ease the tax compliance processes of taxpayers, strengthen the effectiveness, efficiency, and transparency of the management of tax collection.

So far, it includes four main features which enables taxpayers to perform the following activities online via the GDT's official webpage:

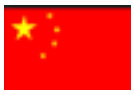
- settling tax bills and generating tax payment receipts;
- online tax registrations;
- Double Tax Agreement (DTA) tax treaty application;
- and Value Added Tax (VAT) report submission and refund which currently is one of the most brought-up topics amongst taxpayers. Through the implementation of this system, the process and time taken for the VAT refund is expected to be significantly reduced.

On top of the existing features, GDT is now in the process of developing the online tax filing system which is anticipated to be released in the near future.

Reference

- Royal Government of Cambodia.(2019). Sub-Decree No. 01 ANKr.BK: Tax Incentive in the Securities Sector. Phnom Penh.
- General Department of Taxation. (2019). E-Tax Service. Retrieve from <https://news.tax.gov.kh/content?id=307>

China



Q&As between the Ministry of Finance and the State Taxation Administration of PRC and Journalists on Standards for Determining the Individual Income Tax Residency Threshold as 183 Days

Q: What would happen to the conditions under which individuals not domiciled in China (hereinafter referred to as "non-domiciled individuals") can be exempt from Chinese individual income tax (IIT), after the Announcement of the Ministry of Finance and the State Taxation Administration on the Standards for Determining the Length of Residence of Non-PRC-domiciled Individuals (the Announcement) came into force?

A: Pursuant to the new Individual Income Tax Law of PRC, the IIT residency threshold for non-domiciled individuals is cut from the previous one year to the current 183 days. But policies and arrangements for IIT exemption on their foreign-sourced income are sustained, and exemption conditions are further eased:

(1) The consecutive period for which non-domiciled individuals can live in China before becoming resident taxpayers is extended from five years to six years (the Six Year Policy);

(2) The consecutive residence period can be reset as long as a non-domiciled individual is away from China for more than 30 consecutive days in any calendar year during the six-year period.

(3) The management method is modified from the original approval by the competent taxation authority to the current put-on-record filing, a change that simplifies the procedures and makes things convenient for taxpayers. Moreover, the Announcement also sets out, if a non-domiciled individual is physically present in China for less than 24 hours on a day, that day shouldn't be counted as a day of residence in China; the count for the new Six Year Policy commences from January 1, 2019. So the residence period before that day is exempt from the counting scope.

Q: How to count the days for which non-domiciled individuals (including residents of Hong Kong, Macao and Taiwan) reside in China?

A: The days when they are physically present in China for 24 hours should be counted as days of residence. Those on which they are physically present in China for less than 24 hours shouldn't be counted as days of residence.

For example, Mr. Li who is a resident of Hong Kong and works in Shenzhen. He usually arrives in Shenzhen on each Monday and returns to Hong Kong on each Friday night. In this case, there are three days out of a week that can be counted as days of residence; calculated by 52 weeks per year, Mr. Li spends 156 days on the mainland throughout a year; by the 183 day rule, he is not a resident individual in China and therefore, all of his foreign-sourced income could be exempt from Chinese IIT.

Q: When will the count of the six-year period of consecutive residence for non-domiciled individual (including residents of Hong Kong, Macao and Taiwan) start?

A: The count of the six-year period of consecutive residence (for 183 days or more in a calendar year) commences from 2019 and therefrom. It means that the residence period before 2019 will be reset. According to this provision, none of non-domiciled individuals reside in China for six years, and foreign-sourced income derived by them for tax years up to 2014 (inclusive) could be exempt from Chinese IIT. Furthermore, if a non-domiciled individual is away from China for more than consecutive 30 days in any year from 2019, he could still reset the six year period.

For instance, Mr. Zhang, a Hong Kong resident, has been working in Shenzhen since January 1, 2013, and will return to Hong Kong on August 30, 2026. During the period of time, he stays in Shenzhen except for the period between February 1 and March 15, 2025 when he will return to Hong Kong for business purpose.

Since the years of residence in 2018 and before are all reset, the period from 2019 and 2024 when Mr. Zhang resides in China for 183 days or more in each year is less than six years. Therefore, the foreign-sourced income derived by him could be exempt from Chinese IIT.

Mr. Zhang's domestic and foreign-sourced income derived in 2025 should be charged Chinese IIT.

Since Mr. Zhang will be away from China for 30 consecutive days in 2025, his years of consecutive residence (for 183 days or more in a calendar year) in China could be reset. In this case, the foreign-sourced income derived by him in 2026 could be exempt from Chinese IIT.

Cyprus

Adoption of Rules Against Tax Avoidance Practices

Following the publication of the EU Anti-Tax Avoidance Directive (ATAD I) on 12 July 2016, the House of Representatives voted into Cyprus Law its provisions on 5 April 2019.

The three measures explained below are applicable from 1 January 2019. Additional measures based on ADAD II are expected to be voted by the House of Representatives by 1 January 2020. These measures apply to all companies and entities that are subject to Cyprus tax, including entities that while are not Cyprus tax residents, they have a Cypriot permanent establishment.

Interest limitation rule

The purpose of this rule is to prevent provision of group financing to companies based in high tax jurisdictions from companies based in low tax jurisdictions and limits the deduction of interest resulting from this financing facilities.

More specifically, this rule provides that exceeding borrowing costs are deductible in the tax period they incurred up to 30% of taxable income before interest, tax, depreciation and amortisation (EBITDA) and up to €3.000.000 per year per company or Cypriot group.

Whenever, a company is a member of a Cypriot group, the rule is applied at the level of the Cypriot group as defined in the Income Tax Law, including permanent establishment in Cyprus.

The rule does not apply to:

- Financial undertakings (credit institutions, insurance/reinsurance companies, pension institutions, alternative investment funds (AIF), undertaking for collective investment in transferable securities (UCITS), derivative counterparties, central securities depositories and securitisation special purpose entities (SSPE)
- Standalone entities
- Loans concluded before 17 June 2016 until any subsequent modifications
- Loans used to fund long-term infrastructure projects which are considered to be in the general public interest

Furthermore, the rule has an escape clause in the case the company is a member of a consolidated group for financial accounting purposes. It may receive the right to fully deduct exceeding borrowing costs if it can demonstrate that the ratio of its equity over its total assets is equal to or higher than the equivalent ratio of the group. This applies when the ratio is equal or at most lower by 2% of the group ratio and all assets and liabilities are valued using the same method as in the consolidated financial statements.

Taxpayers may carry forward such borrowing costs and deduct them from taxable profits for the next 5 years.

Control Foreign Companies (CFC) rule

This rule aims to prevent the redistribution of revenue within groups towards entities that are based in low tax jurisdictions.

A company or a permanent establishment which is not subject to Cypriot tax is considered a CFC when the following conditions are met:

- Cyrus tax resident company itself or together with associated entities holds a direct or indirect participation of more than 50% of the voting rights or of the capital or is entitled to received more than 50% of the profits of such entity
- The corporate income tax actually paid by the entity is less than the 50% of such tax that would be paid in Cyprus

The rule states that the non-distributed income of a CFC, which arose from non-genuine arrangements that have been put in place for the essential purpose of obtaining a tax advantage, should be added to the tax base of the Cyprus tax resident entity. Non-distributed income relates to post accounting profits that has not yet been distributed within the year the profit is derived or within a period of seven months after the year end.

The CFC rule is not applied when accounting profits are less than €750.000 or accounting profits do not exceed 10% of the operating costs of the period.

In addition, there should be no CFC charge if there are not significant people functions in Cyprus that are essential in generating income of the CFC. In such case, a transfer pricing study will be required.

The income or loss to be included in the tax base of the Cyprus tax resident company should be restricted to amounts generate from assets or risks associated to significant people functions performed by the same company. The income should be attributed based on arm's length principles and it is restricted to the amount of non-distributed income of the CFC. Such income or loss should be included in the tax period of the Cyprus tax resident company in which the tax period of the CFC ends.

General Anti-Abuse rule

This rule aims to prevent abusive tax practices that have not yet been dealt with any specific provision. In particular, any arrangement or series of arrangements that have not valid commercial reasons reflecting economic reality and/or are not genuine and their main purpose is to obtain a tax advantage should be ignored in the calculation of corporate tax liabilities in Cyprus.

The Erosion of Member States (MS) Tax Sovereignty in the European Union (EU)

In its 2019 European Semester the European Commission (Commission) communicated to the European Parliament, the European Council, the Council and other bodies, its country specific recommendations. In the area of taxation the Commission states < The transposition of EU legislation and of international agreed initiatives will help curtail aggressive tax planning practices. Certain features of some Member States' tax systems, i.e. Cyprus, Hungary, Ireland, Malta and the Netherlands however may be used by companies that engage in aggressive tax planning>.

Governments aim to maximise tax collections. But they do not attack evaders of tax. They attack avoiders of tax those who in the opinion of the governments avoid tax aggressively. There is no gradation in avoidance. There is no polite and aggressive avoidance. Tax avoided under the law is legal. Evasion is illegal. So they attack legality?

The European Court of Justice (ECJ) commented. <A driver who sells his car following an increase in road tax obviously acts in order to avoid road tax. However that cannot be construed as an abuse of law, even if his sole reason was to save tax.>

< Furthermore, where the taxable person has a choice between two possibilities, he is not obliged to choose the one which involves paying higher amount of tax but, on the contrary, may choose to structure his business so as to limit his tax liability . . . . . taxable persons are generally free to choose the organisational structures and the form of transactions which they consider appropriate for their economic activities for the purpose of limiting their tax burdens. The mere fact that a business structure was chosen . . . . . that did not generate maximum tax burden . . . . . cannot in itself qualify as abuse . . . . . indeed every undertaking must be expected to want to maximise its profit>.

Under the EU treaty MS have sovereignty over their tax law. Directives require unanimous decision. Nevertheless directives are issued that erode the tax sovereignty of MS even with provisions rejected by the ECJ such as Controlled Foreign Corporation (CFC).

How does the interest limitation rule protect from Base Erosion and Profit Shifting (BEPS) when applied within the country. Its application results in double taxation both when applied cross boarder and internally!

The ECJ protects the fundamental freedoms enshrined in the European treaty. The directives violate this.

Even though there is opposition against the Common Corporate Tax Base (CCTB) and the Common

Consolidated Corporate Tax Base (CCCTB) discussion continues. It is a mystery beyond comprehension why MS opposing allow the discussion to continue. The dark corridors of Brussels seem very powerful.

MS are deprived form using traditional economic tools such as money supply and interest rates, government spending and exchange rates in their economic planning. The EU is an organisation with a common market not a common economy. So the surpluses in one geographical area are not shared with the deficits of another geographical area because they are not one economy. The only tool left to a MS to apply its own economic policy is the taxation system. With the tax directives that are imposed by the wealthy upon the weakest economies the EU is cementing and enlarging the gap between the rich and the poor. Is the EU solidarity a fallacy?

Hong Kong

Hong Kong Inland Revenue Department (IRD) Revises Practice Notes on Deduction of Foreign Taxes

In July 2019, the Inland Revenue Department has published an update version of Department Interpretation and Practice Notes (DIPN) No. 28 (Revised) on the provisions relating to deduction of foreign taxes. The changes were made in light of the enactment of Inland Revenue (Amendment) (No. 6) Ordinance 2018. IRD would provide more guidance in DIPN No. 28 (Revised).

Tax on profits is not an outgoing or expenses incurred in producing chargeable profits, the tax is not deductible. Specifically, section 17(1)(g) provides that no deduction shall be allowed in respect of any tax paid or payable under the Inland Revenue Ordinance other than salaries tax paid in respect of employee's remuneration. However, foreign taxes and duties not calculated by reference to profits will be considered for deduction, for examples, rates levied on properties, vehicle licence fee, duties on commodities or foreign taxes and duties not levied by reference to profits.

Before the enactment of Inland Revenue (Amendment) (No. 6) Ordinance 2018, regardless of whether there was a Double Taxation Agreement (DTA) have been made between Hong Kong and foreign countries, Inland Revenue Ordinance (IRO) section 16(1)(c) provided unilateral relief from double taxation for foreign tax paid on specified interest and gains in the form of a deduction.

The main changes in DIPN No. 28 (Revised) focus on the enactment of IRO section 16(2J), which is effective from the year of assessment 2018/2019, such unilateral relief from double taxation would not apply in relation to any tax paid in a territory if:

(a) the territory is a DTA territory; and

(b) under IRO section 50, tax payable in the territory by a Hong Kong resident person in respect of the profits is to be allowed as a credit against tax payable in Hong Kong by the Hong Kong resident person in respect of the profits.

The key reason for changing is that DTA is intended to provide a comprehensive solution to all tax matters which are within its scope. The international practice is that where a DTA is in place, relief from double taxation should be allowed under the DTA only to the extent contemplated by it. The tax credit approach is adopted by Hong Kong in all existing DTAs. IRO section 16(2J) seeks to ensure that the DTAs will prevail in case of any conflicts between the provisions in the IRO and those in the DTAs.

Reference

https://www.ird.gov.hk/eng/pdf/dipn28.pdf

Macau

Macau SAR Financial Service Bureau ("DSF") issued Mutual Agreement Procedure ("MAP") Guidelines

In May 2019, the Financial Service Bureau has published a set of guidelines for Mutual Agreement Procedure ("MAP") – a procedure to resolve disputes for Double Tax Agreements for the Avoidance of Double Taxation ("DTA") with respect to Taxes on Income. The purpose of these guidelines is to provide practical information regarding the MAP whose request for initiation may be submitted before the Financial Service Bureau ("DSF").

Irrespective of the remedies provided by the internal law of Macau SAR or of the other Party concerned, the request for initiating a MAP may be submitted to the DSF under a DTA. The MAP can be requested when a person (who is a resident of Macau SAR or who has the right of abode or is incorporated or otherwise constituted in Macau) covered by a DTA considers that the actions of Macau SAR and / or the other Contracting Party result or will result for him in taxation not in accordance with the provision of such DTA as following: (a) the taxpayer is deemed to be a resident of both Parties or where there is no agreement on the jurisdiction of which he is a resident; (b) the taxpayer and the tax authorities do not agree on the existence of a permanent

establishment or on the characterization of certain items of income for the purposes of the application of the DTA; (c) the taxpayer and the tax authorities do not agree on the interpretation and application of provisions or principles of the DTA; (d) Transfer pricing adjustments between associated enterprises of different Contracting Parties, have occurred or will occur; (e) Adjustments of profits attributable to a permanent establishment situated in a Contracting Party of an enterprises of the other Contracting Party have occurred or will occur; (f) the taxpayer and the tax authorities that have made an adjustments do not agree as to whether the conditions of the application of an anti-abuse provision of a DTA have been met; (g) the taxpayer and the tax authorities that have made an adjustment do not agree as to whether the application of anti-abuse provision of an internal law is in conflict with the provisions of a DTA.

The requests to initiate a MAP should be in writing and in paper format for the case details in languages of Chinese, Portuguese or English within the time frame provided under the applicable DTA to the DSF. No fees are charged for the submission of a MAP request. DSF carries out the preliminary analysis within 30 days from receipt of a request. Before reaching a final solution of the case with the competent authorizes of the other party, the DSF notifies the terms and conditions of the Agreement to the person that submitted the MAP request, so that this person declares within 30 days whether he accepts them as a final resolution of the case. The acceptance of the Agreement reached under a MAP by the person that submitted the request obliges him to withdraw any pending cases in the judicial or administrative instances.

Reference

http://www.dsf.gov.mo/tax/tax_avoiddoubletax.aspx?lang=en&FormType=3

Malaysia

Restriction on Deductibility of Interest

Most multinational enterprises (MNEs) have external borrowings on which they pay interest and other financing costs. The borrowings may range from multi-billion syndicated loans used to finance a significant acquisition or takeover; to overdraft facilities used to help manage the cash flow of individual enterprises within the group.

Beside external borrowings, MNEs have various borrowing arrangements between the enterprises within the group. As such, restriction on deductibility of interest under Section 140C of the Income Tax Act 1967 (hereinafter referred to as the Act) and Income Tax (Restriction on Deductibility of Interest) Rules 2019 [P.U. (A) 175], (hereinafter referred to as the Rules) has been introduced to restrict deductions for interest expenses or any other payments which are economically equivalent to interest, to ensure that such expenses commensurates with the business income.

This legislation on interest restriction is based on the Base Erosion and Profit Shifting (BEPS) Action 4 of the Organisation for Economic Cooperation and Development (OECD), where the aim is to prevent base erosion, through the use of excessive interest expense or any payments which are economically equivalent to interest claimed by businesses.

Part of this legislation has been adopted directly from the OECD BEPS Action 4, and there are parts which have been customised to ensure adherence to the Act and Inland Revenue Board of Malaysia's (IRBM) procedures as well as domestic circumstances.

Objective

The objective of these Restriction on Deductibility of Interest Guidelines (after this referred to as "the Guidelines") is to explain the determination of the amount deductible and restricted in relation to:

(i) business interest expenses; and

(ii) other payments which are economically equivalent to interest

for the basis period beginning on or after 1.7.2019 and subsequent basis periods.

Application

In respect of basis period beginning on or after 1 July 2019, apply to a person who has been granted any financial assistance exceeds RM500,000 in a controlled transaction.

Non-application

Not apply to:

i. an individual;

ii. a licensed banks, insurers, reinsurers, takaful and retakaful operators, development financial institutions;

iii. a construction contractor as defined under the Income Tax (Construction Contracts) Regulations 2007;

iv. a property developer as defined under the Income Tax (Property Developer) Regulations 2007; and

v. a person who has been granted an exemption under Paragraph 127(3)(b) or Subsection 127(3A) of the ITA in respect of the person's adjusted income.

Maximum amount of interest

Pursuant to Section 104C of the Income Tax Act 1967, the maximum amount of interest shall be an amount equal to 20% of the tax-EBITDA of that person consisting of a business source for the basis period for a Year of Assessment.

EBITDA means earnings before interest, taxes, depreciation and amortization.

tax-EBITDA means A + B + C, where

A. is the adjusted income of the person from his business sources before any restriction on deductibility of interest under Section 140C of the ITA is made;

B. is the total qualifying deductions allowed in ascertaining the adjusted income in A;

C. is the total interest expense incurred in relation to the person's gross income for any financial assistance in a controlled transaction from his business sources

Qualifying deduction is defined as:

- an amount of expenditure incurred by the person computed in any deduction falling to be made under the ITA where the amount of deduction is twice the amount of expenditure by the person; and
- any claim for deduction under any rules made under Paragraph 154(1)(b) of the ITA where the deduction is allowed for purposes of ascertaining the adjusted income of the person.

Carry forward of interest expense

Interest expense which is in excess of the maximum amount of interest as ascertained for a basis period for a year of assessment, the amount of that excess shall be allowed to be carried forward and deducted against the adjusted income of the company for the subsequent years of assessment subject to the maximum amount of interest ascertained.

Reference

1. MALAYSIAN INCOME TAX (RESTRICTION ON DEDUCTIBILITY OF INTEREST) RULES 2019
2. MALAYSIAN RESTRICTION ON DEDUCTIBILITY OF INTEREST GUIDELINES

UK

BREXIT

On 31st October 2019 the UK is expected to leave the European Union (EU), with or without a deal agreed with the EU, unless a further extension is agreed. So what does this mean for UK tax law?

To answer that question the tax team at REANDA UK takes a look on what might happen and how this could affect those trading with the UK.

To set the scene with our thoughts, anyone doing business with the UK needs to understand that any tax changes must be passed through Parliament. This means, theoretically, there should be no immediate changes to UK law after Brexit and therefore no need for any business to take any urgent action post 31 October 2019.

Let's start with Indirect Tax – Value Added Tax (VAT)

Currently, UK VAT legislation is bound by the EU Principal VAT directive, as VAT is a European tax. Post Brexit, UK VAT legislation will not be restricted to the EU Directive, giving the UK government more scope to make changes to UK VAT. It is unlikely that the UK will abolish VAT after Brexit as it is a major income stream for the UK government, however, over time we could see some changes.

Businesses operating within the UK charge VAT to individuals within the EU. In addition, any business to business sales between VAT registered entities within the EU is subject to VAT at zero percent so, effectively, no VAT is charged on these transactions.

There are also no customs duties, meaning goods are traded freely within the EU nations. A no deal Brexit, however, is likely to result in duties and import/export VAT being charged on goods and services that are transferred between the UK and the EU. Those potential, additional costs would make business between the UK and the EU more expensive and the UK could be at a disadvantage compared to other EU nations, as imports will become more expensive to UK businesses and exports will be less attractive to the EU nations. The reverse of that could mean the change would encourage more UK businesses to engage with each other and attempt to open more opportunities that way.

The EU also has around 40 free trade deals with non-EU nations, covering more than 70 countries, allowing EU member states the freedom to trade without paying import tax. Post Brexit, the UK would lose its access to the trade deals available to the EU nations. To counter that the UK is aiming to negotiate its own trade deals with the non-EU countries and, in turn, replicate the agreements held by the EU. Independent from the EU and unrestricted by the EU Directives, the UK could, potentially, negotiate more favourable trade deals than those available to the EU member states.

Moving on to Direct Tax – Income Tax, Capital Gains Tax & Corporation Tax

Income Tax, Capital Gains Tax and Corporation Tax are all UK taxes unlike VAT, which is a European tax. However, this does not mean that these taxes will not be affected by Brexit.

Looking at Income Tax, individuals who are non-UK tax resident but are EU/EEA nationals, receive tax free personal allowances in the UK. This can be particularly helpful for individuals who are non-resident in the UK and have UK source income (e.g. property rental income). A UK tax free personal allowance preserves income up to £12,500 (2019/20) which is potentially at risk post Brexit if this is removed.

There has been speculation that the UK could emerge as a tax haven with tax rates favourable in comparison to other countries. Should this materialise, it could encourage businesses to choose their base as the UK and in turn benefit from lower business tax rates. However, given the UK government's efforts to align UK tax rules with international tax rules that negate the effect of tax havens, it would be surprising to see the UK contradict their previous efforts. The UK has also been a driving force behind the BEPS action plans introduced by the OECD.

From 1 April 2020 we should see Corporation Tax rates decrease to 17% and if reports are correct we could see this reducing further over time.

What about EU directives?

Dividends, interest and royalties between parent and subsidiary companies are paid without the deduction of withholding tax, which is the purpose of the EU Parent/Subsidiary Directive. Post Brexit, this Directive will not apply to the UK. The UK does have double tax treaties with countries in the EU, which have the same effect of this EU Directive, however these do not all eliminate the withholding taxes on these types of payments.

Payments of interest and royalties from the UK could be subject to grossing up and subject to a withholding tax of 20%. This may lead EU businesses to gross up payments further to take account of the withholding tax to support their cashflow. The UK does not charge withholding tax on UK dividends and therefore Brexit may bring no change on dividends paid by UK companies to EU companies.

The effect on Employees

A no deal Brexit could be costly for UK employees. Employees working within the UK and UK nationals working abroad will be anxious and uncertain of what a "no deal" Brexit means for them.

There should be a transitional period while post Brexit law is introduced. Currently UK workers in the EEA are only required to pay social security contributions in EEA countries and not in the UK. Post Brexit, the UK may impose National Insurance contributions for British nationals even if they work in an EEA country and pay social security in that country. This means those individuals would be penalised by paying social security in both countries, a move that will be costly for both the employees and employers in the UK. It is possible that the UK may counteract this using double tax treaties. These of course, are subject to negotiations with other countries.

In Conclusion….

There is uncertainty about the impact on companies and individuals. Whilst the benefits of being an EU member will be lost, the UK on a more positive note, will have complete power over its tax rules and treaties with other countries. Much of EU law is targeted at tax avoidance so it is likely that UK law will want to retain this.

Let's see…..