DECEMBER 2020

PRESENTS

FUSION INTERNATIONAL TAX CLUB

Fusion International Tax Club End of Year statement

By Jack Morris, Head of Global Relations, Fusion International

Although 2020 has been one of struggle and uncertainty for many, Fusion International Tax Club (FITC) has continued to be an area of growth. This year has seen the introduction of 15+ new members to our community from countries including Australia, Austria, and Israel.

The foundations of FITC will always be to enhance a growing global network that allows our members to reach fellow tax professionals. We have seen new and exciting relationships evolve including, our members from Florida (USA) and Portugal working closely, forming and running their own webinars which have attracted strong numbers of attendees.

VISION for 2021

We look at 2021 with much excitement with new members on the verge of joining Fusion International Tax Club. We are continuously seeking firms to represent their country jurisdiction in Fusion International Tax Club. In principle, each country will be represented by only three categories from that jurisdiction.

Sole Practitioner/partnership, medium-size firm & large firm. This is to give you, our clients the choice of firms. Our focus continues to be to grow our presence and relationships globally. With our emphasis still on understanding clients' businesses and challenges so that we offer tailored and contextualised solutions.

Every day we seek to develop and grow our reach and bring in leading practices in tax from around the globe. Through the current global pandemic and economical position in the UK, we will be facing unknown challenges as businesses and tax professionals but knowing the strength and experience from within our community we are confident of an exciting year ahead.

From all at Fusion International Tax Club and Fusion Consultancy, we would like to wish all our members a very merry festival period and a prosperous new year. We look forward to an exciting new year alongside all current and future members.

SINGAPORE – A HOLDING COMPANY DESTINATION?

For a country to be an attractive location in which to set up a holding company certain criteria must be satisfied and, in this article, we set out why Singapore is an attractive destination for holding companies.

1. Favourable domestic tax regime

Singapore continues to maintain a comparatively lower corporate income tax rate in order to attract foreign businesses to invest in the country. The current corporate tax rate is 17% and, on top of that, there are tax incentives that may further reduce the Company's tax burden. Interest and royalty income received from subsidiaries would, thus, be taxed at a low tax rate. Dividends, where foreign sourced income rules are met, may even be exempt.

Outgoing dividends paid by the holding company to the ultimate parent corporation or shareholders are not subject to Singapore withholding tax.

There is also no capital gains tax in Singapore. Hence, profits realized by the holding company on the sale of shares in the subsidiary would not be subject to CGT.

2. Large tax treaty network

These treaties, which are modeled on the OECD Convention, provide for reduced withholding taxes on dividends, interest and royalty income. They also provide relief from double taxation. Hence, incoming dividends remitted by the subsidiary to the holding company would be subject to lower treaty withholding tax rates with tax credit relief provided at the holding company level. In addition, the treaties provide certainty of taxing rights, for example, the same business income may not be taxed twice. Certainly, having a large treaty network with over 80 countries is a good legal tax advantage.

3. Plugged into international tax standards/practices

Singapore has joined the global implementation of the Base Erosion and Profit Shifting (BEPS) project. Its transfer pricing regulations are in line with the

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OECD model and it has also implemented other standards like Country-by-Country Reporting (CbCR); there will be consistency and similarity of accepted international tax standards leading to a better understanding of the overall tax burden.

4. Foreign Share Holding

Singapore allows companies, including holding companies, to be 100% foreign-owned: There is no requirement to have a local partner. This provides more convenience to shareholders and increases their comfort level.

5. Exchange Controls

In general, there are no foreign exchange or currency restrictions on the remittance or repatriation of capital or profits in or out of Singapore, this eases movement of capital.

6. Legal and accounting framework

There is a strong rule of law in Singapore to protect investors' assets including intellectual property and the accounting standards in Singapore follow internationally accepted practices very closely.

Who we are

Campos Consulting Pte Ltd (www.campos.com.sg) has many years of expertise in Income Tax (Corporate and Personal) and Goods and Services Tax, and Accounting. We are part of a group of companies all situated in the same premises which provide a whole range of compliance services including the formation of companies, director services, payroll, bookkeeping and tax. We would be happy to help you establish a profitable business in Singapore. ■

Emigrating from South Africa? Timing is essential

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Many South Africans don't realise the significant impact that the month you leave the country can have on your tax obligations.

When you emigrate, you will want to ensure the South African Revenue Service (SARS) stops seeing you as a South African tax resident, so you no longer have to pay SA tax or submit SA tax returns unless you're earning income in SA from an SA source.

This tax status change, known as "tax emigration", is reported to SARS in the tax return covering the period you left South Africa. Your tax charges will apply retroactively and can vary significantly depending on how much of the tax year you were out of the country.

Income tax and emigration

Under South African tax law, your monthly income tax is based on the assumption that you will work the full year at the same salary. At the end of the tax year, any tax that you were overcharged for is returned to you in a refund. For example, if you had months when you were unemployed, or no longer working in South Africa.

This means that if you emigrate late in the tax year, you will get a minimal refund for the months you didn't work. However, if you leave early in the tax year and only have a few months' salary over the full tax year, you can claim a much larger refund.

While a large refund never goes amiss, the amount you earn for the year also determines your tax bracket, which has a wider impact on other tax charges.

How Capital Gains Tax is affected

When you change your tax status, you're deemed to have sold your worldwide assets from your local self to your foreign self on the day you left South Africa. This triggers a capital gains tax (CGT) event, which is sometimes called "exit tax".

CGT is a tax on the profit you make from selling an asset. The difference between South African capital gains tax and many other tax jurisdictions is that in those jurisdictions the CGT is a flat rate with certain exemptions. In SA, a portion of your capital gain gets added to your other income for that year and this portion varies from 7.2% to 18% depending on what tax bracket you're in.

The graphic below illustrates how it makes sense for you to leave early in the tax year to make sure you're in the lowest possible tax bracket. The more you earn, the greater impact a few extra months in SA during the tax year can have.

South African property is also always subject to CGT when you sell it, regardless of whether or not you're a South African tax resident at the time. This is worth bearing in mind if you plan to sell a property in the same tax year that you leave South Africa, as you could end up paying CGT on all your assets together. However, if you sell in the next (or prior) year, you will then add the gain to the taxable income of that year instead.

The primary residence exclusion

Your home, or the place you reside in for most of the year with your family, is exempt from CGT up to an R2 million threshold. But what if you sell your home after you leave the country? Can it still be considered your primary residence if you're not living there anymore?

Many South Africans aren't aware that there is a special allowance for taxpayers who move locations and are still trying to sell their old home who can show that they were trying to sell their primary residence before they left. If you put your home on the market before you go, it can still be considered your primary residence for two years, even if you're renting it out, so long as it remains on the market.

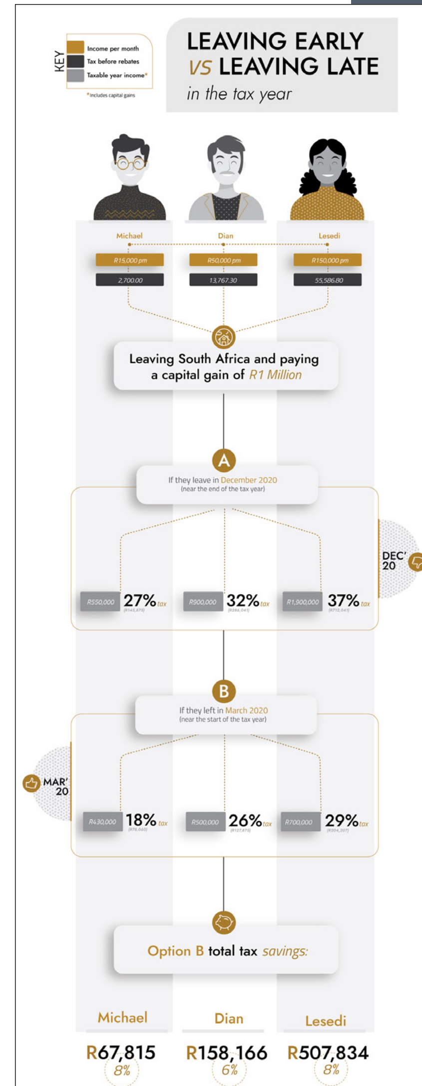
To make use of this exemption and save on your tax, you must not start renting out the property before you leave the country as it will no longer be considered your primary residence. This means you will only receive a portion of the R2 million exemption for when it was your primary residence when the CGT event triggers when you leave.

Understanding tax in your new home

Before you leave, you should also obtain advice about when your new country will start seeing you as a tax resident and what your obligations might be.

South Africa has Double Taxation Agreements (DTAs) with a large number of countries that affect the taxing rights each country has over taxpayers. These agreements exist to ensure you're not unfairly taxed in both jurisdictions, but they can be confusing to navigate.

As you can see, planning ahead is crucial to avoid paying unnecessary tax. A cross-border tax accountant can advise you on when to leave, when to change your tax status, when another country might see you as a tax resident and how to plan your move to suit your own personal circumstances. ■



Our tax experts can advise on all South African tax matters and structure the best solution for you. Get in touch with us on +27 (0) 21 657 1517 or at taxsa@sableinternational.com.

Cyprus Tax residency and Permanent establishment under COVID-19

The Covid-19 pandemic continues to impact daily life around the world, with strict travel restrictions and measures. This is no different for Cyprus, with a large part of the national workforce having to stay and work from home.

To clarify the application of Article 2 of the Income Tax Law, relating to tax residency and permanent establishment, the Cyprus tax department issued an implementing guide (4/2020).

This guide has been issued in order to provide clarifications for any issues that might arise from the situation caused by Covid-19 (such as the travel restrictions put in place between the 21st of March 2020 and 9th of June 2020 for entering or leaving the country). This guide will only be applied where the individual chooses to be subjected under its provision.

Issues relating to the tax residency

- Companies' tax residency

A company that was not considered a Cyprus tax resident before, will still not be considered one even if its personnel, directors, representatives or employees remained in Cyprus due to the Covid-19 travel restrictions.

Furthermore, a company's tax residence status will not be affected if a director could not physically attend a board meeting due to Covid-19 quarantine or restrictions.

- Physical persons tax residency

For a physical person that remained in Cyprus and his/her presence here was due to the travel restrictions imposed by the Covid-19 pandemic, the period between 21st March 2020 and 9th June 2020 will not be taken into consideration when defining his/her tax residence.

Additional clarifications relating to tax residency anti-abuse rules will be required in case the physical person remained in Cyprus for more than 183 days and wishes to apply the provisions of the guide issued by the tax department. He/she will be required to submit evidence to support his/her claim of being a Cyprus tax resident.

Additionally, if an individual was kept abroad due to the abovementioned travel restrictions caused by Covid-19, instead of being in Cyprus under different circumstances, then according to the legislation that individual will be considered to be in Cyprus.

The same rule will also apply to individuals who were considered to be Cyprus tax residents under the rule of 60 days and are not tax residents in any other country.

Through this new guide, the tax department also clarified that a separate assessment will be performed for each case, while comparing the facts that were applied before the outbreak of the pandemic. All necessary evidence needs to be made available upon request to support each case.

Issues relating to Permanent Establishment (PE)

Regarding the permanent establishment, it was clarified that in cases where activities took place in Cyprus by persons being here solely due to COVID-19 will not be considered as activities that create PE in Cyprus. Similarly, where persons remain abroad due to COVID-19 but would otherwise exercise activities resulting in a PE in Cyprus, the activities exercised during the time spent abroad will be considered to have been exercised in Cyprus.

Application of Article 8(23) of the Income tax law

Another clarification within this guide is that in the event of the annual income arising from the employment of an individual is reduced below the €100.000 due to reductions that were caused by Covid-19, the 50% exemption will still apply provided that relevant supporting documentation is available.

Application of Article 36(5) of the Income tax law

The income department also clarified that in cases where an individual was unable to travel abroad for offering his/her salaried services to his/her non-Cyprus tax resident employer or to a PE of a Cyprus employer outside of Cyprus (and was therefore unable to meet the 90 days residency rule due to COVID travel restrictions), then the tax treatment of said salary should not be affected. ■

Cyprus implements EU ATAD exit taxation & hybrid mismatches

The Cyprus Parliament on June 19th, 2020, voted for the Cyprus transposition of the European Union (EU) Anti-Tax Avoidance Directive (ATAD) for Exit taxation and Hybrid mismatch rules. The Directive essentially completes Cyprus' transposition of the EU ATADs i.e. ATAD I and II that were adopted by the EU in 2016 and 2017 respectively.

On August 20th, 2020, the relevant law was published in the Gazette, amending the Assessment and Collection of Taxes Law with immediate effect (for the current tax year 2020), with the exception of certain reverse hybrid mismatch provisions that have an executive date from the tax year 2022.

Exit Taxation Rules

Scope

A Cypriot Tax Resident Company or a Non-Cypriot Tax Resident Company, having a permanent establishment in Cyprus, is subject to tax at an amount equal to the market value of any assets that are transferred at the time of their exit, minus their tax value in the following instances:

1. The Cypriot Tax Resident Company transfers assets from the Company's head office in Cyprus to its permanent establishment in a third country or other Member State, insofar as Cyprus has no longer the right to tax the transferred assets due to the transfer.
2. The Non -Cypriot Tax Resident Company, having a permanent establishment in Cyprus, transfers assets from its permanent establishment to its head office or another permanent establishment outside Cyprus insofar as Cyprus no longer has the right to tax the transferred assets due to the transfer
3. The Cypriot Tax Resident Company transfers its tax residency outside Cyprus (i.e. to a third country or other Member State) except the assets that remain and are effectively connected to Cyprus, through its permanent establishment.
4. The Non -Cypriot Tax Resident Company, having a permanent establishment in Cyprus, transfers its activity and business to another jurisdiction (outside Cyprus i.e. to a third country or other Member State) insofar as Cyprus no longer has the right to tax the transferred assets, due to the transfer.

Asset Value subject to Tax

Based on the above instances, the starting value of the transferred assets for tax purposes shall be equal to their market value at the same time. This effectively means that any profit being made at the point of exit, shall be subject to Cyprus Income Tax. Similarly, when a company transfers its assets to Cyprus from another EU Member State, the assets' starting value in Cyprus shall have the same value at the time of exit/transfer as established by the transferor EU Member State. The latter does not apply in cases where the value does not reflect the market value of the assets.

In addition, the Exit Taxation Rules are not applicable in cases where the assets are expected to return to Cyprus within one year, provided that they either relate to the enancing of securities, are provided as collateral to meet capital requirements or for liquidation purposes.

Payment Deferral of Exit Tax

The Corporate Income Tax is due for payment at the time of the transfer. In cases where the transfer is being made to another EU Member state or a European Economic Area based State with which Cyprus has agreements concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (EU Directive 2010/24) subject to ATAD I, a Cypriot Tax Resident Company or a Non -Cypriot Tax Resident Company, having a permanent establishment in Cyprus, has the option to pay in installments in a period of over five years.

Hybrid Mismatch Rules - Scope

In general, the scope of anti-hybrid mismatch rules is to ensure and to cover cases of double deductions and/or payments in countries without taxation, executively avoiding the payment of tax. The provisions of these rules are limited in hybrid entities; reverse transfers also include rules on hybrid transfers and on reverse hybrid entities. Hybrid mismatches are cases when, as a result of differences in the legal qualification of payments or entities for tax purposes in two jurisdictions, a double deduction arises or there is a deduction of income in one state without inclusion in the tax base of the other. The new law offers a way to neutralise this effect of hybrid tax position. The law shall apply to companies subject to Cyprus Corporate Income Tax where adjustments are required, to the extent a mismatch occurs, such as double deduction and/or double tax credit.

Double Deduction

Subject to the Law, a hybrid mismatch resulting in a deduction of payment, shall be denied in Cyprus, if Cyprus is the investor jurisdiction. If Cyprus is the payer jurisdiction, the deduction shall be denied if the deduction is not denied by the investor jurisdiction. Deductions shall be eligible to set off against dual inclusion income in the current or the following tax year, executive in both Cyprus and other jurisdictions.

Deduction Without Inclusion

Subject to the Law, a hybrid mismatch resulting in a deduction of a payment without inclusion for tax purposes or in a deemed payment between the head office and the permanent establishment or between two or more permanent establishments in any country, shall be denied in Cyprus, if Cyprus is the payer jurisdiction. If Cyprus is the payee jurisdiction and the deduction has not been denied by the payer jurisdiction, the mismatch amount shall be taxable. Exceptions to this rule apply as Cyprus has opted under the possibility provided by the EU Directive, not to include the income as taxable and apply the hybrid rule where the mismatch is made: (i) to a hybrid entity, or (ii) to a payment or a deemed payment involving permanent establishment and hybridity.

Note that a temporary exclusion with regards to hybrid mismatches resulting from payments of interests under associated (grouped) financial instruments applies until December 31st 2022.

Imported mismatch

Any deductions of any payments by a Cypriot Tax Resident Company or a Non Cypriot Tax Resident Company, having a permanent establishment in Cyprus, shall be denied in the case of an imported mismatch, should they directly or indirectly fund deductible expenditure essentially creating hybrid mismatches between companies/parties outside of Cyprus. Subsequently this rule shall not apply in cases where one of the jurisdictions involved has made the equivalent adjustment to neutralise the hybrid mismatch.

Disregarded PE income

When a hybrid mismatch involves a permanent establishment not subject to income tax, unless a double tax treaty (DTT) with a third country exists, Cyprus shall exempt the said income.

Hybrid Transfer for Double Tax Credit

When a hybrid transfer is placed to produce withholding tax or double tax credit, Cyprus shall limit the relief it grants in proportion to the net taxable income in Cyprus vis a vis the payment derived from the transferred instrument.

Reverse hybrid entities

As per the Law, this rule shall be effective as of January 1st, 2022. A reverse hybrid entity is considered an entity incorporated in Cyprus that does not pay its taxes in Cyprus, but in another jurisdiction (i.e. a partnership where its partners are considered its taxpayers instead of the partnership itself) such as the jurisdiction of the investor. Under certain conditions, a reverse hybrid entity may be regarded as a resident of Cyprus in cases where income is not taxed in Cyprus or in any other jurisdiction. In these cases, its income is subject to Corporate Income tax and Special Contribution to the Defence Fund in Cyprus. The above rule shall not apply to collective investment vehicles, such as alternative investment funds.

Tax residency mismatches

Cyprus shall deny the deduction for payments, expense or loss, in cases where tax residency mismatch exists. These cases apply when the payer is a tax resident in two or more jurisdictions for tax purposes, excluding cases of dual-inclusion income. Moreover, should the other jurisdiction be an EU Member State, the deduction will be denied only if the taxpayer is not deemed to be resident in Cyprus according to the double taxation treaty between Cyprus and the other Member State concerned. In such cases, the "loser" State under the tax residency tie-breaker rule of the relevant double tax treaty between Cyprus and that other EU Member State shall deny the deduction.

Moving forward

With the above in mind, we advise all corporates and multinationals holding structures in the EU, doing business with the EU or moving their tax residency, to get in touch with our Tax Advisory Team for advice as per these changes in consideration of future transactions or restructuring. ■

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Opportunity for OIC-adopter company – Depreciation Suspension

"August Decree" (i.e. DL no. 104/2020), thanks to art. 60 co. from 7-bis to 7-quinquies of the Conversion Law (i.e. Law no. 126/2020) has introduced the possibility/opportunity for OIC-adopter companies of not posting in Profit & Loss Statement (also "P&L") in the Statutory Financial Statements (also "FS") related to the business year 2020, up to 100% of the depreciation of tangible and intangible fixed assets.

This optional opportunity is given to support Company in this negative 2020 and can be applied/replicated also to the next financial years, but it will be mandatory the issuing of a Minister of Economy and Finance's Decree. The provision expects that:

1) the "suspended" depreciation will be posted in the P&L of the following financial year (for the major part of entities, it refers to the Financial Statements 31.12.2021) and, with the same method, the subsequent depreciation charges are shifted, increasing the original depreciation plan by one year;
2) the posting in the Statutory Financial Statements for 2020 of the assets, for which the company has chosen the "suspension", at an NBV equal to the resulting one from the Statutory Financial Statements for the prior business year;
3) the recognise in the FS of 2020 of a "not available" profit reserve equal to the "suspended" depreciation charges. If the profit for the year is lower than the shifted depreciation charges, the company must use "other" retained earnings or other available reserves. Any further deficiencies must be closed through the specific allocation of the future profits;
4) the indication in the Notes to the FS of the reasons that led to the application of the above-mentioned opportunity, the quantification of the suspended charge, the corresponding creation of the "not available" reserve, indicating, in addition, the impact on the representation of the equity and financial position and profit or loss for the business year.

The prior point 1) can be interpreted in two following different ways:

a) the percentage of the depreciation charges suspended in 2020 should be recognised in the Financial Statements at the end of the useful life of the related asset;
b) each year (with effect from the year when the company choose the suspension) a percentage of the depreciation charges, equal to that suspended in 2020, should be deferred to the following year.

The following table should help to clarify the above-mentioned interpretations:

A) Gross Book Value: 10.000 Depreciation rate: 20% Suspension year: 2020 % suspension: 80%

Data	2017	2018	2019	2020	2021	2022	2023
Gros Book Value	10.000	10.000	10.000	10.000	10.000	10.000	10.000
Original depreciation	1.000	2.000	2.000	2.000	2.000	1.000	0
Depreciation with suspension	1.000	2.000	2.000	400	2.000	1.000	1.600

B) Gros Book Value: 10.000 Depreciation rate: 20% Suspension year: 2020 % suspension: 80%

Data	2017	2018	2019	2020	2021	2022	2023
Gros Book Value	10.000	10.000	10.000	10.000	10.000	10.000	10.000
Original depreciation	1.000	2.000	2.000	2.000	2.000	1.000	0
Depreciation with suspension	1.000	2.000	2.000	400	2.000	1.800	800

Moreover, it is possible "suspend" the depreciation of assets from a civil-view: it is granted and deferred to the following business year, from a tax-view, the Legislator has provided, however, the possibility of deducting them both for the purpose of income determination, in accordance with the provisions of Articles 102, 102-bis and 103 of D.P.R. 917/1986 and for the purposes of determining the value of net production, in accordance with the provisions of Articles 5, 5-bis, 6 and 7 of Legislative Decree no. 446/1997.

The deduction of the "suspended" depreciation chargers will lead to a mismatch between the civil and the tax value of the assets, resulting in:

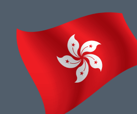
(i) the implementation of a decreasing change in the "REDDITI SC" and "IRAP" model relating to the tax period 2020;
(ii) the filling in section RV of the model "REDDITI SC";
(iii) the recognition of deferred tax liabilities calculated on the "suspended" depreciation charges.

These deferred taxes will be issued at the end of the civil depreciation period of the asset, or at the time of its disposal.

In respect of what we reported before, we underline that the Legislator and/or the Financial Administration have provided any clarifications in relation to:

- the correct interpretation of the provision with reference to the deferral mechanism for depreciation charges, as set out in the numerical example depicted above;
- the fact that, in the absence of specific indications, the suspension of all or only part of all depreciation or only certain selected assets or categories of assets would appear to be permitted.

We wait for official clarifications on the matters above. ■



Is the adoption of the OECD Permanent Establishment Rules conflicting with the established Territorial Source Concept in Hong Kong?

Earlier this year, the Inland Revenue Department ("IRD") in Hong Kong published its first tax ruling addressing the question of a permanent establishment and attribution according to the OECD Model Convention in Hong Kong. With the introduction of international concepts to Hong Kong's tax regime, questions arise whether these are compatible.

Background

As an OECD member, Hong Kong committed to implementing the Action Plan of the BEPS Project. The first steps came mid-year 2018 with the Inland Revenue (Amendment) (No. 6) Ordinance 2018 which introduced and codified transfer pricing principles, permanent establishments, and CbC reporting. Prior to the legislative amendment, the IRD relied on general provisions in the Inland Revenue Ordinance (" IRO") and its Departmental Interpretation and Practice Notes ("DIPNs") to deal with transfer pricing issues and the application of the arm's length principle. The definition of a permanent establishment appeared, until then, only in double taxation agreements.

Hong Kong has established a rather unique tax regime that taxes only profits from "carrying on a trade, profession or business in Hong Kong in respect of [..] assessable profits arising in or derived from Hong Kong [...] from such trade, profession or business (excluding profits arising from the sale of capital assets)". It is noteworthy that the charge to profits tax only includes profits resulting from a trade, profession or business and not the total income. Income of capital in nature, i.e. capital gains, or passive income such as dividends and interest is not subject to the tax charge. The Courts have over the years considered the subject of the source of profits and the following broad guiding principles have emerged from authoritative court decisions:

• Matter of fact

The question of the locality of profits is a hard, practical matter of fact. No universal rule can apply to every scenario. Whether profits arise in or are derived from Hong Kong depends on the nature of the profits and of the transactions which give rise to such profits.

• The operations test

The broad guiding principle is that one looks to see what the taxpayer has done to earn the profits in question and where he has done it. In other words, the proper approach is to identify the operations which produced the relevant profits and ascertain where those operations took place. The source of profits must be attributed to the operations of the taxpayer which produce them and not to the operations of other members of the taxpayer's group.

• Antecedent or incidental activities

The relevant operations do not comprise the whole of the taxpayer's activities. The focus is on establishing the geographical location of the taxpayer's profit-producing transactions as distinct from activities antecedent or incidental to those transactions.

• Place where decision is made

The place where the day-to-day investment/business decisions take place is only one factor that has to be taken into account in determining the source of profits. It is not usually the deciding factor.

• Gross profits from transactions

The distinction between Hong Kong profits and offshore profits is made by reference to the gross profits arising from individual transactions.

• Business presence overseas

A business may maintain a presence overseas which earns profits outside Hong Kong but the absence of a business presence overseas does not, of itself, mean that all the profits of a Hong Kong business invariably arise in or are derived from Hong Kong. However, in the vast majority of cases where the principal place of business is located in Hong Kong and there is no business presence overseas, profits earned by that business are likely to be chargeable to Profits Tax in Hong Kong.

2-Step Test

The source of profits guiding principles have some similar elements to the defining characters of a permanent establishment. The IRD, in its DIPN 60, has established a 2-Step test in an attempt to solve any conflict.

1. the attribution of profits of a non-Hong Kong resident person to its permanent establishment in Hong Kong as if the permanent establishment were a distinct and separate enterprise engaged in the same or similar activities.
2. after the attribution of profits to the permanent establishment in Hong Kong, the broad guiding principle would be applied to determine whether and, if so, the extent to which such profits should be taxed. In this determination the source rules for service, trading or manufacturing income would need to be considered as well.

The attribution rule of same or similar activities could, in certain cases, challenge or alter the application of the source principle where the activities of the permanent establishment differ from the principal office.

Advance Ruling Case No. 66

The provisions of the Ordinance

This ruling applies in respect of section 50AAC(5) and Schedule 17G of the Inland Revenue Ordinance ("IRO").

The Takeaway

While the IRD in its ruling and commentary confirms its approach to permanent establishments and application of the attribution rules following OECD standards, it fails to address the issue of the territorial source concept. We might have to wait for the courts to decide how the broad guiding principles of the territorial source concept are to be applied from case to case. ■

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