You and the Taxman

The battle against BEPS
The impact on Singapore of the OECD’s new tax roadmap
Permanent establishments: now you see them, now you don’t
Up in the air: taxing the cloud
Reining in withholding tax risks
Indirect share transfers in Asia cast under the spotlight
Managing above the line: how customs planning can save costs
Know your entity classification
A new chapter in international taxation is about to be written. Will you be ready as the pages turn?

"Change is constant", so the saying goes. The business world is constantly changing – it is now more globalised than ever with economies linked to one another. Yet, international tax laws have not kept up with this change, allowing MNCs to set up their activities to minimise, or some may say avoid, paying taxes.

Momentum has been building for some time now amongst developed nations to tackle the problem of tax avoidance by multinationals. This culminated in another salvo by the Organisation for Economic Co-operation and Development (OECD) in the form of its 15-point "Action Plan on Base Erosion and Profit Shifting", released in July 2013.

This blueprint to tackle base erosion and profit shifting, or BEPS for short, identifies key areas, such as taxation in the digital space, which need to brought up to par with the current business climate. Endorsed by the G20, it is an ambitious project with an implementation timeframes of up to 2.5 years or more.

The Action Plan recognises that while globalisation has brought tremendous benefits for domestic economies, it has also made it easier for MNCs to relocate productive activities in geographic locations that are distant from the physical location of their customers. This may deprive jurisdictions of their “fair share” of taxes, because profits can be shifted to other low-tax jurisdictions.

To what extent will the BEPS Action Plan affect the policies of tax authorities and the strategies of the international tax planning community? Does this mark a turning point in the sphere of international taxation?

Against this backdrop, we are pleased to put forth a special international tax edition of You and the Taxman, where we cover the all-important BEPS Action Plan and other key international tax issues, some of which have also been singled out in the Action Plan.

"The battle against BEPS" kicks off this issue, walking you through the 15 points of the OECD BEPS Action Plan and the potential impact for the Asia-Pacific. We then turn our attention to the implications on Singapore, with the article "The impact on Singapore of the OECD's new tax roadmap". Though Singapore is not an OECD member, the BEPS Action Plan will no doubt have repercussions on our tax policies.

Action 7 of the BEPS Action Plan identifies that changes to the definition of permanent establishment (PE) may be needed to prevent artificial avoidance of PE status. On this topic, "Permanent establishments: now you see them, now you don't" discusses the common areas which could create PE exposure – accidental expatriates, provision of services and subcontracting arrangements.

Addressing the tax challenges of the digital economy falls under Action 1 of the BEPS project, and cloud computing is part of the digital sphere. "Up in the air: taxing the cloud" discusses the tax considerations that could arise in cloud computing, including permanent establishment and transfer pricing issues.

"Reining in withholding tax risks" examines common withholding tax pitfalls and what companies should do to manage withholding tax risks while “Indirect share transfers in Asia cast under the spotlight” highlights the diverse approaches to taxing indirect share transfers, with lessons learnt from cases in India and China.

"Managing above the line: how customs planning can save costs" highlights that while opportunities exist for customs duty savings through international tax planning, this is not without risks. Lastly, "Know your entity classification" discusses tax implications of using a limited liability partnership (LLP) structure in Singapore for overseas business expansion.

And that wraps up our special international tax edition. Some of the articles are longer than usual, and this is no accident. This is an important time in international taxation and a time to think strategically on cross-border arrangements. We hope you find this issue insightful.
You and the Taxman

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On 19 July 2013, the Organisation for Economic Co-operation and Development (OECD) issued its much anticipated “Action Plan on Base Erosion and Profit Shifting” (BEPS) which sets out the OECD’s work in this area over the next two years. For some time, there has been significant pressure building internationally for multilateral reform of cross-border taxation. This has arisen partly from the adverse publicity in certain countries regarding the tax position of MNCs and the resulting political pressures, culminating in some of the recent statements made by leaders at the G20 summit in Moscow.

The debate on the tax position of MNCs has been played out in various forums. Amongst the most public and well-known of these has been the UK’s Public Accounts Committee questioning of executives from high profile MNCs, representatives from the UK tax authorities and senior tax partners from each of the “Big 4” organisations on the corporate income tax paid by some MNCs in the UK. We have also recently seen similar debates and reports in the US.

The debates and media attention can seem confusing and one-sided. In particular the non-tax benefits MNCs often bring to an economy have sometimes been played down, along with the other “tax” revenues generated through their activities (for example employment taxes and indirect taxes). It is to the OECD’s credit that these benefits are referred to at the start of the Action Plan. Indeed, the ongoing and public “fair tax” debate has been one of the catalysts for the BEPS project and a general reassessment of international tax principles.

Whatever one thinks on the merits of the ongoing debates, their impact cannot be ignored. The danger of dismissing the debate is that countries begin to take unilateral actions driven by political expediency and a desire to raise tax revenues.

As such, if the G20 and other nations are serious about changing the way MNCs are taxed, then a coordinated approach is required now and we welcome the fact that the OECD agrees with this: “Inaction in this area would likely result in some governments losing corporate tax revenue, the emergence of competing sets of international standards, and the replacement of the current consensus-based framework by unilateral measures, which could lead to global tax chaos marked by the massive re-emergence of double taxation”.

Several of the OECD’s “Actions” will have a significant impact on Asia-Pacific based MNCs as well as MNCs that invest and operate in the region. Notwithstanding that most countries in Asia-Pacific are not members of the OECD, governments in the region and their tax authorities are already taking steps to counter alleged abuse by MNCs that affect their revenue bases, albeit with mixed results. By better understanding the proposed actions and looking at recent developments in Asia-Pacific nations, it is fair to say that all MNCs operating in the region need to assess the robustness of their structures against a new higher set of tax standards expected of all countries.
“All MNCs operating in the region need to assess the robustness of their structures against a new higher set of tax standards.”
At its heart, the Action Plan seeks to ensure there is alignment between taxation and the relevant substance that creates economic value. It argues that globalisation, combined with increasingly complex operating models, has opened up opportunities for MNCs to reduce their tax burden.

As a result, tax laws and OECD principles designed to prevent double taxation and so facilitate international trade have also led to instances of reduced taxation (or in some cases “double non taxation” as the OECD puts it). On this, the OECD says: “BEPS relates chiefly to instances where the interaction of different tax rules leads to double non-taxation or less than single taxation. It also relates to arrangements that achieve no or low taxation by shifting profits away from the jurisdictions where the activities creating those profits take place. No or low taxation is not per se a cause of concern, but it becomes so when it is associated with practices that artificially segregate taxable income from the activities that generate it”.

The OECD has identified 15 separate “Actions” it believes are required, and will aim to set out its recommendations on each within a specified timetable - some within 12 to 18 months, some within two years and some which may take more than two years.

**Action 1: Address the tax challenges of the digital economy**
The OECD considers that the development of the digital economy has left the current cross-border taxation system behind and will complete a report by September 2014 identifying the main difficulties the digital economy poses and for the development of detailed options to address these difficulties.

**Actions 2: Neutralising the effects of hybrid mismatch arrangements**
The OECD calls for rules to stop certain effects of hybrid entities and instruments, for example what the OECD calls “double non-taxation”, “double deduction” or “long-term deferral”. This may be through proposed changes to the OECD Model Tax Convention or through recommended domestic law provisions which counter the effects of such arrangements.

**Action 3: Strengthening controlled foreign company (CFC) rules**
There is recognition that strong CFC rules often remove the economic benefit of BEPS but also a suggestion that CFC rules do not always counter BEPS in a comprehensive manner.

**Action 4: Limit base erosion via interest deductions and other financial payments**
The Action Plan seeks the development of best practices in the design of rules to prevent base erosion through the use of excessive interest expense. Examples given include the use of related-party or third-party debt to achieve excessive interest deductions or to finance the production of exempt or deferred income.

**Action 5: Harmful practices**
This Action will consider preferential tax regimes, primarily focusing on improving transparency through the exchange of rulings and on the need for substantial activity in a country before any preferential tax regime is applied.

**Action 6: Prevent treaty abuse**
The OECD will look to develop additional Model Treaty provisions and recommendations for domestic law to prevent the granting of treaty benefits in inappropriate circumstances. This is likely to focus on the issue of hybrid entities being used to obtain treaty benefits, beneficial ownership definitions and increased use of limitation of benefit clauses and anti-triangulation provisions.
Action 7: Status of the permanent establishment (PE) rules
This Action will develop changes to the definition of a PE to prevent any artificial avoidance of PE status. Specifically the OECD refers to the impact of commissionaire arrangements, and the “shift” of profits out of a country where the sales take place without a substantive change in the functions performed in that country. The OECD will also consider PE profit attribution issues.

Actions 8 - 10: Aligning transfer pricing outcomes with value creation
Out of all the issues on MNC taxation discussed in the media recently, it is often this that is brought up. Despite this attention, the OECD notes that rather than replace the current transfer pricing system, the best course of action is to address what are seen as flaws in the current system, focused on intangible assets, contractual risk and over-capitalisation. As part of this, the OECD will also look to make it easier to recharacterise and reconstruct transactions between related parties that would not, or would only very rarely, occur between third parties.

On intangible assets, the OECD will look to address the effects of the movement of such assets between related parties. It will give a broad definition to such assets and seek to ensure that profits associated with the transfer and use of such assets is appropriately allocated in accordance with value creation.

Regarding contractual risk and over-capitalisation, the Action Plan will require the alignment of profits with value creation and ensure inappropriate levels of return are not driven by contractually assumed risks or levels of capitalisation that would not exist in a third party situation.

Action 11: Establish methodologies to collect and analyse data on BEPS
This Action may impose some new data collection obligations on businesses as the OECD seeks to establish the scale and nature of BEPS. However, it is welcomed to see that Action 11 specifically refers to the need to respect taxpayer confidentiality.

Action 12: Require taxpayers to disclose their aggressive tax planning arrangements
Action 12 involves the development of recommendations on mandatory disclosure rules for arrangements deemed aggressive or abusive (taking into account administrative costs both for tax authorities and business).

This desire stems from a view that tax audits, whilst a valuable tool against perceived aggressive or abusive arrangements, cannot always deal with the issues on a sufficiently timely basis.

It may be that rules similar to the UK’s “disclosure rules” are considered in detail, and this issue will be evaluated in conjunction with advanced information sharing provisions and recommendations.

Action 13: Disclosure of supply chain information to tax authorities
The Action Plan suggests that rules may need to be developed requiring MNCs to provide all relevant governments with transfer pricing information on their global allocation of income, economic activity and taxes paid amongst the countries involved. Full disclosure of supply chain information is likely to focus attention on substance and transfer pricing issues addressed elsewhere in the Action Plan, as opposed to the potentially wider disclosures contemplated by the latest EU Commission proposals.

Action 14: Make dispute resolution mechanisms more effective
Work to improve the efficiency of the mutual agreement procedure (MAP) is seen as important to complement the OECD’s work on BEPS. Improving the application of MAP will help to deal with any issues arising from the application and interpretation of new rules introduced due to the BEPS project.

Action 15: Develop a multilateral instrument
The implementation of the BEPS recommendations presents its own challenges. Changes to the OECD model tax convention are not directly effective without amendments to existing bilateral tax treaties. If undertaken on a treaty-by-treaty basis then this process would be lengthy and potentially impractical. Consideration is therefore to be given to a multilateral instrument to amend bilateral treaties for those issues that can be dealt with via changes to a treaty.
The OECD does recognise that not all of the issues highlighted can be dealt with via treaties, and the OECD cannot force individual countries to change their domestic legislation. This issue will require careful thought, especially when considering rules such as freedom of establishment and free movement of capital within trading blocs like the European Union.

**Potential impact for companies in Asia-Pacific and steps taken so far**

In a globalised economy, the markets in Asia-Pacific play an increasingly important role for MNCs. For some countries, the process of centralising functions and processes by MNCs has resulted in lower profits being reported in their country despite overall activities increasing there. Similarly, companies in developed countries are now more inclined to mobilise people, functions and assets, leaving a country either partly or wholly, for commercial and also tax reasons.

These factors have caused some countries in the region to develop and implement their own approaches and plans for dealing generally with BEPS. Recent steps taken by Asia-Pacific nations indicate that the Action Plan and other similar OECD-issued guidance (e.g., Chapter IX of the OECD Transfer Pricing Guidelines) are being taken seriously and will increasingly underpin cross-border tax principles and policies in the region.

Regional headquarter companies in Singapore, Malaysia, Hong Kong and elsewhere are common for MNCs. Such operations often assume significant management, reporting and risk-taking responsibilities for the group’s regional activities. These structures have helped large MNCs manage often disparate market activities but also generate tax benefits by having a significant portion of regional profits taxed at lower rates.

Singapore’s headline corporate tax rate is, at 17%, comparable to some of the rates amongst the G20 countries (e.g., the UK rate will be 20% from 1 April 2015). However, corporation tax rates lower than 17% can be awarded through one of Singapore’s tax incentives, and this policy has been partly credited with encouraging MNCs to locate activities and business here in Singapore since independence, fuelling Singapore’s economic growth.

Such low tax rates could see Singapore held up as a potential “tax haven” and facilitating BEPS. This would miss the point though – low corporate tax rates (i.e., less than headline rate) in Singapore are generally only granted by the Economic Development Board where significant incremental business is brought to Singapore, with strict conditions monitored by the Inland Revenue Authority of Singapore over the period of the incentive. If the Action Plan is to ensure there is alignment between taxation and the relevant substance that creates economic value, then it might seem that Singapore’s incentive regime should be safer than other countries’ regimes.

Action 5 (harmful practices) should become most relevant to Singapore and similar jurisdictions in this area. It may be conceivable that pressure is applied to these jurisdictions to share information on tax incentives granted to MNCs. Given the role that regional headquarter companies often plays in MNC’s global supply chains, the outcomes of Actions 8 to 10 and Action 13 are likely to also be of great interest to tax authorities in these countries and to the MNCs that currently have a presence there, as well as those considering future investments.

MNCs which have regional headquarter companies that fail to meet the substance expectations of countries at greater risk of the adverse effects of BEPS should expect heightened scrutiny and challenges to their tax affairs in the future. With greater emphasis on the alignment of substance with profits, this might involve an increase in substance in existing territories. If global supply chains, the allocation of profits and incidence of taxation need to be disclosed more widely, might more MNCs discount the possibility of including perceived low-tax jurisdictions in their supply chains?

Indonesia’s Director General of Tax (DGT) issued Guidelines for Audits of Taxpayers with Special Relationships (PER-22) on 30 May 2013 which takes effect from 1 July 2013. PER-22 prescribes the information that is required of taxpayers when the DGT undertakes a transfer pricing audit and highlights the areas of focus that DGT officers are expected to take when completing such audits. The target areas are strikingly similar to the Action Plan.
PER-22 requires taxpayers to submit six forms during an audit that disclose detailed transfer pricing information on how taxpayers arrived at the arm’s length principle for transactions and how these transactions compare to their related parties in their supply chains (including overseas companies). Notably, taxpayers are now required to explain the value chain for their business, including the name of any company that performs each of the functions identified in the value chain and their net operating profits.

Australia has also recently enacted new provisions that place a higher level of accountability on public officers (including being personally liable to penalties), provide the Australian Taxation Office with extensive reconstruction provisions for related party transactions and generally require that taxpayers assess the overall commerciality of their arrangements as well as the pricing of individual transactions. Through the newly introduced provisions, taxpayers are encouraged to have adequate transfer pricing documentation available in order to support and defend transactions with related parties, particularly where they result in BEPS for Australia.

In advance of the OECD’s actions on developing additional Model Treaty provisions and having these rolled out into new or revised tax treaties (Action 5), some countries in Asia-Pacific have intensified their pursuit of BEPS by actively revising key double tax treaties to which they are a party. The revised double tax treaty between Australia and Switzerland, signed on 30 July 2013, replaces the existing treaty signed in 1980 and provides a useful insight into how Australia and potentially other countries will draft their tax treaties in a new BEPS governed environment. It is anticipated that new and revised tax treaties with Asia-Pacific countries will adopt more of the measures included in the Australia-Swiss tax treaty.

The treaty includes integrity provisions that help prevent related parties circumventing the permanent establishment thresholds by splitting contracts across related parties. In a move to preserve Australia’s right to unilaterally prevent tax abuse, address thin capitalisation or to ensure that taxes can be effectively collected or recovered, the treaty also contains integrity provisions that limit the application of the non-discrimination clause where these rules would otherwise be overridden.

These are only recent examples of measures taken by Asia-Pacific nations to counter BEPS in their jurisdictions. We expect this trend to continue in parallel with the BEPS project as the OECD’s Action Plan is rolled out. Since it is not only key stakeholder nations of the OECD and G20 that are significantly affected by the outcomes of the BEPS project, it is fair to say that a new paradigm of cross-border tax principles that applies uniformly and effectively to all jurisdictions is in the best interest of all countries.

If individual countries ignore the recommendations of the OECD they run the risk of becoming outlier territories increasingly cast as “tax havens”. We have already seen Singapore and other countries in Asia-Pacific begin to enter into more information sharing agreements with other countries, and believe this signals that these governments agree with the principles of the BEPS Action Plan and plan to align with their neighbours on tackling tax abuse.
Warning of “global tax chaos marked by the massive re-emergence of double taxation” if perceived flaws in the international tax system are not fixed, it is clear the Organisation for Economic Co-operation and Development (OECD) means business in tackling questionable tax avoidance practices.

Globalization and increasingly complex business practices have opened up opportunities for MNCs to reduce their tax burdens within the framework of existing tax legislation and treaties, the OECD argues.

The OECD issued its much-anticipated Action Plan on Base Erosion and Profit Shifting (BEPS) in July 2013 amid mounting political pressure to address century-old international tax rules that have allowed MNCs to pay below-statutory level income taxes.

The 15-point Action Plan (see previous article), which lists the areas of concern, hopes to close the loopholes. Even more ambitious is the aggressive timetable (over the next 1-2 years or possibly more) to unveil the recommendations. Huge technocratic efforts will be needed to amend bilateral tax treaties or rules within trading blocs such as the EU. But clearly, momentum behind this initiative is building amongst the G20 nations.

Singapore may not be a member of the OECD, but its stature as an international business hub means it should carefully consider the OECD’s recommendations to address BEPS.

Thanks to tax incentives, MNCs in Singapore may be able to pay income tax at a rate below the headline corporate tax rate of 17%. This could see Singapore being perceived as a potential “tax haven”, facilitating base erosion and profit shifting. However, such concessionary tax rates are generally only granted when there is significant incremental business or investment brought to Singapore. Incentives come with strict conditions, such as headcount and total business spending. Singapore clearly is not a tax haven under any normal definition of the term.

If the Action Plan is to ensure an alignment between taxation and the relevant substance that creates economic value, then it might seem that Singapore’s incentive regimes should be regarded as less contentious than other “preferential tax” regimes around the globe.

The recommendation to counter “harmful tax practices” (Action 5) should be looked upon as an opportunity for Singapore to further enhance its transparency practices. Singapore may come under pressure to conform by sharing information on incentives or rulings granted to MNCs. But with such responses likely to be reciprocated, and with an increasing number of homegrown companies investing overseas, this measure might be beneficial to Singapore.

“Strengthening controlled foreign corporation (CFC) rules” or Action 3 will impact the structure of MNCs’ operations and decisions about investment locations. Singapore’s low corporate tax rate has, in the early 2000s, caused it to fall within the CFC rules of countries like Japan. Yet, Singapore continues to attract foreign investment. This is because apart from tax, Singapore has more to offer investors - a stable government, a strong corporate governance regime, established infrastructure and an educated workforce. Nevertheless, Singapore needs to keep close tabs on how this area develops to ensure it is not adversely impacted by changes to overseas CFC rules.

The Action Plan also addresses transfer pricing practices, with potentially greater emphasis on the alignment of substance with profits in all territories involved in the supply chain. This is significant given Singapore’s role as a key lynchpin in MNCs’ global supply chains. These actions specifically mention intangible assets (IP) (Action 8), transfers of contractual risk (Action 9) and over-capitalization (Action 10), with an aim to fix perceived weaknesses in the established application of transfer pricing principles.
For IP, MNCs investing into Singapore will have to consider how the Action Plan will require them to demonstrate value creation and economic substance in support of profitability in Singapore. Will it be sufficient to undertake R&D for example, or will the Singapore business have to also demonstrate control of investment decisions and future monetization of the IP? The direction seems to point towards the latter.

Treasury management in Singapore is an area where transfer pricing risk needs to be addressed. The thrust of the Action Plan is that bearing contractual risk and having sufficient financial capacity to bear such risk, especially in an intra-group context, may not be adequate to support the allocation of profits to treasury businesses. If tactical or strategic management and control of such assets can be performed in Singapore, then evidencing this control is necessary to justify the profits allocated.

Similarly, proper transfer pricing documentation (Action 13) is crucial in an era of disclosures of full global supply chain information to the relevant tax authorities. The scrutiny of an MNC’s global operations and the incidence of taxation in different territories can only increase.

While the Action Plan seems to focus heavily on transfer pricing, it could also impact Singapore’s corporate income tax rules.

Singapore does not tax capital gains. If a Singapore tax treaty exempts capital gains for disposing shares in a Vietnamese entity, for example, the capital gains could be non-taxable in both Vietnam and Singapore. Does Singapore need to address this “double non-taxation issue”?

Singapore also taxes foreign interest income only when it is received or deemed received in Singapore. A Singapore entity may extend a loan to an overseas related entity without bringing the interest income back to Singapore, while the overseas related entity may claim a tax deduction on the interest expense. Does this constitute “base erosion via interest deductions”?

The key is to strike a balance between Singapore’s domestic tax laws and the alignment with the international tax rules. In today’s court of public opinion, it is imperative to be well perceived in the international community, especially with regards to tax policy. Singapore is likely to follow OECD developments closely and could formulate tax policies and practices in response to the Action Plan. If Singapore’s automatic information sharing agreements with other countries is any indication, this already portends Singapore’s intention to align with the OECD’s Action Plan.
Companies with an established global footprint should be familiar with the term “permanent establishment exposure”. In today’s globalised business world, the risk of companies inadvertently creating permanent establishment exposure has increased, thanks to an increase in cross-border transactions and rising pressure on tax authorities to boost their country’s tax coffers. Yet, what is a “permanent establishment” or “PE” as it is commonly known?

Despite what the term may seem to suggest, a PE can often be created even if the company does not have a physical presence in the country. For example, the company does not need to set up any sort of establishment or even station anyone with a degree of permanency in the foreign country to create a PE. To explain a PE risk more accurately, it is the risk of the company creating a taxable presence in a foreign country - and having a PE would qualify for a visit from the taxman in that country.

Often, the concept of what creates a PE risk can be very abstract. This is compounded by the lack of guidance and case law interpretations in many countries. Having said this, the risk is very real, especially in today’s tax landscape. In France, a failure to declare a PE was treated as a criminal offence by the French Supreme Administrative Court. In South Africa, the tax authorities are performing frequent reviews of the contractual arrangements with foreign enterprises for the purpose of assessing the foreign enterprise’ PE risks. Closer to home, there has been a plethora of case laws in India over the last few years on PE and profit attribution, whilst China has recently issued additional guidance on PE issues related to secondment arrangements.

When it comes to the definition and application of the PE concept, the Organisation for Economic Co-operation and Development (OECD)’s commentary to Article 5 (Permanent Establishment) of the OECD Model Tax Convention is often referred to, even by non-OECD territories such as China, particularly when there is a tax treaty in place between the two countries. However, it should be noted that tax treaties signed by certain countries in the Asia-Pacific region are commonly based on the United Nations (UN) Model Tax Convention, which contains a more stringent interpretation of the PE concept. For example, under the UN Model Tax Convention, having a building or construction site that lasts for six months is sufficient to create a PE exposure for the foreign company, whilst a 12-month test is provided for under the OECD Model Tax Convention.

Accordingly, when venturing overseas, companies should be mindful of the parameters of the relevant treaty provisions, so as not to unwittingly create a tax exposure in the foreign country for itself. If there is no tax treaty in place between the two countries, the issue of identifying potential PE exposure can become even more onerous.

Based on our experience, the most common areas which serve as a basis for the assertion of a PE include: accidental expatriates or seconded employees, provision of services and subcontracting arrangements.
“Companies should pay close attention to formulating, implementing and maintaining sound policies in the area of PE risks.”
Accidental expatriates or seconded employees

The increased mobility of employees raises issues not just for the employees (such as personal tax and social security), but also creates significant PE exposure for the employer. “Accidental expatriates” refers to employees who travel internationally on business assignments without being on formal secondment programs. Since they are not covered by formal programs, it is often difficult to keep track of what the employees may be doing in the foreign country and their length of stay.

Unfortunately, these two factors are needed to assess if the employer may have a PE exposure as a result of the employees’ business trips. For example, a company’s sales director may travel overseas to discuss contractual terms and sign the sales agreement with major customers, or its service engineer may visit the customer’s onsite location overseas for more than half a year to supervise the installation of heavy equipment. These scenarios may not be out of the ordinary for many businesses, but yet, they do result in PE exposures for the employer in many countries.

Companies may also, for different reasons, second their employees to foreign-related companies on short term assignments. Under a secondment arrangement, the home entity remains as the legal employer of the seconded employees, but the employees work for and report to the host entity during the duration of the secondment. These secondment arrangements should generally not give rise to a PE exposure for the home entity. However, if the secondment arrangement is not executed properly or if it is not supported by proper secondment agreements, the home entity may end up with a PE exposure in the country of the host company.

As mentioned, China has recently issued further guidance on cross-border secondment arrangements in its Announcement (2013) No. 19 (Announcement 19). Aside from setting out the basic principles to determine the existence of a PE, Announcement 19 also sets forth five negative factors under which the home entity may potentially be seen as having created a taxable PE in China if any one of these negative factors occurs. With China’s clarification, it would not be inconceivable that other countries follow suit and scrutinise secondment arrangements more closely.

Provision of services

Companies frequently engage other service providers to render some form of services in the course of their business. For example, a company may enter into an agreement with its foreign subsidiary for the latter to perform sales and marketing support services to the company in its local country or within a specified region. Similar to the case of accidental expatriates, a potential PE exposure may arise for the company, depending on the activities performed by the service provider and where these are performed. To illustrate, assume the subsidiary has the authority to, and does, conclude contracts on behalf of the foreign company in its local country. In most countries, this would give rise to an agency PE exposure for the foreign company.

Subcontracting arrangements

Subcontracting refers to the assigning of part of the obligations and tasks under a contract to another party. For example, a foreign company may subcontract the provision of warranty or trouble-shooting services to a local service provider whilst the company remains as the party legally responsible to the customer. Depending on the duration for which the services are rendered, a potential service PE may arise for the foreign company.

In some countries, including Singapore, domestic tax legislation does not provide for a specific time threshold before a services PE can be created. Where this is the case, the issue would be determining the number of days of services that can be provided in-country before a PE exposure is triggered – should this be a single day, 90 days, 183 days or some other magical number? This is where a tax treaty between the two countries may provide some clarity, particularly if it contains a service PE provision.

Other complexities can also arise when applying the time test to determine the existence of a service PE. For example, based on the OECD commentary to Article 5 (Permanent Establishment) of the OECD Model Tax Convention, connected projects have to be considered and time spent across disjointed periods have to be aggregated. However, when are projects “connected”? And what are the rules for aggregating the time spent if they take place over different time periods or if several projects take place at the same time? These issues would need to be evaluated further before a position can be formed on whether the foreign company may have a services PE in the country where the services are performed.
So what if you have a PE?

Having a PE often means the requirement to file tax returns in the PE country. Failure to do so can lead to potential penalties or even the denial of tax deduction claims by the asserting tax authority. Once a PE has arisen, it will also be necessary to adopt an appropriate method for the attribution of profits to the PE. This in itself can present many challenges.

Further, having a PE could result in potential double taxation for the company, where the profits or income are subject to tax in both the country of residence and the PE country. This is especially so if the two tax authorities are unable to agree on the PE position and attribution of profits, or if there is no mechanism for the two tax authorities to enter into mutual agreement procedures in the first place.

From an accounts and financial statement perspective, the company will be required to analyse and disclose or provide for potential tax liabilities associated with the PE exposure. Given the many uncertainties involved - in assessing the PE risk and in determining the profits attributable to the PE - quantifying the PE exposure can be a time consuming and difficult process.

What can companies do?

Due to the potential high tax costs and negative publicity if a company is found to have an undisclosed PE, companies should try to manage their PE exposure on a proactive basis. To do this, companies should pay close attention to formulating, implementing and maintaining sound policies in the area of PE risks. For example, the activities of employees when they travel abroad or the activities of the outsourced service provider should be monitored to ensure they do not give rise to an agency PE for the company. Companies should also consider automated solutions for tracking business travelers so that an alert can be raised before the time threshold for creating a service PE is breached.

It should be noted that the PE concept has been subject to scrutiny in recent times, with the OECD issuing its revised discussion draft on the interpretation and application of Article 5 (Permanent Establishment) of the OECD Model Tax Convention in October 2012, and the UN Model Tax Convention being updated in 2011 to make revisions to the commentary on Article 5 (Permanent Establishment). In the latest OECD Action Plan on Base Erosion and Profit Shifting released on 19 July 2013, Action 7 calls for the prevention of artificial avoidance of PE status.

Hence, companies should continue to monitor PE developments closely not only to avoid being caught off guard but also to make a timely assessment of the potential impact of any changes.
Cloud computing is transforming the way we work, promising lower costs, improved collaboration and economies of scale. Although the market for cloud computing has exploded, the world’s tax laws have been less quick to catch up. But as tax authorities now begin to eye the borderless nature of cloud computing, companies need to prepare for potential tax controversy.

What is cloud computing?

“Cloud computing” or simply “the cloud” has been a hot topic for a number of years. Technology research firm Gartner describes it as a “a style of computing in which scalable and elastic IT-enabled capabilities are delivered as a service using Internet technologies”.

At its simplest, cloud computing enables enterprises to source IT functions (including infrastructure, storage, databases, applications) and digital content virtually. This provides enterprises with the opportunity to reduce their IT costs and increase their operational efficiency and flexibility, gaining access to the latest technology without the need to invest in capital. With its increasing popularity, the adoption of cloud computing has transformed business operating models across industries. In addition, the cloud has also modernised the lifestyle of end-consumers by making it easier to buy goods and services such as music, movies, games, storage and software over the internet.

Depending on the extent of cloud adoption, part or all of an enterprise’s value chain may be transferred on to the virtual network.

“The mismatch of pace between the evolving digital landscape and the development of tax regulations to address the advancement of the digital economy has given rise to a host of tax issues.”
### Typical operating models under cloud computing

<table>
<thead>
<tr>
<th>For enterprises</th>
<th>For end-consumers</th>
</tr>
</thead>
</table>
| **Software as a service (SaaS)**  
Under SaaS, a business maintains an electronic resource planning (ERP) system on its server. Customers who do not wish to host or license the ERP system pay a subscription for access to the ERP system. | **Lease, rent or license of digital content**  
Here, a business stores digital content on its server. Customers usually pay a subscription fee to access the digital content. |
| **Platform as a service (PaaS)**  
Under PaaS, a business maintains a website on its server. Customers who do not wish to invest in IT hardware and certain software infrastructure pay to access the website to build, host or do both on the website | **Sales of digital content**  
Here, a business stores digital content on its server. Customers pay a one-time fee to purchase the copyrighted content, but not the copyright to it. |
| **Infrastructure as a service (IaaS)**  
Under IaaS, a business owns IT infrastructure such as server farms and networking software. Customers pay for server access and run websites. Customers have no physical control or formal ownership interest in or risk of loss for the servers or hardware. | **Services (with respect to digital content)**  
Here, a business provides customers access to online digital content without the ability to download code or software content to their own device or computer. |

### Various cloud computing deployment models

<table>
<thead>
<tr>
<th>Public cloud</th>
<th>Private cloud</th>
<th>Hybrid cloud</th>
<th>Community cloud</th>
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<tbody>
<tr>
<td>The cloud is hosted by a cloud service provider and is available to all.</td>
<td>The cloud is operated solely for an organisation by itself or a third party.</td>
<td>A combination of public and private clouds.</td>
<td>The cloud is operated by a group of organisations for use amongst the group.</td>
</tr>
</tbody>
</table>

### Key tax considerations relating to cloud computing

With countries pressed for revenue across the globe, tax administrators are clamouring to get a share of the tax pie and casting their nets as wide as possible. Tax policy crafters are finally setting their sights on the digital economy.

The Organisation for Economic Co-operation and Development (OECD) issued a report on base erosion and profit shifting (BEPS) in February 2013, indicating that current international tax standards have not kept pace with changes in global business practices, in particular the development of the digital economy. Results of EY’s cloud computing survey “Tax considerations in cloud computing” conducted in March 2012 across 11 countries also shows that there is often a lack of guidance in domestic tax laws relating to the taxation of transactions conducted over the cloud.

The mismatch of pace between the evolving digital landscape and the development of tax regulations to address the advancement of the digital economy has given rise to a host of tax issues. Enterprises need to consider these tax issues when undertaking or planning to undertake cloud transactions.
Taxable presence or permanent establishment (PE) creation

The OECD defines PE as a fixed place of business where part or all of an enterprise’s business is carried out. However, with cloud computing, enterprises in one jurisdiction can now provide services or deliver digitised goods to customers belonging in other jurisdictions without having to set up a presence in the latter. Enterprises could be earning profits from jurisdictions where they have no physical presence. As a result, tax authorities around the world are grappling with applying existing tax laws and regulations to enterprises operating without respect to country borders.

The response of tax authorities to the increasingly digitised economy has been varied. Some jurisdictions are likely to conclude that the mere presence of a server would give rise to a taxable presence. Others may follow the OECD principles and conclude a taxable presence only upon satisfaction of four conditions – that the server is owned or leased, is operated, is in a fixed location, and performs core functions of the business.

Some tax authorities have issued official guidance on how they would tax e-commerce transactions while others have remained silent. In some instances, two different jurisdictions may stake a claim to the same income. This could leave the enterprise faced with double taxation which may or may not be relieved under a tax treaty. Hence, enterprises should not assume that they can take a blanket tax position for all jurisdictions to avoid being cornered with potential tax exposures.

Characterisation of income

The characterisation of an income is key in determining its tax implications. An enterprise needs to assess how it is conducting its operations with its customers and suppliers to determine the characterisation of its revenue. For example, is it providing a service to its customers and therefore earning a service fee? Or is it providing the customers with a right to a product and earning a royalty?

When making this determination, local countries’ taxation laws need to be factored in. The characterisation of the income would impact the direct tax (including withholding tax) and indirect tax applicable on the transaction giving rise to the income. It could also influence which jurisdiction has the right to tax that income and whether a tax relief or exemption is available under an applicable tax treaty.

Characterising income is a factual exercise which involves a review of the contractual agreements between the relevant parties. It is therefore crucial that enterprises scrutinise their transactions in detail, take a tax position and thereafter maintain and regularly update documentation to support the basis taken.

Transfer pricing

With cloud computing and globalisation, the activities of an enterprise’s value chain may be spread across multiple entities as well as geographies. From a transfer pricing perspective, the challenge would be to identify the value drivers across the value chain and attribute the appropriate amount of profit to each of the value chain processes.

The characterisation of whether a transaction relates to a provision of service or a sale of (digitised) goods would also affect the benchmarking analysis. Generally, there are no specific transfer pricing rules for the e-commerce industry and countries typically follow the OECD principles in the area of transfer pricing. That said, enterprises have to plan for possible challenges from tax authorities on the transfer pricing front as it is an area that is increasingly used by tax authorities from both developed and developing countries to boost their tax revenue.

Indirect taxation

Indirect tax costs can account for a large percentage of business expenses. It is therefore important for enterprises to be aware of the indirect taxation implications that may apply to cloud transactions. The classification of the transaction (e.g., as a service or license or sale of goods) is important as it would impact whether indirect tax applies, which jurisdiction is entitled to impose the indirect tax and what rates are to be applied.
Availability of tax rulings and advanced pricing agreements

The lack of clarity in tax laws relating to cloud computing and e-commerce could give rise to unforeseen tax exposures. To obtain clarity, enterprises may wish to consider applying for tax rulings, negotiating advanced pricing agreements (APAs) to obtain certainty of the tax implications arising from their transactions, or both. That said, given the lack of guidance in tax rules involving the cloud in most jurisdictions, the process of obtaining tax rulings or APAs may be long drawn.

Addressing the BEPS action plan

Further to the BEPS report issued in February 2013, the OECD released its Action Plan on BEPS on 19 July 2013, where it proposed 15 action plans to address the issues highlighted in the BEPS report. The first action proposes to identify the main difficulties in applying current international tax rules to the digital economy and to develop detailed options to address these difficulties. The OECD aims to release a report identifying issues raised by the digital economy and listing the actions to address them by September 2014. In the meantime, enterprises should evaluate how the Action Plan may impact their operations, stay informed about ongoing developments in the OECD and individual countries and determine how to participate effectively (e.g., lobbying) regarding this projects.

Conclusion

Cloud computing is here to stay. The taxation landscape for the cloud continues to evolve and enterprises may need to keep up with a new breed of tax challenges. They should assess their tax positions and exposures and take constructive steps to manage the risks so as not to be blindsided by the myriad of tax issues that could arise.
“...he hardest thing to understand in the world is the income tax,” Albert Einstein once said. This sentiment may be shared by many, especially when it comes to the diverse and complex world of withholding tax. Even so, companies cannot afford to take their withholding tax obligations lightly.

Withholding tax explained
Withholding tax is imposed on a transaction-by-transaction basis. It is usually deducted at the applicable tax rate from certain cross-border payments made to non-residents. Under a withholding tax regime, the purchaser acts as the tax collecting agent for the tax authority. The purchaser withholds tax from the payment to the non-resident and pays that tax to the tax authority, even though the withholding tax is technically the liability of the non-resident supplier.

To illustrate, say a licencee in Singapore has to pay S$100 in royalties to its supplier overseas. Under the withholding tax regime, the licencee has to pay S$90 to the supplier and the remaining S$10 in withholding tax to the Inland Revenue Authority of Singapore. This assumes Singapore’s 10% domestic royalty withholding tax applies in the absence of a reduced treaty rate. In this case, the supplier has suffered 10% Singapore income tax through the withholding tax collection mechanism.

The rising importance of withholding tax
Around the world, shrinking corporate tax revenue has led tax authorities to increasingly rely on other taxes, such as withholding taxes and consumption taxes like goods and services tax to maintain their tax coffers. As a result, tax authorities are ramping up enforcement of withholding tax payments by aggressively pursuing non-compliant taxpayers.

Withholding tax has a wide reach. It can be applied on dividends, interest, rent, royalties, service fees as well as capital gains. It can be levied on third party transactions as well as related party arrangements. As it is transaction based, withholding tax provides a more stable stream of revenue as opposed to corporate or income taxes which are dependent on net income or profit and fluctuate with economic volatility.

Further, the onus of collection often rests with the payer of the transaction thus reducing the tax authorities’ cost of administering the tax. Hence, it is commonly used by tax authorities, especially those in emerging Latin American and Asian economies, to varying degrees, as an efficient and effective mechanism to raise tax revenue given their limited tax infrastructure and resources.

In addition, globalisation has resulted in multinational enterprises (MNEs) conducting fragmented activities spanning multiple entities and geographies. This has given rise to a myriad of cross border transactions that may attract withholding taxes.

Given the rising importance of withholding tax as a form of tax revenue for governments, companies should reassess their withholding tax risks and take steps to manage their compliance.

Common withholding tax pitfalls
Withholding tax regimes are diverse and complex. Some jurisdictions, such as Indonesia and Thailand, require withholding even on payments between resident companies, while others such as Hong Kong do not impose withholding tax except on royalties. In addition, different tax bases may apply - some withholding taxes may be assessed on gross income while others are assessed on net income. Different rates - domestic or treaty - may also apply. While tax treaties may offer reduced rates, the multitude of compliance requirements (for example, documentation or the application process for treaty relief) may add an additional layer of complexity to the withholding tax compliance process.
"Given the rising importance of withholding tax as a form of tax revenue for governments, companies should reassess their withholding tax risks and take steps to manage their compliance."
Many companies do not have a centralised tax team attending to withholding tax compliance. This exercise is often delegated to the local operations or accounts payable team. If they lack the knowledge of withholding tax rules (for example, the offsetting of intercompany balances does not negate withholding tax obligations), the withholding tax exposure may remain dormant for many years. The result: the company could be saddled with a ticking compliance time bomb that could result in significant cost damage should it blow up.

Another common mistake made by companies is the failure to factor tax costs because the tax team is left out of decision making processes at the outset. While companies need to be quick to seize opportunities, they should be equally mindful not to be blindsided by hidden tax costs. If tax teams are only involved in the later stages of business decisions or negotiations, this could result in long-drawn negotiations or deal breakers which may have a negative impact on business relationships.

To illustrate, assume Company A located in Singapore wishes to enter into a licensing agreement with Company B located in Germany for the right to use a trademark. The agreement states that any withholding tax is technically the cost for the licensee (Company A) even though the withholding tax exposure may remain dormant for many years. The result: the company could be saddled with a ticking compliance time bomb that could result in significant cost damage should it blow up.

The terms of the agreement state that any withholding tax obligations e.g., sourcing, business, accounts payable, finance, tax?

How is withholding tax computed e.g., manually or by the company’s IT system?

Who is responsible for computing the withholding tax and paying that to the relevant tax authorities?

Who is responsible for collating and maintaining the withholding tax filing documentation?

If certification requirements are needed for withholding tax exemption, who is responsible to request them? Who maintains the certification and how often is it reviewed and updated?

Is there a review (of the withholding tax computation and compliance) process in place?

Are the applicable rates and procedures documented in a manual? If yes, how often is the manual reviewed and updated?

Results can be collated and illustrated in heat maps and graphs to illustrate where the company has strong internal controls (opportunities for cash management) and where controls are lacking (risk areas). The heat maps and graphs can then be used as the basis for improving the process of identifying potential withholdable transactions, strengthening current controls and developing training manuals.

Companies should also take stock of all the third party and related party transactions they undertake. From this list, they can identify a list of withholdable transactions and create a file containing:

- The nature of the transaction e.g., is it a service payment or a royalty payment, etc. Companies should note that different tax authorities may adopt a different characterisation of the same transaction which would impact the withholding tax applicable on the payment
- The applicable withholding tax rate
- A summary of the withholding tax compliance requirements
- The documents that are needed for treaty application (if applicable) e.g., residency certificate or the latest copy of the contract

A designated team should maintain and update the file for items such as changes in local country withholding tax rates and oversee the collation of prescribed documents on a timely basis.

**Conclusion**

With increasing scrutiny on withholding tax compliance, companies can no longer afford to overlook withholding tax. By proactively managing their withholding tax risks, companies could benefit from the reduced risk of potential assessments and penalties, more efficient cash flow management and lower operational costs.
Foreign investment has surged in Asian markets over the last decade. In structuring investments, inbound investors not only evaluate how to repatriate profits tax efficiently, but also how to minimise taxes upon exit. While an indirect transfer of shares can in certain situations offer an option to mitigate capital gains tax exposures, this strategy is facing increased scrutiny by tax authorities.

Fuelled by strong growth in the region, the values of many Asian companies have increased significantly. Gains on the direct or indirect transfer or disposal of shares in these companies can often be subject to tax in the country where the underlying operating company and its business is located.

Unsurprisingly, regional governments are closely monitoring the offshore transaction activity of inbound investors. Some are even revising legislation to more effectively capture tax revenues, particularly from indirect share transfers that take place outside their jurisdictions.

An indirect transfer of shares generally involves the sale or transfer of shares in a company, which owns shares in another company that has active business operations, substantial investment portfolios or a combination of both. The result: the direct shareholder(s) of the operating company do not change. In many cases, this means that from the perspective of the country where the operating company is a resident, a taxable event (e.g., a disposal) has not occurred, unless rules exist to otherwise tax such transactions. Figure 1 illustrates a simple offshore indirect share transfer.

The company that has its shares transferred is usually a tax resident in a low or favourable tax jurisdiction. Therefore, the transaction may result in little or no tax becoming payable in the country where the shares are transferred.

The question that arises is whether the country where the operating company (and usually also the business) is located can tax such gains derived from indirect share transfers and, if so, on what basis?

Diverse approaches

Governments in Asia-Pacific have adopted different approaches to collect tax from indirect share transfers. This is shaped by the market characteristics and foreign investment rules in their respective countries, including foreign ownership of equity and property, foreign exchange controls and tax policy.

Cases in China and India have been caught in the media spotlight globally, as these countries tackle what they perceive as aggressive tax structures. Conversely, some countries have, as a matter of policy, opted not to tax these transactions or to limit their taxing rights over these transactions in order to encourage foreign investment.

Figure 1: Shares in an intermediate company are transferred leaving no change to the operating company’s direct ownership.
The case in India: lessons from Vodafone

Perhaps the most high-profile of indirect share transfer tax cases is telecommunications group Vodafone’s entry into the Indian market through its purchase of Hutchison Essar*. The amount under dispute exceeds US$2.2 billion in tax and late payment interest.

In the transaction, a Vodafone subsidiary in the Netherlands entered into an agreement with a third-party Hong Kong company to acquire the shares in a Cayman Islands company which, in turn, held a controlling interest in Indian company Hutchison Essar. Through the indirect sale of shares in the Cayman Islands company, the controlling interest was effectively transferred to Vodafone. The Indian tax authorities contended that Vodafone should have withheld tax from its payment to Hutchison and therefore is liable for the payment of outstanding tax (and interest penalties).

Figure 2: A simplified illustration of the Vodafone/Hutchison indirect share transfer

1. Hong Kong and Netherlands companies enter into a share purchase agreement
2. Shares in Cayman Island company and its holdings are transferred to the Dutch company

What became clear from the Vodafone case ruling pronounced by the apex court of India was that the views of the Indian tax authority and broader government in relation to the taxation of indirect share transfers was not reflected in the tax law. In response, the Indian government passed amendments in the income tax law which had retrospective effect and, incidentally, nullified the favourable ruling mentioned above.

Amendments to the tax law now deal directly with indirect share transfers of Indian companies between non-residents and subject these transactions to capital gains tax in virtually the same way as direct share transfers. Various other sections of the tax law were also amended to bring indirect transfers of shares in Indian companies within the Indian capital gains tax net.

The Indian government is also considering revising some of India’s commonly-used double tax treaties to prevent the avoidance of Indian tax through offshore structures. Recent amendments to India’s tax treaties, such as the India-UAE tax treaty, have focused substantially on narrowing opportunities for offshore capital gains tax planning in India and improving the exchange of information between the tax authorities.

Investors are attracted to India for its low cost operating opportunities and growing consumer market base. Understandably, the Indian government has taken pragmatic albeit controversial measures to ensure that gains on indirect share transfers in Indian companies are subject to tax in India. Although the Vodafone case is headed towards a non-binding conciliation process with the Indian government, the case has undeniably had a significant impact on foreign investor confidence in India and the perceived after-tax value of some foreign-owned investments in India.

China and Circular 698

Prior to 10 December 2009, it was common for MNCs to plan disposals or reorganisations of investments in Chinese entities through indirect share transfers. In short, where a share transfer occurred outside China that did not change the direct shareholding of the Chinese entity, the capital gain was disregarded in China.

As China’s role in the global economy shifts from a low-cost manufacturing base to a consumer and financial market, exposure to capital gains tax (and indeed potential for tax revenues) is greatly increased. In response, the Chinese government issued Circular 698 which outlines a non-resident’s obligation to report gains on direct and indirect share transfers and provides the tax authorities with a mechanism and powers to assess tax on such gains. Circular 698 had retroactive effect from 1 January 2008.

Non-residents are now required to furnish the following to the Chinese tax authorities within 30 days from the signing of an equity transfer agreement:

- A copy of the equity transfer agreement or contract
- A statement describing the relationship between the seller and the intermediate holding company in the areas of finance, business and buy-sell transactions
- A statement describing the intermediate holding company’s business operations, human resources, finance and assets
- A statement describing the relationship between the intermediate holding company and China resident company in the areas of finance, business and buy-sell transactions
- An explanation of the reasonable commercial purpose for the seller in establishing the intermediate holding company
- Other information as required by the tax authorities

*Vodafone International Holdings B.V. vs UOI and Anc. - (341 ITR 1)(Supreme Court)
If the tax authorities believe that an interposed holding company does not satisfy the business purpose and substance requirements, they may disregard or “look-through” these entities and impose capital gains tax against the deemed disposer. However, this “anti-abuse” approach to the tax treatment of indirect share transfers has created some investor uncertainty.

Circular 698’s broad outline of the transactions and arrangements that it targets does not address, among other issues:

- Whether a clawback will apply to any tax treaty benefits availed by China in cases where an intermediate company has been disregarded (e.g., reduced dividend withholding tax rates).
- The interpretation of Circular 698 by the authorities also varies between provinces and often lacks consistency. Until additional guidance on Circular 698 is issued centrally, investors have limited certainty on the tax treatment of their indirect share transfers in China.
- Whether a clawback will apply to any tax treaty benefits availed by China in cases where an intermediate company has been disregarded (e.g., reduced dividend withholding tax rates).

What can be expected in the future?

The tax treatment of indirect share transfers in Asia continues to be an area of concern and, in many cases uncertainty, for foreign investors. Regional governments often consider developments in neighbouring jurisdictions when setting and revising tax policy, adopting rules and approaches that best complement their own market characteristics and outlook.

“Whilst indirect share transfer tax planning opportunities continue to exist in Asia, investors should expect their corporate structures to be subjected to increased scrutiny to assess the true economic nature of offshore transactions.”

Whilst indirect share transfer tax planning opportunities continue to exist in Asia, investors should expect their corporate structures to be subjected to increased scrutiny to assess the true economic nature of offshore transactions. Equally, they should be aware that information exchange treaty networks are expanding rapidly in Asia and elsewhere, giving tax authorities oversight of transaction activity where it may have previously not existed. Lessons from cases in India and China should therefore be considered in a broader, more regional context when planning inbound investment structures in Asian countries.

Gagan Malik is a Tax Partner and EY’s India Tax Desk for Singapore and Blake Langridge is a Senior Tax Manager in EY’s Asia-Pacific Tax Centre team based in Singapore.
Managing above the line: how customs planning can save costs

Shubhendu Misra and Donald Thomson discuss how customs planning can result in tax savings opportunities

Buried within the cost of goods sold, customs duties can eat into “above the line” income. In-house tax teams usually invest significant time and energy to create favourable tax positions in international tax planning and business restructuring projects, but may often overlook customs valuation and duty considerations. This could result in missed customs duty savings opportunities or even costly and unviable tax structures. Therefore, customs duty planning is a vital aspect of international tax planning strategy.

Customs and tax authorities have different perspectives on international tax and transfer pricing issues. Customs authorities are concerned with the declared values of imported goods on a shipment or consignment basis, rather than whether the importer meets a specific level of operating margin on an annual basis. It is important to account for these fundamental differences and adopt a broader holistic approach to international tax planning and restructuring.

Customs valuation basics

Customs duties are generally calculated by applying the product specific duty rate on the “customs value” of the imported goods. Customs value is also relevant for calculating other indirect taxes applied on imports. The World Trade Organization Customs Valuation Agreement (WTO CVA) sets out the legal framework for determining the customs value of imported goods, including for transactions between related parties. Most countries have adopted the WTO CVA as the primary basis for their legislation relating to customs valuation.

The WTO CVA sets out six different methods of determining customs value and their order of application or preference. It is estimated that over 90% of cross border transactions across the world use the Transaction Value method of customs valuation which is based on the “price paid or payable”. In most cases, this is the sale price of the imported product, subject to certain adjustments. The Transaction Value principle is specified in Article 1 of the WTO CVA and is also commonly referred to as method 1 of customs valuation.

Customs valuation planning opportunities

Article 8 provides customs valuation planning opportunities as it specifically allows for adjustments to the Transaction Value. Article 8 requires that certain specified elements should be added to the price paid or payable for the imported goods, in addition to transport and logistics costs. These mainly consist of:

- Commissions and brokerage, except buying commissions
- Cost of containers and packing
- The value of assists
- Royalty and license fees
- The value of proceeds of subsequent resale or use of the imported goods.

As such, customs duty can be reduced or increased by unbundling and removing or adding certain items to the declared customs value. This offers various customs valuation planning opportunities for international tax planning and business restructuring projects.

Buying commissions

According to the WTO CVA, commissions or brokerage fees paid by a buyer but not included in the price actually paid or payable are to be added to arrive at the customs value. An exception is buying commission, which is defined as “fees paid by an importer to importer’s

1The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994
“Opportunities exist for customs duty savings through aligning international tax planning and business restructuring with customs valuation concepts. The uncertainties and risks can be managed with supporting documentation explaining the new business arrangements and pricing.”
agent for the service of representing the importer abroad in the purchase of the goods being valued\(^2\). Accordingly, any commissions paid by an importer in the form of buying agency fees do not have to be added to the customs value.

**Royalties and license fees**
The WTO CVA specifies royalty and license fees to include, among other things, payments in respect of patents, trademarks and copyrights. It requires royalties and license fees which are paid by the buyer and not included in the price paid or payable to be added to the customs value for duty purposes if both these conditions are met:
- They are related to the imported goods
- They are paid as a condition of sale of such goods

If royalty payments are significant and the duty rate of the associated imported goods is high, the royalty agreements can be examined to understand whether the payments are dutiable. Agreements can be structured to remove intangibles, management service fees and recharges from the customs value. The payment of import duties related to royalty payments can potentially be reduced by:
- Restructuring the royalty agreement to legitimately exclude royalty payments from customs value
- Considering whether royalty payments can be replaced with other arrangements which are not directly related to the imported goods, such as a fixed fee for sole distribution rights

However, such a restructuring activity must be carefully considered in totality with any potential direct tax and commercial implications including:
- Income tax and withholding taxes
- Business taxes imposed on the payment of commissions or other service fee
- Impact on any current government incentives received
- Other operational and compliance considerations

**Business restructuring and customs valuation**
In the context of business restructuring, where Transaction Value is applicable, the insertion of an additional entity in the supply chain will result in an increase in sales price and customs value. This would result in an increase in the customs duty payable and upon conversion, the local Customs authorities may also challenge that prior imports have been undervalued.

Depending on the specific transactions and trade flows, this price increase can be managed by a number of customs valuation planning approaches: first sale for export, non-resident importation models and free trade agreements.

**First sale for export (FSFE)**
It may be possible to mitigate increases in customs value for imports into the US and EU by utilising the FSFE principle. Goods imported into the US or the EU are often appraised on the price paid or payable to the middleman. FSFE allows importers to pay duty on the “first sale” price paid by the middleman to the manufacturer. The price is lower as it excludes the mark up by the middleman plus other additional expenses.

However, there are key requirements to utilising the FSFE including:
- The transaction is a bona fide sale
- The goods are clearly destined for the US or EU
- The sale is at arm’s length
- The transaction can be supported by full documentation and recordkeeping

**Non-resident importation models**
It should be noted that FSFE is technically not possible in most customs jurisdictions. Therefore, in countries where it is possible for a foreign company to act as the importer, it may be possible to utilise the foreign entity’s purchase price for customs valuation purposes. In addition, the foreign company would normally have to register for value-added tax (VAT) or goods and services tax (GST) which can lead to permanent establishment risks for the foreign entity. This model is less common in Asia-Pacific given the restrictive customs and indirect tax legislations.

**Free Trade Agreements (FTA)**
FTAs can also be utilised to reduce the customs duty impact of increases in customs value as a result of business restructuring. FTAs are international agreements designed to grant preferential market access to its members that may be in many cases lower than the prevailing applicable general rate of duty (Most Favoured Nation) rates.

In general, goods can only qualify for preferential duty rates if they meet the Rules of Origin (ROO) employed by the particular FTA. Administrative requirements must be met in order to claim preferential rates. In order to obtain the Certificate of Origin, the exporter generally must submit evidence that the goods have complied with the associated ROO (e.g., submission of cost statements showing 40% originating criteria in several cases under ASEAN Trade in Goods Agreement). However, companies require substantial operations and local sourced inputs such that the FTA conditions can be met.

**Practical tips and pitfalls of customs valuation planning**

**Managing customs risk through supporting documentation**
Changes to the customs value through customs valuation planning or business

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2 Paragraph 1(a)(i) of the Interpretative note to Article 8 of the WTO CVA
restructuring activities can result in challenges from customs authorities. There is always a risk that the customs authorities may scrutinise the new arrangements between the parties to understand whether the relationship between entities has influenced the transaction value. Where there is an increase in the customs duty payable upon conversion, the local customs authorities may also challenge that prior imports have been undervalued.

This customs risk can be partially managed with supporting documentation which explains the new business arrangement. Most customs authorities follow the WTO CVA fair valuation policy framework. As such, it will be necessary to consider whether the prices between the parties are acceptable under paragraph 2 of Article 1 which provides two methods on which the “arm’s length” nature of the transaction can be established:

- By an examination of the “circumstances surrounding the sale” to evidence whether the relationship has influenced the price: in this context, where the customs authorities take a view that there is evidence of possible price influence, they are required to notify the importer of the grounds.
- By comparing the prices determined using Transaction Value with “test values” based on other transactions or valuation methods, e.g., Deductive Value (broadly similar to resale price minus method) or Computed Value Methods (broadly similar to cost-plus).

As such, a core component of the supporting documentation will be a product price “walk-through” that demonstrates that the new product pricing arrangements are arms length for customs valuation purposes based on “test values” using other transactions or valuation methods.

**Proactively engaging with the customs authorities to mitigate customs risk**

Where the quantum of price change is significant, the customs risk can be further mitigated by discussing the new business arrangement and product pricing in advance with the customs authorities to gain informal approval for the new pricing. In some cases it may even be necessary to obtain formal rulings.

In the event that the customs authorities decide that Transaction Value cannot be used by the importing entity, then continued engagement with the customs authorities will be required to reach an agreement on the most practicable method of valuation to be used. This can often be a time consuming and resource intensive process (including process and IT considerations in the calculation and generation of an invoice for customs purposes) as the customs authorities in Asia are generally unfamiliar with alternate methods of customs valuation and therefore resist their use.

**Trend towards royalties planning being challenged by customs authorities in Asia**

In Asia, there is a growing trend for customs authorities to push for royalties to be added to the transaction value of the goods. Therefore, although it is theoretically possible to structure agreements to be non-dutiable, in practice, local customs authorities will challenge to make the non-goods payments dutiable. This growing risk should be carefully considered when undertaking any form of customs valuation planning that involves royalty or similar payments.

**Transfer pricing adjustments**

Finally, use of a transfer pricing method that assigns a target operating margin to manufacturing and sales entities, very often involves year-end adjustments to align the return for such entities to the targeted range. Such adjustments raise the question whether any corresponding adjustments need to be made to the customs value declared for imports through the year.

Most customs regimes in Asia do not have express provisions to deal with this and the most common approach is to make a disclosure to the customs authorities. If the adjustments result in a reduction of the price previously declared, usually duty refunds are not granted. However, if the adjustments result in an increase of such price, duty and import taxes, along with interest (where specified in the national legislation), need to be paid and in several instances penalties or fines may also be imposed. One of the approaches to minimise significant year-end adjustments is for regular and more frequent entity profitability reviews and prospective price adjustments to bring better alignment with the targets; though it needs to be considered whether any resultant price volatility raises customs valuation questions.

**Conclusion**

Opportunities exist for customs duty savings through aligning international tax planning and business restructuring with customs valuation concepts. The uncertainties and risks can be managed with supporting documentation explaining the new business arrangements and pricing. Engaging customs authorities to determine the appropriate customs value and explaining the background and rationale of the business restructuring and transfer pricing method utilised will also assist in mitigating uncertainty and surprises in future audits.

Shubhendu Misra is Partner, Customs and International Trade and Donald Thomson is Associate Director, Customs and International Trade at Ernst & Young Solutions LLP
Setting up and operating a business entails many choices. One of the most important is the type of legal entity to be used for the business.

When choosing a preferred entity structure to use for business expansion, businesses should consider the entity classification and the resulting tax implications. Understanding the local tax implications of the entity structure is crucial as it could impact the after-tax returns of the business.

Further, if the entity is involved in cross border transactions, it may face a situation where it is treated differently in overseas countries resulting in unexpected high tax costs. Thus, investors should understand the tax effect of the entity classification when evaluating which form of legal entity to deploy.

On the tax front, entities can be broadly classified into three types:

- Transparent entity (such as a partnership) where income of the business is not taxed at the entity level but at the level of the owners or partners
- Non-transparent or opaque entity (such as a company) where income derived by the entity is taxable at the level of the company
- Hybrid entity where the entity is treated differently for tax purposes by two or more countries

Companies and branches are conventional forms for investors keen to set up and operate businesses in Singapore and the region. A fiscally transparent partnership structure such as the limited liability partnership (LLP) is another entity structure that is usually considered. With its legal personality separate from the partners, limitation of liability for the partners and ease of setting up and exit, an LLP may be an alternative entity structure for investors entering into business in Singapore with another joint venture partner.

To illustrate the key tax considerations relating to the legal structure of a business, here we compare a company with an LLP from a Singapore tax perspective.

Risk of higher tax costs

For Singapore tax purposes, a company is regarded as an opaque entity where any taxable income derived by the entity is taxed at the prevailing corporate tax rate of 17%. A company is required to file an income tax return annually to the Singapore tax authorities.

An LLP, which is not a separate legal entity, is regarded as a transparent entity for Singapore tax purposes. This means that an LLP will not be liable to tax at the entity level and instead, each partner will be taxed on his or its share of the income from the LLP.

In Singapore, specified foreign-sourced income (including foreign dividend income) received by a tax resident company is exempt from tax provided that certain conditions are met. Singapore tax resident companies are also eligible to claim double taxation relief for foreign taxes suffered on foreign-sourced income.

If an LLP receives foreign-sourced dividend income and the partners of the LLP are non-Singapore tax resident companies, the partners would not be eligible to claim exemption relief under the Singapore foreign income exemption regime or double taxation relief in Singapore. As a result, the partners could end up paying 17% on the foreign dividend income repatriated to Singapore.
“Investors should understand the tax effect of the entity classification when evaluating which form of legal entity to deploy.”
Access to tax treaty benefits

Singapore has an extensive tax treaty network. To-date, it has inked tax treaties with close to 70 countries. Singapore tax residents are therefore able to benefit from the reduction in withholding taxes on dividends, interest and royalties or tax exemption on service income offered by these tax treaties.

One issue that may have to be managed when using an LLP to invest overseas is the ability to claim tax treaty benefits. Generally, a Singapore entity can enjoy the reduced withholding taxes or exemption relief under Singapore’s tax treaties provided the Inland Revenue Authority of Singapore (IRAS) treats the Singapore entity as a Singapore tax resident and the entity obtains a certificate of residence from the IRAS.

A Singapore company which qualifies as a Singapore tax resident is able to obtain a certificate of residence from the IRAS for claiming the relevant tax treaty benefits.

On the contrary, as an LLP is not regarded as a separate legal person for Singapore tax purposes, it cannot have tax residence status on its own. Therefore, the IRAS will not issue a certificate of residence to an LLP, even if the partners are Singapore tax residents. However, a certificate of residence may be issued, upon request, to a partner of an LLP if the partner is a Singapore tax resident.

There may be uncertainty as to whether foreign tax authorities would treat the Singapore tax resident partners of an LLP as the ultimate beneficial owners of the foreign-sourced income for treaty purposes. As a result, the foreign tax authorities may deny treaty benefits to the Singapore tax resident partners of an LLP.

To illustrate this, let’s examine a 2012 ruling case in India [AAR No. 1029 of 2010] involving a Swiss partnership firm, which is treated as fiscally transparent for Swiss income tax purposes (similar to Singapore). The crux of the issue was whether the Swiss partnership firm was eligible to claim the benefits under the India–Switzerland tax treaty for the legal fees that it had received from its India client for services that were performed primarily in Switzerland and Germany (i.e., outside of India).

The Authority for Advanced Rulings (AAR) in India denied treaty benefits to both the Swiss partnership firm and its partners (who are all Switzerland tax residents) and held that the legal fees should be taxable in India. The AAR was of the view that since the Swiss partnership firm is not a taxable entity for Swiss tax purposes, it does not fall within the definition of a “person” as provided under the said tax treaty. Therefore, it cannot claim the benefits of the tax treaty. With regards to the partners of the Swiss partnership firm, the AAR did not regard them as the recipients of the legal fee income and stated that the right of the partners is only to share the profits of the Swiss partnership firm. Therefore, given that the partners cannot be said to have received any income from India, they cannot invoke the tax treaty to claim that the legal fee income was not taxable in India.

Deductibility of borrowing costs

In Singapore, interest expense is deductible for income tax purposes if it is payable on capital employed in acquiring income.

If a Singapore investor obtains debt financing to set up a company in Singapore for business expansion, the interest costs incurred on the debt financing can only be deducted against the one-tier tax-exempt dividend income that the investor receives from the Singapore company. In such a case, the company would not get any effective tax deduction on its interest costs.

Where an LLP is set up instead of a company to carry on a trade or business, the interest costs incurred by the partners for the business of the LLP should be deductible against their respective share of income received from the LLP. This reduces their taxable income in Singapore.

Compatibility with business objectives

Investors should take into consideration the tax implications arising from using an LLP structure and a company structure in Singapore, especially when the Singapore entity is to be used for overseas business expansion. It is important to understand the entity classification of the different entity structures for tax purposes and the tax implications. With prior tax planning, investors would be able to choose the appropriate tax efficient entity structure that is compatible with their business objectives.
Building a better working world

When business works better, the world works better.

Ernst & Young will now be known as EY.
And our purpose? To build a better working world.
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Enduring growth.
By encouraging the development of the people who are—and will be—the builders, the visionaries, the achievers.
We're making it our purpose to help build a better working world.
Starting with yours.
## At a glance

Inland Revenue Authority of Singapore (IRAS) e-Tax guides issued or revised from 1 January 2013 to 31 August 2013

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Our tax professionals in Singapore provide you with deep technical knowledge, both global and local, combined with practical, commercial and industry experience. We draw on our global insight and perspectives to build proactive, truly integrated direct and indirect tax strategies that help you recognize the opportunity in business change and build sustainable growth, in Singapore and wherever else you are in the world.

We draw on extensive accounting and compliance experience and tried-and-tested methodologies that allow you to manage your direct and indirect tax compliance and reporting obligations effectively. We help you assess, improve and monitor your tax function’s processes, controls and risk management and maintain effective relationships with tax authorities.

Our talented people, consistent methodologies and unwavering commitment to quality service help you to build the strong compliance and reporting foundations and sustainable tax strategies that help your business succeed.

Business Tax Services

Our Business Tax Services in Singapore are designed to meet your business tax compliance and advisory needs. Our tax professionals draw on their diverse perspectives and skills to give you a seamless service through all the challenges of planning, financial accounting, tax compliance and maintaining effective relationships with tax authorities. Our holistic approach builds sustainable tax strategies based on technical, practical, commercial and industry knowledge.

Business Incentives Advisory

Our Business Incentives Advisory team work closely with the Corporate and International Tax Services as well as Indirect Tax Services groups to assist in incentivites negotiations for our clients. For Singapore incentives, we evaluate and assess possible incentive opportunities based on project parameters for our clients, provide suggestions to avail of incentive opportunities, strategise the approach for discussions with the authorities, facilitate meetings with the authorities and our clients, assist in applications for relevant incentives, and assist in the process design for incentive maintenance, tracking and reporting obligations. We also conduct regional incentive studies where we provide cross-country comparisons of potential incentives for site location or competitive benchmarking.

We also assist with R&D tax deduction, where we will meet with technical personnel to assess the potential qualifying R&D projects, work with your finance and tax teams to identify qualifying R&D expenditure, prepare or review the R&D plans for submission to tax authorities, and assist you with queries raised by the authorities surrounding claims.

Cash Tax Planning

We help clients analyse the specific facts of their business operations on a global basis, identify various tax regulations and realise the potential benefits that can be attained. Our tax planning offerings can help you improve cash tax flow, where appropriate create refund opportunities and help plan for cash tax and effective tax rates in future years. By helping to streamline your tax compliance on a local and global level, we use our experience and technological tools to help develop an efficient and effective approach to making claims in a manner acceptable to tax authorities.

Global Compliance and Reporting

Compliance and reporting make huge demands on tax and finance functions today. Our market-leading approach combines extensive local compliance and accounting experience - in 140 countries - with a standard global compliance process and web-based tools.

You can access the resources of our dedicated compliance and reporting professionals in one country or globally with a single point of contact. Our advice can accommodate local-to-local service, where you need it, at the same time as centralising and automating aspects of the process where it makes sense.

Our next generation model focuses on global data management, making it easier to centralise and re-use data across the financial supply chain and geographical boundaries. This can result in more accurate data and less manual intervention. In one country or many, we can give you an integrated, consistent, quality service that unlocks the potential of your compliance function, with tax compliance, statutory accounts preparation and tax accounting calculation support.

Tax Accounting

As demand for transparency increases and tax departments are under pressure to be more effective, we can help you with tax accounting by supporting your tax provision calculations, validating tax balance sheet accounts, implementing new accounting standards under IFRS and local GAAP; tax function performance by improving operating strategy and organisation design, tax processes controls, and data and systems effectiveness; and tax risk by identifying and prioritising key risks and assisting with controls monitoring and remediation.

Tax Performance Advisory

Your tax function needs to effectively manage competing responsibilities and stakeholders while delivering enhanced performance not just in the tax department but across the wider business as well. We can help you build strong compliance and reporting foundations, effective risk management protocols and a high performing tax function. We have experience delivering projects to companies of all sizes across all aspects of the tax life cycle: planning, provision, compliance and controversy. Our holistic approach allows us to speak the same language as your tax, finance, information technology and business professionals, which is necessary to drive enhanced tax function performance across the enterprise.

Tax Policy and Controversy

Developing a tax policy that resolves impediments to business needs a team that can work with government to explain issues, clarify objectives, and achieve a successful outcome for everyone. Our global tax policy network has extensive experience of helping develop and implement policy initiatives, both as external advisers to governments and companies, and as advisers inside government. Our dedicated teams of tax policy professionals and business modelers help address your specific business environment and improve the chance of a successful outcome.

In addition, our global tax controversy network works with you to address your global tax controversy, enforcement and disclosure needs. We focus on pre-filing controversy management to help you properly and consistently file your returns and prepare the relevant back-up documentation. Our controversy professionals leverage the network’s collective knowledge of how tax authorities operate, and increasingly work together, to help resolve difficult or sensitive tax disputes.
Financial Services Tax

Our Financial Services Tax Team is dedicated to delivering value to our clients in the financial services industry who are facing a constantly evolving tax landscape. Whether you are in Banking and Capital Markets, Asset Management, or Insurance sector, we will be able to assist you in managing your direct and indirect tax obligations and tax risks, navigating the complex tax rules across jurisdictions, pursuing tax incentives or concessions, dealing with transfer pricing issues, handling queries by the tax authorities, assessing your tax provisions and analysing your uncertain tax positions.

We can also advise you on the tax implications of new financial products or transactions, and assist in applying for Revenue rulings where applicable. We can advise on the structuring of your new businesses and new funds, or on the review of such structures in an internal reorganisation or in the event of mergers or acquisitions, from the tax perspective. Individual tax issues often feature prominently in structuring or restructuring exercises, and we actively engage with our Human Capital colleagues to advise our financial services clients accordingly.

Human Capital

Our Human Capital services' holistic approach, across a broad continuum of services, and our responsive, high-performing teams provide the interconnected competencies and insight required to address broad business issues and minimize risk. Through our global footprint, we advise many of the world's largest employers, as well as those just venturing abroad for the first time. We help our clients manage the complex challenges of deploying a globally mobile workforce.

With teams specializing in Singapore and US taxes, business immigration and global mobility policy and processes, we help you meet your executive compliance obligations, stay on top of regulatory change and manage your global talent effectively.

Indirect Tax

Customs and International Trade

We bring you a global perspective on Customs and International Trade (CIT). Our CIT professionals can help you develop strategies to manage your costs, speed your supply chain and reduce the risks of international trade. We can help to increase trade compliance, improve import and export operations, reduce customs and excise duties and enhance supply chain security. We help you to address the challenges of doing business in today's global environment to help your business achieve its potential.

GST Services

Our network of dedicated Indirect Tax professionals can advise on the GST treatment of transactions and supplies and helping resolve classification or other disputes and issues with the authorities. We provide assistance in identifying risk areas and sustainable planning opportunities for indirect taxes throughout the tax lifecycle. We provide you with effective processes to help you improve your day-to-day reporting for indirect tax, reducing attribution errors, reducing costs and ensuring indirect taxes are handled correctly. We can support full or partial GST compliance outsourcing, help identify the right partial exemption method and review accounting systems.

International Tax Services

International Tax

Our dedicated international tax professionals assist our clients with their cross-border tax obligations, planning, reporting and risk management. We work with you to build proactive and truly integrated global tax strategies that address the tax risks of today's businesses and achieve sustainable growth.

Global Tax Desk

Our market-leading Global Tax Desks Network - a co-located team of highly experienced professionals from multiple countries - has transformed the way we provide international tax services. The Global Tax Desks Network are senior tax specialists on temporary assignment from their home jurisdictions to work, in “clusters”, with other desks and with local tax professionals. Clusters are located strategically in major business centers so that our desks can respond to your challenges immediately and cost-effectively, avoiding time zone barriers and the high price of international travel.

The desks work as a team - tackling the same problem from all sides - thoughtfully identifying considerations with your cross-border transaction. We work with you to help you manage global operational changes and transactions, capitalization and repatriation issues, transfer pricing and your supply chain - from forward planning, through reporting, to maintaining effective relationships with tax authorities.

Transfer Pricing

Our transfer pricing professionals help you review, document, manage and defend your transfer pricing policies and processes - aligning them with your business strategy. Whether you are changing business structures or models, managing the impact of major transactions or negotiating with the tax authorities, we bring you a global perspective based on our knowledge and long-standing experience of the subject.

Tax Effective Supply Chain Management (TESCM)

Our tax effective supply chain management (TESCM) teams work with you on supply chain design, business restructuring, systems implications, transfer pricing, direct and indirect tax, customs and accounting. We can help you build and implement the structure that makes sense for your business, improve your processes and manage the cost of trade

Transaction Tax

Every transaction has tax implications, whether it's an acquisition, disposal, refinancing, restructuring or initial public offering. Understanding and planning for these implications can mitigate risk, enhance opportunity and provide crucial negotiation insights.

Our Transaction Tax Services comprise a network of worldwide professional advisors who can help you navigate the tax implications of your transaction. By combining diverse cross-border transaction experience with local tax knowledge across a broad spectrum of industry sectors, we can help you make informed decisions and navigate the tax implications of your transaction. We mobilize wherever needed, assembling a personalized, integrated global team to work with you throughout the transaction lifecycle, from initial due diligence through post-deal implementation. We can suggest structuring alternatives to balance investor sensitivities, promote exit readiness and raise opportunities for improved returns.

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Tax leadership

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Employee Remuneration Reporting Seminar
Wednesday, 20 November 2013

Please join us at our full-day seminar on 20 November 2013 to understand the reporting obligations for your employees’ remuneration in Singapore as well as the key tax treatments of various income items and benefits-in-kind, including employee share gains. Our senior Human Capital advisors from EY Singapore will also share their experiences on various income and benefit-in-kind items that employers commonly omit in their reporting to the Inland Revenue Authority of Singapore.

The program will include presentations, interactive discussions, quiz sessions, hands-on case studies and Q&A.

Who should attend?
Tax, human resources, finance, accounting and payroll professionals

Where
Pan Pacific Singapore

Time
9:00 a.m. – 5:00 p.m.

Seminar fee
- Clients, alumni, SIATP members: S$450
- Public: S$500

Fees include lunch, materials, refreshments and GST. Group discount: A discount of 10% applies to organisations registering three or more participants in one registration.

Registration
Michelle Lim, +65 6309 8908
michelle-h.lim@sg.ey.com
by 11 November 2013
An early response is always appreciated

You can also register online at www.ey.com/sg/seminars
Tax thought leadership

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