The following example is taken from s 36-17 of Australia's Income Tax Assessment Act 1997 (ITAA 1997) and illustrates how the tax loss limitation rule works.

▶ Example

For the year ending 30 June 2020, a company has the following:

- a tax loss of A$150 from a previous income year
- assessable income of A$200 (a franked distribution of A$70, a franking credit of A$30 and A$100 of income from other sources)
- no allowable deductions, and
- no net exempt income.

The tax offset of A$30 from the franking credit is not refundable under Div 67 of ITAA 1997.

The loss limitation rule under s 36-17(5)(a) of ITAA 1997 does not apply because the company would not have excess franking offsets for that year if the tax loss were disregarded (ie the tax offset of A$30 is less than the A$60 in income tax that the company would pay if it did not have the tax offset and tax loss).

If the company chooses to deduct the full amount of the tax loss (A$150), it would have excess franking offsets of A$15 (ie A$15 gross tax payable less A$30 tax offset).

However, this choice would breach the loss limitation rule in s 36-17(5)(b) that precludes a loss amount choice that would give rise to an excess franking offset.

However, if the company chooses to deduct A$100 of the tax loss, it would not have an excess franking offset and would not be in breach of s 36-17(5)(b). Therefore, the company can choose a maximum of A$100 or nil (if it wanted to pay tax).

A company is able to convert its excess franking offsets into income tax losses to be utilised in future tax years if it satisfies the ''continuity of ownership test'' (COT — see (a) below) or, failing that, the ''same business test'' (SBT — see (b) below) or, failing that, the ''similar business test'' (SimBT — see (c) below).

Project losses associated with designated infrastructure projects (DIPs) can be uplifted at the government long-term bond rate and are exempt from the COT, the SBT and the SimBT.

Infrastructure projects often experience long lead times between incurring deductible expenditure and earning income, leading to tax losses being incurred in the early stages of the project. DIPs can avoid the erosion of the real value of tax deductions over time, and previous years' losses are still accessible where there is a change in ownership of a DIP, or a change in the company's business.

DIP status can only be conferred on privately financed public infrastructure projects of national significance, which are at the ''Threshold'' or ''Ready to Proceed'' state, on a first come, first served basis. Applications for DIP status can be made until the total capital expenditure cap of A$25 billion has been reached.

(a) Continuity of ownership test (COT)

The COT requires that shares carrying more than 50% of all voting, dividend and capital rights be beneficially owned by the same persons at all times during the ownership test period. The ownership test period runs from the start of the loss year to the end of the income year in which the loss is to be deducted.

If a company is not able to pass the COT because interests in the company are held by non-fixed trusts, the company may still be able to deduct its losses or debts if alternative conditions are satisfied. Special tracing rules apply to widely-held companies. This rule makes it unnecessary for an eligible company to trace the ultimate ownership of shares held by certain intermediaries. Further, small

shareholdings of less than 10% are treated as belonging to a single notional shareholder (similar to the existing less than 1% rule for listed companies). For widely-held companies (ie listed companies or companies with dispersed shareholdings between 50 or more members), tracing through beneficial ownership is simplified under the modified COT.

A modified COT applies for listed public companies and the wholly owned subsidiaries of listed public companies. The modified COT can be used by these companies rather than the regular COT when the company is unable to satisfy the other tax and capital loss recoupment test being the ''same business test'' (SBT).

The modified COT modifies the way the regular COT rules apply to a widely held company by making it easier for the company to apply the COT rules. If the company maintained the same owners as between certain points of time, it does not need to prove it has maintained the same owners throughout the periods in between, which is the case under the regular COT. In certain cases, special concessional tracing rules deem entities to hold voting, dividend and capital stakes in the company so that the company does not have to trace through to the ultimate beneficial owners.

(b) Same business test (SBT)

If a company fails the COT, or modified COT where applicable, the company must satisfy the SBT before a tax loss, net capital loss or bad debt can be deducted. A company satisfies the SBT if it carries on the same business in the claim year as it has carried on immediately before the test time. The SBT contains 3 test elements:

- there must be a continuation of the actual business carried on by the company immediately before and throughout the test time
- the company must not have derived assessable income during the SBT period from a business of a kind that it did not carry on before the test time, and
- the company must not have derived assessable income during the SBT period from a transaction of a kind that it had not entered into in the course of its business operations prior to the loss making year the test time.

Where a foreign resident company carries on business both in and out of Australia, the Australian Taxation Office (ATO) has taken the view that the SBT is applied to the company's global business, not just its Australian business.

(c) Similar business test (SimBT)

If a company fails the SBT, the company can still access previous losses by passing the SimBT, provided the company is able to demonstrate that it has retained sufficient characteristics of the previous loss-making activities. The test compares all the commercial activities and operations of the former business with those of the current business, with particular attention to:

- the degree to which the assets of the previous business (including goodwill) are used to generate assessable income in the current business
- the degree to which the operations and activities of the current business match those of the previous business
- the degree of comparability of the core functions between the current business and the previous business, and
- the degree to which any subsequent changes to the former business can be identified as organic growth rather than a change in direction.

(b) Foreign dividends

Australian resident companies are exempt from tax in Australia to the extent that dividends are paid by a non-resident company in which the Australian resident holds at least 10% voting power (ie ''non-portfolio'' dividends).

The ''non-portfolio'' dividend exemption only applies in respect of Australian resident companies receiving foreign dividends as the beneficial owner. That is, corporate partners in a partnership receiving foreign dividends are not covered by the ''non-portfolio'' dividend exemption. Further, corporate beneficiaries receiving foreign dividends through a trust are also not covered by the ''non-portfolio'' dividend exemption.

(c) In substance dividends/interest

Under Australia's debt/equity rules, certain non-share equity interests (ie equity-like instruments) are treated as ordinary shares for the purposes of the imputation system, and also for applying either dividend or interest withholding tax.

Thus, certain payments made with respect to non-share equity interests are treated as frankable dividends instead of interest payments, both in the hands of the recipient and the payer. The objective of the debt/equity rules is to determine the substance of the situation of a payment as debt or equity interest rather than its legal form. Similarly, under the debt/equity rules, certain dividends paid by a resident company may be reclassified as interest payments. However, from the perspective of the recipient shareholder, the payment remains assessable without the benefit of franking credits (see AUS ¶1-140).

(d) Refund of excess franking credits

A cash refund is available for excess franking credits attaching to franked dividends received by individuals and superannuation funds. Since corporate shareholders are already taxed at the corporate rate, they are not entitled to a cash refund. However, a company's excess franking credits may create a revenue loss that can be carried forward to be utilised in a future year.

AUS ¶1-140 DIVIDENDS PAID

(a) Australian resident shareholders

Franked dividends

Franked dividends carry the level of franking credits determined by the company. A distribution cannot be franked by more than 100% (ie an entity cannot allocate a greater franking credit to a distribution than tax paid by the entity on its underlying profits). For example, assuming a A$100 total distribution, the maximum franking credit for a A$70 dividend is A$30 (for a corporate tax rate of 30%).

Furthermore, as part of the anti-streaming rules, all frankable distributions made by non-listed companies (ie private companies) during the franking period must be franked to the same extent (ie benchmark franking percentage). This ensures that franking credits are not streamed selectively to shareholders who can better utilise the franking credits.

Tax paid and tax imputed to members is recorded in a corporate tax entity's franking account. A credit to the entity's franking account (ie franking credit) arises when the entity pays income tax or receives a franked dividend. A debit arises when the entity franks a dividend or receives a tax refund. Where a corporate tax entity has a franking account deficit at the end of a year, it is required to pay franking deficit tax shortly after the end of the year to make good this deficit.

Unfranked dividends

Unfranked dividends paid by an Australian company to an Australian resident attract TFN withholding tax where the shareholder fails to quote their tax file number to the company. The company is then required to withhold from the unfranked dividend distribution at the highest marginal rate applicable to resident individuals (see AUS ¶1-110(g)).

(b) Non-resident shareholders of Australian companies

Non-resident shareholders are not subject to Australian income tax on the dividend income that is paid out of profits derived from sources in Australia where the dividends are fully franked.

Non-resident dividend income attracts withholding tax to the extent that dividends are unfranked. Franked dividends and dividends paid from pooled development funds are exempt from withholding tax.

The amount of tax that may be levied on dividends flowing from residents in that country to residents of the other country is generally limited by the terms of a tax treaty (if any) between the source country and the country of residency.

Franked dividends

Franked dividends are not subject to withholding tax. Dividends are franked to the extent that tax paid at the corporate level has been imputed to shareholders.

Unfranked dividends

Unfranked dividends are dividends paid without any imputed underlying credit for company tax. The withholding tax is imposed on the gross amount of the dividends at the general withholding tax rate. Note that the exact withholding tax rate may be stated in the relevant tax treaty (if any).

The following types of dividend are not able to be franked, even where franking credits are available in the dividend franking account:

- dividends paid out of share capital accounts, share premium accounts or revaluation reserves, and
- loans or advances to shareholders or associates of closely-held companies that are deemed dividends.

Unfranked dividends paid to non-residents are subject to withholding tax, thus, there is no further Australian income tax liability levied on the dividend income. This means that dividends in respect of which withholding tax is payable, are excluded from a non-resident's assessable income for Australian tax purposes; withholding tax is the final tax (see AUS ¶2-090).

(c) Conduit foreign income withholding tax exemption

In general terms, ''conduit foreign income'' is foreign income that is ultimately received by a foreign resident through one or more interposed Australian corporate tax entities (eg foreign dividends derived from a non-portfolio shareholding interest in a foreign company). Special rules allow conduit foreign income to flow through Australian corporate tax entities to foreign shareholders without being taxed in Australia.

Australian corporate tax entities that receive an unfranked distribution that is declared to be conduit foreign income do not pay Australian tax on that income if the conduit foreign income is on-paid to shareholders (net of related expenses) within a certain period. In such a case, the conduit foreign income in the unfranked distribution is treated as non-assessable income of the Australian corporate tax entity.

PRRT is levied on the taxable profits of a petroleum project at a rate of 40%. The tax point occurs when a marketable petroleum commodity or incidental product:

- is in its final form for the purpose of being sold
- is used as feedstock for conversion into another product, or
- is consumed directly as energy,

as applicable in the respective circumstances. A product cannot be a marketable petroleum commodity if it was produced from something that was itself a marketable petroleum commodity.

(f) Land tax

Land tax is levied by the state governments on the unimproved capital value of held land. Every year the Valuer General in each state determines the unimproved value for all land in that state. The unimproved value of land is the market value of the land under normal sales conditions, assuming that no structural improvements have been made to the property.

Exceptions from land tax include cases where the land is held for primary production purposes and where the land is owned by a natural person as that person's principal place of residence (up to a maximum unimproved value). Local governments levy land tax rates according to the annual rental value of the land concerned.

(g) Payroll tax

Payroll tax is imposed by state governments on taxable wages paid by employers. An employer is liable to payroll tax where the level of taxable wages exceeds a threshold level. The level is increased from time to time in line with inflation. The standard payroll tax rates in the states range from 4% to 6.85% (only on payrolls exceeding the respective state's threshold level).

The Australian states and territories implemented new payroll nexus rules in 2010, with provisions that are uniform across all states and territories. The changes only affect wages paid or payable for persons providing their services in more than one jurisdiction in a month, or partly in more than one jurisdiction and partly overseas in a month. Where a worker provides their services wholly in one jurisdiction, as is the case for the majority of workers, payroll tax will continue to be paid to the jurisdiction where those services are performed.

(h) Fringe benefits tax (FBT)

Fringe benefits tax (FBT) is a tax payable by employers on the taxable value of certain fringe benefits provided in respect of the employment of their employees or the associates of those employees. Employers are liable to pay FBT at the highest marginal tax rate for individuals (including the Medicare levy) on the taxable value of fringe benefits. However, the cost of providing these benefits, including the FBT paid with respect to the benefit, is deductible for income tax purposes.

The year for calculating and lodging a return for FBT is from 1 April to 31 March. The current FBT rate is 47% (49% from 1 April 2015 to 31 March 2017).

Subject to various exemptions, some of the general fringe benefits which attract FBT include:

- the provision of private car use to employees
- the waiver of an employee's debt to their employer
- the provision of interest-free or low interest loans to employees

- payment or reimbursement of employees' expenses
- the provision of free or below market value housing to employees
- payments of certain living away from home allowances
- free or below market value airline transport provided to airline and travel industry employees
- meals and associated travel or accommodation provided to employees
- entertainment provided to employees
- free or discounted car parking provided to employees, and
- residual benefits (ie benefits not otherwise covered by the legislation).

The taxable value of a fringe benefit depends on the type of benefit, whether the recipient makes any financial contribution to the employer, and whether the legislation provides any additional concessions.

An employer's FBT liability is calculated on the basis of the tax-inclusive value of the fringe benefits provided in the year. The tax-inclusive value of a benefit depends on whether the employer who provides the benefit is entitled to a GST input tax credit for the acquisition. In light of the different treatment of certain persons and benefits under the GST rules, an employer's fringe benefits taxable amount is divided into 2 amounts, using 2 separate gross up calculations (see AUS ¶1-070(i)).

(i) Capital gains tax (CGT)

CGT is levied at the ordinary corporate tax rate for companies and the applicable marginal rate for individuals (see AUS ¶1-060).

(j) Superannuation guarantee levy

Australian superannuation rules require employers to pay superannuation contributions for the benefit of their employees to a complying superannuation fund that offers a ''MySuper'' product, unless the employee requests that contributions be made to an alternative fund of their choosing. A complying superannuation fund is one where the superannuation fund has elected to be regulated under the Superannuation Industry (Supervision) Act 1993. ''MySuper'' products aim to be simpler and more cost-effective.

It is compulsory for employers to pay superannuation contributions to the correct superannuation fund by the cut-off dates, for all eligible employees. The minimum contribution required as a percentage of employee payroll is 9.5%.

The levy does not apply to individual salaries to the extent the quarterly earnings base amount exceeds A$57,090 for 2020–21 (A$55,270 for 2019–20). This threshold amount is indexed annually. Superannuation contributions paid for employees are usually tax deductible to the employer. If minimum required contributions are not made voluntarily, however, any shortfall is collected by the tax authorities and is non-deductible. Employers who have a superannuation guarantee shortfall are liable to pay a superannuation guarantee charge for the quarter, equivalent to the amount of the shortfall plus an interest component and an administrative charge. To avoid incurring a superannuation guarantee charge liability in a quarter, the superannuation guarantee contributions must be made within 28 days after the end of the quarter.

FRW: payments for entertainment and sports activities

Payments made to foreign residents in respect of entertainment or sporting activities are subject to FRW at the prescribed withholding tax rate. Entertainment activities include activities of a performing artist (eg acting, dancing, promotional or similar activities). Sports activities include activities of an individual athlete or sports team.

The withholding tax rates for entertainment and sport activities are as follows:

- if the payee is a company — 30%
- if the payee is an individual — between 29% and 45% (depending on the level of ordinary taxable income).

Payments made to foreign resident support staff working in the entertainment industry may, subject to certain conditions, be exempt from withholding obligations.

Foreign resident support staff are not subject to withholding where they:

- are residents, for taxation purposes, of a country with which Australia has a tax treaty, and
- are present in Australia for no more than 183 days in the financial year.

The rate of withholding is nil as these payees will not have a tax liability in Australia. They are also not required to obtain a tax file number (TFN) or an Australian business number (ABN).

For certain construction and related activities, the withholding rate is 5% on each payment under contract.

FRW: payments for construction and related activities

Payments made to foreign residents in respect of construction activities are subject to FRW at the prescribed withholding tax rate. The withholding rate for certain construction and related activities is 5% of each payment under contract. Payers are required to withhold amounts from payments made to foreign residents for the following types of activities:

- construction works, including installation, upgrading of building, plants and fixtures, and
- related activities, including administration, assembly, engineering, project management, etc.

FRW: payments for casino gaming junket activities

Payments made to foreign residents (individuals or entities) that arrange for foreign gamblers to come to Australia for the purpose of gaming at casinos are subject to FRW at the prescribed withholding rate. The withholding rate for gaming junkets (gaming travel packages) is 3% of the total payment.

These individuals or entities are generally known as casino gaming junket operators. They receive payments, incentives and non-cash benefits as a reward for bringing people to a casino to gamble.

Such activities may include:

- contracting with casinos
- contracting with players
- recording player gambling statistics

- credit and debt management
- casino settlement and liaison
- providing customer liaison services (eg translating and interpreting), and
- associated services (eg arranging hotel accommodation, transportation, entertainment and other forms of endearment).

(c) Trading defined

A non-resident is not considered to have commenced trading until:

- a contract of sale is concluded
- manufacturing has commenced, or
- services are performed in Australia.

(d) Tax treaties

The terms of a tax treaty between Australia and the non-resident's country of residence specify that non-residents are liable to Australian tax only if they have an Australian branch, PE or dependent agent with power to conclude contracts.

(e) Mining and exploration in Australia

Special tax concessions are available to taxpayers engaged in mining (including petroleum mining) and quarrying operations for the following types of expenditure.

Exploration or prospecting expenditure

Expenditure on exploration or prospecting for minerals (including petroleum) or quarry materials obtainable by mining or quarrying operations are deductible in the year in which it is incurred. The mining property may be located in or outside Australia. Exploration or prospecting expenditure is deductible from income derived from any source.

Examples of deductible expenditure include transport, materials, labour, administrative costs (office rental, salaries of office staff, etc) incurred in carrying out exploration or prospecting activities.

Pooled project expenditure incurred in the working of mine sites, petroleum fields and quarries

Certain project expenditure not related to a depreciating asset and not otherwise deductible may be deductible over the estimated life of the project at an accelerated rate of 150%. This deduction is not limited to mining projects.

The types of expenditure deductible as pooled project expenditure includes mining capital expenditure and transport capital expenditure that are directly connected with carrying on the mining operations. Infrastructure expenditure directly connected with a project is also deductible. Examples of eligible expenditure includes:

- expenditure on site preparation, buildings and improvements
- cost of feasibility studies and environmental assessments for the project
- buildings used in operating or maintaining a treatment plant, and
- buildings or other facilities for storage.

No other relevant tax rate scales exist. However, the taxation system does contain various complex tax rebate and/or concessional deduction provisions to deal with special categories of individuals including:

(1) primary producers

(2) authors, artists and inventors

(3) remote area residents, and

(4) taxpayers with dependants.

Non-residents

As a general rule the special tax rates/concessions for individuals apply only to residents. However, the income of non-resident minors is taxed at special rates.

The taxation of income earned by a non-resident minor is calculated as follows (2020–21 rates):

(1) the first A$416 is taxed at 32.5% on the whole amount (plus 2% Medicare levy)

(2) income in excess of A$417, but less than A$663 is taxed at A$135.20, plus 66% on the portion over A$416

(3) income in excess of A$663 is taxed at the flat rate of 45% on the whole amount (plus 2% Medicare levy).

AUS ¶3-030 TAX YEAR AND PAYMENT SYSTEM

(a) Overview of the Australian tax collection system

Residents

(1) ***Normal tax year***. The Australian tax and financial year runs from 1 July to 30 June. Individuals are not permitted to adopt any other tax year.

(2) ***Overview of tax collection system***. Withholding tax in the technical sense does not apply to residents, but tax is required to be deducted at source from a variety of payments. Tax deducted at source can generally be claimed as a credit when the tax return is lodged.

(3) ***Lodgment of returns***. Individuals are required to lodge an annual tax return in a specified form. The due date for this return is determined annually and after 30 June about 4 months are usually allowed for lodgment to occur. Penalties exist for late lodgment and incorrect returns. An extension of time is given for returns lodged by a tax agent. Returns can be lodged at the branch of the Australian Taxation Office (ATO) nearest the taxpayer's place of residence. Alternatively, returns can be lodged electronically over the internet. If no return is lodged late payment penalties apply and a default assessment may be issued. The Tax Commissioner permits additional time for tax related lodgments and associated payments for individuals and businesses affected by recent natural disasters.

(4) ***Assessment of tax***. Upon calculating the net tax liability of an individual based on the information disclosed in the tax return, the ATO issues a tax assessment. The amount assessed is deemed to be a debt due to the Commonwealth. The onus of proof in contesting an adverse assessment lies with the taxpayer.

(5) ***Payments and refunds***. Each tax assessment indicates the amount of tax payable or refundable to the taxpayer. The assessment also indicates the due date for payment. Penalties and/or interest charges may apply for late payment of tax.

(6) ***Revenue authority contact details***. In practice, individual taxpayers will normally deal only with the branch of the ATO nearest their place of residence. Contact details for the head office are as follows:

The Commissioner of Taxation

Australian Taxation Office

GPO Box 9990

Canberra ACT 2601

Tel: 13 28 66 (business tax enquiries)

www.ato.gov.au

(7) ***Business entry point***. The business entry point (BEP) is an internet-based service which enables businesses to access information and carry out transactions with government departments using low-cost electronic media. It provides a single entry point for businesses to local, territory, state and federal government information and transactions. The BEP is also the access point for the Australian Business Register, enabling the registration of an Australian business number (ABN), goods and services tax (GST — a value added tax) and tax file numbers. Search and browse features on the website provide access to publicly available information about businesses held on the register.

The web address for the BEP is:

www.business.gov.au

Non-residents

Non-residents with income that is taxable in Australia are subject to the same general requirements as residents in relation to lodging tax returns.

(b) Collection of Australian tax from employees

Residents

(1) ***Scope of salary tax***. Employers are required to deduct tax at source from all payments of salary and wages. The concept of salary or wages is extended by statutory definition to include the payment of directors' fees and certain payments to independent contractors which relate essentially to the individual labour of the contractor.

(2) ***Collection system***. Australia's pay as you go (PAYG) withholding system of tax collection requires employers to deduct tax from all salary payments and remit it directly to the ATO. The rate of PAYG tax deducted from the salary of employees, who advise their tax file number (TFN) to the employer, is designed to reflect the estimated ultimate liability of the employee. Provisions exist whereby the employee may apply to have the rate of PAYG tax deducted from their salary reduced in the event that the employee anticipates that the actual taxable income will be significantly less than the gross salary.

If an employee receives salary from more than one employer the PAYG rate applies to the main employment and other employers are required to deduct tax at the maximum marginal rate.

(3) ***Determination of final liability***. After year-end, employers are required to give employees a payment summary which specifies both their gross salary and the tax remitted on their behalf to the ATO. A copy of this payment summary forms part of the individual's tax return.

Access to certain interest withholding tax exemptions is restricted in respect of interest paid on issued debt interests. These payments may be exempt from interest withholding tax where they are in respect of debentures (dividends paid in respect of shares), but are classified as debt, and interest payments made in respect of ''syndicated loans'' which exceed A$100m.

(e) Collection of tax on behalf of foreign tax authority. The Australian Tax Commissioner has the power to collect a tax debt on behalf of a foreign tax authority or to take conservancy measures to ensure the collection of the debt.

AUS ¶3-040 SOURCE RULES

(a) Personal exertion income

Residents and non-residents

For Australian tax purposes, the source of salaries, directors' emoluments and professional fees is generally the place where the duties giving rise to the income are performed. It has been suggested that where work essentially involves special knowledge or creative powers in a context such that the place where the work is actually performed is relatively unimportant, then such income may be sourced where the contract of service or for services was entered into. However, this latter possibility should be regarded as a rare and extreme case which should not be relied upon without expert advice.

(1) ***Employment income*** — see the general comments above.

(2) ***Business income.*** When trading profits are largely earned through the making of contracts in which the place of performance is relatively unimportant, then the place where the contracts are formed will usually be regarded as the source of the resultant income.

Conversely, where the place of performance of a contract is of major importance, the resultant income will generally be treated as derived where the contract is performed.

In practice, a range of factors including the place of contract, the place of performance, residence of the parties, place of payment, etc, may be weighed in determining the source of trading income. The legislation specifically allows the Commissioner to determine the extent to which a profit arising under an international contract should be treated as Australian sourced.

(b) Interest

Residents and non-residents

For Australian tax purposes, interest is normally regarded as sourced in the country where the agreement giving rise to it was entered into. However, there is no fixed rule in this regard and if the interest and principal are repayable at some location other than the place of original contract this latter place may, in appropriate circumstances, be treated as the source of the interest income. The place where the contract is enforceable against any security may also be taken into account in difficult cases.

It should be noted that interest which is deductible to an Australian taxpayer against domestic income is subject to Australian withholding tax even if it is not technically Australian sourced.

(c) Rent

Residents and non-residents

For Australian tax purposes, real property rentals are treated as sourced from the country in which the property is located. However, the source of rental income from chattels is dependent on a number of factors, including the place where the relevant rental agreement was entered into, where the chattels are to be used, and where rental payments are to be effected.

(d) Royalties

Residents and non-residents

For Australian tax purposes, royalties are generally treated as sourced where the property rights giving rise to the royalty entitlement are located. The legislation contains a broad definition of the term royalty and deems royalties paid to non-residents to have an Australian source to the extent that they are deductible to an Australian taxpayer. The definition of royalty also includes payments made or credited by a non-resident person in carrying on business in Australia, at or through a permanent establishment.

Royalty withholding is generally charged on the GST inclusive value of the royalty payment made to an overseas recipient (ATO Interpretive Decision 2010/89).

(e) Dividends

Residents and non-residents

For Australian tax purposes, the source of dividend income is treated as the place where the company generated the profits which funded the dividend payment. This is usually the place where the business of the company is conducted. The source of a dividend may thus differ from the location of the share register on which the shares to which the dividend relates are registered.

(f) Pension and superannuation payouts

Residents and non-residents

For Australian tax purposes, pension and superannuation payouts are treated as sourced where the fund making the payment is located (refer to Income Tax Ruling IT 2168 for rules governing the source of superannuation payments). The source of annuity payments is generally the place where the contract giving rise to the annuity was executed.

(g) Capital gains

Residents and non-residents

Source is not a criterion for determining liability to Australian capital gains tax, except in relation to the capital receipts provisions applying to non-residents contained in the capital gains tax provisions. Capital gains tax liability arises on the disposal of an asset owned by a taxpayer. Australian residents are liable to gains on assets situated anywhere, while non-residents are only subject to capital gains tax upon a disposal of ''taxable Australian property'' — see AUS ¶3-010(b).

(h) Trust distributions

Residents and non-residents

Income flowing through a trust is treated as retaining both its character and source. For example, if a Bahamian trust derived A$100 rental income from a US property which was subject to 30% tax at source, then on distribution this income would be treated as US source rental of A$100 with A$30 tax credit attaching to it.

Note that certain trusts which qualify as ''managed investment trusts'' are subject to a separate withholding tax regime — see AUS ¶3-030(b) Non-residents (2).

(3) ***Receipt of foreign benefits***. Taxpayers receiving payments from pension or superannuation funds that are non-complying funds for the purposes of Australian superannuation law are not entitled to concessions on payout (see (c)(3) above). Instead, generally speaking, the gross amount of a lump sum payment from a foreign pension or superannuation fund is included in an individual's assessable income, excluding personal and employer contributions. Where a payment is a pension or annuity, the whole of the payment is included in the assessable income, excluding the amount paid to secure the pension or annuity. In very limited circumstances, payments from such funds to resident individuals can be exempt from Australian tax, as exempt resident (or non-resident) foreign termination payments. The objective of Australian tax authorities is to assess the increment in the fund's value from the moment a person obtains resident status in Australia.

(e) Tax planning issues and techniques

Residents and non-residents

As a general rule expatriates should attempt to structure their affairs so as not to receive offshore pension or superannuation benefits while tax resident in Australia. Since the controlled foreign corporation rules will prevent the diversion of such payments to an offshore entity such payments should, where possible, be received before tax residence commences or after it ceases.

(1) ***Australian pension and superannuation planning***. The deductibility of superannuation contributions coupled with the favourable tax treatment of superannuation funds and superannuation fund payouts has made salary sacrifice superannuation a popular domestic tax planning technique. Mature age expatriates can obtain particular benefit from such tax planning since their maximum deductible annual contributions will frequently be very large in light of their salary levels.

Expatriate executives posted temporarily to Australia can utilise salary sacrifice or personal superannuation contributions as a strategy for minimising Australian tax on their salaries.

(2) ***Inbound planning considerations***. Non-residents permanently ceasing work in Australia are able to withdraw their benefits.

(3) ***Superannuation contribution splitting***. Individuals are allowed to split certain superannuation contributions with their spouse, provided this is allowed by the superannuation fund. This enables couples to share superannuation benefits. However, not all contributions are splittable, eg lump sum payments from an eligible non-resident non-complying superannuation fund cannot be split.

AUS ¶3-110 HEALTH AND SOCIAL SECURITY

(a) Australian national health policy

Residents

All Australian residents are subject to a form of compulsory basic medical insurance known as Medicare — see (1) below. The bulk of the medical system, with the exception of public hospitals, is privately owned and operates along free enterprise lines. Recognised providers of medical services (eg doctors, dentists, physiotherapists, etc) are registered by the health authorities who also promulgate a comprehensive listing of scheduled fees for all medical procedures. This scheduled fee is the amount which the government will reimburse towards the cost of each medical service. Services provided by public hospitals and their employees are generally free (ie they

are covered by the scheduled fee), but long waiting times frequently apply. The overwhelming majority of medical services are provided by private practitioners, many of whom charge in excess of the scheduled fee. This excess or gap must be paid for privately or can be the subject of private medical insurance.

(1) ***Free medical coverage.*** Every family is given a Medicare card which operates similarly to a credit card. Medical service providers charging the scheduled fee for their work accept an imprint of the patient's Medicare card in payment for services and claim reimbursement directly from the government. Service providers charging in excess of the scheduled fee frequently require full payment from the patient who must then seek reimbursement of the scheduled fee component of their outgoing by presenting the service provider's receipt to a Medicare office.

While many medical general practitioners charge only the scheduled fee for their services the majority of medical services (eg specialists, pathology and private hospitals) cost considerably in excess of the scheduled fee.

(2) ***Compulsory contributions.*** A Medicare levy applies at the rate of 2% of the taxable income of all resident individuals (excluding low income earners). The levy is collected by the Australian Taxation Office (ATO) as part of its normal tax collection procedures and, from a practical viewpoint, is treated as an increase in the rate of income tax.

The Medicare levy paid by an individual automatically covers the cost of medical treatment for their dependent spouse and children.

Medicare levy surcharges apply to single individuals with taxable income greater than A$90,000 pa and to couples and families with a combined taxable income in excess of A$180,000 pa who do not have private hospital insurance (see AUS ¶3-020(a)).

(3) ***Voluntary health insurance.*** In addition to Medicare it is commonplace to procure private medical insurance to cover costs associated with services not covered by Medicare. Such insurance would cover costs associated with using private hospitals, etc.

An income tax rebate is available for part of the cost of private health insurance premiums. The rebate is available to all Australian tax residents with private health insurance, regardless of the amount of taxable income earned.

The income tax rebates for private health insurance are determined on a sliding scale according to income. The rebate rates for the 2020–21 tax year are as follows:

Annual income (A$)		*Rebate amount* (%)		
Single	Couple/family	Age: under 65	Age: 65–69	Age: 70 or over
90,000 or less	180,000 or less	25.059	29.236	33.413
90,001–105,000	180,001–210,000	16.706	20.883	25.059
105,001–140,000	210,001–280,000	8.352	12.529	16.706
140,001 or more	280,001 or more	0	0	0

The rebates were the same for the 2019–20 tax year.

(4) ***Aged migrants.*** A new permanent visa class for aged migrants has been introduced. A condition of the visa is a requirement to either take out private health insurance for the first 10 years after arrival, or to pay a health services charge of approximately A$25,000 per person.

AUT ¶1-014 EXTENT OF TAX LIABILITY

(a) Resident entities

Austrian resident companies are subject to corporate income tax on their worldwide income and gains. A company is a resident of Austria if it is incorporated in Austria or its activities are directed from Austria. A foreign incorporated company may be treated as Austrian resident if it has its place of management in Austria.

Tax treaties may provide for a tax exemption in Austria, or a foreign tax credit may be available to offset foreign tax paid against Austrian tax due. The foreign tax credit is limited to the lesser of the foreign tax paid or the Austrian tax due on that foreign income.

If there is no tax treaty providing relief from double taxation, relief may be granted under unilateral measures.

(b) Non-resident entities

Non-resident companies which are comparable to Austrian corporations are generally subject to tax only on their Austrian source income.

A company is considered non-resident only if it is neither incorporated in Austria nor directs its activities from Austria.

Business profits of a non-resident company are subject to Austrian corporate tax only if the non-resident company has established a branch, PE or an agent in Austria. A non-resident company is subject to Austrian corporate tax on income derived from real estate situated in Austria. The performance of services in Austria leads to Austrian tax liability, even if these services are not carried out from a fixed base.

For further information regarding Austrian source income, see AUT ¶2-050.

AUT ¶1-016 TAX AND ACCOUNTING YEAR

The tax year for all taxpayers in Austria is the calendar year. A business may choose to use an alternative tax year equal to its accounting year.

A taxpayer's accounting year is generally the calendar year. Certain taxpayers may apply to the Austrian tax authorities for permission to use an accounting year that deviates from the calendar year if the balance sheet date of 31 December is inappropriate or impractical (eg in the case of a seasonal business). When starting a new business, a deviating accounting year can be chosen without prior approval from the tax authorities.

Profits of a deviating accounting year are completely allocated to the calendar year in which the accounting period ends.

For information on tax filing, assessment, payment and penalties, see AUT ¶1-240.

AUT ¶1-020 TAX RATES ON INCOME

(a) Austrian corporate tax

Tax rate

A company is subject to corporate income tax at a flat rate of 25% on income and capital gains, whether retained or distributed. This rate applies to resident companies with unlimited tax liability as well as to non-resident companies subject to limited tax liability on their Austrian source income. The 25% rate has applied since 2005.

Worldwide income of a private foundation is generally subject to the corporate tax rate of 25%.

Minimum tax

A minimum corporate income tax is levied on corporations subject to Austrian unlimited tax liability. The minimum tax due is as follows:

Type of company	*Minimum tax due*
Limited liability companies	€1,750 per year
Newly established limited liability companies	€500 per year in the first 5 years and €1,000 per year in the following 5 years
Joint stock companies	€3,500 per year
Banks and insurance companies	€5,452 per year
Newly incorporated companies (for the first 4 quarters of incorporation)	€1,092 per year

The minimum tax is not a final tax. A taxpayer may carry forward all minimum taxes indefinitely as a credit against future tax payments. These credits may be carried forward without limit as to the number of years or the amount. The minimum tax is not paid back if the company is dissolved before this tax credit is utilised.

(b) Austrian individual income tax

For individuals, the following progressive tax rates apply for 2021:

Taxable income €	*Marginal tax rate* %
0–11,000	0
Over 11,000–18,000	20
Over 18,000–31,000	35
Over 31,000–60,000	42
Over 60,000–90,000	48
Over 90,000–1m	50
Over 1m	55

The same rates have applied since 2016, except that the 20% rate was 25% before 2020.

Income is per year, excluding bonuses taxed at a flat rate (eligible for employment income only) and less social security contributions, income-related expenses and special expenses.

The same rates and formulas apply to non-residents, but a notional amount of €9,000 must be added to income before calculating the tax.

Dividends, interest and royalties

Dividends paid to resident individuals are subject to a 27.5% withholding tax. A 25% withholding tax applies to interest paid to resident individuals on bank deposits and certain kinds of bonds. Other payments to resident individuals, such as royalties, are also generally subject to a 25% withholding tax.

Capital gains

See AUT ¶1-060.

All jointly taxed companies must have the same financial year as the management company. Sometimes the financial year of a new group company may have to change. Alternatively, the Tax Administration may grant permission to change the financial year of the management company.

Joint taxable income only includes the income accrued during the group's existence. Therefore, companies must file intermediate income tax returns in most situations where companies enter or leave the group.

Accumulated losses or profits of a subsidiary from the period before the date of the group formation may not be utilised in the jointly taxed income, but these losses or profits may offset future income and gains of the loss accumulating subsidiary.

(c) Joint taxation with foreign companies (global joint taxation)

For income years beginning 15 December 2004 or later, Denmark introduced the concept of voluntary international joint taxation.

A Danish corporation may elect global joint taxation. If elected, the taxation comprises all foreign entities ''above'' and ''below'' the Danish company in the organisational scheme. Under this scheme, all foreign group companies as well as branches, foreign PEs and immovable property are included in a joint tax return with the Danish company and the Danish group companies. To qualify for joint taxation, a majority of the voting rights is required, but other forms of influence may be sufficient as well. In general, decisive influence exists if consolidated accounts are required for accounting purposes.

In some cases, tax treaties with foreign countries may not allow Denmark to tax the foreign income.

The election of voluntary global joint taxation is binding for a period of 10 years. If voluntary global joint taxation ends during this period, losses of the foreign entity previously offset against Danish tax and not subsequently recaptured will be recaptured in the year of termination. Recapture generally occurs through the inclusion of a capital gain on the deemed liquidation of the subsidiary in the subsidiary's taxable income.

Non-depreciable assets are valued at the trading value on the first day of the financial year for which a company elects global joint taxation, but the assets are still regarded as acquired at the original day of purchase. Depreciable assets are valued at the original purchase price reduced by maximum depreciation until the election of joint taxation. If this value exceeds the trading value on that date, the trading value is used.

If foreign assets are acquired in connection with a merger or change in legal foreign structure that is tax free in the foreign jurisdiction, depreciation or amortisation is disallowed or reduced.

Calculating taxable income

Normal Danish tax rules govern the calculation of income of each entity within the global joint taxation group and the jointly taxed income. Foreign paid tax can be credited against calculated Danish tax on that income. The credit method applies regardless of whether the foreign company, etc, is situated in a country with which Denmark has an exemption tax treaty. If the taxable income of the foreign company, etc, calculated according to Danish rules, exceeds the foreign basis of income, the Danish basis of income must include maximum rates for depreciation, etc, for tax purposes.

Expenses incurred by a foreign company, etc, cannot be deducted from the jointly taxed income if the expenses are deductible for tax purposes from a foreign income that is not included in the Danish tax basis.

Capital gains

Capital gains or losses are calculated according to ordinary tax rules. Gains and recaptured depreciation, however, are reduced so that only gains arising from the period under global joint taxation are taxed.

Voluntary global joint taxation should not be elected if the ultimate parent company is foreign, because the ultimate foreign company would then be considered a Danish company and taxed in accordance with Danish tax rules. Further, the foreign ultimate parent company's real estate, PE or subsidiary in another foreign country would be taxed in accordance with Danish tax rules.

▶ Example

Example of global joint taxation calculation

Danish company in joint taxation with an Australian subsidiary:

	DKK
Danish taxable income	30,000
Foreign income (foreign tax paid DKK16,000)	70,000
Taxable Income	**100,000**
Tax (tax rate of 22%)	22,000
Less: Danish credit on the foreign income (22,000 × 70,000/100,000)	15,400
Maximum foreign tax paid	16,000
Danish tax payable	**6,000**

Tax exempt cash contributions may be paid from a parent company to a directly or indirectly held subsidiary (or between sister companies) within a group, if certain requirements are met.

(d) Asset transfers and other transactions

Asset transfers and other transactions between group companies are for the most part subject to the same rules as those affecting unrelated parties and must take place at arm's length prices. Danish law does not provide for the tax-free transfer of assets between group companies.

(e) Shares

A company within the group may not be subject to tax on a sale of shares if the shares are considered shares in qualifying companies (see DNK ¶1-060(b)).

(f) Value added tax (VAT)

Transfers within groups of corporations are free of VAT, provided the group companies are registered jointly for VAT purposes, see the Danish Value Added Tax Law (Momslov or ML). VAT-free transfers within groups are not dependent on joint taxation (see DNK ¶1-185).

DNK ¶1-185 VAT/GST

(a) General information

Denmark introduced value added tax (VAT) on 14 June 1972 in Merværdi Omsætnings Skat (MOMS). The VAT authority is the Tax Agency division of the Danish Tax Administration. Denmark levies VAT against domestic supply of goods

been abolished. The Danish Central Bank now receives information on all movements from a foreign bank account to a Danish bank account automatically for statistical purposes.

DNK ¶2-020 TRADING IN DENMARK

A non-resident is not subject to Danish tax on trading or business profits unless it directly or indirectly trades or does business in Denmark. In such case, the non-resident must pay tax on its Danish source income.

In general, a non-resident will not directly or indirectly trade or do business in Denmark until it concludes contracts of sale, manufactures or performs services in Denmark. Profits from exporting to Denmark will not be subject to Danish income tax unless the exporter has a Danish PE or a dependent agent in Denmark with the power to conclude contracts.

Where a tax treaty exists between Denmark and a non-resident's country of residence, the treaty will specify that the non-resident is subject to Danish tax only if it has a Danish branch, PE or dependent agent with power to conclude contracts.

DNK ¶2-030 DANISH BRANCH

Under Danish domestic tax rules, a foreign company is subject to Danish tax on its Danish trading or business profits. A Danish branch is advantageous because no withholding tax is payable on remittance of the branch's profits. Further, overheads such as royalties and interests payments paid to the foreign head office may be considered as an internal transfer of money.

(a) Calculating taxable income

The same Danish tax rules that apply to resident companies for computation of taxable income also apply to Danish branches of foreign companies (see DNK ¶1-070). The corporate tax rate of 22% applies to the net income of a branch.

(b) Capital gains tax

Capital gains on branch assets located in Denmark are taxed at the corporate tax rate of 22% (see DNK ¶1-060).

(c) Other Danish source income

Should a foreign company have Danish source income that is not connected with a branch, such as rents from immovable property, the Danish source income will be subject to Danish corporate taxation and taxed at a rate of 22%.

(d) Building projects

A building project in Denmark is likely to be treated as a taxable PE. Denmark follows the guidelines laid out in the OECD Model Convention to determine if activities constitute construction work. Construction work normally lasts for a long duration and tax treaties generally define the applicable threshold for time spent on construction work. If these requirements are met, Denmark will consider the construction work a PE retroactively effective from day one. Commissions, know-how and management fees paid by an entity operating a Danish building project will be tax deductible, provided they are at arm's length rates.

However, some of Denmark's tax treaties with other countries determine a building site to be a taxable PE only where the project lasts more than six, nine or 12 months, depending on the particular treaty. A project of lesser duration may escape Danish tax on the profits derived.

(e) Remittance of branch profits

No withholding tax is payable on remittance of branch profits.

(f) Dividends

Dividends paid by a foreign company to its shareholders out of its Danish branch profits and capital gains are not subject to Danish withholding tax. However, if Danish voluntary global joint taxation is elected, Denmark may tax such dividend distributions because all entities below and above a Danish company within the joint taxation are considered Danish companies (see DNK ¶1-180(c)).

DNK ¶2-040 DANISH ADMINISTRATION OR LIAISON OFFICE

Denmark is a strategic location for international operations, and many foreign businesses wish to establish an administrative or liaison presence within the country.

Administrative or liaison activities carried out in Denmark will not cause an administered non-Danish company to be taxed as a Danish resident or taxed as trading or doing business in Denmark, provided crucial management decisions are not made in Denmark (see DNK ¶1-230, DNK ¶1-010(c)).

The Danish office itself also will not be liable to Danish income tax. In general, most of Denmark's tax treaties with other countries provide that a Danish office used only for buying goods, collecting information or advertising products will not constitute a Danish taxable branch of the overseas entity that it represents in Denmark.

DNK ¶2-050 OTHER DANISH SOURCE INCOME OF NON-RESIDENTS

(a) Immovable property

A non-resident's net income from immovable property located in Denmark is subject to tax at the corporate tax rate of 22%.

(b) Share of profit

A non-resident's income from a share of the net profit or a share of the gross revenue of a business in Denmark is subject to Danish tax at the corporate tax rate of 22%. No withholding tax applies.

(c) Dividends received

Dividends received by a non-resident from a Danish company are subject to 22% withholding tax.

However, if the shareholder is a foreign company, a Danish company may distribute dividends without withholding tax if the foreign company:

- qualifies as a company under Danish rules
- directly owns at least 10% of the shares in the Danish company, and
- the distribution of the dividend to the foreign company is protected by either the EU Parent Subsidiary Directive or by one of Denmark's tax treaties (reduction/waiver of withholding tax).

Further, there are no withholding taxes on dividends paid from a Danish company to a foreign company holding less than 10% of the shares in the Danish company, if the foreign company:

- qualifies as a company under Danish rules
- has decisive influence directly or indirectly in the Danish company
- is resident in an EU/EEA member state, and

33 The lower rate applies to interest paid (a) to a government organisation, the central bank or a pension fund, (b) in respect of corporate bonds, or (c) in respect of a loan or credit guaranteed or insured by an international trade institution.

34 The lower rate applies under the EU Parent Subsidiary Directive, or if the foreign company (not through a partnership) owns directly at least 25% of the paying company's capital for 12 months prior to payment of the dividend.

35 The lower rate applies under the EU Interest and Royalties Directive or to interest paid in respect of (a) a loan guaranteed or insured by a government organisation or the central bank, or (b) sales on credit.

36 The lower rate applies if the foreign company (not through a partnership) owns directly or indirectly at least 25% of the voting rights in the paying company.

37 The lower rate applies if paid to a pension fund, or if the foreign company owns directly at least 10% of the paying company's capital for a period of at least 6 months.

38 The lower rate applies if the foreign company owns directly or indirectly at least 25% of the voting rights in the paying company for at least 6 months prior to payment of the dividend; the non-treaty rate applies rather than the higher 30% rate specified in the treaty.

39 The lower rate applies to royalties derived from industrial investment.

40 The 0% rate applies to dividends paid to a pension fund; the 5% rate applies if the foreign company (not through a partnership) owns directly at least 25% of the paying company's capital for at least 12 months prior to payment of the dividend.

41 The 10% rate applies if the foreign company (not through a partnership) owns directly at least 25% of the paying company's capital for at least 12 months prior to payment of the dividend; the 0% rate applies under the EU Parent Subsidiary Directive.

42 The 0% rate applies to interest paid to a pension fund, or in respect of a loan or credit lasting at least 3 years guaranteed or insured by specified institutions; the 5% rate applies to interest paid to a bank.

43 The lower rate applies to fees for technical services.

44 The lower rate applies to interest paid in respect of a loan guaranteed or insured by a government organisation or the central bank.

45 The 0% rate applies under the EU Parent Subsidiary Directive, or if the foreign company (not through a partnership) owns directly at least 25% of the paying company's capital for at least 12 months prior to payment of the dividend; the 5% rate applies to interest paid to a pension fund.

46 The lower rate applies under the EU Interest and Royalties Directive, or to interest paid in respect of (a) a loan guaranteed or insured by a government organisation, (b) sales on credit of equipment, or (c) government bonds or debentures.

47 The 10% rate applies if the foreign company (not through a partnership) owns directly at least 25% of the paying company's capital; the 0% rate applies under the EU Parent Subsidiary Directive.

48 The lower rate applies under the EU Interest and Royalties Directive, or to interest paid in respect of a loan or credit guaranteed or insured by a government organisation.

49 The 0% rate applies if the foreign company (not through a partnership) owns directly at least 25% of the paying company's capital for at least 12 months prior to payment of the dividend; the 5% rate applies to interest paid to a pension fund.

50 The 5% rate applies if the foreign company owns directly at least 25% of the paying company's capital for at least 12 months prior to payment of the dividend, or if paid to a pension fund; the 0% rate applies under the EU Parent Subsidiary Directive.

51 The lower rate applies under the EU Parent Subsidiary Directive, or (a) if the foreign company (not through a partnership) owns directly at least 10% of the paying company's capital, or (b) if paid to a pension fund.

52 The lower rate applies if the foreign company owns directly or indirectly at least 25% of the voting rights in the paying company.

53 The lower rate applies to interest paid in respect of sales on credit.

54 The 0% rate applies to interest paid to a government organisation or the central bank; the 10% rate applies if the foreign company (not through a partnership) owns directly at least 25% of the paying company's capital.

55 The 0% rate applies to interest paid to a pension fund; the 5% rate applies if the foreign company owns directly at least 10% of the paying company's capital.

56 The lower rate applies if the foreign company (not through a partnership) owns directly at least 25% of the paying company's capital for at least 12 months prior to payment of the dividend.

57 The lower rate applies to interest paid in respect of a loan granted or guaranteed by a financial institution with the objective of promoting exports.

58 The lower rate applies to fees for technical assistance.

59 The 5% rate applies if the foreign company (not through a partnership) owns directly at least 70% of, or has invested at least US$12 million in, the paying company's capital; the 10% rate applies if the foreign company so owns at least 25% of the paying company's capital.

60 The higher rate applies to royalties from the use of trademarks and information concerning commercial operations.

61 The 0% rate applies if paid to the central bank or a government organisation, or if the foreign company owns directly at least 50% of, and has invested at least €2 million in, the paying company's capital; the 5% rate applies if the foreign company owns directly at least 10% of, and has invested at least €100,000 in, the paying company's capital.

62 The lower rate applies if the foreign company (not through a partnership) owns directly at least 25% of the voting rights in the paying company.

63 The lower rate applies to interest paid to, or in respect of a loan financed, guaranteed or insured by, a government organisation or the central bank.

64 The 0% rate applies if the foreign company (not through a partnership) owns directly at least 25% of the paying company's capital for at least 12 months prior to payment of the dividend, or if paid to a government organisation or the central bank; the 5% rate applies to interest paid to a pension fund.

65 The lower rate applies (a) if the foreign company (not through a partnership) owns directly at least 10% of the paying company's capital, or (b) if paid to a government organisation, the central bank or a pension fund.

66 The lower rate applies to interest paid (a) to or by a government organisation or the central bank, (b) to a pension fund, (c) in respect of a loan financed, guaranteed or insured by a government organisation, or (d) in respect of sales on credit of equipment or merchandise.

67 The non-treaty rates apply rather than the higher 25% rate specified in the treaty.

68 The lower rate applies if the foreign company owns directly or indirectly at least 25% of the paying company's capital; the non-treaty rate applies rather than the higher 25% rate specified in the treaty.

69 The lower rate applies if the foreign company (not through a partnership) owns directly at least 25% of the paying company's capital; the non-treaty rate applies rather than the higher 25% rate specified in the treaty.

70 The lower rate applies if the foreign company (not through a partnership) owns directly at least 20% of the paying company's capital and has invested more than €1 million or equivalent in the paying company's capital.

HKG ¶1-170 LIQUIDATION

Liquidation distributions of a capital nature are not subject to tax in Hong Kong. A company may be required to pay tax on a depreciation balancing charge in certain circumstances (see HKG ¶1-100).

HKG ¶1-180 COMPANY GROUPS

Companies are assessed to Hong Kong profits tax separately, regardless of whether they are part of a group of associated or related companies. There is no concept of group assessment that allows losses to offset gains within a group of companies.

HKG ¶1-185 VAT/GST

Hong Kong does not impose any value added tax (VAT) or goods and services tax (GST).

In December 2006, the Chief Financial Secretary withdrew the consultation document proposing the implementation of a GST. The Secretary withdrew the proposal because of opposition from the public. The government claimed that a GST would have been the best form of new tax to alleviate the structural deficit in Hong Kong.

HKG ¶1-190 OTHER HONG KONG TAXES

(a) Basic rule

Hong Kong imposes a number of taxes in addition to the profits tax. The t include:

- property tax
- rating and government rent
- customs and excise duties
- stamp duty
- consignment tax
- hotel accommodation tax
- motor vehicles tax
- taxes on gambling, and
- securities and futures levies.

These taxes are discussed below.

There is currently no insurance premiums tax in Hong Kong. Non-resident insurers that carry on business in Hong Kong and derive Hong Kong source profits are subject to profits tax under IRO ss 23 and 23A.

Estate duty was abolished on 11 February 2006. No estate duty affidavits and accounts need to be filed, and no estate duty clearance papers are needed for the application for a grant of representation in respect of deaths occurring on or after that date. The estate duty chargeable in respect of estates of persons dying on or after 15 July 2005 and before 11 February 2006 (transitional estates) with the principal value exceeding HK$7.5 million will be reduced to a nominal amount of HK$100.

(b) Property tax

Property tax is payable at a rate of 15%. The tax applies to 80% of the assessable value of taxable property and is levied on the owner of land and buildings situated in Hong Kong. Assessable value is generally the current annual rental income of the property. A corporation doing business in Hong Kong and occupying a building for its own use, or for producing rental income, is exempt from property tax, but subject to profits tax on the net income after allowing all relevant deductions.

A corporation carrying on a trade, profession or business in Hong Kong is exempt from property tax because its rental income forms part of the assessable income of that corporation under profits tax. No property tax is levied when the property is for the corporation's own use as no income is derived.

(c) Rating tax and government rent

Rating tax

A 5% rating tax is levied on the annual value of all premises, which is used to provide local services such as drainage. The rating is normally paid by the occupant of the premises.

For the 2021–22 tax year, the rating tax is waived, capped at HK1,500 per rateable property per quarter for the first and second quarters (1 April 2021 to 30 September 2021) and HK$1,000 per rateable property per quarter for the third and fourth quarters (1 October 2021 to 31 March 2022). For non-domestic tenements, the caps are increased to HK$5,000 and HK$2,000 respectively.

For the 2020–21 tax year, the rating tax was waived, capped at HK1,500 per rateable property per quarter. The cap was increased to HK$5,000 for non-domestic tenements for the first and second quarters (1 April 2020 to 30 September 2020).

For the 2019–20 tax year, the rating tax was waived, capped at HK$1,500 per rateable property per quarter. The cap was increased to HK$5,000 for non-domestic tenements for the fourth quarter (January to March 2020).

For the 2018–19 tax year, the rating tax was waived, capped at HK$2,500 per rateable property per quarter. For the 2016–17 and 2017–18 tax years, the rating tax was also waived, capped at HK$1,000 per rateable property per quarter.

The rating tax was also waived for the first 2 quarters of the 2015–16 tax year (capped at HK$2,500 per rateable property per quarter), and the first 2 quarters of the 2014–15 tax year (capped at HK$1,500 per rateable property per quarter).

Government rent

Government rent is levied at the rate of 3% of the annual value of the premises, determined under the Government Rent (Assessment and Collection) Ordinance (Cap 515).

(d) Customs and excise duties

Customs and excise duties are levied on:

- buses
- hydrocarbon oils
- liquors
- methyl alcohol
- motor vehicles
- tobacco and tobacco products

Non-residents

(b) Utilising tax treaty relief

(1) ***Status and content of tax treaties.*** Under most tax treaties signed by Hong Kong, non-resident individuals who are employed in Hong Kong will not be subject to tax in Hong Kong if:

(i) the individual is present in Hong Kong for not more than 183 days in a calendar year or in any 12-month period

(ii) the income is not paid by an employer who is a resident of Hong Kong, and

(iii) the individual's employment income is not borne by a permanent establishment or a fixed base that the employer has in Hong Kong.

(2) ***Typical residence tie-breaker article.*** Tie-breaker clauses are built into the tax treaties for when issues of dual residence arise. The issue of an individual's tax residence is significant, as taxability and relief are determined by reference to the person's country of residence. Tie-breaker clauses generally provide the following criteria in descending order of importance, so that only one country can claim an individual as its tax resident:

(i) existence of a permanent home

(ii) close personal and economic relations

(iii) habitual abode

(iv) nationality, and

(v) mutual agreement.

(3) ***Major exceptions to typical tie-breaker.*** The Hong Kong tax treaties generally follow the same broad principles as to individual resident tie-breaker criteria, although the details may vary. It is thus necessary to examine in detail the wording of the relevant treaty in respect to a particular situation.

HKG ¶3-060 MAIN DEDUCTIONS AND RELIEFS

(a) Basic deductibility principles

Residents

Hong Kong's general rule with respect to deduction applies to salaries tax. Expenses, other than expenses of a domestic, private or capital nature, that are incurred in the production of taxable income are deductible. In practice, it is generally difficult to support a claim for deduction with respect to income derived from employment, except in cases where it is evident that an individual incurs expenses (eg claims for travel, communication and entertainment expenses by a salesperson not entitled to claim expense reimbursement under the terms of their employment). The salesperson will, however, be required to support the claim that such expenses were incurred in the production of income which is assessable to tax in Hong Kong.

(1) ***Foreign outgoings/losses.*** The basic rule outlined above applies. Foreign expenses are deductible, provided they were incurred in the production of income which is assessable to tax in Hong Kong.

(2) ***Capital outgoings/losses.*** Expenses of a capital nature are not deductible.

(3) ***Personal expenditure.*** Expenses of a domestic, private or personal nature are not deductible.

However, an individual is entitled to claim a deduction for money donations to approved charitable institutions of up to 35% of assessable income.

(4) ***Fees for training courses*** at approved institutions are deductible up to a maximum amount of HK$60,000.

(5) ***Specifically non-deductible outgoings*** — see (2) and (3) above.

(6) ***Elderly residential care expenses.*** A person may claim a deduction for elderly residential care expenses paid by the person or their spouse to a residential care home in respect of the person's or their spouse's parent or grandparent under salaries tax or personal assessment. A person chargeable to tax at the standard rate is also entitled to the deduction, which is a maximum of HK$100,000 per year from the 2018–19 tax year onwards (HK$92,000 per year for the 2016–17 and 2017–18 tax years; HK$80,000 per year for the 2014–15 and 2015–16 tax years).

(7) ***Deductions for home loan interest.*** Home loan interest paid is deductible from a person's assessable income for salaries tax purposes, or from a person's total income for personal assessment purposes. A person chargeable to tax at the standard rate is also entitled to the deduction, which is HK$100,000 per person for up to 20 years (up to 15 years before 1 April 2017; up to 10 years before 1 April 2012). To qualify for the deduction, the person must be the owner of a dwelling in Hong Kong, and must wholly or partly use the property as their residence in the tax year. The loan must be a secured mortgage for the acquisition of the property, and must be from an approved lender.

(8) ***Charitable donations.*** An individual making approved charitable donations is entitled to a maximum tax deduction of up to 35%. Payments other than those that are strictly gifts are not considered to be donations. A donation must also be in the form of money, since deductions are not allowed for the monetary value of property.

(9) ***Self-education costs.*** A deduction is available in respect of fees for approved training courses. The maximum deduction is HK$100,000 from the 2017–18 tax year (HK$80,000 previously).

Non-residents

Since Hong Kong has no concept of residence and its tax principles do not distinguish residents from non-residents, the above comments apply to all individuals.

(b) Tax relief for special categories of gain

Residents and non-residents

(1) ***Employment income.*** Situations where employment income may be relieved from tax are outlined at (a) above. Relief under personal assessment is outlined at HKG ¶3-030(b)(2).

(2) ***Business income.*** A person who derives non-Hong Kong source business income is not liable to tax in Hong Kong. See HKG ¶3-040(a)(2) for criteria in determining source.

(3) ***Interest.*** An individual is not liable to tax on interest income.

(4) ***Rent.*** There is no special tax relief except that available under personal assessment — see HKG ¶3-030(b)(2).

(5) ***Royalties.*** Where a person carries on a business in Hong Kong which gives rise to royalty income as set out in HKG ¶3-030(d)(3), personal assessment outlined at HKG ¶3-030(b)(2) may be available.

beneficiary. It is payable at the rate applicable to the total income of the beneficiary except that business income is taxed at the maximum marginal rate (ie 30% plus surcharge and education cess (see IND ¶1-020(a)).

In the case of a discretionary trust, the tax is assessed in the hands of the trustee as a representative assessee and is payable at the maximum marginal rate.

(i) Cooperative societies

A cooperative society means a society registered under the Co-operative Societies Act 1912 or under any other law for the time being in force in any state for the registration of cooperative societies. Typically, this form would not be adopted for inbound international investments.

The income of a cooperative society computed after deductions is subject to tax at the rates stated below for AY 2022–23 (PY 2021–22), including 4% cess:

Income Rs	*Tax rate* %
Up to 10,000	10.4
10,001 to 20,000	20.8
20,001 and over	31.2

From AY 2021–22 (PY 2020–21), cooperative societies may instead opt to pay tax at a rate of 22% plus 10% surcharge and 4% cess. Severely limited deductions are available.

IND ¶1-012 BUSINESS REGISTRATION AND LICENSING

(a) Registration and licensing requirements

Registration requirements for the various entity types used in India are outlined in IND ¶1-010. All businesses also need to comply with local registrations for doing business such as under the Shops and Establishments Act 1953, the Employee Provident Funds and Miscellaneous Provisions Act 1952, and the Professional Tax Act of the relevant state, etc. However, these registrations are incidental to doing business rather than necessary for the establishment of the form of business.

A newly formed entity must obtain a permanent account number (PAN) and a tax account number (TAN). A PAN is the tax registration number used for all tax reporting and assessments, other than tax withholdings made by the entity, which are reported using a TAN. Foreign entities and non-residents receiving any income from India that is subject to tax withholding are also required to obtain a PAN.

Non-resident Indians (NRIs), persons of Indian origin (PIOs), politically exposed persons (PEPs), and other entities with an interest (business or otherwise) in India must complete a different and more extensive PAN registration form (49AA) than that required for resident taxpayers (49A).

International investments in India have few restrictions (these have been gradually reduced over time and are very few compared to earlier years). The restrictions are basically related to investments in certain sectors such as real estate, airlines, banking, insurance, retail, agriculture, defence and related activities, and mining. Under certain circumstances, international businesses having joint ventures/alliances with a company must seek their consent before entering into a joint venture/alliance with other entities for the same business. It is therefore advisable to confirm the applicability of any such restrictions before planning investments.

(b) Compliance

Every assessee must apply for and obtain a unique permanent account number (PAN). The PAN must be stated on the return of income, in all tax payment documents, and at the time of entering into specified transactions (such as the purchase of property). It must also be quoted at various other times, such as when opening a bank account or a dematerialised account for holding shares (known as a demat account), on investment above a specified limit in shares and mutual funds, at the time of registration of certain documents, etc.

Every person responsible for effecting withholding tax from payments made by that person (eg all entities running business activities) must obtain a separate unique tax account number (TAN). TANs must be stated in all payment documents for taxes withheld, in the withholding tax returns, etc. If an assessee does not provide PAN details to a party required to withhold tax from any payment to the assessee, the withholding tax rate is at least 5%.

IND ¶1-014 EXTENT OF TAX LIABILITY

India's rules for computation of business income are found under ss 28 to 44DB of the Income Tax Act 1961 (ITA). Exemptions from income are under ss 10 to 10C of the ITA, and deductions are under ss 80A to 80RRB of the ITA. Certain other provisions are scattered throughout the ITA, eg transfer pricing, MAT, etc.

There is not a separate rate of tax on business income. The business income is added in taxpayer's assessable income and tax is paid at the rate prescribed under the Finance Act applicable to each year.

(a) Liability to tax: jurisdiction

A taxable entity which is resident in India is taxed on its global income. If the foreign source income has been taxed in a foreign country, credit for tax paid in the foreign country is allowed subject to provisions of the ITA and tax treaties with the respective countries.

A non-resident entity is taxed in India if income is earned in India, received in India, or deemed to accrue or arise in India.

(b) Residence defined

Companies

A company is considered resident in India in a given tax year if:

- it is an Indian company, or
- it has its place of effective management, at any time in that year, in India.

Partnership firms

A partnership firm is resident in India if any portion of its control and management is in India.

A partnership firm is non-resident if its control and management is wholly outside India.

Individuals

From 1 April 2021, an individual is regarded as resident in India if:

- the individual stays in India for 182 days or more during a PY (financial year immediately preceding the assessment year)
- the individual stays in India for 120 days or more during a PY, and 365 days or more during the 4 years preceding that PY

For taxpayers with annual taxable supplies of RM5 million or more, the taxable period was the calendar month. For other taxpayers, the taxable period was a period of 3 calendar months.

Input credit

A taxable person that made taxable supplies was entitled to deduct the GST paid on purchases of goods and services, provided that they were used for business purposes and were not GST exempt. A taxable person had to prove the right to deduct input GST to the RMCD by holding a GST invoice issued by the supplier. GST payers deducted input GST on their cost components so that the ultimate consumer bore the burden of tax. A taxpayer had to pay the supplier of the goods or service within 6 months from the date of supply; failure to do so resulted in the taxpayer having to repay any input tax claimed in a return. The input tax could only be reclaimed in the taxable period in which the supplier was paid.

GST refunds

When the input tax incurred by a taxable person during a tax period exceeded their output tax for that period, the excess represented a GST credit which could be reclaimed as a refund. The refund could be offset against any unpaid GST, excise duty, or import and export duty. The refund could also be carried over into the next GST period at the taxpayer's request or by order of the RMCD. GST refunds had to effectively be paid to taxpayers within 14 working days from the date of the online submission of a GST return, or within 28 working days for manual submissions.

MYS ¶1-190 OTHER MALAYSIAN TAXES

(a) Withholding tax

The following table summarises Malaysian domestic withholding tax rates.

Nature of payment	*Rate (%)*
Interest paid to a non-resident person	15
Interest paid to a resident of a country which has a tax treaty with Malaysia	0–15
Royalties and rents	10
Payments to non-resident contractors	13
Remuneration of a public entertainer	15
Payment for use of property or installation or operation of plant and machinery	10
Technical fees	10
Section 4(f) income	10

There is no Malaysian withholding tax on dividends paid to non-residents.

For more information on withholding taxes on payments to non-residents, see MYS ¶2-050.

(b) Real property gains tax

See MYS ¶1-060.

(c) Stamp duty

Stamp duty is a tax levied at various rates on instruments (ie documents or contracts) which give effect to certain dutiable transactions.

The instruments chargeable to stamp duty are provided in the First Schedule of Malaysia's Stamp Act 1949. Examples and some important exemptions are as follows:

Description of instrument/subject	*Duty payable*
Form 14A (conveyance — land/transfer of property as a gift) from 1 July 2019:	1% on the first RM100,000, 2% on the next RM400,000, 3% on the next RM500,000, and 4% on the excess over RM1m
Form 14A (conveyance — land/transfer of property as a gift) before 1 July 2019:	
(i) for property with a value not exceeding RM2.5m (from 1 January 2019 until 30 June 2019)	1% on the first RM100,000, 2% on the next RM400,000, and 3% on the excess over RM500,000 up to RM2.5m
(ii) for property with a value exceeding RM2.5m	1% on the first RM100,000, 2% on the next RM400,000, 3% on the next RM500,000, and 4% on the excess over RM1m
Agreement for the sale of book debts (not approved by Minister of Finance) and goodwill/deed of assignment of rights under a contract	1% on the first RM100,000, 2% on the next RM400,000, and 3% on the excess over RM500,000
Form 32A (shares not listed on the Kuala Lumpur Stock Exchange)	0.3%
Lease for movable properties	0.5%
Loan agreement (local currency)	0.5%
Loan agreement (foreign currency)	0.5% subject to a maximum of RM500
Contract notes (shares)	0.1%
Agreement for lease of immovable property (without fine or premium) and for securing the payment for provision of services or facilities or to other matters or things in connection with a lease (eg service charge):	
(i) average rent per year and other considerations not exceeding RM2,400	Nil

(k) Approved service projects (ASPs) for communications, utilities and transportation sectors (applications closed)

Selected projects in the communications, utilities (including energy conservation services) and transportation sub-sectors approved by the Malaysian Ministry of Finance, known as ASPs, qualify for pioneer status for 5 years or investment allowance (IA) for 10 years.

A company involved in transportation, communications, utilities or any other sub-sector approved by the Minister of Finance (ie approved service projects or ASPs) is eligible for an IA. IA is an allowance on the capital expenditure incurred and varies from 60% to 100%. The allowance can be offset against 70% to 100% of statutory income. IA is given in addition to capital allowances for qualifying expenditure. The Minister of Finance decides the IA rates for the applicant company. The IA rate depends on the type of services provided, the size of the investment and the technology involved, the government's prevailing investment policy, etc. The last-mile broadband network service provider in the telecommunications industry, for instance, was given an IA rate of 100% for a period of 5 years which could be offset against 100% of statutory income for applications received by the Ministry of Finance before 31 December 2012.

Unutilised IA can be carried forward for 7 years for set off against future business income.

Exemptions on customs duties are available on imported materials and machinery. Exemptions for excise duty are on materials and machinery purchased locally.

(l) Tourism industry

Pioneer status/ITA for tourism projects

Pioneer status for tourism projects provides a tax exemption for 5 years on 70% of statutory income. As an alternative, ITA is given at 60% of capital expenditure against 70% of statutory income incurred within 5 years of approval. Another round of pioneer status and ITA is granted to project owners who upgrade their facilities. The ITA alone is granted for a third round of upgrading. Tax exempt dividends may be paid out from tax exempt income.

Qualifying tourism projects include:

- construction of hotels with ratings of 1 to 3 stars
- construction of hotels with ratings of 4 or 5 stars in Peninsular Malaysia on or before 31 December 2016
- construction of hotels with ratings of 4 or 5 stars in Sabah or Sarawak on or before 31 December 2020
- expansion/modernisation of existing hotels
- construction of holiday camps
- recreation projects
- construction of convention centres with halls to accommodate up to 3,000 participants.

Tax exemption for tour operators (expired)

Tour operators were exempt from excise duty on locally produced cars used as hire and drive cars. A further 50% excise duty exemption was given on locally assembled 4WD vehicles.

From 1 January 2013, an income tax exemption applied to the income of tour operators that:

- brought in at least 750 foreign tourists a year, or
- handled at least 1,500 local tourists a year.

The exemption applied for years of assessment 2013 to 2020.

Tax exemption for luxury yacht industry

Companies engaged in the business of construction, repair and maintenance of luxury yachts, and those providing charter services of luxury yachts, are eligible for a 5-year income tax exemption.

Tax exemption for organisers of international trade exhibitions in Malaysia

Income earned from the organisation of international trade exhibitions held in Malaysia is eligible for income tax exemption if there are at least 500 foreign visitors per year.

Healthcare travel/medical tourism

The following incentives are available to private hospitals to expand their capacity and to boost the healthcare travel/medical tourism industry:

- an investment tax allowance of 100% on qualifying capital expenditure incurred for a period of 5 years for the construction of new hospitals or for the expansion, modernisation or refurbishment of existing hospitals, or for medical devices exceeding RM50,000 (effective for applications received from 1 January 2018 until 31 December 2020)
- an investment tax allowance of 100% on qualifying capital expenditure incurred by a company that provides healthcare facilities to healthcare travellers for expansion, modernisation or refurbishment, for a period of 5 years (effective for applications received from 1 January 2015 until 31 December 2020), and
- double deduction on expenses incurred by private hospitals in obtaining domestic or internationally recognised accreditation as recognised by the International Society for Quality in Health, eg the Malaysian Society for Quality in Health (MSQH) or the Joint Commission International (JCI).

(m) Protection and conservation of the environment

Pioneer status/ITA

Pioneer status and ITA incentives are available to companies engaged in:

- integrated operations for the storage, treatment and disposal of toxic and hazardous wastes
- provision of energy conservation services
- waste recycling activities (eg recycling of agricultural waste, recycling of chemicals, production of reconstituted wood-based panel boards, etc)
- generation of energy using renewable resources, eg biomass, hydro and solar power.

Accelerated capital allowances

Accelerated capital allowances are given for:

- environmental protection equipment which stores, treats and disposes of waste, and
- waste recycling machinery and equipment.

(zq) Financing Assistance Schemes — Second Stimulus Package

	Working Capital Guarantee Scheme	*Industry Restructuring Loan Guarantee Scheme*
Objective	To assist viable companies with shareholder equity below RM20m to gain access to financing to maintain their operations during the current challenging economic environment	To promote investments: – that increase productivity – in high value added activities (such as R&D and downstream agriculture activities) – that promote greater application of green technology
Eligibility criteria	Legally registered Malaysian-owned companies (at least 51%) in all economic sectors, with shareholder equity below RM20m	Legally registered Malaysian-owned companies (at least 51%) in all economic sectors
Financing limits	Minimum: RM50,000 Maximum: Aggregate financing of RM10m per company	Minimum: RM50,000 Maximum: Aggregate financing of RM50m per company
Purpose of financing	– The scheme granted must be for the purpose of financing business activities and not for refinancing existing credit facilities – Participating financial institutions are responsible for determining the genuineness of the customer, based on the institution's credit evaluation procedure	– To finance investments that meet the objectives of the scheme – Refinancing of existing credit facilities is not allowed
Interest/ financing rates	Determined by participating financial institutions	Determined by participating financial institutions
Source of funds	Participating financial institutions	Participating financial institutions
Guarantee cover	SPV, which is fully backed by the Malaysian Government, will provide: – 80% automatic guarantee cover on approved limit for medium sized enterprises – Financing risk on the remaining 20% will be borne by the participating financial institution	For companies with shareholders equity less than RM20m: – 80% by the Government – 20% by the participating financial institutions For companies with shareholders equity of RM20m or more: – 50% by the Government – 50% by the participating financial institutions
Guarantee fee	0.5% pa on the approved limit	0.5% pa
Loan tenure	Up to 5 years	Up to 10 years
Application dates	Application is open from 16 March 2009 to 31 December 2010 or upon approval of financing up to RM5b, whichever is earlier	Application is open from 16 March 2009 to 31 December 2010 or upon approval of financing up to RM5b, whichever is earlier
Participating financial institutions	– All commercial banks – All Islamic Banks – All development financial institutions	– All commercial banks – All Islamic Banks – All development financial institutions
Responsibility of participating financial institutions (PFIs)	Not applicable	PFIs will be responsible for credit assessment and for ensuring that financing provided meets the objective of the scheme

(zr) Incentives for relocation to Malaysia

A tax exemption is available for manufacturing companies that relocate to Malaysia. The exemption period is 10 years if the total value of invested fixed assets is between RM300 million and RM500 million, and 15 years if the total value of invested fixed assets exceeds RM500 million. The incentive applies to companies that obtain approval between 1 July 2020 and 31 December 2021 and are in operation in Malaysia within one year of obtaining approval.

Developments

The Malaysian Government has proposed extending the approval period for the relocation tax exemption to 31 December 2022.

(zs) Incentives for investments by pharmaceutical manufacturers

Developments

The Malaysian Government has proposed introducing a reduced corporate income tax rate for investments in Malaysia by manufacturers of pharmaceutical products, including vaccines. The reduced rate would be between 0% and 10% and would apply for a period of 10 years.

MYS ¶1-210 FOREIGN EXCHANGE TRANSACTIONS

(a) Basic principle

The local currency in Malaysia is the ringgit (RM). This is the only currency used for Malaysian tax return filing; no other functional currency is allowed.

There are no provisions in the Income Tax Act or any established practice of the tax authorities in relation to exchange gains and losses. Foreign currency gains and losses are generally treated as assessable income or allowable deductions on a realisation basis, but only to the extent such gains or losses are attributable to a fluctuation in a currency exchange rate, or to an agreed exchange rate differing from an actual exchange rate.

(b) Capital assets and transactions

If a taxpayer purchases a fixed asset from overseas, any exchange gain or loss arising before payment of the purchase price is added to, or deducted from, the cost of the fixed asset for capital allowances purposes.

Exchange losses or gains arising from a capital transaction (eg from the repayment of a foreign currency loan or from investments in stocks and shares) are capital in nature and are neither deductible for tax purposes, nor taxable.

(d) Combating money laundering

To prevent money laundering, certain companies and branches must report unusual financial transactions to the Dutch Ministry of Justice. These companies include traders in valuable goods, financial services providers and professional service providers (accountants, lawyers, tax advisers, civil law notaries and real estate agents).

There are a number of indicators to determine whether a transaction is unusual. Some of the indicators include the payment of amounts exceeding €15,000 and the assumption that a transaction is related to the financing of terrorist activities.

NLD ¶1-220 INTERCOMPANY PRICING

(a) Arm's length pricing

It is a basic principle of Dutch tax law that related companies and branches should conduct their business as if they were independent. Intercompany pricing must be at arm's length as defined by OECD Transfer Pricing Guidelines.

Parties are deemed to be related if an entity directly or indirectly participates in:

- the supervision of another entity
- the control of another entity, or
- the share capital of another entity.

Parties are also deemed to be related if a third entity directly or indirectly participates in the supervision, control, or share capital of both parties to a transaction.

(b) Examination by authorities

The fiscal authorities closely examine intercompany or intra-group transactions and adjustments may be made to arm's length prices for tax purposes.

(c) Adjustment to arm's length pricing

Adjustment to arm's length pricing applies to transactions of all types, including the purchase and sale of inventory, the provision of services, and financial facilities such as the making of loans and the giving of guarantees.

(d) Determining arm's length prices

There are no legal rules for determining arm's length prices. All methods are applied equally (comparable uncontrolled price, cost plus or any other method). Taxpayers may obtain, on request, an advance pricing agreement (APA) on transfer prices in cross-border transactions between related parties (see (h) below).

(e) Special regulations or guidelines

The Dutch Ministry of Finance has issued guidelines in accordance with the OECD guidelines. They are applicable to Dutch subsidiaries or branches owned by a foreign company (or group of companies), with taxable profits in the Netherlands.

(f) Documentation requirements

The tax authorities may perform an audit on a taxable entity in the Netherlands. Each company must keep documents and proof in its administration records regarding transfer prices.

The specific type of documentation which is required is not further stipulated in the Dutch legislation. However, the OECD guidelines are generally followed, as clarified by the Dutch State Secretary of Finance. Documents prepared by multinationals under the *Code of Conduct on transfer pricing documentation for*

associated enterprises in the EU (known as the EU TPD) are also accepted by the Dutch authorities. Further, documentation requirements may differ according to the specific facts and circumstances of each case.

CbC reporting

In accordance with the revised OECD guidelines, the Netherlands requires multinational groups with an aggregated turnover of more than €750 million to prepare and file country-by-country (CbC) reports detailing their cross-border transactions. Submission of CbC reports is due one year following the close of the relevant tax year (the group's reporting period for the purposes of consolidated financial statements, rather than the individual group companies' tax or accounting periods).

(g) Double tax

If adjustments are made for Dutch tax purposes, corresponding adjustments in the tax calculations of the foreign entity may be necessary to prevent double taxation. In some recently negotiated tax treaties, such as the United Kingdom/Netherlands treaty, a procedure is laid down to ensure that the corresponding adjustment is granted. In some treaties these situations may be resolved only under the mutual agreement procedure. Neither tax authority should be expected to allow a corresponding adjustment if there is no applicable treaty.

(h) Advance pricing agreements (APAs)

Taxpayers may enter into unilateral, bilateral or multilateral advance pricing agreements (APAs) in the Netherlands. These are rulings on transfer pricing of cross-border transactions of goods and services. The policy of issuing APAs ensures that Dutch transfer pricing rulings comply with the OECD transfer pricing guidelines.

Unilateral APA requests must be submitted to the International Tax Security Treatment Team (Behandelteam Internationale Fiscale Zekerheid (IFZ)), and requests for bilateral or multilateral APAs must be made to the International Affairs and Consumption Taxes Department of the Ministry of Finance (Directie Internationale zaken en Verbruiksbelastingen van het Ministerie van Financien (IZV)). The request must meet extensive documentation requirements. APAs are generally valid for a period of 5 years but can be extended to 10 years in certain circumstances.

NLD ¶1-230 MIGRATION OF COMPANIES

(a) Consent

A Dutch company may remove its residence from the Netherlands without the prior consent of the fiscal authorities.

(b) Incorporation distinction

A distinction regarding the emigration of companies should be made between a company incorporated under Dutch law and a foreign incorporated company.

Companies incorporated under Dutch law

Companies incorporated under Dutch law remain subject to Dutch corporate income tax on their worldwide income. An exemption from Dutch taxation may apply on the basis of Dutch unilateral provisions or an applicable tax treaty. A company incorporated under Dutch law is obliged to file a corporate income tax return after emigration.

Companies incorporated under a foreign law

Companies incorporated under a foreign law are not subject to Dutch tax after emigration, except on Dutch sources of income.

Costa Rica (in force 1 July 2012)
Dominica (in force 1 March 2012)
Gibraltar (in force 1 December 2011)
Grenada (in force 20 January 2012)
Guernsey (in force 11 April 2009)
Isle of Man (in force 24 July 2006)
Jersey (in force 1 March 2008)
Liberia (in force 1 June 2012)
Liechtenstein (in force 1 December 2010)
Marshall Islands (in force 8 November 2011)
Monaco (in force 1 December 2010)
Montserrat (in force 1 December 2011)
Saint Kitts and Nevis (in force 29 November 2010)
Saint Lucia (in force 31 March 2011)
Saint Vincent and the Grenadines (in force 31 March 2011)
Samoa (in force 2 March 2012)
San Marino (in force 1 January 2011)
Seychelles (in force 1 September 2012)
Turks and Caicos Islands (in force 1 May 2011)
Uruguay (in force 1 June 2016).

The Netherlands has signed memorandums of understanding regarding the exchange of tax information with Denmark, Lithuania, Slovenia and Ukraine.

INDIVIDUALS • Residents and Non-residents

NLD ¶3-001 SNAPSHOT

The following table provides a summary of the major features of the taxation system of the Netherlands as they affect transferring executives and business migrants.

Liability to tax	(NLD ¶3-010)
Residents	Worldwide income
Non-residents	Certain Dutch source income
Tax year	(NLD ¶3-030)
Individuals	1 January–31 December
Variations?	None allowed
Maximum marginal income tax rates	(NLD ¶3-020)
Residents	Box 1: up to 49.5% > €68,507 Box 2: flat 26.9% Box 3: up to 1.7639% > €950,000
Non-residents	As for residents

Capital gains tax rates	(NLD ¶3-010(b), NLD ¶3-020(b))
Residents	26.9% (on substantial shareholdings — box 2 income); up to 49.5% (business gains taxed as box 1 income)
Non-residents	As for residents
Inflation or other adjustment to gain?	
Estate tax rates	(NLD ¶3-090(a))
Residents	Progressive rates up to 20%, 36% or 40% (depending on the relationship of the heir to the deceased)
Non-residents	As for residents
Gift tax rates	(NLD ¶3-090(a))
Residents	Progressive rates up to 20%, 36% or 40% (depending on the relationship of the donee to the doner)
Non-residents	As for residents
Wealth/asset tax rates	(NLD ¶3-090(c))
Residents	None
Non-residents	None
CFC rules applicable?	Yes (NLD ¶3-010(c))
Typical tax treaties	(NLD ¶3-050)
Number of signatories	Over 90 countries
Typical model	OECD
Major exceptions	None

NLD ¶3-010 LIABILITY TO TAX

(a) Dutch taxation of income

Residents

Residents of the Netherlands are subject to Dutch personal income tax (inkomstenbelasting) on their worldwide income at progressive rates, while in certain circumstances decreased proportional rates apply.

There are 3 types of tax for the various sources of income. These various sources of income have been organised into 3 ''boxes'':

- box 1: taxable income from work and home
- box 2: taxable income from substantial interests (see (b) below for the definition of a substantial interest), and
- box 3: taxable income from savings and investments.

Each type of income falls into one box. Each box is separately and individually taxed as far as possible. Each box has its own tax rate and taxpayers cannot offset negative income in one box against positive income in another box.

Box 1

The tax rate for box 1 is on a rising scale up to a maximum of 49.5% (see NLD ¶3-020(a)). The types of income falling within this box are:

- wages, pension payments, social security benefits, and benefits associated with a company car
- profits from a business (non-incorporated enterprise)
- earnings from other work

NLD ¶3-070 FAMILY TAX RELIEF

(a) Availability of family tax filing in the Netherlands

Residents

Under the Dutch tax system, every individual is required to file a separate tax return and to be separately assessed to tax. Married persons are taxed separately on their income from personal labour. However, all other income and deductions are attributed to spouses in the proportion that they choose in the annual tax return.

Income (other than income from personal labour) of children under the age of 18 is taxed in the hands of the parent who exercises parental control. If both parents exercise parental control, the income of the children is split equally between them.

Spouses living permanently apart are taxed separately on all income. The income of any children is taxed in the hands of the parent who maintains the children.

Non-residents

Expatriates who are not considered to be resident in the Netherlands file a non-resident income tax return. The allocation set out above does not apply to non-residents.

(b) Dutch tax deductions and rebates for dependants

Residents

The Netherlands has a complex system of relatively minor tax rebates and deductions, which among others benefit individuals who are supporting a dependent spouse, child or student, sick and disabled relatives and other relatives in the first and second degree.

Expenses incurred in maintaining relatives are part of the so-called ''personal deduction''. The personal deduction is the sum of the various types of expenses that are deductible from income in boxes 1, 2 and 3 — see NLD ¶3-010(a).

The following items are part of the personal deduction:

(1) maintenance payments to a former spouse

(2) living expenses for children younger than 30 years maintained by their parents. The deductible quarterly amounts are fixed amounts, based on the age of the child and the degree of maintenance, and

(3) expenses incurred for weekend visits by handicapped children aged 30 years or older to their parents. The deductible amounts are based on the number of nursing days and the distance travelled between the nursing home and the parents' home.

Non-residents

Non-resident taxpayers are not entitled to tax deductions and rebates for dependants.

(c) Other Dutch family related tax relief

Residents and non-residents

There is no other family related tax relief in the Netherlands.

NLD ¶3-080 LOCAL TAXES

(a) State or province level taxation

Residents and non-residents

The Dutch provinces and municipal authorities do not have taxing rights on income derived by individuals. Nevertheless, they have a restricted autonomy to levy a few relatively small taxes.

Provinces among others are entitled to levy certain taxes in connection with works related to the water economies of the provinces. Provinces are also entitled to levy certain car taxes and other taxes related to public services.

(b) City and municipal taxes

Residents and non-residents

Immovable property tax is payable by owners of real estate. Immovable property tax is payable by users and owners of real estate when the real estate has a business function. If the real estate is residential property, only the owners are liable for this tax. The user of a residential property is not liable for immovable property tax. Exemptions are available for agricultural land, nature conservation areas and churches. The rates applied vary per municipality.

(c) Other local taxes

Residents and non-residents

There are no other significant local taxes.

NLD ¶3-090 ESTATE, GIFT AND WEALTH TAXES

(a) Dutch inheritance and gift tax

The Netherlands' law on inheritance and gift tax is contained in the Succession Act 1956, as amended.

Taxable events

Inheritance tax is levied on the value of all property inherited from an individual who at the time of their death was a resident of the Netherlands. Gift tax is levied on the value of all gifts received from an individual who at the time of the gift was a resident of the Netherlands.

Partners

The term ''partners'' includes:

(1) married individuals

(2) unmarried partners who fulfil the following cumulative criteria:

(i) both partners have reached the majority age, and

(ii) both partners pursue a ''common household'', which follows from:

– registering at the same address in the basic personal administration register or a comparable foreign register

– having a mutual care obligation agreed by a notarial deed

– not being relatives in a direct line, and

– not meeting the above conditions with any other person.

In the case of inheritance, the common household has to exist for at least 6 months preceding the time of death. For gifts, the common household has to exist for at least 2 years preceding the time of the gift. For an inheritance or gift received by partners, the tax due is calculated in accordance with the closest relationship between the testator or donor and one of the partners.

Where the repurchase is not offered on a pro rata basis (ie to select shareholders), the brightline test will be satisfied where the vendor shareholder has suffered at least a 15% interest reduction.

Where a distribution is between 10% and 15% of the market value of the company, the brightline test will be met if shareholders can prove to the Commissioner of Inland Revenue that the repurchase is not in lieu of the payment of dividends. In certain cases the Commissioner can invoke the ''in lieu of dividend test'', notwithstanding the satisfaction of the brightline tests.

Certain debentures and redeemable preference shares are excluded from the brightline requirements.

NZL ¶1-170 LIQUIDATION

(a) Distribution of amounts on winding up

Where a company is being wound up, any amount distributed with respect to any share in the company on liquidation will not be a dividend for New Zealand tax purposes to the extent the amount distributed does not exceed:

- the subscribed capital, and
- the capital gains (generally only non-related party capital gains).

(b) Bonus shares

See NZL ¶1-150(b).

(c) New Zealand parent company

For the tax treatment of intercorporate dividends, see NZL ¶1-130.

(d) Overseas parent company

Non-resident withholding tax applies to all distributions made out of amounts in excess of the capital subscribed on liquidation (see NZL ¶1-140(c)).

NZL ¶1-180 COMPANY GROUPS

(a) Requirements

Under New Zealand tax law, two or more companies may be treated as a group of companies where at any time the aggregate of the common voting interests is at least 66%.

Where ''market value circumstances'' exist, the shareholders' economic interest in a company must be determined by reference to their voting interests and to their ''market value interests'' in the company. Market value circumstances exist where a company has:

- issued debentures at a floating rate of interest dependent on that company's profit or dividend payable
- issued shares that have a dividend payment guaranteed by a third party, or
- certain options to acquire shares in that company.

(b) Set off

Where the shareholders in a group of companies have at least a 66% commonality, losses of a group company, including losses carried forward, may be either set off against the net income of another company in the group by election, or utilised by means of a subvention payment of profits from the profit company to the loss company. The commonality of shareholding must be met at all times from the beginning of the year of loss to the end of the year of offset.

A group company which is resident overseas cannot set off losses against profits derived by a New Zealand company unless the loss is deductible by the overseas company for New Zealand tax purposes. In the case of a dual resident company (ie a company which is a resident of both New Zealand and another country or other countries), the company is required to carry forward losses and offset them against future profits to avoid ''double dipping''.

(c) Transfer of trading stock

Any transfer of trading stock between companies in a wholly owned group may be valued at the original cost paid by the first company.

(d) Consolidation regime

Wholly owned groups of companies may elect to consolidate and be treated as a single company for tax purposes. Transfers of dividends, interest, management fees and assets, including trading stock within a consolidated group, will generally be disregarded for tax purposes. In order to consolidate there is a general requirement that companies share the same income year for tax purposes.

Consolidated groups are only required to file one annual income tax return under the consolidated group tax number. There are no special tax returns for consolidated groups, they are treated as a single company and as such are required to file a company tax return and pay income tax as a single company.

The general requirements for a consolidated group are:

- all group members are 100% commonly owned
- all group members are New Zealand residents (no cross-border consolidations are permitted)
- if one member is a qualifying company, all members must be a qualifying company (see NZL ¶1-200(g) for the meaning of qualifying company)
- no member can be a loss attributing qualifying company (see NZL ¶1-200(g))
- no group member is exempt from income tax, and
- all companies have the same balance date (see NZL ¶1-016).

(e) Liquidation of a group company

See NZL ¶1-170.

(f) Intra-group interest

Interest paid or received within a group is deductible or treated as gross income respectively, except in a consolidated group.

(g) Interest on funds borrowed to purchase shares

Interest paid on funds borrowed to purchase shares in a company that is, or consequentially becomes, a member of the same group is deductible (see NZL ¶1-110(a)).

(h) Intra-group dividends

Dividends may be paid and received between members of a wholly owned group as exempt income in the case of all members of the group which are New Zealand resident companies (see NZL ¶1-130). Dividends paid to an overseas holding company are subject to withholding tax (see NZL ¶1-140(c)).

Developments

From 1 October 2021, the 33% marginal tax rate for interest payments will be increased to 39%.

In this event the gross interest must still be declared on the individual's return. In both cases a credit can be claimed for the tax deducted at source.

(2) ***Rents*** are not subject to any tax deductions at source.

(3) ***Royalties*** are not subject to any tax deductions at source.

(4) ***Dividends*** which are not fully imputed (see NZL ¶3-060(b)(6)) are subject to the deduction of tax at source at 33% on the unimputed part. The company tax rate is currently 28%.

Resident withholding tax (RWT) needs to be deducted at the rate of 3% from fully imputed dividends paid after 1 April 2008 using the imputation ratio. Individuals who earn over NZ$70,000 (2010–11 income year) are required to pay the 5% shortfall on fully imputed dividends. Taxpayers earning NZ$70,000 pa or above must make up the 5 percentage point difference in the tax due on the receipt of dividends. This is done at the end of the tax year when the return of income is filed with the Inland Revenue.

While for income years commencing on or after 1 April 2011, the applicable company tax rate was reduced from 30% to 28%, RWT on dividends is still currently set at 33%. Unless a change in RWT is made, RWT will need to be deducted at a rate of 5% from fully imputed dividends paid where the dividend is imputed at a ratio of 28/72. Where companies have imputation credits earned on tax paid at 30%, this may be as late as for dividends paid after 1 April 2013.

(5) ***Pension/superannuation contributions and payouts.*** Payments received from an approved employee pension or superannuation fund, whether lump sum or pension, are tax free. From 1 April 2000, a withdrawal tax is imposed on individuals who withdraw amounts from a superannuation fund, which are not otherwise exempt from tax.

(6) ***Capital gains.*** No tax is deducted at source in consequence of the disposal of an asset.

Non-residents

Non-residents are required to quote an IRD number to avoid the deduction of tax at maximum marginal rates at source from employment and certain other gross income. An IRD number need not be quoted by non-residents on income subject to non-resident withholding tax. However, to avoid the deduction of resident withholding tax from interest and dividend income, non-residents must advise payers of their non-resident status and country of residence.

The tax legislation contains a general provision enabling the Commissioner of Inland Revenue to require any person having the control of funds belonging to a non-resident to pay any tax due by the non-resident out of those funds. It is, therefore, common practice for residents to seek the Commissioner's guidance before the remittance of income to non-resident parties.

(1) ***Interest*** is subject to withholding tax at the rate of 15% but this is normally reduced to 10% by tax treaty. Also, certain interest payments made after 1 August 1991 to approved non-resident lenders are not subject to withholding tax.

(2) ***Rents*** are not subject to any tax deductions at source.

(3) ***Royalties*** payable to non-residents are subject to the deduction of tax at source at the rate of 15%, but this is reduced to 10% by some tax treaties.

This is a final tax for copyright and cultural royalties, but it is a minimum tax for other royalties and knowhow payments.

(4) ***Dividends.*** A non-resident withholding tax at the rate of 30% is deducted from dividends payable to non-residents. This is generally reduced to 15% if the dividend is fully imputed. If the dividend is not fully imputed, withholding tax may be reduced to 15% by a relevant double tax agreement — see NZL ¶3-060.

(5) ***Pension/superannuation contributions and payouts.*** The same rules apply as for residents.

(6) ***Capital gains.*** No tax is deducted at source from capital gains.

NZL ¶3-040 SOURCE RULES

(a) Personal exertion income

Residents and non-residents

The source of salaries, directors' emoluments and professional fees is generally the place where the duties giving rise to the income are performed.

(1) ***Employment income.*** See the introduction above.

(2) ***Business income.*** When trading profits are largely earned through the making of contracts in which the place of performance is relatively unimportant, then the place where the contracts are entered into will usually be regarded as the source of the resultant income. Conversely, where the place of performance of a contract is of major importance, the resultant income will generally be treated as derived where the contract is performed. In practice, a range of factors (including the place of contract, the place of performance, residence of the parties, place of payment, etc) may be weighed in determining the source of trading income. The legislation specifically allows the Commissioner to determine the extent to which a profit arising under an international contract should be treated as New Zealand sourced.

(3) ***Personal services income.*** Specific anti-avoidance rules apply to personal services income to prevent higher income earners (earning in excess of NZ$70,000 for the 2021–22 income year) from diverting personal services income to other associated entities such as companies and trusts (thereby capping their tax rate at 28% or 33%).

(b) Interest

Residents and non-residents

Interest is deemed to be derived from New Zealand if the money is lent in New Zealand. Income from money lent outside of New Zealand has a New Zealand source only when it is lent to:

(1) a New Zealand resident, unless the loan is used for purposes of business carried on by the New Zealand resident through a fixed establishment outside New Zealand, or

(2) a non-New Zealand resident for use in respect of a business carried on by the non-resident through a fixed establishment in New Zealand.

Capital allowances

Allowable exploration expenditure (AEE) is amortised over the life of the resource project. The deduction is calculated by dividing the unamortised balance by the lesser of the remaining life of the project or 4. The amount of the deduction is limited to the amount of income remaining after taking all other deductions other than deductions for allowable capital expenditure (ACE) (see below). In other words the deduction cannot create a tax loss.

ACE is amortised over the life of the resource project. The ACE is split into 2 categories: capital expenditure with an estimated effective life of more than 10 years (long-life ACE) and capital expenditure with an estimated effective life of less than 10 years (short-life ACE).

The annual deduction for long-life ACE is claimed on a straight-line basis over 10 years. Where the remaining life of the project is less than 10 years, the rate at which the deduction is allowed is calculated by reference to the remaining life of the project. For short-life ACE, the annual deduction is calculated by dividing the unamortised balance by the lesser of the remaining life of the project or 4. For new mining projects, the deductions for both long-life ACE and short-life ACE are calculated by dividing the unamortised balance by the lesser of the remaining life of the project or 4.

The amount of the deduction for ACE is limited to the amount of income remaining after taking all other deductions. In other words the deduction cannot create a tax loss.

The order of deduction of ACE is long-life ACE first and, if fully utilised, a deduction for short-life ACE may then be claimed. Where there is insufficient income to use the deduction, the excess is deemed to be ACE incurred in the next year's income.

Off licence exploration expenditure

One major relaxation of the ring fencing principle applies to taxpayers that are involved in a producing project, where the taxpayer, or a related party, incurs exploration expenditures outside the area of the productive project. In this situation the taxpayer can elect to add such exploration expenditure to an exploration pool which can be amortised against income from the producing project.

The amount allowable as a deduction from this exploration pool in respect of resource operations carried on by the taxpayer or a related corporation is the lesser of:

- 25% of the total undeducted balance of expenditures in the exploration pool, or
- such amount as reduces the income tax (other than additional profits tax — see PNG ¶1-190(j)) which would, but for this deduction, be payable by the taxpayer and its related corporations in respect of those resource operations for that year of income, by 10%, or by 25% for mining projects.

Management fees

Once an entity derives assessable income from a resource project, its deduction for management fees is restricted to 2% of operating expenses other than management fees. During the exploration phase of a project, the amount of management fees that can be treated as allowable exploration expenditure is limited to 2% of exploration expenditure other than management fees. Furthermore, during the development phase, the amount of management fees that can be treated as allowable capital expenditure is limited to 2% of allowable capital expenditure other than management fees.

Transfer of expenditure

When interests are transferred from one taxpayer to another, the vendor and purchaser can agree to transfer deduction entitlements for the unamortised balances of allowable exploration expenditure (AEE) and allowable capital expenditure (ACE) to the purchaser.

(m) Tax holidays

Papua New Guinea provides for a tax holiday of up to 11 years for new business undertaken in certain prescribed remote rural areas.

Papua New Guinea has granted a 10 year tax holiday to the Ramu Nickel Project.

Before 2015, taxpayers who exported certain qualifying goods that they manufactured in Papua New Guinea were entitled to an income tax exemption of 100% of export sales made prior to the last day of the third year following the date export sales were first made. For the following 3 years, the excess of export sales over average export sales of the previous 3 years was exempt. There was no tax deduction available for expenses incurred in deriving this exempt income (ie it was the profits from export sales that were exempt). This exemption has been repealed, but will continue to apply to goods that qualified for the exemption prior to 1 January 2015.

(n) Environmental protection and clean up costs

Two provisions operate to provide specific deductions for environmental protection and clean-up costs.

Deductions are available for expenses incurred for the purpose of environmental protection activities, and for the costs associated with preparing an environmental impact study. These costs are deductible over the anticipated life of the project, or 10 years.

PNG ¶1-210 FOREIGN EXCHANGE TRANSACTIONS

(a) Trading

The local currency in Papua New Guinea is the kina (K). Foreign exchange gains and losses from trading transactions (such as trade debts, funds utilised for trading purposes and hedging arrangements in connection with trading transactions) are taxable/deductible when realised.

(b) Capital transactions

Foreign currency losses and gains on capital account are taxable/deductible if they arise from business-related foreign currency debts incurred or borrowings made on or after 11 November 1986, provided they are realised. Exchange gains and losses on revenue items are also taxable/deductible when realised.

(c) Exchange controls

The government of Papua New Guinea imposes limited exchange controls following liberalisation measures over the past several years (see PNG ¶2-010).

PNG ¶1-220 INTERCOMPANY PRICING

Although Papua New Guinea is not a member of the OECD, its tax legislation contains provisions dealing with international agreements designed to prevent the transfer of profits through international transfer pricing or profit shifting arrangements. In broad terms, these provisions enable the IRC to assess tax on a Papua New Guinea taxpayer as if the relevant transactions had taken place at arm's length prices.

Returns made in respect of income received from employment and/or pensions must be submitted between 15 March and 15 April. Returns made in respect of other categories of income (including self-employment income, investment income, rental income and interest income) must be submitted between 16 April and 16 May.

Furthermore, the taxpayer has the obligation to report and file an additional tax return within 30 days from the occurrence of an event that alters a previous tax declaration.

Penalties apply for late lodgment and incorrect returns.

Returns must be filed electronically.

(4) ***Assessment of tax*** — see (2) above.

(5) ***Payments and refunds.*** Income tax must be paid in the year subsequent to the year to which the income relates (see (2) above). When the tax due is not paid within the appropriate period, interest is charged on the amount of tax due. Such interest is calculated on the basis of an annual interest rate indexed to the Euro Interbank Offered Rate (Euribor) 12-month average of the previous year, plus a differential of 5 percentage points.

Refunds resulting from the difference in favour of the taxpayer between the actual tax due and what was paid, must be paid by the same date as tax would have had to be paid if any were due.

(6) **Revenue authority contact details**

Autoridade Tributária e Aduaneira

Rua da Prata, n.° 10 1149-027 Lisbon, Portugal

Tel: +351 21 881 26 00

Fax: +351 21 881 29 38

www.portaldasfinancas.gov.pt

Non-residents

Non-residents are subject to the same requirements concerning the filing of tax returns as residents.

(b) Collection of Portuguese tax from employees

Residents

(1) ***Scope of salary tax***. Employers are required to withhold tax at source on all remuneration in cash and in kind paid to employees.

(2) ***Collection system***. Tax is withheld by the employer and paid over to the tax authorities by the 20th day of each month following that in which it was deducted. The rate is determined on the basis of annual gross salary. Correction of any withholding error must be made in the next period immediately following the discovery; however, such corrections cannot be made later than the last monthly withholding period of the year.

(3) ***Determination of final liability***. By the end of February, employers who have withheld tax must send to the tax authority a statement indicating the income paid and tax withheld, compulsory deductions of health and social security contributions, as well as any union dues collected.

Non-residents

Except where a relevant tax treaty provides otherwise, non-residents are subject to withholding tax at source on payments of salary and wages in the same way as residents.

Non-residents must designate a tax agent in Portugal to represent them with the tax authority and to make sure that all of their tax obligations are met.

(c) Collection of Portuguese tax from the self-employed

Residents

A self-employed individual has the responsibility to make 3 payments of the tax owed on account by 20 July, 20 September and 20 December.

Non-residents

The same rules apply to non-residents.

The Portuguese source income and capital gains of self-employed non-residents cannot be transferred abroad without proving that the tax due has been paid, or that sufficient security for its payment has been provided.

(d) Collection of Portuguese tax on property income

Residents and non-residents

Income derived from immovable property must be reported on a taxpayer's annual tax return through the Declaration of Income Model 3 (Declaraçao de Rendimentos Modelo 3) together with a special schedule attached to the tax return (Annex F — Anexo F).

(1) ***Interest***. The withholding tax rate on domestic interest payments is generally 28%.

(2) ***Rent***. Rental income is not subject to withholding tax, and is assessable with other income as declared in the annual tax return and such income must be reported in the above-mentioned Annex F.

(3) ***Royalties***. Royalties are subject to withholding tax at source at a rate of 25% for payments made to non-residents and 16.5% for payments made to residents.

(4) ***Dividends***. Withholding tax applies at a rate of 28%.

(5) ***Pension/superannuation contributions and payouts***. Pensions and payments from superannuation funds are subject to tax withheld at source at the same progressive rates applicable to employment income — see PRT ¶3-020(a).

(6) ***Capital gains***. No tax is deducted at source on the disposal of assets. Taxable capital gains must be declared in the annual tax return and must be reported in a special schedule attached to the tax return (Annex G — Anexo G).

PRT ¶3-040 SOURCE RULES

(a) Personal services income

Residents and non-residents

The source of income for both dependent personal services (ie salaries, pensions) and independent personal services (ie professional fees) is the place where the activity is performed.

(1) ***Employment income*** — see the general comments above.

(2) ***Business income.*** Business income that originates from an activity performed through a Portuguese permanent establishment is considered to be sourced in Portugal.

COMPANIES • General tax system outline

SGP ¶1-001 SNAPSHOT

Tax authority	Inland Revenue Authority of Singapore www.iras.gov.sg
Tax year	1 January–31 December Accounting period ending other than 31 December is acceptable. Profits arising in an accounting period ending other than 31 December are not apportioned. (SGP ¶1-016)
2021 income tax rates	Corporate tax rate: 17% (SGP ¶1-020(a))

Resident individuals (SGP ¶1-020(b)):

Taxable income (S$)	*Tax*
0–20,000	Nil
20,000–30,000	2% on excess over S$20,000
30,000–40,000	S$200 + 3.5% on excess over S$30,000
40,000–80,000	S$550 + 7% on excess over S$40,000
80,000–120,000	S$3,350 + 11.5% on excess over S$80,000
120,000–160,000	S$7,950 + 15% on excess over S$120,000
160,000–200,000	S$13,950 + 18% on excess over S$160,000
200,000–240,000	S$21,150 + 19% on excess over S$200,000
240,000–280,000	S$28,750 + 19.5% on excess over S$240,000
280,000–320,000	S$36,550 + 20% on excess over S$280,000
Over 320,000	S$44,550 + 22% on excess over S$320,000

Non-resident individuals: 22% flat rate; employment income at the higher of 15% or the resident rate. (SGP ¶1-020(c))

VAT/GST	GST at a rate of 7% is levied on most goods and services. (SGP ¶1-185)
Capital gains tax (CGT)	No capital gains tax as such, but capital gains may be construed or deemed to be income in nature and subject to income tax if derived from activities of a trade or business carried on in Singapore. (SGP ¶1-060)
Losses	Trading losses may be offset against all income received in the same accounting period or carried forward indefinitely and offset against future trading profits, subject to the satisfaction of a substantial shareholding test. Losses up to S$100,000 incurred in a current year may be carried back one year. (SGP ¶1-080)
Treaty network	More than 80 treaties in effect (SGP ¶2-090)
Withholding tax (non-residents)	Dividends Nil Interest 15% Royalties 10%
Group consolidation	The losses and unutilised capital allowances of one company may be utilised for tax purposes by another company in the same group. For group relief purposes, a group refers to a Singapore incorporated parent and all its Singapore incorporated subsidiaries. (SGP ¶1-180)
CFC rules	None
Thin capitalisation restrictions	None
Currency	Singapore dollar — S$
Exchange controls	None

SGP ¶1-010 FORMS OF DOING BUSINESS IN SINGAPORE

(a) Overview

Business in Singapore may be conducted through a range of business entities. The choice of business entity has ongoing implications for the tax treatment of income derived by the entity, the costs of compliance with regulatory requirements, and the opportunities to expand, restructure, sell the business or sell the entity.

Exempt supplies mainly relate to financial services and transactions such as interest income from bank deposits. In addition, partially exempt GST traders that only make certain prescribed exempt supplies (such as assigning of receivables and purchasing of bonds) are allowed to claim all input tax even if they have failed the de minimis rule.

The following expenses are disallowed as input tax claims:

- club subscription fees (including transfer fees) charged by sporting and recreational clubs
- medical expenses, medical and accident insurance premiums incurred by employees
- benefits provided to the family members or relatives of employees
- costs and running expenses of a motor car (except for Q-plated cars with a certificate of entitlement issued before 1 April 1998), and
- any transaction involving betting, sweepstakes, lotteries, fruit machines or games of chance.

Approved contract manufacturer and trader scheme

The approved contract manufacturer and trader scheme gives certain businesses that have contracts with non-GST registered overseas customers the right to:

- recover GST on the purchase of local goods used in providing services to such customers, and
- disregard GST in respect of the sale of goods and services to such customers.

Approved businesses for this scheme are:

- contract manufacturers in the semi-conductor printing industries, and
- qualifying contractors in the biomedical industry.

(h) GST refunds

The Comptroller of GST normally makes any refunds due to GST-registered persons within 30 days from the date of receipt of the GST return. GST refunds can be made via electronic bank transfer, cheque, bank draft or telegraphic transfer.

(i) Records and invoices

Accounting records pertaining to accounting periods ending before 1 January 2007 must be kept for 7 years. Accounting records pertaining to prescribed accounting periods ending on or after 1 January 2007 are required to be kept for 5 years.

Records can be kept in electronic form as long as the guidelines set in the IRAS e-Tax Guide — Record Keeping Guide for GST-Registered Businesses are followed.

A tax invoice must be issued when the customer is a GST-registered person so that the customer can use it as a supporting document to claim input tax on the standard-rated purchases. In general, a tax invoice must be issued within 30 days of the time of supply. A tax invoice need not be issued for zero-rated, exempt and deemed supplies or to non-GST-registered customers.

The tax invoice must show the following:

- the words ''tax invoice'' in a prominent place
- an identifying number

- the date of issue of the invoice
- name, address and GST registration number of business
- customer's name (or trading name) and address
- the type of supply, eg credit sale, hire-purchase, loan, etc
- a description of the goods or services supplied
- for each description, the quantity of goods or the extent of services and the amount payable (excluding tax)
- any cash discount offered
- the total amount payable excluding tax, the rate of GST and the total tax chargeable shown separately
- the total amount payable, including tax, and
- the breakdown of exempt, zero-rated or other supply, stating separately the gross amount payable in respect of each, if applicable.

If the amount payable stated in the tax invoice, including tax, is S$1,000 or less, a simplified tax invoice which contains only the following particulars can be issued:

- name, address and GST registration number of business
- the date of issue of the invoice
- the description of the goods or services supplied
- the total amount payable including tax, and
- the words ''price payable includes GST''.

Simplified tax invoices cannot be used for zero-rated or exempt supplies.

GST-registered traders are not required to seek approval from IRAS to issue electronic tax invoices.

When sales are invoiced in a foreign currency, the GST amount, the amount payable and the total of these 2 items as reflected in the tax invoice must be converted into Singapore dollars. Generally, the invoice should be in English.

(j) Deferring GST

Under the Import GST Deferment Scheme (IGDS), GST-registered businesses can make an application to the Comptroller of GST to defer import GST payable on their goods at the point of entry into Singapore. The purpose of this scheme is to alleviate the cash flow issues for GST-registered businesses arising from the time lapse between the payment and claiming of import GST. Under the IGDS, the import GST is deferred for at least one month and declared as a payable amount in the corresponding GST return. Approval under the IGDS will be accorded to GST-registered businesses that meet all qualifying conditions including:

- good compliance records with the IRAS and Singapore Customs
- GST registration for at least 3 years, and
- subscription to monthly GST filing.

Besides the IGDS, there are other schemes such as the Major Exporter Scheme that also ease the cash flow effect of the time lapse between the payment and claiming of import GST.

Under this category, a 10% concessionary tax rate on incremental qualifying income derived from the provision of qualifying supporting shipping services will apply for 5 years.

Qualifying supporting shipping services include:

- ship management, ship agency and shipping freight/logistic services (previously covered by the ASL scheme)
- ship broking and FFA trading (previously covered by the FFA trading incentive), and
- corporate services provided to qualifying related parties involved in shipping-related activities.

Not-for-profit organisations

As part of the Government's effort to develop Singapore as a philanthropic hub, approved not-for-profit organisations (NPOs) are eligible for a tax exemption during the period from 15 February 2007 to 31 March 2022. The approval will be for a period not exceeding 10 years and may be extended on expiry for a further period not exceeding 10 years at any one time. NPOs eligible for the tax incentive may include those that use Singapore as a base to carry out regional and global activities, as well as those that promote the economic development of Singapore.

Developments

The Singapore Government has proposed extending the tax exemption for NPOs to 31 December 2027.

International arbitration (expired)

Until 30 June 2017, approved law practices could apply for a 50% tax exemption on qualifying incremental income from the provision of any professional work of a legal nature provided by lawyers of the practice for a client who was a party to an international arbitration that was held in Singapore (or would have been heard in Singapore had it not been settled).

Any law practice could apply to the Minister for Finance for approval as an approved law practice if it intended to provide legal services in connection with:

- any international arbitration hearing held in Singapore from 1 July 2007 to 30 June 2017, or
- any international arbitration which would have been heard in Singapore, had it not been settled, from 1 July 2012 to 30 June 2017.

Operational headquarters (OHQ) incentive (expired)

An OHQ is an entity incorporated or registered in Singapore for the purposes of providing management, technical or other supporting services to subsidiaries, related and/or associated companies (or their branches) in other countries. The OHQ should be the regional control centre with all-round regional management centralisation and control from Singapore. An OHQ can be involved in manufacturing, assembly or other service activities in addition to providing headquarters support for the regional network.

On application to the Economic Development Board, a concessionary tax rate of 10% applied to income derived before 1 October 2015 by an approved OHQ from the following activities:

- provision of qualifying services to overseas subsidiaries and related companies
- trading in foreign exchange and offshore investments
- prescribed treasury, investment or financial activities
- interest income derived from loans raised from financial institutions in Singapore and extended to group companies, and
- royalty income from related companies in respect of research and development work carried out in Singapore.

Income derived by approved OHQs which perform at least one substantive global function in Singapore may be exempted from tax on application to the Economic Development Board. If the OHQ has the global responsibility for the provision of a particular service (eg personnel and financial management) to its network companies worldwide, such a service can be considered as a substantive global function.

The tax incentive period is up to 10 years and is subject to review at the end of the period.

Global trader program (GTP)

Companies engaging in international trading of derivatives on the GTP list of approved derivatives can qualify for 5% or 10% concessionary tax treatment on trading profits. Companies approved under the program on or before 31 December 2026 can receive the benefits up to 5 years subsequently. Qualifying companies are those that:

- conduct substantial offshore trading activities on a principal basis
- incur a significant amount of directly attributable local business spending, and
- employ a commensurate number of experienced trading professionals in Singapore.

Approved fund manager incentive

Fund managers approved by the Minister for Finance, or by a person appointed by the Minister, are eligible to be taxed at the concessionary rate of 10% on fees and commissions derived from managing the funds of a foreign investor for the purpose of certain designated investments and from providing investment advisory services in relation to such investments. The approved fund manager scheme was subsumed under the financial sector incentive fund management scheme with effect from 1 January 2004, or until 31 December 2008, whichever is the later, until the end of the period for which the Minister had approved the company.

Financial sector incentive (FSI)

The financial sector incentive (FSI) is an umbrella scheme providing concessionary rates of tax to various types of financial institutions such as banks, fund managers and securities companies. Qualifying income of approved FSI companies is taxed at a concessionary tax rate of 5%, 10% or 12% (see below).

For example, where the FSI company is a bank licensed under the Banking Act (Cap 19) or a merchant bank approved under s 28 of the Monetary Authority of Singapore Act (Cap 186), income derived from, inter-alia, the following activities, is taxed at a concessionary rate of 12% under the FSI-Standard Tier award:

- granting loans, other than by way of bonds or debentures, in any foreign currency, the repayment of which is not in Singapore currency