

# taxtalk newsletter

Grant Thornton   
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## Tax – its part on the corporate structure

For multinational businesses, structuring their affairs from both an operational and tax perspective has become essential, given that many of these companies are increasingly under pressure to reduce costs and provide value for money. At the same time, businesses are coming under increased scrutiny by regulators and tax authorities. In the Winter 2004 issue of Tax Talk, our summary of the current tax planning environment highlighted the ways tax authorities and international bodies were cooperating on an unprecedented scale to combat tax avoidance and evasion. This cooperation and change has accelerated within the last twelve months. A good example of this trend is the continued issue and implementation of transfer pricing regulations within the Asia Pacific region.

This trend towards the issue and implementation of transfer pricing regulations is not surprising given that businesses today increasingly have a global perspective, with the result that the number of cross border transactions has risen sharply.

In the Autumn 2005 issue of the Asia Pacific Tax Adviser, we highlighted these transfer pricing trends within the Asia Pacific region and the use of a more structured way

to effect change through supply chain management.

In the past, groups of companies have often simply evolved with little thought to tax or organisational structure. The main driving force behind their expansion was to take advantage of legitimate business opportunities, for example, meeting customer demand, sourcing goods, manufacturing, etc.

In this issue of Tax Talk we have summarised the direct and indirect tax rates and trends within some of the key Asia Pacific countries. This has to be the starting point when structuring or re-structuring an international group of companies from a tax perspective. Of course, this is just a starting point. There are many other factors that need to be taken into account from both a commercial and tax perspective. Some of the key tax implications were summarised in the Winter 2004 issue of Tax Talk.

A very important development in the Hong Kong tax system has been the conclusion of double tax agreements over the last year. This is a key milestone in Hong Kong's development and reflects a key Government initiative. This is explored further within this issue of Tax Talk.



Gary James, Tax Partner (left) and  
Newton Shum, Tax Manager (right) of Grant Thornton

## Expanding in the Asia Pacific region – tax rates and trends

Although tax issues should not dictate business strategy, tax planning is part of the decision making process in the structuring of businesses.

Of interest to businesses are the trends in relation to taxes generally and of particular interest is the age-old question “how do I get my money out?” The table below sets out the key corporate direct and indirect taxes affecting companies looking to establish a presence in the Asia Pacific region, and the withholding taxes that apply on profit repatriation.

	Corporate tax rate(s) (Note 1)	VAT / GST rate(s)	Dividends (Note 7)	Interest (Note 7)	Royalties (Note 7)	Technical services (Note 7)
<b>Australia</b>	30%	10%	30%	10%	30%	30%
<b>Mainland China</b>	33% (Note 2)	Exempt / 0% / 13% / 17%	0%	10%	10%	10%
<b>Hong Kong</b>	17.5%	N/A	Nil	0%	5.25% / 17.5%	0%
<b>India</b>	33.66% – domestic companies 41.82% – foreign companies	Exempt / 0% / 1% / 4% / 12.5% / 20%	Nil (Note 8)	20%	10% (Note 10)	10% (Note 10)
<b>Japan</b>	41.28% / 42.79% (Note 3)	0% / 5%	20%	20%	20%	20%
<b>Korea</b>	13% / 25%	Exempt / 0% / 10%	27.5%	27.5%	27.5%	22%
<b>Malaysia</b>	28% (Note 4)	N/A (Note 5)	Nil	15%	10%	10%
<b>New Zealand</b>	33%	Exempt / 0% / 12.5%	30%	15%	15%	15%
<b>Philippines</b>	35%	Exempt / 0% / 10% (Note 6)	35% (Note 9)	35% (Note 9)	35% (Note 9)	35% (Note 9)
<b>Singapore</b>	20% (Note 4)	5%	Nil	15%	10%	20%
<b>Taiwan</b>	25%	Exempt / 0% / 5%	20% / 25% / 35%	20%	20%	20%
<b>Thailand</b>	10% / 15% - 25% - 30% (Note 4)	10%	10%	15%	15%	15%
<b>Vietnam</b>	28%	Exempt / 0% / 5% / 10%	Nil	10%	15%	10%

### Notes

1. Reduced rates given to small businesses, as investment incentives or to qualifying corporations have not been included in this table.
2. Rate applicable to foreign invested enterprises. There are also 15% and 24% rates for certain locations.
3. This effective tax rate includes inhabitant taxes and enterprise taxes.
4. There are reduced rates for certain types of business operations and holding company structures.
5. GST will be implemented on 1 January 2007 to replace the current sales and services tax.
6. Rate may be increased to 12% from 1 January 2006.
7. Rate imposed when there is no tax treaty in force.
8. There is no withholding tax on dividend payments. However, the company paying the dividend is required to pay Dividend Distribution Tax at an effective rate of 14.03%
9. Special rates available for certain incomes.
10. Under Indian domestic tax laws, withholding tax rate of 10% applicable in respect of agreements entered into on or after 1 June 2005.



The table gives a general overview of the rates applicable in each tax jurisdiction. In respect of the corporate tax rates, the rates given above are the standard rates. Some of these tax jurisdictions offer a progressive tax rate system depending on the amount of taxable income. In some tax jurisdictions reduced rates are offered as investment incentives to qualifying corporations.

Of the Asia Pacific tax jurisdictions, the typical jurisdictions that are usually considered as holding location regimes are Hong Kong, Singapore and Malaysia. As shown in the table above, both Hong Kong and Singapore have the lowest corporate tax rates in the region. Singapore also offers an extensive range of investment incentives that are designed to encourage foreign investment in certain sectors. The corporate tax rate in Malaysia is comparable to some of the other tax jurisdictions in the region but its location, good infrastructure and incentives attract foreign investors.

For comparative purposes, the standard corporate tax rates in some European countries are: United Kingdom 30%, Denmark 30%, Sweden 28%, Netherlands 34.5%, Cyprus 10% and in the US, 15% – 35%.

Value-added tax (VAT) or Goods and Services Tax (GST) is a relatively new tax. It is a consumption tax charged on the supply of goods and services. The only tax jurisdictions that have yet to introduce this tax are Hong Kong and Malaysia, although this is set to change in the near future. In most of the Asia Pacific tax jurisdictions the rate depends on the type of goods and goods are usually either exempt, zero-rated or standard rated. The general trend has been for the rates to remain unchanged. In some tax jurisdictions such as New Zealand, there was a trade-off by the Government on the implementation of this tax. The personal tax rates were reduced.

The VAT rates in this region are comparatively lower than the VAT rates in some of the European countries such as: United Kingdom 17.5%, Denmark 25%, Sweden 25%, Netherlands 19% and Cyprus 15%.

So finally, the age-old question, “How do I get my money out?” The method of profit repatriation depends on the structure of the local entity that has been set up, for example whether it is a branch, subsidiary, etc. After-tax profits may be repatriated directly by branches.

More commonly used methods are dividend, interest or royalty payments. In most of the tax jurisdictions mentioned above, where profits have already been subject to local taxes, after-tax profits may be repatriated directly without being subject to further withholding tax.

The withholding tax rates in the table above are the rates when there are no treaties in force. Generally, except for Hong Kong, which only has withholding tax on royalty payments, all the other Asia Pacific tax jurisdictions impose withholding tax of between 10% and 35% on payments of interest and royalties.

Most of the Asia Pacific tax jurisdictions have now entered into tax treaties with many tax jurisdictions. The treaties provide for a reduction or exemption of withholding tax on certain types of income. For example, without a treaty the withholding tax imposed by Australia on royalties is 30% but with a treaty the rate is reduced to 10% to 15% for many tax jurisdictions. Treaties also aim to avoid double taxation i.e. credit is given in most tax jurisdictions for the lesser of the actual tax paid on foreign income and the local tax applicable to such income. Within this issue of Tax Talk we have explored Hong Kong's recent trend in tax treaties.

## Hong Kong's tax treaties



The Hong Kong Government perceives various benefits in establishing an extensive network of Double Tax Agreements (DTAs) to avoid double taxation. These benefits include providing increased certainty of potential tax liabilities to investors, enhancing Hong Kong's attractiveness for foreign investors, fostering closer economic and trade links with foreign countries and reinforcing Hong Kong as an international financial centre. In addition, DTAs can reduce withholding tax rates on certain sources of income, in particular for passive income such as royalties.

Whether the perceived benefits are real and material or not, entering into comprehensive DTAs with other jurisdictions has added a new dimension to the Hong Kong tax regime and it represents an important step in the Government's policy that Hong Kong has now entered into full DTAs with Belgium and Thailand, and an arrangement to avoid double taxation with mainland China. The Government is

currently negotiating DTAs with other trading partners such as Macau, Vietnam, Italy and the Netherlands. It is also negotiating a full DTA with China.

For detailed information on the DTAs with Belgium and Thailand, please refer to our Tax Notes Issues 10 and 14 respectively. Copies of which can be found on our website at [www.gthk.com.hk](http://www.gthk.com.hk).

For a taxpayer to enjoy the benefits provided by DTAs, he is required to be a "resident" of one of the contracting parties. However, the residency concept has in the past played very little role in the Hong Kong tax regime due to its territorial-based concept. In the DTAs with Belgium and Thailand for individuals, residents have been defined as those who ordinarily reside in Hong Kong, or stay in Hong Kong for more than 180 days during an assessment year, or for more than 300 days in two consecutive assessment years one of which is the current assessment year.

For companies, it means a company incorporated in Hong Kong or, if incorporated outside Hong Kong, is managed and controlled in Hong Kong.

Another important dimension relates to the provisions for the exchange of information under the DTAs. Although the issue was resolved in the DTAs with Belgium and Thailand by way of adopting the less restrictive exchange of information articles, various existing provisions under the IRO such as the secrecy provision conflict with the exchange of information requirements. This issue has yet to be fully resolved.

Keep an eye on our publications for further developments!

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