



businessbrief

The newsletter with regional tax and economic information

This newsletter is devoted to providing information on tax related and general business issues. Contributions for inclusion in this newsletter are provided by member firms and are published in a regional format.

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Asia / Pacific

China: Tax changes in China

1. Timeline for the increases in tax rates for FIEs

For FIEs which are eligible for unutilised tax holidays, the CIT rate will gradually increase over 5 years counting from the effective date of the new CIT Law. For those FIEs which are eligible for a preferential tax rate of 15% and unutilised tax holidays under the old tax regime, a "half-rate reduction" during the unutilised tax holiday period is calculated based on the gradually increased tax rates.

Financial Year	CIT Rate	CIT Half- Rate
2008	18%	9%
2009	20%	10%
2010	22%	11%
2011	24%	12%
2012 and after	25%	12.5%

2. Dividend withholding tax

Dividend is recognised as income from the day on which the FIE makes a resolution to distribute profits (i.e. Board Resolution date). The Chinese tax authorities have granted a special concession to waive withholding tax on dividends arising from pre-2008 retained earnings in order to smooth out the transition from the old tax regime to the new CIT regime.

3. Tax residency - definitions and requirements

Although the concept of '(non-)resident enterprises' is new to the Chinese law, it follows international standards. An enterprise is considered to be a 'resident enterprise' if it is established under Chinese law or has its place of effective management in China. As a result, these companies are taxed in China on their worldwide income. The term 'effective management' refers to the fact that an organisation exercises management and control over production and business operations, personnel, finance and accounting, and possesses property on Chinese ground. However, the specific factors that determine management and control are not defined yet. The interpretation of these terms is up to local tax authorities and might result in different regulations for each jurisdiction if a clear guideline is not issued.

4. Anti-avoidance provisions

The new CIT Law empowers the tax authorities to adjust taxable income where business transactions are arranged without reasonable business purpose. Related-party transactions that FIEs make as part of their global investment strategy could be considered as tax-avoidance tactics. Therefore, FIEs should prepare and systematically organise their arguments in order to meet anti-avoidance reporting requirements and/or challenges by the Chinese tax authorities.

5. Provisions on thin capitalisation

The "thin capitalisation" rules of the new CIT Law state that loan interest expenditure of a company which has exceeded the prescribed debt-to-equity ratio is not deductible. There are no standards specified in the law regarding the debt-to-equity ratio; instead the Ministry of Finance and the State Administration of Taxation are to provide such standards.

6. Incentives for "new and high-tech" enterprises and qualifying for HT/NT designation

To enjoy the reduced tax rate of 15%, a High / New Technology Enterprise (HNTE) must own its core intellectual property and have its products and services listed in 'The Areas of High and New Technology Encouraged by the State' guidelines. R&D expenditure and revenue from high-technology products and services must reach a certain percentage of the company's total revenue. In addition, science and technology personnel must account for a certain percentage of the total number of staff so far, the percentages to qualify for a "High-/ New-Technology Enterprise" are not specified yet; neither in the CIT Law, nor in the DIR. Therefore, further clarification will be required in subsequent tax and non-tax regulations.

Companies that qualified as HNTEs under the old law should temporarily apply for the standard rate (25%) during the provisional CIT filings in 2008 until they are re-assessed and possibly qualify as new HNTEs based on the criteria of the new CIT Law. Quarterly provisional filing should be adopted for the first quarter of 2008 for the following types of enterprises:

- Enterprises outside the Shenzhen and Xiamen Special Economic Zones;
- Non-manufacturing enterprises and domestic enterprises in the Shanghai Pudong New Area; and
- Domestic enterprises which were approved to file combined tax returns under the old income tax regimes.

(Provided by: Yuki Kobler, Fiducia Management Consultants (Shanghai) Ltd, Shanghai, China)

Hong Kong: How to set up a Hong Kong private limited company

A Hong Kong (HK) Private Limited Company helps minimise risks and secure profits; this solution has proven suitable for sourcing operations of both SMEs and big corporations. Here is a short overview of requirements for a Private Limited Company in HK.

What are the set-up requirements?

As Hong Kong law is based on the British legal system, the set-up of a HK Limited Company is a straightforward exercise. There are two ways of setting up a limited company: the purchase of a ready-to-go shelf company or the incorporation of a company tailor-made to meet individual needs. Crucial parameters that need to be decided on are the name of the company (in English and/or Chinese), the director and shareholder and the amount of capital. Service providers are able to guide investors through this process and support them in finding the most suitable company structure.

What are the capital requirements?

The law does not require minimum capital. Theoretically, HKD1 is sufficient to incorporate the company. The issued (paid up) capital cannot be higher than the authorised capital and shareholders are free to determine the point of time when payment is made.

Who can be a director and a shareholder?

The director may be an individual or corporate body of any nationality and does not have to be a HK resident. The same

goes for the shareholder(s). The number of shareholders can be between one and 50. The liability of each shareholder is limited to the share capital they have invested. In case investors are not able to act as a director or shareholder for any reason, many service providers offer nominee services that will act on the investors' behalf. Tax laws in the director's and shareholder's country of residence shall be observed when structuring the set-up.

What else is needed?

The HK law requires the appointment of a Company Secretary, residing in HK, who is responsible for maintaining company records and notifies the Registrar of Companies, the Stamp Duty Office and the Inland Revenue Department of changes regarding the company. The Company Secretary may be an individual or corporate body. Additionally, a HK Limited Company must have a registered office which is located in HK in order to retain important documents like the Certificate of Incorporation, the Business Registration Certificate and the Common Seal. All correspondence from the HK government will be addressed to the Registered Office.

How long will the set-up take?

The whole process will take around 10 working days depending on the chosen structure. Only then is the physical presence of the investor needed to set up the necessary corporate bank account. After that, the HK Limited Company is fully operative.

What about corporate tax requirements?

From Financial Year 2008/2009 onwards HK's profit tax is 16.5% (see page 4). There is no tax on capital gains, dividends and interest earned. Under special circumstances, the limited company may even declare business transactions as offshore which are subject to 0% tax in HK. Once a year, the company accounts need to be audited by a certified auditor.

(Provided by: Thaddaeus Mueller, Fiducia Management Consultants (Shanghai) Ltd, Shanghai, China)

Hong Kong: Securing profits when sourcing from China

How A Hong Kong Structure Can Help Foreign Sourcing Operations Minimise Risk And Maxi-Mise Profits.

As many foreign companies continue to source from China via Hong Kong (HK), it is worthwhile to take a closer look as to why this model enjoys ongoing popularity and how to implement an efficient set-up. There are many good reasons for companies to manage their supply chain from HK: a good infrastructure, a legal framework based on British law, a transparent and efficient banking system, fair taxation, a fully convertible currency and a qualified workforce. But with all these advantages come the downsides of high office rental prices, increased salaries and rising material and production costs across the board. So how does the HK sourcing model remain competitive?

No Storage Costs And Less Financial Risk

The option of selling goods 'Free On Board' (FOB) from China has become a huge success factor for foreign companies that have set up shop in HK. The big retailers in US & Europe who are a major customer group of many toy, textile and hard goods trading companies are increasingly asking for this option which also helps the traders avoid many of the former risks associated with selling big numbers of merchandise. By opening a letter of credit to the HK Limited Company which is then passed on to the China supplier, the danger of non-payment by the customer can be easily eliminated. This has

particular significance if the order is customised specifically according to the customer's needs: special brand name, colour, functionality or simply the packaging make it impossible to sell goods to another customer. Apart from smaller financial risks, the cost of logistics and expensive storing – which often make up 3-5% of a transaction – can be saved. Thus, direct FOB business leads to a faster time to market and to lower prices both of which can boost competitiveness in times of rising sourcing costs throughout the region.

HK Limited Company as a black box

Sourcing operations in HK that serve European and American customers often need to walk a tightrope to meet demands. With product life cycles getting shorter and disloyal customers merely looking at the price tag, these customers might try doing direct business with the respective Chinese suppliers. Therefore, many buyers have found it very useful that by channelling business via a HK company the risk of disclosing their Chinese suppliers can be avoided. When the final goods are shipped, all related documents, labels, addresses and other hints are rewritten in HK so that customers as well as suppliers only know the HK Limited Company, but do not know each other.

Streamlining sourcing operations

Outsourcing the functions of order processing, re-invoicing and logistics arrangements proves to be an additional factor that can streamline operations. As many goods are seasonal, a lot of buyers don't require full time staff. They work with service companies that efficiently handle the administrative side of the business according to the often cyclical demands. Additionally, this separation of important functions provides a 'second set of eyes' that controls payment streams and reduces the risks that are often associated with China sourcing: unclear money streams, shady bookkeeping practices and bribery.

(Provided by: Thaddaeus Mueller, Fiducia Management Consultants (Shanghai) Ltd, Shanghai, China)

Hong Kong: Tax Changes in Hong Kong

On 28 February 2007, The Proposal For Hong Kong's Tax Changes For 2008/2009 Has Been Announced. Taxpayers Benefit From Numerous Tax Concessions And Handouts.

Profits tax: reduced

A person carrying on a trade, profession or business is taxable on profits arising in or derived from Hong Kong. For 2008/09, the standard rate applicable to persons other than companies will be reduced by 1% to 15%; the profits tax rate for corporations will be reduced by 1% to 16.5%. This is one of the lowest rates around the world.

Salaries tax: reduced / Allowances: increased

A person is subject to salaries tax on his or her Hong Kong-sourced employment income, any income from an office held in Hong Kong and any Hong Kong pension. The standard rate will be reduced by 1% to 15% for 2008/09. The basic and married person's allowances will be increased from HKD100,000 to HKD108,000 and from HKD200,000 to HKD216,000 respectively for 2008/09.

Property tax: reduced

The standard rate (for non-corporate owners) will be reduced by 1% to 15% of the net assessable value for 2008/09. The net assessable value is calculated as the amount of rental income less allowable deduction less a statutory 20% allowance for repairs and outgoings.



Duty on alcoholic beverages: exempt

The proposal includes the exemption of duties on wine, beer and all other alcoholic beverages except spirits with immediate effect, and the removal of the related administrative controls upon amendment of the relevant legislation, so as to facilitate the development of trading, storage and distribution of these alcoholic beverages

Liability to tax

Only income or profits arising in or derived from Hong Kong are taxable. HK and China have a mutual understanding regarding tax relief for HK companies in order to avoid double taxation. Also, individual income will not be subject to mainland individual income tax if that resident stays in China for a period not exceeding 183 days in any 12-month period commencing or ending in the taxable period concerned.

(Provided by: Thaddaeus Mueller, Fiducia Management Consultants (Shanghai) Ltd, Shanghai, China)

Singapore: Budget 2008

Our Minister of Finance presented the 2008 Singapore Budget on 15 February 2008. The Minister announced that the booming Singapore economy and property market in 2007 were impetus to the \$6.4b bumper surplus from an economy that grew by 7.7 percent. The Government has shared this by giving to Singaporeans \$1.8b worth of goodies in terms of cash gifts in the form of Growth dividends and top ups to Medisave which is the national medical savings scheme.

The dreaded estate duty was finally abolished, making Singapore competitive as a regional wealth management hub and fund capital. Although there was no cut in personal tax rates, a 20% tax rebate capped at \$2,000 was given. There were further extensions and refinements to the existing tax incentives available in the financial, fund, wealth management and maritime sectors. Research & Development and innovation got a boost by a slew of incentives that allows and encourages in particular small and medium enterprises and start-up companies to embark on the road of innovation and creation.

We present the 2008 SINGAPORE BUDGET HIGHLIGHTS.

Corporate tax

- No change in corporate income tax rate which remains at 18%.
- Start up companies with corporate shareholders, so long as one individual shareholder with 10% minimum shareholding, will enjoy tax exemption on the first \$100,000 chargeable income in the first three years of assessment.
- Tax deduction for R&D increased from 100% to 150% and no longer has to be related to company's existing business.
- New R&D tax allowance up to 50% of the first \$300,000 of chargeable income, which can be defrayed against incremental R&D done in Singapore.
- New R&D incentive for start-up enterprises to convert losses during their initial research phase into a cash grant up to \$20,250.
- Special allowance up to \$150,000 every three years for cost of fixtures, fittings and installations to be written down over three years.
- Extend unilateral tax credit relief to companies that earn foreign sourced income in countries with which Singapore has no tax treaties.
- Expand and extend Financial Sector Incentives for another five years to 31 December 2013.

- New Enhanced FSI-Islamic Finance incentive which qualifying income is subject to the 5% concessionary tax rate.
- Refine and Extend Qualifying Debt Securities Incentive for another 5 years to 31 December 2013.
- Extend tax exemption on income from trading in Singapore Government Securities by primary traders to 31 December 2013.
- Refine and Extend Approved Special Purpose Vehicle incentive another 5 years to 31 December 2013.
- Refine and extend tax incentive for project financing for another 3 years to 31 December 2011.
- New tax incentive that grants tax exemption on locally-sourced investment and foreign sourced income for qualifying family-owned investment holding companies.
- Introduce 5% concessionary tax rate to qualifying offshore Islamic insurance.
- Introduce 10% concessionary tax rate to qualifying income for insurance and reinsurance brokers.
- Extend Maritime Finance Incentive (MFI) to include container leasing.
- Refine and extend the tax exemption on gain on sale of Singapore registered vessels for another 5 years to year of assessment 2014.
- Include forex and risk management gains arising from shipping operations as tax exempt income under Approved International Shipping and MFI tax incentives.
- Claim GST for listed REITS and registered business trusts in infrastructure and ship leasing and aircraft leasing regardless of direct or indirect holding of underlying assets.
- Extend double tax deduction for overseas talent recruitment costs to another 5 years to 30 September 2013.
- Increase tax deduction for medical expenses from 1% up to 2% of total wage bill for companies that provide inpatient medical benefits through portable medical shield plans or ad-hoc contribution to employees' Medisave subject to cap of \$1,500 per employee per year.
- The various employee equity-based incentive schemes will be repackaged as Employee Remuneration Incentive Schemes (ERIS) under one new umbrella incentive scheme as well liberalizing the qualifying conditions for ERIS.

Personal tax changes

- No changes in personal tax rates with highest rate at 20%.
- 20% tax rebate up to a \$2,000 cap for year of assessment 2008.
- Refine Not Ordinarily Resident scheme to also include benefits in kind.
- Claim course fee relief from YA 2009 regardless of whether the course is relevant to their current trade, business, profession, vocation or employment.

Central provident fund changes

- Tax relief up for individuals as well as employers to \$7,000 to top up minimum sum in own CPF account.
- Tax relief up to another \$7,000 to top up minimum sum in family members' CPF account.
- Tax relief capped at prevailing Medisave Contributing Ceiling for voluntary contribution that individuals make to their own Medisave account.

Estate Duty

- Estate duty abolished from 15 February 2008.

(Provided by: N. Vimala Devi, BSL Tax Services Pte Ltd, Singapore-Chair of the AGN Asia Pacific Tax Committee)

Central & South America

Uruguay: Uruguayan corporations

URUGUAYAN OFF SHORE CORPORATIONS WILL DISAPPEAR

The Uruguayan regulations on Income and Capital Taxes as well as on off shore companies have been modified. The Uruguayan corporations specialized in off shore business will not be incorporated in the future. This decision has been determined by the politic against money laundering. The existing off shore companies will have to change their bylaws in order to become common corporations before 2010, or be cancelled.

INTERESTING OPTION FOR OFF SHORE OPERATIONS

The Local Corporations

The interesting point is that the common corporations will be able to carry on off shore business with very convenient taxation on profits and on assets. First of all, it is important to know that the Uruguayan corporations may have their shares issued in nominee or in bearer form. Another point of interest is that only one natural person or one legal entity may be the sole shareholder of the common corporations. The corporation is represented by a board of Directors or by only one Director, called "Administrador". A shareholder, member of the board or Administrador, may be any individual eighteen or more years old, resident in Uruguay or abroad.

Taxation

All the investments that such a corporation may have outside of Uruguay are exempted from capital taxes or taxes on assets. The profits from such investments, are exempted from Income taxes. If this corporations act as trading companies, the profit taxable by Income Tax is the three (3) per cent of the gross income (difference between the amount invoiced less the amount of the invoice received from the vendor). The rate of the Income Tax on said 3% is the 25%. If the profits are distributed, the shareholders will pay an additional tax of 7% on the same 3%. These corporations must carry on accounting books and prepare financial statements as any other corporation.

Additional advantages

The local or common companies, may carry on business in the Uruguayan territory, as well as off shore operations. In such a situation, for taxes purposes, two separate accounts must be prepared: One, for off shore operations showing the 3% on off shore operations income. The other accounts will show the local operations, with the expenses for local operations, determining the taxable profit, as for any local company. Additionally, the companies may have bank accounts, in any currency, in Uruguay.

Additional information

For additional information, ask ACPA, the Uruguayan member firm of AGN International, writing to: acpa@acpa.com.uy (Provided by : Julio Pilon, ACPA, Montevideo, Uruguay)

Europe

Luxembourg: Tax Changes in Luxembourg

Changes Applicable To Business Entities

Capital duty to be reduced to 0,5%

Capital Duty on share capital paid into newly formed companies or capital increases is to be reduced from 1% to 0.5% as from January 1, 2008 and will be reduced to Zero by 2010.

Investment tax credit is increased by 2%

The tax credit that is available for investments in specific amortisable tangible assets (excluding buildings and company cars) of 10% of the cost of the asset (bonification pour investissement complémentaire) is raised to 12% as from 2008.. Together with the tax credit on new investments, Luxembourg companies will be entitled to a total tax credit of up to 14%-20% on the value of their investments in fixed assets.

Royalties on Intellectual Property will be exempted by 80%

A new article 50ter LIR will be introduced to allow an 80% exemption of certain intellectual property income as well as an 80% exemption of capital gains on certain sales of intellectual property by Luxembourg companies and individuals.

Changes For Individuals

Individuals pay less Income tax

The tax rates remain the same with a maximum tax rate of 38.95% but the tax brackets are increased by 6% so that a single person starts paying tax from € 10.335 (€ 9750 in 2007) and the top marginal rate is applied to taxable income over € 36.570 (€34.500 in 2007)

Couples living under a registered domestic partnership are treated for tax purposes the same as married couples

As from 1st January 2008, couples that have registered their domestic partnership for the full tax year can request to be treated in the same way as married couples. This means that their income will be aggregated for tax purposes and all allowances and deductions applicable to married couples will be applied.

Taxation of non-residents: rental losses in connection with real estate located in a foreign country to be taken into account

Following a decision of the European Court of Justice of July 18, 2007 all foreign income will be taken into account for the



progression rate to compute the applicable Luxembourg tax rate for certain non resident taxpayers.

Currently Luxembourg Law only allows resident taxpayers who own real estate situated in another EU Member State to deduct losses (for example interest charges on financing) against the progression rate to compute their Luxembourg average tax rate.

From 2008 non-resident taxpayers will be able to opt to be treated as resident taxpayers as soon as they derive at least 90% of their professional income from Luxembourg.

The Tax Benefit of Children is removed from the tax tables and replaced by a Cash Payment per Child.

From 2008 families with one or more dependent child will be eligible for a cash payment of € 922,50 per child regardless of the amount of taxable income or tax payable.

This payment will be made by the Family Allowance Department (Caisse Nationale des Prestations Familiales)

Taxation of Company Cars increased to 2% per month

The lump sum taxable fringe benefit for an individual, for the use of a company car will be increased from 1,5% to 2% of the purchase price (including VAT) of the car. A new circular is expected to be issued by the Luxembourg direct tax authorities.

Taxation of overtime payments

The tax regime applicable to payments made for work at night and week-ends, or overtime, will be amended in order to be in line with the single status ("statut unique") applicable to private employees, as agreed in the tripartite agreement of April 2006. Payments made for overtime to employees falling within the scope of the single status will now benefit from a general exemption without any limitation. A Grand-Ducal regulation is expected to define the limits and conditions applicable to the new regime.

Royalty Income : 80% Exempt From Tax As From January 2008

The Luxembourg government has recently introduced a law that only 20% of income derived from intellectual property ("IP") as well as capital gains realised on the disposal of such IP will be taxed in Luxembourg at the 30% corporate tax rate thereby taxing royalties at only 6% effective tax.

By introducing a partial exemption regime for income generated through IP, the Luxembourg government intends both to encourage research activities in Luxembourg and to increase the attractiveness of Luxembourg for the holding and management of IP.

The exemption applies to income paid to Luxembourg taxpayers (individuals or companies) for the use of any registered software copyright, patent, trademark, design or model.

Patents developed and used in-house may generate a deemed income deduction, under certain conditions.

Capital gains generated on IP will be exempt up to 80%. Contrary to companies located in offshore jurisdictions, a Luxembourg resident would be entitled to benefit from a reduction of withholding tax on income received from abroad, based on the current EU directive on royalty payments or the

relevant double tax treaties. In addition, the scope of intellectual property that may fall under of this new regime is larger than a similar treatment that exists in Belgium. The regime is also believed to be compliant with the Luxembourg obligations under EU regulations.

General conditions to benefit from the IP regime (article 50bis, Section 4 and 5 LIR)

Only 20% of the net income derived from IP and from the sale of IP if taxable in Luxembourg. IP acquired from a third party may include patents, software, copyrights, trademarks, or logos, and patents developed in-house.

This exemption is limited to registered patents only.

The regime is available to both individuals and corporations.

The regime is subject to the following three conditions:

- The IP must have been acquired or created after December 31st, 2007;
- Expenses in direct economic connection with the IP must be recorded as an asset in the balance sheet during the first year for which the benefit of this tax regime is claimed;
- The IP may not have been acquired from a person that is an "affiliated company".

A company A is considered as affiliated to company B if:

- A directly holds at least 10% of the share capital of B;
- B holds at least 10% of the share capital of A;
- At least 10% of the share capital of A and of B is directly held by a third company.

Net Income from intellectual property (article 50bis, Section 1 and 2 LIR)

Net income is defined as the gross royalty income received by the taxpayer reduced by the amount of expenses in direct economic connection with this income, including annual depreciation and write-downs.

A taxpayer that has developed and used his own patent would also benefit from a notional deduction amounting to 80% of the net positive income he would have received from a third party as consideration for the right to use of the said patent.

Net positive income is defined in the law as the fictitious gross royalty income he would have received from a third party reduced by the amount of expenses in direct economic connection with this income, including annual depreciation and write-downs.

Capital gains on the disposal of intellectual property (article 50bis, Section 3 and 6 LIR)

Capital gains realized on the disposal of IP as defined in Section 1 will also benefit from an 80% exemption.

The gain will remain taxable up to the extent of the expenses in direct connection with the income as well as depreciations and write-downs that have reduced the tax base of the taxpayer in the tax year of the disposal or in any previous tax year.

If no market value is available, article 50bis Section 6 provides that the estimated market value of the IP as defined in article 27, al. 2 LIR could be determined according to any well accepted method for the valuation of intellectual properties. In addition, companies are considered as SME's (as defined in

Grand-Ducal Decree dated March 16th, 2005) are entitled to value the intellectual property at 110% of the expenses that have reduced their tax base for the tax year of the disposal and of any previous tax year.

Conclusion

The present regime adequately combines two objectives. It allows for a full deduction of all R&D expenses for projects that do generate commercial results. However, successful R&D projects are not penalized through excessive taxation once they come to fruition.

In addition, the link between the new regime and the existing participation exemption regime will enable Luxembourg to propose integrated solutions for the holding and management of both participations and IP.

Combined with the other advantages of Luxembourg economy, the new proposed IP regime will contribute to making Luxembourg an even more attractive holding jurisdiction.

(Provided by Karl Horsburgh, HT Group, Luxembourg)

Ukraine: Tax update for the Ukraine

Inheritance

The value of assets left to the deceased's husband and wife, their children and parents are not taxed. The value of assets left to other family members are taxed at 5%. The rate is 15% on bequests from non-residents and 30% on those to non-residents. When the inheritance is got by the non-resident the tax rate of 30% will be applied.

The heirs have to provide details of any amounts received each year to the tax authorities. Payment of any taxes due must be made by the following 1 April.

Salaries

The salaries paid by Non-state businesses are set by the business owners or by the body authorized by the owner but may not be lower than the minimum amount of salary stipulated by law. There is no upper limit.

The minimum amount of salary is a state social guarantee which is obligatorily used in all territory of Ukraine for enterprises, institutions and organizations of all forms of ownership and natural persons. The minimum amount of salary is guaranteed by the state under the condition that the fixed norms of working time duration and norms of intensity of labour are met.

The minimum amount of salary for 2008 is stipulated by Law of Ukraine "On State Budget of Ukraine":

The remuneration of labour can be carried out using the hourly, piece-work and other systems of remuneration of labour.

Activities	From 01.01.2008 till 31.03.2008	From 01.04.2008 till 30.09.2008	From 01.10.2008 till 30.11.2008	From 01.12.2008 till 31.12.2008
Minimum amount of salary	515	525	545	605

The salaries are paid to the employees regularly on the working days in the terms stipulated by the collective

agreement but at least twice a month in a span of time which does not exceed sixteen calendar days.

The rates of charges on and withdrawals from the employees' salaries are given in Table 1 below:

Charges	Rate	Withdrawals	Rate
Pension fund (PF)	33.2%		2%
Fund of social security for the case of temporary loss of ability to work (FSSTLAW)	1.5%	If the salary is lower than the CL* or is equal to the CL*; If the salary is higher than the CL*	0.5% 1%
Fund of social security for the case of unemployment (FE)			0.5%
Fund of social security for the case of accident when at work and professional diseases (FSSAW)	According to the tariff stipulated by FSSAW depending on the type of activity		
Tax on revenues of natural persons (TRNP)			15%

*CL is a cost of living for the person able to work.

In accordance with Law of Ukraine "On State Budget of Ukraine for 2008" the amount of the cost of living for the person able to work is as under:

Persons	From 01.01.2008 till 31.03.2008	From 01.04.2008 till 30.09.2008	From 01.10.2008 till 30.11.2008	From 01.12.2008 till 31.12.2008
For the persons able to work	633	647	649	669

The maximum amount of actual expenses on remuneration of labour of the employees who are to pay the insurance fees under the laws of Ukraine is equal starting from 01.01.2008 to fifteen amounts of the cost of living stipulated by law for the persons able to work.

In 2008 a tax social benefit in the amount of UAH 257.50 is applied to the employee's salary if its amount does not exceed UAH 890.00.

VAT

The order of VAT taxation is regulated by Law of Ukraine "On value added tax" as of 03.04.97 no. 168/97-BP.

The tax payers are the entities of entrepreneurial activity including enterprises with foreign investments, natural persons carrying out the entrepreneurial activity or importing goods to the customs territory of Ukraine, and non-resident's representation without the status of the juridical person.

The object of taxation is the tax payers' supply of goods and services provided in the customs territory of Ukraine and the import / export of goods under the customs procedure of import (export).

The VAT due is based on the contractual value defined at usual prices taking into consideration the excise tax, import customs duty and other state taxes and dues stipulated by Ukrainian legislation.



The tax rate for the operations of supply of goods and services in the Ukraine is 20%. For export of goods and the services accompanying such export the tax rate is 0%.

The date of the supply is determined using the rule of “the first event”: either the dispatch of goods or the receipt of payment. The date of appearance of the tax liabilities during import is the date of issue of customs declaration.

The tax liabilities are reduced by the amount of the tax credit consisting of the amounts of taxes accrued (paid) by the tax payer in regard with the acquisition or manufacture (import) of goods, services or fixed assets aimed at their usage in the taxable operations within the economic activity.

The date of appearance of the tax credit is determined using the rule of “the first event”: either the date when the funds debited from the bank account of the tax payer to pay for goods or the date of receipt of the tax invoice that certifies the fact of acquisition of goods (works, services) by the tax payer. The right to the tax credit is proved by the tax invoice which should contain the mandatory requisites stipulated by Law on VAT.

Therefore, the amount of VAT subject to be paid to or refunded by the tax authorities is the difference between the amount of the tax liability and the tax credit of the reporting tax period.

Income tax

The order of income tax taxation is defined in Law of Ukraine “On taxation of income of enterprises” as of 22.05.97 no. 283/97-BP.

This is payable by Ukrainian resident entities carrying out economic activity (including budget, public and other enterprises, institutions and organizations) carrying out activity aimed at the receipt of income in the Ukraine and elsewhere.

Non-residents subject to the tax are the natural or juridical persons created in any organizational-legal form who receive revenues with the source of their origin in Ukraine excluding the institutions and organizations with the diplomatic status or immunity according to the international treaties of Ukraine or law.

The tax rate is 25 and the taxable amount is determined by reducing the corrected gross revenue by the gross expenses and the amount of depreciation charges.

In accordance with clause 4.1 of Law on income, the gross revenue is the total amount of the tax payer’s revenue from all types of activity received (accrued) during the reporting period in pecuniary, tangible or intangible form in the territory of Ukraine, its continental shelf, exclusive (sea) economic zone as well as beyond them. The date of increase of the gross revenue is the date within the tax period during which any of the following events occur earlier:

- either the date when the funds from the buyer (customer) are credited to the bank account of the tax payer as a payment for goods (works, services). When the goods (works, services) are sold for cash that is the date when that cash is recorded in the cash-box; if there is no cash-box that is the date of collection of cash at the servicing bank institution;
- or the date when the goods are dispatched; for the works (services) that is the date of actual provision of results of works (services) by the tax payer.

In other words, the rule of “the first event” is used at the appearance of the gross revenues.

According to clause 5.1 of Law on income, the gross expenses of the manufacture and circulation (hereinafter referred to as the “gross expenses”) are the amount of any expenses of the tax payer in pecuniary, tangible or intangible form realized as a compensation of cost of goods (works, services) acquired (manufactured) for their further usage in the own economic activity.

The amounts of any expenses paid (accrued) during the reporting period in regard with the preparation, organization and running of manufacture or with the sale of products (works, services) are included into the gross expenses.

The list of expenses being included into the gross expenses is given in article 5 of Law on income.

The date of increase of the gross expenses according to sub clause 11.2.1 of Law on income is the date within the tax period during which any of the following events occur earlier:

- either the date when the funds are written-off from the bank accounts of the tax payer as a payment for goods (works, services), in the case when they are acquired for cash that is the date when the cash is given out of the cash-box of the tax payer;
- or the date when the goods are debited; for the works (services) that is the date when the tax payer receives actually the results of the works (services).

However, sub clause 11.2.3 of Law defines special rules for determination of the date of increase of the gross expenses when carrying out operations with non-residents: the date of increase of the gross expenses is the date when the goods are debited by the tax payer (and during their import – also the works / services) accompanying or supplementary to such import of goods); and for the works (services) that is the date of their actual receipt irrespectively of availability of payment for them (including partial one or made in advance).

Parent companies

The taxation of dividends is regulated by clause 7.8 of Law of Ukraine “On taxation of income of enterprises”.

The issuer of the corporate rights who adopted resolution on payment of dividends to its shareholders (founders) is obliged to accrue and pay to the budget (tax authorities) the advance of income tax at the rate of 25% of the amount of the dividends. before the payment of the dividends. At the end of the reporting period in which the dividends are paid the enterprise-issuer decreases the amount of the accrued income tax by the amount of the given advance.

If there is no treaty on avoidance of double taxation between Ukraine and the country of the non-resident the taxation of the dividends paid to the non-resident enterprise is carried out under the order defined in article 13 “Taxation of non-residents” of the Law of Ukraine “On taxation of income of enterprises”. It means that besides the payment of the advance (at the rate of 25%), the enterprise-issuer should additionally charge the tax at the rate of 15% of their amount and at their expenses (the so-called repatriation tax) and pay that tax to the budget at the time when the dividends are paid. For taxation of dividends under the rules of the international treaty the non-resident should prove its status: to provide the issuer who is paying the dividends with the reference (or its notarized copy) certifying that the non-resident is a resident of the country with which the international treaty is concluded. In these circumstances the repatriation tax will not be withdrawn from the dividends paid to the non-resident.



When the dividends are accrued or paid to the natural person such revenues are taxed at the rate of 15%.

The taxation of recipients of dividends if they are juridical persons is regulated by sub clause 7.8.6 of Law on income tax. In accordance with that subclause the resident juridical persons receiving the dividends does not include them in gross revenue (except permanent representatives of the non-

resident). The exception is made only for the dividends received by the resident tax payer from non-residents. Such dividends are included into the gross revenue of the period of receipt.

(Provided by: Svetlana Bondareva, Global Consulting Corporation, Ukraine)

The European Regional Survey on Inheritance Tax and other taxes can be accessed at: www.agn-europe.org

North America

Mexico: Transnational Companies and Transfer Pricing in Latin America

Globalization and internationalization of the economy are already common throughout the world. National borders are increasingly open to foreign competition as an affirmative answer to the challenge faced by producers who offer their merchandise and services on broader markets where the demand is monopolized by those that achieve the best productivity indexes, as well as for some sectors that still receive government subsidies such as the agricultural sector.

Advances in information and transportation systems notably reduced the so-called transaction costs and comparative advantages that used to enable those that had access to abundant natural resources to have certain control that would have to be relinquished when faced with such competitive advantages.

More than in any other period of history, today Latin American Countries seek to attract investors to their territory, given the implication that investment can represent in terms of income, jobs, taxes, growth, and welfare of the population.

The foregoing leads to the question as to the reasons that reflect the decisions of foreign capital to be invested in one country or another.

The theory could divide such reasons into two categories: natural resources or factors and social or institutional factors. The foregoing encompasses the availability of natural resources, geographic location, and the language. Social or institutional factors entail the quality of infrastructure, skill of the workforce, security, quality of institutions, political transparency, political stability, regulatory framework, public policies, and even corruption.

Many Latin American countries have the natural resources or factors. Even though the social or institutional factors are not all that good, the statistics of the Economic Commission for Latin America and the Caribbean on location of Direct Foreign Investment (DFI) have shown positive behavior in Latin America since the mid-nineties.

A recent study Publisher by the Foundation of Studies for

Development, a Colombian institution, identified the main factors that have a bearing on the decision of multinational companies to remain in a country. The list is headed by Law and Order as well as Macroeconomic Stability, whereas tax incentives for foreign investment seem to be less important.

More than tax incentives, companies are interested in legal stability, since a country that plays by the rules of the game in legal issues guarantees stability when the law is enforced.

The high frequency of amendments enacted to tax legislation in Latin America have responded mainly to the search for additional resources for the treasury at times when public finances are in crisis, which could be a sign of instability that frightens multinational companies. However, we should not underestimate Transfer Pricing Legislation, which has been enacted throughout nearly all of Latin America, particularly over the last ten years.

Transfer pricing involves transactions whereby one company buys or sells goods or renders or receives services to or from an associated company or related party.

Traditionally, multinational companies have used transfer pricing in related party transactions, which have not been subject to any control in many countries. Therefore, tax regimes of certain Latin American countries have responded by implementing transfer pricing regimes, pursuant to legal provisions that make observance of such legislation binding. The first countries to have these regimes were Mexico (1995), Brazil (1997), and Argentina (1999).

Six methods were adopted in Latin America for the analysis of related party transactions, which should be applied in accordance with "the best method rule". In the particular case of Mexico, top priority is given to the use of the Comparable Uncontrolled Price Method. If this method does not apply, the other methods should be used with preference given to the Resale Price Method and the Cost Plus Method.

The other three methods (Profit Sharing, Residual Profit Sharing, and Transactional Operating Profit Margin) are based on the yields of transactions. Accordingly, they require that the selling price and cost be at market value.



Application of these methods is not all that easy. As Mexican taxation administration acquires experience, Transfer Pricing Legislation has been undergoing adjustments to achieve clearer regulations. The foregoing is highlighted by:

Considering that around 90% of holding or parent companies of multinational companies are in the United States, the European Economic Community, and Japan, and nearly 70% of world trade is carried out between related companies, it is advisable for all Latin American countries to have transfer pricing provisions included in their legislation.

(Provided by : Guillermo Perez, Prieto, Ruiz de Velasco y Cía, Mexico)

US: Allocation & Apportionment tax issues for companies with foreign operations

If you are doing business in foreign countries, each year at tax time you face the sometimes overwhelming task of calculating what is known as Allocation and Apportionment – the official process for assigning your expenses for foreign operations. The only time in is not required of a taxpayer is where there are no claims for foreign tax credits, no domestic production deduction, and no foreign losses to claim.

Below is a list of questions and areas to consider in order to properly allocate your expenses.

Where income and losses occur for tax purposes?

How much foreign tax credit is potentially available to you?

How much of a foreign person's income is taxable by IRS?

What is the tax basis of business units?

Review certain types of income that are subject to US taxation and in what amount.

Though the rules are clear, calculating A&A isn't as straightforward as it might be. It's easy to get off track and potentially end up filing an incorrect return, or worse, being unable to make full use of available tax benefits.

Your first job is to decide which method to use as your measure, e.g. gross income vs. total revenue. Choosing the measure with care can yield a better result, usually by maximizing the amount of foreign income. Other financial measures for apportioning income can include by compensation paid or accrued, or one of various other costs. A ratio analysis is an indispensable tool. Below are the steps to follow to correctly and fully complete the allocation part of the process:

Establish the source of all income to be reported to IRS. This step is relatively straightforward.

Determine if there is an alternative sourcing rule available in a tax treaty between the United States and the relevant foreign jurisdiction. Your most efficient search option here is to use one of the major tax library services such as BNA, CCH, Tax Analysts, or RIA. Watch for "terms of art," which are seemingly common expressions that have very specific meanings in tax law. Plan to spend sufficient time in this step.

Establish the various sources of income into classes. The basic classes are fairly common knowledge, and if you're

very familiar with Allocation and Apportionment, you know exactly what your options are here. If not, you may want our experts at Meaden & Moore help with this step.

Segregate expense items that have special sourcing rules. These most usually include interest expense, R&D expenditures, and taxes. It's very important to think about what your goal is while performing this step.

After you have performed this information gathering and sorting process, the next steps refer to the apportionment part of the A&A process:

Determine, of all expenses (other than those in step 4 above) from all sources (source refers to where something is treated as occurring for tax purposes), which must be matched with particular classes of income, and assign those expenses accordingly. Business managers generally understand how to perform this step.

Within each class of income there may be several sub-classifications and a need to appropriately allocate additional directly related expenses. Subclasses can apply because of various business activities. Your decisions should be based on your goals and an understanding of your opportunities, as well as according to the limits of tax law. Choices might include, for example, foreign income vs. domestic income that is effectively connected with a US trade or business, qualified domestic production income, various special income classifications earned by "controlled foreign corporations." These options are by no means simple. If you are not thoroughly familiar with the benefits of each option, you may want to seek advice from our experts at Meaden & Moore.

Establish a reasonable method for apportioning non-allocated expenses to all the various groupings and sub-groupings of income. The trick is to consider the benefits of various method options, eliminate those that would not produce a reasonable result, then pick the best for you.

Executing the A&A portion of your tax returns is a complex process. Sometimes just reading a description of what needs to be done can be daunting. An expert can bring deep knowledge-the kind often missing from the regular tax accountant's experience-to making decisions in A&A that comply strictly with requirements yet bring the greatest benefit to your organization.

Example of a Simple Apportionment

ABC Company has \$100 of gross income from sales, \$50 from rents and \$50 from partnerships. Expenses apportioned to sales = \$60 to rents = \$60 and to partnerships = \$5. All expenses except executive salaries (\$30), and professional fees (\$10) have been accounted for in the allocation process. Using gross income as the apportionment factor, 50% of unallocated expenses (\$20) is applied to sales, 25% (\$10) to rents, and 25% (\$10) to partnerships,

Class	Gross Income	Allocation	Apportionment	Net Income
Sales	100	60	20	20
Rents	50	60	10	-20
Partnerships	50	5	10	35
Total	200	40	40	35

(Prepared by: William Harwood, Meaden & Moore, USA)