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## **Brazil**

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### **Important changes in 2009 related to the filing and payment of Corporate Income Tax and other changes**

In Brazil, corporate income tax and CSLL are paid according to two different tax methods:

#### **Actual Profit Tax Method**

Charged on net taxable income at a 15% basic rate, plus surtax of 10% on annual income that exceeds R\$ 240K per year or R\$ 20K per month, plus 9% CSLL.

Net taxable income is adjusted for inclusions and deductions.

Deductible expenses are needed to keep its source of income.

For the filing of income tax returns, which should have been available from early June, companies have the option to file according to RTT (regime de transição tributário). These means that, notwithstanding recent changes in tax laws, companies are allowed to use the methods and criteria available to them on December 31, 2007. This is useful, since the current laws harmonize BR GAAP to IAS/IFRS, bringing the concept of fair value into our accounting and tax laws.

#### **Deemed Profit Tax Method**

Charged on gross sales- sales of products at 8% plus CSLL 12%, service revenue is 32% and CSLL 32%.

No incentives are provided in this method and it is good for products with very high profit margins.

Article 79, item XII of law 11.941/2009 states that from May 28, 2009 gross sales of goods and services is the result of operational sales transactions and the price of services rendered as the core activity of a company. Other income consists of rental income, recoverable expenses, financial income, FX variation, and interest on own equity. Since this is a new law, there might be room for interpretation.

The choice of method is made in the first months of a new fiscal year, and can only be changed in the next period. Often for Brazilian purposes the actual profit tax method is the most interesting; however companies must evaluate the possibility of crediting themselves when consolidating before making the choice.

Tax losses carry forward – the taxable profit of each year can only be reduced by tax losses up to a maximum of 30%.

#### **Other Developments**

Tax authorities now require the maintenance of the Brazilian Public Digital Bookkeeping System (SPED). SPED aims to modernize and unify the receipt, validation, storage and authentication of books and documents that comprise the commercial and tax bookkeeping of Brazilian companies, using a single computerized flow of information.

On May 28, Law 11941/2009 (previous MP 449/2008), gives the opportunities for com

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panies that owe government taxes either to pay them in installments, or to pay them in cash and get a discount (for example 100% of the fine).

If a company is liquidated, incorporated, merged, acquired, according to the rule RFB 946/2009, the corporate income tax return related to this event must be filed by the last day of the month following the event (previously the deadline was 30 days from the event).

From July 1st, 2009 onwards it will be possible to set up an Individual Microcompany according to the Law- Lei do Microempresário Individual (MEI 128/08). These entrepreneurs may set up such companies if their turnover is up to R\$ 3.000,00. This will reduce the informality in the economy and the entrepreneur has tax advantages, as well as social security benefits.

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## Cyprus

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### **Cyprus – Russia Double Tax Treaty**

On 16th April 2009, Russia and Cyprus signed a Protocol for the new double taxation avoidance agreement, which set the stage for the removal of Cyprus from Russia's 'blacklist' of jurisdictions which have not provided an ample level of cooperation with the Russian tax authorities. The Protocol is expected to be ratified by both countries in 2009, ensuring that it will enter into force as from 1st January, 2010. Following a long negotiation progress which had also involved the Presidents of the two countries directly discussing the issue in November 2008, the protocol was signed in Nicosia by the Finance Minister of Cyprus and a senior tax official from the Russian Finance Ministry. This new agreement will stimulate a renewal in the encouraging financial climate for the large volume of Russian investment in Cyprus to continue to flourish.

The main provisions of the new Treaty are as follows:

#### **Dividends**

The deal outlines the ways in which Cyprus-based subsidiaries of Russian companies can avoid paying tax in Russia when their dividends are repatriated under certain circumstances.

Russia's removal of Cyprus from its blacklist will mean that dividends received by Russian companies from Cypriot subsidiaries can qualify for the Russian dividend participation exemption. Russian subsidiaries which were based in territories and countries on the blacklist were not included in this exemption.

In respect to the dividends, the withholding tax rates of 5% or 10% remain unchanged; the only change to the conditions for eligibility of the 5% rate is that rather than a minimum USD 100,000 investment in the capital of the company in whose shares are held the minimum investment is now EUR 100,000.

#### **Interest and Royalties**

There are no changes to the nil rates of withholding tax on interest and royalties.

#### **Big change: not until at least 2014**

The major change to the existing treaty is the taxation of capital gains on the sale of shares in real estate property-rich companies. Currently, the treaty provides for the country of residence of the selling entity to have the taxing right (e.g. Cyprus for Cypriot companies selling shares in Russian property-rich companies).

The Protocol moves to the latest Organisation for Economic Cooperation and Development (OECD) Model Treaty principle that such gains should be taxable in the country where the real estate is situated.

However, we do not expect this amendment to the treaty to apply until 1st January 2014 at the earliest, as the protocol provides for the amendment to become effective on the first day of the calendar year following four years after the Protocol as a whole enters into force.

#### **Distributions from mutual investment funds**

The Protocol amends the dividend article to provide that dividends shall include payments on the shares of mutual investment funds so that such distributions would have a maximum tax of 10% withheld by the paying entity.

Under Russian domestic law, such distributions are subject to 20% withholding tax.

#### **Other amendments**

The meaning of permanent establishment is extended to allow for the taxation of profits from services performed in one country by an entity of the other country through an individual or individuals present in the other country for more than 183 days in a 12-month period in certain circumstances.

The article on exchange of information is replaced by the latest OECD Model Treaty equivalent and the article on assistance in collection is replaced by wording almost identical to the latest OECD Model Treaty equivalent.

#### **Cyprus tax regulations commended by OECD and G20**

In addition to the positive development of Cyprus' removal from Russia's blacklist, Cyprus has also been placed on the G20 and OECD's 2009 'white list' of countries which provide the highest standards of transparency and regulation in tax issues.

On 2nd April 2009, the OECD published a list of jurisdictions it believes have not implemented internationally agreed standards of tax cooperation, following through on the G20 nations' pledge to take action against 'non cooperative' territories in the interests of maintaining stability in the global financial system.

The list is split into three parts: the first list contains jurisdictions which are deemed to have "substantially implemented" the agreed tax cooperation standard; the second contains the names of jurisdictions which have committed to, but have not yet implemented the standard and the last list names those jurisdictions which have not committed to the standard and will presumably face sanctions of some sort unless they fall into line.

Being placed on the first list, Cyprus offers long-term stability to the corporate and trust arrangements of the global business community and the OECD's ruling has confirmed Cyprus' importance to the world economy.

#### **Amendment to definition of "titles" as outlined in Tax NewsBrief 11**

On 19th May 2009, the Inland Revenue Depart-

ment issued a Directive amending the Directive previously issued detailing the definition of titles. The amendments are as follows:

1) Paragraph 12 of the Article has been amended from "Index participations only if they result in titles" to "index participations only if they represent titles".

2) Paragraph 14 has been amended from "American LLC which are subject to tax on their profits" to "American LLC which are subject to tax on their profits without legal representation for taxation purposes".

3) It has also been emphasised that "Promissory notes" and "Bills of exchange" are not subject to the definition of titles. Please refer to Tax NewsBrief 11 for the initial Directive.

#### **Stamp Duty**

On 29th May, a new directive was announced, stating that the issue of any certificate from the Director of Inland Revenue Department which confirms that the person in question is a Resident of the Republic of Cyprus is subject to an €80 stamp duty.

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#### **Ireland**

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In an effort to address Ireland's economic difficulties, an emergency mini budget was presented in April 2009. Below are some of the main changes to income tax, corporation tax, CAT, CGT and VAT.

- The special 20% rate applied to the trading profits from dealing in or developing residential development land is being abolished. The income will be charged at the person's relevant marginal rates of income tax or the higher rate of corporation tax (25%). This change will apply as regards Income Tax for the year of assessment 2009 and subsequent years and as regards Corporation Tax for accounting periods ending on or after 1 January 2009 (with accounting periods straddling that date being deemed for this purpose to be separate accounting periods).

- The capital acquisitions tax rate is being increased from 22% to 25% in respect of gifts or inheritances made from midnight on 7 April 2009.
- The capital gains tax rate is being increased from 22% to 25% in respect of disposals made from midnight on 7 April 2009.

A new income levy was introduced effective 1st January 2009. This income levy is payable on gross income from all sources before any tax relief's, capital allowances, losses or pension contributions.

- The April 2009 budget doubled the income levy rates to 2%, 4% and 6% effective from 1st May 2009. Health levy rates also doubled to 4% and 5%.
- New CT payment dates: The Finance (No.2) Act 2008 (Section 38) introduced revised arrangements for the payment of preliminary tax by companies with a corporation tax liability of more than €200,000 in the preceding accounting period. For these companies, preliminary tax is now payable in two installments.

- \* 1st installment: due six months from the start of the accounting period 50% of previous year's final liability or 45% of the current year's final liability
- \* 2nd installment: due one month from the end of the accounting period. Brings total preliminary tax payment up to 90% of the final liability,
- \* Balance of tax is due nine months after the end of the accounting period

### **New "VAT Package"**

Significant new EU legislation on VAT will come into effect on 1 January 2010 and will cover changes to the place of supply of services, a new regime for the intra-Community refunds of VAT, the requirement for recapitulative (VIES) statements for intra-Community supplies of services and the requirement for monthly VIES statements for goods. The VAT package is not currently part of Irish legislation but the Directives will be transposed into Irish law through Ministerial Regulations.

The VAT Package will extend the range of

services that will be deemed to be supplied where the recipient is established. Since the changes impact both business-to-consumer (B2C) and business-to-business (B2B) transactions, they have the potential to affect all businesses.

### B2B services

Under the VAT Package, the general rule for B2B services will switch from the place where the supplier is established to the place where the recipient is established. If the recipient has another fixed establishment elsewhere and the services have been provided to that establishment, then the place of supply is where that establishment is located. Exceptions to this general rule include services in connection with immovable property (taxed where property located), cultural, artistic, sporting, scientific, educational and entertainment services (taxed where physically carried out) and passenger transport (taxed where service occurs). Overall, the changes will reduce the need for businesses to make 8th and 13th Directive claims to recover VAT currently incurred on services in Member States in which they are not established.

### B2C services

For B2C services, the general rule will continue to be that the place of supply of services is the place where the supplier has established its business. There will continue to be a number of exceptions to this general rule.

### **New 8th Directive refund procedure**

The VAT Package replaces the existing refund mechanism and introduces the following key changes:

- A detailed timetable for processing (and paying) refund applications;
- The right for businesses to receive interest on overdue refunds;
- A simplified, new electronic procedure for the submission and processing of refund applications which must be submitted to the Irish Revenue Commissioners.
- A new deadline for the refund application – up to 9 months following the period in question.

### **VAT - New reporting requirements**

Those involved in supplying goods to

businesses established in other Member States will be familiar with the Intrastat and VIES systems. The major shift in the place of supply of services creates a need for the extension of this information sharing system to supplies of services. For many service-orientated businesses, which are unfamiliar with such reporting, this change is likely to represent a substantial additional compliance burden. All businesses should begin considering how the additional accounting and compliance obligations can be successfully integrated into their current business processes and systems.

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### **Non Taxable Benefits-in-Kind**

The 2009 Budget and more recently the Supplementary Budget have left tax payers with very little to be grateful for, with the marginal rate of tax for some tax payers now as high as 52%. However, employers may find it useful to know that there are still a few ways around this through Benefits in Kind. While Revenue practice is generally to levy Income Tax on all benefits in kind, there are a few exceptions to this rule.

#### **Employer Pension Contributions**

Pension contributions paid by an employer in respect of an employee to Revenue-approved Superannuation Schemes and Personal Retirement Savings Accounts (PRSAs) are not considered to be taxable benefits up to certain personal limits.

#### **Cycle to Work Scheme**

This new initiative is primarily aimed at reducing traffic by encouraging employees to cycle to work. To qualify, the employer may purchase a bicycle and associated safety equipment to the value of €1,000 per employee. This can be given to the employee tax free or can be paid for by the employee through a salary sacrifice arrangement. If the employee pays for it, tax relief will be given through their payroll. Employees can avail of this once every five years. Tax relief is not granted on any excess spent over the €1,000.

#### **Employee Travel Passes**

This initiative is aimed at encouraging the use of public transport. It works in a similar manner as the cycle to work scheme. The travel pass can be purchased directly by the employer as a tax free benefit or can be paid for by the employee through a salary sacrifice arrangement, where tax relief will be granted through the payroll. A number of conditions must be met to qualify.

#### **In-house Medical Plans**

No taxable benefit arises to employees where the employer contributes to an in-house medical plan. This extends to the provision of GP Services for the benefit of the employees at the expense of the employer.

#### **Employee Medical Check Ups**

There is no taxable benefit when an employer requires an employee to undertake a medical check up at the expense of the employer.

#### **Employee Mobile or Home Phone**

Mobile or home phones provided to employees in the course of business are not considered to be taxable benefits when the cost is borne by the employer. Private use of the phone by the employee must be incidental.

#### **Employee Home High-Speed Internet Connection for business use**

Where an employer bears the cost of installation and use of a home high speed internet connection for business use for an employee, a taxable benefit does not arise. As with provision of home and mobile phones, personal use of the internet connection must be incidental.

#### **Computer Equipment**

The provision of any computer equipment to an employee is not a taxable benefit. This includes computers, printers, scanners, modems etc. Private use of the equipment by the employee must be incidental.

#### **Canteen Meals**

Free or subsidised meals provided by an employer are not taxable benefits, once the facilities are available equally to all employees.

**Once off Small Benefit**

An annual small benefit can be given to each employee in every tax year on which no taxable benefit will arise. The value of this benefit is not to exceed €250. This treatment does not apply to cash payments, which are taxable in full.

**In-house Sports Facilities**

Where sports and recreational facilities are made available on the employer's premises for the use of employees generally, a taxable benefit is not treated as arising. To qualify, the facility must be available to all employees.

**In-house Crèche/Childcare Facilities**

Where an employer provides free or subsidised childcare facilities for employees, a taxable benefit does not arise where the childcare facility is provided on premises which

- meet certain requirements of the Child Care (Pre-School Services) Regulations 1996, and made available-
  - solely by the employer,
  - by the employer jointly with one or more other participants in a joint scheme and the employer is wholly or partly responsible for either-
    - financing and managing the facility, or
    - providing capital for the construction or refurbishment of the premises, or
- by any other person or persons and the employer is wholly or partly responsible for either-
  - financing and managing the facility, or
  - providing capital for the construction or refurbishment of the premises

**Staff Discounts**

A discount, given by an employer (e.g. an employer in the retail sector) on the purchase of goods by an employee, is not regarded as a taxable benefit if the sum paid by the employee is equal to or greater than the cost to the employer of acquiring or manufacturing the goods and the goods cannot reasonably be converted into money or money's worth.

**Long Service Awards**

A taxable benefit does not arise in respect of Long Service Awards where the following conditions are satisfied:

- the award is made as a testimonial to mark long service of not less than 20 years,

- the award takes the form of a tangible article(s) of reasonable cost,
- the cost does not exceed €50 for each year of service, and
- no similar award has been made to the recipient within the previous 5 years

These are some but not all of the benefits still available to employers and employees alike. These exceptions reduce the tax, PRSI, health levy and income levy for the employee as well as the employer PRSI and so can prove beneficial for all.

It should be noted however from the 1st January 2008, employees are not permitted to sacrifice salary for any tax free benefits, with the exception of:

- Cycle to work Scheme
- Travel Pass
- Specific Employee Share Schemes

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**Rent to Buy Schemes**

The Rent to Buy Scheme is a recent concept in the Irish real estate market. It is essentially a letting agreement with a tenant option to purchase at the end of a specified period. For the purchaser, it provides a method to save for a deposit and also gives them the option to try out a property before they commit to purchase. For the developer, it is a new way of attracting interest from prospective purchasers in an unsure market.

The Rent to Buy Scheme works by allowing the prospective owner to rent the property from the developer under standard rental terms for a specified period. A deposit is paid on signing of a letting agreement detailing the option to buy within an agreed timeframe. After the specified period, the prospective owner decides whether or not to buy. If he buys, the original deposit and rent paid (or part thereof depending on the terms of the contract) is used as a deposit against the agreed purchase price. If he decides not to buy, any rent paid is forfeited and the

deposit is refunded.

Under current tax legislation, schemes of this nature may be problematic. Revenue, however, have announced a number of concessions in a bid to boost the property market.

### **Stamp Duty**

If the rent exceeds €19,050 per annum, stamp duty on the lease is payable by the tenant at a rate of 1%. If the annual rent does not exceed €19,050 there is no stamp duty payable.

The sale of a 2nd hand property would, with the exception of first time buyers, give rise to a sizeable stamp duty liability. Current legislation allows for an exemption to stamp duty for owner occupiers purchasing new residential dwellings below 125sqm in size. For the purpose of the legislation, properties subject to Buy to Rent Agreements are considered new at the end of the rental period. Full stamp duty rates will apply to investors that do not intend to occupy the dwelling.

### **VAT**

The letting of a residential property is an exempt supply for VAT purposes and would generally result in a clawback of input vat claimed on construction/development by the developer. Under the new VAT on property rules, properties completed after 1st July 2008 and let under Rent to Buy schemes will not be subject to this clawback. Instead an annual clawback of 1/20th of VAT input credit claimed will be imposed for the duration of the letting agreement.

On the subsequent sale of the property, to the tenant or a third party, the developer is liable to account for VAT as normal at 13.5%.

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### **Malaysia**

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### **Second Stimulus Package**

The Second Stimulus Package was announced by the Minister of Finance on 10 March 2009 aiming to mitigate the impact of global contraction on the domestic economy. Among other things the proposal incorporates tax incentives which are summarised below:

- (1) Tax relief up to RM10,000 per year on housing loan interest incurred by a Malaysian citizen which is a tax resident for the purchase of a residential property from a developer where the sale and purchase agreement is executed between 10 March 2009 and 31 December 2010. The relief is given for 3 consecutive years from the first year the housing loan interest is paid.
- (2) Tax exemption on compensation received for loss of employment is increased from RM6,000 to RM10,000 for each completed year of service with the same employer, for individuals who were retrenched on or after 1 July 2008.
- (3) Remuneration incurred by companies and businesses on formerly retrenched workers, will be entitled for double deduction provided that the following conditions are satisfied:
  - (a) Workers employed must be Malaysian citizens and residents retrenched on or after 1 July 2008.
  - (b) The termination of employment has been registered with the Director General of Labour, Ministry of Human Resources.
  - (c) The amount which qualifies for double deduction should not exceed RM10,000 per month for each worker and is further limited to a maximum of 12 consecutive months commencing from the first month the worker is employed.
  - (d) The deduction is available for retrenched workers appointed between 10 March 2009 and 31 December 2010.
  - (e) The incentive is not available where the former employer of the retrenched workers and the present employer are associates, one party has control over the other or both parties are controlled by another person.
- (4) Deferred interest income of banking and financial institutions arising from deferment of the repayment of housing loans of retrenched individual borrowers for the purchase of residential property will only be taxed when such interest income is received, subject to certain terms and conditions being met.

(5) Companies and businesses are allowed to carry back their current year tax losses for years of assessment 2009 and 2010 up to RM100,000 per year of assessment to the immediate preceding year of assessment. This however does not apply to companies which have been granted tax incentives, public listed investment holding company and some other organisations.

(6) Accelerated capital allowances (ACA) will be given to all tax payers as follows:

(a) Qualifying expenditure on new acquisition of plant and machineries between 10 March 2009 and 31 December 2010 to be claimed within 2 years (Initial: 20%; Annual: 40%).

(b) Plant and machinery acquired vide hire purchase, the principal portion of instalment payment made between 10 March 2009 and 31 December 2010 to be claimed within 2 years (Initial: 20%; Annual: 40%).

(c) The ACA does not apply to companies who have been granted tax incentives or income tax exemptions.

(7) Effective from year of assessment 2009, expenditure on renovation and refurbishment of business premises incurred between 10 March 2009 and 31 December 2010 and subject to a maximum amount of RM100,000 will qualify for Accelerated Capital Allowance to be claimed within 2 years (50% for each year of assessment).

(8) There will not be any claw back of capital allowance claimed by a person on assets which were disposed off within two years from date of purchase provided the reasons for such short term ownership are considered appropriate by the tax authorities.

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## Netherlands

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### Foreign saving accounts

The Dutch government is increasing the pressure on Dutch residents with foreign saving accounts or other foreign assets, that haven't been included in the Dutch tax form.

The first step concerns an international effort to contain the power of tax havens. The call for complete transparency is becoming louder.

The second step is adjusting several tax treaties regarding the banking secrecy and other bottlenecks.

Another important instrument is the so-called repentance ruling. A Dutch resident can voluntarily report the foreign assets to the tax authorities. Based on the ruling, taxes have to be paid over a period of the last 12 years (maximum). There is no penalty. The period of 12 years is recently approved by the European Court.

The advantage of using the repentance ruling is that it creates a clean break and the possibility to continue a normal situation. The ruling has been a great success for the Dutch Government. However, politicians want to change the ruling, because there are no sanctions. Experts expect that this will be the end of the success. Why should anyone voluntarily come forward when there is no pardon?

### Depreciation limited on real estate

For the past two years depreciation on real estate is limited in the Netherlands.

When a property is bought, the purchase price has to be split in to an amount for the land and an amount for the building. Depreciation is only possible on the building and is about 3% - 4% every year.

For taxes however, you have to compare the book value with the so-called WOZ value. The WOZ value is the assessment of the local government for the real estate. When the real estate is being used within the business, depreciation is possible until the book value has reached the limit of 50% of the WOZ value. When the real estate is let, depreciation is possible until the book value has reached the limit of 100% of the WOZ value.

Before investing in real estate in the Netherlands, make sure that the conse-

quences for the tax position are clear.

### **Alteration announced regarding interest deduction**

There are several specific rules in the Netherlands regarding a limitation on interest deduction, especially by acquisitions with loans of connected companies. The rules are very complicated and a full explanation exceeds the purpose of this newsletter. The most important thing to realize is that you have to be aware of the serious tax problems which can evolve in these kinds of situations.

The Dutch government has announced a completely different approach for these kinds of loans and the tax position of the interest. The final content of the alterations will become clear at the end of this year.

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### **Philippines**

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### **Updates on Taxation - Republic of the Philippines**

**MANILA:** Major legislations and regulations have drastically reshaped the taxation scenario in the Philippines.

#### **Income Taxation:**

Foremost among the new implementations is the reduction of the corporate income tax from the previous 35% of the computed net income, to now 30% (effective 2009).

#### **Wage-Earners:**

By way of government assistance to the lower-income groups, those receiving the legislated minimum wage (around P120,000 per annum in Metro-Manila, lower in provinces) excluding allowances and “de minimis” benefits – shall no longer be subject to income taxation.

For other individual taxpayers, their personal exemptions were raised to P200,000- per family of two working spouses with four minor children. The schedule of withholding taxes (implemented by employers) was accordingly adjusted.

#### **Quarterly Returns:**

Income tax returns of all covered taxpayers are submitted on quarterly basis coupled with the tax payment. Juridical persons reporting net losses are required to pay the Minimum Corporate Income Tax (MCIT) computed at 2% of Gross Income. Said tax payment is creditable for the next three (3) years against accruing income taxes.

The 12% Value-Added Output Tax (net of Inputs) on sales of goods and services was not amended. Banks and quasi-banks are still subject to 5% Gross Receipts Tax on their lending activities – but for income from non-loans, GRT rate was increased to 7%. Profit entities operating educational institutions and hospitals are levied 10% GRT, but non-profit institutions are exempted from all taxes, except withholding taxes.

#### **Audit:**

Financial statements of businesses with quarterly gross receipts of P150,000- (about US\$3,000-) for submission to the Bureau of Internal Revenue must be audited by accredited external auditors. BIR-stamped financial statements of corporations and partnerships, regardless of receipts must be audited by accredited external auditors before submission to the Securities and Exchange Commission.

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### **Singapore**

Contributed by Yee Fook Hong  
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### **New Research & Development Tax Measures**

Under section 14D and section 14E of the Income Tax Act tax deductions are granted to a qualifying trade in respect of qualifying R & D expenditure incurred.

The Minister for Finance in his Budget 2008 introduced new tax incentives and enhances existing ones to encourage businesses to build up R & D capabilities in Singapore.

Claims made should be submitted together with the annual income tax return and

relevant documentation, and such claims would be allowed if the stated conditions are satisfied.

The new measures will apply only to R & D expenditure incurred by a taxpayer who is the beneficiary of the R & D activities carried out. Thus, an R & D service provider will not qualify. Besides, the R & D must be undertaken in Singapore.

#### **Liberalised R & D Tax Deductions**

This is an enhanced deduction of expenses for R & D done in Singapore, effective from the Year of Assessment (YA) 2009 up to YA 2013 (both YAs inclusive):

- Previously, only taxpayers carrying on a manufacturing trade or business or a trade or business for the provision of services could claim deduction of R & D expenses incurred in respect of their existing trade or business.

With the liberalization, R & D activities not related to a Company's existing trade or business will now be eligible for deductions on qualifying R & D expenses if the R & D activities are carried out in Singapore either by the taxpayer itself or by a R & D organisation in Singapore on its behalf;

- a further tax deduction equal to 50% of qualifying R & D expenditure for R & D undertaken within Singapore;
- For outsource R&D performed in Singapore, the additional tax deduction of 50% is based on a specific percentage of payments made:
  - where the payment for qualifying R & D expense is more than 60% of all such payments, the claim is 50% of the amount of the qualifying R&D payment,
  - in all other cases, the claim is 50% on 30% of the total payment made;
- Qualifying expenditure relating to R & D activities are staff costs, consumables and any expenses approved by the Minister.

Expenses for R & D related to the existing trade or business outsourced to an R & D organization outside Singapore will continue to be granted single deduction (i.e 100%)

#### **R & D Tax Allowance (RDA) Scheme**

The Scheme is targeted at encouraging Small Medium-Sized Enterprises to engage in qualifying R & D activities.

- Under the scheme, a company that derives chargeable income for any YA falling within the period from YA 2009 to YA 2013 (both YAs inclusive) will be granted an R&D tax allowance of up to S\$150,000 for a YA. That is, it allows a taxpayer to earn a tax allowance equal to 50% of its chargeable income (up to \$300,000);
- Companies may accumulate up to S\$450,000 of RDA, the excess will be forfeited. The RDA can, subject to conditions, be utilized to offset assessable income derived in the subsequent YAs up to YA 2016, if companies incur incremental qualifying R & D expenditure in the basis period relating to the YA of utilization.
- Any unutilised RDA at the end of YA 2016 will be disregarded.
- YA 2009 would be the first YA for which an RDA can be accumulated, and YA2010 would be the first YA for which the RDA can be utilized.

#### **R & D incentive for Start-Up Enterprise (RISE) Scheme**

The Scheme aims to make Singapore more attractive for R & D intensive start-up and to encourage them to invest more in building up their in-house R & D capabilities in Singapore.

It provides cash flow assistance to R & D intensive new start-up companies that have yet to make any taxable profits and therefore cannot avail themselves of the RDA Scheme.

- R & D intensive start-up company is given the option to convert tax losses incurred in its first 3 YAs of incorporation falling within the period YA 2009 to YA 2013 into cash grants;
- It allows the loss-making start ups which

expend at least S\$150,000 of qualifying R & D expenditure in the basis period relating to YA of claim (net of Government grant & subsidy) to convert their tax losses of up to S\$225,000 (i.e. based on 150% of \$150,000) into cash grant at the rate of 9%;

- Maximum cash grant a start-up may obtain is S\$20,250 (i.e. S\$150,000 x 150% x 9%);
- An election has to be made for the claim together with the annual tax return and the election is irrevocable.
- For RISE, a qualifying start-up company refers to a company which:
  - is incorporated and is a tax resident in Singapore;
  - has at least one of its 3 YAs falling within the period YA 2009 to YA 2013 (both YAs inclusive)
  - has a total share capital which is beneficially held directly by no more than 20 persons, all of whom are individuals, or at least one is an individual shareholder holding at least 10% of the total number of issued ordinary shares of the company throughout the basis period for the YA of claim;
- Any unutilized tax adjusted losses available for carry forward to the next YA shall be reduced by the amount of the tax adjusted losses converted.

### **R & D definition**

To qualify for the tax incentives, the activities have to fall within the definition of R & D under section 2 of the Income Tax Act, i.e

“...any systematic, investigative and experimental study that involves novelty or technical risk carried out in the field of science or technology with the object of acquiring new knowledge or using the results of the study for the production or improvement of materials, devices products, produce, or processes....”

The following activities however do not qualify as R & D –

a) quality control or routine testing of materials, devices or products;

- b) research in social sciences or the humanities;
- c) routine data collection;
- d) efficiency surveys or management studies;
- e) market research or sales promotion;
- f) routine modifications or changes to materials, devices, products, processes or production methods;
- g) cosmetic modifications or stylistic changes to products, processes or production methods;
- h) software development not intended for purpose of sale, rent, licence, hire or lease to 2 or more persons who are not related parties to each other, and to the person who develops the software or on whose behalf the development of the software is undertaken.

Where a project does not qualify to be R & D, a taxpayer may still qualify for single tax deduction provided the expenditure is allowable for tax deduction.

### **United Kingdom**

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### **Non Resident Employees Working in the UK**

From April 2009, the UK has amended the rules for counting the number of days an individual spends in the UK for the purposes of PAYE exemptions, bringing them in line with the OECD model.

Non resident employees who come to work in the UK on a short term basis are, in principle, subject to UK taxation on the portion of their employment income which relates to duties performed in the UK. An employee will generally be non resident if they have previously lived abroad, are in the UK

on a short term basis and spend less than 183 days in the UK in the tax year.

The employee is also, however, likely to be subject to tax on this income in their country of residence and if that country has a double tax treaty with the UK, this will usually operate to provide exemption from UK tax, provided;

- the employee does not exceed 183 days presence in the UK,
- the remuneration is paid by or on behalf of an employer who is not UK resident, and
- the remuneration is not borne by a permanent establishment or fixed base of an employer in the UK (ie. branch or group company).

The UK PAYE ('Pay As You Earn') regulations provide that any employer with a 'presence in the UK' (ie. a company, branch, agency or UK representative office) is obliged to deduct tax at source from earnings of employees working in the UK, even though the employee may not be liable for UK tax on this income.

To cater for such situations, employers are able to relax these strict PAYE arrangements in respect of employees on short term business visits to the UK, where their UK earnings would fall to be exempt from UK tax under the double tax treaty, as set out above. This treatment must, however, be agreed with HM Revenue & Customs.

In determining the number of days presence in the UK for the purposes of the 183 day rule and availability of the PAYE relaxation, every day a person is present in the UK, whether for the whole or part only of that day, is counted as a days presence. Prior to 5 April 2009, part days spent in the UK were aggregated in determining the number of days presence.

Eg. An employee who spends 8 hours per day working in the UK over 3 successive days, leaving the UK each night, could previously claim 1 day's presence only (8 hours x 3 days = 24 hours = 1 day). From April 2009, the same 8 hours per day for 3 days will count as 3 days presence in the UK.

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