

# International Tax and Cross Border Transactions

## Introduction

Companies face a number of domestic tax challenges throughout all stages of their business cycle (i.e. entry, operation and exit). It is important that companies are also aware of the various international tax and cross-border impacts of their activities.

## International tax and cross border challenges

### Tax structuring

It is increasingly important for companies to have a robust and efficient legal entity holding structure.

Key areas to consider are:

- Withholding tax minimization
- Reduction of any potential capital gains tax
- Effective use of holding companies
- Access to double tax treaty agreements
- Anti-avoidance measures

### Profit repatriation

When an entity becomes profitable, it commonly wants to repatriate its profits back to headquarters. This can be done in many ways. Irrespective of the method selected, profit repatriation is not always the most straightforward process; there are a number of regulatory and tax implications that companies need to consider.

### Permanent establishment

Foreign companies that have not set up a legal entity in a particular jurisdiction should still be mindful that they may be subject to taxes in that jurisdiction under certain scenarios.

One such circumstance is if the foreign company creates a permanent establishment (PE). A PE can be created in a number of ways; this includes a fixed place of business, sending employees for a certain time period exceeding relevant thresholds, dependent agents executing contracts etc.

### Re-organisation/M&A

Most jurisdictions have special rules governing how reorganisation and Mergers & Acquisitions (M&A) activities are to be treated for tax purposes. Sometimes these rules provide the opportunity to completely or partially defer the tax on realized gains under certain circumstances. Also in some cases, the transaction may be out of the particular jurisdictions taxation net; for example, where indirect transfers are performed. However, careful planning and analysis is required; even if there is no tax liability there is usually a filing or reporting requirement.

### Tax treaty access

In order to access preferential withholding tax rates, some specific requirements need to be met. For example, in China, the beneficial ownership test must be satisfied. The concept of 'beneficial owner' is not a defined term under China's Corporate Income Tax (CIT) law. However, the Chinese tax authorities have released guidance on this concept. Broadly, to satisfy the beneficial ownership test, a foreign recipient needs to demonstrate that it conducts substantive business activities in the residence treaty jurisdiction as well as have control over the China-sourced income.

### Anti-avoidance

Most countries' domestic tax laws contain anti-avoidance rules allowing the tax authorities to make adjustments to taxable revenue or taxable income where business arrangements, structures, or transactions are entered into without reasonable commercial purpose and result in a reduction, exemption, or deferral of tax payment.



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## How we can help

Dezan Shira & Associates' international tax team has the depth and breadth of experience across all main industry sectors, as well as the ability to apply best practices to ensure that the management of international taxes is handled effectively.

Our tax services professionals can provide international tax advice in Asia in the following areas:

- Holding and financing structure review and optimization
- Cross-border transaction advice and planning
- Withholding tax leakage minimization, cashflow maximization etc.
- Advice on profit repatriation strategies and the resulting tax implications
- Mergers & Acquisitions / Reorganizations
- Intellectual property planning and strategies
- Assistance in coordinating and speaking with tax authorities

The abovementioned services are intended to highlight the range of services we currently provide our clients. We would be pleased to have a conversation with you to hear about your particular needs and requirements. From there, we can prepare a precise scope of work and fee proposal taking these into account.

## Why Dezan Shira & Associates

Dezan Shira & Associates' international tax practice specifically focuses on advising foreign companies with respect to the international tax aspects of their operations and investments in China and throughout the Asia Pacific region. We are experts in this field and have a strong working relationship with tax authorities at all levels in Asia and beyond.

Dezan Shira & Associates is a pan-Asia, multi-disciplinary professional services firm, providing tax, legal, audit, accounting and payroll as well as operational advisory services. Dezan Shira & Associates is in its third decade of operations and has subsequently grown to support 28 offices (12 of which are in China) and over 300 staff in our operations throughout China, Hong Kong, India, Singapore, Indonesia, and Vietnam together with our alliance partners in Malaysia, the Philippines and Thailand

CONTACT



HONG KONG

### Jennifer Lu

Partner  
Corporate Accounting Services

T: +852 2170 6203  
E: jennifer.lu@dezshira.com



VIETNAM

### Mia Pham

Manager  
Tax Services

T: +84 935 277 434  
E: mia.pham@dezshira.com



INDIA

### Krishan Aggarwal

Senior Manager  
International Business Advisory

T: +91 11 4003 8908 ext. 908  
E: krishan.aggarwal@dezshira.com



SINGAPORE

### David Stepat

Country Director  
International Business Advisory

T: +65 6789 3256  
E: david.stepat@dezshira.com

> Accounting  
> Audit and Risk Advisory  
> Tax Advisory

> Business Intelligence  
> Corporate Established  
> Outbound Direct Investment

> HR and Payroll  
> Recruitment and PEO  
> Technology

> Due Dilligence  
> Mergers and Acquisitions  
> Intellectual Property

Email: [tax@dezshira.com](mailto:tax@dezshira.com)

Web: [www.dezshira.com](http://www.dezshira.com)



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