



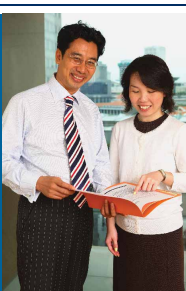
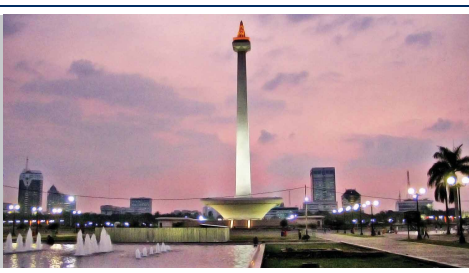
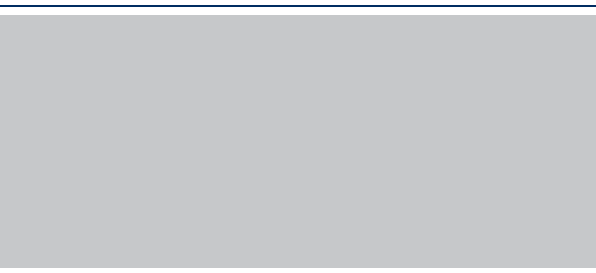
AMINEWS

Asia



Content

- China: *Double Taxation Avoidance Agreements*
- Indonesia: *Expanded CFC legislation*
- New Zealand: *Declaration of Trust & Escrow Trust*
- Singapore: *Corporate tax rate reduced*



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CHINA: Double Taxation Avoidance Agreements

Several of China's double taxation avoidance agreements provide for reduced Chinese dividend withholding taxes and avoidance of Chinese capital gains taxes on disposal of shares in Chinese companies.

As such, foreign investment companies, for example, in Hong Kong, Barbados, Mauritius and Singapore, have been used extensively for holding participations in Chinese companies.

However, China's State Administration of Taxation (SAT) has recently issued new regulations (Notice 81 and Circular 2) that include additional requirements that foreign companies doing business with China must fulfill to claim tax treaty benefits. The two notices were issued in response to specific taxpayer situations that minimised Chinese capital gains and dividend withholding taxes through the use of SPVs in Singapore and Barbados.

In general, the notices stipulate commercial substance for the establishment of an entity in a particular jurisdiction.

A company wishing to claim reduced Chinese dividend withholding taxes must provide the Chinese authorities with documental proof that:

- the foreign holding company is a tax resident of its home country and is the beneficial owner of the dividends;
- the dividend qualifies as a dividend under Chinese tax regulations;
- the main purpose of the foreign holding structure is not to benefit from reduced withholding/capital gains taxation based on the tax treaty between China and the holding company's jurisdiction.

Recommendations

Existing and new China inbound investment structures should be established in such a way that they can withstand the scrutiny of the new regulations and will reduce the risk of endless investigations by the Chinese tax authorities.

To this end, the following checklist indicates the necessary documents and substance:

- Tax residency certificate of the foreign holding company, which should be available at all times;
- Evidence of the residence of the company's directors and their role in the management and decisions of the company;
- Evidence of the tax position of the foreign shareholder in the contracting state, in particular the tax payment on the dividend received from the Chinese resident company;
- Evidence that the foreign shareholder can not be considered to be a resident of a third country and also can not be considered a Chinese resident;
- Contracts, evidence of ownership, resolution on the dividend distribution and evidence of payment, etc.;

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- Information on the foreign investor's shareholding in the Chinese resident company;
- Investment of more than the absolute minimum capital in the foreign investment company;
- The foreign investment company must carry out activities other than merely holding shares in one Chinese company. An investment company may own multiple entities or facilitate the funding of investments, it may conclude certain service and management agreements with group companies and third parties;
- The foreign company should hold one or more bank accounts in its country of residence;
- A proper office including staff should be maintained by the foreign investor company.

The Amicorp Group can assist clients in re-structuring, setting up and managing compliant holding companies in Hong Kong, Mauritius, Barbados, and Singapore, as well as Ireland, Switzerland and Lithuania, all of which have favorable tax treaties with China concerning dividends and capital gains taxation.

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INDONESIA: Expanded CFC Legislation

In light of Indonesia's recently changed Controlled Foreign Corporation (CFC) legislation (through PMK 256), Indonesian companies intending to make outbound investments or acquisitions should be more prudent when choosing their foreign holding company.

Up to now, Indonesian tax authorities could try to claim Indonesian corporate taxation where it concerned income of subsidiaries in 32 jurisdictions on its blacklist (see below). Most of these jurisdictions can be qualified as tax havens with which Indonesia does not have a double taxation avoidance agreement in place. In addition, existing legislation requires a shareholding of 50% or more in the foreign subsidiary, and also that this foreign subsidiary is not a listed company and typically does not have a regular (annual) dividend distribution policy.

The new CFC rules would open the door for the Indonesian tax authorities to tax (undistributed) income of foreign subsidiaries regardless of the country of residence of said subsidiary (provided the >50% subsidiary is not listed and has no dividend distributions). The foreign entity would be deemed to have distributed profits within 4 months from the date of submission of its income tax return or 7 months from the date of financial year-end, if no tax return has been filed.



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(Former) blacklisted jurisdictions:

- | | | |
|------------------|------------------------|----------------|
| * Argentina | * Hong Kong | * Paraguay |
| * Bahamas | * Jersey | * Peru |
| * Bahrain | * Liechtenstein | * Qatar |
| * Belize | * Lithuania | * St. Lucia |
| * Bermuda | * Macao | * Saudi Arabia |
| * BVI | * Mauritius | * Uruguay |
| * Cayman Islands | * Mexico | * Vanuatu |
| * El Salvador | * Netherlands Antilles | * Venezuela |
| * Estonia | * Nicaragua | * Zambia |
| * Greece | * Panama | |
| * Guernsey | | |

Recommendations

Uncertainties remain as to the application of the CFC rules, especially if Indonesian taxpayers invest through non-corporate entities such as partnerships or foundations. In addition, the treatment of foreign profits legitimately reserved for foreign reinvestment or expansion or applied towards funding in the form of debt or equity is unclear.

Where Indonesian taxpayers have multi-tiered structures, it is arguable that the rules do not apply to companies under the first tier held by Indonesia.

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NEW ZEALAND: Declaration of Trust & Escrow Trust

Worldwide, many individuals and families have established personal holding and investment companies without making any arrangements in case of death of the shareholder(s) or ultimate beneficial owner(s) (UBO).

Nominee Services, Declarations of Trust and Escrow Trust Arrangements

For companies with no estate or succession planning in place, if the company is in a common law jurisdiction there is a very high probability that the heirs of the UBO will need to enter into probate procedures.

What arrangements have you made to ensure the smooth transition of your shareholding to your heirs or assigns?



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What is probate?

It's a legal process for the transference of a deceased's estate (i.e., shares, property, cash, etc.) in accordance with a will. The court will decide the validity of the will. Probate interprets the instructions of the deceased, confirms the executor as the personal representative of the estate and will rule on the interests of heirs and other parties who may have claims against the estate. (Probate will also be required to cover assets that were not covered by a will, such as shares of an undisclosed company).

The probate procedure can last for months or, in extreme cases, years. The delays and cost of legal work and other third-party costs can be prohibitive and can, in some cases, result in company shares being held in deadlock. This can result in a loss of commercial benefits. For example, if the family business is entering into a major contract or going through a sales process (which requires shareholder approval), probate matters will probably need to be resolved before the contract can be signed or the sale completed.

If you have a nominee arrangement over the shares in your common law personal investment company, there is a very high probability that your heirs will need to go through the respective foreign jurisdiction's probate process to access these shares in the event of your death. With prior planning, this probate application occurring at what could be a very emotional and difficult time for your heirs can easily be avoided.

So what's the solution?

A trust. If not a discretionary trust then a bare trust arrangement such as a declaration of trust or an escrow trust. Either of these services can be used and cost much the same as a nominee shareholder service but are more legally effective for succession planning. The declaration of trust is an offshore structure and the escrow trust is an onshore structure. These are special types of trust used to avoid probate matters only, as neither of them is a fully discretionary trust. The trustee, in these cases, has no discretion at all and, on death of the settlor, the shares will continue to be held for or be transferred to, the persons listed in the trust documents, by the trustee or escrow agent.

Declaration of Trust vs. Escrow Agreement

With the declaration of trust (DOT), the shares of the underlying company, i.e. a BVIBC, are registered in the name of the trustee, or transferred to the trustee. The settlor does not need to sign the DOT but will simply need to provide a letter of instruction including the details of the beneficiaries. However, the settlor and the escrow agent (trustee) will both execute the escrow agreement in favour of (or for the benefit of) the settlor or persons nominated by him/her.

Typically the escrow agreement and the DOT will designate the settlor(s) as primary beneficiary with his or her children designated as secondary beneficiaries. With husband and wife beneficial owners, it is also possible to have joint rights of survivorship, so the secondary beneficiaries benefit only in the event of the decease of both primary beneficiaries.

Variant arrangements are also possible with beneficiaries that are unrelated to the settlor also being designated to benefit. One example is a separate zero or low tax company that is also beneficially owned by one or more family members.



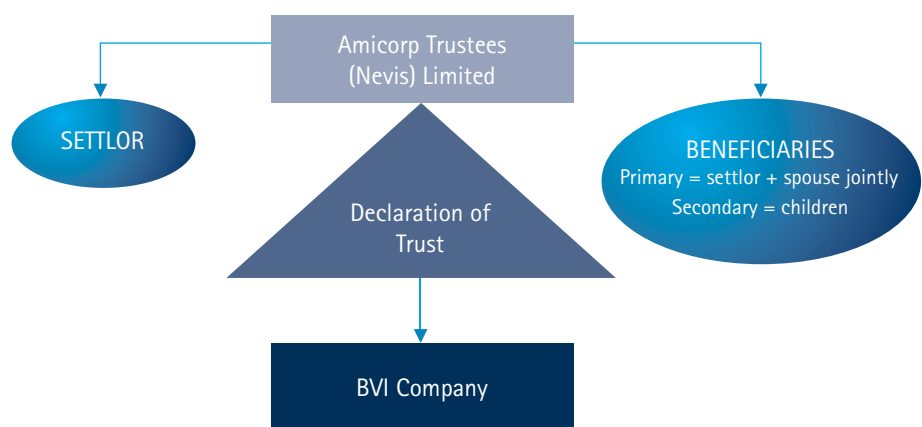
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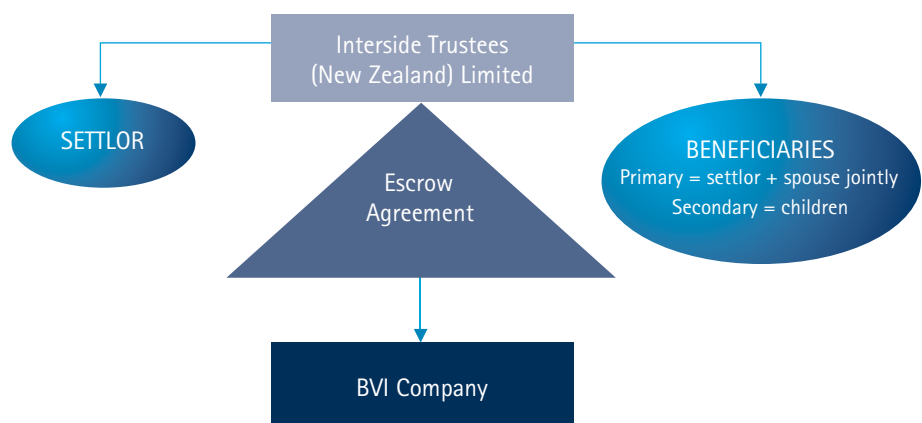
It may also be possible to combine the use of an escrow agreement and a DOT with a traditional discretionary trust to avoid higher trustee fees during the lifetime of the discretionary trust settlor. This enables full control of the assets by the settlor while alive. At death, control of these assets can pass to the trustee of the discretionary trust, without probate issues, and be held under its terms for the benefit of the beneficiaries.

The diagram below illustrates an offshore and an onshore version of these arrangements:

Nevis Structure (Offshore)



New Zealand Structure (Onshore)



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SINGAPORE: Corporate tax rate reduced

In its 2009 budget announcements, Singapore revealed plans to reduce its corporate income tax rate from 18% to 17%. This rate will apply to 2010 corporate tax assessments.

As a result of the new tax rate, Singapore comes closer to the Hong Kong profits tax rate of 16.5%.

Also recently announced:

- Expansion of the income tax exemption for foreign sourced income held offshore. Such income accrued before January 22, 2009 may be remitted into Singapore until January 21, 2010 without tax. While foreign sourced income is not subject to Singapore tax, it also may not benefit from the protection of Singapore double tax treaties. Without this amendment, this income would have borne tax at an effective rate of 15%.

Due to the requirements that must be satisfied for income to be considered as foreign sourced, we recommend that advice be sought prior to taking advantage of this exemption

- Singapore companies are now permitted to carry back losses of up to SGD200,000 incurred in 2008 and 2009 to offset income derived in the previous three tax years. The potential tax refund is SGD36,000.
- The scope of income tax exemption allowable to Singapore foreign trusts is being expanded to include income from trading in Singapore shares. Further details will be available in April 2009.
- Singapore has passed the Limited Partnerships Act 2008, which permits the establishment of limited partnerships in Singapore. The vehicle will be tax transparent as with general partnerships and limited liability partnerships. It is expected that the date of effect will be before June 2009.

Limited partnerships provide useful vehicles for trading, joint venture scenarios, underlying entities for trust structures or managing the tax losses in the start-up phase of infrastructure projects.

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In the Asia-Pacific region, Amicorp has offices in India (Bangalore and Mumbai), China (Hong Kong and Shanghai), Singapore and New Zealand (Auckland). From these locations, we offer our clients in this region the services of our worldwide network including:

- Incorporation and management of companies, partnerships, trusts and foundations;
- Structuring and execution of cross border financing, licensing and trading transactions;
- Succession planning and asset protection;
- Structuring, set up and administration of investment funds, and
- Business and knowledge process outsourcing services.

For our clients all over the world, we offer Asia-Pacific products such as Hong Kong companies, Singapore companies, Singapore LLPs, Singapore trusts, New Zealand trusts and private trust companies.

Amicorp's global policy is to provide high quality services to our clients and to be well informed and up to date on domestic developments in legislation and market environment. We wish also to keep our contacts informed about new developments that may affect their international businesses.

Should you have any questions or comments, please contact your nearest Amicorp office or the AmiNews Asia coordinators, Niels van Linder at n.vanlinder@amicorp.com or David Stone at d.stone@amicorp.com



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