

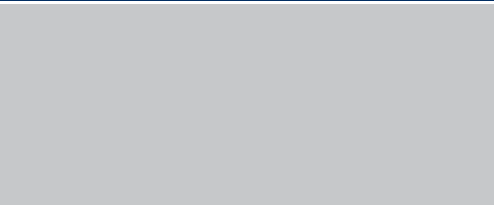


# AMINEWS

## Asia

### Content

- CHINA / HONG KONG – *Second protocol to Double Taxation Agreement between China and Hong Kong*
- INDIA – *Double Taxation Avoidance Agreement with Luxembourg approved by India*
- INDIA – *Increase of Indian capital gains tax out of short-term listed shares*
- MALAYSIA – *Update Double Taxation Agreement with Spain*
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## CHINA/ HONG KONG -

### *Second protocol to Double Taxation Agreement between China and Hong Kong*

Hong Kong has traditionally been the business gateway in and out of China. This position is strengthened by the concessional tax treaty between Hong Kong and China. The two regions recently issued a new protocol to provide guidance on the application of the treaty to capital gains derived from sale of shares in Chinese companies.

1. Gains from the sale of shares in a Chinese company whose asset value comprises less than 50% immovable property are exempt from Chinese capital gains tax under the treaty. An issue arose as to the timing for determining the asset value.

It has been agreed to adopt a look-back period of 3 years preceding the sale and to review the book value of the assets to determine whether the 50% threshold has been breached.

2. Gains from the sale of shares in a Chinese company (if not an immovable property company as above) were tax exempt provided participation did not exceed 25% of the company.

It has been agreed to adopt a 12-month look-back period preceding the sale to determine whether the 25% threshold has been exceeded. This is consistent with the treaties of China with Singapore and Mauritius. If the shareholding is higher than 25%, then Chinese capital gains tax can still be avoided if the shares in the Chinese company are held by a Barbados company, as the tax treaty between China and Barbados provides for the allocation of the right to tax capital to the (alienating) Barbados company.

The China treaty with Hong Kong is the only treaty to provide this advantageous clarification. It is unclear whether other Chinese treaties would be entitled to this concession in the absence of specific protocol or announcement.

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## INDIA -

### *Double Taxation Avoidance Agreement with Luxembourg approved by India*

On February 21, 2008, the government of the Republic of India ratified the earlier-signed Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and capital with Luxembourg.

The draft text of the tax treaty (which is currently being examined by the Luxembourg government) has not yet been published, but it is expected to include tax benefits for investments between the two countries. In particular, Luxembourg's fund industry could become an important player for India investments when the tax treaty is in place.

## INDIA -

### *Increase of Indian capital gains tax out of short-term listed shares*

An issue that attracted attention in India's 2008 budget announcements has been the increase of India's capital gains tax from 10% to 15% on gains from the sale of listed stock that has been held for less than one year (short term).

This could mean a higher tax burden for investors in Indian listed shares who invest from a jurisdiction that does not have in place a double taxation agreement with India that avoids such capital gains taxes.

Currently, the most interesting holding company jurisdictions for India inbound investments remain Mauritius, Cyprus, Singapore and The Netherlands.

Long-term gains on listed shares are still exempt from corporate taxes in India, provided securities transaction tax ("STT") has been paid.

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## MALAYSIA -

### *Update Double Taxation Agreement with Spain*

The amended treaty between Spain and Malaysia came into effect on January 1, 2008. The most notable amendment was in the Protocol and permitted Spain to deny treaty benefits to Malaysian companies taxed under the concessional regime in Labuan. This means that the tax exemptions for a Spanish holding company are now not allowable where the entity is held by a Labuan company.

Coincidentally, Malaysia has announced in its Annual Budget, September 2007, that Labuan companies can now elect to be taxed under the general Malaysian tax law as opposed to the Labuan regime. This approach is intended to address the trend of Malaysia's treaty negotiations limiting tax treaty relief for Labuan companies.

## SINGAPORE -

### *Budget 2008*

#### *Singapore Budget 2008 offers Welcome Developments*

Singapore announced its annual budget on Friday, 15 February 2008, after recording a surplus of SGD6.4 billion and an economic growth rate of 7.7% for 2007.

Overall, the budget adopted a longer-term perspective by enhancing existing tax incentives for the financial and maritime sectors as well as expanding tax concessions for small and medium-sized enterprises and start-up businesses.

#### *Financial Sector*

The present tax exemptions for income derived by non-residents from qualifying debt securities (including Islamic instruments) and the concessional tax regime for participants in the Financial Sector has been extended for another five years until 31 December 2013.

The Financial Sector Incentive (FSI) scheme provides for concessional tax rates of 5% or 10% for income derived by Singapore fund managers, dealers in qualifying derivatives and debt securities, credit facility syndicators, and financial service headquarters. In addition, the FSI scheme is now extended to cover businesses performing Shariah-compliant activities.

Fund managers will qualify for the 10% tax concession whilst simultaneously qualifying their funds for tax exemption on certain income.

#### *Marine Sector*

With effect from 1 April 2008, container leasing activities will enjoy a concessional tax rate of either 5% or 10% on its entire onshore and offshore container leasing income, depending on its commitments. A container investment manager will enjoy a 10% concessional tax rate on its management fee income.

Further, all gains from the sale of vessels will not be subject to income tax so long as the vessels are registered with the Singapore Registry of Ships ("SRS") or owned by an international shipping enterprise for a further period of five years, from YA 2010 to YA 2014. The scope of the concession is

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also expanded to include gains from the sales of ships which are subsequently leased back as well as gains from the sale of shares in a Special Purpose Company which owns ships.

### Estate Duty

The most notable budget announcement is the abolishment of estate duty.

Through this measure, Singapore has now positioned itself to match Hong Kong in the area of wealth management. Several matters are of interest for prospective clients:

1. The repeal of estate duty should prompt individual clients to review the positioning of Singaporean assets within their holding structure.
2. Estate duty promoted the use of trusts to manage divestment due to uncertainties under the local legislation. Civil law structures such as foundations can now be considered where the principal has continuing involvement in the management of assets.

### Family Investment Companies

The unconditional tax exemption for all foreign-sourced income derived by Singapore individuals is to be extended to family-owned investment companies. Presently, the scope of tax exemption for such income derived by companies is limited to dividends, branch profits and service income subjected to tax at 15% outside Singapore.

The broadening of the scope of exemption for foreign income for family companies will enhance the appeal of such vehicles by permitting the involvement of family members in different capacities whilst limiting their liabilities. The conditions for a qualifying company will be released in May 2008.

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## VIETNAM -

### *Double Taxation Avoidance Agreement with Ireland signed*

On 10 March 2008, the governments of the Socialist Republic of Vietnam and Ireland signed an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and capital.

Main features and/or details of the agreement, which must be ratified by both countries before coming into force,- are:

#### Withholding tax rates

- Withholding tax on dividends of 5% for shareholding relationships of at least 70%;
- Maximum withholding tax on dividends of 10% in all other cases;
- Interest withholding tax rate of 10%;
- Withholding tax on royalties related to industry or science capped at 5%;
- Withholding tax on royalties related to commerce capped at 10%;
- Maximum withholding tax on Technical fees is 7.5%.

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### Capital gains

Capital gains from the sale by an Irish company of shares in a Vietnamese company will be taxable only in Ireland (and thus not in Vietnam), unless it concerns shares in a Vietnamese company, the assets of which consist mainly of immovable property situated in Vietnam.

### Tax planning consideration

The new tax treaty with Ireland opens the possibility of using Irish holding companies for investing in equity in Vietnamese operations.

Where Vietnamese real estate projects are concerned, a Singapore holding company will be most tax efficient.

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Amicorp's offices in the Asia-Pacific region are located in India (Bangalore and Mumbai), China (Hong Kong and Guangzhou), Singapore and New Zealand (Auckland). From these locations, we offer our clients in the Asia-Pacific region the services from our worldwide network, which include:

- 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.

Furthermore, we offer Asia-Pacific products, i.e., Hong Kong companies, Singapore companies, Singapore LLP's, Singapore trusts, New Zealand trusts and private trust companies to our clients all over the world.

As is our global policy, we strive to be a provider of high-quality services, by being well-informed about domestic developments in legislation and the market environment. At the same time, we wish to keep our contacts informed about new developments that may influence their international businesses.

Should you have any questions or comments, please contact your nearest Amicorp office or contact the AmiNews Asia coordinators as listed below:

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