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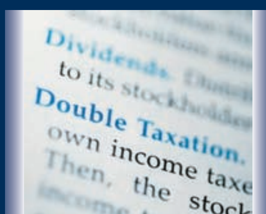

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Amicorp's offices in the Asia-Pacific region: India (Bangalore and Mumbai), China (Hong Kong and Guangzhou), Singapore and New Zealand (Auckland). From these locations, we offer our clients in the Asian-Pacific region the services from our worldwide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

- 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;
- Business and knowledge process outsourcing services, and
- Structuring, set up and administration of investment funds.

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 market environment. At the same time, we wish to keep our contacts informed about new developments that may be of influence to their international businesses.

Should you have any questions or comments, please contact your nearest Amicorp office or the AmiNews Asia coordinator Niels van Linder at *n.vanlinder@amicorp.com*

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CHINA – The latest on the New Enterprise Income Tax Law

As we announced in the April 2007 edition of AmiNews Asia, the new Enterprise Income Tax Law (EIT Law) will come into effect on 1 January 2008 in the People's Republic of China.

This legislation will be accompanied by detailed Implementation Rules, which specify certain definitions, tax rates and interpretations of the EIT Law.

The recently publicated Implementation Rules include a withholding tax rate of 10% for dividends paid from China to foreign shareholders. Although this is lower than the 20% rate mentioned in the EIT Law, there is still room for tax planning by using one of the Double Taxation Agreements (DTAs) concluded by China. Based on several DTAs – i.e., Hong Kong, Barbados, Singapore, Lithuania and Switzerland – the 10% dividend withholding tax can be further reduced to 5%.

Furthermore, the capital gains tax rate on gains realized by foreign investors out of the sale of shares in Chinese companies has been confirmed at 10%. The capital gains tax can also be mitigated by using the right DTA, which does grant the right to tax said gains to the country of the foreign alienator. Amicorp can assist clients in selecting the most tax efficient structure and likewise, managing the implementation of the structure.

Mei Luo
Managing Director
Amicorp Guangzhou
m.luo@amicorp.com

HONG KONG – Double Taxation Avoidance Agreement with Luxembourg signed

On 2 November 2007, the Hong Kong Special Administrative Region of the People's Republic of China and the Grand Duchy of Luxembourg 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 still needs ratification by both countries before coming into force – are:

Withholding tax rates

- Withholding tax on dividends of 0% for shareholding relationships of at least 10% or in case the shareholding represents at least EUR 1.2 million in the dividend paying company;
- Maximum withholding tax on dividends of 10% in all other cases;
- Interest withholding tax rate of 0%;
- Withholding tax on royalties capped at 3%.

Capital gains

Capital gains from the sale by a Hong Kong company of shares of a Luxembourg company will only be taxable in Hong Kong (and thus not in Luxembourg). Interestingly, Hong Kong does not levy a capital gains tax and therefore such gains will be taxed neither in Luxembourg nor in Hong Kong.

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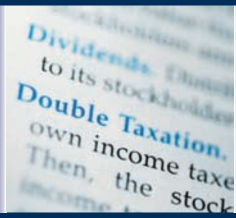

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Where it concerns shares in Luxembourg companies of which the assets consist mainly (>50%) of immovable property situated in Luxembourg, then Luxembourg will have the right to tax capital gains related to such shareholding, unless:

i) the Luxembourg company is listed at a (recognized) stock exchange;

ii) the gain results from a company/group reorganization, merger or similar operation; or

iii) the Luxembourg company is an active real estate company which derives most of its income out of said business.

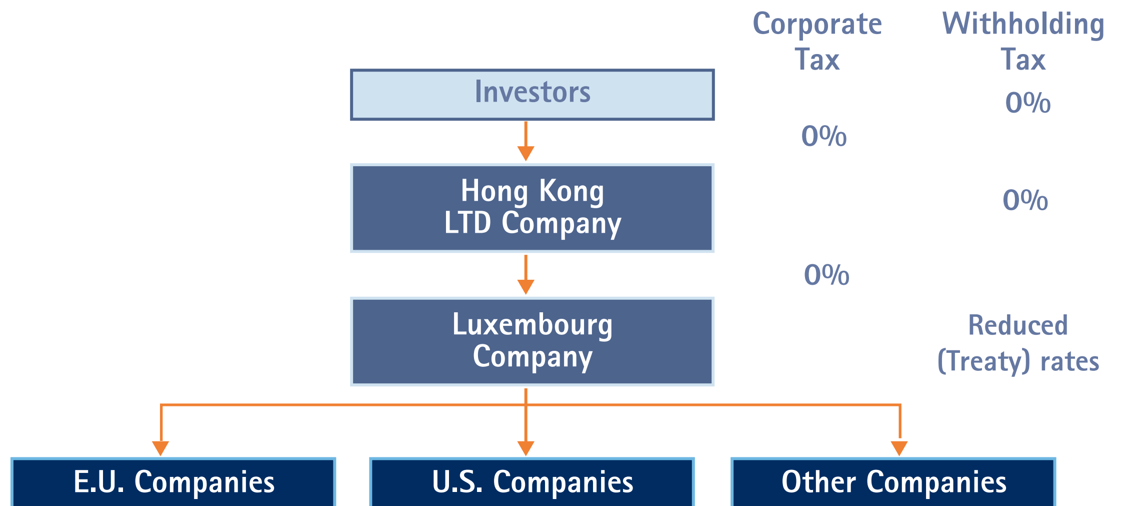
Pension payments

Based on Article 17 of the Agreement, pension payments between the two countries shall be taxable only in the source country. This applies not only to public pension scheme payments but also to private occupational retirement schemes - recognized in Hong Kong or Luxembourg.

Tax Planning Considerations

The new Hong Kong - Luxembourg tax treaty definitely creates tax planning opportunities. In particular, where Asian investors intend to invest into or through Europe, the Hong Kong - Luxembourg route can be an interesting option. It should be noted that the common withholding tax on dividends in Luxembourg is 25% - which can be reduced to 0%.

In a diagram, such Hong Kong - Luxembourg investment structure can be outlined as follows:



Luxembourg has a double taxation agreement with China, which is similar to the Hong Kong - China agreement with 5% withholding tax on dividends and absence of Chinese capital gains taxation as long as the shareholding in the Chinese company is less than 25%. Obviously, Luxembourg has a much wider network of double taxation agreements compared to Hong Kong, which Hong Kong now can make (indirectly) use of.

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HONG KONG – Reduction profits tax rates

In Hong Kong's 2008 Budget presentation (in October 2007), it was announced that the Profits Tax rate for corporations will be reduced from 17.5% to 16.5% as per the financial year 2008/2009 (which commences 1 April 2008).

Hong Kong applies the 'territoriality taxation' principle, based on which only Hong Kong source income is subject to said profits taxation; therefore, foreign source income such as income out of investments in foreign companies (i.e., Luxembourg) or from portfolio investments on foreign bank accounts is not subject to taxation in Hong Kong.

Michael Shue
Managing Director
Amicorp Hong Kong
m.shue@amicorp.com

INDIA – Outbound investments for Indian residents liberalized

Over the past several months, the Reserve Bank of India has increased the amounts that can be invested abroad without their permission, for both individuals and companies residing in India.

Individuals

Indian individuals are currently permitted to transfer an amount of USD 200,000 per person per year overseas. This creates opportunities for persons/families to purchase real estate abroad. In this context, it is wise to remember that estate duties may apply when an individual is registered as owner of said real property and passes away. For example, in the UK and the USA, such estate duties (which can be over 40%) exist. Estate duties do not apply when the registered owner of real estate is a legal entity which has individual shareholders. In these cases, an entity from a low/zero tax jurisdiction in which the investors will be shareholders, can provide the solution.

Companies

Based on Reserve Bank of India's Notification of 25th September 2007, Indian companies are permitted to invest in overseas companies – wholly owned subsidiaries and joint ventures – to an amount up to 400% (previously 300%) of the net worth of the Indian company.

India outbound investments are increasing, especially in markets such as Eastern Europe, Central Asia and Africa. To defer Indian corporate taxation and to reduce foreign withholding taxes and capital gains taxes, the use of an 'intermediate holding company' from a country that has good double taxation agreements with both India and the target company jurisdictions should be considered. Amicorp can assist clients in selecting the most adequate foreign investment structure and managing the structures.

INDIA – Recent Amendments to the "FII" Regulations in India

On October 25, 2007 the much anticipated new developments regarding foreign portfolio investments into Indian capital markets was revealed. The Securities and Exchange Board of India ("SEBI") announced certain policy decisions in respect of investments through Overseas Derivative Instruments ("ODIs") and eligibility criteria for registration as Foreign Institutional Investor ("FII").

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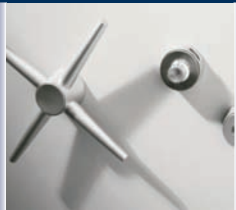

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Broadly, the new policy measures incorporated into the draft policy (issued by SEBI on October 16, 2007) now in effect follow:

- With immediate effect: FIIs and their sub-accounts shall not issue/ renew ODIs with underlying derivatives – including the Participatory Notes ("P-Notes"). They are required to wind up the current position over 18 months, during which period SEBI will review the position from time to time. It was also clarified by SEBI that there was no proposed bar on ODI contracts, expiring this month or in the following months, being renewed, provided the renewal does not go beyond 18 months.
- With immediate effect: Further issuance of ODIs by the sub-accounts of FIIs will be discontinued. They will be required to wind up the current position over 18 months, during which period SEBI will review the position from time to time. As regards P-Note issuing sub-accounts who have applied for registering as FIIs, SEBI has clarified that such sub-accounts will be treated as if they were FIIs as on the date decided for calculation of the Assets under Custody in India ("AUC"), which shall be September 30, 2007.
- The FIIs who are currently issuing ODIs with notional value of ODIs outstanding (excluding derivatives) as a percentage of their AUC in India of less than 40% shall be allowed to issue further ODIs only at the incremental rate of 5% of their AUC in India. SEBI has clarified that 5% incremental issuance allowed to such FIIs would be applicable on an annual basis, until such time that the percentage reaches 40%, after which the entity will abide by the proposal applicable to entities above the 40% limit.
- Those FIIs with notional value of PNs outstanding (excluding derivatives) as a percentage of their AUC in India of more than 40% shall issue PNs only against cancellation / redemption / closing out of the existing PNs of at least equivalent amount.

In addition to the above policy measures SEBI made the following changes to the registration criteria:

Broad-based criteria - The "broad-based" criteria shall now be modified to include entities having at least 20 investors and no single investor holding more than 49% (instead of 10% at present).

Track record of the applicant - Track record of individual fund managers will be considered for the purpose of ascertaining the track record of a newly set up fund, subject to such fund manager providing its disciplinary track record details.

Issuance of ODIs – ODIs would be issued to only "regulated" entities and not "registered" entities.

Perpetual registration - FII and sub-account registrations will be perpetual, subject to payment of fees.

Certain FII Applicants exempted from being 'regulated' – SEBI has exempted FII applicants that are Pension Funds, Foundations, Endowments, University Funds and Charitable trusts or societies from being "regulated" by an appropriate foreign regulatory authority.

It is expected that the above changes will be put in force by SEBI as law by formally amending the FII Regulations in due course. The Chairman has indicated that one can expect further changes to the FII Regulations with a view to provide further access to Indian markets. It is evident that the above changes are with an objective to make Indian markets cleaner and transparent.

Amicorp can provide foreign investors guidance in selecting the best investment route into India, while complying with the (changing) Indian regulations. In the near future Amicorp will offer an FII licensed investment fund and assistance to investors that wish to invest through alternative routes – such as through equity investments ("FDI").

Niels van Linder
Managing Director
Amicorp Mumbai
n.vanlinder@amicorp.com

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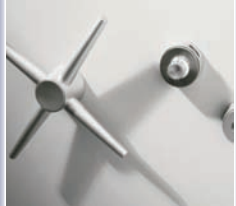

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SINGAPORE – Introduction Limited Partnership confirmed

A few months ago, a new Limited Partnerships Act ("Act") was announced, its law was drafted by the Ministry of Finance of Singapore. Following the approval of the draft Act, (likely in the first half of 2008), the Singapore Limited Partnership will add to the number of legal entity forms available in Singapore. This will create greater flexibility for local and foreign investors in choosing their business structures.

Like a Singapore Limited Liability Partnership ("SG LLP") introduced in 2005, a Singapore Limited Partnership ("SG LP") is transparent for tax purposes. Taxation attaches only at the level of the partners, not at the level of the LP itself.

The difference between the SG LP and the SG LLP is that the liability of all the partners of the SG LLP for the debts, obligations and liabilities is limited, whereas the SG LP will have at least one partner whose liability will be unlimited.

This unlimited liability partner is known as the general partner - active in the management of the SG LP – and liable for all the debts, obligations and liabilities incurred by the SG LP during the period in which it acts as a general partner. The other partner(s) of the SG LP are limited partners and not be personally liable for the debts, obligations and liabilities of the SG LP. Limited Partners are not allowed to take part in the management of the SG LP (except for certain "safe harbour" activities specified in the Singapore LP Act) or have powers to bind the SG LP.

With such features, the SG LP will appeal to investors who prefer to be passive partners and entrust the management of the business to others who have the expertise and confidence in the business to assume the unlimited liability. As such, the SG LP is likely to be a popular vehicle for private equity and fund investment businesses.

Other partnerships that the Amicorp Group currently offers are the UK LLP (including the Scottish LLP), the Singapore LLP and the Netherlands C.V.

Joe Teng
Managing Director
Amicorp Singapore
j.teng@amicorp.com

AMI NEWS Asia

Amicorp Group
Paseo de Gracia 103, 1st Floor
08008 Barcelona
Spain
Tel.: +34 (93) 208 2581
Fax.: +34 (93) 208 2582
E-mail: amicorp@amicorp.com

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EUROPE

Amicorp Baltic UAB
Konstitucijos ave. 7
24th fl oor
LT-09308 Vilnius
Lithuania
Tel.: +370 5248 7532
Fax.: +370 5248 75350
Email: vilnius@amicorp.com

Amicorp (Cyprus) Ltd
1 Avlonos street
Maria House
Nicosia 1075
Cyprus
Tel.: +357 22 504 000
Fax.: +357 22 504 100
E-mail: cyprus@amicorp.com
Post address
PO Box 23293
Nicosia 1680
Cyprus

Amicorp de España, S.L.
Avenida Diagonal 431 Bis - 1st Floor
08036 Barcelona,
Spain
Tel.: +34 93 241 7563
Fax.: +34 93 241 7564
E-mail: barcelona@amicorp.com

Amicorp Luxembourg SA
47, Boulevard Royal
L-2449 Luxembourg
Grand Duchy of Luxembourg
Tel.: +352 26 27 43
Fax.: +352 26 27 43 50
E-mail: luxembourg@amicorp.com

Amicorp Netherlands B.V.
WTC Amsterdam, Tower C-11
Strawinskylaan 1143
1077 XX Amsterdam
The Netherlands
Tel.: +31 20 578 8388
Fax.: +31 20 578 8389
E-mail: netherlands@amicorp.com

Amicorp Switzerland AG
Zug Representative Offi ce
Baarerstrasse 75
6300 Zug
Switzerland
Tel.: +41 41 712 1355
Fax.: +41 41 712 1356
Email: switzerland@amicorp.com

Amicorp Switzerland AG
Holbeinstrasse 25
CH-8008 Zurich
Switzerland
Tel.: +41 44 252 0880
Fax.: +41 44 252 0881
Email: switzerland@amicorp.com

Amicorp (UK) Limited
3rd Floor
5 Lloyds Avenue
London
EC3N 3AE
Tel.: +44 207 977 1250
Fax.: +44 207 977 1251
E-mail: london@amicorp.com

THE AMERICAS

Amicorp Americas LLC, Agencia en Chile,
(Representative Offi ce)
Augusto Leguía Norte 100, Of. 712
Las Condes
Santiago, Chile
Tel.: +56 2 435 0700
Fax.: +56 2 435 0624
E-mail: santiago@amicorp.com

Amicorp Barbados
Coniston Bld, Bush Hill,
The Garrison, St. Michael.
Barbados, West Indies.BB14038
Tel.: +1 (246) 228 5363
Fax.: +1 (246) 228 5981
E-mail: barbados@amicorp.com

Amicorp do Brasil Ltda.
Rio de Janeiro Representative Offi ce
Rua Lauro Müller 116
31 Andar, sala 3104
Edifício Torre do Rio Sul
22290-160, Botafogo
Rio de Janeiro - RJ
Tel.: +55 21 2295 7525
Fax.: +55 21 2295 7948
E-mail: riodejaneiro@amicorp.com

Amicorp do Brasil Ltda.
Rua Helena 260
14 Andar-conj. 141, Villa Olimpia
04552-050 São Paulo – SP
Brazil
Tel.: +55 11 3049 3454
Fax.: +55 11 3049 3455
E-mail: saopaulo@amicorp.com

Amicorp BVI Limited
2nd Floor Marcy Building
Purcell Estate
P.O. Box 2416, Road Town
Tortola
British Virgin Islands
Tel.: +1 284 494 2565
Fax.: +1 284 494 2552
E-mail: bvi@amicorp.com

Amicorp Curaçao N.V.
Amicorp Building
Pareraweg 45
P.O. Box 4914, Curaçao
Netherlands Antilles
Tel.: +599-9 434 3500
Fax.: +599-9 434 3533
E-mail: curacao@amicorp.com

Amicorp Mexico
Mexico Representative Offi ce
Edifi cio Torre Picasso
Blvd. Manuel Ávila Camacho No. 88
8 piso, Despacho 802
Col. Lomas de Chapultepec
11000 México, D.F.
Tel: +52 55 5202 5999
Fax: +52 55 5202 1004
E-mail: mexico@amicorp.com

Amicorp Services Ltd.
Miami Representative Offi ce
Brickell Bay Offi ce Tower
1001 Brickell Bay Drive
Suite 2310
Miami, Florida 33131
U.S.A.
Tel.: +1 305 416 4730
Fax.: +1 305 416 4738
E-mail: miami@amicorp.com

Amicorp Services Ltd.
New York Representative Offi ce
45 Rockerfeller Plaza
Suite 1507
New York, NY 10111
U.S.A.
Tel.: +1 212 752 3267
Fax.: +1 212 755 9148
E-mail: newyork@amicorp.com

ASIA/PACIFIC

Amicorp Advisory Services Pvt Ltd.
Maker Chambers VI
Nariman Point
Mumbai 400 021
India
Tel.: +91 22 2282 6326
Fax.: +91 22 2282 6327
E-mail: mumbai@amicorp.com

Amicorp (Guangzhou) Consultants Ltd.
Suite 1807, Tower A, Center Plaza
No 161, Linhe Road West
Tianhe District
Guangzhou 510620
P.R. China
Tel.: +86 20 3825 1480
Fax.: +86 20 3825 1482
E-mail: guangzhou@amicorp.com

Amicorp Hong Kong Limited
Suites 1306-07
13th Floor, ING Tower
308 Des Voeux Road Central
Hong Kong
Tel.: +852 3105 9882
Fax.: +852 3105 9883
E-mail: hongkong@amicorp.com

Amicorp Management India Private Ltd.
34, Andree Road
Shanthi Nagar
Bangalore 560 027
India
Tel.: +91 80 4126 4300
Fax.: +91 80 4126 4700
E-mail: bangalore@amicorp.com

Amicorp New Zealand Ltd.
Unit C3
17 Corinthian Drive
North Shore City 0752
Auckland
New Zealand
Tel.: +64 9 414 4614
Fax.: +64 9 414 4362
E-mail: newzealand@amicorp.com
Post address
PO Box 300125
North Shore City 0752
Auckland
New Zealand

Amicorp Singapore Pte. Ltd.
55 Market Street
#09-02
Singapore 048941
Tel.: +65 6532 2902
Fax.: +65 6534 1244
E-mail: singapore@amicorp.com

Amicorp Supporting Offices

anguilla@amicorp.com
austria@amicorp.com
bahamas@amicorp.com
belgium@amicorp.com
cayman@amicorp.com
denmark@amicorp.com
ireland@amicorp.com
madeira@amicorp.com
mauritius@amicorp.com
sweden@amicorp.com