THE GLOBAL TAX CHRONICLE

Presented by, BDO India

Edition 8

August 2022

CONTENTS

PREFACE

On behalf of the tax team at BDO India, I am privileged to present the eighth issue of The Global Tax Chronicle.

This quarterly publication delivers critical tax developments from an international perspective, covering core subjects of direct & indirect taxation and transfer pricing. This publication has been authored and compiled by BDO India's International Tax team

The publication brings forth an expert's perspective on pertinent trends in the area of taxes across countries, aiming to provide comprehensive yet relevant coverage of the developments in the tax world.

The eighth issue of the GLOBAL TAX CHRONICLE focusses on tax implications on global Research and Development (R&D) initiatives and covers:

Tax Conversations

- With an astounding increase in technologies, there has been immense growth in R&D expenditure across the globe. To leverage and incentivise research undertaken by businesses, policymakers have designed various incentives including granting of an enhanced deduction for R&D expenditure. The opening article provides an overview of the corporate tax rules prescribing such enhanced deductions in key countries
- Apart from the corporate tax benefits, several jurisdictions offer indirect tax incentives for R&D activities by way of reduction in indirect taxes and providing support by way of grants. The second article outlines such Indirect tax incentives and Government grants in key countries
- The closing article under this section focusses on the impact of transfer pricing on R&D initiatives carried out by MNE groups globally by providing insight on the common TP issues related to such global R&D incentives and what MNE's need to be mindful of while setting up their global R&D arrangements

Switzerland is one of the most developed economies in Europe, offering political, economic and financial stability along with an attractive tax regime for intangibles. **The World Tax File Focussing On: Switzerland**, sheds light on the tax and regulatory environment in the country, highlighting why it is regarded as a hub for hosting intangibles and considered as the world's leading financial centres.

Lastly, the publication covers **Tax News from Around the Globe** - a round-up of recent and crucial tax developments worldwide and provides a window to the upcoming compliance calendar for the current and upcoming 2 months.

We hope you find this an interesting and relevant read for your business and related international strategies.

We look forward to receiving your valuable feedback and comments.

MILIND KOTHARI
Managing Partner
BDO India

TAX CONVERSATIONS

CORPORATE TAX BENEFITS ON R&D EXPENDITURE

SYNOPSIS

Acknowledging the perennial need for research and development to foster innovation and enhance productivity and value in the economy, developed and developing nations have granted several incentives for businesses who carry out R&D activities – whether for their own business or for the economy in general. A common form of incentive granted for R&D activities is corporate tax benefits on the expenditure incurred towards such activities. The article discusses the corporate tax benefits granted by key countries on R&D spends.

BACKGROUND

Innovation is a key driver of productivity and value in the global economy. To reap the benefits of innovation, policymakers actively encourage and support research activities – whether they are for a particular business or for the economy at large. As per the Organisation for Economic Cooperation and Development's (OECD) statistics, in 2020, the average gross research and development spending in around 45 countries was 2.681% of GDP.[1]

While governments set up central agencies to conduct research, the power of research undertaken by private groups is realised and often the laws are directed to leverage such research. The decision of investments on R&D can be largely influenced by tax policies because of the gap between the gross and after-tax profits from an investment. Tax systems across are crafted to provide incentives for research done by businesses thereby narrowing this gap.

There are various ways in which policies around the globe are designed to incentivise R&D spending. While some countries provide tax subsidies for R&D spending, other countries have provided accelerated benefits such as enhanced deduction on defined types of R&D spending, accelerated depreciation on qualified assets, etc. Several countries, especially in Europe, have tax policies that reduce the tax rate on profits from patents, software and other intangible assets, typically known as the patent box regime. Incentives are granted not only for the expenditure but also for the income that would be realised from exploiting such innovation.

The corporate tax benefits designed in key countries in the form of deduction of R&D expenditure have been discussed below:

Singapore

- For R&D carried out in Singapore, an enhanced tax deduction of 250% shall be available on the qualifying expenditure incurred in years of assessment upto 2025, subject to conditions which inter-alia include:
  - Taxpayers must bear the financial burden of carrying out the R&D activities
  - It shall effectively own and can commercially exploit the know-how, intellectual property or other results of the R&D activities
- For the R&D carried out overseas, a deduction of 100% of qualifying expenditure shall be allowed. Qualifying expenditure includes allowable staff costs and consumables i.e. material or items used in an R&D activity

[1] https://data.oecd.org/rd/gross-domestic-spending-on-r-d.htm

- Where R&D work is outsourced, qualifying expenditure is deemed as 60% of the payments made

Switzerland

- As an optional measure, the Federal law prescribes that Swiss cantons are eligible to introduce an R&D super deduction, which shall enable taxpayers to avail of an additional deduction of up to 50% upon request
- An enhanced deduction is also available on qualifying Swiss R&D personnel expenses as well as expenses for third-party contract R&D in Switzerland (depending on canton to canton) calculated as follows:
  - Qualifying personnel expenses are granted an additional “lift-up” of 35%
  - Third-party costs are eligible for an 80% deduction of the invoiced costs
- An expense incurred for activities across any sector may qualify for the additional R&D tax deduction adhering to certain criteria like novelty, creativity, uncertainty, systematic approach, transferability, etc. The range of qualifying expenditure is much broader than for the patent box regime for lower taxation of income. However, it does not include expenses such as market launch and exploitation of products.

China

- Resident enterprises are eligible for an accelerated deduction of 175% of R&D expenses incurred during the development of new technologies, new products, or new production techniques that have formed intangible assets
- Such expenditure incurred by manufacturing enterprises and small & medium technological enterprises is eligible for a higher limit of 200%.

Hong Kong SAR

- The recently introduced R&D tax deduction regime provides for deduction of the expenditure, depending upon its classification viz. Type A or Type B
  - Type A expenditure qualifies for the basic 100% tax deduction – This is usually the expenditure a company incurs for conducting an in-house research
  - Type B expenditure qualifies for the enhanced two-tiered tax deduction i.e. 300% deduction for the first HKD 2mn of the expenditure and a 200% deduction for the remaining amount, without any limit. It generally refers to payment to a designated local research institution, a qualifying expenditure related to the trade, profession or business
- Qualifying R&D activity is defined as follows:
  - Activity in the fields of natural or applied science to extend knowledge
  - A systematic, investigative or experimental activity carried on for the purposes of any feasibility study or concerning any market, business or management research
  - An original and planned investigation carried on with the prospect of gaining new scientific or technical knowledge and understanding
  - The application of research findings or other knowledge to a plan or design for producing or introducing new or substantially improved materials, devices, products, processes, systems or services before they are commercially produced or used

Mauritius

- Where a taxpayer has incurred any qualifying expenditure on R&D (upto 30 June 2027) that is directly related to their existing trade or business, such taxpayer may deduct twice the amount of the expenditure incurred. For the same, the R&D should have been carried out in Mauritius and no annual allowances should have been claimed on the same
- The term ‘qualifying expenditure’ means any expenditure relating to R&D, including expenditure incurred on innovation, improvement or development of a process, product or service, consumable items, computer software directly used in R&D and development and subcontracted R&D

SIGNIFICANCE OF R&D-RELATED INCENTIVES – AN INDIAN PERSPECTIVE

Tax preferences for R&D are common around the world. The aim of curating beneficial policies for R&D is to attract investment. It is perceived that by reducing the tax costs of those investments, more innovations are likely to be developed. A survey[2] conducted suggests that a 10% reduction in the tax cost of R&D spending translates to a 10% long-run increase in R&D. However, the report also evidences that firms will reclassify other costs to benefit from R&D tax preferences, which is a challenge that governments have to face.

Statistics[3] further reflect that developed countries like the USA spend about 3.1% of their GDP i.e. USD 612.714bn in R&D followed by China which spent USD 514.798bn constituting 2.2% of its GDP.

[2] https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.33.3.163
[3] https://en.wikipedia.org/wiki/List_of_countries_by_research_and_development_spending

India ranks fourth in terms of its expenditure on R&D spending amounting to USD 158.691bn accounting for only 1.3% of the GDP. While India offers tax benefits on R&D expenditure incurred, it is generally observed that not many businesses can reap the benefits of such policies. As per unconfirmed reports, at a particular point in time, it was only about 25% of the companies who applied for recognising their R&D units in India, which is a precursor for an enhanced deduction, were approved. Majority of the applications were not approved, presumably due to not being able to adhere to the stringent guidelines around recognition.

Compared with Singapore in 2018, about 520 companies claimed enhanced R&D benefits. Small and Medium Enterprises (SMEs) comprised the majority of R&D beneficiaries, making up 85% of R&D claims. Based on the R&D claims processed, 83% of SME claims were granted full R&D benefits, with another 6% of the claims adjusted by Singaporean tax authorities on the approved expenditure. In other words, the approval ratio for R&D benefits for companies in Singapore is as high as 90%.

CONCLUDING THOUGHTS

Tax policy is just one tool among many to influence R&D activities, which boosts and fosters innovation and growth in an economy. Studies show that tax preferences do increase R&D spending by businesses and thus governments should curate policies keeping in mind the economic effect of the same in the long run. Policies that will be simpler to implement, along with support from governments to businesses to adhere to the policies will go a long way to encourage R&D spends in an economy. For businesses, a thorough evaluation of the tax and regulatory laws relating to R&D activities is necessary to be able to avail benefits that governments offer.

INDIRECT TAX INCENTIVES AND GOVERNMENT GRANTS ON R&D EXPENDITURE

BACKGROUND

R&D related incentive regimes around the world continue to evolve at a rapid pace. Many countries are acknowledging the importance tax incentives play in supporting innovation, establishing new industries and growing knowledge economies. Several countries incentivise business investment in R&D, to foster innovation which has been a common approach to providing direct government funding for R&D activity. However, a significant number of jurisdictions offer R&D tax incentives also.

In this article we will highlight the incentives offered by key countries for R&D spends from an indirect tax and grants perspective:

India

- The Government provides Indirect Tax benefits such as customs duty exemptions on the import of specified goods for companies having an in-house R&D unit and concessional Goods and Services Tax (GST) and exemption is available for research institutions
- The concessional rate of customs duty is available on the import of specified instruments, equipment or components by research institutions in the pharmaceutical and biotechnology sector, subject to conditions. Further, a customs duty exemption is available on the import of equipment, instruments, raw materials, components, pilot plant and computer software when imported into India for a project by a company having an in-house research and development unit, subject to conditions
- A concessional rate of GST is applicable to research institutions for procurement of specified goods subject to certain conditions. Further, the supply of R&D services related to the pharmaceutical sector by an Indian service provider to a foreign service recipient can be considered an export of services (subject to conditions in the relevant notification) and hence eligible for benefits available to exports

China

- China offers incentives to taxpayers eligible for the Technologically Advanced Service Company (TASC) and the High and New Technology Enterprise (HNTE) status. TASC and HNTE refer to those companies with advanced technologies and qualified personnel to produce products or provide services
- Companies qualifying as TASCs nationwide from the beginning of 2017 are eligible for a zero Value-Added Tax (VAT) rate treatment on qualified offshore outsourcing service income. Providing qualified technologically advanced outsourcing services in ITO, BPO or KPO fields to overseas entities shall be treated as one of the major recognising criteria for qualifying as TASC for a claim of zero VAT treatment

Singapore

- In Singapore, Government cash grants are available to cover a portion of qualifying costs for approved R&D projects undertaken in the country. Some of the common grants applicable to R&D, such as the Research Incentive Scheme for Companies (RISC), Innovation Development Scheme (IDS), Enterprise Development Grant and enhanced Financial Services Technology Innovation (FSTI 2.0) grant, are Government cash grants that co-fund the qualifying R&D expenses incurred by companies to set up/expand innovation labs and develop talent in FinTech/technology sectors
- The support level varies from scheme to scheme. Generally, eligible expenditures include manpower-related costs, equipment and materials, professional services and intellectual property rights. The maximum support under the newly announced enhanced FSTI 2.0 scheme has been raised to 70% (typically at 30% to 50%) of total qualifying costs
- It is imperative to note that cash grants are applicable for future investments and typically, support is granted only on (parts of) projects that have not commenced. Being a discretionary incentive, grants are provided selectively to R&D labs/centres and large projects in certain strategic technology areas identified by the Singapore Government

Switzerland

- Switzerland has several incentives to promote R&D activities and investments for companies which include financial contributions (grants). Science-based innovation is directly promoted in Switzerland in the interests of business and society. Various departments and institutions of the public sector have budgets at their disposal. With innovation projects, networking, training and coaching, they specifically promote cooperation between science and the economy. However, some funding is only available on a subsidiary basis, so projects are only supported if they could not be achieved without funding or if potential remained untapped
- Further, many funding initiatives are specifically designed for cooperation between companies and research institutions such as universities or consortia
- It is pertinent to note that to receive the financial contribution, the beneficiary must fulfil various operational conditions (e.g. innovative project, export focus, maintenance and creation of jobs) and project-related conditions (e.g. innovation of the company, national or international target markets, or economic importance for the respective canton and Switzerland).

CONCLUDING THOUGHTS

The R&D tax incentive schemes are widely adopted in advanced economies. The effectiveness of R&D tax incentives has been the subject of debate, globally. Some early studies challenged the effectiveness of R&D incentives; however, majority of the studies find that R&D incentives increase private investment and innovation, influence the location where companies conduct R&D and also lead to several societal benefits.

As more countries have recognised the importance of research and innovation for economic growth, they have added R&D incentives and increased their support of R&D through the use of grants and other forms of funding. Businesses would be well advised to evaluate the government grants that would be available to them depending upon the nature of their R&D activities to effectively reduce their R&D costs.

IMPACT OF TRANSFER PRICING ON RESEARCH AND DEVELOPMENT INITIATIVES

INTRODUCTION

Multinational Enterprises (MNEs), have their business operations across the globe and R&D is one of the important value drivers for these MNEs. To be ahead of competitors through innovation of new products/services or enhancing existing ones, MNEs are increasingly spending more on R&D activities. However, the whole work in the R&D value chain need not be carried out from one location and by one company. MNEs generally enter into contracts between affiliates governing the terms and conditions under which intangible assets will be developed, exchanged and exploited, which triggers Transfer Pricing (TP) requirements to be complied with. To minimise costs, typically MNEs located in developed countries shift work wholly or partially to other group entities in developing countries.

Such R&D structures lead to several TP aspects requiring attention, which is key for MNEs to address to ensure minimal litigation across the globe. A few aspects relating to the interplay between R&D arrangements and TP have been elaborated below.

IMPORTANCE OF R&D IN VALUE CHAIN ANALYSIS AND TAX INCENTIVES SCHEMES

R&D plays a vital role in the entire value chain analysis especially when MNEs are innovating new products/services. Some of the important factors which MNEs take into consideration are the R&D tax incentives provided by various jurisdictions, whether the intangible created due to R&D must remain in those jurisdictions to claim incentives and most importantly whether all the R&D activities need to take place in one jurisdiction. Additionally, MNEs would also need to consider the availability of necessary talent and the cost of labor, material and other facilities as they play an important role in evaluating the cost of performing R&D services in one country vis-à-vis another country.

In relation to the above, MNEs need to strategise their R&D activities, intellectual property (IP) ownership, entitlement towards tax incentives and accommodate their business dynamics, whilst fitting into the MNEs' transfer pricing arrangement. Basis the TP rules, all the intragroup arrangements between the MNE affiliates in relation to the IP (i.e. development or licensing) need to be at arm’s length.

COMMONLY SET UP R&D ARRANGEMENTS

The most common forms of R&D arrangements are discussed below:

- **Contract R&D and technology license option:**
  Generally, contract R&D service providers are compensated for the R&D activities on a cost-plus basis. In such a scenario, the IP owner licenses the IP to the local entities performing R&D and charges royalty. These structures have been quite common where the IP is centralised. However, with the changes brought by Organisation for Economic Co-operation and Development (OECD) and other countries, there are concerns about whether licensing option is sustainable over a while, particularly if there are substantial functions and Development, Enhancement, Maintenance, Protection and Exploitation (DEMPE) substance in the local entity. As tax authorities over time are keen to understand an MNE group’s overall value chain and R&D arrangements when making TP assessments, there is a potential risk that the contract R&D service provider may be recharacterised, under a view that the local R&D entity is the economic owner of the locally developed IP, upon examining the local DEMPE functions.
- **Cost sharing arrangement (CSA):**
  Under a CSA, a local entity would co-own the relevant locally developed IP along with its overseas affiliates, while the base IP will likely be with the MNE group IP owner. The CSA participants will share the IP development contributions based on the respective expected benefits, the local entity will be entitled to the sole IP usage and benefit for the local business operations, while the IP usage and benefit for the overseas operations will belong to the overseas affiliates.

KEY ISSUES FACED BY MNES WHILE STRUCTURING R&D ARRANGEMENTS

Post implementation of OECD's Base Erosion and Profit Shifting (BEPS) action plans, R&D activities and relevant IP ownership structures carried out by MNEs have come under closer TP scrutiny by tax authorities around the globe. Tax authorities are continuously focusing on functions, specifically, DEMPE, carried out by the entities involved globally in the value chain to determine if the entities involved in carrying out the R&D functions are legal or economic owners of the intangibles.

This has resulted in a lot of uncertainty and litigation issues in many countries. In relation to the same, some of the countries have issued notification/circulars to clarify under what circumstance would the MNE become the economic or legal owner of the IP while performing R&D activities in the respective countries.

An important aspect to mitigate litigation is maintaining robust documentation, clearly delineating DEMPE functions carried on by the participating entities. The functional analysis should capture the significant economic activities/functions carried out by the entities (as elaborated in the above arrangements), which would assist in the appropriate characterisation of entities in the value chain and enable the proper selection of the most appropriate method/tested party.

The use of TP methods like the Transactional Net Margin Method (TNMM) which estimates the value of intangibles based on cost and adds a return to those costs, should generally be discouraged. In such cases, advanced methods such as Profit Split Method may be an appropriate method to benchmark the R&D activities, which shall reflect the true contribution of each entity.

KEY INITIATIVES ARE UNDERTAKEN BY OECD AND OTHER COUNTRIES IN RELATION TO R&D ACTIVITIES

OECD in its Transfer Pricing Guidelines (TPG) 2022 has identified key functions such as design and control of research, control over strategic decisions regarding intangible development, management and control of budgets, etc. which can contribute to the value of the intangibles. If MNEs are performing any of the above functions then they may be categorised as economic owners of the intangibles and would be required to be compensated accordingly.

Apart from OECD, a few other countries such as India, China and Israel have also provided clarification on when MNEs can be categorised as economic owners which have been discussed as under:

India

In 2013[4] India issued a circular regarding clarifications on the functional profile of development centres engaged in contract R&D services with insignificant risk. Indian tax authorities have classified R&D centres set up by foreign companies into three broad categories based on functions, assets and risks assumed such as centres that are entrepreneurial in nature; centres that are based on cost-sharing arrangements; and centres that undertake contract R&D.

In relation to the above, the Indian tax authorities generally treat service providers with insignificant risk wherein the foreign principal performs most of the economically significant functions (such as conceptualisation and design of the product and providing the strategic direction and framework), provides funds/capital, supervision by a foreign principal, does not assume or has no economically significant realised risk, and has no ownership right (legal or economic) on the outcome of the research, as contract R&D service providers. Additionally, to remove ambiguity and being one of the critical service areas, the Safe Harbour rules[5] were prescribed wherein the contract R&D service providers assuming insignificant risks have been prescribed an operating margin of 24%.

China

The views of Chinese Authorities are in line with the OECD guidelines that the returns should be allocated to the entity performing the DEMPE functions and if the local entity has developed intangibles then the local entity should be entitled to a return on those intangibles.

Israel

Israel has over time become an R&D hub for many MNEs. Due to this, recently, the Israeli tax authorities also announced their intention to tighten their view on tax audits in relation to TP policies regarding R&D centres in Israel[6].

Israeli tax authorities have also provided some examples of characteristics that support the conclusion that the R&D centre might have economic ownership of an intangible asset such as the origin of the intangible asset being in Israel, MNE group headquartered in Israel, undertakes significant risks relating to the R&D activities, etc.

Additionally, they have also provided guidance where there is a lack of economic ownership such as the R&D centre was established at the initiative of a foreign MNE, does not take part in major business risks and does not have the financial capabilities to support its activities, does not have accumulated losses for tax purposes with respect to the development of intangible assets, does not provide a valuable and unique contribution, within the MNE, etc.

CONCLUDING THOUGHTS

Post BEPS, the emphasis on substance taking precedence over form has gained more importance. Also, increased scrutiny around IP ownership and R&D activities necessitates MNEs to understand the significance of preparing a global policy/document that enunciates the allocation of income across various jurisdictions, specifically where and how the value is generated, significant risks borne and controlled by different entities, and the activities undertaken across entities. Leaving blanket application of traditional cost-plus models, MNEs need to consider the DEMPE functions/economic ownership of intangibles and determine the most appropriate method (e.g. profit split method). commensurate the contribution of the R&D centre.

With the increasing ongoing controversies around R&D/intangibles and the additional disclosure requirements in the Master File[7] such as overall strategy for development, ownership and exploitation of intangibles including the location of R&D facilities and location of R&D management, MNEs must have a globally consistent narrative. This should be supported with contemporaneous documentation and align with the MNE's specific facts and models — i.e., the arrangement in intercompany agreements/legal documents. Developing and applying a global policy ensures minimising efforts in responding to tax authority requests and maintaining consistency in communication during tax audits across the globe.

[4] CIRCULAR NO.06/2013 [F NO. 500/139/2012], DATED 29-6-2013
[5] https://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx
[6] https://www.bdo.co.il/en-gb/insights/tax/transfer-pricing/the-israeli-tax-authority-tightening-its-standpoint-regarding-development-centers#_ftn1
[7] OECD - Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations - Annex I To Chapter V: Transfer Pricing Documentation – Master File

THE WORLD TAX FILE: FOCUSSING ON: SWITZERLAND

SYNOPSIS

Switzerland is amongst the developed economies in Europe offering political, economic and financial stability. With the Swiss economy being seen as a global leader in wealth management, its financial sector contributes to about 9.2% of GDP. Even though Swistzerland is not a part of the European Union, it has access to the EU market. This article highlights the federal tax and regulatory environment prevailing in Switzerland - a democratic country with a liberal and free market economy.

CHOICE OF LEGAL ENTITY

A foreign business can establish its presence in Switzerland through various forms of entities; the preferred forms of business for foreign investors are listed below:

- **Limited company (AG/SA)**
  - Limited company, an independent legal entity, is the most common form of business in Switzerland
  - It shall be formed with at least one resident shareholder and the law mandates the appointment of at least one resident director
  - The minimum share capital required is CHF 100,000 of which 20% is paid upfront
- **Limited liability company (GmbH/Sàrl)**
  - This is similar to a limited company with its shareholders listed in the commercial register
  - The conditions of one resident shareholder and director prevail
  - The GmbH/Sàrl has a lower minimum capital threshold of CHF 20,000 than that of SA/AG
  - There are no restrictions on the number of shareholders, but each one must contribute at least the equivalent of CHF 100
- **Branch**
  - Foreign companies can also carry out business via a branch office
  - +Although a branch is an extension of the parent company, it can sign contracts on its behalf, perform transactions and appear in court
- **Partnerships**
  - A partnership is viewed as tax transparent and hence the business doesn't pay corporation tax, but each partner pays individual tax based on their profit share
  - Businesses are required to draw up a partnership agreement that details the obligations and entitlements of each partner
  - Another form of business is a limited partnership, where at least one partner has unlimited liability similar to a general partnership

TAX AND REGULATORY FRAMEWORK

In Switzerland, three political levels share power: the Confederation, cantons and communes. Consequently, taxation in Switzerland takes place at these three levels.

Income Taxes

- **Tax structure:**
  - For federal tax purposes, an entity is regarded as a tax resident of Switzerland who has its registered office or place of effective management in Switzerland

- Tax is levied on the worldwide income of a resident, except for income from a permanent establishment or immovable property located abroad. Non-residents are subject to tax on only certain types of Switzerland-sourced income including income and capital gains derived from Swiss businesses, permanent establishments or immovable property
- Federal corporation tax is levied at a flat rate of 8.5%. Further, the levy of taxes depends upon the cantonment where the entity is located
- Dividends and capital gains are exempt from corporate income tax to the extent they qualify for the participation exemption
- Losses incurred in a year may be carried forward for 7 tax years

- **Profit repatriation:**
  - A 35% withholding tax is imposed mainly on dividends distributed by resident companies, as well as on interest from bonds issued by Swiss debtors and on bank deposits. The withholding rates on payments to non-residents are usually reduced under the extensive tax treaty network in Switzerland
  - Subject to qualifying for a participation exemption, the withholding on dividends could be reduced to 0%
  - The tax withheld is refunded to corporate recipients on request. In respect of dividends paid to resident companies, the payer may apply for an exemption from the obligation to withhold the tax. If the exemption is granted, the payer is allowed to distribute the gross dividend but must complete a reporting procedure
  - There are no federal withholding taxes on royalties or other forms of income
- **Group treatment:**
  - There are no group taxation provisions in Switzerland

Indirect Taxes

- Value-added tax is only levied at the federal level. VAT is a general tax on the consumption of goods and services. It is levied at all stages of production and distribution
- The standard rate is 7.7% and a reduced rate of 3.7% applies to the letting of hotel rooms, holiday homes, guest rooms, camping grounds, etc.
- On goods of basic needs like food, non-alcoholic beverages, books, magazines and pharmaceutical products a reduced rate of 2.5% applies
- VAT paid on goods and services is recoverable by deducting it from the output tax
- Imports in Switzerland are generally subject to customs duty and import VAT
- It is pertinent to note that, as of today there are no special rules for online marketplaces and platforms in Switzerland

Transfer Pricing (TP)

- Swiss law requires that all transactions between related companies should be concluded on an arm's length basis
- Although there are no specific transfer pricing requirements, if requested by the authorities, taxpayers must demonstrate that the transfer prices applied to rely on sound economic and commercial reasoning, comply with the arm's length requirement
- CbCR reporting is required to be carried out by MNEs with annual consolidated group revenue equal to or higher than CHF 900mn

Taxes on exit and ease of exiting

- There is no Capital Gains tax on the sale of shares in Switzerland and thus any capital gains arising on the transfer of shares of a company are not taxable
- Upon closure of business, a company has to make an application to the regulatory authority for removing its name from the register. Companies are required to discharge all their tax obligations and fulfil the other criteria before the deregistration process is completed

Tax Compliance

- **Corporate tax returns**: The tax year in Switzerland is a 12-month period and usually coincides with the calendar year. However, a company may opt for any period not exceeding 12 months to be its financial year which shall be the tax year. For a calendar year, the corporate tax return is to be filed by 31 March of the year following the tax period. The statute of limitations for assessments is 15 years.
- **VAT Returns**: VAT returns are to be filed on a quarterly or monthly basis, depending upon the election by the entity. The returns are to be within 60 after the end of the VAT settlement period. The VAT liability is payable along with the filing of the return.
- **CbCR:** CbCR Reporting, if applicable, should be filed within 12 months of the group's financial year-end.
- **Master file and Local file:** There are no specific requirements outlining the preparation and submission of a master file and local file in Switzerland.

SWITZERLAND IS AN ATTRACTIVE JURISDICTION FOR DOING BUSINESS

- To establish business outside the home jurisdiction, it is of paramount importance to have a stabilised economy that allows the investors to experience growth and reach the break-even point at ease. Switzerland is a country with a transparent legal system and political stability hence, attracting foreign investments
- Although Switzerland is not a member of the EU, it has bilateral trade agreements with the EU. Contributing to 78% of Swiss imports and around 45% of exports being to EU countries, Switzerland has proven to be a major EU trading partner

- With technological advancement, highly skilled manpower and a low unemployment rate, Switzerland is an attractive jurisdiction for investors to set up their base here
- The tax rate here is competitive and by far, it has the lowest VAT rate in all of Europe. The patent box regime and the R&D super deduction of upto 150% serve as an additional advantage for other jurisdictions when it comes to setting up an IP holding company
- Another reason to establish a business in Switzerland is its wide treaty network covering about 60 countries, most of them being western industrial countries
- Not only it is considered as one of the world's leading financial centres, whether it be for asset management, the insurance business or as a trading platform for commodities but is also home to not less than 15 Fortune 500 companies in numerous sectors such as financial services, insurance, commodities, food & beverages or pharmaceuticals

CONCLUDING THOUGHTS

Given its political, social and economic stability, innovative legal framework and competitive tax system, Switzerland has time and again proved to be one of the most favoured jurisdictions for doing business, specially for businesses looking to expand their base into Europe.

The article has been drawn up basis the generally prevailing situation. Readers are advised to ascertain the implications, based on the facts and circumstances applicable to them.

TAX NEWS FROM AROUND THE GLOBE

MAURITIUS

Budget 2022-2023 - Tax measures

The Mauritian budget 2022-2023 was presented on 7 June 2022. The key tax and regulatory measures announced include:

- 8-year tax holiday shall be allowed to newly set up freeport operators or developers with an investment of at least MUR 50mn provided that the companies:
  - Start operations on or after 01 July 2022 and
  - Conform to the substance requirements which are in line with the OECD standards
- The annual turnover threshold to qualify as SME has been amended and accordingly, all companies with a turnover of up to MUR 100mn will be categorised as SMEs instead of MUR 50mn currently.
- TDS rates for professional services and rent have been increased to 5% and 7.5% respectively. The scope of the TDS deductible at 3% has also been extended to Consultancy fees, Security Services and cleaning services, etc.
- Measures have been announced towards facilitating the ease of doing business, such as streamlining procedures to obtain licenses and permits, the expedited opening of bank accounts for individuals and businesses, etc.

In addition, announcements regarding integrating the dual regimes of domestic and global business under the Mauritian law and the introduction of a 15% domestic minimum top-up tax applicable to Mauritius resident companies in line with the OECD's Pillar Two approach were also made.

Source:
https://www.mra.mu/download/BudgetHighlights2022.pdf

https://www.bdo.mu/en-gb/insights/featured-insights/budget-brief-2022-23

UK

Major transfer pricing documentation changes proposed:

- Currently, the UK law does not provide for a legal requirement that transfer pricing documentation should be kept. The draft legislation published in July 2022, sets out new transfer pricing documentation requirements for the largest UK businesses to retain and produce upon request, a master file, local file and summary audit trail
- The documentation files will have to be submitted to the UK tax authorities (HMRC) within 30 days of a request
- Apart from these, there are two further proposals in the consultation that are likely to have a significant impact on relevant businesses:

- The requirement that taxpayers keep an “evidence log” that would provide specific data and facts to help better inform a transfer pricing risk assessment
- International Dealings Schedule that would accompany the annual tax return

  Source:
  https://www.gov.uk/government/publications/new-transfer-pricing-documentation-requirements-for-uk-businesses

Draft legislation to implement Pillar Two published

The UK government in July 2022 published a draft legislation to implement the OECD recommended Pillar Two approach into their tax law. The proposal shall entail the levy of a top-up tax on UK parent members when a subsidiary is located in a non-UK jurisdiction and the group’s profits arising in that jurisdiction are taxed below the minimum rate of 15%. The draft legislation provides details on the implementation of Pillar Two and also the coexistence of Pillar Two with the US GILTI rules. Comments on the draft legislation are invited by 14 September 2022.

Source:
https://www.gov.uk/government/publications/introduction-of-the-new-multinational-top-up-tax

R&D tax changes planned for 2023

In July 2022, HM Revenue and Customs, UK published a draft legislation for R&D tax relief changes announced in the 2021 Autumn Budget. These changes will affect companies claiming under either of the two schemes (SME or RDEC) and will take effect for accounting periods beginning on or after 1 April 2023. Changes can be observed in both the R&D Expenditure Credit for large companies as well as the SME R&D regimes. Key areas include: refocusing relief to UK activities, an extension of the scope of R&D to include data and cloud computing expenditure and the extension of the R&D definition to include pure mathematics, new administrative requirements for tackling abuse and improving compliance.

Source: https://www.bdo.co.uk/en-gb/insights/tax/innovation-and-research-and-development-tax-incent/r-d-relief-how-it-will-work-from-april-2023?feed=1

AUSTRALIA

The Australian Taxation Office (ATO) released a guidance on 20 July 2022 (Taxpayer Alert TA 2022/2) that cautions taxpayers about using treaty shopping arrangements to obtain reduced withholding tax rates on dividends and royalties paid out of Australia and indicates that such arrangements will be subject to heightened scrutiny. The ATO tax alert contains two examples and the ATO notes the need for contemporaneous documentation and other objective evidence that supports a taxpayer’s arrangements.

Failure to produce such evidence could lead to an assumption that accessing reduced withholding tax rates under a treaty that the taxpayer was not otherwise entitled to was one of the principals or main reasons for structuring a transaction. Finally, ATO mentions tools at its disposal to counteract treaty shopping arrangements, i.e. the domestic general anti-avoidance rule and diverted profits tax, as well as the principal purpose and main purposes tests under Australia’s tax treaties.

Source:

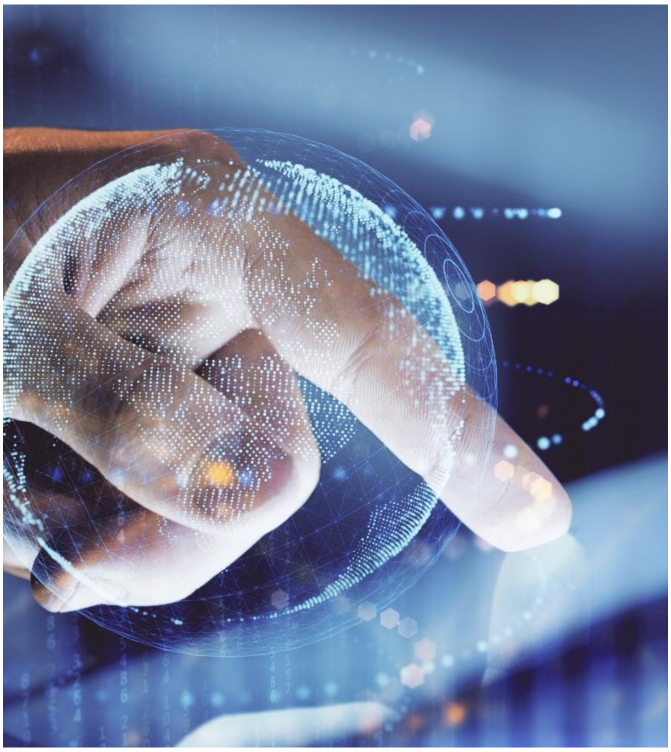
https://www.bdo.global/en-gb/microsites/tax-newsletters/corporate-tax-news/issue-63-august-2022/australia-ato-issues-guidance-on-treaty-shopping-arrangements

HONG KONG

To address concerns of the European Union over double non-taxation, the Hong Kong Government has introduced a Consultation Paper to introduce measures refining Hong Kong’s foreign source income exemption regime for passive income. Accordingly, the foreign passive income in the form of dividends, interest, IP income and capital gains. etc, which is not currently taxable in Hong Kong is now likely to be subjected to tax in Hong Kong, where such income is received in Hong Kong. The proposal is likely to be implemented with effect from 1 January 2023.

Source:

https://www.legco.gov.hk/yr2022/english/panels/fa/papers/fa20220704cb1-411-2-e.pdf



COMPLIANCE CALENDAR

August 2022

SUN	MON	TUE	WED	THU	FRI	SAT
	1	2	3	4	5	6
7	**8**	9	**10**	11	12	13
14	**15**	**16**	17	18	19	20
21	22	23	24	**25**	26	27
28	**29**	**30**	**31**			

September 2022

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5	**6**	7	8	9	**10**
11	**12**	13	14	**15**	**16**	17
18	19	20	21	22	23	24
25	**26**	27	**28**	29	**30**	

October 2022

SUN	MON	TUE	WED	THU	FRI	SAT
						1
2	3	4	5	**6**	7	8
9	**10**	11	12	13	14	**15**
16	**17**	18	19	20	21	22
23	24	**25**	26	27	**28**	29
30	**31**					

ABOUT BDO GLOBAL

BDO is a leading professional services organisation and are global leaders of the mid-tier, with a presence in 160+ countries and over 95,000 people working out of more than 1,700 offices. We endeavor to deliver an exceptional client experience through a tailored solutions approach, while partnering with our employees and clients globally.

- We offer sensible, actionable advice grounded in local knowledge backed by regional and global experience
- We set high standards and our global systems give our people responsibility for delivering tailored service that is right for clients
- We support our clients every step of the way as they expand abroad

TO BE THE LEADER FOR EXCEPTIONAL CLIENT SERVICE

ANTICIPATING CLIENT NEEDS	CLEAR COMMUNICATION	MEETING OUR COMMITMENTS	ENCOURAGING OUR PEOPLE	DELIVERING VALUE
*anticipating **client needs** and being forthright in our views to ensure the best outcome for them*	*being clear, open & swift in our **communication***	*agreeing to and meeting our **commitments**: we deliver what we promise, everyday, for every client*	*providing the right environment for our **people** and the right people for our clients*	*creating **value** through giving clients up to date ideas and valuable insight and advice that they can trust*

ABOUT BDO IN INDIA

BDO in India offers Assurance, Tax, Advisory, Business Services & Outsourcing and Digital Services for both domestic and international clients across industries. The team at BDO in India consists of over 4000 professionals led by more than 200 partners and directors operating out of 13 offices, across 10 key cities.

200+ PARTNERS DIRECTORS

4000+ STAFF

11 KEY CITIES

Ahmedabad | Bengaluru | Chandigarh | Chennai | Goa | Hyderabad | Kochi | Kolkata | Mumbai | New Delhi | Pune

ASSURANCE

- Accounting Advisory Services
- Financial Statement Audit and Attestation Services

BUSINESS SERVICES & OUTSOURCING

- Global Outsourcing
- Shared services & Outsourcing

ADVISORY

- Business Restructuring
- Corporate Finance and Investment Banking
- Deal Value Creation
- Financial Due Diligence
- Forensics
- Government Advisory
- M&A Tax and Regulatory
- Risk Analytics
- Risk and Advisory Services
- Strategy & Commercial Due Diligence
- Sustainability & ESG
- Valuations

TAX

- Customs & International Trade
- Direct Tax Services
- Global Employer Services
- Goods & Services Tax (GST)
- Indirect Tax Assessment & Litigation Assistance
- International Tax Services (ITS)
- Representation and Litigation Support
- Tax Technology
- Transfer pricing Services

DIGITAL SERVICES

- Digital Services
- Technology Products and Solutions

Contact Us

For any content related queries, you may write in to taxadvisory@bdo.in or get in touch with,

GUNJAN PRABHAKARAN
Partner & Leader
Indirect Tax
gunjanprabhakaran@bdo.in

DEEPA SURESH
Partner
Tax & Regulatory Services
deepasuresh@bdo.in

KUNAL SHAH
Associate Partner
Tax & Regulatory Services
kunalshah@bdo.in

For any other queries or feedback, kindly write to us at marketing@bdo.in

BDO in India

Ahmedabad
The First, Block C – 907
Behind ITC Narmada, Keshavbaug
Vastrapur, Ahmedabad 380015, INDIA

Bengaluru
SV Tower, No. 27, Floor 4
80 Feet Road, 6th Block, Koramangala
Bengaluru 560095, INDIA

Chandigarh
Plot no 55, 5th Floor,
Industrial & Business Park,
Phase 1, Chandigarh 160002, INDIA

Chennai
No. 443 & 445, Floor 5, Main Building
Guna Complex, Mount Road, Teynampet
Chennai 600018, INDIA

Delhi NCR - Office 1
The Palm Springs Plaza
Office No. 1501-10, Sector-54 ,
Golf Course Road, Gurugram 122001, INDIA

Delhi NCR - Office 2
Windsor IT Park, Plot No: A-1
Floor 2, Tower-B, Sector-125
Noida 201301, INDIA

Goa
701, Kamat Towers
9, EDC Complex, Patto
Panaji, Goa 403001, INDIA

Hyderabad
1101/B, Manjeera Trinity Corporate
JNTU-Hitech City Road, Kukatpally
Hyderabad 500072, INDIA

Kochi
XL/215 A, Krishna Kripa
Layam Road, Ernakulam
Kochi 682011, INDIA

Kolkata
Floor 4, Duckback House
41, Shakespeare Sarani
Kolkata 700017, INDIA

Mumbai - Office 1
The Ruby, Level 9, North West Wing
Senapati Bapat Marg, Dadar (W)
Mumbai 400028, INDIA

Mumbai - Office 2
601, Floor 6, Raheja Titanium
Western Express Highway, Geetanjali
Railway Colony, Ram Nagar, Goregaon (E)
Mumbai 400063, INDIA

Pune - Office 1
Floor 6, Building # 1
Cerebrum IT Park, Kalyani Nagar
Pune 411014, INDIA

Pune - Office 2
Floor 2 & 4, Mantri Sterling, Deep
Bunglow Chowk, Model Colony,
Shivaji Nagar, Pune 411016, INDIA