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Editorial

Sachin Vasudeva
SCV & Co. LLP, India
E: sachin.vasudeva@scvindia.com

The OECD/G-20 two-pillar tax deal will have to be passed into domestic law of states parties by 2023

The global tax deal endorsed at the G-20 summit in Rome is an indication of the cooperation between countries to address the tax challenges emanating from digitalisation of a global economy. This was a herculean task and credit to the OECD/G-20 for endorsing the radical changes to global taxation. The countries have adopted a two-pillar solution.

Under pillar one taxing rights over 25% of the residual profit of the largest and most profitable multinational enterprises (MNEs) would be re-allocated to the jurisdictions where the customers and users of those MNEs are located. A lower threshold is set for re-allocating profit to smaller, developing economies. This would be applicable to MNEs with global turnover above €20 billion and profitability (i.e. profit before tax/revenue) above 10%, calculated using an averaging mechanism with the turnover threshold to be reduced to €10 billion over a period of time. For this purpose a new nexus rule would be created under pillar one.

Pillar two consists of two interlocking domestic rules (together the Global anti-Base Erosion (GloBE) Rules): (i) an Income Inclusion Rule (IIR), which imposes on a parent entity top-up tax of the low-taxed income of a constituent entity; and (ii) an Undertaxed Payment Rule (UTPR), which denies deductions or requires an equivalent adjustment to the extent the low-tax income of a constituent entity is not subject to tax under an IIR. Also, a treaty-based rule (the Subject to Tax Rule (STTR)) allows source jurisdictions to impose limited source taxation on certain related party payments subject to tax below a minimum rate. The STTR will be creditable as a covered tax under the GloBE Rules. The rate of tax that has been agreed for IIR and UTPR is 15%. Companies with a global turnover above €750 million would be within the scope of pillar two.

Changes in the domestic law of G-20 countries would now have to be made to incorporate these principles as 2023 has been agreed as a deadline for implementation. This would also signal an end to the unilateral measures adopted by many countries, including India, to tax digital transactions.

As economies recover from the pandemic a surge in prices and wages is going to be the next challenge being faced by countries and they have their task cut out for 2022.

Signing off with a quote from Sri Sri Paramahansa Yogananda:

> *Let us forget the sorrows of the past and make up our minds not to dwell on them in the New Year. With determination and unflinching will, let us renew our lives, our good habits and our successes. If the last year has been hopelessly bad, the New Year must be hopefully good.*

Sachin Vasudeva

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The rise in the investment of cryptocurrency

CONTRIBUTED BY
Adrian Rosa
Leebridge Group, Australia
E: adrian.rosa@leebridgegroup.com.au

The rise in adoption of cryptocurrency as an investment has certainly not gone unnoticed by the Australian Taxation Office (ATO) in recent times. The ATO estimates that over 600,000 taxpayers have invested in crypto-assets in recent years.

Due to the perceived higher level of anonymity in the digital world, some taxpayers falsely believe that the ATO will never know if they hold cryptocurrency. The ATO, however, are now closely tracking digital transactions where they interact with the real world through data from banks, financial institutions and cryptocurrency online exchanges, to follow the money back to the taxpayer.

The ATO Commissioner has gazetted the Notice of Data Matching Program – Cryptocurrency 2020–21 to 2022–23 financial years, stating the ATO will use its powers to acquire account identification and transaction data from cryptocurrency designated service providers for the financial years 2020–21 to 2022–23.

The ATO is also extending its reach to foreign countries, to monitor digital currency markets and increase its collaboration in the fight against global tax evasion, cybercrime and money laundering. The ATO joined the operational alliance known as the J5 in 2018; here, tax enforcement authorities from Canada, the Netherlands, the United Kingdom and the United States have joined together to share intelligence and data in real time on digital currency.

This article explains what cryptocurrency is and the tax implications that can be often difficult to comprehend about this relatively new class of asset, particularly in light of increased ATO scrutiny.

What is cryptocurrency?

The ATO does not regard Bitcoin, Ethereum (and other cryptocurrencies) as a currency for the purpose of applying Australian tax law.

The unit of currency of Australia is the Australian dollar and this is the only recognised form of payment besides the currency of other countries. As no cryptocurrency has been recognised and adopted as a monetary unit by the laws of any other sovereign state, it is not recognised as foreign currency either.

If cryptocurrency is not a currency (nor a foreign currency) for taxation purposes, then what is it?

The ATO's view is that cryptocurrency is "property" and therefore a Capital Gains Tax (CGT) asset for taxation purposes. Gains from cryptocurrency are similar to gains from other investments, such as shares. Generally, as an investor, if you buy, sell or exchange one cryptocurrency for another, it will be subject to CGT rules and resultant gains or losses must be reported for taxation purposes.

However, CGT is not where all disposals of cryptocurrency fall under Australian tax law. There can be instances where cryptocurrency can be deemed to be on revenue account or, in limited circumstances, a personal use asset.

Taxation implications of cryptocurrency

Assessing the taxation implications of cryptocurrency really depends on the taxpayer's intention when acquiring the asset and certain factors set out in case law. Taxpayers should carefully consider how and why the cryptocurrency was acquired, the length it was held, any changes in use or intention and motivations for sale.

The taxation implications can best be summarised in the following table:

Taxpayer intention	Cryptocurrency held as	Tax treatment
Investment	CGT asset	Taxed under CGT provisions with 50% discount where asset held for ≥12months
Profit-making scheme	Revenue asset	Taxed as ordinary income
In the course of carrying on a business	Revenue asset	Taxed as ordinary income
Personal use	Personal use asset	No tax where investment value under A$10,000

CGT asset

Generally, the tax consequences of a disposal of cryptocurrency is dealt with under the CGT provisions. If the capital proceeds on sale of the cryptocurrency are more than the cryptocurrency's cost base, a taxable capital gain will result. Conversely a capital loss will result if the capital proceeds are less than the cost base.

Where the taxpayer has held the cryptocurrency for less than 12 months the whole capital gain will be included in assessable income. Where the taxpayer has held the cryptocurrency for 12 months or more, any capital gain may be reduced by a 50% discount and only half the gain is included in the taxpayer's assessable income. (Note: the 50% discount will apply for taxpayers who are individuals or trust entities. Where the taxpayer is a complying superannuation fund the general CGT discount is 33% and for corporate taxpayers no CGT discount is available.)

Revenue asset

Where the taxpayer is considered to have acquired the cryptocurrency either as part of a profit-making undertaking or in the course of carrying on a business, the disposal of cryptocurrency will be assessed as ordinary income rather than a capital gain. When assessed as ordinary income there is no 50% general discount on the gain irrespective of how long the cryptocurrency has been held prior to sale.

Whether such gains give rise to income as a CGT or revenue asset will depend on the particular facts and circumstances of the taxpayer. It can be a complex task to determine whether the asset is on CGT account versus revenue account. In the event where further clarity is required an ATO private binding ruling (PBR) can provide certainty on the tax treatment; alternatively, a reasonably arguable position (RAP) can be sought from a legal advisor.

Personal use asset

A personal use asset is defined as a CGT asset, other than a collectable, that is used or kept mainly for the personal use or enjoyment of the taxpayer. A capital gain from a personal use asset is CGT exempt if it is acquired for A$10,000 or less. Any capital losses from the disposal of personal use assets are disregarded.

An example of this may be where a taxpayer acquires cryptocurrency and uses it to purchase a personal service or asset such as an item for their home (e.g. furniture for personal use at home).

We note, as there is very little guidance from the ATO on their views about the definition of personal use assets as it applies to cryptocurrency, only in very limited circumstances would cryptocurrency be considered a personal use asset.

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Given the increased ATO scrutiny of cryptocurrency, taxpayers need to keep records of transactions associated with acquiring, holding and disposing of cryptocurrency. They will need to keep records for five years after disposal of cryptocurrency

Other tax considerations

Exchange of cryptocurrency

There is a common misconception that tax is only calculated when the taxpayer cashes in cryptocurrency, turning it back to Australian dollars.

Any gain on the exchange of one cryptocurrency for another (for example the exchange of Bitcoin for Ethereum) will be liable to tax as either a capital gain or ordinary income depending on the taxpayer's circumstances (other than the limited circumstances where cryptocurrency is considered to be held as a personal use asset).

Accordingly, taxpayers need to be aware of being able to fund unexpected tax liabilities from the exchange of one cryptocurrency for another, particularly where a taxpayer may realise a significant taxable gain on the exchange of cryptocurrency without cashing into Australian dollars.

(Note: an exchange of cryptocurrency is different to transferring cryptocurrency from one wallet to another wallet. A transfer is not considered the disposal of cryptocurrency for tax purposes as the taxpayer maintains ownership of the coin/token.)

Airdrops

Another tax consideration for cryptocurrency investors arises for airdrops.

Airdrops are additional cryptocurrency coins an existing holder receives on a chain, typically for nil consideration. The concept can be explained as similar to bonus shares, where additional shares are allocated to a shareholder for an existing holding of shares in a company.

The ATO's view is that the monetary value of cryptocurrency coins received via an airdrop at the time it is derived is ordinary income of the taxpayer. A disposal of the cryptocurrency coin(s) received via an airdrop may also trigger a tax liability on disposal.

Staking rewards

As cryptocurrency is underpinned by block chain technology and has a decentralised structure, a "consensus mechanism" is used to validate transactions and create new blocks. Terms such as *forgers* and *miners* are used to describe cryptocurrency coin holders under this consensus mechanism.

Forgers are given the opportunity to validate new blocks in the chain and generally receive additional coins as a reward for staking their existing coins whilst miners contribute their computer resources to validate transactions by solving mathematical equations and are rewarded with additional coins from the network.

The ATO has indicated that under consensus mechanisms, forgers and miners are receiving a reward for the provision of services and these additional coins (rewards) will be taxed as ordinary income at the time of receipt. Whether the coins are taxed as capital or revenue on their disposal will ultimately depend on how the coins were used and the holder's intention at the time of the acquisition and throughout the period the coins were held.

Maintain accurate records

Given the increased ATO scrutiny of cryptocurrency, taxpayers need to keep records of transactions associated with acquiring, holding and disposing of cryptocurrency. They will need to keep records for five years after disposal of cryptocurrency.

As many platforms and software packages are available to assist taxpayers to keep track of movements in their cryptocurrency,

maintaining adequate records should not be too difficult.

What should you do?

Given the increased ATO scrutiny and their access to data on cryptocurrency activities investors should act with the expectation that the ATO is already aware of their activities and there is no longer anonymity.

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CONTRIBUTED BY
Stefan Huang
Wetec International CPAs, Taiwan
E: shanehua@cpawetec.com.tw

Taiwan tax update – Anti-treaty abuse, COVID tax measures and new property tax regime

Tax measures in response to COVID-19

Before mid-May 2021, Taiwan had kept good border control and enjoyed a stable situation. Since then, Taiwanese people have endured two months of national "soft-lockdown" in reaction to a surge caused by a variant of COVID-19. During that period, Taiwan's Ministry of Finance (MOF) announced the following tax measures in order to relieve pandemic-stricken enterprises, primarily small and medium-sized enterprises (SMEs) in hospitality industries:

- Extending the due date for individual tax, corporate tax and VAT filing for all taxpayers
- Individuals and enterprises which suffered significant economic impact caused by virus control could apply to pay taxes in instalments over extended periods
- Enterprises whose employees are required to take quarantine leave are eligible to deduct an extra 100% of these employees' salary during the quarantine period
- Granting partial or full sales tax relief to small vendors, such as street bistros and games arcades, whose business suffered direct impacts of the soft lockdown from May 2021
- Enterprises may apply for a refund of input VAT with a maximum of NT$300,000.

Taiwan is going to integrate anti-treaty abuse rules into treaty application regulations

In April 2021, the MOF proposed amendments to the Regulations Governing Application of Agreements for the Avoidance of Double Taxation with Respect to Taxes on Income. These amendments are intended to implement the OECD-recognised anti-treaty abuse rules. The amendments will substantially dominate the practices of Taiwan treaty application soon after they come into effect.

The first thing worth mentioning is the stipulated *Principal Purpose Test* rule (PPT). According to this rule, the tax authority will not grant a treaty benefit to taxpayers if the tax benefits are found to be the principal purpose of an arrangement or transaction, whether the benefits are derived directly or indirectly from that arrangement or transaction.

Second, the new amendment clarifies the scope of *place of effective management*. Where a legal person has double residency, its place of effective management will be deemed to be the only place of residence for treaty application purposes. The place of effective management is determined by the following factors:

1. where management and decision-making activities take place,
2. where books of account and board and general meeting minutes are held,
3. place from where the major operating activities are run.

Third, for treaty purposes the scope of royalties is limited to considerable payments for the use of industrial, commercial and scientific secrets. The licensor does not need to further customise and guarantee the utilities of the royalty. Cross-border sale and purchase of software are also excluded from the scope of "royalty".

The amendment will come into force upon MOF's formal announcement, expected before the end of 2021, and will be retroactive from 1 January 2019. The major impacts of these new rules would fall

mainly on multinational enterprises which either operate with fragmented e-commerce business models or operate indirectly, through a subsidiary without substance but located in a jurisdiction convenient for treaty purposes.

Reforms of real estate transactions and taxation in Taiwan, effective from 1 July 2021

Taiwan has suffered from sky-high housing prices for years. Even during the pandemic, housing prices remained high. Local residents have been urging the Taiwan ruling party to respond to the housing problems. Two administrative and tax reforms have been enacted effective from 1 July 2021 and apply to real properties acquired after 2016, to cool the red-hot housing market:

Pillar one – Housing transaction price registration system 2.0

This new system aims to eliminate the information asymmetry between buyers and sellers. Under the new system, some extra transactional data have to be registered online and will be open to the public:

Taxpayer	Applicable tax rates	Holding periods
Domestic individual	45% 35% 20% 15%	Within two years Two to five years Five to ten years Over ten years
Foreign individual	45% 35%	Within two years Over two years
Domestic corporate	45% 35% 20%	Within two years Two to five years Over five years
Foreign corporate	45% 35%	Within two years Over two years

- The right address of each transferred property
- The price of any off-plan property
- A speculator who owns an off-plan property is not allowed to resell the property before construction is finished.

Pillar two – Reform of the special tax regime for capital gains derived from sale of real estate

Capital gains from real estate transactions after the beginning of 2016 are subject to a special, separate tax regime. Under the separate regime, the tax payable is determined by the length of the period the property was held. Tax scope covers income from a sale of land and/or building, an off-plan property or a sale of company shares over half of the net assets of which consist of real estate in Taiwan.

- Taxpayers may be domestic individuals, foreign individuals, a domestic corporation or a foreign corporation that transacts in local real estate or special equity
- Tax compliance and procedures:
  - *domestic* and *foreign individuals* are entitled to *separate taxation* (i.e. their tax filing can be separated from income tax filing) so long as they file for the separate taxation within 30 days after transferring title in their property
  - *domestic* and *foreign corporations with a fixed place of business in Taiwan* are entitled to separate taxation, but should consolidate the tax filing with the corporate income tax filing
  - *foreign corporations without a fixed place of business in Taiwan* can appoint a tax agent to handle the separate taxation and tax declaration

- Progressive tax rates apply according to the length of the period the property was held (see table on previous page).

Conclusion

Taiwan acted early in containing the COVID-19 pandemic and enjoys relative peaceful daily life and burgeoning economic performance. While it continues, Taiwan's tax regulations are adapting to the challenges of the pandemic, rising housing prices and more rapid integration of OECD tax rules. Foreign investors can expect more friendly and foreseeable tax rules when doing business in Taiwan or with Taiwanese partners.

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Corporate Tax Modernisation Act (KöMoG)

CONTRIBUTED BY
Werner Bünnagel
Morison Saarbrücken GmbH, Germany
E: wbuennagel@wubwp.de

> *Without doubt, the option to be taxed like a corporation could be an interesting tax alternative for many partnerships*

US tax law has known it for a long time – now German tax law has its own "check-box procedure".

In Germany, partnership profits are still taxed less favourably than corporation profits. Corporations are subject to a tax on profits of about 30% (corporation tax and business tax). In addition, tax can be deferred if the corporations retain their profits. The tax rate for distributed profits is approximately 26% for natural persons and approximately 1.5% for corporations.

By contrast, partners must pay tax on their share of partnership profits immediately, at their individual tax rate (up to 47.5%). The existing preferential treatment of profits not withdrawn has proved to be too complicated in practice and thus useless. Instead of improving this preferential treatment, certain partnerships have been given the option to apply to be taxed like a corporation from 2022 onwards.

This application can be made by all partnerships taking the legal forms "general partnership", "limited partnership" (including the German GmbH & Co. KG) and "partnership". Sole proprietorships, partnerships under the civil code (the German GbRs) and investment funds cannot apply. Eligible partnerships have to submit the application in electronic form to the local tax office. It is irrevocable. Because it also affects the taxation of any shareholders, a majority shareholder resolution is required. The application is not subject to approval; the tax authorities cannot reject an application.

Through the option, the partnership is treated like a corporation. Therefore, all rules in the main German tax laws apply to it as far as they apply to corporations. From a legal point of view, the transition to corporate taxation is considered a change of legal form from a partnership to a corporation. Initially, this fictitious change of legal form includes only those assets that already belong to the partnership. Additional assets owned by individual partners must be transferred to the partnership under the option in order to complete the application in a tax-neutral manner.

As a result of the option, the partners of the partnership now become partners in a corporation, with all tax consequences. This means, for example, that remuneration for the work of a partner does not constitute a share in profits but wages, which are subject to wage tax deduction. Similarly, a profit distribution no longer represents a withdrawal, but income from capital assets, which is subject to capital gains tax.

The option also includes the possibility of a re-option, i.e. application to again be taxed as a partnership. This applies to its partners accordingly. Like the option, the re-option must be applied for before the beginning of a business year. The application must be submitted to the local tax office competent for taxation as a corporation. There is no minimum time limit for a re-option, so that a change back from taxation as a corporation to taxation as a partnership is possible after one year. Profits retained during the period of taxation as a corporation are deemed to be distributed with the re-option and are taxable for the partners.

Without doubt, the option to be taxed like a corporation could be an interesting tax alternative for many partnerships. In a loss-making phase, however, the option would be of little use because the losses would remain at the level of the partnership and could not be used by its partners to offset other income. I therefore assume that financially strong and profitable companies are more likely to make use of the option in order to benefit from the tax deferral effects and the lower taxation of a corporation. However, it remains to be seen whether this form of taxation will be accepted by the German economy.

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CONTRIBUTED BY
Hans Philips
Van Havermaet, Belgium
E: hans.philips@vanhavermaet.be

Appointment of a VAT representative in Belgium: new guarantee rules

In order for a non-EU-established taxable person to be able to perform taxable transactions in Belgium for which he is the VAT debtor, this taxable person must in principle register for a Belgian VAT number and appoint a *fiscal representative* established in Belgium. For EU-established persons the appointment of a fiscal representative is not compulsory but optional.

The appointment of a fiscal representative must be accompanied by a *guarantee* to ensure the payment of all sums due by the represented non-EU taxable person by way of VAT, fines, interest and costs.

The rules of the guarantee arrangement have recently been amended. These legislative amendments also apply to the appointment of *global representatives*, and to *intermediaries* within the meaning of the Import One-Stop Shop (IOSS) regulation.

Applicable to whom?

The appointment of a fiscal representative is only mandatory for non-EU-established taxable persons who carry out taxable transactions in Belgium in relation to which they are the VAT debtor.

Such appointment is not mandatory and often a direct VAT identification is sufficient if:

- The co-contracting party is the VAT debtor for a taxable transaction carried out in Belgium (reverse charge)
- The taxable person is established in the EU or in a third country with which the EU has concluded an agreement on mutual assistance similar in scope to Council Directive 2010/24/EU and Regulation (EU) No 904/2010 – this is the case for Norway and, under the current state of affairs, for the UK also
- The non-EU-established taxable person has a fixed establishment in Belgium which carries out the taxable transaction in Belgium.

The amount of the guarantee

The amount of this guarantee:

- Is set at 10% of the balance of Belgian VAT due, for a period of twelve calendar months resulting from VAT returns that were filed during the previous calendar year

Where it is not possible to establish a one-year reference period for determining this guarantee, the amount of the guarantee will be determined provisionally by the VAT authorities on the basis of estimates supplied by the fiscal representative. Subsequently, the guarantee will then be finally determined on 30 April of the following year.

- Must be at least €7,500 and no more than €1 million
- Is fixed for a period ending on 31 December of the second year following the year in which the guarantee is determined.

The guarantee must be issued in favour of the Belgian VAT authorities.

The amount of this guarantee will be reviewed every three years to reflect any increase or decrease in the VAT due.

- In principle, the VAT authorities will always proceed with a revision where the amount of the guarantee increases
- Conversely, a revision can be requested by the taxable person or its fiscal representative where the amount of the guarantee reduces
- In any case, no revision is made when the amount guaranteed changes by less than 10%.

The form of the guarantee

The guarantee can be provided in the form of:

- A cash deposit in a special bank account of the Belgian authorities
- Securities in favour of the Belgian authorities
- A personal guarantee issued by an insurance company, a bank or a private savings bank (bank guarantee), which is allowed to carry out its activities in Belgium.[1]

REFERENCE

1. This refers to financial institutions which, under Belgian regulations, may carry out their activities on Belgian territory. In accordance with the European rules on freedom of establishment and freedom to provide services, it does not necessarily mean an institution established in Belgium.

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Canadian tax considerations for non-residents owning Canadian real estate

CONTRIBUTED BY
Doug Polson
McCarney Group LLP, Canada
E: dpolson@mgca.com

Many individuals living outside of Canada, including former Canadian residents and others who have never lived in Canada, should keep in mind the tax considerations associated with purchase of Canadian real estate including condominiums, houses and seasonal properties.

Former Canadian residents who continue to own real estate in Canada after becoming non-residents, either as an investment or to have a home to move back to if they choose to return to Canada, should also be aware of certain tax implications as stated below.

Owning Canadian real estate and Canadian residency for tax purposes

The ownership of Canadian real estate could be seen as a significant residential tie to Canada; however, there are means to reduce this impact. A significant residential tie is one of the main factors in determining whether you are a resident of Canada for tax purposes.

If a person is considered to be a resident of Canada for tax purposes s/he will be subject to Canadian tax on all worldwide income. This includes income earned in Canada as well as income earned outside of Canada.

One means to reduce this impact is to have the real estate rented to an arm's length party at fair market value, preferably under a long-term lease. In such circumstances, the Canada Revenue Agency (CRA) will not see this property as a significant residential tie to Canada when making a residency determination, while leaving the real estate vacant and available for regular and continuous use could be regarded by CRA as such a tie. Furthermore, renting the real estate to family members, or simply allowing family members to use the home rent-free, could also be seen by CRA as a significant residential tie to Canada. As a result, the individual would be treated as a resident of Canada for tax purposes and they would be taxed on their worldwide income.

Rental income from Canadian real estate

Unfortunately, many Canadian expatriates rent their homes but do not properly abide by the tax withholding and/or tax filing requirements because they are often unaware of these rules. The taxpayer should be aware that income from the rental of Canadian real estate is taxable in Canada, even if they are a non-resident of Canada for tax purposes, so they must ensure that the tax filing and remittance requirements are met.

Non-tax residents are taxable in Canada on investment income including rent. This tax is commonly referred to as withholding tax. The general rate for this tax is 25% of the gross amount of the investment income received from the Canadian source. The Canadian resident who pays the rent or other amounts to the non-resident is required to withhold this tax from the payment and remit it to the CRA. No deductions or credits are permitted and the non-resident is not required to file an income tax return. If an international tax treaty is in place between Canada and the country of tax residence of the non-resident owner, then the rate of withholding tax may be reduced or eliminated on certain investment income.

Not surprisingly, there are withholding tax and annual non-resident rental filing requirements with which individuals must comply if they own real estate in Canada as a non-resident and earn rental income from it. If these requirements are not properly met, significant interest and/or penalties for non-compliance could be imposed by

> *If the property is rented while an individual is abroad the rental income may be large enough to cover most of the expenses incurred on the real estate, which can be a significant benefit*

CRA. Changing the property's use from income-producing to personal use could be regarded as disposal: see below.

Non-residents of Canada can elect to be taxed on the net rent they receive instead of the gross amount of the rental income from real estate. Since there are usually costs associated with earning rental income, this can significantly reduce the amount of tax withheld from the non-resident. Non-residents who choose to make this election are required to file special tax returns annually by 30 June of the following year.

Non-residents are still not able to claim deductions (other than rental expenses) or credits against their net rents. They also cannot carry over any loss if the rental property is losing money.

If the property is rented while an individual is abroad the rental income may be large enough to cover most of the expenses incurred on the real estate, which can be a significant benefit. Some expenses involved in maintaining a property include property taxes, mortgage interest, utilities, property management fees, and repairs and maintenance. It will be necessary to track and keep proper documentation to support claims for these and other expenses incurred to earn the rental income. Where all this is done properly, the individual has the benefit of renting the home with little to no tax.

Selling Canadian real estate

When Canadian real estate is sold (or treated as disposed of – see above) while the individual is a non-resident of Canada, there will also be tax owing on any gains as a result of the sale. Furthermore, the non-resident must meet certain filing and remittance requirements relating to the sale.

The non-resident must file a special tax form and remit to the CRA withholding tax of 25% of the purchase price less only the cost of the property. No selling expenses are allowed in determining the withholding tax. Once the non-resident has filed the form and remitted the withholding tax, CRA will issue a compliance certificate to the vendor.

If the non-resident is not able to provide a copy of the certificate to the purchaser, proving that s/he has filed the form and remitted the withholding tax, the purchaser will be required to withhold and remit tax of 25% of the *total purchase price*, not the purchase price less the cost of the property. In addition, CRA could also apply penalties to the non-resident for not filing the form and remitting the tax.

In addition, the non-resident is required to file a Canadian non-resident income tax return, to report the sale of Canadian real estate.

A tax refund may arise since the overall Canadian tax rate may be less than the required withholding tax remittance, and *will* arise in relation to the selling costs, which were not allowed to be taken into account when the original withholding tax remittance was calculated.

Principal residence exemption

Most Canadians can designate the real estate they own in Canada as their principal residence. If the home is sold prior to leaving Canada, the full principal residence exemption should be available (with some exceptions), resulting in no tax on the sale of the home.

Complexities arise when a home that formerly qualified as a principal residence is sold by a non-resident of Canada. The reason for this is that the home cannot be designated as an individual's principal residence for years in which they are not a

Canadian resident for tax purposes for at least part of the year. The result of this is that the principal residence exemption will not fully offset the capital gain on the sale of the property and a taxable gain may arise in Canada.

Change in use rules

When a property changes from being used for personal purposes to rental there is a "change in use" of the property. This change in use results in a deemed disposition and reacquisition of the property for the fair market value at that time. The deemed disposition may result in a capital gain which will often be offset by the principal residence exemption.

However, there is an election that can be filed that allows an individual to defer the deemed disposition and to take advantage of the principal residence exemption to potentially reduce the tax on a future capital gain on the sale of the property. There are many complex issues involved in the decision whether or not to file this election.

Purchasing Canadian real estate and the non-resident speculation tax (NRST)

In 2017, the Province of Ontario announced a new 15% non-resident speculation tax (NRST) on the purchase of residential property located in the Greater Golden Horseshoe by individuals who are not citizens or permanent residents of Canada, or by foreign corporations (foreign entities) and taxable trustees.

The NRST applies to purchases of land containing at least one and not more than six single family residences. If the property includes both residential property and another type of property, the NRST only applies on the purchase price of the residential property.

Purchases of Canadian real property may also be subject to goods and services tax or harmonized sales tax (GST/HST) when certain conditions apply. GST/HST is a sales tax that applies to the sale price of new Canadian residential real property such as real property purchased from a residential home builder.

Tax on unproductive use of Canadian housing by foreign non-resident owners

The Federal Budget 2021 proposes to introduce a new national 1% tax on the value of vacant or underused real estate owned by non-resident, non-Canadians. The tax will be levied annually, beginning in 2022.

All owners of residential property in Canada, other than Canadian citizens or permanent residents of Canada, will be required to file an annual declaration for the prior calendar year in respect of each Canadian residential property they own, starting in 2023.

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CONTRIBUTED BY
Stefan Huang
Wetec International CPAs, Taiwan
E: shanehua@cpawetec.com.tw

Uber onshores e-commerce operation in Taiwan – from VAT, corporate and transfer pricing perspectives

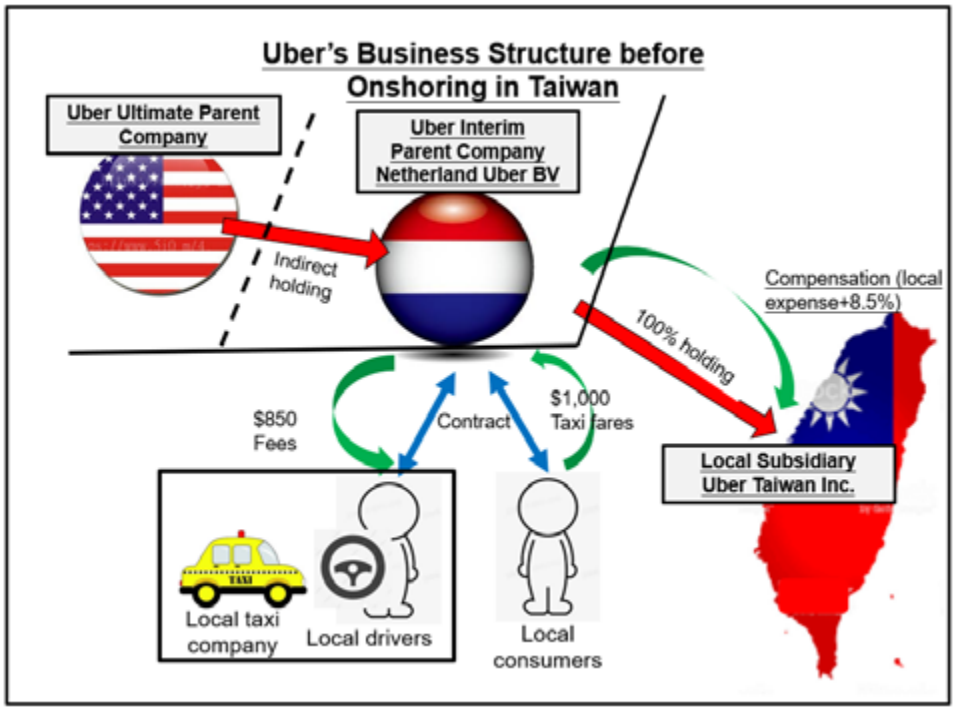
On 10 December 2020 the Uber group announced a major policy change for its operation in Taiwan: Uber's Taiwan subsidiary ("Uber Taiwan subsidiary") took over the taxi services from its parent company – the Netherlands Uber BV. According to the announcement, Taiwanese consumers can refrain from paying extra international transaction fees after Uber's onshoring. A similar announcement on 1 February 2021 conveyed the same policy change for Uber's food delivery services ("Uber Eats") in Taiwan.

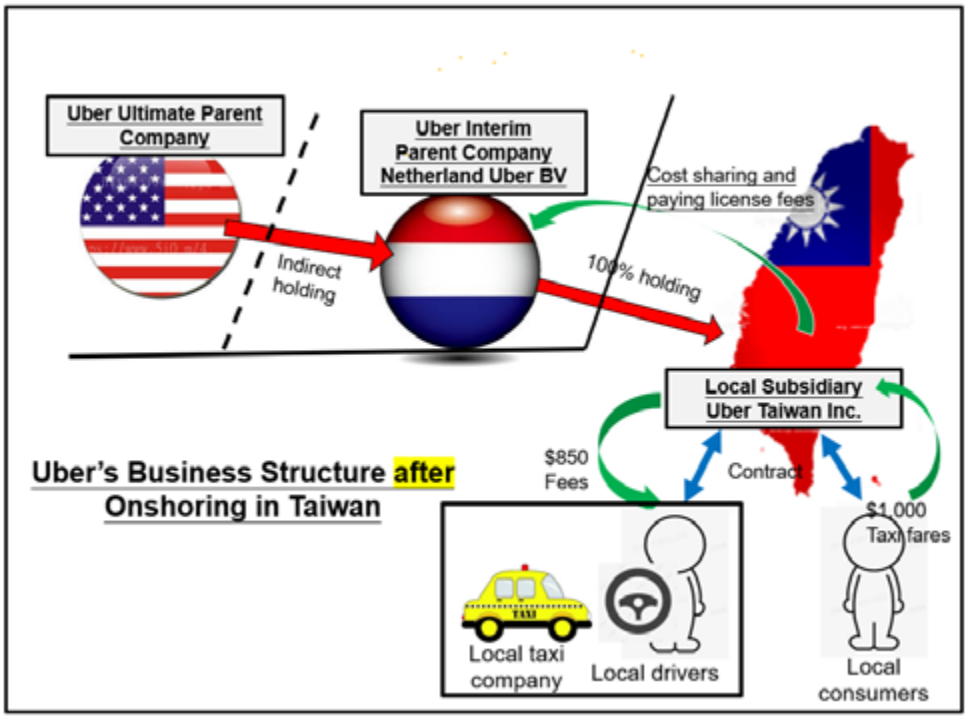
From May 2017 until this onshoring policy took place, Uber had operated its taxi and delivery services using a *cross-border e-commerce* model, in which Netherlands Uber BV contracted local consumers and suppliers, matched the transactions via digital platform and mobile apps, and handled the cashflow by a cross-border clearance mechanism. The two following figures demonstrate the different business structures before and after the onshoring.

Uber emphasises the alleviation of consumers' cross-border payment costs as a major benefit after onshoring. The onshoring itself may also indicate that the taxi and food delivery businesses are quite price-sensitive in Taiwan and that consumers tend to compare cost between similar service providers. As a matter of fact, Uber faces strong competition from local players such as TaiwanTaxi and localised international brands such as Foodpanda, which also operate under the same digital business model. Thus, onshoring may bring Uber on to an equal footing with these local and localised players in market competition as well as tax burden and compliance.

Changes in VAT after onshoring

From the first day that Uber onshored its business, the simplified cross-border E-commerce VAT regime ceased to apply. Uber was required to calculate VAT payable





under the same multiple-stage VAT regime as other Taiwanese companies, collect inward VAT invoices ("GUIs") and then deduct input taxes from output taxes. The multiple-stage system now enables Uber to issue outward GUIs to consumers with a sales figure reflecting platform usage and delivery charges, i.e. netting these off against taxi and food prices. Moreover, Uber is relieved of the responsibility to issue eGUIs to taxi passengers under a special article of the GUI bylaws that favours local taxi service providers. Uber's B2B and food delivery business are required to issue GUIs to buyers in the same way as a normal VAT business.

Changes in corporate income tax after onshoring

Before onshoring, Uber neither paid corporate income tax nor was subject to the withholding tax regime for its B2B and B2C sales in Taiwan. That is because Uber had operated under the name Netherlands Uber BV without a local permanent establishment in Taiwan, so was subject to the business income exemption clause of the Taiwan-Netherlands Tax Treaty ("Tax Treaty"). Revenues earned in Taiwan were consolidated to Netherlands Uber BV income tax statements.

After onshoring, Uber performs business activities under the name Uber Taiwan Inc., its subsidiary company. The business operator – Uber Taiwan Inc. – is deemed an independent entity subject to the same income taxation, bookkeeping and filing standards as other local competitors. After-tax profits generated in Taiwan will be subject to a 10% withholding tax if repatriated to the Netherlands parent Uber BV under the Tax Treaty. Any losses incurred in Taiwan can be carried forward up to ten years. Onshoring also brings convenience in dealings with local suppliers and business clients since the

Taiwanese subsidiary can issue outward GUIs so no longer needs to apply for withholding exemption.

Transfer pricing concern after onshoring

Before onshoring, transfer pricing (TP) arrangements relating to intangibles were made between Uber BV and licensor enterprises within the Uber group. An intellectual property (IP) arrangement was not needed by the Uber Taiwan subsidiary because it performed only auxiliary and preparatory functions.

Since, after onshoring, Uber Taiwan Inc. becomes the business operator and uses corporate IP, TP issues now arise. See the red-circled part in the figure below.

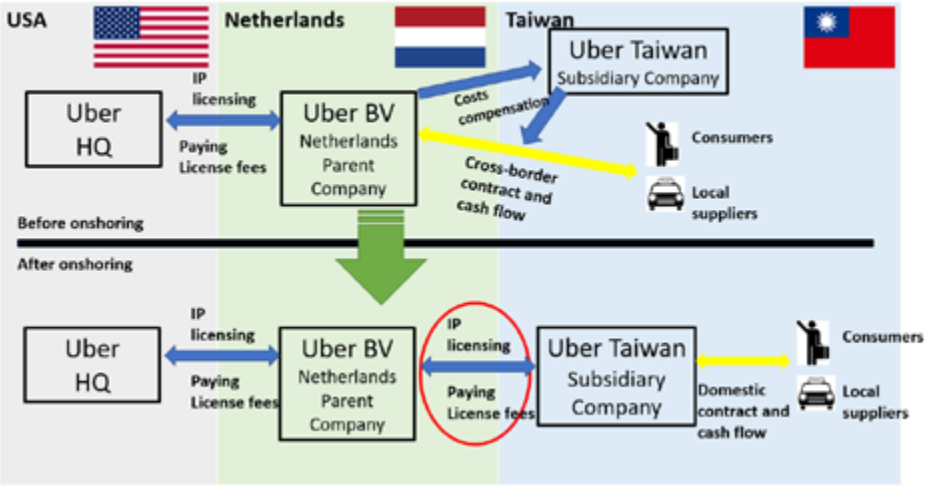
To operate Uber's taxi and food delivery business in Taiwan, Uber Taiwan Inc. has to use the trademark, brand name and software, and access the global platform, technology and know-how owned by the Uber group, and properly compensate the group. However, in light of market competition in Taiwan, two elements must be taken into consideration for TP purposes, especially when choosing uncontrolled comparables and pricing methods:

1. Uber's brand name brings neither customer loyalty nor market segmentation. Taiwanese customers incline to consumer experience and compare cost in the taxi and food delivery sectors.
2. Uber's e-commerce model has been so pervasively employed by local competitors that the technologies and know-how associated with online-platform matchmaking are neither unique nor valuable for competitiveness.

Onshoring as a business alternative for cross-border e-commerce

Uber's decision to onshore its operation in Taiwan may set a positive example and reveal a trend for cross-border e-commerce operators to have closer contact with and react faster to end users. From tax perspectives, onshoring streamlines VAT and income tax calculation and compliance, with the costs of taxing profits in the market jurisdictions seen as reasonable. Onshoring can be a smart strategy to neutralise challenges from the OECD/G20 proposal for global digital and minimum taxation.

Uber's IP license structure before and after onshoring in Taiwan



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Contact Morison Global to discuss your needs

E: info@morisonglobal.com

T: +44 (0)20 7638 4005

www.morisonglobal.com

Morison Global

6th Floor
2 Kingdom Street
Paddington
London, W2 6BD
United Kingdom

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