International Fiscal Association
Hong Kong Branch

2024 IFA Asia Pacific Regional Tax Conference

Hong Kong 22 – 24 April 2024

Workshop 7 – latest and hottest tax developments in Asia: do you really know what happens next door?

PROGRAM

1.	Introduction	10’
2.	Country updates	50’
3.	Study case	25’
4.	Closing	5’

COUNTRY UPDATES

INDIA

Highlights

India's economic growth story - the balancing act between tax policy measures vs. principles of ease of doing business –

1. Compliance with BEPS minimum standard –
   - India is a signatory to MLI
   - Recent development - protocol to amend India – Mauritius tax treaty

2. Most Favoured Nation clause – Landmark ruling and after effects

3. "Angel Tax" – widening of tax base to non-residents

4. Digital taxation ("Google Tax") –
   - Equalization Levy (EL) (domestic tax measure) impending the OECD Two Pillar solution

INDIA

Most Favoured Nation (MFN) clause – Supreme Court (SC) ruling in Nestlé S.A.*

Invoking MFN clause in India's bilateral treaties

Open Issues:

1. **Impact on concluded assessments / proceedings?**
2. **Impact on pending matters / ongoing disputes?**
3. **Impact on existing structures / repatriation strategies?**

Issues & Supreme Court ruling

1. Right to invoke MFN clause when the third country with which India entered into DTAA was not an OECD member

   Held - The country with whom subsequent DTAA (with beneficial provisions) had been entered into, should have been an OECD member on the date of entering the DTAA to invoke the MFN clause

2. Whether MFN comes into effect automatically or requires a specific notification

   Held - Separate notification under section 90 to be issued by the Government of India to activate the MFN clause

*[2023] 155 taxmann.com 384 (SC)

INDIA

Angel Tax – widening of tax base

Open Issues:

1. **Impact on commercial negotiations**

2. **Specific exemption to notified entities – but routine foreign investment by companies in JV and M&A deals not covered**

What is Angel tax?

Any premium received by a company (other than a public listed company), exceeding the fair market value ('FMV') of shares issued was liable to be taxed in the hands of the company.

Popularly known as 'Angel tax' since maximum impact on 'angel investments' when it was introduced

What is the change?

Earlier restricted to investments from residents – now includes non-residents as well

Valuation conundrum

Valuation under Income tax – prescribes a **'cap'** price

Valuation under exchange control – prescribes a **'floor'** price

Recent changes – amendment to rules prescribed for tax valuation

SOUTH KOREA

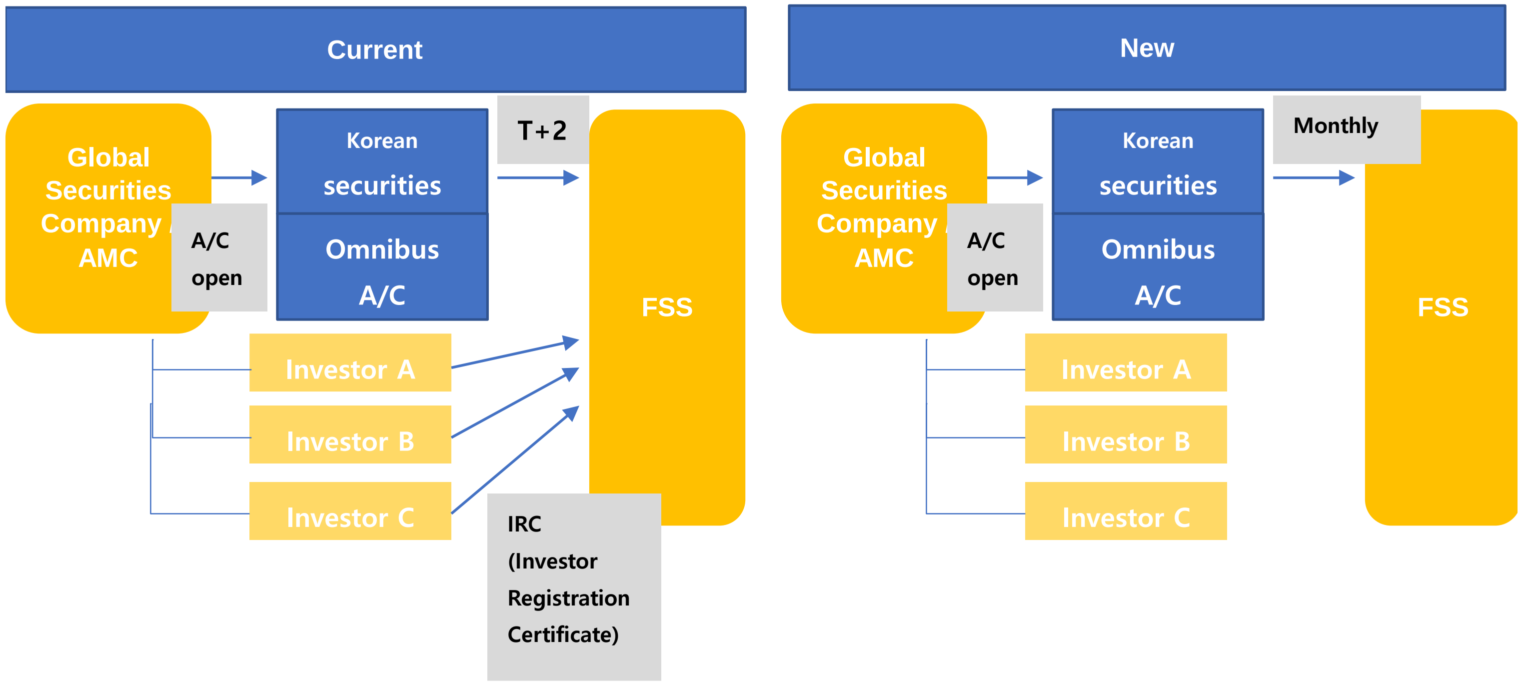
Highlights

- Overview of General Tax Policy
- The key highlights of recent tax law changes are as follows:

  1. Significant expansion of R&D and investment tax credits program to further strengthen and foster the country's certain strategic industries and technologies
  2. Ramp-up of the government's support for the "K-contents" production industry, particularly for the production of video content such as films, TV programs, and dramas
  3. The adoption of "participation exemption" to induce more repatriation of capital
  4. Elimination of unnecessary red tapes with respect to "omnibus account" to allow easier access to Korean capital market (i.e., Korean bourses) by foreign investors
  5. Supplementation of Pillar II rules to keep up with OECD development

SOUTH KOREA

- Illustration of Omnibus Account



JAPAN (1)

- Current development of Pillar 1 in Japan:
  - - Emphasize the importance of active participation in international discussion for early signing of MLC in 2024 tax reform package of Japan's ruling coalition party, while the text of the MLC has not been published yet.
  - - No plan to introduce DST (Digital Service Tax)
- Introduce "Platform Taxation" to charge Consumption Tax (VAT)
  - If foreign businesses carry out B2C transactions (providing digital services to Japanese consumers) through digital platforms and receive consideration exceeding JPY 5 billion through the digital platforms, such transactions will be deemed to be performed by the operators of the digital platforms. Thus, the digital platform operators will be liable for VAT (Japanese consumption tax).
  - Applicable to transactions on or after 1 April 2025.
- Restriction to Small Business VAT Exemptions to Foreign Businesses
  - Restriction to prevent abuse of small business VAT Exemption by foreign businesses who already have large business outside Japan when commencing Japanese business.
- Revise tax-free system for foreign tourists
  - VAT for foreign tourists will be exempt only when customs confirm the purchased items are taken out of Japan. Details are TBD in 2025 tax reform.

JAPAN (2)

- Current development of Pillar 2 in Japan:

  - Japan introduced the IIR in 2023 tax reform and reflected additional guidance in 2024 tax reform (applicable from fiscal year beginning 1 April 2024).

  - UTPR and QDMTT has not been introduced (will be introduced in 2025 tax reform or later).

  - Businesses call for simplification/streamlining CFC rule due to compliance burden; little progress to date.

- Establish "Innovation Box" Tax Incentive

- Corporations may receive 30% deduction from income derived from the license or domestic sales to unrelated parties of certain intellectual property (patents and AI-related program copyrights obtained on or after 1 April 2024).

- Intellectual property shall be researched and developed by themselves in Japan.

- Applicable for 7 years from fiscal years beginning 1 April 2025

- Implementing the Crypto-Asset Reporting Framework (CARF) and Amendments to the Common Reporting Standard (CRS)

CHINA

- 2023 Q1 tax revenue collection highlight (recap of 2022)

- Recent State Council Circular reenforcing level playing field for FDI in China, attracting and stabilizing FDI, continuation of FDI preferential polices

- Individual income tax incentives to boost household disposable income

- Extension of expatriate taxation to attract foreign talents

- China's commitment and implementation of Pillar 2, things to watch out

- Other major tax incentives

1. Refund of input VAT

2. Further expansion of Super R&D credits

What is the current pain globally?

- Currently, there are many rulings to comply globally

- Many companies formed in offshore jurisdictions in the past are not able to comply

✓ For example, tax filing, tax resident certificate, tax number
✓ Not able to meet the substance condition
✓ Unable to open bank account and transfer funds

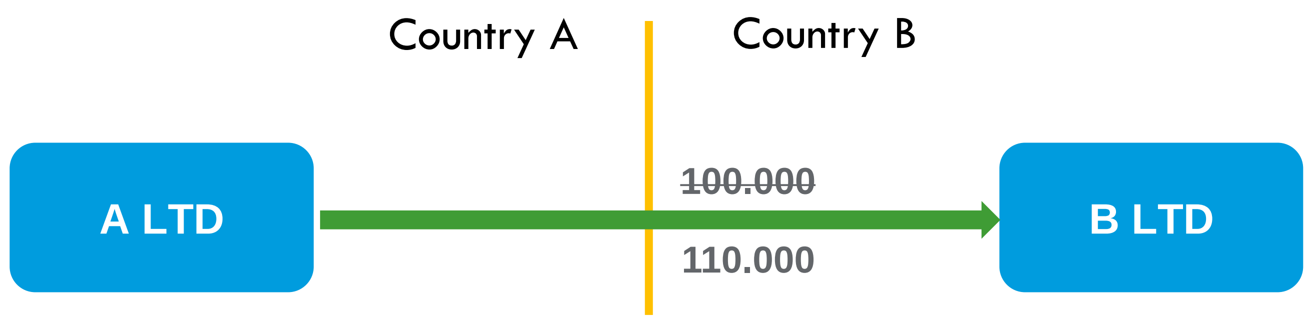
- It is not effective to transfer out the assets and contracts to a new company

Redomicile is the best way out

Redomicile is a process involving
- de-register from the jurisdictions that failed to comply with the international rulings and
- re- register into the jurisdictions that complies with international standards and comply with the relevant rulings and declaration

STUDY CASE

TP – PRIMARY, SECONDARY, CORRESPONDING & OTHER ADJUSTMENTS



	Taxpayer	Tax Autority
Sales	100.000	110.000
Cost	(90.000)	(90.000)
Profit	10.000	20.000
Income Tax @22%	2.200	4.400
Credit tax		2.200

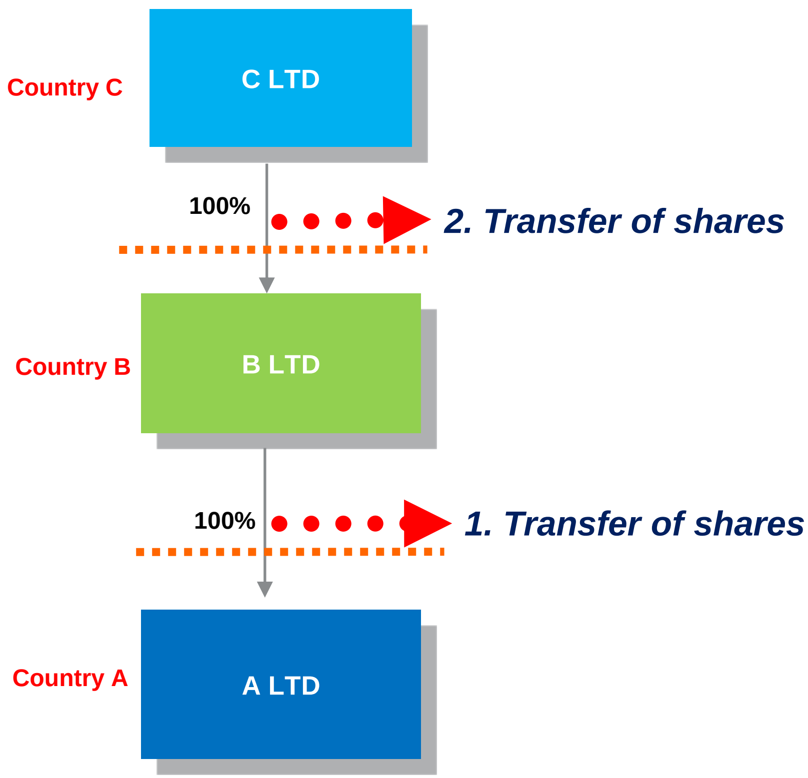
	Taxpayer	
Sales	120.000	**Corresponding adjustments**
Cost	(100.000)	
Profit	20.000	
Income Tax @10	2.000	

Add. Income tax **(Prim.Adj)**	**2.200 (10.000 x 22%)**
Add. Withhold tax **(Sec.Adj)**	**1.500 (10.000 x 15%)**
Add.VAT **(VAT Adj)**	**1.100 (10.000 x 11%)**
Total Add. Tax Burden	**4.800**

Total Additional Group Tax Burden => 4.800

Total Group Tax Burden => 10.200 (6.400 + 4.800)

ANTI-AVOIDANCE RULES – CAPITAL GAIN TAX ON INDIRECT TRANSFER OF SHARES



Discussion:

1. Transferring of A Ltd shares owned by B Ltd (non-resident) would normally be subject to tax in Country B.
2. Instead of transferring at A LTD shares level – what would be the tax implications if transfer is executed at B LTD shares level – any tax payable in Country A?
3. What would be the implication if Treaty exists between Country A and Country B?

REDOMICILED OF A COMPANY

Companies from jurisdictions ABC&D

De-register from country of origin

Companies from jurisdictions ABC&D

Continue in Labuan and UAE

Re-register in Labuan and UAE

Comply to the tax filing, substance and AMLA requirements in the new countries