

Tax Treaty, Transfer Pricing, and Permanent Establishment

DAY ONE - MORNING

TAX TREATIES

Overview of Tax Treaties

- Double taxation and the need for tax treaties
- Tax treaty vs. domestic law
- Legal framework of tax treaties
- Interpretation of tax treaties
- Rights and obligations created under tax treaties

Model Tax Treaties

- Overview of OECD Model Tax Treaty
- OECD Model Tax Treaty v. UN Model Tax Treaty

Application of specific provisions of tax treaty (applying OECD commentary)

- Residency
- Permanent establishment (to be covered in more detail under separate heading)
- Dividends, interests, royalties, technical fees, capital gains
- Avoidance of double taxation
 - ✓ Tax credits
 - ✓ Tax deductions

DAY ONE - AFTERNOON

Tax treaty abuse

- Treaty shopping
- Beneficial Ownership v. Conduit Entities
- Double Non-taxation
- Hybrid Mismatches
- Base Erosion

Recent developments

- Tax Competition between Countries
- Anti-abuse legislation
- OECD Initiative against Base Erosion and Profit Shifting

Case studies

- Indofood International Finance Ltd v. JP Morgan Chase Bank
- Singapore's Limitation of Relief Rules in Its Treaties and US Limitation of Benefits Rules
- Vietnam GAAR Rules

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DAY TWO - MORNING

PERMANENT ESTABLISHMENT

What is a permanent establishment?

Risks of creating a permanent establishment

- Furnishing of services
- Agency
 - Dependent v. Independent Agent
 - Common agencies that may impact PE creation
 - Consignments
 - Sale Agents
 - Construction, installation and assembly projects
 - Supervisory activities relating to construction, installation and assembly projects
 - Drilling rigs
 - Assignment of employees
 - Leasing of equipment
 - Activities that are preparatory or auxiliary in nature

Impact under the tax treaty (applying OECD commentary)

Case studies

DAY TWO - AFTERNOON

TRANSFER PRICING (TP)

Introduction to TP

OECD current developments

- BEPS project
- Intangibles
- Comparables
- Documentation/CbC
- Business restructuring
- Information sharing

Design

- Centralised business models
- Manufacturing
- Distribution
- R&D
- Financial transactions
- Procurement strategies
- Price-setting vs. price-checking
- Benchmarking

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Document

- Cost effective documentation strategies to manage compliance burden
- Masterfile plus CbC strategy
- Importance of legal agreements

Defend

- Audit strategies
- Advance Pricing Agreements
- Ongoing risk management through documentation

How to manage the internal TP function

- Cost effective documentation and benchmarking
- Risk mitigation
- Minimisation of overall effective tax rate

Case studies for specific issues and jurisdictions

- E.g. Design of transfer pricing model for Asian multinational
- Others