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Australia

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Tax Aspects of Emissions Trading Schemes

Despite the Global Financial Crisis (GFC) there is still a push in many countries to implement some form of Emissions Trading Scheme (ETS). Whilst the populist clamour to do so has been reduced by the GFC, the fact is that amongst at least the western economies the political need to be seen to be acting has not gone away. Whether we like it or not we will be accounting for carbon credits and the like in the near future.

Common to most mooted ETS's are the following elements:

- "Permits to pollute" will be issued by governments
- These permits will be limited in supply
- Permits will be purchased by emitters – i.e. businesses
- Some permits may be issued free of charge to selected industries by government
- Permits will be trade-able
- Permits will be time-limited.

It is expected that this will create a market and a price signal to pressure emitters to change their ways – or else to price the pollution they create. Low-emitters will have a comparative price advantage; high emitters will not. Businesses that become more efficient (i.e. lower emitters) will be able to sell their surplus permits to others – thus profiting from their efficiency.

The tax issues arising from this broad outline

involve simple questions with complex answers. Are the permits an asset or an expense – or both, at different times? Will profits on sale of permits be ordinary income or capital? Will losses be deductible? What is the treatment of permits issued by governments for free?

Countries will often need to change their tax laws to make specific allowance for these permits, as in most cases the tax law does not contemplate such permits yet, and existing laws may be very unclear as to how they would efficiently apply to ETS's. However, following some proposed accounting treatments, below are some likely tax issues that may arise...

Purchased permits:

- These are likely to be treated akin to trading stock – i.e. deductible when applied or used – or upon expiry. This will raise timing issues – the tax deduction may be in a tax year after the cash flow to purchase the permit. Clients may need assistance with managing their capital expenditure programmes to include permits.

Sale of permits

- The profit – or loss – on sale of permits is likely to be treated as ordinary income, although some countries may attach special tax consequences to such sales, e.g. quarantining losses, taxing profits at special rates.

Government subsidised permits

- Where particular industries are supported by government – granted free or subsidized permits special tax questions may arise. It is

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possible that countries may tax the market value of those permits as income at the time of granting. This could lead to unfunded tax liabilities. This will be especially so where a deduction for such permits is delayed until time-expired or the permit is applied, which may be in a subsequent tax year.

Emissions reduction costs

- As businesses will be under pressure to reduce their emissions, many new costs will be contemplated, or existing investment programmes may be accelerated. Questions may arise as to whether particular costs that are incurred for the purpose of reducing emissions – and thus reducing the need to buy permits – will be tax deductible and when those costs will be deductible. Some countries may introduce special investment allowance rules to allow deductions for such costs where undertaken specifically for emissions reductions purposes...But other countries may not.

- The accounting for the value of carbon credits purchased – e.g. buying trees to offset a business's emissions – may also call for special tax treatment. Are these assets or expenses – especially where the trees themselves are a long term asset but they were bought to remove the need to buy current year permits?

This article has not intended to answer all the tax questions raised by proposed ETS's, as every country will have different tax treatments. Rather, it has hopefully highlighted just a few of the items to look out for as the ETS's become part of our every day experience in the near future.

Belgium

Contributed by Johan Dens
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Belgian tax-exemption rules on dividends judged to be not in line with the parent directive (European Court of Justice – February 12/2009 – C138/07 Cobelfret)

The main goal of the European Parent Directive is to organize a tax free distribution of dividends between EU located companies and to prevent economic double taxation.

Once the profit of an EU company has been subject to corporate taxes, the net profit, in case of distribution as a dividend, should be tax exempted.

This tax exemption exists on the level of the distributing company, by way of a non application of withholding tax (outbound dividends).

The tax exemption exists on the level of the recipient company (inbound dividends).

The Parent directive leaves members the choice between two methods of avoiding this double taxation.

1.The tax exemption method

2.The tax imputation method through a tax credit.

Belgium decided to use the technique of the tax exemption method.

How does it work?

The received dividend is added to the other benefits of the company to calculate the total gross economic income of the company.

In a second stadium the dividend income is extracted by way of a 95% deduction of this gross income.

Example:

Profit/loss from trading	500
Received dividend	300
	<hr/>
Total income	800
Participation exemption 300x 95%	285
	<hr/>
Gross taxable income	515
	===

As such the Belgian regulation is in full accordance with the Parent Directive.

The problem arises when the company doesn't have sufficient income to allow a full deduction of the participation exemption, due to the fact that this deduction cannot result in a negative income! (it is limited to the positive amount where it is deducted from).

	Theoretical (Parent Directive)	Practice (Belgian rules)
Profit from trading	<200>	<200>
Received dividend	500	500
Total income	300	300
Participation exemption 500 x 95%	"475"	300
To be transferred !?	175	0

Belgium applies the 'practice' example. This means that, in this example, an amount of 175 is subject to double taxation, as this amount in the Belgian way of calculation is not transferable to future profits (by way of a transferable loss or as a non used part of the participation exemption).

The European Court of Justice decided that the Belgian rules, result in an economic double taxation because it may prevent companies to make full use of the participation exemption and therefore is not in accordance with the Parent Directive.

Belgium will have to review the participation exemption rules. Taxpayers need to verify the deadlines for tax complaints. The EU court denied the request of the Belgian government to limit (for the past) the consequences of this judgment. This was refused. Financial implications for the budget are estimated to be important.

Cyprus

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Determination of substantially lower foreign tax

Subject to the provisions of Special Contribution for the Defence of the Republic Law, a Cyprus resident Company, or a Company which is not resident but has a permanent establishment in Cyprus, which receives dividends from a non-Cyprus resident Company in which it holds directly at least 1% of the share capital shall be exempt from the payment of special contribution.

This exemption does not apply:

(i) If the Company paying the dividend engages directly or indirectly more than 50% in activities which lead to investment income and

(ii) The foreign tax burden on the income of the Company paying the dividend is "substantially lower" than the tax burden of Cyprus

The Inland Revenue Department proceeded into offering a determination, clarifying that "substantially lower" foreign tax means below 5%

Cyprus – Qatar Double Tax Treaty

The Double Tax Agreement between Cyprus and Qatar was signed by the Minister of Finance on November 11, 2008.

Qatar ratified the treaty on January 26, 2009.

The treaty is based on the OECD model convention, and the main provisions are:

- Dividends and interest may only be taxed in the state of residency of the recipient.
- Royalties may be taxed at source at a rate not exceeding 5%.
- Capital gains deriving from the disposal of immovable property may be taxed in the state in which the immovable property is situated.
- Gains deriving from the disposal of shares, whereby more than 50% of their value is immovable property, may be taxed in the country in which the property is situated.
- A tax credit is allowed at the level of the receiving state in respect to any taxes paid at the level of the source state.

• The provision for exchange of information is also included in this agreement.

INTRASTAT – Changes from 1 January 2009

Changes in INTRASTAT thresholds from 1 January 2009:

- The exemption threshold is increased from €45.000 to €55.000
- The delivery terms threshold for incomings is increased from €1.000.000 to €1.500.060
- The delivery terms threshold for outgoings is increased from €1.000.000 to €1.200.000

Amendments to the Income Tax Law

On March 11, 2009 the Income Tax Law was amended as follows with effect from 1 January 2008:

- An individual who was resident outside Cyprus before the commencement of employment in Cyprus is entitled to an exemption of the lower of €8.550 (before was CY£5.000) or 20% of the remuneration from any office or employment exercised in Cyprus.
- Pensions received from abroad by Cyprus tax resident individuals are taxed in Cyprus at 5% on income exceeding €3.420 (before was CY£2.000).

Ireland

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Prior to the 1st of January 2006, individuals who were resident in Ireland for tax purposes and who were either non-domiciled or non-ordinarily resident, were only liable to tax in Ireland on income remitted. This excludes the United Kingdom as the remittance basis of taxation does not apply to income arising in the UK.

From the 1st of January 2006, there were changes introduced which excluded income from the remittance basis if the income was attributable to a foreign employment where the duties of such an employment were performed in Ireland.

Amendments to this legislation have been included in Section 13 of the Finance Act 2008 (Part 2). Effective from the 1st of January 2009 there is a re-introduction of the remittance basis of taxation for certain employments.

Now where an employee exercises such an employment for at least 3 years, he can, at the end of the tax year, have the tax restricted to the greater of:

- the emoluments remitted to Ireland
- or**
- an amount equal to €100,000 + 50% of the emolument that is in excess of €100,000.

Subsequently, relief is available whereby any tax deducted in excess of this amount will be refunded by way of income tax.

Example:

U.S. individual earns €250,000 under a foreign employment contract, the duties of which are exercised in Ireland in 2009. Of this, €100,000 was paid to U.S. bank account which is not remitted to Ireland. The remaining €150,000 was paid to an Irish bank account.

Before the Finance Act 2009 amendments, Revenue would have taxed the individual on the full amount earned of €250,000.

Under the new provisions, the taxpayer can apply to have the amount subject to Irish tax restricted to the greater of:

- the emoluments remitted to Ireland
- or**
- an amount equal to €100,000 + 50% of the emolument that is in excess of €100,000.

In the above example the amount which would be taxable in Ireland would be €175,000 which is the greater of the amount remitted to Ireland in this case €150,000 and €100,000 + (50% of €150,000) = €175,000.

Taxpayer is entitled to a refund of the tax suffered on the difference between €250,000 and €175,000, which is €75,000.

Malaysia

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Single tier tax system – a boon or bane to the malaysian equity market?

In year of assessment 2008, Malaysia made a milestone change to its tax system and moved from the full imputation tax system to the single tier tax system.

Malaysian companies now no longer have to examine their section 108 (dividend franking account) balances in deciding on the quantum of dividends available for distribution to their shareholders. Also, they can now dis tribute tax exempt income such as capital gains to their shareholders.

Additionally, dividends are now tax exempt in the hands of the investors thus eliminating the hassle of grossing up dividends and, thereafter, deducting tax deducted at source from the income tax payable. However, more interesting are the potential effects of the single tier tax system on the Malaysian equity market.

The movement to the single tier tax system has removed the benefits (from a tax perspective) of gains from disposal of equity investments against dividends as both are now tax exempt in the hands of the investors. This will ultimately see investors holding their shares for longer periods of time provided that Malaysian companies are able to provide sustainable dividend returns. Companies, therefore, will have to develop long term sustainable income retention/dividend pay-out policies, communicate them to their shareholders and, more importantly adhere to the policies. If this happens, the much maligned dividend yield methodology will come into fashion again for purposes of share valuation and give the long running champion--price earnings ratio--a run for its money.

Notwithstanding the above, the single tier tax system has evened up the playing field between companies with and those without tax incentives. Dividends distributed by both companies are now tax exempt in the hands of the recipients. This effectively means that investor practice of giving preference to companies with tax incentives will ride into the horizon never to return. Similarly debt financing of equity investment will be less attractive as the exemption of dividend income effectively means that tax savings on interest expense will become permanent losses at least from a tax perspective.

The above are merely academic expectations of what the single tier tax system will do for the Malaysian equity market. **The question is have the envisaged benefits been realized since the move towards the single tier tax system?** It is too early to answer that question. The single tier tax system is in its infancy. Furthermore, the Malaysian government has provided a transitional period of 6 years until 31 December 2013 for Malaysian companies to groove into the system. Individual shareholders still yearn for the full imputation system so as to enjoy tax refunds wherein their effective tax rates are below the corporate tax rate applied to dividend income at source.

There are no statistics as to the number of Malaysian companies which have made the irrevocable option to elect for the single tier tax system. Therefore, measurement and assessment of the merits of the system can only be made when the system has been up and running for a significant period of time, maybe in 2017. In the meantime, other determinants such as the present economic downturn are likely to dilute the positive effects of the single tier tax system. Also, market participants have to be educated on the merits of the single tier tax system to ensure that they make informed decisions and not invest merely driven by the herd mentality.

In finality, the movement towards the single tier tax system should theoretically benefit the Malaysian capital market. However, actual results in these changing times have often proved that theories need to be revisited and restructured to suit current dynamics. Therefore, keep your fingers crossed, especially if you are a promoter of the Malaysian equity market.

Saudia Arabia

Contributed by Salah Al-Naim
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A. Saudi Arabia New Income Tax Law

The new Income Tax Law in Saudi Arabia has stipulated a set of rights to taxpayers, as example the Law has allowed the carry – forward of a net operating loss to the taxable year following the year in which the loss is incurred. The carried – forward loss shall be deducted from the tax base of the following taxable years until the cumulative loss is fully offset. The Implementing Regulation have specified the maximum limits allowed to be annually deducted at 25% of the annual profit as per return.

Article 23 of the Law has allowed, for tax purposes, a natural person to record his transaction on a cash or accrual basis. However, if his gross income from business during a taxable year exceeds 5 million Saudi Riyals, he must use the accrual method in all succeeding taxable years notwithstanding any later drop of his income

below this limit.

Article 59 of the law stipulated the confidentiality of information by Department of Zakat (Islamic Tax) and Income tax staff which they have access in their official capacity.

1. Subject to Income Tax

Tax on non-residents : Persons subject to tax

- a non-resident who does business in the Kingdom through a permanent establishment is subject to all provisions applicable to resident companies.

- a non-resident, including a legal person owned by Saudis, with no permanent establishment in the Kingdom, is subject to withholding provisions on income from sources within the Kingdom, with exception for income of capital gains from disposal of technical or non-technical interests in a resident capital company where general provisions of the Income Tax Law apply.

2. Corporate Income tax

- A resident capital company on non-Saudi shares. Investment funds are considered capital companies.

- Total shares in net profits of non-Saudi limited partners in limited partnerships.

- A company is a resident company if it meets any of the following conditions:

- *it is formed under the Companies Regulations;*
- *its place of central control and management is situated within the Kingdom.*

- Corporate & individual Income Tax Rate is 20% for a resident capital company tax base , Tax base is gross taxable income minus allowed deductions.

B. Persons Subject to Zakat (Islamic Tax) NO INCOME TAX

1. Saudi individuals or nationals of GCC states who conduct business in the Kingdom of Saudi Arabia in commercial goods.

2. Saudi companies of all types and companies owned by nationals of GCC states that conduct business in the Kingdom, and shares of Saudis and nationals of GCC states in joint companies.

1. Determination of Zakat (Islamic Tax) 2.5% of Zakat Base:

For zakat payers with books and records, Zakat Base is determined as follows:

a. Adjustments to book result :

Net profit (loss) per books, additions to book result:

- Reserves formed during the year of audit
- Social Insurance paid abroad
- Fixed assets depreciation differences
- Expenses not related to the activity
- Zakat or tax paid and charged to accounts

Net profit as adjusted for zakat purposes

b. The following items are added to net profit (loss) as adjusted for zakat purposes :

Paid-up capital, Additions to paid-up capital:

- Balances of all provisions and reserves that completed one year, with exception to depreciation provision (not added).

- Prior years' profits carried forward (if any)

- Loans used to acquire/finance fixed assets or investments

- The owner's/partner's credit current account

- Retained profits for distribution (If any)

The year's adjusted net profit

Total items included in zakat base

Deductions:

- Fixed assets net value

- Carried over loss as adjusted by DZIT

- The year's loss as adjusted

- Pre-setting up expenses balance

- Entity's construction in progress

- Investments in other entities that were subject to zakat at these entities

- Investments in the Kingdom's government bills (average of 12 months)

Zakat base

Payable zakat is 2.5 percent of zakat base.

C. Saudi Arabia International Tax treaties

There is an agreement between the government of Saudi Arabia and the government of the United States of America for Reciprocal Exemption of Taxes On Income from the international operation of a ship or ships or aircraft.

Saudi Arabia has been signing many treaties for the Avoidance of Double Taxation and the Prevention of Tax Evasion

with respect to tax on income and on capital with all of People's Republic of China, the government of the Republic of India, the Islamic Republic of Pakistan, the Republic of Austria, and the Republic of South Africa.

Singapore

Contributed by Yee Fook Hong
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Singapore Budget 2009

The 2009 Budget was presented by the Minister for Finance in Parliament on 22 January 2009.

Part I - Economic Performance and Outlook Global economy

2008 - Grave economic crisis

- Simultaneous recession in all major regions
- Economic activity took a sharp downturn
- Industrial production and exports fell dramatically
- Jobs at risk
- Global trade and cargo volumes had slumped
- Global financial system - fragile

2009 - Great uncertainty over how long recession will last

- Governments taking unprecedented steps to stimulate their economies

Singapore

2008 - Economy grew by 1.2%

- GDP (4th quarter) declined by 3.7%
- Inflation averaged 6.5%
- Key risks - scale of recession and job loss
- Manufacturing exports and service industries affected by the world sharp contraction

2009 - GDP projected to contract by 2% to 5%

Part II - Key Initiatives

A \$20.5 billion Resilience Package

Key objectives

- (a) Help Singaporeans to keep their jobs;
- (b) Help businesses to meet their costs and enhance competitiveness;
- (c) Focus on the future - accelerate investments, world-class education, broaden training opportunities, build innovative capabilities

Components

- (a) \$5.1 billion to help preserve jobs;
- (b) \$5.8 billion Special Risk-Sharing Initiative (to stimulate bank lending);
- (c) \$2.6 billion to enhance business cash-flow and competitiveness;
- (d) \$2.6 billion to support Singaporean households;
- (e) \$4.4 billion for developing first class infrastructure and for expanding education and healthcare;

B Jobs Programme

(i) A one year Jobs Credit Scheme - cash grant for every employer

*12% on the first \$2,500 of each month's wages for each employee on the CPF payroll to be paid on a quarterly basis (i.e \$300 a month) starting from March 2009

(ii) Re- skilling for workers and professionals (Skills Programme for Upgrading and Resilience (SPUR)

*to upgrade skills by providing higher course fee and absence payrolls during training;

*SPUR support extended for quality in-house training;

*to step up training courses - (professionals, managers, executives, technicians);

*Workfare Income Supplement (WIS) temporary top-up for low-income workers (an additional 50% of the WIS payments)

C Stimulating Bank Lending

(i) To help good and viable companies to get funding from banks to stay afloat;

(ii) Government to take on a significant share of the risks of bank lending;

(iii) 2008 - SME loan schemes to increase Government's share of risk to 80%. Bridging Loan Programme for working capital with Government 50% share of the risk;

(iv) New Special Risk-Sharing Initiative (initially for 1 year)

*a new Bridging Loan Programme (BLP) which will cater to loans of up to \$ 5 million.

Government's share of risk to be increased from 50 to 80%. Banks

- will be allowed to set their own interest rates.
- *Government to take on a significant part of risk in trade financing;
 - *The different schemes available are:
 - Loan Insurance Scheme - Plus
 - New Trade Credit Insurance Programme
 - Local Enterprise Finance Scheme
 - Micro Loan Programme
 - Internationalisation Finance Scheme
- D Enhancing Business Cash-flow and Competitiveness**
- (i) To prepare for opportunities
 - (ii) To ease business cash-flow
- E Sharpening competitiveness and capabilities for innovation**
- (i) Reducing taxes to encourage investments;
 - (ii) Making innovation pervasive;
- F Supporting Families**
- (i) Direct assistance to households;
 - (ii) Support for charitable and the community
- G Building a Home for the Future**
- (i) expanding and accelerating infrastructure spending;
 - (ii) developing suburban nodes;
 - (iii) to invest more in sustainable development (\$1 billion over next 5 years);
 - (iv) best place for families
- H Budget position**
- For FY 2009, the Government projects an Overall Budget deficit of \$8.7 billion (3.5% of GDP) after dipping into the national reserves of \$4.9 billion
- Part III - Highlights of tax changes**
- Corporate income tax**
- (a) Corporate income tax reduced from 18% to 17% as from YA 2010;
 - (b) For YAs 2009 and 2010, "income tax relief for loss carry-back " can be carried back for up to preceding 3 YAs with cap increased to \$200,000;
 - (c) Tax exemption for tax resident companies and Partners (of Partnerships) in Singapore on all their foreign-sourced income remitted during 22 Jan 2009 to 21 Jan 2010;
 - (d) Capital Allowance for plant & machinery incurred in the basis periods for YAs 2010 and 2011 to be allowed within 2 years (with 75% in the first year);
 - (e) Subject to approval, accelerated writing-down allowance for Intellectual Property rights for Media and Digital Entertainment acquired by a company or partnership (during 22 Jan 2009 to 31 Oct 2013) reduced from 5 to 2 years;
 - (f) Tax deduction within one year for expenditure incurred (up to 15 Feb 2013) on "Renovation and Refurbishment " (with cap of \$150,000 for every 3 years);
 - (g) New tax framework to facilitate corporate amalgamations introduced (to be announced);
 - (h) Fund Management incentives enhanced - no restrictions on " residency status" of fund vehicles and investors. Also no investment limit for the Enhanced Tier;
 - (i) Headquarter Services Incentive Scheme enhanced from 22 Jan 2009 to 31 Dec 2013. Withholding tax exemption on interest payments on qualifying loans made to qualifying persons;
 - (j) Commodity Derivatives Traders Incentive Scheme to be enhanced;
 - (k) Withholding tax exemption extended for 5 years to 31 Dec 2013 for interest payable on loans taken by a shipping enterprise from a lender outside Singapore for acquiring a Singapore-flagged ship, and also on loans taken from a lender outside Singapore to acquire 100% of the shares in a Special Purpose Company owning 100% of a Singapore flagged ship;
 - (l) The start-up exemption scheme (100% on first \$100,000 and 50% on the next \$200,000 of chargeable income) for the first 3 YAs extended to companies limited by guarantee subject to the same conditions.
- Personal income tax**
- (a) No change in tax rates;
 - (b) 20% tax rebate for YA 2009 capped at \$2,000;

(c) Removal of income tax on Net Annual Value for YA 2010;

(d) Tax deduction on approved donations made during 2009 increased from 200% to 250%;

Goods & Services Tax

(a) No change in GST rate;

(b) GST zero-rating for the aerospace industry expanded to include all aircraft used for international transportation of goods and passengers. Also extended to cover the sale, maintenance or repair services of aircraft components or systems of qualifying aircraft;

(c) Suspension of GST and duty on goods temporarily removed from Licensed warehouse for auctions and exhibitions as from 1 April 2009 provided they are returned to the warehouse subsequently;

(d) Exemption of duty and GST for specified quantity of wine for use at approved wine exhibitions and conferences as from 1 April 2009.

Property Tax

(a) 40% Property tax rebate for commercial and industrial properties for 2009;

(b) Property tax deferral of up to 2 years or TOP, whichever the earlier, for land approved for development as from 22 Jan 2009;

(c) 40% Property tax rebate for owner-occupied residential properties for 2009;

(d) For hotel rooms property tax rate of 20% to remain for 2009

Road & Diesel Tax

(a) 30% Road tax rebate for goods vehicles, buses and taxis for one year from 1 July 2009. Special (Diesel) Tax waiver for un-hired taxis for one year effective 1 March 2009;

(b) Green Vehicle Rebate extended for 2 years to 31 Dec 2011;

(c) Tax exemption for CNG vehicles extended for 2 years to 31 Dec 2011

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