COMPARISON OF ASIA PACIFIC HOLDING COMPANY REGIMES

This analysis provides an indicative guide only and advice from appropriate country specialists should always be sought.
Particular attention should be given to the date at which the information is correct – shown under the country name at the top of each column.

	Australia	China	Hong Kong	Indonesia	Japan	Korea	Malaysia/Labuan
Last updated	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012
Establishing HoldCo							
Are advanced rulings available?	Yes	No	Yes	No[1]	Yes	Yes	Yes[2]
Are there restrictions on activities?	No	Yes[3]	No	Yes[4]	No	Yes[5]	No
Are there substance requirements?	No[6]	Yes	No	No[7]	No	No	Malaysia – yes; Labuan – no but advisable to demonstrate
Is capital duty payable?	No	No[8]	0.1% of authorised capital up to a maximum of HKD 30,000	No[9]	0.7% (generally)	Yes[10]	Malaysia – RM1,000 to RM70,000; Labuan – RM1,000 to RM5,000[11]
Is there a special tax regime for holding companies?	No	No	No	No	No	Yes[12]	Yes[13]
Is there CFC or equivalent legislation?	Yes[14]	Yes[15]	No	Yes[16]	Yes	Yes[17]	No
Number of jurisdictions with active income tax treaties (minimum)	42	92	15[18]	59	63	76	69[19]
What is the effective corporate tax rate?	30%[20]	25%	16.5%	25%[21]	38%/39%[22]	24.2%[23]	Malaysia – 25%; Labuan – Labuan trading income is taxed at 3% or at a maximum amount of RM20,000 and Labuan non-trading income is exempt[24]

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	Australia	China	Hong Kong	Indonesia	Japan	Korea	Malaysia/Labuan
Last updated	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012
Tax treatment of disposal of HoldCo							
Is any tax payable in HoldCo country on disposal of HoldCo shares by a nonresident corporate shareholder?	No, unless HoldCo's assets are primarily comprised of Australian real estate, the HoldCo shares are held on revenue account or a non-resident shareholder holds shares through an Australian PE[25]	Yes[26]	No[27]	Yes[28]	Yes, in certain circumstances and for real estate companies[29]	Yes[30]	Potential exposure to Real Property Gains Tax[31]
Tax treatment of payments by HoldCo							
Dividends							
What is the rate of withholding tax on dividends paid to nonresidents?							
– Non-treaty	30%[32]	10%	Nil	20%	20%	22%	Nil
– Treaty	0% – 25% (exceptions apply)[33]	5% – 10%	Nil	10% – 20%[34]	0% – 20%	0% – 22%	Nil
Interest							
Are there thin cap limits or other restrictions on interest deductibility?	Yes[35]	Yes[36]	Yes[37]	No limits have been set[38]	Yes[39]	Yes[40]	Yes[41]

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	Australia	China	Hong Kong	Indonesia	Japan	Korea	Malaysia/Labuan
Last updated	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012
Is interest on loans to acquire subsidiaries deductible against HoldCo's profits?	Yes – subject to thin cap limits and anti-avoidance rules	Unclear	No	No[42]	Yes[43]	Yes – subject to limitations[44]	Malaysia – maybe; Labuan – yes for Labuan trading activities, N/A for Labuan non-trading activities[45]
What is the rate of withholding tax on interest paid to nonresidents?							
– Non-treaty	10%	10%	Nil	20%	15%/20%[48]	0%/15.4%/22%[49]	Malaysia: 15%; Labuan: 0%
– Treaty	0% – 10%[46]	Generally 7% or 10%	Nil	0% – 15%[47]	0% – 20%	0% – 16.5%	Malaysia: 5% – 15%; Labuan: 0%
Liquidation payments							
Is there withholding tax on liquidation payments?	Yes[50]	Yes[51]	No	If the liquidation payment to shareholders exceeds the paid-in capital, the excess is treated as a dividend	Yes[52]	Yes[53]	No
Taxation of HoldCo income							
Dividends							
Does the foreign subsidiary have to meet any substance requirements?[54]	No[55]	N/A	No	No	No (for double tax relief purposes)	No	No
Does the foreign subsidiary have to pay tax locally?[56]	No[57]	No, subject to the CFC rules	No	No	No (for double tax relief purposes)	No	No

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	Australia	China	Hong Kong	Indonesia	Japan	Korea	Malaysia/Labuan
Last updated	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012
How are dividends taxed?	Exempt/ Taxable at 30%[58]	Domestic dividends - generally exempt from enterprise income tax; foreign dividends - generally subject to 25% enterprise income tax with credit for foreign tax	Exempt	Domestic dividends – generally exempt; foreign dividends – taxable with credit for foreign tax paid[59]	Domestic dividends – dividends received deduction; foreign dividends – 95% exemption[60]	Domestic dividends – taxable but dividends received deduction available; foreign dividends – taxable with credit for foreign tax paid[61]	Malaysia – single tier corporate tax system for domestic dividends, foreign dividends exempt; Labuan – Labuan trading income taxed at 3% or a maximum amount of RM20,000, Labuan non-trading income exempt[62]
What is the required holding period?	N/A	N/A[63]	N/A	N/A	6 months	N/A	N/A
What is the required percentage ownership?	At least 10% of direct voting power[64]	N/A	N/A	25% (for tax exemption for domestic dividends)	25%[65]	N/A	N/A
Gains on disposal of participations							
Are capital losses deductible?	Yes[66]	Yes	No	Yes	Yes	Yes	No
Does the foreign subsidiary have to meet any substance requirements?[67]	Yes[68]	N/A	No	N/A	No	No	No
Does the foreign subsidiary have to pay tax locally?[69]	No	No, subject to the CFC rules	No	N/A	No	No	No
How are gains on the sale of a subsidiary taxed?	Exempt/ Proportionately taxable at 30%[70]	Taxable at 25%	Exempt[71]	Taxable as ordinary income if the subsidiary is not listed on the Indonesian Stock Exchange[72]	Taxable at the relevant corporate tax rate	Taxable at the relevant corporate tax rate[73]	Malaysia – capital gain not subject to income tax. Potential RPGT implications; Labuan – Labuan trading income taxed at 3% or a maximum RM20,000, Labuan non-trading income exempt[74]

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	Australia	China	Hong Kong	Indonesia	Japan	Korea	Malaysia/Labuan
Last updated	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012
Is relief available for the write-down in value of subsidiaries?	No	No	No[75]	No	No[76]	No	No
What is the required holding period?	Continuous 12 month period in the 2 years before disposal	N/A	N/A	N/A	N/A	N/A	N/A
What is the required percentage ownership?	At least 10% of the voting power	N/A	N/A	N/A	N/A	N/A	N/A
Is joint taxation for groups available?	Yes[77]	No	No	No	Yes	Yes[78]	No

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	Mauritius	New Zealand	Philippines	Singapore	Taiwan	Thailand	Vietnam
Last updated	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012
Establishing HoldCo							
Are advanced rulings available?	Yes	Yes	Yes	Yes	Yes[79]	Yes[80]	Yes
Are there restrictions on activities?	No	No	No	No	No[81]	Yes[82]	Yes[83]
Are there substance requirements?	Yes[84]	No[85]	No[86]	No[87]	Yes[88]	No[89]	No
Is capital duty payable?	No	No	Yes[90]	Standard SGD 300 registration fee[91]	0.025% of authorised capital	Yes[92]	No
Is there a special tax regime for holding companies?	Yes	No	No	No	No	No	No
Is there CFC or equivalent legislation?	No	Yes[93]	No	No	No[94]	No	No
Number of jurisdictions with active income tax treaties (minimum)	34	37	38	68	22	53	49
What is the effective corporate tax rate?	Maximum 3%/15%[95]	28%[96]	30%	17%[97]	17%[98]	30%/23%[99]	25%
Tax treatment of disposal of HoldCo							
Is any tax payable in HoldCo country on disposal of HoldCo shares by a nonresident corporate shareholder?	No	No, unless shares are held on revenue account[100]	Yes[101]	No[102]	No[103]	Yes/No[104]	Yes[105]

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	Mauritius	New Zealand	Philippines	Singapore	Taiwan	Thailand	Vietnam
Last updated	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012
Tax treatment of payments by HoldCo							
Dividends							
What is the rate of withholding tax on dividends paid to nonresidents?							
– Non-treaty	Nil	0%/15%/30%[106]	15%/30%[107]	Nil	20%	10%	0%
– Treaty	Nil	0%/5%/15%	10% – 25%	Nil	5% – 15%	10%	0%
Interest							
Are there thin cap limits or other restrictions on interest deductibility?	No	Yes[108]	No[109]	No[110]	Yes[111]	No[112]	Yes[113]
Is interest on loans to acquire subsidiaries deductible against HoldCo's profits?	Yes	Yes - subject to thin capitalisation rules	Yes	Depends[114]	Depends[115]	Depends[116]	Yes
What is the rate of withholding tax on interest paid to nonresidents?							
– Non-treaty	Nil	0%/15%[117]	20%[118]	15%[119]	20%	15%	10%
– Treaty	Nil	0%/10%/15%	10% – 25%	0% – 15%	7% – 15%	0% – 15%	0% – 10%[120]
Liquidation payments							
Is there withholding tax on liquidation payments?	No	Yes[121]	Yes[122]	No	Yes[123]	Yes[124]	No

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	Mauritius	New Zealand	Philippines	Singapore	Taiwan	Thailand	Vietnam
Last updated	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012
Taxation of HoldCo income							
Dividends							
Does the foreign subsidiary have to meet any substance requirements?[125]	No	No[126]	No	No	Yes[127]	No	No
Does the foreign subsidiary have to pay tax locally?[128]	N/A	No[129]	No	No	No	Yes[130]	No
How are dividends taxed?	Taxable on "gross" dividend	Exempt/Taxable at 28%[131]	Domestic dividends – exempt; foreign dividends – taxable at 30%	Taxable with credit for foreign WHT and underlying tax (first tier subsidiaries only)/Exempt[132]	Taxable on gross dividend/ Exempt[133]	Exempt[134]	Taxable with credit for foreign tax paid[135]
What is the required holding period?	N/A	N/A	N/A	N/A	N/A	3 months[136]	N/A[137]
What is the required percentage ownership?	N/A	Generally N/A[138]	N/A	N/A	N/A	25%[139]	N/A
Gains on disposal of participations							
Are capital losses deductible?	No	No, unless shares are held on revenue account[140]	Yes[141]	No	Yes[142]	Yes[143]	No
Does the foreign subsidiary have to meet any substance requirements?[144]	No	No	N/A	No	Yes[145]	N/A	No
Does the foreign subsidiary have to pay tax locally?[146]	No	No	N/A	No	No	N/A	No

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	Mauritius	New Zealand	Philippines	Singapore	Taiwan	Thailand	Vietnam
Last updated	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012	January 2012
How are gains on the sale of a subsidiary taxed?	No capital gains tax	Not taxed unless shares are held on revenue account[147]	Taxable[148]	No capital gains tax, provided gains are capital in nature[149]	Taxable/Exempt[150]	Taxable at the standard corporate income tax rate of 30%[151]	Taxable at corporate income tax rate of 25%[152]
Is relief available for the write-down in value of subsidiaries?	No	No	Yes[153]	No	No	No	No
What is the required holding period?	N/A	N/A	N/A	N/A	N/A	N/A	N/A
What is the required percentage ownership?	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Is joint taxation for groups available?	No	Yes[154]	No	No[155]	Only for financial institutions	No	No

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Notes

[1] **IND:** Advance agreements between the tax authority and a taxpayer for a proposed transaction are not currently available. However, at the taxpayer's request, the tax authority will issue a private ruling to confirm or clarify the tax treatment based on the prevailing tax law and regulations and the taxpayer's specific circumstances. The ruling is only applicable to the particular taxpayer and does not provide a strong legal basis for other taxpayers in the event of a dispute with the tax office.
[2] **MAL/LAB:** In addition, an application for a tax residence certificate can be made to the Malaysian tax authorities.
[3] **CHI:** Investment companies set up by foreign investors cannot be involved in manufacturing activities directly; the investment here refers to a particular type of investment in China. The investments made by the companies must follow the Guideline Catalogue of Foreign Investment where some industries are restricted or prohibited for foreign investments.
[4] **IND:** Certain business sectors are closed to foreign investment or open only with certain conditions. The list of business activities which are closed or restricted (the "negative list") is adjusted periodically.
[5] **KOR:** Holding companies are governed by legislation such as the Monopoly Regulation and Fair Trade Act and the Financial Holding Companies Act, in accordance with which certain requirements must be met. A financial holding company cannot hold participations in a non-financial subsidiary and vice versa.
[6] **AUS:** There are no substance requirements; however, Australian corporations law requires a proprietary company to have at least one director who ordinarily resides in Australia.
[7] **IND:** No specific substance requirements but there must be at least two shareholders at all times. The management of a limited liability company in Indonesia consists of two boards: the Board of Commissioners (supervisory board) and the Board of Directors (executive board). Minimum capital requirement depends on the type of business.
[8] **CHI:** China does not levy capital duty, however the initial and any additional registered capital is subject to 0.05% stamp duty.
[9] **IND:** Various registration fees may apply. Stamp duty (less than US$1) may be required to legalise certain documents.
[10] **KOR:** Capital registration tax of 0.48% on the nominal value of the paid-in capital is levied when a company registers its incorporation or capital increase. If the company is incorporated in a prescribed metropolitan area, the capital registration tax is 1.44%.
[11] **MAL/LAB:** In Malaysia, for authorised share capital not exceeding RM100,000 (min) and exceeding RM100 million (max); in Labuan, for nominal capital not exceeding RM50,000 (min) and at least RM1 million (max).
[12] **KOR:** A more favourable Dividends Received Deduction (DRD) regime is available to a qualified holding company.
[13] **MAL/LAB:** Under Malaysian Income Tax Act 1967 (MITA), an investment holding company (IHC) is defined as a company whose activities consist mainly of the holding of investments and which derives not less than 80% of its gross income from such investments (excluding gross income derived from a source which itself consists of a business of holding an investment). Generally, the deduction of expenses for an IHC will be restricted. However, this does not apply to IHCs listed on the Malaysian stock exchange. Investment income of resident public listed IHCs will be treated as business income and expenses will be fully deductible. However, in either case, unabsorbed losses and capital allowances cannot be carried forward. See the note on "Effective corporate tax rate" for the tax regime applicable to a Labuan entity.
[14] **AUS:** New CFC rules are being introduced in Australia. The new rules are expected both to simplify Australia's anti-tax deferral regime and narrow the types of income attributed. As at January 2012, the new rules had not been enacted.
[15] **CHI:** Resident companies must include in their taxable income any undistributed profits of CFCs when the election not to repatriate cannot be supported by a reasonable business rationale. To be a CFC, the company must be incorporated in a country or region where the effective tax rate does not exceed 12.5%.
[16] **IND:** The Ministry of Finance has issued a specific regulation on CFC rules. An Indonesian resident company owning at least 50% of a foreign company must include a deemed dividend from that company in its tax return where no dividends were repatriated to the Indonesian company, otherwise the Ministry of Finance will do so. This applies only if the foreign company is not quoted on a stock exchange. The dividend is deemed to be derived in the fourth month following the deadline for filing the tax return in the offshore country or seven months after the offshore company's tax year end if the country does not have a specific tax filing deadline.
[17] **KOR:** Generally, when a Korean resident holds directly or indirectly at least 20% of the shares in a foreign company and the effective rate of tax of the foreign company has been 15% or less for the past three years, the Korean resident may be deemed to have received a dividend equal to the "deemed distributable retained earnings" multiplied by the shareholding ratio, even though there has been no actual distribution of such retained earnings to the Korean resident. This rule is subject to certain exceptions and limitations.

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[18] **HK:** To date, 22 double tax agreements have been signed and of these, 15 are effective. Actual effective dates may differ between the contracting parties and reference should be made to the relevant agreement. A protocol to the existing Hong Kong-Luxembourg double tax agreement introduced significant amendments to the agreement with effect from 1 April 2012 in Hong Kong.
[19] **MAL/LAB:** Labuan is generally covered by Malaysia's tax treaties, although it is specifically excluded from the definition of Malaysia in certain treaties (e.g. treaties with Australia, Chile, Indonesia, Japan, Luxembourg, Netherlands, Seychelles, South Africa, Spain, Sweden and the UK). The precise wording of the relevant treaty must be reviewed.
[20] **AUS:** Company tax rates are expected to decrease to 29% from the 2013/14 income year, however these measures have not been enacted and are not certain.
[21] **IND:** The corporate tax rate is applied to taxable income. Resident corporate taxpayers with revenue up to IDR 50 billion receive a 50% reduction in the corporate tax rate imposed on the taxable income for gross revenue up to IDR 4.8 billion. A 5% tax rate reduction applies to companies listed on the Indonesian Stock Exchange, subject to certain criteria.
[22] **JAP:** Under the 2011 Tax Reform Act, a corporate tax rate reduction from 30% to 25.5% will be effective for fiscal years beginning on or after 1 April 2012. However, a 10% surtax on the national tax will be imposed for the first fiscal year beginning on or after 1 April 2012 and the two subsequent fiscal years. Consequently, the effective tax rate for a company located in Tokyo whose share capital exceeds JPY 100 million (i.e. a company subject to factor-based enterprise tax) will be 38.01% for the first three fiscal years beginning on or after 1 April 2012, reducing to 35.64% thereafter. For a company whose share capital is JPY 100 million or less, the effective corporate tax rate will be 39.43% for the first three years beginning from 1 April 2012, reducing to 37.11% thereafter.
[23] **KOR:** From 2012, the rate, including resident surtax, is 11% on the first KRW 200 million of taxable income; 22% on taxable income between KRW 200 million and KRW 20 billion; and 24.2% on taxable income exceeding KRW 20 billion. Until 2011, the rate, including resident surtax, is 11% on the first KRW 200 million of taxable income and 24.2% on the excess.
[24] **MAL/LAB:** In Malaysia, the corporate tax rate under the MITA is 25% for the year of assessment (YA) 2009 and subsequent years. For Labuan, the tax rate on Labuan trading income is 3% of net profits per the audited accounts, subject to a maximum of RM 20,000, upon election. The election must be submitted to the Inland Revenue Board within three months from the commencement of a YA. A Labuan entity may alternatively make an irrevocable election for its income from Labuan business activities to be taxed under the MITA.
[25] **AUS:** Broadly, non-resident investors should not be subject to Australian capital gains tax (CGT) in respect of any capital gain arising from the sale of shares in HoldCo (unless HoldCo's assets principally comprise Australian real property). Where HoldCo's shareholders have an associate-inclusive interest of at least 10% in HoldCo (for a 12 month period within 2 years), any capital gain arising from the sale of shares in HoldCo may be subject to Australian CGT where the market value of HoldCo's shares is principally attributable (directly or indirectly) to Australian real property. Furthermore, upstream disposals of non-resident companies might also be subject to CGT in certain circumstances if the underlying assets principally comprise Australian real property. Revenue gains arising to non-resident investors from the sale of shares in an Australian company continue to be taxable in Australia (subject to the availability of treaty protection and/or income source rules). The Australian Taxation Office has released its view in relation to the availability of treaty protection and the application of source rules to revenue gains (TD 2011/24 & TD 2011/25). Broadly, treaty protection may be available to non-resident investors who hold HoldCo shares indirectly through a foreign limited partnership. In relation to source, the ATO will take a substantive approach and the place of contract may not be determinative.
[26] **CHI:** 10% withholding tax on capital gain (may be exempt under a relevant tax treaty). Stamp duty of 0.05% of transaction price payable by transferor and transferee.
[27] **HK:** Provided HoldCo's shareholder is not carrying on a business in Hong Kong, or the gain is "capital" in nature or sourced outside Hong Kong.
[28] **IND:** Tax is payable equal to 5% of the gross proceeds, subject to the provisions of a relevant tax treaty; 0.1% of the gross proceeds if HoldCo is listed on the Indonesian Stock Exchange.
[29] **JAP:** Taxable capital gains may arise in two circumstances:
(1) "Specially related shareholders": in principle, where a foreign company with no PE in Japan disposes of shares in a Japanese resident company (i.e. JPN holding company), the capital gains generated from the transaction should not be subject to Japanese corporation tax. However, where the foreign company qualifies as a "Specially related shareholder" of the Japanese resident company (typically where there is a more than 50% shareholding relationship), and disposes of the shares in the Japanese company under certain conditions, the capital gains on disposal are subject to Japanese corporation tax. The conditions (known as the "5%25% rules") are as follows:
i) the foreign company owns 25% or more of the shares in the Japanese company at any time during the preceding three years from the final day of the fiscal year in which the disposal took place; and
ii) the foreign company disposes of 5% or more of the outstanding shares in the Japanese company during the tax year in which the disposal took place.
If these conditions are satisfied, any capital gain should be subject to Japanese corporation tax at a rate of 28.05% (i.e. 25.5% plus 10% surtax).

(2) Real estate rich Japanese companies: special taxation rules apply to capital gains that arise from the transfer of “shares in a Japanese company related to real estate” or a “beneficial interest of specific trust related to real estate” (i.e. “real-estate rich companies”). Where:

i) aggregate amount of real estate assets at fair market value (e.g. land, buildings) / total amount of assets owned ≥ 50%; and

ii) the shareholder owns more than 5% (2% in the case of a non-listed company) of shares in the real-estate rich company;

capital gains on the disposal of shares in the company are subject to Japanese corporation tax at 28.05%.

[30] **KOR:** Generally, capital gains on the disposal of shares of a Korean company derived by a non-resident seller without a Korean PE are subject to tax of the lower of 11% of sales proceeds or 22% of realised gains. The tax must be withheld by the buyer. Certain disposals of publicly-traded shares are exempt from the tax and exemption may often also be available under the terms of a relevant tax treaty. Special rules apply to the disposal of real estate-rich companies.

[31] **MAL/LAB:** Not subject to income tax provided the gain is classified as "capital" rather than "income". There could be Real Property Gains Tax (RPGT) implications if HoldCo is regarded as a real property company (RPC) for RPGT purposes. RPGT at an effective rate of 5% is imposed on any chargeable gain arising from the disposal of shares in an RPC within 5 years of the date of acquisition.

[32] **AUS:** Withholding tax is only payable to the extent the dividend is unfranked (i.e. paid out of untaxed profits). Dividends from foreign companies can be flowed through Australian companies free of Australian income and withholding taxes.

[33] **AUS:** The withholding rate under Australia's treaties generally varies between 0% – 15% depending on the country of residence of the recipient and applies only to the unfranked portion of the dividend. Exceptions apply, e.g. Fiji, Kiribati – 20%, Thailand 15% – 20%, Philippines – 25%.

[34] **IND:** Certain requirements must be satisfied to benefit from reduced treaty rates.

[35] **AUS:** Thin capitalisation legislation applies to entities that are broadly: i) foreign controlled, or ii) control foreign companies. Thin capitalisation legislation applies to deny interest deductions where, broadly, total average debt exceeds 75% of the total average value of the assets (reduced by certain non-debt liabilities and investments in associates) of the entity, i.e. the debt:asset ratio is broadly 3:1. Alternatively, an arm’s length test may be available, which results in a notional amount of interest-bearing debt that represents what the Australian entity could reasonably be expected to obtain on arm’s length terms, having regard to certain factual assumptions and relevant facts. A recent ruling issued by the ATO indicates that the ATO may also seek to apply transfer pricing legislation to limit the deductibility of interest on intercompany debt, even where gearing levels are within the prescribed thin capitalisation limits.

[36] **CHI:** Debt:equity ratio 2:1; 5:1 for financial institutions.

[37] **HK:** Although there are no thin capitalisation limits, there are other strict rules regarding deductibility of interest, particularly in relation to borrowings from non-residents.

[38] **IND:** The Ministry of Finance is authorised to determine thin cap limits for tax purposes. However, to date, it has not issued any regulations to exercise this power.

[39] **JAP:** The thin capitalisation ratio is generally 3:1.

[40] **KOR:** Where a domestic subsidiary or branch borrows amounts in excess of 300% of equity (600% of equity for certain financial institutions) from a foreign controlling shareholder (head office in the case of a branch), the interest relating to the excess portion of the loan is not deductible for Korean tax purposes. This rule also applies to loans from third parties guaranteed by the foreign controlling shareholder.

[41] **MAL/LAB:** Thin capitalisation provisions introduced in the Finance Act 2009 require that where financial assistance provided to a related party is excessive in the opinion of the Director General of Inland Revenue (DGIR), a deduction may be denied for the excessive portion of interest or charges. The Ministry of Finance has announced that the implementation of the thin capitalisation rules will be deferred until the end of December 2012.

Interest and other expenses are not deductible to the extent that they relate to exempt income; therefore, interest on a loan to purchase an investment generating exempt dividend income may not be deductible.

[42] **IND:** The interest should be capitalised into the acquisition cost of the shares.

[43] **JAP:** Where Holdco receives dividends from domestic companies and applies for the dividends received deduction, the interest expense allocated to the underlying shares on which the dividends are paid will not be deductible (other than for dividends paid within a consolidated tax group or a 100% resident company group).

[44] **KOR:** Where a domestic company receives dividends from a domestic subsidiary and applies for the Dividends Received Deduction (DRD), the DRD may be reduced by a proportion of the interest expense calculated by comparing the ratio of the acquisition value of shares in the subsidiary to the total assets of the domestic company. This limitation does not apply to dividends within a tax consolidation group (which can only include 100%-owned subsidiaries).
[45] **MAL/LAB:** For Malaysia, in general, interest and other expenses are not deductible to the extent they relate to exempt income. Therefore, interest on a loan to purchase an investment generating exempt dividend income may not be deductible. Interest expense incurred in relation to dividends taxed under the full imputation system (in transition up to YA 2013) can be deducted from such dividend income but interest expense in relation to single-tier tax exempt dividends will be disregarded for tax purposes.
[46] **AUS:** Generally the treaty rate of withholding is 10% with some exceptions (e.g. 0% for interest paid to Finnish, French, Japanese, New Zealand, Norwegian, South African, UK and US resident unrelated financial institutions). Under a new treaty with Chile, a 5% rate may be available for interest payments to such financial institutions. However, as at January 2012, this treaty is not yet in force. Exemptions from interest withholding tax can apply in certain circumstances (e.g. publicly offered debentures).
[47] **IND:** Certain requirements must be satisfied to benefit from reduced treaty rates.
[48] **JAP:** Notes 15%; loans 20%. Original issue discount is not generally treated as interest (subject to any treaty override).
[49] **KOR:** The rate of withholding tax on interest paid to a non-resident without a Korean PE is 22% under domestic tax legislation. However, interest on bonds issued by the national government, local government or a domestic company is subject to a lower rate of 15.4%. A tax exemption is available for interest received by non-residents on certain foreign currency denominated bonds.
[50] **AUS:** To the extent distributions do not represent a return of paid up share capital, they are treated as dividends and subject to withholding tax at the appropriate rate.
[51] **CHI:** The portion of the liquidation income equivalent to shareholder's retained earnings and reserves is treated as dividend income. Any excess over the cost of the investment is treated as a capital gain.
[52] **JAP:** A certain part of a liquidation payment is generally treated as a deemed dividend.
[53] **KOR:** Upon liquidation, the value of property distributed to shareholders in excess of the acquisition cost of the shares of the liquidated company is treated as a deemed dividend. If the shareholder is a non-resident without a Korean PE, the deemed dividend would be subject to withholding tax.
[54] In many countries, whilst there may not be specific requirements for the subsidiary to be subject to a certain level of tax or meet specified substance criteria, CFC or equivalent legislation may apply to effectively tax income received by the subsidiary in the holding company's country of residence. The precise circumstances must be carefully considered.
[55] **AUS:** Foreign subsidiary income may be subject to CFC rules.
[56] In many countries, whilst there may not be specific requirements for the subsidiary to be subject to a certain level of tax or meet specified substance criteria, CFC or equivalent legislation may apply to effectively tax income received by the subsidiary in the holding company's country of residence. The precise circumstances must be carefully considered.
[57] **AUS:** Foreign tax paid on income attributed under the CFC rules may be creditable to HoldCo.
[58] **AUS:** Broadly, dividends received from non-portfolio investments (i.e. at least 10% of direct voting power) in non-resident companies are non-assessable in Australia and no tax credit is available (unless income was previously taxed under the CFC rules). Where dividends are taxable, credit is available for foreign dividend withholding tax only. New provisions in relation to this exemption are being introduced. The new provisions are expected to apply a substance over form approach in relation to the availability of the exemption (e.g. returns on legal form equity which is in substance debt would not benefit from the exemption). It is also expected that distributions through interposed partnerships and trusts will be able to benefit from the exemption (currently not available). As at January 2012, these new provisions have not been enacted.
[59] **IND:** Dividends paid out of retained earnings derived or received by an Indonesian resident company from a shareholding of at least 25% in an Indonesian limited liability company are exempt from tax. Foreign dividends remitted to Indonesia are taxable with credit for the foreign tax paid, limited to the amount of Indonesian tax otherwise payable on the relevant foreign income.
[60] **JAP:** Exemption available under the domestic dividends received deduction depends broadly on percentage ownership and holding period with adjustment for allocated interest (other than for dividends paid within a consolidated tax group or a 100% resident company group). Under the foreign dividend exemption rule, dividends received from subsidiaries situated outside Japan are 95% exempt from Japanese corporate taxes, subject to a minimum shareholding threshold. In general, the Japanese parent company must own directly at least 25% of the shares in the foreign subsidiary paying the dividend and hold those shares continuously for at least six months immediately prior to the date of declaration of the dividend. Indirect foreign tax credits in respect of underlying corporate taxes are no longer available and withholding taxes on dividends that qualify under the above foreign dividend exemption rule are treated as non-deductible

expenses and not available for a direct foreign tax credit. In particular cases, direct dividends paid by foreign companies which have been subject to the Japanese CFC rules within the last 10 years or which received dividends from second tier foreign subsidiaries which have been subject to the Japanese CFC rules within the last 2 years may be fully exempt from corporate tax and any withholding tax on dividends is deductible.

[61] **KOR:** Dividends received from domestic subsidiaries: generally taxable but Dividends Received Deduction (DRD) available of 30% – 100% depending on the percentage ownership. A more favourable DRD regime is available to a qualified holding company.
Dividends received from foreign subsidiaries: generally taxable but direct and indirect foreign tax credits (FTCs) are available subject to a number of requirements and limitations. Unused FTCs can be carried forward for five years. Certain tax treaties provide more favourable treatment with respect to indirect FTCs.

[62] **MAL/LAB:** Malaysia adopted a single tier corporate tax system with effect from the 2008 year of assessment, under which tax on a company's profit is a final tax. Dividends distributed are exempt from tax in the hands of shareholders. Companies which have no credit balance in the Section 108 account (i.e. a dividend franking credit under the full imputation system) on 1 January 2008 automatically move to the single-tier tax system. Companies with a credit balance in the Section 108 account may make an irrevocable election for the single-tier tax system. Companies with a credit balance in the Section 108 account which do not elect to switch to the single-tier tax system are allowed to utilise the credit balance for the purpose of dividend distribution during the transitional period of six years until 31 December 2013. There are certain conditions to be met for a company to utilise its credit balance in the Section 108 account as well as for a shareholder to claim a tax credit from the franked dividends received during the six year transitional period. For Labuan, see the note on "Effective corporate tax rate" for the tax regime applicable to a Labuan entity in respect of its income from Labuan business activities.

[63] **CHI:** The exemption does not apply to dividends received in respect of the shares of public traded Chinese companies held for less than 12 months.

[64] **AUS:** The new provisions may apply in respect of membership interests instead of direct voting power and are also expected to apply to dividends received by attributable taxpayers of CFCs, even where the relevant 10% interest is not held. As at January 2012, these new rules have not been enacted.

[65] **JAP:** Subject to override by the terms of individual tax treaties. Some treaties reduce the ownership requirement to 10% or 15%.

[66] **AUS:** Allowable capital losses are available for offset against any taxable capital gains, depending on the active foreign business asset percentage (e.g. where the active foreign business asset percentage of the foreign company is at least 90%, no portion of the capital loss will be allowed). Capital losses cannot be offset against ordinary income.

[67] In many countries, whilst there may not be specific requirements for the subsidiary to be subject to a certain level of tax or meet specified substance criteria, CFC or equivalent legislation may apply to effectively tax income received by the subsidiary in the holding company's country of residence. The precise circumstances must be carefully considered.

[68] **AUS:** For any exemption to be available, a direct shareholding carrying at least 10% of the voting power is required for a period of 12 months in the preceding 24 month period. The capital gains tax reduction is then based on the active foreign business asset percentage of the foreign company. (This test includes assets of foreign subsidiary and downstream entities to the extent HoldCo has a total participation interest > 10%). The exemption is wholly available where the active foreign business asset percentage is at least 90%, there is a proportionate exemption where the active foreign business asset percentage is between 10% and 90% and no exemption is available if the active foreign business asset percentage is less than 10%. The gain can be on-distributed via a conduit foreign income account without Australian dividend withholding tax.

[69] In many countries, whilst there may not be specific requirements for the subsidiary to be subject to a certain level of tax or meet specified substance criteria, CFC or equivalent legislation may apply to effectively tax income received by the subsidiary in the holding company's country of residence. The precise circumstances must be carefully considered.

[70] **AUS:** For any exemption to be available, a direct shareholding carrying at least 10% of the voting power is required for a period of 12 months in the preceding 24 month period. The capital gains tax reduction is then based on the active foreign business asset percentage of the foreign company. The exemption is wholly available where the active foreign business asset percentage is at least 90%, there is a proportionate exemption where the active foreign business asset percentage is between 10% and 90% and no exemption is available if the active foreign business asset percentage is less than 10%. The gain can be on-distributed via a conduit foreign income account without Australian dividend withholding tax.

[71] **HK:** The exemption is available provided the gain is regarded as "capital" rather than "revenue" in nature or the gain is sourced outside Hong Kong.

[72] **IND:** 0.1% of the gross proceeds if the subsidiary is listed on the Indonesian Stock Exchange.

[73] **KOR:** Generally taxable at the relevant corporate tax rates. From 2012, the rate, including resident surtax, is 11% on the first KRW 200 million of taxable income; 22% on taxable income between KRW 200 million and KRW 20 billion; and 24.2% on taxable income exceeding KRW 20 billion. Until 2011, the rate, including resident surtax, is 11% on the first KRW 200 million of taxable income and 24.2% on the excess.

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[74] **MAL/LAB:** In Malaysia, not subject to income tax provided the gain is classified as "capital" rather than "income". There could be Real Property Gains Tax (RPGT) implications if the subsidiaries are regarded as real property companies (RPCs) for RPGT purposes. RPGT at an effective rate of 5% is imposed on any chargeable gain arising from the disposal of shares in an RPC within five years of the date of acquisition. For Labuan, please refer to the note on "Effective corporate tax rate" above for the tax regime applicable to a Labuan entity in respect of its income from Labuan business activities.
[75] **HK:** A deduction may be available in limited circumstances if: i) the unrealised loss is reflected in the income statement; and ii) any gain or loss on the ultimate disposal of the shares would be "revenue" in nature and sourced in Hong Kong.
[76] **JAP:** Write-down in value of subsidiaries is not deductible in principle. However, if the value of shares has decreased by at least 50% and the value is not expected to be recovered as of the end of the fiscal year, relief for the write-down in value may be allowed.
[77] **AUS:** Tax consolidation (fiscal unity) regime.
[78] **KOR:** Tax consolidation is available for a domestic parent company and its 100% (directly and indirectly) owned domestic subsidiaries.
[79] **TAI:** Only when certain criteria are met.
[80] **THA:** By way of a private letter ruling request or following the APA guidelines and procedures that were released in 2010.
[81] **TAI:** Advance permission is required to operate in certain industries but a pure holding company would not have any restrictions on its activities.
[82] **THA:** If the holding company is majority foreign owned, there are a number of restricted business activities that fall under the Foreign Business Act which does not include ownership in local and foreign entities. This should be checked through appropriate local legal counsel.
[83] **VIET:** Only one foreign owned HoldCo (for domestic investment) has been licensed in Vietnam to date. This was under the former law. Guidelines on the establishment of foreign owned domestic holding companies under the current law (effective 1 July 2006) are yet to be issued. Outbound investment has the further restriction that an offshore investment licence is required. In summary, the establishment of foreign owned HoldCos in Vietnam at present is very difficult in practice.
[84] **MAU:** There must be two Mauritius-resident directors and board meetings must be chaired from Mauritius.
[85] **NZ:** No substance requirements, however a new bill proposes to strengthen the New Zealand company registration regime. One proposal is to require the company to have at least one director (or agent) who is ordinarily resident in New Zealand.
[86] **PHI:** The majority of directors must be Filipino residents.
[87] **SING:** Companies are required to have one shareholder and one director who must be "ordinarily resident" in Singapore. Pure investment holding companies with no activities in Singapore may face difficulty in obtaining a Certificate of Residence from the Inland Revenue Authority of Singapore (IRAS).
[88] **TAI:** The holding company must have a physical office and commence its business within six months of being established.
[89] **THA:** For public companies, at least half of the board of directors must be Thai residents.
[90] **PHI:** The Philippine SEC imposes a filing fee of the higher of 1/5 or 1% of the authorised capital stock, or PHP 1,000.
[91] **SING:** Applies to the incorporation of a public/private company limited by shares. For the incorporation of a public company limited by guarantee or a public accounting corporation, the registration fee is SGD 600.
[92] **THA:** On the issue of new shares, a stamp duty of THB 5 per share certificate applies.
[93] **NZ:** Broadly, a New Zealand resident with an income interest of 10% or more in a CFC has attributed CFC income from that CFC where the active business test is not met. Broadly, to the extent that passive income is greater than 5% of total income, attribution of passive income will be required. An exemption from attribution applies for certain Australian resident CFCs which meet certain criteria.
[94] **TAI:** A bill proposed in December 2009 included changes to CFC rules but it must be discussed and passed by the Legislative Yuan and enacted by the President before the changes enter into effect.
[95] **MAU:** A flat tax rate of 15% applies to both domestic and foreign source income. However, a company holding a Category 1 Global Business Licence (a GBC 1 company), is entitled to claim a credit for the greater of the actual foreign tax incurred or a deemed foreign tax credit equivalent to 80% of the Mauritius tax payable, giving a maximum effective tax rate of 3% on foreign income.
[96] **NZ:** 28% with effect from the 2012 income year, previously 30% (since the 2009 income year).

[97] **SING:** 75% of the first SGD 10,000 of chargeable income and 50% of the next SGD 290,000 of chargeable income is exempt from tax.
[98] **TAI:** A 10% advance tax is payable on any earnings of the holding company that remain undistributed by 31 December of the following year. An alternative minimum tax (AMT) applies, at a rate between 10% and 12% (The Executive Yuan is authorised to determine the exact rate within this range based on the economic situation and has set a 10% rate each year since 2006). Specific tax-exempt items must be added back to taxable income for purposes of calculating AMT. For business enterprises, the significant provisions include: (1) AMT base – the following items need to be added back to taxable income for AMT calculation purposes: i) income that is exempt in accordance with the income tax holiday approved before the Statute for Upgrading Industries (SUI) which expired on 31 December 2009 and various laws; ii) income from the disposal of Taiwanese securities; iii) income from offshore banking units of financial institutions; and iv) income that may be exempt under any newly enacted laws or regulations; (2) Threshold amount – broadly, business enterprises can claim an exemption of NTD 2 million when calculating AMT, so only business enterprises with income over NTD 2 million will be subject to AMT.
[99] **THA:** Reduced marginal rates apply on the first THB 3 million if registered paid-in share capital is THB 5 million or less. In 2011 the Cabinet approved a reduction in the corporate income tax rate to 23% from 2012, with a further reduction to 20% in 2013. Specific terms and conditions that will apply to the corporate income tax rate reductions are expected but have not yet been released by the Thailand Revenue Department.
[100] **NZ:** No capital gains tax in New Zealand. However gains on disposals of shares could be taxable as income if HoldCo's shares are held on revenue account (i.e. shares acquired for the purposes of disposal, business of dealing in shares, etc).
[101] **PHI:** The Philippine tax code provides for the sale of stock in a domestic corporation to be treated as derived entirely from sources within the Philippines, regardless of where the shares were sold.
[102] **SING:** Gains of a capital nature are not taxable under Singaporean legislation, whereas gains of an income nature are subject to income tax at the prevailing corporate income tax rate if the gains are sourced in Singapore or received/deemed received in Singapore. The determination of whether a gain is income or capital in nature is complex and must take into account all the facts of a particular case. Where HoldCo's shareholder is a foreign corporation not carrying on a business in Singapore and which does not have a presence in Singapore, the gain from the disposal of shares in HoldCo, if regarded as income, would likely be regarded as non-Singapore source income and therefore should not be subject to Singapore income tax.
[103] **TAI:** Under Taiwanese legislation, capital gains arising from qualified Taiwan securities transactions are exempt from Taiwan general corporate income tax. If the Taiwan HoldCo is a company limited by shares, the shares are issued in accordance with Taiwan Company Law and authenticated by a qualified bank or trust company, no general corporate income tax is payable in Taiwan on capital gains realised on the disposal of the shares in HoldCo. However, the capital gains are subject to Alternative Minimum Tax (AMT).
[104] **THA:** If the shares are sold to a party in Thailand then any gain resulting from the sale (sale proceeds less original cost of shares) would be subject to 15% withholding tax. If the shares are sold to another non-resident party with no taxable presence in Thailand, then Thailand tax law has no mechanism in place to tax the gain from the sale.
[105] **VIET:** The capital transfer is liable to the Vietnamese CIT rate of 25%, subject to relief under an applicable tax treaty.
[106] **NZ:** The domestic rate of withholding tax on fully imputed dividends is 0% for a dividend paid to a non-resident where the non-resident has a 10% or more voting interest in the company. In most other cases the non-resident withholding tax rate will be 15% unless the dividend is unimputed, in which case a 30% rate applies. In some cases a supplementary dividend can be paid to effectively negate the cash impact of the withholding tax. The withholding rate under New Zealand's tax treaties will be either 0%, 5% or 15% depending on the country of residence of the recipient and whether the relevant criteria are met.
[107] **PHI:** Withholding tax rate is 15% provided that the country of residence of the non-resident recipient allows a 15% tax credit. Otherwise, dividends are taxed at 30%.
[108] **NZ:** Thin capitalisation rules apply to limit the deductibility of interest on debt of a foreign controlled New Zealand entity or a foreign taxpayer in New Zealand to the extent that the ratio of interest bearing debt to assets of the entity's New Zealand group exceeds the greater of: i) 60% or ii) 110% of the ratio of debt to assets of the company's worldwide group. (The 60% ratio applies with effect from the 2012 income year, it was previously 75%.) The thin capitalisation rules have been extended to New Zealand residents that have an income interest in a controlled foreign company (CFC) (subject to certain exemptions). The debt:asset ratio for "outbound" thin capitalisation is 75%.
[109] **PHI:** There are no thin cap rules except for in certain regulated industries. Interest expense is generally deductible but subject to a ceiling. The allowable deduction for interest expense is reduced by an amount equal to 33% of the interest income subject to final withholding tax.
[110] **SING:** Interest and other expenses are not deductible to the extent they relate to exempt income; therefore, interest on a loan to purchase an investment generating exempt dividend income may not be deductible.

[111] **TAI:** As from fiscal year 2011, interest expense of a profit-seeking enterprise (PSE) from related party debt exceeding the stipulated debt:equity ratio is not deductible for tax purposes. The disallowed interest expense is not available to be carried forward to subsequent years and is not recharacterised as a dividend. The debt:equity ratio generally is 3:1. The ratio does not change depending on the scale of the business or industry, although companies in the financial industry, such as banks, financial holding companies, insurance companies, securities firms, etc., are excluded from the application of the thin capitalisation rules.
[112] **THA:** If a taxpayer is seeking to obtain a Board of Investment certificate to promote a business activity, a debt:equity ratio of 3:1 must be in place when applying for the promotion certificate. This does not affect the deductibility of the interest for corporate income tax purposes since there are currently no thin capitalisation rules in Thailand.
[113] **VIET:** There are no thin capitalisation rules in Vietnam, however, there are two main bases for interest restrictions. The interest rate for borrowings other than from credit institutions or economic organisations is capped at 150% of the interest rate announced by the State Bank as at the date of the loan. Payments of interest on loans for contributions to legal capital or to registered legal capital which is not yet fully paid up, as per the schedule for capital contribution set out in the enterprise charter, are not deductible.
[114] **SING:** Interest and other expenses are not deductible to the extent they relate to exempt income; therefore, interest on a loan to purchase an investment generating exempt dividend income may not be deductible.
[115] **TAI:** Interest and other expenses are not deductible to the extent that those expenses relate to tax-exempt income.
[116] **THA:** Not clearly stated in Thai tax law. There is a position where it can be considered as deductible for corporate income tax purposes if the holding company can justify that the interest element results in a benefit to the HoldCo.
[117] **NZ:** The tax treaty rate is 15% or 10% depending on the country of residence of the recipient. However, the rate of non-resident withholding tax on qualifying payments of interest to non-associated parties can be 0% where the payment of interest is made by an approved issuer under the Approved Issuer Levy (AIL) regime, provided a 2% levy is paid.
[118] **PHI:** 20% withholding tax rate applies to interest payments to non-resident foreign companies.
[119] **SING:** Only if the interest is i) not derived by the non-resident from any trade or business carried on in Singapore; and ii) not effectively connected with a permanent establishment in Singapore.
[120] **VIET:** The France/Vietnam treaty has no interest article and as such, the other income provision of the treaty provides that only the country of residence can tax the interest, resulting in a zero rate of withholding tax.
[121] **NZ:** To the extent distributions do not represent a qualifying return of capital (or in some cases certain capital gains), they are treated as dividends subject to withholding tax at the appropriate rate.
[122] **PHI:** 30% final withholding tax on the excess of the liquidation proceeds over the cost of the investment in HoldCo.
[123] **TAI:** The excess of any liquidation payment over the original investment is treated as a dividend and subject to dividend withholding tax.
[124] **THA:** Proceeds in excess of the registered paid-in capital plus share premium are subject to 15% withholding tax, as opposed to the 10% withholding tax that applies to dividends paid out to shareholders.
[125] In many countries, whilst there may not be specific requirements for the subsidiary to be subject to a certain level of tax or meet specified substance criteria, CFC or equivalent legislation may apply to effectively tax income received by the subsidiary in the holding company’s country of residence. The precise circumstances must be carefully considered.
[126] **NZ:** May be subject to CFC rules (see response to "Is there CFC or equivalent legislation?").
[127] **TAI:** If the foreign subsidiary wishes to apply the provisions of a tax treaty with Taiwan, it must meet the necessary substance requirements. The Ministry of Finance issued Assessment Rules on the Eligibility for Income Tax Treaty Benefits on 7 January 2010 which request the applicants to provide a tax residence certificate and beneficial owner documentation.
[128] In many countries, whilst there may not be specific requirements for the subsidiary to be subject to a certain level of tax or meet specified substance criteria, CFC or equivalent legislation may apply to effectively tax income received by the subsidiary in the holding company’s country of residence. The precise circumstances must be carefully considered.
[129] **NZ:** May be subject to CFC rules (see response to "Is there CFC or equivalent legislation?").
[130] **THA:** The net profits of the subsidiary must be subject to a corporate income tax rate of at least 15% in the tax jurisdiction where it is considered tax resident.
[131] **NZ:** Domestic dividends derived from a member of a wholly owned New Zealand group are exempt. Most foreign dividends received by New Zealand resident companies are exempt. Foreign dividends derived by a company resident in New Zealand are not exempt if the dividends arise from fixed-rate shares, or the dividends are tax-deductible for the foreign company or the dividends arise from certain non-attributing portfolio Foreign Investment Funds (FIFs).

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[132] **SING:** If no foreign tax credit is provided for in the relevant tax treaty, the company can rely on unilateral provisions in Singapore legislation that allow credit for foreign withholding tax and underlying tax subject to the condition that the company is resident in Singapore and owns at least 25% of the shares of the payer. Foreign-source dividends received by a resident company are tax exempt provided the dividend has been subjected to tax in the foreign jurisdiction and at the time the dividend is received in Singapore, the headline rate of tax in the foreign jurisdiction is at least 15%.
[133] **TAI:** Dividends received from foreign subsidiaries are included in corporate taxable income and subject to 17% corporate income tax. Credit is available for any foreign tax paid, up to certain limits.
[134] **THA:** Subject to the conditions that: i) HoldCo owns at least 25% of the shares (with at least 25% of the voting rights), ii) HoldCo owns the shares for at least three months before and three months after the dividend is paid and iii) there is no cross-ownership of shares.
[135] **VIET:** Credit for foreign tax is limited to the amount of Vietnamese tax that would be payable on the income.
[136] **THA:** HoldCo must own the shares for at least three months before and three months after the dividend is paid.
[137] **VIET:** Within six months after obtaining tax finalisation reports or documents of equal validity under laws of the investment-receiving countries, investors must remit all profits and other income generated from their investment projects back to Vietnam.
[138] **NZ:** 10% in the case of certain Foreign Investment Funds (FIFs) as noted under "How are dividends taxed?".
[139] **THA:** HoldCo must own at least 25% with comparable voting rights.
[140] **NZ:** No capital gains tax in NZ. However losses on disposals of shares could be deductible if HoldCo's shares are held on revenue account (i.e. shares acquired for the purposes of disposal, business of dealing in shares, etc).
[141] **PHI:** Deductible only to the extent of capital gains arising from similar transactions
[142] **TAI:** Capital losses are deductible provided that the participations do not qualify as Taiwan securities exempt from Taiwan general corporate income tax. To qualify as an exempt security, the participation must be in a company limited by shares, whose shares are issued in accordance with Taiwan Company Law and authenticated by a qualified bank or trust company.
[143] **THA:** Gains can be offset by HoldCo's brought forward tax losses and capital losses are deductible for corporate income tax purposes.
[144] In many countries, whilst there may not be specific requirements for the subsidiary to be subject to a certain level of tax or meet specified substance criteria, CFC or equivalent legislation may apply to effectively tax income received by the subsidiary in the holding company’s country of residence. The precise circumstances must be carefully considered.
[145] **TAI:** If the foreign subsidiary wishes to apply the provisions of a tax treaty with Taiwan, it must meet the necessary substance requirements.
[146] In many countries, whilst there may not be specific requirements for the subsidiary to be subject to a certain level of tax or meet specified substance criteria, CFC or equivalent legislation may apply to effectively tax income received by the subsidiary in the holding company’s country of residence. The precise circumstances must be carefully considered.
[147] **NZ:** No capital gains tax in New Zealand. However gains on disposals of shares could be taxable as income if HoldCo's shares are held on revenue account (i.e. shares acquired for the purposes of disposal, business of dealing in shares, etc).
[148] **PHI:** Sales of shares in a domestic corporation sold other than via the local stock exchange (LSE) are subject to a final tax of 5% on the first PHP 100,000 of the net capital gain and 10% on the excess. If the shares are listed on the LSE, gains are exempt and losses non-deductible. Sales of shares listed on the LSE are subject to stock transaction tax at a rate of 1/2 of 1% of the gross selling price or gross value in money of the shares or stocks sold. Gains on the disposal of shares in a foreign corporation are added to the gross income of the HoldCo and subject to corporate tax at 30%.
[149] **SING:** Determining whether gains are capital or revenue in nature depends on the specific facts and circumstances of each case and can result in disagreements between the taxpayer and the Singapore tax authorities.
[150] **TAI:** Capital gains on the sale of a foreign subsidiary are subject to 17% corporate income tax. Capital gains on the sale of a domestic subsidiary, which is a company limited by shares, may be subject to AMT, currently 10%.
[151] **THA:** Gains can be offset by brought forward tax losses for corporate income tax purposes.
[152] **VIET:** The taxable income equals the disposal proceeds less the cost of the investment and any transfer costs.
[153] **PHI:** A write-down is allowed as a deduction from gross income provided the devaluation is permanent.
[154] **NZ:** Tax consolidation regime, or offset of losses by election or by subvention payment.

[155] **SING:** Each company is required to file a separate tax return. However, a loss transfer system of group relief allows current year unutilised losses, unutilised capital allowances and unutilised donations to be transferred from one qualifying company to be offset against the taxable profits of another qualifying company within the same group, subject to conditions.

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