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LEGAL & TAX

JOI Seminar

Taxation in Myanmar, Laos and Cambodia

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- DFDL's Tax & Customs Practice Group Mission

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Jack is the Regional Director, Tax & Customs Practice Group. He has over twelve years' experience in Europe and Asia and previously headed the tax team of a "Big Four" firm managing a team of tax specialists. Jack specializes in providing international tax planning and consulting, cross border tax advisory services, tax due diligence, corporate restructuring and reorganization and compliance advice.

Jack is a regular speaker on current taxation issues in the region and his speaking engagements include European Chamber of Commerce, Chinese Chamber of Commerce, Australian New Zealand Business Association, Thai Tax Forum, Lao Stock Exchange (LSX), Cambodian Stock Exchange (CSX) and various DFDL sponsored events throughout the region including Thailand, Singapore and Laos. Jack is a member of the Association of Chartered Certified Accountants.

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Comparable Taxation Table

	Laos	Myanmar	Cambodia
CIT	28%/24%	25%/35%	20%
VAT/CT	10%	5%	10%
Carry Forward Loss	3 years	3 years	5 years
Capital Gains	10%	10%/40%	20%
Transfer Pricing Rules	No	No	No
Thin Cap	No	No	No (Interest restricted)
Advance Rulings	No	No	No
Dividends WHT	10%	0%	14%
Interest WHT	10%	15%	14%
Royalty WHT	5%	20%	14%
Service/Management Fee	5.6%/4.8%	3.5%	14%
Hold Co Regime	No	Yes	Yes
DTAs	Yes	Yes	No
DTA - Malaysia	No	Yes	No

- Myanmar

Contents

- Taxation Overview

Snapshot

- Income Tax
- Commercial Tax
- Customs Duties
- Tax incentives under the Foreign Investment Law (FIL)
- Tax incentives under the Myanmar Special Economic Zones Law and Dawei Special Economic Zones Law (SEZ Laws)
- Withholding Tax

- **Sources of Taxable Income**

  i) Salaries;
  ii) Profession;
  iii) Business;
  iv) Property;
  v) Capital gains;
  vi) Undisclosed sources of income; and
  vii) Other sources of income

- **Income Year**

  - 1 April to 31 March

Income Tax - CIT

- **Corporate Income Tax**
  - Subsidiary 25% (Worldwide income) (Not Operating under the FIL)
  - Subsidiary 25% (Income within Myanmar) (Operating under the FIL)
  - Branch 35% (Income within Myanmar) (Not Operating under the FIL)
  - Branch 25% (Income within Myanmar) (Operating under the FIL)

- **Capital gains**
  - Resident companies 10%
  - Non-resident companies 40%

- **Capital gains in oil and gas sector (Foreign Currency)**
  - Up to 100 Million 40%
  - 100 Million to 150 Million 45%
  - Above 150 Million 50%

Income Tax - CIT

- Annual tax returns: monthly or quarterly advance payments
- Tax declaration on capital gains within 1 month following disposal
- No formal transfer pricing regulation and compliance
- Expense deduction, depreciations
- Loss carry forward 3 years
- Capital losses cannot be deducted from income

- **Residence**
  - Resident foreigners Stay at least 183 days
  - Non-resident foreigners Stay less than 183 days
  - Expatriates working for a foreign invested enterprise under the FIL are deemed tax residents of Myanmar, regardless of their actual period of presence in the country.

- **Taxable basis**
  - "Salary" includes salary, wages, annuity, pension, gratuity, and any fees, commissions or perquisites received in lieu of or in addition to any salary and wages.
  - Benefits are included in the definition of taxable salary.
  - No clear description of what constitutes a taxable benefit in this regard.
  - In practice, Income Tax borne by the employer is also regarded as a taxable benefit in itself.

Income Tax - PIT

- **Tax Rates for Expatriate Employees**
  - Resident foreigners — 1% to 20% (Worldwide income)
  - Non-resident foreigners — 35% (Income within Myanmar)
  - Expatriates working for a foreign invested enterprise under the FIL — 1% to 20%

- **Paying tax in practice**
  - Employers must apply a withholding for the income tax on salary on a monthly basis.
  - Also provide an annual finalization statement of salaries paid to employees.
  - If the income is paid in foreign currency, the tax must be paid in local currency by residents and foreign currency by non-residents.
  - No deductions for costs related to employment income, but there are a number of allowances.

Commercial Tax (CT)

- Turnover tax applicable to specific transactions
  - Goods manufactured or 14 services rendered in Myanmar
  - Imported goods based on landed cost
- Rates

- Goods manufactured and sold in Myanmar	5% (except 18 items)
- 14 services rendered in Myanmar	5%
- Imported goods	5% (except 18 items)

- No commercial tax imposed on exported goods except 5 items

(petroleum; natural gas; teak; hardwood; jade and precious stones)

Customs Duties

- Rates from 0% to 40%
- Customs duties and CT are levied at the point of entry for imported goods
- Customs draw back for re-export (6 months)
- Exemption from customs duties under bond
- For oil and gas sector, Myanmar Oil & Gas Enterprise (MOGE) can facilitate customs duties/CT temporary imports or free import

Tax incentives under the FIL

- The Myanmar Investment Commission (MIC) typically grants 3-year tax holiday, starting from the date of commencement of commercial production of goods or services.

- MIC may also grant one or more other exemptions or relief such as:

- Exemption or relief from income tax on profits of the business if these profits are maintained in a reserve fund and are subsequently re-invested within 1 year after the reserve fund is made;

- Relief from income tax up to 50 per cent on the profits accrued from the export of the goods produced by any enterprise;

- Right to carry forward and set off losses for up to 3 consecutive years from the year the loss is sustained in respect of such loss sustained within 2 years immediately following the enjoyment of exemption or relief from income tax;

- Exemption or relief from customs duty or other internal taxes such as commercial tax or both on machinery, equipment, instruments, machinery components, spare parts and materials used in the business that are imported and are required for use during the period of construction i.e. before commercial production;

- Exemption or relief from customs duty or other internal taxes or both on raw materials imported for the first 3 years' commercial production following the completion of construction.

Tax incentives under the SEZ Laws

- Investors may apply for income tax exemption on export proceeds for first 5 years from the date of commencement of production or service; 50% income tax relief on export proceeds for second 5 years; and 50% income tax relief on re-invested profits for a further 5 years.

- After expiry of the income tax exemption and relief period, manufacturing businesses may have further income tax relief if the value of export items exceeds:

- 50% of the total value of products in the case of large-scale businesses;
- 60% of the total value of products in the case of medium-scale businesses;
- 70% of the total value of products in the case of small-scale businesses.

- What constitutes large etc. scale businesses has not yet been determined.

Tax incentives under the SEZ Laws

- Exemption from commercial tax or value-added tax (VAT) may be granted on export items;
- Service enterprises may be granted commercial tax relief up to the prescribed period (not yet prescribed) commencing from the year of operation;
- Exemption from customs duty and other internal taxes on raw materials, machineries and equipment imported for export processing enterprises established in Export Processing Zone;
- Exemption from customs duty and other internal taxes on import of machineries and motor vehicles to be used in investment enterprises for 5 years commencing from the year of operation, and 50% relief for the next 5 consecutive years;
- Exemption and relief from taxes and duties in accordance with the existing law for import of materials from local and abroad for investment enterprises in other zones other than Export Processing Zone.

Withholding Tax - Residents

- Withholding taxes (Residents)

- Dividend	0%
- Interest	0%
- Royalty	15%
- Services	2% (including contracting oil & gas)
- Goods purchase	2% (within/from Myanmar)

Withholding Tax - Non-residents

- Withholding taxes (Non-residents)

-	Dividend	0%
-	Interest	15%
-	Royalty	20%
-	Services	3.5% (including contracting oil & gas)
-	Goods purchase	3.5% (within/from Myanmar)

Withholding Tax (WHT) - Considerations

- "Under a contract, agreement or other form"
- WHT deducted from payment made to residents (not final tax)
- WHT deducted from payment made to non-residents (final tax)
- The WHT covers services and procurement of goods within/from Myanmar.
- Tax authorities yet to issue ruling on leasing transactions.
- It is not relevant whether the services were performed in Myanmar or abroad, provided they are performed under a contract with a Myanmar /resident principal.
- The tax liability for the WHT is triggered by payment of the fee.
- Payment within 7 days (procedure)

- DTA Overview

DTAs

- There is no DTA between Myanmar and Japan. Local withholding taxes will apply.
- DTAs with a few important trade partners including Thailand, Malaysia, Singapore, Korea, Vietnam, India, Indonesia, UK and Bangladesh
- Indonesia and Bangladesh are not yet in force

DTA Table

Country	Dividends		Interest (1)	Royalties
	Individuals, Companies	Qualifying Companies		
India	5	5	10	10
Korea	10	10	10	10/15 (2)
Malaysia	10	10	10	10
Singapore	10	5(3)	8/10 (4)	10/15 (2)
Thailand	10	10	10	5/10/15
United Kingdom	0	0	-(5)	0 (6)
Vietnam	10	10	10	10

(1) Many of the treaties provide for an exemption for certain types of interest, e.g. interest paid to public bodies and institutions. Such exemptions are not considered in this column.

(2) The 10% rate applies in respect of payments of any kind received as a consideration for the use of, or the right to use, any patent, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(3) This rate applies if the beneficial owner is a company which owns at least 25% of the shares of the company paying the dividends.

(4) The lower rate applies if the interest is received by any bank or financial institution.

(5) The domestic rate applies; there is no reduction under the treaty.

(6) Royalties are exempt up to an amount considered fair and reasonable consideration for the rights for which the royalties are paid. Royalties do not include royalties or other amounts paid in respect of the operation of a mine or quarry or of other extraction of natural resources, or rent or royalties in respect of a motion picture film.

- Holding Companies

Myanmar Holding Structure – Japan Holding Co

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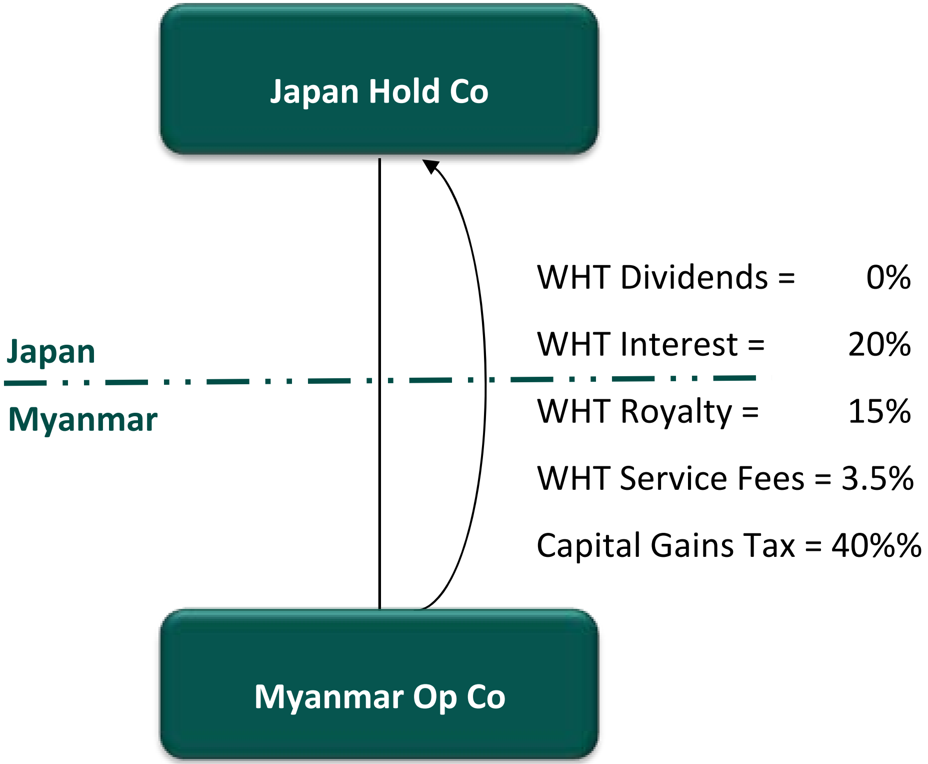
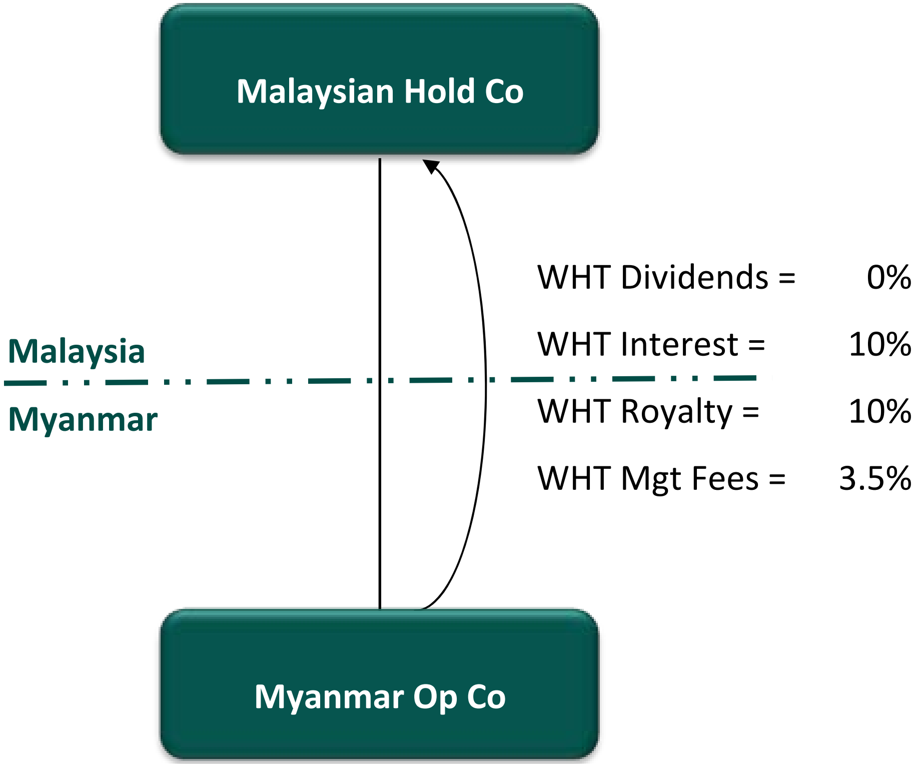
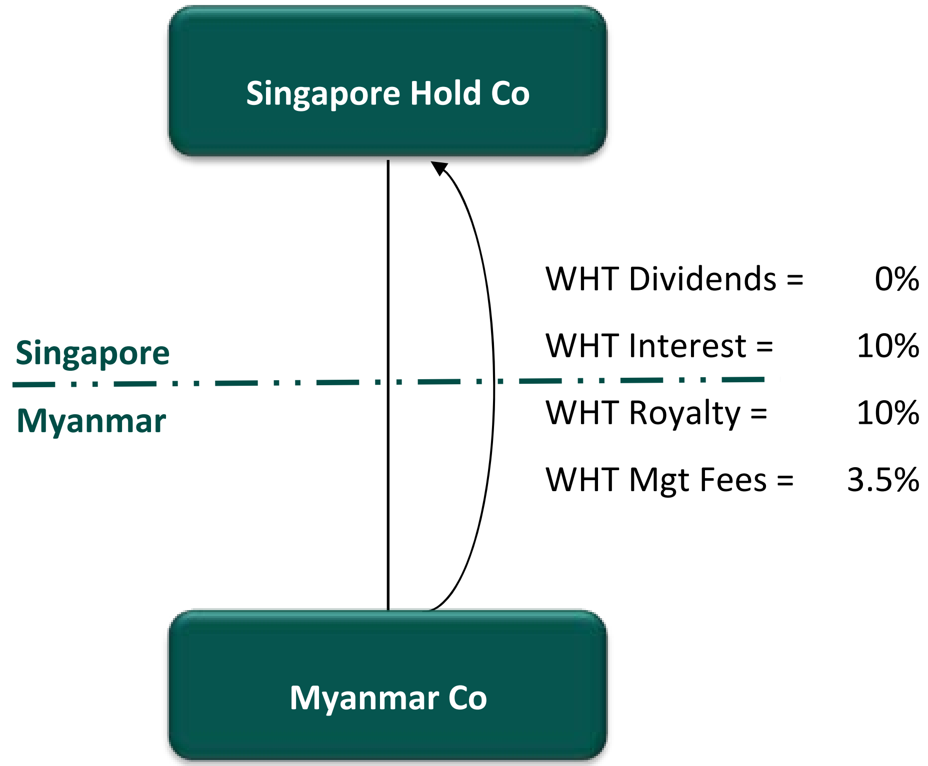


Myanmar Holding Structure – Malaysian Holding Co



Myanmar Holding Structure – Singapore Holding Co



Myanmar- Singapore Tax Treaty

- Article 13 – Capital Gains

- If gains from shares representing a participation of at least 35% of a company in Myanmar, and of which at least 20% is sold, these maybe taxed in Myanmar.

- Domestic rates: Capital gains at 10% for resident foreigners and 40% for non-resident foreigners

- DTA rate: Not exceed 10% (No specific rates in other DTAs)

- Thus, DTA rate reduced to 10% for non-resident foreigners

- Article 11 – Interest

  - DTA rate: bank or financial institution - not exceed WHT of 8% (normally 10% in Myanmar DTAs)

- Should consider Singaporean holding companies

- Profit Repatriation from Myanmar

Special considerations

- DTAs implemented, but at the discretion of tax authorities
- No thin capitalization rules
- Shareholder loans deductable
- Transfer pricing issues—no clear cut guidelines
- Capital gains— DTA / Domestic Rates
- As to the remittance of all funds, funds in hard currency can be remitted to and from the accounts of Myanmar Investment and Commercial Bank (MICB) or Myanmar Foreign Trade Bank (MFTB) at several banks outside Myanmar, with the approvals of the Foreign Exchange Management Department (FEMD) under the Central Bank and the MIC.

- Laos

Snapshot

- Tax reform 2012 – New Amended Tax to be implemented 1 Oct 2012
- Generous tax exemptions and incentives available
- Corporate Income Tax at28%, reduced to 24% new Amended Tax Law
- VAT at 10%
- WHT on dividends 10%
- WHT on interest 10%
- WHT on royalties 10%
- Capital gains at 10%
- No formal transfer pricing rules
- No thin capitalization rules
- DTAs with Vietnam, China, Korea and Thailand

- Corporate Income Tax

CIT Rates 2012

- 24% applicable to legal entities (domestic and foreign invested companies), except companies that are listed on the securities exchange which will receive a profit tax reduction of 5% from the normal profit tax rate for 4 years from the listing date, and thereafter will be subject to the normal profit tax rate.
- 26% applicable to tobacco manufacturers, in which 2% will be contributed to the Tobacco Control Fund.
- Companies that are paying profits tax at a rate of 35% will be able to now apply a reduced rate of 24%
- Companies paying 20% or in a period of tax holiday should not be affected by the new rates

- Tax Incentives

Tax Incentives available in investment law

Tax incentives are determined by the activities and location of investment in Lao PDR.

Activities are ranked in levels from 1 to 3 and categorized as follows:

1. Highly promoted - e.g. 4 star resorts and hotels, printing, education
2. Moderately promoted – e.g. manufacture of motor cycles
3. Low level promoted activities – e.g. soft drinks manufacturing, car parts

And location:

Zone 1 – Underdeveloped

Zone 2 – Moderately developed

Zone 3 – Developed with good economic infrastructure

Tax Incentives for investors *continued*

<u>Concession Activities</u>:

Tax incentives for concession related activities will be determined on a case by case basis by the GoL

- Examples of concession type activities include: mining, electric generation, telecommunications, airlines, insurance and financial institutions and businesses requiring land concessions e.g. plantations

Profit Tax Incentives

Zone 1:

- Level 1 activities will receive tax exemption for 10 years
- Level 2 activities will receive tax exemption for 6 years
- Level 3 activities will receive tax exemption for 4 years

Zone 2:

- Level 1 activities will receive tax exemption for 8 years
- Level 2 activities will receive tax exemption for 4 years
- Level 3 activities will receive tax exemption for 2 years

Zone 3:

- Level 1 activities will receive tax exemption for 6 years
- Level 2 activities will receive tax exemption for 2 years
- Level 1 activities will receive tax exemption for 1 years

Profit Tax Incentives *continued*

- Profit tax exemptions period commences when the enterprise commences operations
- For companies that invest into Research & Development (R&D), new product development and new technology the commencement is when the enterprise is profitable.

- Profit Repatriation

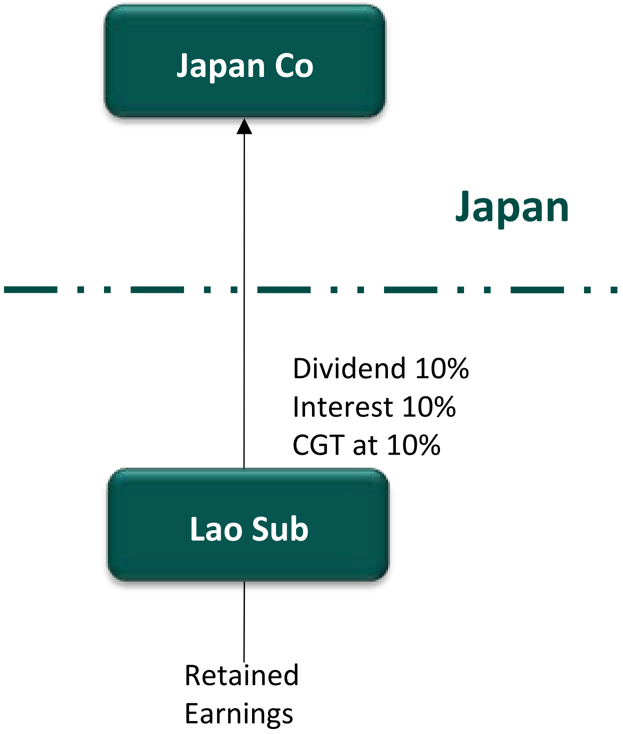
WHT on Cross-Border Payments

▪ Dividends	10%
▪ Interest	10%
▪ Royalty	5%
▪ Service fees	5.6%/4.8% (Amended Tax Law)
▪ Purchased goods	1.4%/1.2% (Amended Tax Law)
▪ Capital gains on sale of shares	10%

Cash Repatriation from Lao PDR

Direct Investment from Japan

- Lao Subsidiary pays dividend to Japanese shareholders
- WHT on dividend and interest is 10%
- Payable within 10 days from date of payment
- Not permitted to make dividend payments if company has retained losses
- Capital gains on the sale of shares at 10%



Thai Holding Company for Lao Co

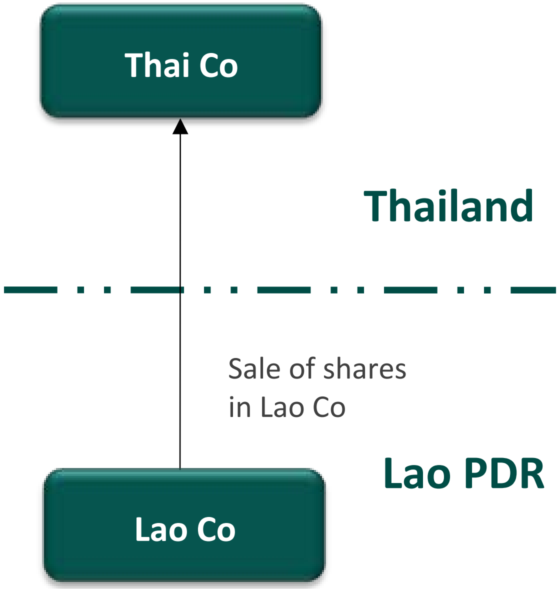
Exit Strategy

▪Thai investor sells its shares in Lao Co

▪Normally the profit on the sale of the shares is taxed at 10%

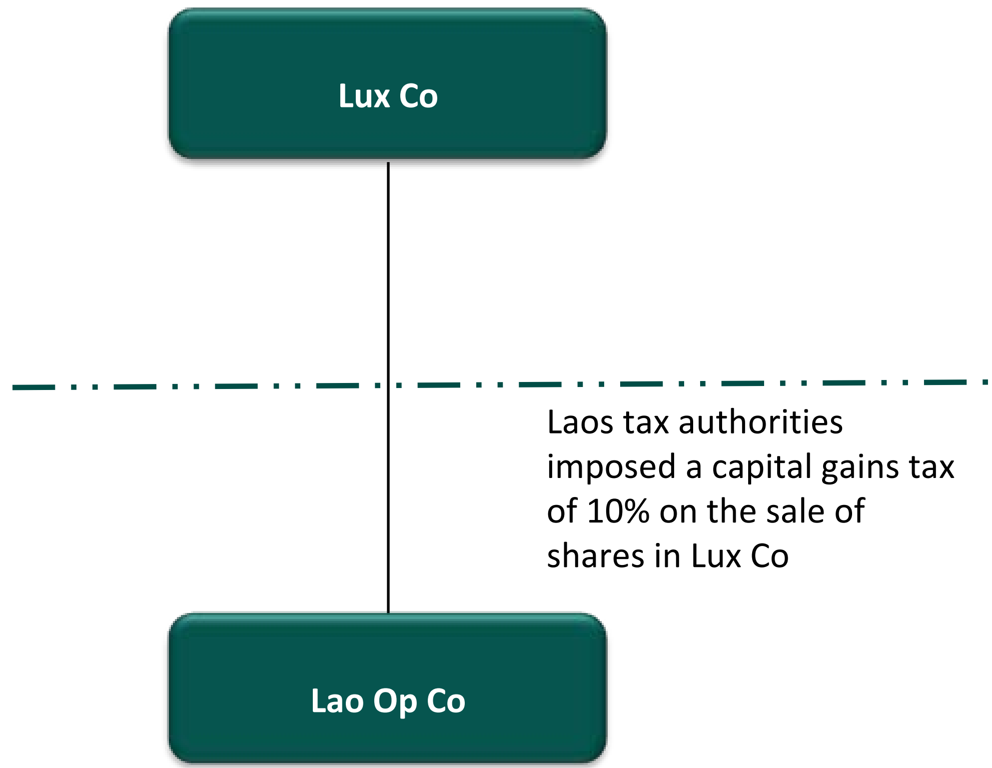
▪The tax treaty provides that the sale of shares can only be taxed in the resident state of the seller i.e. Thailand

▪No tax applied in the Lao PDR



Precedent Case

Telecom Case – Indirect sale of shares



- Cambodia

Snapshot

- Corporate Tax 20% or Minimum Tax 1% on turnover (highest only)
- No DTAs with any country
- WHT for payments to non-residents:

- Dividend	14% (+20% for exempt profit)
- Interest	14%
- Royalty	14%
- Services	14% (no VAT)
- Purchase goods	0%

- No formal transfer pricing regulations
- Capital gains on shares by non-resident is generally not taxable

Corporate Income Tax ("Tax on Profit")

- 20% on net profit **OR** Minimum Tax of 1% on turnover, whichever is higher
- Deductible expenses
- Limitations

-Interest ("cap" on 50% of non-interest profit)

-Related party transactions

-Losses on fixed assets in related transfer

- Carry forward of losses 5 years

Withholding tax ("WHT") payments to non-residents

- Standard rate of 14%
- Applicable to service fees, interests, dividends, royalties
- Example: Cambodian company pays interest to Malaysian lender = 14% WHT
- Interest free loans –deemed interest

Example: Cambodian company pays dividend to Malaysian shareholder = TOP 20% + WHT 14%

- Tax Incentives

Tax Incentives Cambodia

Tax incentives (some examples)

- Textile/garments (at least USD 500K)
  (extension granted)
- Chemicals/cement (at least USD 1M)
- Rubber products (at least USD 500K)
- Metal products (at least USD 300K)
- Electronics (at least USD 300K)

Tax holiday limitations

- Tax on Profit exempt for 6-9 years
- VAT still applies (unless exempted)
- Withholding tax still applies
- Tax on Salary still applies

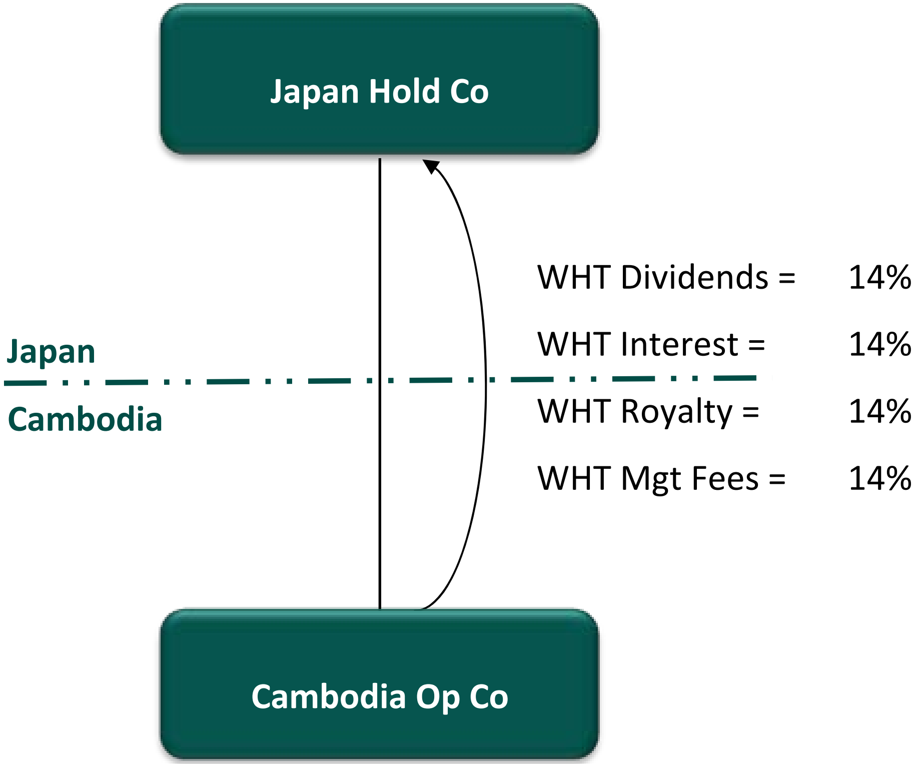
VAT exempt in Special Economic Zone

Major limitation: Additional Dividend Distribution Tax

- Subject to normal rate 20%
- If you distribute tax exempt profit
- Structure this in advance to ensure that this tax does not apply!

- Cambodian Holding Structures

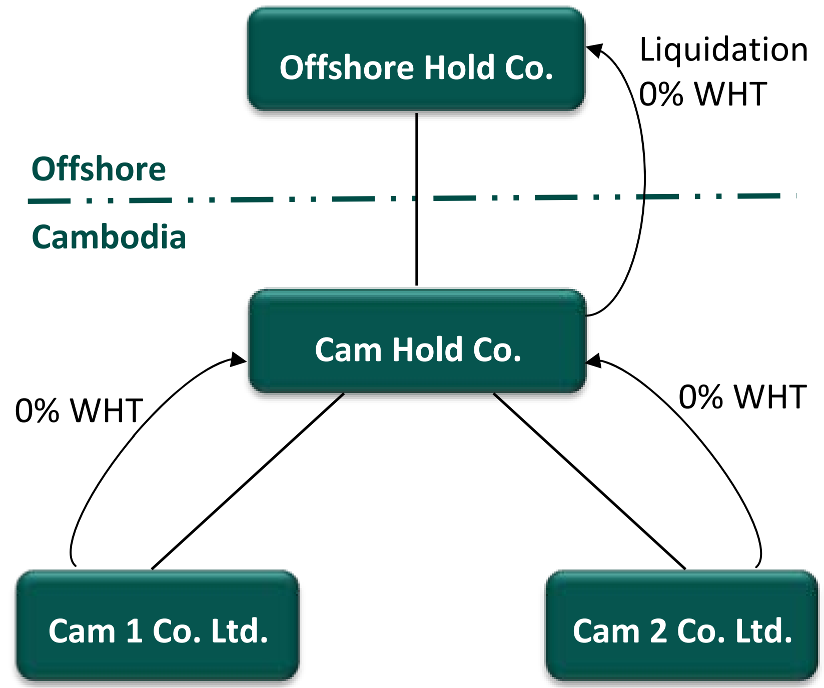
Cambodia Holding Structure – Japan Holding Co



Cambodian Holding Company

– Corporate Law/Regulatory
– Dividends WHT = 0% for residents
– Cash pooling
– Reinvestment
– Liquidation no WHT
– No capital gains tax for

Non-residents



- Q & A

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