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Tax Considerations for Supply Chain Management

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ASEAN Integration

ASEAN Free Trade Area (AFTA)

- Removal of tariffs and non-tariff barriers.
- Integrating customs procedures
- Establishing the ASEAN Single Window
- Continuously enhancing the Common Effective Preferential Tariffs (CEPT) Rules of Origin including its Operational Certification Procedures, and harmonising standards and conformance procedures.

ASEAN Integration

- ASEAN tax coordination is limited to the elimination of certain withholding taxes and the completion of the network of double tax treaties among all ASEAN countries.
- Issue: Without a uniform corporate tax rates, ASEAN integration creates an increased tax competition between ASEAN countries in order to attract foreign direct investment promoting further regional and global integration of businesses.

TAXATION AMONG ASEAN COUNTRIES

Countries	Corporate income tax rate (%)	Personal income tax rate (%)	VAT/GST rate (%)
Brunei	20	None	None
Cambodia	20	20	10
Indonesia	25	30	10
Laos	24	24	10
Malaysia	25	26	6 –services 5-10 for sales
Myanmar	25	20 for employment 30 other income	5 for services 3-100 for goods
Philippines	30	32	12
Singapore	17	20	7
Thailand	20	35	10
Vietnam	22	35	10

Tax Considerations for Supply Chain Management

Characterization of transaction

- Supply of Goods
- Supply of Services



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TAXATION OF SUPPLY OF GOODS



Business Profits Rule

What is business profits?

- What is permanent establishment (PE)?
- What is the attribution rule?

Permanent establishment issues

- **Permanent establishment (PE)** issue - used by some countries to attack supply chain structures.



PE creates taxable presence
in the Philippines

Attribution Rule

- When an enterprise of a Contracting State carries on business in the other Contracting State, and it has a permanent establishment in the other Contracting state country; the profits on which is attributable to the permanent establishment shall be subject to tax to the other contracting state.
- Rules in determining the whether an enterprise has a PE varies in different jurisdiction

Taxation of Supply of Goods

- Income Tax
- VAT
- Import Tax

Income Tax - Supply of goods

- Situs of supply of goods
 - when is it taxable in the Philippines
 - what is sale in the Philippines

Withholding tax on supply of goods

If sale outside of the Philippines:

- Exempt

If sale inside the Philippines

- Income Tax
 - If no PE
 - If with PE
- Value Added Tax

Withholding tax on supply of goods – local supplier

- Income payments by Top 20,000 private corporations to their local/resident suppliers of their local/resident suppliers of goods and services other than those covered by other rates of withholding tax
 - a. Supplier of goods – 1% of the Gross Selling Price, or total amount of goods or its equivalent
 - b. Supplier of services – 2% of Gross Payments

Importation issue in the Philippines

- The BIR has set the requirements and guidelines for the accreditation of Philippine importers and brokers.
- Under RMO No. 10-2014, importers and brokers need to seek an Importer Clearance Certificate (ICC) and Broker Clearance Certificate (BCC) from the BIR as the first stage of accreditation process that will enable them to import and transact business with Customs.



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TAXATION OF SUPPLY OF SERVICES



Supply of services

Common types of services

- Consultancy
- Project management
- Royalties
- Marketing
- Secondment of employees

Tax Situs of Services

SERVICE is sourced where it is rendered

General Rule: Taxable in the place where rendered

Exception to the rule: exempt under tax treaty

Taxation of Consultancy/Project Management

- OECD Tax Rules
 - income earned treated as business profits, and may be exempt from income tax provided there is no PE in the
 - In case there is PE net taxation of attributable profits



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TAXATION OF SUPPLY OF SOFTWARE TRANSACTIONS



Taxation of software

Copyrights

- Software Sale
- Rules on Characterization of payments for software

Taxation of Royalties

- Withholding tax
- VAT
- Import duties

Copyright

- Sale of Software – involves transfer of a copyright right in a software where there has been a transfer of all substantial rights in the copyright such as :
 - i. The right to make copies of the software for purposes of distribution to the public by sale or other transfer of ownership, or by rental, lease or lending;
 - ii. The right to prepare derivative computer programs based upon the copyrighted software;

Copyrights

- iii. The right to make a public performance of the software;
- iv. The right to publicly display the computer program; or
- v. Any other rights of the copyright owner, the exercise of which by another without his authority shall constitute infringement of said copyright.

(Section 5 RMC 44-05)

Copyrights

- Rules on characterization of payment of Software

RMC 44-05

- business profits
- Royalties
- rental income
- capital gains tax



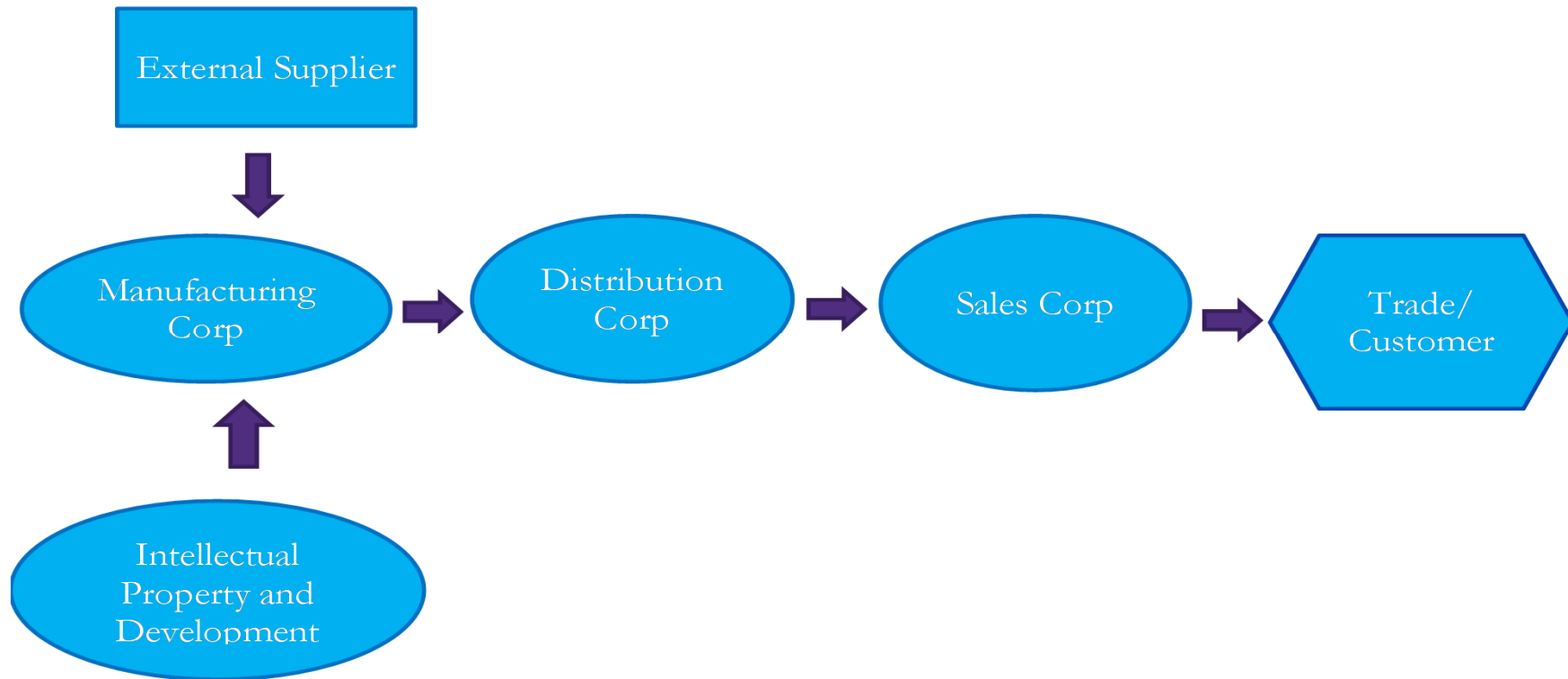
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INTERCOMPANY TRANSACTIONS



Transfer Pricing



Process of manufacturing and shipping of goods by MNE

Transfer Pricing

- Given the related services performed by each part of a MNE the following are the usual Related Party Transactions:
 - Sale of Goods
 - Loans or intercompany financing
 - the provision of services such as a central IT group providing global IT support services;
 - intangibles such as the sale or license of technology across borders;

Transfer Pricing Considerations

- Allocation of services to different countries considering Low Tax Jurisdictions
- Aligning business and tax goals, MNEs must ensure that the appropriate profits are earned in the most favourable jurisdictions, thereby effectively managing the corporate group's overall tax liability.

Transfer Pricing

- Revenue Regulation 02-2013 - transfer pricing regulations was already issued
- Preparations of contemporaneous Transfer Pricing Study to support pricing on related party transactions

Transfer Pricing

- Common TP Methods:
 - the comparable uncontrolled price method,
 - the resale price method
 - the cost plus method
 - the comparable profit method
 - the profit split method

Taxation of intercompany loans

- WHT
 - 20% FWT Interest on foreign loans (**Section 28 (B) (5) (a)**)
- Preferential rates may apply if lender is a resident of a country which has a tax treaty with the Philippines

Taxation of ROHQ/RHQ

- ROHQ
 - taxed at 10% of the taxable income
- RHQ
 - not subject to income tax

(Section 28 (A) (6) of the Tax Code)

Taxation of Employees of ROHQ/RHQ

- 15% FWT on gross income received by every alien individual occupying managerial and technical positions (Section 25 (C) of the Tax Code)
- Same rate may apply to Filipino employees provided they hold positions which will qualify as managerial and highly technical. (RR 11-10)

Questions & feedback

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