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M E M O R A N D U M

The New Enterprise Income Tax Law

The new *PRC Enterprise Income Tax Law* (the "New Law")[1], which took effect on January 1st 2008, levels the playing field between foreign invested enterprises ("FIEs") and domestic enterprises.

The New Law sets an enterprise income tax ("EIT") rate of 25% applicable to both FIEs and domestic enterprises.

Also, as a result of the New Law most tax benefits and preferential treatments previously available to FIEs are either restricted or abolished.

In order to deal with the impact of these legal changes most FIEs will need to assess there corporate strategies in China. Taxation treaties will be an essential part of this assessment and review.

In order to provide a general outlook of this new landscape the present memorandum covers the following matters:

I. Preferential Treatment to FIEs. Before and After the New Law.

II. Tax Treaties. Comparative Table.

I. Preferential Treatment to FIEs. Before and After the New Law.

The following is a comparative table of the situation before and after the New Law, regarding preferential treatments applicable to FIEs.

Previous preferential tax treatments	Current Treatment. Comments
Reduced EIT rates for FIEs established in special investment zones	This preferential treatment is eliminated by the New Tax Law, but for enterprises set up prior to January 1, 2008 which were enjoying income tax rate of 15%, their income tax rate will be gradually increased to 25% within five years as follows: 2008 18% 2009 20% 2010 22%

[1] The New Law has been detailed by the Regulations for the Implementation of PRC Enterprise Income Tax Law (the "Regulations") promulgated on December 6, 2007.

	2011 24% 2012 25% For enterprises in encouraged industries in the western areas, including 12 provinces, and in 3 ethnic autonomous regions, they will continue to enjoy a preferential tax rate of 15% until year 2010. For entities set up prior to January 1, 2008 which were enjoying income tax rate of 24%, their income tax rate will be changed to 25% from January 1, 2008.
Two-year exemption and three-year reduction	This preferential treatment is eliminated by the New Law. Nevertheless, for those enterprises which have commenced their two plus three tax holidays before year 2008, they can continue to enjoy the remaining tax holidays until expiry. But for those enterprises which have not commenced their tax holidays before year 2008 due to losses, their tax holidays will be deemed to commence in year 2008. For new enterprises registered in six economic zones, namely Shenzhen, Zhuhai, Shantou, Xiamen, Hainan and Shanghai Pudong after January 1, 2008, if they are qualified as high technology type enterprise that should be supported by the State, they are still eligible for the two plus three years tax holidays. The tax holiday is commencing from the first year that the enterprise generates incomes. Moreover, for enterprises in specific industries in western areas and 3 ethnic autonomous regions, they are still eligible for the two plus three years tax holidays.
Reduced EIT rates for export-oriented FIEs	This incentive treatment is eliminated by the new Enterprise Income Tax Law.

Tax exemption on repatriation of dividends	The general tax rate for repatriation of dividends is at 10%. However, see section II herein on relevant tax treaties.
Tax reduction on reinvestment	This reduction treatment is eliminated by the new Enterprise Income Tax Law.
Local tax exemption or reduction	Previously, the enterprise income tax was composed of two parts: income tax on enterprise and local income tax. As the new Enterprise Income Tax Law has unified the two parts into one general rate of 25%, so this exemption will not apply now. However, there is one exception: the autonomous authority of ethnic autonomous locality may decide on the reduction or exemption of the portion of enterprise income tax shared by such locality.

II. Tax Treaties. Comparative Table.

Category of Income	**Jurisdiction with No Treaty***		**HK**	**Singapore**	**Mauritius**	**Barbados**
	Prior 2008	**Post 2008**				
Dividends	Exempt	10%	5%	10%/7% (5%) **	5%	5%
Royalties	10%	10%	7%	10%	10%	10%
Interest	10%	10%	7%	7%/10%***	10%	10%
Capital Gain (shares in PRC Property Co. with ≥25% holding)	10%	20%	10%	10%	10%	Exempt****

Note:

Tax treaties are only compared in light of the mentioned categories of income. Additional considerations might be necessary, including administrative and regulatory costs in different jurisdictions.
* E.g., BVI (WHT on dividends, interest and royalty is reduced to 10% according to the EIT Regulation.
** 25% shareholding is required, or the rate increases to 10%. Furthermore, 5% is offered under the new Singapore-PRC treaty was signed on 11 July 2007 which is yet to be ratified by China.
*** 7% on interest paid to a Singapore financial institution, and 10% in all other cases.
**** The Barbados-PRC treaty is being renegotiated and it is widely anticipated that the capital exemption provisions will be removed following the signing and the ratification of the new treaty.

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