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Asia Tax Bulletin

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In This Edition

We are pleased to present the Winter 2021/22 edition of our firm's *Asia Tax Bulletin*.

Dear Reader,

Welcome to the Asia Tax Bulletin, winter 2021/22 edition. I would like to make a special note about the recent 'Grey-listing' of Hong Kong and Malaysia by the European Union (EU) – placing Hong Kong and Malaysia on its watchlist for blacklisting, unless they implement a tax reform prior to 2023 to amend the way they tax foreign investment income. In both jurisdictions, foreign investment income is not taxable regardless of whether the income is remitted and regardless of whether the receiving company has any economic substance. This enables investors to use companies without any economic substance to earn foreign investment income without being taxed on the income in these jurisdictions.

The EU requires Hong Kong and Malaysia to amend their tax legislation to either tax the foreign investment income or to introduce economic substance requirements; or other conditions which will make it less convenient to use these jurisdictions predominantly for international taxation planning purposes.

In relation to corporate investors Malaysia withdrew its tax exemption rule for foreign investment income (an exception applies until 2026 to foreign dividend income) with effect from 1 January 2022,

meaning that offshore-sourced investment income is now generally subject to income tax in Malaysia if it is remitted to Malaysia. The question is whether this will be sufficient. Hong Kong has yet to take any measures so the international investment community will be watching closely.

If either jurisdiction fails to introduce satisfactory rules during 2022, the EU may decide to put them on its blacklist of tax havens, which may cause certain EU member states to impose punitive measures on the payment of investment income to companies in Hong Kong or Malaysia (e.g., higher withholding tax rates, non-deductibility for corporate income tax), and subsidiaries may be taxable in the hands of the EU-based parent company under controlled foreign company tax provisions in the EU member states. These jurisdictions might become less attractive for investment or as a gateway to Asia to EU investors.

**With best wishes,
Pieter de Ridder**



Pieter de Ridder
Managing Partner, Singapore, Mayer Brown
+65 6922 2240
pieter.deridder@mayerbrown.com



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JURISDICTION:

China (PRC)

Bond Interest Withholding Tax Exemption

At the State Council Executive Meeting on 27 October, it was decided that China will extend its tax exemption on bond interest for foreign investors until the end of 2025. The existing preferential treatment provided in China tax circular Caishui [2018] No. 108 provides a three-year tax exemption on bond interest up to 6 November 2021. This was formalised through the joint issuance by the Ministry of Finance and the State Taxation Administration of circular (Circular [2021] No. 34) on 22 November 2021.

The tax exemption covers both the 10% PRC Corporate Income Tax and 6% Value-added Tax for bond interest earned by foreign institutional investors who typically invest via three main China bond access routes, being: QFII; China Inter-bank Bond Market (CIBM) Direct; and the Bond Connect Scheme. It is anticipated that the extension this time should be in line with what was granted under Circular 108.

The extension of the tax incentive reflects China's strong commitment to attract global investment into the onshore bond market, supporting the continuing internationalisation of its vast corporate bank market.

Cancellation of Local Surtax on VAT on Imports and Inbound Services

For instance, services provided by overseas entities to Chinese entities may be subject to VAT. The Chinese entities, as service recipients, may therefore have to withhold VAT, as well as the local surtax for such transactions.

However, with the issuance of the Urban Maintenance and Construction Tax Law, State Administration of Taxation Announcement (2021) No. 26 and Ministry of Finance and State Administration of Taxation Announcement (2021) No. 28, effective from 1 September 2021, 1) import of goods; or 2) labor, services or intangible assets sold by overseas entities or individuals to domestic entities are no longer subject to the local surtax (i.e., Urban Maintenance and Construction Tax, Education Levy and Local Education Levy) on top of the related VAT paid.

Simplified Procedure for Unilateral Advance Pricing Agreements

The State Taxation Administration (SAT) issued SAT Public Notice [2021] No. 24 implementing the simplified application procedure for unilateral advance pricing agreements (APAs) with effect from 1 September 2021.

The circumstances under which the competent tax authority may deny an application are slightly different from the draft version and are restated below:

- The enterprise is under special tax adjustment investigation or other tax investigations, and the case is still open.
- The enterprise has failed to file the annual report form on related-party dealings pursuant to the relevant regulations and has not corrected the failure in a timely fashion.
- The enterprise fails to prepare, maintain and provide contemporaneous documentation pursuant to the relevant regulations.
- The information requested has not been provided or does not conform to the requirements of the competent tax authority and the failure is not rectified.
- The enterprise does not cooperate with the competent tax authority in an on-site evaluation of functions and risks.

JURISDICTION:

Hong Kong

Tax Reform

The European Union (EU) has added Hong Kong to the EU's "grey list" of non-cooperative jurisdictions for tax purposes with effect from 5 October 2021 because it considers that aspects of Hong Kong's territorial tax system may facilitate tax avoidance or other tax practices regarded as harmful. This happened as a result of the EU's review of foreign-source income exemption regimes. Hong Kong has agreed to make changes to the relevant legislation, as announced by the government on October 5, 2021. The EU has granted Hong Kong until 31 December 2022 to make the necessary changes.

The "grey list" is a watchlist—the EU will monitor the situation and it may move Hong Kong to its "blacklist" if the identified harmful aspects of its tax system do not change. Being on the EU's blacklist of non-cooperative countries will have negative tax consequences in the EU, which would make it unattractive to use Hong Kong companies for investments, especially investments outside Hong Kong. The negative consequences include a denial of deduction of payments made, increased withholding tax rates (which could be as high as 25%), the application of controlled foreign company rules if the Hong Kong company is a subsidiary of an investor in the EU, the taxation of dividends, and administrative measures.

The Hong Kong government announced that it will amend its tax law by the end of 2022 and implement regulations in 2023 that will help the EU combat tax evasion by certain offshore units set up by European businesses in Hong Kong. A government spokesperson said in a statement on

5 October 2021. "The proposed legislative amendments will merely target corporations, particularly those with no substantial economic activity in Hong Kong, that make use of passive income to evade tax across a border. Individual taxpayers will not be affected."

The EU sees the non-taxation of certain foreign sourced passive incomes, such as interest and royalties, of European businesses set up in Hong Kong that have no substantial economic activity in Hong Kong as potentially leading to situations of "double non-taxation". It is still a question whether this will also include foreign dividend flows, as cross-border dividend payments generally do not result in double non-taxation (dividends are generally not tax deductible).

Details of the proposed changes to the Hong Kong profits tax legislation have not yet been issued. Potential measures may be that:

- (i) Hong Kong companies without sufficient economic presence (including activities) in Hong Kong will be deemed to have derived the offshore income in Hong Kong (and therefore be taxable on the income for profits tax purposes) and may be denied certain tax deductions;
- (ii) That these companies will not receive any support from the Hong Kong government in the event that a tax dispute arises with another jurisdiction (which could have adverse transfer pricing and other double taxation effects); and
- (iii) These companies will not receive a certificate of tax residence in Hong Kong from the Inland Revenue Department (IRD). Finally, these companies may be subject to a higher burden of proof if questioned by the IRD. The Hong Kong measures will unlikely be confined to transactions with EU parties.

As an immediate effect, investors should expect the IRD to be conducting a review of existing structures which may lead to tax audits. Existing structures where Hong Kong companies without substance earn offshore sourced income (which are not subject to profits tax) may need to be revisited and may need to be adjusted in order to pre-empt the negative effects of the likely changes. This will be relevant for finance and IP structures as well as trading structures and may also include holding structures.

Shipping

Further to the recommendations of a dedicated task force of the Hong Kong Maritime and Port Board (HKMPB), the Board endorsed a new tax proposal, which aims to provide for half-rate tax concessions (i.e. 8.25% Profits tax) for ship managers, ship brokers and ship agents, with a view to attracting more members of the global maritime industry to establish a business presence in Hong Kong.

The government will prepare and propose an amendment to the Inland Revenue Ordinance for the introduction of the tax concessions, which is expected to happen in the first half of 2022.

Carried Interest

On 16 July 2021, the Hong Kong Monetary Authority (HKMA) issued guideline on the certification of funds under Schedule 16D to the Inland Revenue Ordinance (IRO) in relation to tax concessions for carried interest. The Guideline is available at the HKMA's website.

The Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Ordinance 2021 was enacted to give Profits tax and Salaries tax concessions in relation to eligible carried interest received by, or accrued to, qualifying persons and qualifying employees on or after April 1, 2020 from the provision of investment management services to certified investment funds. The tax concessions aim to attract more private equity funds to operate and be managed in Hong Kong, thereby promoting the development of the investment management and related professional services industries in Hong Kong.

As defined in section 2 of Schedule 16D to the IRO, a certified investment fund means a fund within the meaning of section 20AM of the IRO that is certified by the Monetary Authority (MA) to be in compliance with the criteria for certification published by the MA. The Guideline sets out the criteria for certification and other matters in relation to the MA's certification.

With immediate effect, the certification scheme is open to applications by funds.

No Stamp Duty if Overseas Legal Merger

The Court of Appeal (COA) handed down its judgement on *Nomura Funds Ireland Plc v The Collector of Stamp Revenue*, on 14 January 2021 and delivered its written judgement on 21 July 2021. The decision of COA supported that the transfer of Hong Kong stock upon a merger effected under the merger law of Luxembourg is not chargeable with Hong Kong stamp duty. The judgement has set a legal precedent in Hong Kong on the stamp duty implications arising from an overseas merger.

JURISDICTION:

India

Indirect Transfer of Shares of an Indian Company

On August 2, 2021, the lower house of the Indian Parliament passed The Taxation Laws (Amendment) Bill, 2021, this removes the retrospective application of the rules on the taxation of gains arising on a transfer of shares in a foreign company where such shares derive their value substantially from assets located in India.

In practice this is often referred to as an indirect transfer of shares of an Indian company and reference is often made to the Vodafone case in 2012, when, despite the taxpayer winning its case at the Supreme Court of India, it nonetheless had to pay the Indian tax due to a subsequent change in law which was given retroactive effect to 1961. This change in law aims to ensure that any indirect transfer of Indian assets undertaken before 28 May 2012 (i.e. the date on which the rules on indirect transfers became law) is not subject to Indian income tax. Any transfer which occurred on or after 28 May 2012 are not protected and hence are still potentially subject to the Indian tax on indirect transfers.

In tax policy terms, there is some hope that this is the start of a broader course correction to attract foreign investors as the law change is accompanied by the note that foreign investment is important for India.

Re-Domiciliation and Tax Treaty Protection

Courtesy of Khaitan & Co, it was reported on 19 August 2021, that in a first ruling on the issue, the Income Tax Appellate Tribunal, Mumbai in its recent judgment in the case of Asia Today Limited (Taxpayer) [ITA No. 4628/2006, ITA No.4629/2006, ITA 1877 of 2008 and CO No. 123/2008], ruled that

re-domiciliation from British Virgin Islands to Mauritius cannot by itself result in denial of the benefits of the India-Mauritius tax treaty.

Furthermore, following the Supreme Court ruling and various other judgments, the Tribunal held that where the taxpayer has a Permanent Establishment (PE) in the form of a dependent agent in India who is remunerated on an arm's length basis, no further profits are to be attributed to the PE in India.

Equalization Levy and the USA

India and the United States have agreed to apply the same terms under the Joint Statement issued by the United States, Austria, France, Italy, Spain and the United Kingdom to India's equalization levy and the corresponding trade action taken by the United States.

In a press release issued by India's Ministry of Finance, India noted that the interim period will be from 1 April 2022 until the implementation of Pillar 1 or 31 March 2024, whichever is earlier. India will remain in close contact with the United States to ensure that there is a common understanding of their commitments and that both countries will endeavour to resolve differences through constructive dialogue. The press release also noted that the final terms of the agreement will be finalized by 1 February 2022.

International Tax Developments

Switzerland

On 13 August 2021, the Swiss Federal Tax Administration published a clarification, announcing that the conditions for the activation of the Most Favoured Nation (MFN) clause contained in the amending protocol, signed on 30 August 2010, to Switzerland's tax treaty with India have been met. The MFN clause should apply as of 1 January 2021. If India does not apply the clause on a reciprocal basis, Switzerland will apply the reduced rate from 1 January 2023. Currently, the treaty provides for a 10% withholding tax on dividends. The MFN clause of article 11 of the 2010 protocol provides that this rate will be reduced when India signs a new treaty with another OECD Member States providing for a lower rate. The MFN clause has become effective because India's treaty with Colombia (effective from 1 January 2015) and its tax treaty with Lithuania (effective from 1 January 2013) provide for a 5% withholding tax on dividends.



Reduced Withholding Tax on Interest From Bonds for Domestic Investors

The government has reduced the withholding tax rate on interest income from bonds to 10% (from 15%) for recipients who are resident taxpayers, including permanent establishments, in order to level the tax treatment of interest income from bonds between domestic and foreign investors and develop the domestic bond market.

The above change is implemented through the issuance of Government Regulation (PP) No. 91 of 2021 (GR-91). The lower withholding tax rate applies from 30 August 2021, the date of promulgation of GR-91.

The income tax under GR-91 is a final tax, except when the interest income recipient is:

- a registered pension fund; or
- a bank established in Indonesia or a branch of a foreign bank in Indonesia.

The Ministry of Finance is expected to issue regulations regarding the procedures for withholding, deposit and reporting of the income tax on bond interests.

Tax Reform

The Law of Tax Harmonization was passed by parliament in October and ratified by the President on 6 November 2021, which results in the following tax changes per 1 January 2022 unless indicated otherwise below:

- The turnover threshold for registration for VAT will be put at Rp 1.8 billion (approx. USD 145,000) which is significantly lower than the current threshold of Rp 4.8 billion.
- The VAT rate will be increased from 10% to 11% on 1 April 2022 and will be further increased to 12% from the year 2025.
- The VAT base will be expanded by

reducing VAT exemptions. Only basic goods that are essential for the community such as health services, educational services, social services and several other types of services will be exempt from VAT. Importantly, subject to details to be announced in a tax regulation, financial services will no longer be exempt services for VAT.

- The corporate tax rate has not be reduced and will continue to be 22% in 2022.
- The maximum income tax rate for resident individuals with inome exceeding IDR 5 billion has been increased from 30% to 35% for the year 2022.
- The population database will be integrated with the tax administration system, i.e. via the use of a national identification number in lieu of an individual taxpayer identification number (NPWP) to facilitate individual taxpayers in exercising their rights and carrying out their tax obligations.
- A new tax amnesty is offered from 1 January through 30 June 2022 for individuals who come forward to report previously unreported taxable income.
- A new carbon tax will be introduced from April 2022.

International Tax Developments

Indonesia's new tax treaties with Singapore and the UAE have entered into effect on 1 January 2022. Indonesia's tax treaty with Singapore offers excellent opportunities for private equity investors and investment funds, as it includes an exemption of the Indonesian capital gains tax on the sale of shares of an Indonesian company if the necessary conditions are met.



Tax Reform Proposals 2022

On 10 December 2021 the ruling parties published their tax reform proposals for 2022. The proposals will be discussed in parliament in January 2022. They include a review of existing special measures to realise a virtuous cycle of growth and wealth distribution (increased salary tax incentive, open innovation promotion tax incentive), a review of the tax system based on structural changes in the economy and society (personal income taxation, inheritance tax, gift tax), a review of the international tax system including tax avoidance and tax evasion, an improvement of smooth and appropriate tax administration (qualified invoice storage methodology, bookkeeping obligations, scanned document storage systems, storage of electronic transaction information).

The proposals will be discussed in parliament and are subject to change. It will result in draft legislation, cabinet orders and ministerial ordinances. Details of these will be clearer in the course of the year. We will monitor the developments and report about them in this Bulletin.

International Tax Developments

Switzerland. Japan and Switzerland signed an amending protocol to update the Japan - Switzerland Income Tax Treaty, as amended by the 2010 protocol, in Bern.



JURISDICTION:

Korea

Corporate Tax

The threshold for the effective tax rate for foreign corporations subject to the controlled foreign corporation (CFC) taxation regime will be increased to 17.5% (currently at 15%). The amendment is also expected to include “trusts subject to corporation” within the scope of foreign corporations subject to CFC rules.

The foreign tax credit/refund system for qualified investment vehicles will be abolished. Currently, where qualified investment vehicles incur taxes overseas in relation to their overseas investments, they receive a tax credit or refund (up to 14%), which has an effect of eliminating international double taxation. Going forward, when qualified investment vehicles distribute investment returns to their investors, taxes will be withheld.

The basis for including loss-making businesses in comparable transactions for transfer pricing (TP) purposes will be allowed depending on the economic circumstances such as an economic depression. This is to ensure a reasonable application of the TP regime in situations such as the COVID-19 pandemic.



JURISDICTION:

Malaysia

Foreign Sourced Income Tax Reform

On 29 October 2021, Malaysia’s Finance Minister presented the government’s Budget Tax Proposals to parliament. Based on these proposals, which were approved by parliament and have been adopted in the Finance Act 2021, from 2022, foreign sourced income remitted to Malaysia will be subject to income tax. This applies to both companies and individuals in Malaysia. This proposal stems from the EU’s measure in October 2021 to put Malaysia on its watch list for tax haven jurisdictions, which would result in punitive tax measures in the EU unless Malaysia amends its income tax law prior to 1 January 2023. Tax planning will focus on how to avoid that foreign sourced income will be remitted to, or considered deemed remitted to, Malaysia in order to avoid the income becoming taxable.

Foreign investors should consider the tax cost (if any) of changing current investment structures where they hold the investment through a Malaysian company. This would be relevant if they anticipate any considerable dividend flows from these investments.

This change in law brings Malaysia on par with Singapore, in so far as companies are concerned. For individuals, Malaysia’s tax change would make Malaysia’s tax system less favourable compared with Singapore’s income tax rules for resident individuals.

Windfall Tax

During 2022, there will be a one-time additional 9% point ‘Windfall tax’ as part of the income tax liability for businesses with taxable income exceeding MYR 100 million during the fiscal year 2022. The Windfall levy will not apply to companies enjoying tax incentives and it will not apply to foreign sourced income remitted to Malaysia. With the windfall tax included, companies with taxable profits exceeding MYR 100 million during 2022 will be subject to 33% income tax instead of the 24% rate without the windfall tax.

Exemption Order

In a surprise move on 30 December 2021, the Ministry of Finance announced that subject to conditions to be issued by the Inland Revenue Board of Malaysia, the government has agreed that, notwithstanding the provisions in the Finance Act (see above), the following foreign-sourced income will continue to be exempted from tax from 1 January 2022 until 31 December 2026:

- dividend income received by resident companies and limited liability partnerships; and
- all classes of income received by resident individuals, except for individuals carrying on business partnerships.

Malaysian companies receiving other types of offshore sourced income will be taxable on it as of 1 January 2022. Similarly, if the conditions (yet to be announced by the Malaysian tax authority) are not met, foreign sourced income earned by resident individuals or companies in Malaysia will be subject to income tax. The additional windfall tax of 9% however will not apply to foreign sourced income during 2022.

Tax Incentives for Relocating Business to Malaysia

The Malaysian Investment Development Authority (MIDA) has published guidelines on special tax incentives available to companies that relocate selected service activities in Malaysia, and to non-citizen individuals employed by such companies.

Budget 2022 Miscellaneous Tax Proposals

- With effect from fiscal year 2022, tax losses can be carried forward during 10 years instead of the 7 years currently.
- Gains derived from the sale of Malaysian real property after five years ownership by individuals will no longer be subject to the Real Property Gains Tax (RPGT). Currently such sales are subject to 5% RPGT.
- Various relaxations are being proposed to a number of tax incentive programmes for businesses.
- Low value goods (value of less than MYR 500) imported into Malaysia will become subject to Sales Tax from 2023.
- Stamp duty of 0.15% will apply to contract notes relating to the sale of shares but limited to a maximum of RM 1,000 for each contract note. Stamp duty amounts exceeding RM 1,000 will be remitted, and this applies to contract notes from 1 January 2022 until 31 December 2026 for trading of shares listed on Bursa Malaysia.



Previously, the BIR announced that certain sales of goods and services to export-oriented enterprises will be subject to the standard 12% VAT following the satisfaction of conditions set forth under RA No. 10963. However, the Bureau of Internal Revenue (BIR) has reinstated the zero per cent (0%) value added tax (VAT) on certain transactions considered as export sales of goods and provision of services. This was formalised through Revenue Regulations No. 21-2021 (RR No. 21-2021) of 3 December 2021, which takes effect immediately following its publication and applies to transactions entered into by registered export enterprises from the third quarter of 2021.

VAT zero-rating will apply to the following transactions for a maximum period of 17 years from the date of registration of the export enterprise, unless extended under the government's Strategic Investment Priority Plan:

- The sale of raw materials, inventories, supplies, equipment, packaging materials and goods to a registered export enterprise to be used directly and exclusively in its registered project or activity pursuant to sections 294 (E) and 295 (D) of Republic Act (RA) No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises Act (CREATE Act) and section 5, rule 2 of its implementing rules and regulations (IRR); and
- The sale of services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, to a registered export enterprise to be used directly and exclusively in its registered project or activity pursuant to sections 294 (E) and 295 (D) of the CREATE Act and section 5, rule 2 of its IRR.

The abovementioned sales to existing registered export enterprises located inside ecozones and freeport zones also qualify for VAT zero-rating until the expiration of the transitory period.

JURISDICTION:

Singapore

Forex Taxation of Bank Accounts

Where the designated bank account has been used for other purposes (such as loan repayment, payment for assets acquisition, investment purposes), any foreign exchange differences arising from the revaluation of the year-end balance of such bank account is regarded as capital in nature and therefore, not taxable or tax deductible. However, since financial year 2019, the Comptroller of Income Tax is prepared to treat the foreign exchange differences as revenue in nature (and thus forex gains would be taxable and forex losses would be tax deductible) if the capital transactions incurred within the designated bank account do not exceed the following de-minimis limit:

- i. Total number of capital transactions: not more than 12 transactions a year; and
- ii. Total value of capital transactions: not more than S\$500,000 a year.

Reduced Penalty Under the Voluntary Disclosure Programme

As voluntary disclosure for late payment of withholding tax is made online, the full penalty is automatically computed. It is noted that some IRAS officers agree, upon request, to defer the penalty until the reduced penalty under the voluntary disclosure programme (“VDP”) is computed, while some require upfront payment of the full penalty, to be followed by a refund after the penalty is revised.

The IRAS has indicated that it will not require VDP applicants to pay the full penalty upfront. After e-filing the undisclosed or additional withholding tax, the VDP applicant should do the following:

- Pay the withholding tax and the reduced penalties under the VDP; and
- Submit the online form to Request for Reduced Penalties under Voluntary Disclosure Programme for S45 Withholding Tax (“VDP Request”). IRAS will review and respond to the VDP Request via e-mail within 15 days.

For payers who are under GIRO, the additional tax and full penalties will be deducted automatically through GIRO. Hence, VDP applicants who wish to pay only the reduced penalties can contact IRAS via email: enfs45@iras.gov.sg to request it before 10th of the month in which the GIRO deduction is scheduled to be carried out. Otherwise, IRAS will refund the overpaid penalties (if any) within 30 days upon approval of the VDP Request via direct crediting into the GIRO-linked bank account.

Gst Guidelines for Imported Low-Value Goods and Non-Digital Services

On 30 July 2021, the Inland Revenue Authority of Singapore issued separate guidelines for the implementation of GST on imported low-value goods (LVGs) and remote services. The guidelines discuss the features of the overseas vendor registration (OVR) regime, which will be extended to business-to-consumer (B2C) supplies of imported LVGs and non-digital services effective from

1 January 2023; rules governing registration, reporting and compliance; and transitional rules for transactions straddling the implementation date.

Under the extended OVR regime, any supplier belonging outside Singapore (i.e. an overseas supplier) with worldwide turnover exceeding SGD 1 million and making B2C supplies of LVGs or remote services to customers in Singapore exceeding SGD 100,000 is required to register, charge and account for GST. A local or overseas operator of electronic

marketplace or a “re-deliverer” (see Note below) may also be regarded as the supplier of the LVGs or remote services made through the marketplace or re-deliverer under certain conditions:

- Overseas suppliers, local or overseas electronic marketplace operators and re-deliverers (collectively referred to as “overseas vendors”) may use certain information, such as customers’ IP address and credit card information, to determine if their customers belong in Singapore.
- Overseas vendors must charge GST on their supply of LVGs or remote services if their customer is not GST registered. GST-registered customers should not be charged with GST on overseas purchases as they can perform reverse charge if the transaction falls within the scope of reverse charge.
- When GST is incorrectly charged to a GST-registered customer, the customer should contact the OVR vendor for a refund instead of making an input tax claim on the purchase.
- To minimize the extraterritorial compliance burden, OVR vendors will be registered under a pay-only regime.

Arbitration Under Tax Treaties

The Inland Revenue Authority of Singapore (IRAS) has issued an e-Tax Guide on the arbitration provision found in Singapore’s DTAs. Singapore supports arbitration as a means of resolving tax disputes between countries. The e-Tax Guide provides the procedure to be followed and the requirements in order to be eligible for arbitration.

Guidance on Tax Treatment of When Income is Earned Under a Contract

The Inland Revenue Authority of Singapore (IRAS) has updated the guidelines on the tax treatment of revenue determined in accordance with Financial Reporting Standard (FRS) 115 or Singapore Financial Reporting Standards (International) (SFRS(I) 15), particularly by clarifying the “entitlement to income” principle.

To minimize complexities in tax rules and compliance burden when an entity adopts FRS 115 or SFRS(I) 15, the IRAS would generally accept the accounting revenue as determined in accordance with such standard/s as the revenue for income tax purposes. The acceptance of the accounting revenue determined under FRS 115 or SFRS(I) 15 is consistent with the “entitlement to income” principle. One exception to this rule is in exceptional circumstances where the accounting treatment deviates significantly from tax principles, such as when there is deviation from the “entitlement to income” principle.

The updated guidelines expound the principle, such that under this principle, income received upfront for a contract is recognized for tax purposes and subject to tax in the year where:

- the income has accrued i.e. the taxpayer is legally entitled to the income;
- there is no further performance obligation required of the taxpayer; or
- the income is non-refundable.

No Deemed Remittance of Foreign Sourced Income if Shares are Redeemed

On 1 September 2021, the Inland Revenue Authority of Singapore (IRAS) held in an advance ruling that the use of unremitted foreign-sourced dividend income to redeem shares of a Singapore incorporated company will not constitute a remittance or deemed remittance into Singapore for the purposes of section 10(25) of the Income Tax Act (ITA). The ruling was published via Advance Ruling Summary No. 12/2021.

IRAS ruled that, so long as no funds were remitted to a bank account in Singapore or physically brought into Singapore, the assignment of a portion of the receivables (which comprises unremitted foreign sourced dividend income) for the purposes of the proposed share capital reduction exercise and the payment of service fees using the balance of the receivables will not constitute a remittance or deemed remittance into Singapore.

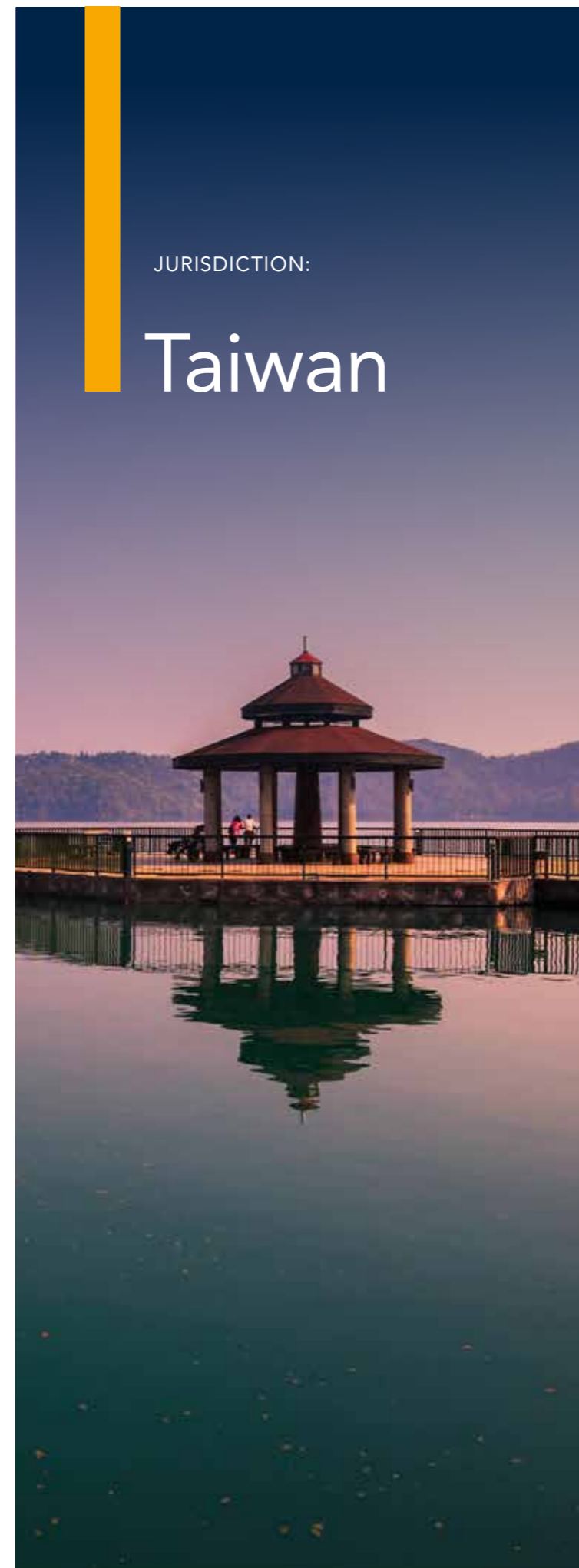
Section 10(25)(b) of the ITA provides that foreign-sourced income, which is applied in or towards the satisfaction of any debt incurred in respect of a trade or business carried on in Singapore will be regarded as income received in Singapore from outside Singapore. The ruling indicates that IRAS will not consider the use of foreign-sourced income to effect a share capital reduction or as payment for services rendered as income that is “applied in or towards the satisfaction of any debt incurred in respect of a trade or business carried on in Singapore”. It would therefore appear that IRAS adopts a narrow interpretation of the term “debt” when determining whether or not section 10(25)(b) of the ITA is triggered and, accordingly, whether a foreign-sourced income will be treated as a remittance or deemed remittance into Singapore.

International Tax Developments

Brazil

Singapore’s double tax treaty with Brazil, which was signed in 2018, has entered into force with effect from 1 January 2022. Based on the tax treaty, withholding tax rates are reduced as follows:

- -15% on dividends, in general, and 10% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends for at least 365 days;
- -15% on interest and 10% if the beneficiary of the interest is a bank and the loan was granted for at least five years to finance the purchase of equipment or investment projects. In this treaty, rates are subject to a most favoured nation clause;
- -10% on royalties and 15% on trademark royalties; and
- -10% on fees for technical services.



JURISDICTION:

Taiwan

Real Property Taxation/ Indirect Transfers

Multinational enterprises with real property situated in Taiwan should consider the impact of the New Law on any potential transfers of real property, including any restructuring.

The Taiwan Legislative Yuan passed an amendment to the current capital gains tax law in respect of the transfer of real property (New Law). The New Law is effective from 1 July 2021 and specifically applies to the transfer of real property acquired on or after 1 January 2016. The pre-amendment capital gains tax law applies to transfers of real property acquired before 1 January 2016. Under the New Law, the tax rates for capital gains derived from the transfer of real property have been increased and capital gains tax on indirect share transfers (where the transferred shares are “real property rich”) has been introduced.

The New Law revised the current capital gains tax law in respect of the transfer of real property by:

- (1) increasing the progressive tax rates;
- (2) extending the taxing scope; and
- (3) reducing deductions when computing capital gains.

The capital gains tax on the transfer of real property situated in Taiwan is taxed at progressive rates subject to different holding periods as outlined overleaf.

Residency status	Pre-amendment		Post-amendment	
	Real property holding period	Tax rate	Real property holding period	Tax rate
Resident company	No holding period	20%	Less than 2 years	45%
			2-5 years	35%
			More than 5 years	20%
Non-resident company	Less than 1 year	45%	Less than 2 years	45%
	More than 1 year	35%	More than 2 years	35%

Under the New Law, transfers of pre-sold condominiums/homes (either with or without land) by companies are treated as the transfer of real property and capital gains derived thereon are subject to the progressive rates listed above (prior to the New Law, such transfer was not a taxable event). Relevant costs for acquiring the pre-sold condominium/homes can be deducted from the transaction amount when calculating the capital gains tax amount.

Prior to the New Law, gains derived from the transfer of a foreign company's shares would be subject to capital gains tax on the transfer of real property if the value of shares being transferred substantially comprised Taiwanese real property (i.e., where more than 50% of the value of the shares or share capital of the company in question comprised Taiwanese real property, the shares were "real property rich"). Such gain derived from the transfer would be reclassified as capital gains from the transfer of real property rather than as a transfer of qualified securities and the progressive tax rates would apply. Based on additional guidance published on 30 June 2021, the value of the shares and share capital is determined based on the net asset value from the financial statements of the company.

Under the New Law, if the shares are "real property rich," regardless of whether the shares are of a foreign company or a Taiwanese company, the gain

derived thereon would be reclassified as capital gains on the transfer of real property and the progressive rates under the New Law would apply from 1 July 2021. That is, the New Law also applies to the indirect transfer of foreign or Taiwanese shares as a result of a transfer of a foreign company's shares, as long as the shares being transferred are property rich.

Under the New Law, the calculation of the "real property rich" threshold may be different from the calculation under an applicable tax treaty. Instead of using net asset value from financial statements to determine the company's value, tax treaties usually use total asset value without taking into account debts or other liabilities when determining whether a company's shares are "real property rich" and thus a further analysis would be required when the taxpayer's resident country has a tax treaty with Taiwan.

Tax Treaties

South Korea - On 17 November, Taiwan signed a double tax treaty with South Korea.

UK - The new protocol to Taiwan's tax treaty with the UK has entered into force and will apply as from 1 January 2022.

KSA - Taiwan's tax treaty with Saudi Arabia entered into force on 1 November 2021.



VAT Rate

The government will continue to apply the 7% reduced VAT rate from 1 October 2021 to 30 September 2023 on all imports, sale of goods and provision of services subject to VAT. The reduced VAT rate was due to expire on 30 September 2021, after which the standard 10% VAT would apply. The 7% rate has now been extended by 2 years.

VAT for Foreign Digital Services

The Revenue Department (RD) has issued a guideline for non-resident suppliers and non-resident electronic platforms that supply electronic or digital services to non-VAT registered buyers in Thailand. The VAT on electronic services supplied to non-VAT registered buyers will come into effect on 1 September 2021.

A non-resident electronic service provider must register for VAT if the following criteria are met:

- the electronic service is provided from abroad;
- such service is used in Thailand by a non-VAT registered buyer; and
- the non-resident electronic service provider has income from such services of more than THB 1.8 million in a calendar year (sole proprietor/non-juristic partnership) or accounting period (company/juristic partnership).

On the other hand, a non-resident electronic platform must register for VAT if:

- it performs a continuous process on behalf of the non-resident electronic service provider, from offering the service to receiving payment for and delivering the service;
- such service is used in Thailand by a non-VAT registered buyer; and
- the non-resident electronic service provider has income from such services of more than THB 1.8 million in a calendar year (sole proprietor/non-juristic partnership) or accounting period (company/juristic partnership).

Voluntary registration is also possible even if the income from such services does not exceed the VAT registration threshold via the simplified VAT registration system for e-service (SVE) on the RD's website.

By default, non-resident service providers and electronic platforms can treat the buyer as non-VAT registered unless the former has information that the buyer is VAT-registered or if the buyer has provided such information. They are not required to verify the validity of the buyer's VAT registration or tax identification number.

Because this guideline only applies to supplies of electronic services to non-VAT buyers, non-resident electronic service providers and electronic platforms are not required to pay VAT from services provided to VAT-registered buyers.

Transfer Pricing

The Revenue Department has published a list of mandatory documentation for taxpayers required to prepare and submit transfer pricing (TP) documentation under section 71 ter (2) of the Revenue Code. These requirements apply to TP documentation prepared for fiscal years beginning on or after 1 January 2021.

Country by Country Reporting

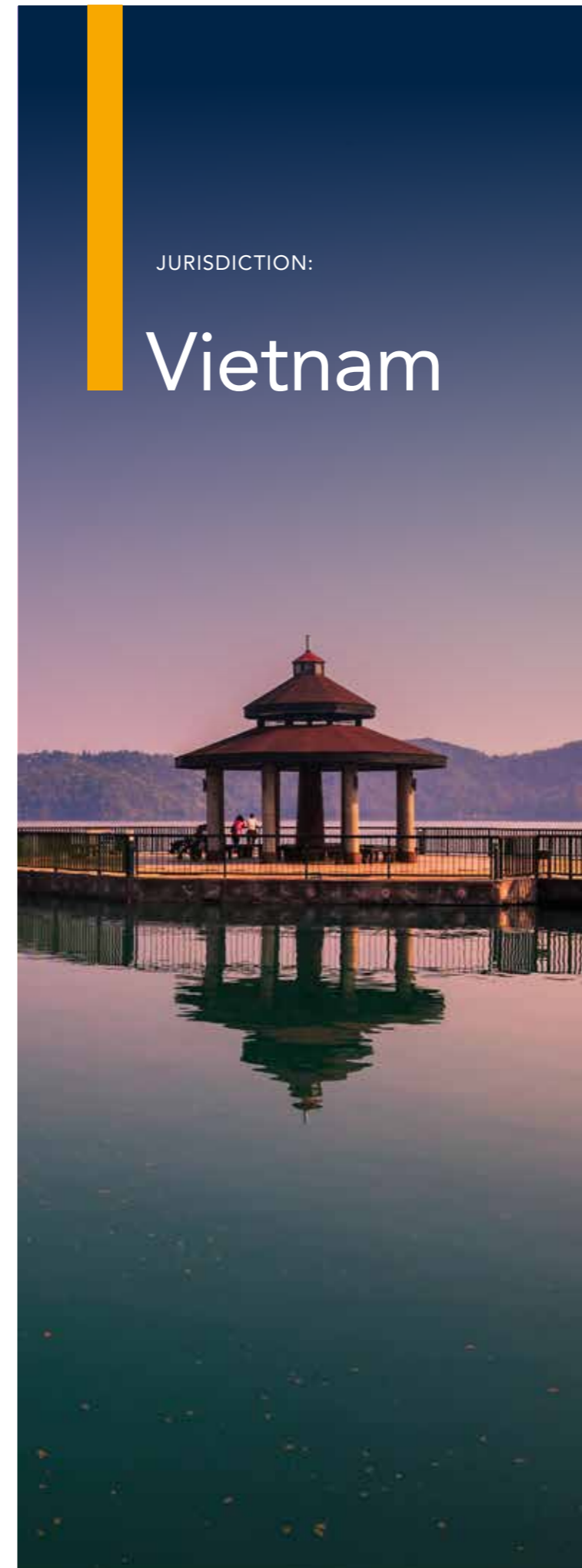
On 15 October 2021, the Revenue Department (RD) issued Notification No. 408 (Notification 408) to implement the Country-by-Country (CbC) reporting requirement in Thailand.

Notification 408 applies to multinational enterprise (MNE) groups with consolidated group revenue in the preceding accounting period, i.e. in a 12-month period, of not less than THB 28 billion, or not less than the pro-rata of THB 28 billion if the basis period is less than 12 months. The CbC reporting requirement applies to accounting periods starting on or after 1 January 2021.

Tax Incentive Automation and Manpower Investments

The government has extended several tax incentives to encourage investments in automation system development and manpower in Thailand until 31 December 2022, as follows:

- *Automation:* an additional deduction equal to 100% of the investment made between 1 January 2021 and 31 December 2022 in automation systems (i.e. machinery and software used with the machinery).
- *Manpower:* an additional deduction equal to 50% of the actual salaries (capped at THB 100,000 per month) paid from 1 January 2021 to 31 December 2022 to newly hired highly skilled workers in the science, technology, engineering and mathematics field. An additional deduction equal to 150% of the cost incurred from 1 January 2021 to 31 December 2022 in training employees in courses accredited by relevant government agencies.



E-commerce and Digital Services

The Ministry of Finance (MOF) has gazetted Circular No. 80/2021/TT-BTC (Circular 80), which provides guidance on the implementation of certain provisions in the Law on Tax Administration and Decree No. 126/2020/ND-CP. Notably, chapter IX of Circular 80 sets out the rights and responsibilities of overseas suppliers that do not have a permanent establishment (PE) in Vietnam and are involved in e-commerce activities, digital-based business and other services with Vietnamese buyers.

“E-commerce activity” is the carrying out of a part or the whole process of commercial activities through electronic means via the internet, mobile telecommunication networks or other open networks, in accordance with Decree No. 52/2013/ND-CP.

“Digital-based business” is the provision of services through the Internet or an electronic network, and such provision is essentially automated with minimal or no human intervention and cannot be done without using information technology.

Overseas suppliers without a PE in Vietnam who carry out e-commerce activities, digital-based business or other services with organizations and individuals in Vietnam will be required to register with the General Department of Taxation (GDT), and declare and pay value added tax (VAT) and corporate income tax (CIT) on their revenues from such activities.

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The following entities may also be responsible for tax registration, declaration and payment:

- organizations and tax agents operating in Vietnam authorized by overseas suppliers to register, declare and pay tax on their behalf;
- Vietnamese organizations that purchase goods and services from overseas suppliers, if the overseas suppliers do not register, declare and pay tax. In such case, withholding, declaration and payment of tax will follow the provisions of MOF Decree No. 103/2014/TT-BTC of 6 August 2014 (the foreign contractor tax regime); and
- commercial banks or intermediary payment service providers (IPSPs), if the Vietnamese buyers are individuals and the overseas suppliers do not register, declare and pay tax. In such case, the GDT will notify the banks or the IPSPs when to begin withholding, declaring and paying the tax on behalf of the overseas suppliers.

Overseas suppliers registered with the GDT or their authorized tax agents are required to declare and pay VAT and CIT on a quarterly basis.

Overseas suppliers who are residents from tax treaty partners of Vietnam may seek tax relief according to the relevant tax treaty.

Circular 80 has taken effect on 1 January 2022. However, the provisions which deal with registration, declaration and payment of tax, and authorization of an organization or tax agent in Vietnam, will take effect after an announcement is made by the GDT that its electronic portal system is in operation.

E-commerce Platforms

E-commerce platforms are only obligated to declare and submit tax on behalf of individuals when authorized. Circular No. 100/2021/TT-BTC amending, supplementing Circular No. 40/2021/TT-BTC guiding on value added tax, personal income tax and tax administration of household businesses and individual businesses will take effect on 1 January 2022.

Accordingly, organizations including owners of E-commerce platforms will only declare and submit tax on behalf of individuals on the basis of an authorization in accordance with Vietnam civil law. Therefore, E-commerce platforms do not have to declare or submit tax on behalf of the sellers if not being authorized by the sellers.

Tax Incentives

Socio Economic Projects

In October 2021, the Prime Minister issued Decision No. 29/2021/QĐ-TTg (Decision 29), which provides details on the special investment incentives for investment projects with significant socio-economic impact under article 20(2) of the Law on Investment.

Investment projects eligible for special investment incentives and assistance are:

- investment projects on the establishment or expansion of innovation centres and research and development centres with a total investment capital of at least VND 3,000 billion and disbursing at least VND 1,000 billion within 3 years from the issuance date of the investment registration certificate or the approval of investment guidelines or the National Innovation Center established under the Prime Minister's decision; and
- investment projects in industries and trades eligible for special investment incentives with an investment capital of at least VND 30,000 billion and disbursing at least VND 10,000 billion within 3 years from the issuance date of the IRC or the approval of investment guidelines.

The tax incentives range from a corporate income tax rate between 5 and 9% for 30-37 years or tax holidays for a total of 15-19 years consisting of 5-6 years 100% corporate income tax exemption followed by 50% corporate income tax exemption.



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Pieter de Ridder
 Managing Partner, Singapore, Mayer Brown
 +65 6922 2240
 pieter.deridder@mayerbrown.com

Pieter de Ridder is a Partner of Mayer Brown and is a member of the Global Tax Transactions and Consulting Group. Pieter has over two decades of experience in Asia advising multinational companies and institutions with interests in one or more Asian jurisdictions on their inbound and outbound work.

Prior to arriving in Singapore in 1996, he was based in Jakarta and Hong Kong. His practice focuses on advising tax matters such as direct investment, restructurings, financing arrangements, private equity and holding company structures into or from locations such as mainland China, Hong Kong, Singapore, India, Indonesia and the other ASEAN countries.

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