LOWE LIPPMANN
Chartered Accountants & Business Advisors

NOVEMBER 2019

TAX ALERT: DOUBLE TAX AGREEMENT WITH ISRAEL NOW IN FORCE

Introduction

On 28 March 2019, Australia and Israel signed the first ever Double Tax Agreement (**DTA**) between the two countries. The Australian Government stated that the treaty will strengthen friendships and commercial relationships, create further opportunities for bilateral trade and investment between the two countries.

The DTA will also provide a legal basis for the exchange of taxpayer information between tax officials in respect of taxes covered by the treaty.

On 14 November 2019, the Australian Parliament passed legislation to give effect to the new DTA and introduce it into our tax law system.

Main features of the Double Tax Treaty

Australian taxes covered
The taxes covered by the treaty will include income tax, fringe benefits tax and resource rent taxes.

Business Profits
Business profits will be attributed to permanent establishments (**PE**) on the basis of the 'relevant business activity' approach (**RBA**). Under the RBA approach, the profits of an enterprise refer only to the profits of the business activity in which the PE has some participation/involvement.

Transfer pricing adjustments
A seven-year time limit will generally apply for making transfer pricing adjustments, with a correlative adjustment to be made to the profits of an associated enterprise so that the transfer pricing adjustment does not result in double taxation of the same profits in the hands of two associated enterprises.

Dividends, Interest and Royalties – Withholding Taxes
Reduced withholding taxes for dividends, interests and royalties to create a more favourable bilateral investment environment, and also make it cheaper for Australian business to access foreign capital and technology (and vice versa), as follows:

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Entities	Dividends	Interest	Royalties
Government bodies (including government investment funds) and central banks	0% (if holding no more than 10%)	0%	5%
Tax exempt pension funds or Australian complying superannuation funds. Also financial institutions, for interest only.	0% (if holding no more than 10%)	5%	5%
Companies that hold an interest of 10% or more in the paying company	5%	10%	5%
Others	15%	10%	5%

We note that in practice, Australia only imposes dividend withholding tax on payments of unfranked dividends.

Alienation of property

Income, profits or gains from the disposal of immovable property (such as land) or of shares or comparable interests in land-rich entities may be taxed in the country where the immovable property is situated.

Pensions

Pensions are generally taxable only in the country of residence of the recipient taxpayer. However, the source (paying) country may also tax the payment if they are lump sum payments from certain pension funds, retirement benefit schemes or in certain life events (ie. disability or death). In addition, Government service pensions will be taxable only in the source country unless the person is both a resident and a national of the other country, in which case the pension will be taxable only in their residence country.

Conclusion

As well as eliminating the risk of double taxation, there should be significant savings in withholding tax. For example, if an Australian subsidiary is paying dividends to its Israeli parent entity, they would currently need to pay 30% withholding tax. However, under the rules enacted by the new DTA, this withholding tax rate should fall to only 5%.

Prior to the DTA being executed, if a parent company in one of the countries wished to establish a subsidiary entity in the other country, it would typically structure this indirectly through an interposed entity in a third country which has a tax treaty with both Israel and Australia. Under the new DTA there should no longer be the need for this complexity when establishing investment structures.

Please do not hesitate to contact your Lowe Lippmann Relationship Partner if you wish to discuss any of these matters further.

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