ASEAN Tax Regimes and the Integration of the Priority Sectors: Issues and Options

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The views expressed in this report are those of the authors, and not necessarily those of the ASEAM Member Countries, the ASEAN Secretariat and/or the Australian Government.

Data in this Report is based upon a Survey conducted within KPMG in March 2006 and analysis of information available from sources, principally including the International Bureau of Fiscal Documentation (2006) and KPMG Asia Pacific taxation (2005) material, with some revisions and updates in February 2007.
ABSTRACT

This project analyses taxation impediments to the integration of the ASEAN priority sectors.

The project report includes a synopsis of earlier studies that identified generic impediments to ASEAN integration in the absence of a comprehensive network of Double Taxation Agreements between ASEAN Member Countries. The report reiterates the extent of taxation treaty coverage with ASEAN and compares these taxation treaty arrangements with non-ASEAN countries. The report discusses generic taxation issues that act as impediments to integration, including those associated with double taxation, the lack of full tax relief, administrative uncertainties, inconsistent definitions and the different taxation treatment of services.

The project analysed available material and conducted a survey seeking information on taxation incentives and impediments in each ASEAN Member Country that are specific to the priority sectors. The report also considers the issue of taxation incentives provided to sectors other than the priority sectors.

The report examines some of the issues associated with tax avoidance associated with increasing economic integration and outlines some of the specific measures adopted by other jurisdictions to address these issues.

The report also outlines the taxation experience of the European Union as the most highly integrated regional economic organisation. This analysis includes some of the background associated with the development of European Union taxation arrangements and possible similar approaches that might be considered by ASEAN.

The report concludes by proposing several recommendations for consideration by ASEAN. These recommendations propose mechanisms that would remove many of the impediments to economic integration resulting from current taxation arrangements and also suggests some measures designed to facilitate greater cooperation on taxation issues.
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EXECUTIVE SUMMARY

This project, ‘ASEAN Tax Regimes and the Integration of the Priority Sectors: Issues and Options’ project has an analysis of ASEAN tax regimes including a survey examining whether there are specific tax impediments to the integration of the ASEAN priority sectors.

The project has also assessed how other regions manage tax related impediments and issues, specifically the European Union as the only regional economic institution that provides a basis for comparison and analysis.

Taxation has the potential to either be a facilitator or an impediment to greater integration and economic growth within ASEAN. Taxation is only one of many considerations made by businesses in making investment decisions; other factors such as transparency, supply chains, labour force and markets are clearly important to investment decisions, but taxation is clearly a key factor that must be considered.

The survey and other research indicate that the tax related impediments to integration are more important in a generic effect than any specific impediments to integration impacting on priority sectors. While incentives for non-priority sectors derogate from the principles of competitive neutrality and implicitly favour those sectors at the expense of the priority sectors, this would be difficult to quantify across ASEAN and this is less important than the generic tax impediments. In particular, the survey did not identify any specific tax impediments among ASEAN Member Countries (‘AMCs’) that were specific to the priority sectors.

The need to act

There has been little noticeable progress over the past three years in addressing the absence of Double Taxation Agreements (DTAs) between AMCs. The only apparent advance has been an update to one existing DTA. One AMC still has no DTAs with any other AMCs and two other AMCs have very limited DTAs. Several AMCs also offer more favourable DTA provisions to non-ASEAN countries than they offer to fellow AMCs. The absence of a comprehensive DTA network within ASEAN means that the twin issues that DTAs are designed to address, namely double taxation and tax avoidance, remain largely unresolved.

This lack of relief from double taxation for the movement of income and capital between AMCs is a potential impediment to greater economic integration within ASEAN. The status quo described above will become increasingly difficult to sustain over the longer term.

Increasing integration between the economies of the AMCs and the steady growth of globalisation has some potential to lead to greater opportunities for tax avoidance. While most AMCs have some form of transfer pricing regime, there is a general lack of other measures that might act to prevent other forms of tax avoidance. These issues are likely to become more important as the ASEAN economic integration process advances.

The challenge for ASEAN

Addressing the twin issues of relief from double taxation and the prevention of fiscal evasion between AMCs is something that ASEAN will need to undertake if it is to progress the development of an ASEAN economic community, as envisaged in the Vientiane Action Plan (VAP). While it is difficult to quantify the extent of intra-ASEAN or extra-ASEAN cross-border tax avoidance, based upon other economies it is reasonable to assume that cross-border tax avoidance is occurring and that increasing integration and globalisation means that the situation is likely to deteriorate over time.
A recent Working Paper on financial integration in Asia released by the International Monetary Fund observed:

The differences in tax regimes across the region, and differences in treatment of residents versus non-residents hinder the development of regional capital markets as they prevent free movement of capital across the region. These problems are fairly universal, and typically dealt with bilateral tax treaties (as with the G-7 countries) that try to balance the revenue and capital market development considerations. A more pro-active regional approach to identifying tax-related problems, and policies toward a more harmonized approach to capital markets taxation would be advantageous.  

The importance of these issues will increase as AMC economies grow and as ASEAN economies become both more integrated and more globalised. Economic integration will increase the potential for taxpayers to structure transactions to maximise any advantage from the different ASEAN tax arrangements. Globalisation and competition for foreign direct investment are likely to make these issues progressively more difficult to manage. The issue therefore becomes when, rather than whether, these issues will be addressed by ASEAN.

**Recommendations**

This report proposes several recommendations for consideration by ASEAN that would assist the integration process with respect to taxation issues. These recommendations include:

- that ASEAN adopts a process of Agreed Positions to assist convergence within ASEAN on taxation issues;
- that ASEAN adopts a non-discrimination principle, under which the tax treatment of nationals (individual and corporate) of other AMCs would be no less favourable than the tax treatment of nationals;
- that ASEAN adopts a regime of maximum withholding tax rates for dividends, interest and royalties between AMCs and considers a timetable for phased reductions for withholding taxes between AMCs, possibly leading to their eventual abolition;
- that ASEAN adopts a system of flow-through provisions for treaty negotiations with non-ASEAN countries that would facilitate negotiations by one or more AMCs on behalf of ASEAN;
- that ASEAN adopts Most Favoured Nation arrangements internally, such that AMCs would be obliged to offer all other AMCs the same tax treaty terms as any negotiated with non-ASEAN countries;
- that ASEAN adopts a formal process for dispute resolution and information sharing between AMC revenue agencies; and
- that ASEAN further investigates some of the taxation concepts being developed by the EU to assist economic integration.

By adopting some or all of these recommendations ASEAN would balance the competing requirements of reducing tax impediments to increased integration while also acting to minimise the potential for fiscal evasion.

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I. BACKGROUND

The original ‘Review of ASEAN Member Countries’ International Tax Regimes’ project examined the taxation of income and capital flows within and among ASEAN Member Countries (“AMCs”) (Benjamin et al., 2004).

This original project found that while many AMCs have extensive regional bilateral treaty networks, e.g. Malaysia, Singapore and Viet Nam, no AMC has a comprehensive network across the entire region. The absence of a comprehensive Double Tax Agreement (DTA) relationship across ASEAN was identified as an impediment to regional economic integration. This situation has remained fundamentally unchanged since the original project.

A. LIMITED DOUBLE TAX AGREEMENTS BETWEEN AMCS

The typical DTA coverage by each AMC is often limited to just over half the other AMCs. In addition, some AMCs have very limited treaty networks, e.g. Brunei Darussalam, Cambodia, Lao PDR and Myanmar. Table 1 below provides an overview of the regional DTA network.

A limited DTA network within ASEAN is an impediment to regional economic integration and development in terms of:

- increasing business tax costs;
- imposing administrative burdens;
- creating transaction / cost uncertainty; and
- providing a general disincentive to regional in/outbound investment and profit repatriation.

The ‘age’ of the ASEAN DTA network is also a salient issue. The average ASEAN DTA is between 10 and 15 years old. This may also be considered an impediment to cross border investment because:

- AMC fiscal and regulatory reform has overtaken DTA terms – making many de facto obsolete;
- economic and technological changes over the last decade have created ‘new income’ unable to be characterised under some DTAs. This potentially increases the complexity / uncertainty and costs associated with transactions in selected value-adding service industries, such as R&D services. Additionally, for governments, it also may lead to lost revenue;
- recent DTA negotiations have trended towards lower withholding tax rates. Older DTAs typically impose relatively high withholding tax rates. As a result of this, AMCs may miss investment opportunities based on the imposition of high headline withholding tax rates and lack of relief; and
- older DTAs may force AMCs to take unilateral action to provide relief for inbound and outbound investors. This does not foster regional economic integration.
Table 1: ASEAN Treaty Network Coverage and Year Signed

<table>
<thead>
<tr>
<th></th>
<th>Brun</th>
<th>Cam</th>
<th>Indo</th>
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<th>Myan</th>
<th>Phil</th>
<th>Sing</th>
<th>Thai</th>
<th>Viet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brun</td>
<td>2000</td>
<td>2005</td>
<td></td>
<td></td>
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<tr>
<td>LPDR</td>
<td>1997</td>
<td>1996</td>
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</table>

Source: International Bureau for Fiscal Documentation

Table 2: ASEAN Treaty Network Coverage and Year Effective

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<thead>
<tr>
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<th>Brun</th>
<th>Cam</th>
<th>Indo</th>
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<th>Phil</th>
<th>Sing</th>
<th>Thai</th>
<th>Viet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brun</td>
<td>2003</td>
<td>2005</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Myan</td>
<td>N/E</td>
<td>N/E</td>
<td>N/E</td>
<td>2001</td>
<td>N/E</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

‘N/E’ indicates DTAs signed, but not effective / not in force
Source: International Bureau for Fiscal Documentation

Because of their coverage and currency, the best practice DTA coverage within ASEAN is by:

- Indonesia;
- Singapore;
- Thailand; and
- Viet Nam.

By contrast, Cambodia does not have a DTA with any other AMC, while Lao PDR and Myanmar each have only one DTA in force with another AMC.

Thailand and Viet Nam’s treaty networks do not provide for either comprehensive double tax relief (for example, additional withholding taxes continue to be levied) nor for a standard
approach to relief. Each bilateral DTA varies in its approach and generosity. Viet Nam has used a combination of OECD and more recently UN models for its treaties.

Treaties can also become outdated, for example three of The Philippines’ DTAs with AMCs are 20 years old, and it is an intensive and time consuming task to constantly negotiate and renegotiate a treaty network.

Table 3: ASEAN Treaty Network Coverage Summary

<table>
<thead>
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<th>Myan</th>
<th>Phil</th>
<th>Sing</th>
<th>Thai</th>
<th>Viet</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Very limited old treaty network</td>
<td>No treaty network</td>
<td>More extensive newer treaty network</td>
<td>Very limited newer treaty network</td>
<td>Extensive newer treaty network</td>
<td>Limited newer treaty network</td>
<td>Extensive newer treaty network</td>
<td>Extensive newer treaty network</td>
<td>Extensive newer treaty network</td>
<td>More extensive newer treaty network</td>
</tr>
</tbody>
</table>

ASEAN best practice, as illustrated by Indonesia, Singapore and Viet Nam, is to have an extensive, modern bilateral treaty network with other AMCs. The lack of comprehensive coverage and a guaranteed minimum standard of double tax relief within ASEAN results in additional costs and risks to investment into those non-treaty countries. The absence of a treaty can also create uncertainty, fails to provide ‘tie-breaker’ rules to establish the tax jurisdiction and leads to inconsistent – usually inadequate - approaches to taxation and tax relief.

B. INTRA-ASEAN COMPARED WITH NON-ASEAN

The treatment of income and capital flows between AMCs (i.e. intra-ASEAN) is often not as favourable as the treatment between AMCs and non-ASEAN countries. This is based on the idea that the imposition of ‘high’ withholding taxes is a disincentive to income and capital flows. Table 3 below outlines each AMC’s best withholding tax rates for ASEAN and non-ASEAN countries.

Table 4: AMC Withholding Tax Best Practice

<table>
<thead>
<tr>
<th>State</th>
<th>Lowest withholding tax rates (ASEAN states)</th>
<th>Lowest withholding tax rates (Non-ASEAN states)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei</td>
<td>Indonesia: D-15%, I-15%, R-15% (n.b.: Non-treaty rate: D-0%, I-20%, R-0%)</td>
<td>United Kingdom: D-0%, I-20%, R-0% (same as non-treaty rate)</td>
</tr>
<tr>
<td>Cambodia</td>
<td>No DTA ratified Non-treaty rate: D-14%, I-14%, R-14%</td>
<td>No DTAs ratified Non-treaty rate: D-14%, I-14%, R-14%</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Singapore: D-15/10%, I-10%, R-15%</td>
<td>United Arab Emirates: D-10%, I-5%, R-5%</td>
</tr>
<tr>
<td>Lao PDR</td>
<td>Viet Nam: D-10%, I-10%, R-10%</td>
<td>China: D-5%, I-5/10%, R-5/10%</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Myanmar/Viet Nam: D-0%, I-10%, R-10%</td>
<td>Bahrain: D-0%, I-5%, R-8%</td>
</tr>
<tr>
<td>Myanmar</td>
<td>Singapore: D-0%, I-8/10%, R-10/15%</td>
<td>United Kingdom: D-0%, I-20%, R-0%</td>
</tr>
</tbody>
</table>
The impact of this inconsistent treatment is to make income and capital flows between AMCs and countries outside ASEAN more advantageous than intra-ASEAN ones acting as a disincentive to greater regional investment and economic integration. This situation discourages investment into, and repatriation of profits from AMCs to other AMCs.

There are two other factors to consider:

- the relative negotiating power of AMCs; and
- the desire to attract investment from outside the region.

Different AMCs are in different DTA bargaining positions, especially on withholding tax rates. However, in order to facilitate the goal of economic integration, it would be logical that AMCs should allow cross-border income and capital flows to be as free as possible within ASEAN in order to foster the development of a regional economic community. In addition, the region as a whole may appear to be less attractive to foreign investment because of the additional tax costs and administrative burdens associated with intra-ASEAN trade.

Best practice within ASEAN is offered by those countries that have implemented unilateral measures to reduce or eliminate double taxation, including the foreign-source income exemptions offered by Brunei Darussalam, Malaysia and Singapore. This approach is consistent with global best practice.

The next best practice has been through the negotiation of bilateral treaties between AMCs that have delivered a similar outcome to the unilateral one, but subject to the reciprocity that is entailed in the treaty negotiated position.

Table 5: AMC Withholding Tax Rates Summary

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<th>Brun</th>
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<th>LPDR</th>
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<th>Phil</th>
<th>Sing</th>
<th>Thai</th>
<th>Viet</th>
</tr>
</thead>
<tbody>
<tr>
<td>High WTRs both on intra-ASEAN and non-ASEAN funds flow</td>
<td>High WTRs both on intra-ASEAN and non-ASEAN funds flow</td>
<td>Moderate to high WTRs on intra-ASEAN and low WTRs on non-ASEAN funds flow</td>
<td>Moderate WTRs on intra-ASEAN and low to moderate WTRs on non-ASEAN funds flow</td>
<td>Moderate WTRs on intra-ASEAN and low to moderate WTRs on non-ASEAN funds flow</td>
<td>Moderate WTRs on intra-ASEAN and low to high WTRs on non-ASEAN funds flow</td>
<td>High WTRs on intra-ASEAN and high to moderate WTRs on non-ASEAN funds flow</td>
<td>Moderate WTRs on intra-ASEAN and low WTRs on non-ASEAN funds flow</td>
<td>High WTRs on intra-ASEAN and moderate to high WTRs on non-ASEAN funds flow</td>
<td>Low to moderate WTRs on intra-ASEAN and moderate WTRs on non-ASEAN funds flow</td>
</tr>
</tbody>
</table>

“WTR” = Withholding Tax Rates
Source: International Bureau for Fiscal Documentation
C. WITHHOLDING TAXES IMPOSED ON INCOME (AND CAPITAL) FLOWS – DOUBLE TAXATION

Subject to limited exceptions with respect to some dividend flows, AMCs often impose secondary additional taxation on earnings from business profits in the form of dividends, interest and royalties and in some cases capital gains. Note that Brunei Darussalam, Malaysia and Singapore do not impose withholding taxes on dividends in addition to taxes levied on the profits and income of companies, regardless of whether the recipient is a resident or non-resident.

The withholding tax is usually imposed in addition to the underlying tax that was paid or payable on the actual earnings, profits or gains. When this additional withholding tax is imposed it represents a second or double layer of taxation in the source country of the earnings. When the profit is repatriated to the home / resident jurisdiction – depending on the type of relief mechanism they employ – the income and gains may be subject to another layer of tax, against which the underlying and / or withholding tax may be creditable. If it is not creditable, a possible third layer of taxation may be payable.

The effect of these multiple or cascading layers of taxation – i.e. double taxation – is to penalise the repatriation of profits and therefore act as a disincentive to investment. No ASEAN country imposes a similar form of double taxation on its domestic income and hence many jurisdictions create a discriminatory treatment of regional income compared with domestic income – in contrast to the stated objective of ASEAN to create a single integrated economic market. This may reduce the attractiveness of intra-ASEAN investment and external investment into ASEAN.

D. LACK OF FULL RELIEF

Each AMC imposes conditions on access to and eligibility for tax relief provided through foreign tax credits or exemption relief. The conditions can often mean that the relief is unavailable:

- some AMCs offer no relief (Myanmar), while others deny foreign corporations a foreign tax credit and offer no credit for underlying tax paid on the corporate profits out of which dividends are declared (The Philippines);
- where corporations hold excess foreign tax credits, it is common that they cannot be offset against domestic income tax and cannot be carried backwards or forwards to other years (The Philippines);
- where foreign losses are not taken into account in the computation of the maximum credit (Indonesia);
- where Commonwealth relief\(^1\) is offered, the lack of reciprocity means that the relief is effectively limited to a very small number of countries (Brunei Darussalam);
- where unilateral credit is offered, it is limited to the tax on the foreign income or 50% of the foreign tax imposed, whichever is lower. No carry-forward or carry-back of excess foreign tax credits is permitted, nor may it be set off against tax on income from other sources. In other words, the application of a ‘per source limitation rule’ (Malaysia); and
- where a corporation receives multiple classes of income (active and passive or difficult to define) from transactions across multiple jurisdictions, practical technical difficulties may arise as to the precise characterisation and jurisdictional nexus of the income. This may

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\(^1\) a form of tax relief available in respect of cross-border transactions between member countries of the Commonwealth e.g. Australia, Bangladesh, Brunei Darussalam, Canada, India, Malaysia, New Zealand, Singapore, Sri Lanka and the United Kingdom
act to deny relief or add administrative complexity where different methods of computing the payable corporate tax make a distinction between active income (e.g. income from the sale of goods) and passive income, such as income from dividends, rents, royalties, and interest (Thailand).

E. ADMINISTRATIVE IMPEDIMENTS/UNCERTAINTIES

In some cases the policy objective of double tax relief is present but the administrative mechanisms to provide the relief are neither efficient nor certain. The net effect of such administrative difficulties is to create transaction uncertainty and potentially increased business tax costs.

Accessing refunds of withholding taxes can often be difficult, as can be proving eligibility for lower withholding tax rates in a DTA or accessing an entitlement to foreign tax credits. Examples of this problem include:

- where the tax authorities require a “Certificate of Domicile” from a foreign tax authority to prove a taxpayer’s residence to obtain treaty relief (Indonesia);
- where taxpayers must obtain a ruling from the tax authority before accessing treaty relief (The Philippines); and
- where strict time limitations are imposed on accessing mutual agreement procedure (The Philippines, Viet Nam).

A requirement for obtaining exemptions for a reduction in withholding taxes, whereby the taxpayer is asked to produce a certificate of domicile, is often unreasonable. Where there is a dispute on the procedure for claiming tax treaty relief, there is no publicly notified appeal procedure. However, there are procedures for objection and appeal of tax assessment.

F. INCONSISTENT DEFINITIONS/TREATMENT

For income classes, such as dividends and interest, DTA definitions and concepts are generally consistent across jurisdictions. Where two countries do not share a common definition then access to double tax relief may not be possible at all, especially where the DTA is silent on the matter or one is absent, thereby raising the prospect of double taxation without any relief being permitted.

G. WITHHOLDING TAXES ON SERVICES

One area where domestic approaches can differ widely is with respect to the imposition of withholding taxes on services of varying kinds. The most common services subject to withholding tax are contractor fees. Countries including Indonesia, Thailand and Viet Nam adopt a very wide-ranging definition of such payments and subject them to withholding tax. By contrast, contractor payments in Brunei Darussalam may not be subject to tax at all. Regional variances in this area present practical problems for individuals and firms undertaking cross-border work, as well as for revenue authorities in attempting to tax such transactions.
II. SECTOR SPECIFIC INCENTIVES AND IMPEDIMENTS

This chapter summarises the results of the survey and other analysis which is detailed in the Appendix. It examines whether there are sector specific impediments to the integration of the ASEAN priority sectors arising from the direct tax regimes of AMCs.

1. Incentives

Based upon the survey and analysis, most AMCs provide incentives for the development of specific sectors of their economies. Some of these incentives include the declared ASEAN priority sectors while other incentives have been instituted to foster specific areas of national economies where growth is desired. AMCs are clearly not unique in providing such incentives, which are a characteristic of many taxation systems.

Brunei Darussalam is the only AMC which does not have any tax incentives for either any of the priority sectors or any non-priority sectors, principally due to the revenues earned through the oil and gas sector and the focus of the economy on this sector. The other nine AMCs have tax incentives which favour priority sectors and in most cases also provide tax incentives that favour non-priority sectors.

Tax incentives provided by AMCs are closely aligned with the structures of their respective economies. Singapore, for example, is unlikely to provide significant incentives for sectors which are non-existent (or not desired) in its economy such as agro-products, automotive, fisheries and wood-based products.

Incentives offered by AMC tax regimes vary considerably. In several cases there is a generic tax incentive that may be approved by a government agency such as a Board of Investment that will entitle particular projects to certain tax benefits. Even in circumstances where the incentives are provided for a particular sector, there are often conditions such as investment thresholds below which the incentives will not be available, incentives may be subject to the projects taking place in specific regions or incentives may require certain levels of local participation (either employment or ownership).

Table 6: AMC Incentives by Sector

<table>
<thead>
<tr>
<th>Sector</th>
<th>Brun</th>
<th>Cam</th>
<th>Indo</th>
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<th>Viet</th>
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</thead>
<tbody>
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<td>Agro</td>
<td>no</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>n/c</td>
<td>Yes</td>
<td>limited</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>Air travel</td>
<td>no</td>
<td>no</td>
<td>limited</td>
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<td>yes</td>
<td>n/c</td>
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<tr>
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<td>n/c</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
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*n/c*: not clear whether there is an incentive specific to the sector

This chart is based upon the survey conducted within KPMG in March 2006 and analysis of information available from sources including the International Bureau of Fiscal Documentation (2006) and KPMG Asia Pacific Taxation (2005) material. Analysis by priority sector is contained in Appendix 2.
2. Impediments

Impediments for the priority sectors arising from the taxation systems of AMCs appear to be largely indirect in the form of incentives directed by AMCs to other sectors of their economies. These indirect impediments represent the diversion of incentives and therefore encourage investment away from priority sectors to other sectors of AMC economies. In the case of a tax regime that is strictly neutral with respect to the priority sectors and other sectors of the economy, it can also be argued that it does not specifically encourage the priority sectors. In most AMCs there are a range of incentives applying to the priority sectors to varying degrees, but they typically also provide a range of incentives to non-priority sectors.

The survey and analysis did not identify specific tax impediments to the priority sectors in respect of the international tax regimes of AMCs. The impediments are essentially generic tax impediments as described above, in matters such as withholding taxes, lack of full relief from double taxation, inconsistent definitions and administrative issues. The impediments to the priority sectors identified within the tax regimes of AMCs are therefore largely indirect and arguably less important than the generic tax and other institutional impediments to integration.

Impediments to integration of the priority sectors can come in other forms other than direct taxation, such as indirect taxes, customs duties and restrictions on enterprise ownership. There is also preference given in the tax and incentive programmes of many AMCs to national, rather than broader ASEAN, individuals and firms or economic activities, such as incentives specifically restricted to locally made products, rather than products from the wider ASEAN community.

The key conclusion is the direct tax related impediments to the integration of the ASEAN priority sectors are generic in nature rather than specific to the priority sectors.
III. ECONOMIC INTEGRATION AND TAX AVOIDANCE

Greater economic integration brings with it a multitude of benefits associated with the likely increased investment into the region. However, economic integration also increases opportunities for tax avoidance as taxpayers have an increased ability to structure their transactions to take advantage of differing tax systems. With the current pace of globalisation and tax competition between countries to attract investment, this problem is increasingly difficult to manage. Countries have traditionally dealt with the threat by introducing sophisticated tax avoidance rules. Increasingly however, countries are taking a coordinated bilateral or multilateral approach to the issue.

A. SPECIFIC MEASURES TO PREVENT TAX AVOIDANCE

1. Transfer Pricing Regulations

Transfer pricing regulations are aimed at preventing tax avoidance by related companies through non-arm's length transactions. Related companies may manipulate 'transfer prices' to minimise the tax liability of the group as a whole by maximising tax deductions in high-tax jurisdictions. Transfer pricing rules generally place a high compliance burden on companies by requiring that companies adequately document all related-party transactions to substantiate that they have been conducted on an arm’s length basis (i.e. on the same basis as would have been conducted by independent parties). In the event that transactions are not conducted on an arm’s length basis, the tax authorities may employ the transfer pricing regulations to make a unilateral adjustment to the transfer price and ensure that the appropriate level of tax revenue is collected.

2. Thin Capitalisation Rules

Generally, dividend payments are not deductible for tax purposes whereas interest payments may be tax deductible, depending on the manner in which the loan funds are utilised. This difference in tax treatment gives rise to an incentive for companies to lower their tax liabilities by increasing interest payments at the expense of dividend payments. Hence, companies may choose to fund their subsidiaries through debt rather than equity. Thin capitalisation rules prevent companies from thinly capitalising companies by excessive debt funding. The rules generally impose a specific threshold up to which interest payments are tax deductible. It should be noted, however, that thin capitalisation rules have not been universally adopted by EU member states or the OECD.

3. Controlled Foreign Company Rules

Some countries, such as Australia and the United States, have introduced controlled foreign company (CFC) rules to prevent wholly-owned groups of companies from avoiding tax by locating subsidiaries in low tax jurisdictions. Under CFC rules, parent companies are generally required to include the undistributed income of its subsidiaries in computing its taxable income. Exemptions may apply for the ‘active’ income of subsidiaries which is considered part of their legitimate business operations. However, passive income which is considered to be most susceptible to manipulation is generally caught by CFC rules. It should also be noted, however, that CFC rules have not been universally adopted by EU member states or the OECD.
4. Coordination and Cooperation

Tax harmonisation represents the ultimate mechanism for combating tax avoidance. Companies will not be able to engage in tax avoidance behaviour if all tax systems were identical with a unified tax rate and/or tax base. However, tax harmonisation remains an ideal which is unlikely to be achieved as long as taxation rights remain a sovereign right of each individual country. Indeed, as discussed in Chapter IV, the EU tried but failed in its attempts to introduce a harmonised corporate tax rate within the EU.

However, countries can still act in concert to prevent tax avoidance through coordination and cooperation by tax authorities. By working together to address common tax administration issues, tax authorities can ultimately increase revenue collection for all countries. Coordination and cooperation can be achieved at a bilateral level through the inclusion of mutual cooperation and exchange of information provisions in bilateral tax treaties or at a multilateral level. While some EU countries may also use a bilateral approach, the EU as a whole has adopted a multilateral approach through its Mutual Assistance Directive of 1977.

<table>
<thead>
<tr>
<th>Country</th>
<th>Transfer Pricing</th>
<th>Thin Capitalisation</th>
<th>Controlled Foreign Corporations</th>
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<tr>
<td>Brunei Darussalam</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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<td>Cambodia</td>
<td>Value may be adjusted by tax authorities</td>
<td>No, but there are limits on interest deductibility</td>
<td>No</td>
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<td>Indonesia</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>No</td>
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<td>Not formal</td>
<td>No</td>
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<td>Yes</td>
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<tr>
<td>Viet Nam</td>
<td>Value may be adjusted by tax authorities</td>
<td>Not formal</td>
<td>Controls on offshore investment by domestic businesses</td>
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</table>

B. MULTILATERAL SOLUTIONS

In an increasing globalised economy, it is inevitable that some taxpayers will engage in cross-border behaviour that is designed to minimise their tax liability. This is likely to be of increased significance to AMCs as they continue efforts to achieve greater economic
integration. ASEAN can respond to the issue by leaving it to be dealt with by individual member countries, through bilateral cooperation between member countries, or through a multilateral approach instituted by ASEAN.

We recommend that ASEAN further examine the multilateral approach as it is most suited to the particular circumstances of ASEAN and AMCs. The introduction of specific tax avoidance measures by individual AMCs is not considered appropriate as it only increases the complexity of the country’s tax system and is unlikely to benefit AMCs as they are generally low-tax jurisdictions. Further, the introduction and implementation of such rules will require significant financial and administrative resources which may challenge the revenue administrative capacity of some AMCs, particularly Cambodia, Lao PDR, Myanmar and Viet Nam (“the CLMV countries”). However, the problem will not be addressed if only some member countries introduce such rules and others do not.

A multilateral approach should be coordinated by ASEAN through the establishment of clear guidelines regarding cooperation by tax authorities of all AMCs. In particular the guidelines should set out clear rules regarding the exchange of information by tax authorities as a key mechanism for the prevention of tax avoidance.
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IV. THE EU MODEL

This chapter is an analysis of the experiences of the European Union (“EU”) in mitigating or eliminating tax related impediments to economic integration across a regional economic organisation. The reason for examining the experiences of other economic unions is to analyse approaches which may be applicable for ASEAN in the elimination of tax related impediments to economic integration generically and across the priority sectors.

There is no other comparable economic union which has practised anything approaching the level of economic integration practised by the EU. The second part of this chapter will draw upon the experiences in the EU and in particular those that might be applicable to assist ASEAN integration.

A. CASE STUDY: THE EUROPEAN UNION

The European Union had its inception following World War II as the European Coal and Steel Community (“ECSC”), established in 1951. The original body comprised six countries, Belgium, West Germany, Luxembourg, France, Italy and the Netherlands. The body held the power to make decisions about the coal and steel industry in these countries.

Following the success of the ECSC, these 6 countries decided to integrate other areas of their economy and in 1957, signed the Treaties of Rome creating the European Atomic Energy Community (“EURATOM”) and the European Economic Community (“EEC”). These three communities were integrated in 1967, creating the European Commission.

In 1992, the Treaty of Maastricht introduced new forms of cooperation (e.g. defence, justice and home affairs) and created the European Union (“EU”).

1. Membership of the European Union

The original six Member States were joined by Denmark, Ireland and the United Kingdom in 1973, followed by Greece in 1981, Spain and Portugal in 1986 and Austria, Finland and Sweden in 1995. The European Union welcomed ten new Member States in 2004 including Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Bulgaria and Romania are expected to join in 2007. Croatia and Turkey began membership negotiations in 2005.

2. Objectives of the European Union

The creation of a single common or internal market, i.e., an economic and monetary union. The internal market is characterised, as between Member States, by the abolition of obstacles to the free movement of goods, persons, services and capital and there was to be “a system ensuring that competition in the internal market is not distorted”.

3. European Union and Tax Policy

In the EU single market it is important to ensure that Member States’ tax measures do not hamper the free movement of goods, services and capital or distort competition. This has to be balanced with the fact that tax policy is a characteristic of national sovereignty and part of a country’s overall economic policy, helping finance public spending and redistribute income. In the European Union, responsibility for tax policy mainly lies with Member States, who may delegate some of it from central to regional or local level, depending on the constitutional or administrative structure of their government.
In line with this, it is the European Commission’s stated belief that there is no need for an across the board harmonisation of Member States’ tax systems. Provided that they respect Community rules, Member States are free to choose the tax systems that they consider most appropriate and according to their preferences. In addition, any proposal for Community action in the tax field would take full account of the principles of subsidiarity and proportionality. There should only be action at EU level where action by individual Member States could not provide an effective solution and many tax problems might, in fact, simply require better co-ordination of national policies.

Within the abovementioned framework, the Commission has undertaken the following in the area of taxation.

a. Indirect taxes

Significant progress has been made in the area of indirect taxes as a basis for harmonisation exists in the EC Treaty. Article 90 of the EC Treaty prohibits any tax discrimination which would directly or indirectly give an advantage to national products over products from other Member States. Article 93 calls for harmonisation of turnover taxes, excise duties and other forms of indirect tax.

The Value Added Tax ("VAT") was the first tax to be 'harmonised' in 1977 and was adapted in 1992 to meet the requirements of the new single market, together with excise duties, which were also harmonised at the same time.

VAT is governed primarily by directives. Directives are binding, as to the result achieved on Member States. The national authorities are free, however, to choose the form and methods by which they achieve that result.

Customs/Excise duties are governed by regulations. A European regulation is binding in its entirety and is directly applicable in all Member States. In principle therefore, the customs treatment of goods is identical regardless of where the goods enter the EU.

It should be noted that in practice the extent of indirect tax harmonisation within the EU is questionable, since although the VAT regimes in each Member State have broadly similar characteristics, including a minimum standard VAT base rate, there remain considerable variations in the indirect taxes, most notably with respect to excisable products including alcohol, petroleum and tobacco.

b. Direct taxes

Debate on harmonising direct corporate taxation has been taking place since 1962. The Neumark Committee recommended that:

- taxes on company income be harmonised through the adoption of the ‘two-tier’ or ‘split-rate’ method of taxing distributed and undistributed profits, by which corporation tax is partially refunded on the distribution of profits;
- any taxes directly affecting capital movements, such as taxes on capital transactions and interest and dividends be harmonised; and
- double taxation be dealt with through a multilateral agreement, replacing any bilateral agreements in force.

In 1967, the Commission’s programme for the harmonisation of direct taxes sought to:

- remove all tax barriers to capital movements, a single market and the expansion of investment;
- ensure tax neutrality in corporate restructuring operations or cross-border mergers;
create conditions of equal competition for investments by aligning tax incentives and the methods of computing tax liability;

remove differences between national schedular taxes and possibly in all taxes on company assets;

introduce a uniform corporate tax base and method of calculating the taxable profits;

approximate Member State corporate tax rates;

coordinate methods of inspection and collection; and

eliminate double taxation that cannot be dealt with through harmonisation.

In 1969, the Commission proposed the following measures to facilitate the integration of EC capital markets through an adjustment of direct taxes:

the revision of Member States’ withholding taxes on income from variable-yield securities and from bonds and debentures to enable tax to be claimed or refunded under the tax rules of each country and in cross-border situations;

the harmonisation of tax rates because the tax in many cases was not reimbursable and rate differences between countries could colour investment decisions; and

the abolition of withholding tax on bond interest in order to help promote a European capital market for business and to attract inward investment. (withholding tax on dividends could be addressed with less urgency since double taxation was often alleviated through double taxation arrangements between Member States.)

The Commission’s position was towards the full harmonisation of the corporate tax systems of all Member States. In light of this, it presented detailed proposals on:

the tax aspects of cross-border corporate restructuring; and

the tax treatment of multinational groups of companies.

The 1969 proposals received little consideration by the Council. In 1975, the proposed program consisted of two main parts:

completing work of establishing tax conditions enabling the highest possible degree of liberalisation in the movement of persons, goods, services and capital and of integration of economies; and

making preparations with a view to further European integration, to bringing closer together the respective burdens of those taxes and charges having any substantial impact on the ideal of European integration and therefore to use taxation as an instrument of common policies.

Also in 1975, the Commission proposed a directive for the harmonisation of the systems of company taxation and of withholding taxes on dividends, suggesting the use of the imputation system of corporation tax and alignment of rates. In 1976, the Commission proposed an arbitration procedure to deal with double taxation arising from transfer pricing. In 1978, it proposed a measure on taxation of dividends distributed through collective investment schemes and started preparing measures on withholding tax on bond interest and the tax treatment of holding companies. These efforts only served to secure co-operation between tax administrations.

In the 1980s, the Commission proposed the harmonisation of national periods for carrying over losses and a common system of withholding tax on interest and royalties.
The Commission reassessed its approach in the 1990s and adopted a more practical approach to convergence rather than harmonisation. Under this new approach, the Commission would limit itself to introducing measures essential for the completion of the internal market, leaving Member States free to determine their own taxation arrangements unless they conflicted with the principles of the EC Treaty and created distortions within the common market.

In July 1990, the “package of three” was successfully adopted. The package aimed to facilitate the formation of intra-EU, cross-border groups and seeks to remove the fiscal obstacles associated therein. The package of three comprised:

- the parent-subsidiary directive (discussed below);
- the merger directive (discussed below); and
- the Arbitration Convention.

The Arbitration Convention is a multilateral convention between Member States introducing a revolutionary innovation in international tax law – a compulsory arbitral procedure which binds tax administrations to eliminate double taxation. This procedure must be invoked by the competent authority of Member States should they fail to come to a mutual agreement on the applicable transfer price and to adequately eliminate double taxation within two years after a case has been submitted to them by the taxpayer concerned. A recommendation will then be issued by the arbitral commission which will only bind the parties to the arbitration if these are still unable to reach agreement within six months after the recommendation is issued. The Arbitration Convention applies only to transfer pricing disputes and not to other disputes encountered in the context of a double taxation agreement.

The Ruding Committee was established in April 1990. Its purpose was to “evaluate the importance of taxation for business decisions with respect to investment and international allocation of profits between enterprises”. The committee addressed three matters:

- whether differences in Member States’ taxation cause major distortions in the functioning of the internal market, particularly with regard to investment decisions and competition;
- if such distortions do arise, whether they are likely to be eliminated by market forces and tax competition between Member States or whether action at EC level would be required; and
- what measures might be needed at EC level to eliminate these distortions.

In 1992, the Ruding Committee provided its views in respect of the convergence approach to Member State corporate taxation.

Following its analysis of differences in rates, tax bases, dividend taxation and the tax treatment of cross-border flows of income (dividends, interest and royalties), the committee found that Member States’ tax differences affected investment positioning and distorted competition. They also found that further action was required at the supranational level to move impediments to the internal market.

The Ruding Committee recommended:

- the removal of measures which discriminate in favour of domestic companies or against investment in other Community countries (for instance, by the more favourable treatment of domestic-source dividends than of foreign-source dividends) and which constitute a distortion in Member States tax systems which impedes cross-frontier investment and shareholdings; and
- the prevention of excessive competition, aimed at attracting mobile investment, by fixing a minimum corporation tax rate of 30 per cent and a minimum tax base.
In June 1992 the Commission issued guidelines on corporate taxation. The Commission agreed with the committee on the following issues:

- eliminating double taxation on cross-border flows;
- extending the scope of the parent-subsidiaries directive to include all parent companies subject to corporation tax; and
- extending the scope on the mergers directive to cover all undertakings in asset transfers.

The Commission also proposed the additional reforms to eliminate double taxation:

- common definitions and treatment of thin capitalisation;
- common rules concerning headquarters allocation costs and the definition of shareholder costs;
- completion of DTAs networks between Member States, and conclusion of agreements with non-member countries in strict accordance with the non-discrimination rules in the EC Treaty; and
- moving towards neutral treatment of foreign-source dividends.

As mentioned above, for reasons of national sovereignty, harmonisation of direct taxes has not been successful and the EU and Member States have adopted a convergence approach in this area. Convergence has been effected through the adoption of EU directives on direct taxes and increasingly of late, legal action through the European Court of Justice (“ECJ”) where Member States national tax rules do not comply with the EC Treaty.

4. EU Directives
   a. Parent-Subsidiary Directive

   The EU Parent-Subsidiary Directive of July 1990 (90/435/EEC) aims at reducing the differences between taxation rules for nationally organised groups of companies and taxation rules for EU-wide groups.

   The EU Parent-Subsidiary Directive has two purposes:

   - to ensure that the Member State of the parent company either refrains from taxing the profits distributed by a subsidiary that is resident in another Member State or, if taxing such profits, authorises the parent company to deduct from the amount of tax due the corporate income tax paid by the subsidiary in the other Member State; and
   - to exempt profit distributions by the subsidiary to the parent company from withholding tax.

   For the purposes of this Directive “company of a “Member State” means any of the companies mentioned in the Annex of the Directive. Companies that are resident in a Member State, but deemed by virtue of a tax treaty with a non-EU State to be resident of that third State, do not qualify.

   According to Article 3(1), a qualifying Parent-Subsidiary relationship exists if the parent company holds at least 25% of the issued shares of the subsidiary. However, Member States are allowed to replace this criterion with one related to the holding of voting rights, and are also permitted to require a minimum holding period of not exceeding 2 years.

   Regarding the holding period, the European Court of Justice (“ECJ”) ruled in the Denkavit cases of October 1996 (C-283/94, C-291/94 and C-292/94) that although (according to the wording of Article 3(2)) a tax advantage may be denied if the parent company does not maintain a holding in the subsidiary for an uninterrupted period of 2 years, the granting of the
advantage may not be subject to the condition that the parent company has held the
minimum participation for the minimum period at the time of profit distribution.

By virtue of Article 4, the parent should, in principle not be taxed on the profits distributed
by the subsidiaries, or the indirect credit method should be applied. A Member State is
however, permitted to exempt not less than 95% of distributed income, and to fix the
management costs of the holding at a flat rate of not more than 5%.

b. Interest and Royalties Directive

The EU Interest and Royalties Directive of March 2003 (5926/03/EC) eliminates
withholding taxes on interest and royalty payments between related companies of different
Member States with cross shareholding of at least 25%, including their permanent
establishments. The Member States may decide not to apply the directive if the 25% cross-
shareholdings have not been maintained for a period of at least 2 years.

Under the directive, interest and royalty payments will be taxed in the Member State in
which the recipient company is established. The State of the recipient company will grant a
credit for the withholding tax levied. Member States must implement this directive no later
than 1 January 2004.

c. Merger Directive

The EC Merger Directive provides for the deferral of taxation on capital gains on defined
cross-border merger or reorganisations within the European Union.

The Merger Directive covers four situations:

- Mergers in which one or more companies, on being dissolved without going into
  liquidation, transfer all their assets and liabilities to another existing or new company, and
  in exchange the shareholders of the transferor companies receive shares in the capital of
  the transferee company and, if applicable, a related cash payment not exceeding 10% of
  the nominal value of those shares. “Mergers” also includes the situation where a wholly
  owned subsidiary transfers all its assets and liabilities to the parent company (Art. 2 (a))

- Divisions of companies in which a company, on being dissolved without going into
  liquidation, transfers assets and liabilities to two or more existing or new companies, and
  in exchange the shareholders of the transferor company receive shares in the capital of
  the transferee companies and, if applicable, a cash payment not exceeding 10% of the
  nominal value of those shares. This is the same event as a merger, except in this case
  two transferee companies are involved (Art. 2 (b)).

- Transfers of assets in which there is a transfer of one of more branches of a company’s
  activities to another company in exchange for shares in the capital of the transferee
  company (Art. 2(c)). A “branch of activity” means all the assets and liabilities of a division
  of a company which, from an organisational point of view, constitutes an independent
  business i.e. an entity capable of functioning by its own means (Art 2 (i)).

- Exchanges of shares in which Company A receives shares in the capital of Company B
  from existing shareholders, such that Company A obtains a majority of the voting rights of
  Company B, and in exchange those existing shareholders receive shares in the capital of
  Company A and, if applicable, a related cash payment not exceeding 10% of the nominal
  value of the shares issued in exchange (Art. 2 (d)).

5. ECJ decisions

European Court of Justice (“ECJ”) decisions are based on the freedoms enshrined in the
EC Treaty: free movement of workers, freedom of establishment, free provision of services
and free movement of capital and payments. Many of the court’s important decisions have
been based on the freedom of establishment principle. Generally, if a feature of a tax system
amounts to a barrier to cross-border economic activities, the ECJ has often held that the feature conflicts with the EC Treaty.

ECJ decisions can generally be categorised as follows:

- **Non-discriminatory taxation** – for Member States, the fundamental principle of non-discrimination and therefore of equal treatment entails that, in imposing direct taxes, Member States should avoid any type of discrimination on the basis of nationality. This rules out formal discrimination on grounds of nationality (overt discrimination) and also disallows differences in fiscal treatment formally based on grounds other than nationality (e.g. by residence) but which produce the ultimate effect of discriminating on grounds of nationality (covert discrimination).

- **Discrimination vs differential treatment** – discrimination arises through the application of different rules to comparable situations or through the application of the same rules to different situations, and is therefore disallowed. However, Member States are not barred from fixing different rates of taxation or from establishing different criteria for the imposition of taxation. The differential treatment must be imposed objectively and not directly or indirectly on the grounds of the taxpayer’s nationality. Accordingly, the mere fact that an EU national carries a heavier tax burden in a host state than some locals does not by itself constitute discrimination. Such a taxpayer would only be entitled to challenge the imposition of taxation there as discriminatory if he is subjected to taxation on a basis different from that on which tax is imposed on locals in equivalent positions.

- **Reverse discrimination** – every Member State is bound to treat nationals of other Member States no less favourably than its own nationals. However, this prohibition does not prevent a Member States from applying on its own territory a tax treatment that is less favourable to its own nationals than to the nationals of other Member States.

- **Fiscal cohesion and non-discrimination in tax rates** – Fiscal cohesion requires a correlation between the sums that are deducted from taxable income and the sums that are actually subjected to tax. It has been accepted by the ECJ that, for this reason, restrictions on free movement, including discriminatory taxation, may be justified in tax terms. However, a mere threat to the fiscal revenues of a Member State does not qualify for consideration as fiscal cohesion in the sense recognised by the Court.

- **Tax breaks and exemptions** – Member States are required to provide tax breaks, exemptions and other substantive fiscal rights without discriminating on the basis of nationality.

- **Repayment of overpaid tax** – Domestic measures that make the repayment of overpaid tax subject to discriminatory residential requirements will breach EU law.

- **Tax deductions** – Refusal to allow tax deductions may amount to discrimination contrary to Articles 39, 43 and 49 of the EC treaty.

- **Transfer of residence** – The treaty protects the right of a company to establish itself in another Member State through a branch or subsidiary or through a transfer of its assets to a company incorporated under the laws of another Member State.

Some recent examples of ECJ decisions impacting Member State tax systems include:

- If an individual who lives in one Member State works in another state where he derives most of his income, the Member State where he works must give him tax allowances as if he were a resident.

- If a company formed in Member State A has a branch in Member State B, Member State B must give the branch tax relief equivalent to those which a company formed in Member State B would be entitled under double tax treaties to which Member State B is a party.
• Thin capitalisation rules which restrict the use of debt to fund subsidiaries appear not to be valid within the EU.

• If a Member State would give relief to a parent company for the cost of funding its investment in a subsidiary in the same Member State, it must also give relief in respect of a subsidiary in another Member State. This applies even if it does not tax the profits of the latter subsidiary.

• A Member State which gives relief to a parent company for losses incurred by a subsidiary in the same Member State must also give such relief where the subsidiary is in a different Member State, even though the Member State of the parent company does not tax the profits of the subsidiary.

• Controlled foreign company legislation, under which the Member State of a parent company taxes the parent company on the profits of a subsidiary member in another Member State even if the subsidiary has not distributed those profits to the parent company may not be legal within the EU.

In addressing these cases in the ECJ, Member States have very few defences available to them. Generally, the defence of cohesion (protecting the coherence of a national tax system) has been so limited as to be rendered useless. Steps guarding against illegal tax evasion are acceptable provided that they are proportionate. However, steps countering legal tax avoidance are not permitted.

6. Current EU proposals

One reason why changes in tax have been slow is because the relevant articles of the EC Treaty require unanimity for any change. This has significantly hampered progress and proposals are currently underway to amend this requirement to enable changes in some areas of tax to be made through qualified majority voting. The Commission may be more directly extensively involved in Member States tax policies if the proposal is successful.

The current push in relation to direct taxes in the EU is to consolidate only the corporate tax base of all countries and not corporate tax rates. The common consolidated corporate tax base ("CCCTB") is expected to significantly reduce the compliance costs of companies operating across the internal market, resolve existing transfer pricing problems, allow for the consolidation of profits and losses, simplify many international restructuring operations, reduce some of the complexities arising from the co-existence of the classical and exemption approaches to international taxation (without extending into the personal tax field), avoid many situations of double taxation and remove many discriminatory situations and restrictions. The CCCTB would contribute to greater efficiency, effectiveness, simplicity and transparency in company tax systems and remove the gaps between national systems. The working group is currently working on the technical aspects of achieving a CCCTB and this proposal is expected to be achieved in stages over the next three years.

The Commission recently introduced a pilot ‘home state’ taxation program for small and medium enterprises ("SMEs"). Under the program Member States should allow SMEs to compute their company tax profits according to the tax rules of the home state of the parent company or head office. An SME wishing to establish a subsidiary or branch in another Member State would as a result be able to use the familiar tax rules of its home State when calculating its taxable profits. The home state tax system is voluntary and will run for an initial trial period of 5 years.
B. THE EU MODEL AS A POSSIBLE APPROACH FOR ASEAN

1. A tax treaty

The approach eventually adopted by the EU is one that might be considered by ASEAN as an appropriate mechanism for the convergence of the tax regimes of AMCs. As with the current EU model, this would not be an endeavour to eliminate legitimate tax competition between AMCs, but rather to allow each AMC to continue to operate their own taxation arrangements, consistent with their revenue requirements and economies. A convergence approach would, however, establish baseline standards for taxation including matters such as common revenue base definitions and consistent standards. A convergence approach would provide a high degree of predictability on tax issues for investment attraction, both from within ASEAN and external to ASEAN. Consistent standards among AMCs would also remove the opportunity for arbitrage between tax systems because of differing definitions.

Institutional issues that would need to be addressed would be the mechanisms for implementing a convergent tax regime across ASEAN. In this respect it might comprise a standing committee or panel of the AMC revenue agencies, possibly under the aegis of the ASEAN Secretariat.

A multilateral ASEAN tax treaty between AMCs, similar to the EU, would be the optimum solution. Such a tax treaty arrangement would remove the need for each AMC to negotiate separate bilateral tax treaties with each of the nine other AMCs. A treaty would provide for consistency within ASEAN that would enhance the attractiveness of the region as a destination for foreign direct investment. A multilateral tax treaty would also be benefit to the CLMV countries, since they would not need to resource the often lengthy separate treaty negotiation processes. A treaty would also provide a tax treaty accession process similar to the EU for new applicants for ASEAN membership (such as Timor-Leste).

The difficulty in establishing a multilateral tax treaty within ASEAN would be the lengthy and complex process to achieve consensus between AMCs that have very different economies.

2. Agreed Positions

An alternative to a comprehensive ASEAN tax treaty would be for AMCs to adopt common Agreed Positions. This would be a less intensive process than a tax treaty negotiation process and could be implemented in progressive steps rather than as a final treaty outcome.

Agreed Positions on taxation within ASEAN could be adopted by consensus between ASEAN Finance Ministers would be similar to, but less stringent than, the Directives process applied by the EU. Similar to the EU Directives process, ASEAN Agreed Positions on taxation would establish some minimum taxation standards and act as a mechanism for cooperation between revenue agencies to address issues such as fiscal evasion.

Agreed Positions could focus on what might be described as ‘the easier issues’ first, such as income source recognition, transfer pricing allocation issues between AMCs and information sharing protocols between AMC revenue agencies.

Agreed Positions would be determined by agreement between the respective revenue agencies of the AMCs. Similar to the EU the Agreed Positions would be made by unanimous decision and would establish minimum taxation standards and address issues such as common tax definitions and tax base definitions. The Agreed Positions would include timetables for their adoption by all AMCs. Similar to the EU, adoption of the Agreed Positions on taxation would be part of the criteria for the accession of any new member states to ASEAN. This process would be one through which minimum standards could be established and also act as a mechanism for cooperation between revenue agencies to address issues such as tax evasion.
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V. RECOMMENDATIONS

A. AGREED POSITIONS PROCESS

That ASEAN gives consideration to adopting an Agreed Positions process to assist convergence within ASEAN on taxation issues.

Agreed Positions would be determined by agreement between the respective AMC Finance Ministers. The Agreed Positions would be adopted by unanimous decision and would establish basic taxation standards and address issues such as common tax definitions. The Agreed Positions would include timetables for their adoption by all AMCs. An advantage of this process is that specific taxation issues could be addressed in order of their priority, as opposed to the more extensive task of negotiating a multilateral tax treaty within ASEAN.

This process would be one through which minimum standards could be established and also act as a mechanism for cooperation between revenue agencies to address issues such as tax evasion. In particular, standards for anti-avoidance measures such as transfer pricing might be addressed through such a process.

B. EQUALITY OF TAX TREATMENT

That ASEAN gives consideration to adopting an Agreed Position on non-discrimination for AMC resident corporations and individuals operating in other AMCs. This would emulate the no less favourable tax treatment arrangements operating in the EU.

Key features of this approach might include:

- tax treatment of the nationals (individual and corporate) of other AMCs no less favourably than the nationals of the AMC; and

- nationals of other AMCs to be able to access various taxation and investment incentives on equal terms to the nationals of each AMC.

Non-discrimination between AMC nationals would be likely to encourage integration of AMC economies, including the priority sectors where incentives are available.

Several options would need to be considered by ASEAN with the introduction of a ‘no less favourable tax treatment’ principle. These would include:

- whether the principle should apply universally within ASEAN;

- whether the principle should be limited to the designated Priority Sectors; and

- whether there should be a phase-in to enable adjustment by the CLMV countries.

C. WITHHOLDING TAXES

That ASEAN gives consideration to a maximum withholding tax rates regime between AMCs. The central issue with respect to withholding tax is that AMCs often have more favourable arrangements with non-ASEAN countries than they do with other AMCs with respect to withholding taxes applied to dividends, interest and royalties. ASEAN could address this anomaly and disincentive to ASEAN integration by adopting an Agreed Position for maximum withholding tax rates between AMCs. Consideration could also be given to a timetable for phased reductions for withholding taxes between AMCs, possibly leading to their eventual abolition.
D. TREATY NEGOTIATION FLOW-THROUGH PROVISIONS

That ASEAN gives consideration to adopting a treaty flow-through process. AMCs typically have a range of DTAs with non-ASEAN countries. Singapore, for example, has negotiated fifty-eight such treaties. The concept behind the flow-through provisions would be to allow other AMCs to accede to treaties negotiated with non-ASEAN countries. As a means to advance a collective bargaining position and manage the effort required, the treaty negotiations could be led by one or two AMCs on behalf of ASEAN. The treaty negotiated would then be available but not mandatory for accession by other AMCs.

E. MOST FAVOURED NATION ARRANGEMENTS

That ASEAN gives consideration to adopting Most Favoured Nation arrangements internally. Under these arrangements, AMCs would be obliged to offer all other AMCs the same treaty terms as any negotiated with any non ASEAN countries. Similar to the Agreed Position proposed for withholding taxes on dividends, interest and royalties, such an arrangement would mean that AMCs would have treaty arrangements with other AMCs that were at least as favourable as treaty arrangements with non-ASEAN countries.

F. DISPUTE RESOLUTION AND INFORMATION SHARING PANEL

That ASEAN gives consideration to establishing a formal dispute resolution mechanism for AMC revenue agencies on taxation issues. The necessity for such a mechanism will increase with further ASEAN integration.

A preferred model would probably be a Panel process rather than a Court system. A Panel comprising the revenue agencies of the AMCs could also act as a means of enhanced information sharing to address tax avoidance issues.

A convergence model for ASEAN tax regimes would necessarily require a mechanism for dispute resolution between AMCs on taxation issues. It is not recommended that the European Court of Justice model be adopted, since this would necessarily result in some diminution of national sovereignty. In cases where there are issues between revenue agencies and taxpayers, these should be resolved within the jurisdiction of the relevant AMC.

It is recommended that disputes between AMCs on taxation issues should be considered by a Panel representing the AMC revenue agencies. The ASEAN Secretariat could potentially have a key role in facilitating this process. An alternative, perhaps secondary method of dispute resolution might be referral to the Permanent Court of Arbitration, to which five AMCs are already members.

G. FUTURE DEVELOPMENTS

That ASEAN notes the taxation developments in the European Union. The EU, because of the advanced state of its economic integration and convergence on taxation issues is likely to continue to be the source of concepts and practices that are designed to assist economic integration. Recent EU initiatives such as home state taxation for the small and medium business sector and the common consolidated corporate tax base for larger businesses are concepts that ASEAN may wish to consider in the future.
REFERENCES


APPENDICES

APPENDIX 1 TECHNICAL NOTES

1. Competitive neutrality

The principle of neutrality provides that taxation should have a neutral effect on economic or financial decision-making. That is, the potential tax advantages or disadvantages should not drive an investor in deciding where to invest, or the nationality of the investor.

To attain neutrality, domestic treatment of domestic and foreign investments should be the consistent, and similarly, that the domestic treatment of domestic and foreign taxpayers should be consistent.

Competitive neutrality is often cited as a desirable characteristic of good tax system design. The principles of competitive neutrality are that the tax system:

- does not discriminate between business location, form, functions and transactions;
- does not create an imbalance across competitors or industries; and
- ensures taxpayers in similar circumstances bear a similar tax burden.

While competitive neutrality is a desirable characteristic, in reality few tax systems have it. Departures from the principle of competitive neutrality in taxation are widespread in both developed and transitional economies. Internationally, most countries have tax systems that either give special benefits to certain traditional sectors (e.g. the farming sector) or provide special incentives to foster the development of new sectors of the economy (e.g. biotechnology).

In common with other economies, AMCs typically employ incentives under their respective tax systems that favour certain economic sectors. Examples include tax holidays for up to eight years for new projects in 22 industry sectors in Indonesia and tax benefits for companies operating in the Multimedia Super Corridor in Malaysia.

To the extent that tax regimes give preferential treatment to certain sectors of the economy, it can be argued that the other sectors of the economy that do not have access to similar concessions are bearing a greater burden of taxation than might otherwise be the case.

2. Tax competition

There is a significant body of information available on the issue of harmful tax competition, in particular from the OECD Global Forum on Taxation. The OECD has established criteria to determine whether a preferential tax regime is harmful, in particular where:

- the tax regime imposes low or no taxes on the relevant income (from geographically mobile financial and other service activities). Although a low or zero effective tax rate is the necessary starting point of an examination of a preferential regime, it alone is never sufficient to find harm;
- the tax regime lacks transparency;
- there is no effective exchange of information with respect to the tax regime; and
- the tax regime is ring-fenced from the domestic economy.

A distinction needs to be made between legitimate tax competition, for example jurisdictions adopting low corporate tax regimes in order to be internationally competitive for
highly mobile capital investment and jurisdictions engaging in harmful tax competition as defined by the OECD.

The OECD states clearly that countries have the right to set their own levels of taxation. While this statement may appear obvious, it is necessary to state that different countries will have different tax regimes and rates based upon factors such as the level of economic development, their respective revenue bases and their desired levels of government expenditure. The European Union (EU) demonstrates that member states of an economic union can adopt measures aimed at convergence of many aspects of their taxation systems (similar treatment of similar tax issues) while retaining different rates of taxation between the member states. Action against harmful tax practices should therefore not be regarded as an endeavour to reduce competitiveness between jurisdictions or to harmonise with uniform taxation regimes.

3. Aligning tax systems
   a. Unitary

   A unitary taxation approach is one in which each member country gives up its own taxation rights and adopts a unitary taxation system. Under such a system issues such as double taxation, transfer pricing and issues of definition would be eliminated. The member countries of such a unitary taxation system would determine other issues such as revenue sharing formulas. In order for unitary taxation systems to operate successfully, all countries within such a system need to agree on accounting principles, revenue sharing formulas and adopt uniform tax administration procedures.

   Probably the only examples where a unitary taxation system has been successfully adopted have been in circumstances when formerly independent states have decided to federate (West Germany and East Germany) and when federations decide to adopt uniform taxation (Australia in 1942).

   b. Harmonisation

   A harmonised taxation system is one in which the tax systems of the member countries agree to adopt the same taxation arrangements. Under such an arrangement the incentives to shift to lower taxed countries or to transfer income from high taxed to low taxed countries would be eliminated. There would also be a harmonisation of definitions and tax treatment between the member countries in such a taxation system.

   Difficulties in achieving full harmonisation include the requirement for the higher taxing countries in the group to reduce their taxes, while those lower taxing countries would be required to increase taxes, solely for the purpose of meeting the harmonisation goal. In addition to potential institutional resistance by tax administrations, there would certainly be opposition from taxpayers in countries that were required to increase their taxes.

   From the early 1960s the European Union (EU) favoured a tax harmonisation approach under which the Member States would adopt the same corporate tax system including the tax base, tax rate and rules. In 1990 the EU abandoned the harmonisation approach in part because harmonisation in other areas of policy was leading to erosion of national sovereignty, it was unable to achieve the unanimity required for decision making on issues such as a standard corporate tax rate across all EU Member States.

   c. Convergence

   Following the failure of harmonisation as a direct tax policy approach, the EU adopted a methodology by which member states retain their sovereignty over their taxation
arrangements but embrace the concept of convergence where the member states adopt common rules and definitions. The convergence approach provided that each Member State would maintain control over its corporate tax system but also implement various corporate tax principles for fiscal integration.

The system of EU Directives allowed Member States time to adopt the agreed standards and also provided conformance guidelines for new Member States that wished to join the EU. In addition to the approach adopted for direct taxation, described below, the EU also has a Directive covering indirect taxation that establishes the tax base and a minimum rate for value added tax for all Member States.

The new EU approach of seeking the convergence of corporate tax systems was in line with the principle of subsidiarity. In 1990 a common policy was adopted within the EU on the issue of foreign losses and for the abolition of withholding taxes on group interest and royalty payments between MCs. This reform facilitated the formation of cross-border groups by removing fiscal obstacles.

Another example of EU moves towards convergence of the corporate tax systems was the Parent – Subsidiary Directive, under which the Member State of the parent company either refrains from taxing the profits distributed by a subsidiary that is resident in another Member State or, if taxing such profits, authorises the parent company to deduct from the amount of tax due the corporate income tax paid by the subsidiary in the other Member State. The Parent – Subsidiary Directive also exempts profit distributions by the subsidiary to the parent company from withholding tax.

The EU convergence approach is also demonstrated by the Interest and Royalties Directive which eliminates withholding taxes on interest and royalty payments between related companies of different Member States with cross shareholding of at least 25%, including their permanent establishments. Under the directive, interest and royalty payments are taxed in the Member State in which the recipient company is established. The Member State of the recipient company will grant a credit for the withholding tax levied.

Other examples of convergence using the EU Directive approach include the Merger Directive which provides for the deferral of taxation on capital gains on defined cross-border merger or reorganisations within the EU and the Mutual Assistance Directive which provides a framework for the exchange of information between tax administrations in order to prevent cross border tax evasion and tax avoidance.
APPENDIX 2: SURVEY PROGRAM

SURVEY GENERIC FORMAT

[AMC name]

ASEAN Tax Regimes and the integration of the Priority Sectors survey

Background

KPMG has been engaged under the ASEAN - Australia Development Cooperation Program Regional Economic Support Facility (“AADCP – REPSF”) on a research project to assess the features of the different tax regimes within ASEAN and the extent to which they impact on the aim of integrating ASEAN’s eleven priority sectors.

The Vientiane Action Plan (“VAP”) agreed by ASEAN in November 2004 identified 11 priority sectors for full integration by 2010 as part of an ASEAN Economic Community. These 11 priority sectors are Agro-Based Products, Automotive Products, Electronics Products, Fisheries Products, Rubber-Based Products, Textiles and Apparels Products, Wood-Based Products, Air Travel Services, e-ASEAN Products, Healthcare Products and Tourism and Travel-related Services.

Your role

To assist this project by confirming our understanding of any income tax measures which promote or impede the integration of the abovementioned 11 priority sectors.

This survey is structured as follows:

- Measures which promote the priority sectors (incentives for the priority sectors and generally)
- Impediments to the priority sectors (incentives for non-priority sectors followed by general impediments)

Please place a tick (✓) or a cross (✗) in the box next to the relevant statement and provide any comments in the space provided.
# Checklist

*Measures which promote the ASEAN priority sectors*

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<td>Wood based products sector</td>
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<td>General incentives (not industry specific)</td>
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Impediments to the ASEAN priority sectors

Incentives directed at non-priority sectors:

Comments (if any):

Any general incentives listed above that are impediments to integration of priority sectors when used in non-priority sectors.

Comments (if any):

Business Impact

Please comment on the extent to which differences in the direct (corporate and individual) taxation systems between [AMC name] and other ASEAN Member Countries might impact on trade and investment decisions for the 11 priority sectors when non-tax barriers are removed under economic integration.

Comments:
SURVEY RESULTS BY PRIORITY SECTOR

Following are the sector-specific analyses by each of the priority sectors from each AMC. This is based upon the Survey conducted within KPMG in March 2006 and analysis of information available from sources principally including the International Bureau of Fiscal Documentation (2006) and KPMG Asia Pacific Taxation (2005) material.

A. AGRO-BASED PRODUCTS SECTOR

1. Brunei Darussalam

Brunei Darussalam does not provide any incentives specific to the agro-based products sector. Brunei Darussalam offers the following non-industry specific tax incentives:

- Pioneer status: exemption from tax for up to five years, plus extensions of initially five years and later three years. Dividends paid out of profits are exempt in the hands of shareholders.
- Expanding enterprise exemption: tax holidays for businesses which invest to expand production of ‘approved products.’

Brunei Darussalam does not have any features in its taxation system that act as an impediment to the agro-products based sector.

2. Cambodia

Cambodia does not provide any incentives specific to the agro-based products sector. Cambodia provides general, non-sector specific incentives for Qualifying Investment Projects (“QIPs”) which are granted an automatic tax holiday of 3 years and an extension of up to another 3 years, depending on the characteristics of the project. The exemptions take effect from the year the project derives its first profit or after 3 years of operations, whichever occurs first.

In particular, small-scale agricultural projects, including the following are ineligible for the QIP incentives:

- Paddy farming less than 1,000 hectares
- All kinds of cash crops less than 500 hectares
- Vegetables less than 50 hectares
- Timber plantation less than 1,000 hectares
- Tree plantation less than 200 hectares

3. Indonesia

Indonesia provides tax incentives relevant to the agro-products based sector. Incentives for investment in less developed regions in the agriculture and plantation sectors, include:

- Carry-forward of losses for up to 8 years; and
- Reduction of the land and building tax to 0.25% for the first 8 years.
- Losses incurred in a given year may normally be carried forward for 5 years. However, a loss carry-forward of 8 years applies to industries indicated by the Minister of Finance,
including plantations growing hardy plants (i.e. crops with a growth period of more than 1 year).

These incentives are specific to designated less developed regions of Indonesia rather than being general incentives for the agro-products based sector.

4. Lao PDR

A specific agricultural tax applies to sectors engaged in cultivation and the rearing of livestock. The tax rates vary according to the crop or livestock involved. Various exemptions or reductions are also available.

The standard rate of tax on juridical bodies such as private companies is 45% on production business.

- Tax incentives may include:
  - an annual profit tax at a flat rate of 20%;
  - sector-specific taxes and royalties will be prescribed for foreign investments involving natural resources exploitation and energy generation;
  - import duties are levied on manufacturing machinery, spare parts and other machinery used in projects or manufacturing business at a flat rate of 1%;
  - raw materials and intermediate components imported for processing and subsequently re-exported are exempt from import duties;
  - all exported finished products are exempt from export duties;
  - foreigners may be granted an exemption and/or a reduction in taxes because of the large size of their investments and the significant positive impact these are expected to have on PDR Laos' economic development. The Government will issue area-specific or general regulations and resolutions in the event of the establishment of one or more free zones or investment promotion zones; and
  - individual foreign nationals are subject to personal income tax at a flat rate of 10% on their salary.

5. Malaysia

Malaysia provides a broad range of incentives for the agro-products based sector under the following categories:

- Agricultural production
- Processing of agricultural products
- Forestry and forestry products
- Manufacture of palm and palm kernel oil products and derivatives

A company which undertakes the promoted activities listed above is eligible to apply for Pioneer Status or Investment Tax Allowance and Reinvestment Allowance.

‘Qualifying capital expenditure’ for Investment Tax Allowance in relation to agricultural projects also includes the following expenditure incurred on:
  - clearing and preparation of land;
  - planting of crops;
  - provision of irrigation or drainage systems;
- provision of plant and machinery used in Malaysia for ‘agricultural activities’ (refer below for definition of ‘agricultural activities’);

- construction of access roads, including bridges, construction or purchase of buildings and structural improvements of land or other structures used for ‘agricultural activities’ (refer below for definition of ‘agricultural activities’);

- ‘agricultural activities’ include crop cultivation, animal farming, aquaculture, inland fishing or deep sea fishing and other agricultural or pastoral pursuits; and

- projects located in promoted areas will be eligible for an enhanced Pioneer Status or Investment Tax Allowance.

‘Qualifying project’ for Reinvestment Allowance includes an agricultural project undertaken by a company in expanding, modernizing or diversifying its cultivation and farming business in the production of essential food such as rice, maize, vegetables, tubers, livestock, aquatic products or any other activities approved by the Ministry of Finance.

In addition to the above incentives, other agro-based products sector-specific incentives include incentives for food production for new projects

A company which invests in a subsidiary company engaged in food production together with the subsidiary company qualifies for either one of the following two incentive packages:

Incentive Package A:

A company making investments in the subsidiary company, which is undertaking an approved food project, shall be entitled to a tax deduction equivalent to the amount of investments made (which is used for the sole purpose of financing the approved food production project) in the basis period for a year of assessment.

The subsidiary company undertaking food production will be given income tax exemption of 100% on its statutory income for 10 years commencing from the first year the company enjoys profit in which:

- losses incurred before the exemption period are allowed to be brought forward after the exemption period of 10 years;

- losses incurred during the exemption period are also allowed to be brought forward after the exemption period of 10 years; and

- dividends paid from the exempt income will be exempted in the hand of the shareholders.

Incentive Package B:

Under this package, group relief is available for companies engaged in an approved food production project. The company which invests in the subsidiary company engaged in food production will be given group relief for the losses incurred by the subsidiary company before it records any profit.

The subsidiary company undertaking food production will be given income tax exemption of 100% on its statutory income for 10 years commencing from the first year the company makes profit.

In addition:

- losses incurred during the exemption period are allowed to be carried forward for utilisation after the exemption period of 10 years; and

- dividends paid from the exempt income will be exempted in the hands of the shareholders.
Both the above incentive packages are subject to the following conditions:

- the investing company should own at least 70% equity in the subsidiary company that undertakes food production;
- the eligible food products are approved by the Ministry of Finance. Presently, the approved food products are vegetables, fruits, herbs, spices, kenaf, aquaculture and rearing of cattle, goats and sheep;
- the food production project should commence within a period of one year from the date the incentive is approved; and
- for existing companies which reinvest in food production

A company which reinvests in the production of the food products (kenaf, vegetables, fruits, herbs, spices, aquaculture and rearing of cattle, goats and sheep) is also eligible for the same incentives for another period of 5 years.

- 100% allowance on capital expenditure for approved agricultural projects

The Income Tax Act, 1967 provides for a 100% deduction of capital expenditure incurred on approved agricultural projects as determined by the Minister of Finance. The deduction is applicable for capital expenditure incurred within a specific time frame on the cultivation and planting of specific agricultural produces on a specified minimum area of cultivation.

Included in the approved agricultural projects are the cultivation of vegetables, tubers, roots, herbs, spices, crops for animal feed, hydroponic based products, fruits (papaya, banana and passion fruit, star fruit, guava and mangosteen) ornamental fish culture, fish and prawn rearing, cockles, oysters, mussels, seaweed culture, and shrimp, prawn and fish hatchery and floriculture.

6. Myanmar

The Foreign Investment Commission may grant any enterprise which produces goods or renders services an exemption from income tax for a period up to 3 consecutive years, including the year in which the production of goods or rendering of services commences. The exemption period may be extended if the enterprise is successful and the investment is beneficial to Myanmar.

The Foreign Investment Commission may also grant any or all of the following exemptions or reliefs:

- exemption or reduction of income tax for an enterprise which places funds in a reserve and reinvests those funds in the enterprise within one year;
- accelerated depreciation of machinery, equipment, buildings or other capital assets used in the enterprise at rates fixed by the Foreign Investment Commission;
- exemption from income tax of up to 50% on the profits accrued from the export of goods produced by an enterprise;
- an investor may pay income tax to the Treasury on behalf of foreigners employed in the enterprise and may then deduct such payments from the assessable income of the enterprise;
- income tax on the income of the above-mentioned foreigners may be paid at the rates applicable to citizens of Myanmar;
- expenses incurred in respect of research and development for the enterprise which is actually necessary and carried out in Myanmar may be deducted from assessable income;
- carry forward of losses for 3 years following the exemption or relief period;
- exemption or relief from customs duty or other indirect taxes, or both, on machinery, equipment, instruments, spare parts and materials used in the business, which are imported during the construction period; and
- exemption or relief from customs duty or other indirect taxes, or both, on imported raw materials for the first 3 years of commercial production following the end of the construction period.

It is not clear whether there are any incentives or impediments to the agro-based products sector in the Myanmar tax system.

7. The Philippines

The Philippines provides tax holidays which can apply to agro-products based enterprises. The Omnibus Investments Code 1987 (OIC) offers tax and non-tax incentives to Board of Investments (BOI)-registered enterprises, whether pioneer or non-pioneer. Pioneer enterprises may include BOI-registered enterprises which are engaged in the pursuit of agricultural activities, which are entitled to a tax holiday for 6 years from the commencement of commercial operations. In the case of other registered, but not pioneer designated enterprises, the tax holiday is 3 years from the commencement of commercial operations. These tax holidays may be extended in some circumstances.

The Philippines also provides incentives for R&D, which may include activities in the agro-based products sector. These R&D activities must result in higher output, improved production efficiency and lower energy consumption. These incentives include an income tax holiday and a deduction for labour expenses equivalent to 50% of the wages of the personnel directly involved in R&D activities for the first 5 years after registration.

Agribusiness is among the “preferred areas of investment” listed by the Board of Investments (BOI) and approved by the President. Agribusiness is defined as the commercial production and commercial processing of agricultural and fishery products including their by-products and wastes.

"Pioneer enterprise" shall mean a registered enterprise:
- engaged in the manufacture, processing or production, and not merely in the assembly or packaging of goods, products, commodities or raw materials that have not been or are not being produced in the Philippines on a commercial scale; or
- which uses a design, formula, scheme, method, process or system of production or transformation of any element, substance or raw materials into another raw material or finished goods which is new and untried in the Philippines; or
- engaged in the pursuit of agricultural, forestry and mining activities and/or services including the industrial aspects of food processing whenever appropriate, pre-determined by the Board, in consultation with the appropriate Department, to be feasible and highly essential to the attainment of the national goal, in relation to a declared specific national food and agricultural program for self-sufficiency and other social benefits of the project; or,
- which produces non-conventional fuels or manufactures equipment which utilize non-conventional sources of energy or uses or converts to coal or other non-conventional fuels or sources of energy in its production, manufacturing or processing operations.
Provided that the final product in any of the foregoing instances, involves or will involve substantial use and processing of domestic raw materials, whenever available; taking into account the risks and magnitude of investment:

Provided, further, that the foregoing definitions shall not in any way limit the rights and incentives granted to less-developed-area enterprises provided under EO 226.

- Additional deduction for labour expense is available when the Income Tax Holiday ("ITH") is not availed.
- Projects (whether production or processing) that cost at least the Philippine Peso equivalent of Ten Million Dollars U.S. $10,000.00 may qualify for pioneer status.

8. Singapore

There are no direct tax incentives for the agro-based products sector in Singapore.

9. Thailand

Thailand provides incentives applicable to the agro-products based sector under rules governed by the Board of Investment ("BOI"). Prioritised projects are identified in the list of promoted projects maintained by the BOI and normally include agriculture and manufacturing of agricultural products.

- Prioritised projects – a project ‘housed’ within a Thai corporation and specified by the BOI as a prioritised project is entitled to the following tax incentives, regardless of where it is located:
  - an entire (100%) tax holiday of up to 8 years;
  - a further 50% corporate tax rate reduction for up to 5 years;
  - a Thai dividend withholding tax exemption (normally, 10% of the dividend) for dividends paid out of 100% tax holiday profits within the 100% holiday period;
  - a ‘double’ income tax deduction for certain annual ‘infrastructure’ expenditure (e.g. transportation, electricity etc costs);
  - an additional 25% tax depreciation (a total of 125% of the capital cost) of certain infrastructure costs (e.g. ‘spur’ rail links, waters storage costs etc); and
  - an exemption of import duty on machinery, raw materials & other inputs to production.

- Replacement machinery
  - machinery imported by projects in the food industry to replace old machinery, are exempted from import duty, provided that certain conditions are met. (Notification of BOI No. 1/2546 of 2 May 2003)

10. Viet Nam

Viet Nam has a range of incentives to encourage investment in the agro-products based sector of the economy. Viet Nam uses the designations ‘particularly encouraged’ and ‘encouraged’ to define projects for the purposes of incentives.

- Investment is ‘particularly encouraged’ in the processing of agricultural products where more than 50% of products from domestic material sources are exported; and agriculture.
  - A reduced enterprise income tax (EIT) rate of 15% applies for the duration of the project if the project is listed as a ‘particularly encouraged’ project.
- An EIT rate of 10% for 15 years from the commencement of production or business activity is available if the taxpayer is engaged in an investment project listed as being particularly encouraged.

- Foreign investment enterprises investing in projects where investment is particularly encouraged and in regions with particularly difficult socio-economic conditions have an exemption on import duties on raw materials used for production for a period of 5 years from the commencement of production.

- In addition, investments in particularly encouraged projects or areas are entitled to a full tax exemption of up to 4 years and a 50% reduction of tax payable for the next 9 years.

- Investment is ‘encouraged’ in the preservation of food and post-harvest agricultural products, the processing of agricultural products, the production of agricultural machines, spare parts and equipment, and irrigation equipment and technical services for agriculture.

- An EIT rate of 15% for a period of 12 years from the commencement of production or business activity is available if the taxpayer is engaged in an investment project on the list of encouraged projects.

- Projects or enterprises entitled to this reduced rate also enjoy a full tax exemption for 2 years and a 50% reduction of tax payable for the next 3 years (or a 2 year tax exemption if they are manufacturing or production enterprises located in an industrial zone and exporting less than 50% of output).

- Activities eligible for investment activities (under the Enterprise Income Tax Law)

  - List A (activities eligible for investment incentives) includes the processing of agricultural products and technical services for agricultural products, the planting of cotton and ‘industrial agriculture’.

  - Investment in these areas entitles an investor to preferential tax rates of 10%, 15% or 20%. The nature of the incentive granted depends on the type of investment, and the nature and location of the enterprise.

  - In order to benefit from the incentives above, the investment must be in a qualifying activity and the project employ at least 100 labourers in urban centres, 200 labourers in areas with difficult socio-economic conditions, or 50 labourers anywhere else.

B. AIR TRAVEL SERVICES SECTOR

1. Brunei Darussalam

Brunei Darussalam does not provide any incentives specific to the air travel services sector. Brunei Darussalam offers the following non-industry specific tax incentives:

- Pioneer status: exemption from tax for up to five years, plus extensions of initially five years and later three years. Dividends paid out of profits are exempt in the hands of shareholders.

- Expanding enterprise exemption: tax holidays for businesses which invest to expand production of ‘approved products.’

Brunei Darussalam does not have any features in its taxation system that act as an impediment to the air travel sector.
2. Cambodia

Cambodia does not provide any incentives in the form of Qualified Investment Project tax concessions for the transportation sector, including air travel services.

3. Indonesia

Indonesia provides tax incentives relevant to the air travel services sector only to the extent that they are specific to less developed regions of Indonesia. Incentives for investment in less developed regions include:

- carry-forward of losses for up to 8 years; and
- reduction of the land and building tax to 0.25% for the first 8 years.

These incentives are specific to designated less developed regions of Indonesia rather than being general incentives for the air travel services sector.

4. Lao PDR

It is not clear whether there are any incentives or impediments to the air travel services sector in the Lao PDR tax system.

5. Malaysia

Malaysia’s tax code regards airline business as a specialised industry and assesses income on a world-wide basis.

Approved service projects (ASPs) are defined as projects in the service sector in relation to transportation, communications, utilities or any other sub-sector as approved by the Minister of Finance. Airline businesses are eligible to apply for incentives as an ASP. The incentives include:

- Income Tax exemption which is comparable to the Pioneer Status; or
- Investment Allowance which is comparable to the Investment Tax Allowance

A company which undertakes the promoted activities listed above is eligible to apply for Pioneer Status or Investment Tax Allowance and Reinvestment Allowance.

Pioneer Status is a form of tax incentive which provides for partial or full tax exemption from payment of Income Tax. Generally, a company granted Pioneer Status enjoys a 70% tax exemption on its statutory income for 5 years. It pays income tax on the 30% balance.

The profits that are exempted from tax are transferred to an exempt income account for the purpose of franking tax exempt dividends. Redistributions by shareholder companies of such exempt dividends are also exempt from tax.

To encourage investment in the promoted areas (i.e. the States of Sabah and Sarawak and the designated ‘Eastern Corridor’ of Peninsular Malaysia), full tax exemption under Pioneer Status will be granted for projects located in these promoted areas.

Investment Tax Allowance is a form of incentive available to eligible projects with large capital investment and long gestation periods as an alternative to the Pioneer Status incentive. Investment Tax Allowance is a tax incentive based on the qualifying capital expenditure incurred. Generally, a company granted Investment Tax Allowance receives an allowance of 60% on its qualifying capital expenditure incurred within 5 years from the date on which the first qualifying capital expenditure is incurred. The allowance can be used to set off against 70% of its statutory income for each year of assessment. Any unutilised
allowance can be carried forward until it is fully utilised. The company pays income tax on the 30% balance.

The amount of Investment Tax Allowance utilised is transferred to an exempt income account for the purpose of franking tax exempt dividends. Redistributions by shareholder companies of such exempt dividends are also exempt from tax.

To encourage investment in the promoted areas i.e. the States of Sabah and Sarawak and the designated ‘Eastern Corridor’ of Peninsular Malaysia, Investment Tax Allowance of 100% of the qualifying capital expenditure will be granted to projects located in these promoted areas to be set off against 100% of the statutory income.

6. Myanmar

The Foreign Investment Commission may grant any enterprise which produces goods or renders services an exemption from income tax for a period up to 3 consecutive years, including the year in which the production of goods or rendering of services commences. The exemption period may be extended if the enterprise is successful and the investment is beneficial to Myanmar.

The Foreign Investment Commission may also grant any or all of the following exemptions or reliefs:

- exemption or reduction of income tax for an enterprise which places funds in a reserve and reinvests those funds in the enterprise within one year;
- accelerated depreciation of machinery, equipment, buildings or other capital assets used in the enterprise at rates fixed by the Foreign Investment Commission;
- exemption from income tax of up to 50% on the profits accrued from the export of goods produced by an enterprise;
- an investor may pay income tax to the Treasury on behalf of foreigners employed in the enterprise and may then deduct such payments from the assessable income of the enterprise;
- income tax on the income of the above-mentioned foreigners may be paid at the rates applicable to citizens of Myanmar;
- expenses incurred in respect of research and development for the enterprise which is actually necessary and carried out in Myanmar may be deducted from assessable income;
- carry forward of losses for 3 years following the exemption or relief period;
- exemption or relief from customs duty or other indirect taxes, or both, on machinery, equipment, instruments, spare parts and materials used in the business, which are imported during the construction period; and
- exemption or relief from customs duty or other indirect taxes, or both, on imported raw materials for the first 3 years of commercial production following the end of the construction period.

It is not clear whether there are any incentives or impediments to the air travel services sector in the Myanmar tax system.

7. The Philippines

The Philippines does not provide direct tax incentives for the air travel services sector, however, air transport is covered under the sector “Infrastructure” in the list of “preferred areas of investment” by the Board of Investment and approved by the President where air
transport operation includes passenger and/or cargo operation classified as a public utility. Pioneer status may be granted to air travel services under which they are entitled to a tax holiday for 6 years from the commencement of commercial operations when they are either:

- serving the missionary/developmental routes, as indicated in the Certificate of Public Convenience and Necessity (CPCNs); or
- providing support services to village enterprises e.g. consolidation of products.

8. Singapore

There are no direct tax incentives for the air travel services sector in Singapore; however, it should be noted that the recent growth of budget travel has seen more landing rights and licences being issued to budget Airlines.

Services ancillary to the air services sector may be eligible for the investment allowance, which is an alternative to the pioneer industry and export incentives. The types of projects that qualify include technical and engineering services (e.g. aircraft servicing) which are not involved in the reworking or remanufacturing of components or forming part of the manufacturing process.

The investment allowance is an additional deduction over and above the normal capital allowance claimable of up to 100% of the fixed capital expenditure incurred. The allowance most commonly granted is 30%; and dividends paid out of an ‘investment allowance account’ are exempt from tax in the hands of the recipient shareholders. The fixed capital expenditure on an approved project must be incurred within 5 years, or 10 years in the case of expenditure for promotion of the tourist industry.

9. Thailand

Thailand provides incentives applicable to the air travel services sector under rules governed by the Board of Investment (“BOI”). Prioritised projects are identified in the list of promoted projects maintained by the BOI and may include the manufacture or repair of aircraft.

- Prioritised projects – a project ‘housed’ within a Thai corporation and specified by the BOI as a prioritised project is entitled to the following tax incentives, regardless of where it is located:
  - an entire (100%) tax holiday of up to 8 years;
  - a further 50% corporate tax rate reduction for up to 5 years;
  - a Thai dividend withholding tax exemption (normally, 10% of the dividend) for dividends paid out of 100% tax holiday profits within the 100% holiday period;
  - a ‘double’ income tax deduction for certain annual ‘infrastructure’ expenditure (e.g. transportation, electricity etc costs);
  - an additional 25% tax depreciation (a total of 125% of the capital cost) of certain infrastructure costs; and
  - a promoted project may be granted an exemption from or reduction of import duty on machinery brought in within a specified period, provided that manufacturers and assemblers in Thailand are unable to adequately supply machinery of a similar type and quality.

- Replacement machinery
  - BOI No.2/2546 of 30 January 2003 extends the incentive to used machinery.
Used machinery must generally not be older than 10 years, except for used machinery or vehicles imported for use in the business of air transportation, provided that an approval is obtained from the related government authority.

In order to import used machinery, a certificate of efficiency must be obtained from an internationally recognized Thai or foreign institution.

10. Viet Nam

It is unclear whether Viet Nam provides incentives to encourage investment in the air travel services sector of the economy. Investment projects in the service provision field are generally ineligible for income tax reduction on the basis that the reduced enterprise income tax incentive available under the Foreign Investment Law does not apply.

However, air services are listed in ‘List A’ as an eligible investment activity under the Enterprise Income Tax Law. The incentives available under this provision entitle an investor to preferential tax rates of 10%, 15% or 20%. The nature of the incentive granted depends on the type of investment, and the nature and location of the enterprise. The investment must be in a qualifying activity and the project employ at least 100 labourers in urban centres, 200 labourers in areas with difficult socio-economic conditions, or 50 labourers anywhere else.

C. AUTOMOTIVE PRODUCTS SECTOR

1. Brunei Darussalam

Brunei Darussalam does not provide any incentives specific to the automotive products sector. Brunei Darussalam offers the following non-industry specific tax incentives:

- Pioneer status: exemption from tax for up to five years, plus extensions of initially five years and later three years. Dividends paid out of profits are exempt in the hands of shareholders.
- Expanding enterprise exemption: tax holidays for businesses which invest to expand production of approved products.

Brunei Darussalam does not have any features in its taxation system that act as an impediment to the automotive products sector.

2. Cambodia

Cambodia does not provide any incentives specific to the automotive products sector. Cambodia provides general, non-sector specific incentives for Qualifying Investment Projects (“QIPs”) which are granted an automatic tax holiday of 3 years and an extension of up to another 3 years, depending on the characteristics of the project. The exemptions take effect from the year the project derives its first profit or after 3 years of operations, whichever occurs first. This includes mall-scale projects, involving investment capital less than US$ 300,000 for the production of motor vehicles, parts and accessories.

3. Indonesia

Indonesia offers tax holidays of up to eight years for new projects in 22 categories of industries, including automotive components.
4. **Lao PDR**

It is not clear whether there are any incentives or impediments to the automotive products sector in the Lao PDR tax system.

5. **Malaysia**

The production of transport equipment, components and accessories relating to transport and/or automotive is a promoted activity and is eligible to apply for tax incentives such as Pioneer Status or Investment Tax Allowance and Reinvestment Allowance.

Companies which are producing qualifying automotive component modules or systems which include design, R&D and production are eligible for a better Pioneer Status or Investment Tax Allowance with 100% exemption at statutory income level.

- **Industrial Linkage Programme/ Vendors Development Programme**

  The manufacture of parts, components or accessories for motor vehicles is a promoted activity under the Industrial Linkage Programme (ILP). Vendors including small and medium scale companies which manufacture products in an ILP are eligible for Pioneer Status at 100% tax exemption for 5 years or Investment Tax Allowance of 100% on qualifying capital expenditure incurred within 5 years which can be set off against 100% of the statutory income.

6. **Myanmar**

The Foreign Investment Commission may grant any enterprise which produces goods or renders services an exemption from income tax for a period up to 3 consecutive years, including the year in which the production of goods or rendering of services commences. The exemption period may be extended if the enterprise is successful and the investment is beneficial to Myanmar.

The Foreign Investment Commission may also grant any or all of the following exemptions or reliefs:

- exemption or reduction of income tax for an enterprise which places funds in a reserve and reinvests those funds in the enterprise within one year;
- accelerated depreciation of machinery, equipment, buildings or other capital assets used in the enterprise at rates fixed by the Foreign Investment Commission;
- exemption from income tax of up to 50% on the profits accrued from the export of goods produced by an enterprise;
- an investor may pay income tax to the Treasury on behalf of foreigners employed in the enterprise and may then deduct such payments from the assessable income of the enterprise;
- income tax on the income of the above-mentioned foreigners may be paid at the rates applicable to citizens of Myanmar;
- expenses incurred in respect of research and development for the enterprise which is actually necessary and carried out in Myanmar may be deducted from assessable income;
- carry forward of losses for 3 years following the exemption or relief period;
- exemption or relief from customs duty or other indirect taxes, or both, on machinery, equipment, instruments, spare parts and materials used in the business, which are imported during the construction period; and
- exemption or relief from customs duty or other indirect taxes, or both, on imported raw materials for the first 3 years of commercial production following the end of the construction period.

It is not clear whether there are any incentives or impediments to the automotive products sector in the Myanmar tax system.

7. The Philippines

Motor Vehicle Products is a “preferred area of investment” listed by the Board of Investment (BOI) and approved by the President.

- Motor vehicle products – production and/or manufacture of motor vehicle parts and components and the manufacture or assembly of motor vehicles, provided that the activity includes a program for the development of the motor vehicle parts and components. In the case of the manufacture/assembly of motor vehicles, projects complying with any of the following may qualify for Pioneer status:
  - at least US$100 million (for Passenger Cars, Commercial Vehicles and Buses) and US$4 million (for motorcycles) in new investments, which may include acquisition of existing assets or facilities;
  - exports at least 10,000 units (for Passenger Cars and Commercial Vehicle); 30,000 units (for motorcycle) and 500 units (for buses) per annum of completely-built-up (CBU) motor vehicles;
  - at least US$20 million (for Passenger Cars, Commercial Vehicles and Buses) and US$1 million (for motorcycles) in incremental investments for Modernization / Expansion projects; and
  - manufacture of generic vehicles (e.g., ASEAN cars) that are designed/suited for Asian market.

- In the case of manufacture of parts and components of motor vehicles, projects complying with any of the following may qualify for Pioneer status:
  - manufacturing of transmission, engines and tool & die for chassis and engine manufacturing;
  - cross-border investment merger between companies across border involving a strong component company merging with a weak Philippine-based company; provided that the surviving company will make use of Philippine facilities for global sourcing;
  - common facilities for forging parts and components of motor vehicle;
  - supporting industries for the manufacture of transmission/engine/common service facilities for forging of motor vehicle parts and components provided that the supporting industries will have supply and/or service contract/s with the manufacturers of transmission/engine/common service facilities for forging of motor vehicle parts and components; and
  - design customized to Asian needs in autos, trucks and buses.

8. Singapore

There are no direct tax incentives for the automotive products sector in Singapore. The Singapore Government regards traffic density as something that must be closely controlled. Automobile manufacturing is therefore not encouraged in Singapore, and there are no automotive manufacturing plants in Singapore.
9. Thailand

Thailand provides incentives applicable to the automotive products sector under rules governed by the Board of Investment ("BOI"). Prioritised projects are identified in the list of promoted projects maintained by the BOI.

- Prioritised projects – a project ‘housed’ within a Thai corporation and specified by the BOI as a prioritised project is entitled to the following tax incentives, regardless of where it is located:
  - an entire (100%) tax holiday of up to 8 years;
  - a further 50% corporate tax rate reduction for up to 5 years;
  - a Thai dividend withholding tax exemption (normally, 10% of the dividend) for dividends paid out of 100% tax holiday profits within the 100% holiday period;
  - a ‘double’ income tax deduction for certain annual ‘infrastructure’ expenditures (e.g. transportation, electricity etc costs);
  - an additional 25% tax depreciation (a total of 125% of the capital cost) of certain infrastructure costs (e.g., ‘spur’ rail links, waters storage costs etc); and
  - an exemption of import duty on machinery, raw materials & other inputs to production.

Typically, most new investment in the automotive products sector will exceed Thai Baht 500 million (US$ 12.5 million) which qualifies the investment for ‘Promoted Treatment’ as indicated above except that Thailand is divided into three zones:

- Zone 1 – 3 year 100% tax holiday;
- Zone 2 – 7 year 100% tax holiday & 3 year 50% holiday; and
- Zone 3– 8 year 100% tax holiday & 5 year 50% holiday.

Some sub-sectors are less eligible since they are already well developed in Thailand (e.g. motor cycles) but case by case applications to the BOI are usually warranted.

10. Viet Nam

Investment is encouraged in the manufacture of spare parts for automobiles and motorbikes, and in the manufacture and assembly of vehicles.

- An EIT rate of 15% for a period of 12 years from the commencement of production or business activity is available if the taxpayer is engaged in an investment project on the list of encouraged projects.

- Projects or enterprises entitled to this reduced rate also enjoy a full tax exemption for 2 years and a 50% reduction of tax payable for the next 3 years (or a 2 year tax exemption if they are manufacturing or production enterprises located in an industrial zone and exporting less than 50% of output).

- Manufacture of motorcycles and engines

  - A tax preference policy applies to enterprises, including foreign-invested enterprises, engaged in the manufacture of motorcycles and engines, provided that certain conditions are met.
  - Each component is prescribed a percentage value. The total of the percentage values of all locally manufactured components determines the localization rate.
- The localization rate of each enterprise for a current year is the actual localization rate achieved during the previous year and determines the level of incentive applicable. The rate of import tax payable by an enterprise is determined by the localization rate.

D. E-ASEAN PRODUCTS SECTOR

1. Brunei Darussalam

Brunei Darussalam does not provide any incentives specific to the e-ASEAN products sector. Brunei Darussalam offers the following non-industry specific tax incentives:

- pioneer status: exemption from tax for up to five years, plus extensions of initially five years and later three years. Dividends paid out of profits are exempt in the hands of shareholders; and
- expanding enterprise exemption: tax holidays for businesses which invest to expand production of ‘approved products.’

Brunei Darussalam does not have any features in its taxation system that act as an impediment to the e-ASEAN products sector.

2. Cambodia

Cambodia does not provide any incentives specific to the e-ASEAN products sector. Cambodia provides general, non-sector specific incentives for Qualifying Investment Projects (“QIPs”) which are granted an automatic tax holiday of 3 years and an extension of up to another 3 years, depending on the characteristics of the project. The exemptions take effect from the year the project derives its first profit or after 3 years of operations, whichever occurs first. There are no limitations on qualifying as a QIP.

3. Indonesia

Indonesia does not offer tax incentives specific to the e-ASEAN products sector.

4. Lao PDR

It is not clear whether there are any incentives or impediments to the e-ASEAN products sector in the Lao PDR tax system.

5. Malaysia

There are incentives to promote the Information and Communication Technology (ICT) sector in Malaysia.

- Incentive for Software Development
  Companies which develop both original and/or undertake major modifications of existing software are eligible for Pioneer Status with tax exemption of 70% of the statutory income for five years.
- Accelerated Capital Allowance
  Expenditure to acquire computers and information technology assets is granted accelerated capital allowance which allows the expenditure to be written off within 2 years.
- Multimedia Super Corridor (MSC)
The Malaysian government launched the MSC initiative to create an ideal environment to encourage innovation and creativity in the field of ICT. The Corridor is a designated 15 km by 50 km zone which starts from the Kuala Lumpur City Centre (KLCC) and extends south towards the Kuala Lumpur International Airport. Within the Corridor are the designated MSC Cybercities.

Companies which are developers or heavy users of multimedia and ICT products and services may want to consider the tax incentives granted for companies with MSC status.

- Pioneer status with full tax exemption of statutory income for 5 years, extendable for a further 5 years; or
- Investment Tax Allowance of 100% on qualifying capital expenditure for 5 years.
- Exemption of customs duty on import of ICT or multimedia equipment, provided the equipment is used in approved MSC activities; and
- exemption of withholding tax on specified payments made by a MSC status company to a non-resident company.

In addition to tax incentives, a MSC status company is eligible for non-tax incentives including:

- no restriction on foreign equity;
- easy employment of expatriates to run the MSC operations; and
- liberalised foreign exchange requirements.

6. Myanmar

The Foreign Investment Commission may grant any enterprise which produces goods or renders services an exemption from income tax for a period up to 3 consecutive years, including the year in which the production of goods or rendering of services commences. The exemption period may be extended if the enterprise is successful and the investment is beneficial to Myanmar.

The Foreign Investment Commission may also grant any or all of the following exemptions or reliefs:

- exemption or reduction of income tax for an enterprise which places funds in a reserve and reinvests those funds in the enterprise within one year;
- accelerated depreciation of machinery, equipment, buildings or other capital assets used in the enterprise at rates fixed by the Foreign Investment Commission;
- exemption from income tax of up to 50% on the profits accrued from the export of goods produced by an enterprise;
- an investor may pay income tax to the Treasury on behalf of foreigners employed in the enterprise and may then deduct such payments from the assessable income of the enterprise;
- income tax on the income of the above-mentioned foreigners may be paid at the rates applicable to citizens of Myanmar;
- expenses incurred in respect of research and development for the enterprise which is actually necessary and carried out in Myanmar may be deducted from assessable income;
- carry forward of losses for 3 years following the exemption or relief period;
- exemption or relief from customs duty or other indirect taxes, or both, on machinery, equipment, instruments, spare parts and materials used in the business, which are imported during the construction period; and
- exemption or relief from customs duty or other indirect taxes, or both, on imported raw materials for the first 3 years of commercial production following the end of the construction period.

It is not clear whether there are any incentives or impediments to the e-ASEAN products sector in the Myanmar tax system.

7. The Philippines

Qualified ICT services, ICT enabled services and ICT support services located either outside Metro Manila or in identified IT hubs are entitled to the incentives granted in E.O.226.

- “ICT services” – software development (system software, middleware, application software/systems) computer graphics animation.
- “ICT enabled services” — refers to business lines that can be transformed and delivered through the means of ICT infrastructure. These include call/contact centres, medical/legal transcription, engineering design, (BPO) business process outsourcing activities (back-office operations), such as but not limited to: general accounting & bookkeeping services; expense and revenue reporting/sales auditing; financial analysis and auditing; payroll processing; travel & expense management, HR application development and management; data entry/data processing; inventory control; technology support; litigation support; server management; content conversion.
- “ICT Support Activities” — refers to business that supports the operations or development of ICT Services and ICT-Enabled Services sectors, i.e., R&D centre, incubation centres, educational/training institutions, community access facilities/shared access facilities and internet service providers (ISP).

The following are the qualifications for pioneer status:
- introduces a major innovation in software development with project cost of at least the Philippine Peso equivalent of US$2.5 million to be put up during the first year of operations; and
- Call/Contact Centres Projects must have a minimum investment cost of Philippine Peso equivalent of US$2,500 per seat to be qualified for BOI incentives. This amount covers the cost of equipment (hardware and software), office furniture and fixture, building improvements and renovation, and fixed assets except land, building and working capital.

8. Singapore

- Approved Cyber Trader: e-commerce is encouraged through the Approved Cyber Trader incentive which offers a 10% concessionary tax rate on qualifying income on qualifying products. Investment allowance of up to 50% is also available on the cost of qualifying new fixed capital expenditure.
- Other than the above incentive, there is also a tax exemption on royalty payments made to non-residents for certain classes of software. Accordingly, end-consumers and re-sellers of these classes of software are no longer required to withhold tax on such payments.
9. Thailand
Thailand does not provide specific incentives applicable to the e-ASEAN products sector.

10. Viet Nam
Investment is particularly encouraged in new technology for manufacturing communication and telecommunication equipment and the production of information technology products.

- A reduced enterprise income tax (EIT) rate of 15% applies for the duration of the project if the project is listed as a particularly encouraged project.

- An EIT rate of 10% for 15 years from the commencement of production or business activity is available if the taxpayer is engaged in an investment project listed as being particularly encouraged.

- Foreign investment enterprises investing in projects where investment is particularly encouraged and in regions with particularly difficult socio-economic conditions have an exemption on import duties on raw materials used for production for a period of 5 years from the commencement of production.

- In addition, investments in particularly encouraged projects or areas are entitled to a full tax exemption of up to 4 years and a 50% reduction of tax payable for the next 9 years.

Investment is encouraged in the manufacture of precision mechanical equipment, the manufacture of communication and telecommunication devices and the manufacture of electronic components and parts.

- An EIT rate of 15% for a period of 12 years from the commencement of production or business activity is available if the taxpayer is engaged in an investment project on the list of encouraged projects.

- Projects or enterprises entitled to this reduced rate also enjoy a full tax exemption for 2 years and a 50% reduction of tax payable for the next 3 years (or a 2 year tax exemption if they are manufacturing or production enterprises located in an industrial zone and exporting less than 50% of output).

E. ELECTRONIC PRODUCTS SECTOR

1. Brunei Darussalam
Brunei Darussalam does not provide any incentives specific to the electronic products sector. Brunei Darussalam offers the following non-industry specific tax incentives:

- Pioneer status: exemption from tax for up to five years, plus extensions of initially five years and later three years. Dividends paid out of profits are exempt in the hands of shareholders.

- Expanding enterprise exemption: tax holidays for businesses which invest to expand production of ‘approved products.’

Brunei Darussalam does not have any features in its taxation system that act as an impediment to the electronic products sector.
2. Cambodia

Cambodia provides general, non-sector specific incentives for Qualifying Investment Projects ("QIPs") which are granted an automatic tax holiday of 3 years and an extension of up to another 3 years, depending on the characteristics of the project. The exemptions take effect from the year the project derives its first profit or after 3 years of operations, whichever occurs first.

The electronic products sector is eligible for QIP incentive discussed above unless investment capital is less than US$ 300,000 for production of electrical and electronic appliances.

3. Indonesia

Tax holidays of up to eight years are offered for new projects in 22 categories of industries, including electronic components.

4. Lao PDR

It is not clear whether there are any incentives or impediments to the electronic products sector in the Lao PDR tax system.

5. Malaysia

The manufacture of electrical and electronic products, components and parts thereof is a promoted activity eligible for tax incentives such as Pioneer Status or Investment Tax Allowance and the Reinvestment Allowance.

6. Myanmar

The Foreign Investment Commission may grant any enterprise which produces goods or renders services an exemption from income tax for a period up to 3 consecutive years, including the year in which the production of goods or rendering of services commences. The exemption period may be extended if the enterprise is successful and the investment is beneficial to Myanmar.

The Foreign Investment Commission may also grant any or all of the following exemptions or reliefs:

- exemption or reduction of income tax for an enterprise which places funds in a reserve and reinvests those funds in the enterprise within one year;
- accelerated depreciation of machinery, equipment, buildings or other capital assets used in the enterprise at rates fixed by the Foreign Investment Commission;
- exemption from income tax of up to 50% on the profits accrued from the export of goods produced by an enterprise;
- an investor may pay income tax to the Treasury on behalf of foreigners employed in the enterprise and may then deduct such payments from the assessable income of the enterprise;
- income tax on the income of the above-mentioned foreigners may be paid at the rates applicable to citizens of Myanmar;
- expenses incurred in respect of research and development for the enterprise which is actually necessary and carried out in Myanmar may be deducted from assessable income;
- carry forward of losses for 3 years following the exemption or relief period;
- exemption or relief from customs duty or other indirect taxes, or both, on machinery, equipment, instruments, spare parts and materials used in the business, which are imported during the construction period; and
- exemption or relief from customs duty or other indirect taxes, or both, on imported raw materials for the first 3 years of commercial production following the end of the construction period.

It is not clear whether there are any incentives or impediments to the electronic products sector in the Myanmar tax system.

7. The Philippines

Electronics is among the "preferred areas of investment" listed by the Board of Investment (BOI) and approved by the President. This covers all segments within the value-chain structure of the industry such as original design manufacturing (ODM), electronics manufacturing services (EMS), the manufacture of electronic products (except home appliances), IC design, the manufacture of parts and components of electronic products including the inputs for the manufacture of such components and the manufacture of production supplies used by the electronics industry.

8. Singapore

Singapore offers the investment allowance incentive for the electronic products sector. The investment allowance is an alternative to the pioneer industry and export incentives.

The types of projects that qualify include computer based information and other computer related services. The following incentives are available:

- An investment allowance, which is an additional deduction over and above the normal capital allowance claimable of up to 100% of the fixed capital expenditure incurred. The allowance most commonly granted is 30%; and
- Dividends paid out of an 'investment allowance account' are exempt from tax in the hands of the recipient shareholders.

9. Thailand

Thailand provides incentives applicable to the electronic products sector under rules governed by the Board of Investment ("BOI"). Prioritised projects are identified in the list of promoted projects maintained by the BOI.

- Prioritised projects – a project 'housed' within a Thai corporation and specified by the BOI as a prioritised project is entitled to the following tax incentives, regardless of where it is located:
  - an entire (100%) tax holiday of up to 8 years;
  - a further 50% corporate tax rate reduction for up to 5 years;
  - a Thai dividend withholding tax exemption (normally, 10% of the dividend) for dividends paid out of 100% tax holiday profits within the 100% holiday period;
  - a ‘double’ income tax deduction for certain annual ‘infrastructure’ expenditure (e.g. transportation, electricity etc costs);
  - an additional 25% tax depreciation (a total of 125% of the capital cost) of certain infrastructure costs (e.g., ‘spur’ rail links, waters storage costs etc); and
10. Viet Nam

Investment is particularly encouraged in new technology for manufacturing communication and telecommunication equipment and the production of information technology products.

- A reduced enterprise income tax (EIT) rate of 15% applies for the duration of the project if the project is listed as a particularly encouraged project.

- An EIT rate of 10% for 15 years from the commencement of production or business activity is available if the taxpayer is engaged in an investment project listed as being particularly encouraged.

- Foreign investment enterprises investing in projects where investment is particularly encouraged and in regions with particularly difficult socio-economic conditions have an exemption on import duties on raw materials used for production for a period of 5 years from the commencement of production.

- In addition, investments in particularly encouraged projects or areas are entitled to a full tax exemption of up to 4 years and a 50% reduction of tax payable for the next 9 years.

- Investment is encouraged in the manufacture of precision mechanical equipment; manufacture of electrical middle and high-voltage devices; manufacture of machinery and spare parts for hydraulics machines; manufacture of communication and telecommunication devices; and manufacture of electronic components and parts.

- An EIT rate of 15% for a period of 12 years from the commencement of production or business activity is available if the taxpayer is engaged in an investment project on the list of encouraged projects.

- Projects or enterprises entitled to this reduced rate also enjoy a full tax exemption for 2 years and a 50% reduction of tax payable for the next 3 years (or a 2 year tax exemption if they are manufacturing or production enterprises located in an industrial zone and exporting less than 50% of output).

- Activities eligible for investment incentives (under the Enterprise Income Tax Law)

- List A (activities eligible for investment incentives) includes manufacture of electrical devices, engines, machines, machine tools and similar products.

- Investment in these areas entitles an investor to preferential tax rates of 10%, 15% or 20%.

- The nature of the incentive granted depends on the type of investment, and the nature and location of the enterprise.

- In order to benefit from the incentives above, the investment must be in a qualifying activity and the project employs at least 100 labourers in urban centres, 200 labourers in areas with difficult socio-economic conditions, or 50 labourers anywhere else.
F. FISHＥRIES PRODUCTS SECTOR

1. Brunei Darussalam

Brunei Darussalam does not provide any incentives specific to the fisheries products sector. Brunei Darussalam offers the following non-industry specific tax incentives:

• Pioneer status: exemption from tax for up to five years, plus extensions of initially five years and later three years. Dividends paid out of profits are exempt in the hands of shareholders.

• Expanding enterprise exemption: tax holidays for businesses which invest to expand production of ‘approved products.’

Brunei Darussalam does not have any features in its taxation system that act as an impediment to the fisheries products sector.

2. Cambodia

Cambodia provides general, non-sector specific incentives for Qualifying Investment Projects (“QIPs”) which are granted an automatic tax holiday of 3 years and an extension of up to another 3 years, depending on the characteristics of the project. The exemptions take effect from the year the project derives its first profit or after 3 years of operations, whichever occurs first.

The fisheries products sector is eligible for QIP incentive discussed above unless it is:

• fresh water aquaculture farm less than 5 hectares; or

• sea water aquaculture farm less than 10 hectares.

3. Indonesia

Indonesia offers incentives for investments in less developed provinces in the fisheries sector, including:

• carry-forward of losses for up to 8 years;

• reduction of the land and building tax to 0.25% for the first 8 years; and

• VAT exemption is granted to fisherman and the group (association) of fishermen; in addition the delivery of seeds and or germ of fishery product is not subject to VAT.

4. Lao PDR

It is not clear whether there are any incentives or impediments to the fisheries products sector in the Lao PDR tax system.

5. Malaysia

Spawning, breeding, culturing and processing of aquatic products and offshore fishing are promoted activities and eligible for Pioneer Status or Investment Tax Allowance and Reinvestment Allowance. The incentives available for the agricultural sector are applicable to the fisheries products sector. Aquaculture and deep-sea fishing are also eligible for the incentives available under Approved Food Production projects.
6. Myanmar

The Foreign Investment Commission may grant any enterprise which produces goods or renders services an exemption from income tax for a period up to 3 consecutive years, including the year in which the production of goods or rendering of services commences. The exemption period may be extended if the enterprise is successful and the investment is beneficial to Myanmar.

The Foreign Investment Commission may also grant any or all of the following exemptions or reliefs:

- exemption or reduction of income tax for an enterprise which places funds in a reserve and reinvests those funds in the enterprise within one year;
- accelerated depreciation of machinery, equipment, buildings or other capital assets used in the enterprise at rates fixed by the Foreign Investment Commission;
- exemption from income tax of up to 50% on the profits accrued from the export of goods produced by an enterprise;
- an investor may pay income tax to the Treasury on behalf of foreigners employed in the enterprise and may then deduct such payments from the assessable income of the enterprise;
- income tax on the income of the above-mentioned foreigners may be paid at the rates applicable to citizens of Myanmar;
- expenses incurred in respect of research and development for the enterprise which is actually necessary and carried out in Myanmar may be deducted from assessable income;
- carry forward of losses for 3 years following the exemption or relief period;
- exemption or relief from customs duty or other indirect taxes, or both, on machinery, equipment, instruments, spare parts and materials used in the business, which are imported during the construction period; and
- exemption or relief from customs duty or other indirect taxes, or both, on imported raw materials for the first 3 years of commercial production following the end of the construction period.

It is not clear whether there are any incentives or impediments to the fisheries products sector in the Myanmar tax system.

7. The Philippines

Fisheries products sector has the same tax and other incentives as the agro-products based sector, since the agribusiness definition above includes fisheries products.

Other incentives available to Board of Investment (BOI)-registered enterprises in the fisheries products sector include:

- tax and duty-free importation of breeding stocks and genetic materials; and
- a tax credit in respect of domestic breeding stocks and genetic materials.

8. Singapore

Singapore does not provide any direct tax incentives for the fisheries products sector.
9. Thailand

Thailand provides incentives applicable to the fisheries products sector if Thai fish is used under rules governed by the Board of Investment ("BOI"). Prioritised projects are identified in the list of promoted projects maintained by the BOI.

- Prioritised projects – a project ‘housed’ within a Thai corporation and specified by the BOI as a prioritised project is entitled to the following tax incentives, regardless of where it is located:
  - an entire (100%) tax holiday of up to 8 years;
  - a further 50% corporate tax rate reduction for up to 5 years;
  - a Thai dividend withholding tax exemption (normally, 10% of the dividend) for dividends paid out of 100% tax holiday profits within the 100% holiday period;
  - a ‘double’ income tax deduction for certain annual ‘infrastructure’ expenditure (e.g. transportation, electricity etc costs);
  - an additional 25% tax depreciation (a total of 125% of the capital cost) of certain infrastructure costs (e.g., ‘spur’ rail links, waters storage costs etc); and
  - an exemption of import duty on machinery, raw materials & other inputs to production.

10. Viet Nam

- Investment is particularly encouraged in the processing of aquatic products where more than 50% of products from domestic material sources are exported and aquaculture.
  - A reduced enterprise income tax (EIT) rate of 15% applies for the duration of the project if the project is listed as a particularly encouraged project.
  - An EIT rate of 10% for 15 years from the commencement of production or business activity is available if the taxpayer is engaged in an investment project listed as being particularly encouraged.
  - Foreign investment enterprises investing in projects where investment is particularly encouraged and in regions with particularly difficult socio-economic conditions have an exemption on import duties on raw materials used for production for a period of 5 years from the commencement of production.
  - In addition, investments in particularly encouraged projects or areas are entitled to a full tax exemption of up to 4 years and a 50% reduction of tax payable for the next 9 years.

- Investment is encouraged in the processing of aquatic products, the manufacture of equipment and spare parts for fishing boats and technical services for fishery industries.
  - An EIT rate of 15% for a period of 12 years from the commencement of production or business activity is available if the taxpayer is engaged in an investment project on the list of encouraged projects.
  - Projects or enterprises entitled to this reduced rate also enjoy a full tax exemption for 2 years and a 50% reduction of tax payable for the next 3 years (or a 2 year tax exemption if they are manufacturing or production enterprises located in an industrial zone and exporting less than 50% of output).

- Activities eligible for investment incentives (under the Enterprise Income Tax Law)
List A (activities eligible for investment incentives) includes: aquaculture, processing of aquatic products and technical services for aquatic products; and offshore fishing.

Investment in these areas entitles an investor to preferential tax rates of 10%, 15% or 20%.

The nature of the incentive granted depends on the type of investment, and the nature and location of the enterprise.

In order to benefit from the incentives above, the investment must be in a qualifying activity and the project employs at least 100 labourers in urban centres, 200 labourers in areas with difficult socio-economic conditions, or 50 labourers anywhere else.

G. HEALTHCARE PRODUCTS SECTOR

1. Brunei Darussalam

Brunei Darussalam does not provide any incentives specific to the healthcare products sector. Brunei Darussalam offers the following non-industry specific tax incentives:

- Pioneer status: exemption from tax for up to five years, plus extensions of initially five years and later three years. Dividends paid out of profits are exempt in the hands of shareholders.
- Expanding enterprise exemption: tax holidays for businesses which invest to expand production of ‘approved products.’

Brunei Darussalam does not have any features in its taxation system that act as an impediment to the healthcare products sector.

2. Cambodia

Cambodia provides general, non-sector specific incentives for Qualifying Investment Projects (“QIPs”) which are granted an automatic tax holiday of 3 years and an extension of up to another 3 years, depending on the characteristics of the project. The exemptions take effect from the year the project derives its first profit or after 3 years of operations, whichever occurs first.

The healthcare products sector is eligible for QIP incentive discussed above unless it is:

- hospital-polyclinic having less than 50 patient beds with investment capital less than US$ 1,000,000;
- production of modern medicines with investment capital less than US$ 1,000,000; or
- production of traditional medicines with investment capital less than US$ 500,000.

3. Indonesia

Tax holidays of up to eight years are offered for new projects in 22 categories of industries, including pharmaceuticals.

4. Lao PDR

It is not clear whether there are any incentives or impediments to the healthcare products sector in the Lao PDR tax system.
5. Malaysia

The manufacture of pharmaceutical and related products such as clinical diagnostic reagents, gelatine and gelatine products, intravenous, dialysis or irrigating solutions, vaccines and medicaments is a promoted activity and eligible for Pioneer Status or Investment Tax Allowance and Reinvestment Allowance. The development, testing and production of pharmaceuticals, biodiagnostics, cell cultures, biopolymers, etc which may be categorised under the ‘Biotechnology’ sector is eligible to apply for better incentives for High Technology Companies.

6. Myanmar

The Foreign Investment Commission may grant any enterprise which produces goods or renders services an exemption from income tax for a period up to 3 consecutive years, including the year in which the production of goods or rendering of services commences. The exemption period may be extended if the enterprise is successful and the investment is beneficial to Myanmar.

The Foreign Investment Commission may also grant any or all of the following exemptions or reliefs:

- exemption or reduction of income tax for an enterprise which places funds in a reserve and reinvests those funds in the enterprise within one year;
- accelerated depreciation of machinery, equipment, buildings or other capital assets used in the enterprise at rates fixed by the Foreign Investment Commission;
- exemption from income tax of up to 50% on the profits accrued from the export of goods produced by an enterprise;
- an investor may pay income tax to the Treasury on behalf of foreigners employed in the enterprise and may then deduct such payments from the assessable income of the enterprise;
- income tax on the income of the above-mentioned foreigners may be paid at the rates applicable to citizens of Myanmar;
- expenses incurred in respect of research and development for the enterprise which is actually necessary and carried out in Myanmar may be deducted from assessable income;
- carry forward of losses for 3 years following the exemption or relief period;
- exemption or relief from customs duty or other indirect taxes, or both, on machinery, equipment, instruments, spare parts and materials used in the business, which are imported during the construction period; and
- exemption or relief from customs duty or other indirect taxes, or both, on imported raw materials for the first 3 years of commercial production following the end of the construction period.

It is not clear whether there are any incentives or impediments to the healthcare products sector in the Myanmar tax system.

7. The Philippines

Research and development (R&D) activities qualifying for incentives include health-related activities resulting in higher output, improved production efficiency and lower energy consumption, and activities relating to the elimination of health risks.
Qualifying R&D activities attract the following tax incentives:

- Income tax holiday; and
- A deduction for labour expenses equivalent to 50% of the wages of personnel directly involved in R&D activities for the first 5 years after registration.

Healthcare and wellness products and services is among the “preferred area of investment” listed by the Board of Investments (BOI) and approved by the President. This covers healthcare and wellness products and services, hospital services, medical and dental services, other human health and wellness services (including services in the field of nursing care, rehabilitation and recuperation, spas), retirement villages, and related services located either in identified medical zones or outside Metro Manila when catering mainly to foreigners and non-residents. It also covers the manufacture of drugs and medicines in accordance with the Philippine National Drug Formulary (“PNDF”) of the Department of Health (“DOH”), supplements limited to Vitamin A, Iron and iodine for use in the Fortification Law and herbal medicines.

The deduction for labour expenses is applicable only when the income tax holiday is not availed of by the enterprise. Income tax holidays may be availed of only after accreditation by the DOH. Hospitals classified for “medical tourism must likewise be accredited by the Department of Tourism (“DOT”).

The following may qualify for pioneer status:

- Tertiary or Secondary care hospitals with a minimum capacity of 100 beds and an investment cost of at least the Philippine Peso equivalent of US $10Million. (“Secondary care hospital” is a departmentalized hospital that provides clinical care and management on the prevalent diseases on the locality, as well as particular forms of treatment, surgical procedure, and intensive care. “Tertiary care hospital” is a teaching and training hospital that provides clinical care and management on the prevalent diseases on the locality, as well as specialized and sub-specialized forms of treatment, surgical procedure and intensive care.
- Specialized Services or Centers of Excellence with the project cost of: Cancer Center – Philippine Peso equivalent of US $6Million; Heart/Lung/Kidney Center - Philippine Peso equivalent of US $10Million. (Specialized services or Centers of Excellence refers to focused expertise on certain types of services mostly with low patient numbers, and need critical mass of patients to make treatment centres cost effective. Services generally include training of specialist staff, high quality research programs, and use of scarce resources like expertise, high technology equipment and donated organs).
- Ambulatory Surgical Services that cost at least the Philippine Peso equivalent of US $2 million.
- Dental Services that cost at least the Philippine Peso equivalent of US $1 million.
- Health Spa projects that will make use and/or apply the ‘Filipino healing modality’ using indigenous essential oils as endorsed by the DOT.
- Retirement villages with a minimum area of 20 hectares.
- Projects involving the manufacture of drugs and medicines in accordance with the PNDF, food supplements limited to Vitamin A, iron and iodine for use in the Food Fortification Law, herbal medicines, and active substances of these drugs, which cost at least the Philippine peso equivalent of US $20 million.
8. Singapore

Singapore does not provide any direct tax incentives for the healthcare products sector. While not aimed specifically at the healthcare products sector, the intellectual property cost and approved research and development expenditure incurred on pharmaceutical drugs and other healthcare products will be entitled to writing down allowance and further deductions.

9. Thailand

Thailand provides incentives applicable to the healthcare products sector under rules governed by the Board of Investment ("BOI"). Prioritised projects are identified in the list of promoted projects maintained by the BOI.

- Prioritised projects – a project ‘housed’ within a Thai corporation and specified by the BOI as a prioritised project is entitled to the following tax incentives, regardless of where it is located:
  - an entire (100%) tax holiday of up to 8 years;
  - a further 50% corporate tax rate reduction for up to 5 years;
  - a Thai dividend withholding tax exemption (normally, 10% of the dividend) for dividends paid out of 100% tax holiday profits within the 100% holiday period;
  - a ‘double’ income tax deduction for certain annual ‘infrastructure’ expenditure (e.g. transportation, electricity etc costs);
  - an additional 25% tax depreciation (a total of 125% of the capital cost) of certain infrastructure costs (e.g. ‘spur’ rail links, waters storage costs etc); and
  - an exemption of import duty on machinery, raw materials & other inputs to production.

10. Viet Nam

Investment is particularly encouraged in the manufacture of medical equipment for the production of medicines; and projects for manufacturing antibiotic materials.

- A reduced enterprise income tax (EIT) rate of 15% applies for the duration of the project if the project is listed as a particularly encouraged project.
- An EIT rate of 10% for 15 years from the commencement of production or business activity is available if the taxpayer is engaged in an investment project listed as being particularly encouraged.
- Foreign investment enterprises investing in projects where investment is particularly encouraged and in regions with particularly difficult socio-economic conditions have an exemption on import duties on raw materials used for production for a period of 5 years from the commencement of production.
- In addition, investments in particularly encouraged projects or areas are entitled to a full tax exemption of up to 4 years and a 50% reduction of tax payable for the next 9 years.

Investment is encouraged in the production of veterinary drugs with a domestic added value of 40% or more and the production of medicines and curative drugs for human consumption.

- An EIT rate of 15% for a period of 12 years from the commencement of production or business activity is available if the taxpayer is engaged in an investment project on the list of encouraged projects.
- Projects or enterprises entitled to this reduced rate also enjoy a full tax exemption for 2 years and a 50% reduction of tax payable for the next 3 years (or a 2 year tax exemption if they are manufacturing or production enterprises located in an industrial zone and exporting less than 50% of output).

Activities eligible for investment incentives (under the Enterprise Income Tax Law) include health care, investment in medical equipment, vehicles and devices for the disabled; planting of plants with pharmaceutical properties; and investment in manufacture of medicines.

- Investment in these areas entitles an investor to preferential tax rates of 10%, 15% or 20%.
- The nature of the incentive granted depends on the type of investment, and the nature and location of the enterprise.
- In order to benefit from the incentives above, the investment must be in a qualifying activity; and the project employ at least 100 labourers in urban centres, 200 labourers in areas with difficult socio-economic conditions, or 50 labourers anywhere else.

- Reduced enterprise income tax rate (EIT) for investment in medical care
- An EIT rate of 10% for 15 years from the commencement of production or business activity is available if the taxpayer is engaged in investment in medical care.

H. RUBBER-BASED PRODUCTS SECTOR

1. Brunei Darussalam

Brunei Darussalam does not provide any incentives specific to the rubber-based products sector. Brunei Darussalam offers the following non-industry specific tax incentives:

- Pioneer status: exemption from tax for up to five years, plus extensions of initially five years and later three years. Dividends paid out of profits are exempt in the hands of shareholders.
- Expanding enterprise exemption: tax holidays for businesses which invest to expand production of ‘approved products.’

Brunei Darussalam does not have any features in its taxation system that act as an impediment to the rubber-based products sector.

2. Cambodia

Cambodia provides general, non-sector specific incentives for Qualifying Investment Projects (“QIPs”) which are granted an automatic tax holiday of 3 years and an extension of up to another 3 years, depending on the characteristics of the project. The exemptions take effect from the year the project derives its first profit or after 3 years of operations, whichever occurs first.

The rubber-based products sector is eligible for QIP incentive discussed above unless the investment capital is less than US$ 500,000.

3. Indonesia

No sector-specific incentives for the rubber-based products sector other than generic incentives for investment in less developed regions.
4. Lao PDR

It is not clear whether there are any incentives or impediments to the rubber-based products sector in the Lao PDR tax system.

5. Malaysia

The manufacture of rubber and rubber-based products such as tyres, latex products, dry rubber products and reclaimed rubber is a promoted activity and eligible for Pioneer Status or Investment Tax Allowance and Reinvestment Allowance.

6. Myanmar

The Foreign Investment Commission may grant any enterprise which produces goods or renders services an exemption from income tax for a period up to 3 consecutive years, including the year in which the production of goods or rendering of services commences. The exemption period may be extended if the enterprise is successful and the investment is beneficial to Myanmar.

The Foreign Investment Commission may also grant any or all of the following exemptions or reliefs:

- exemption or reduction of income tax for an enterprise which places funds in a reserve and reinvests those funds in the enterprise within one year;
- accelerated depreciation of machinery, equipment, buildings or other capital assets used in the enterprise at rates fixed by the Foreign Investment Commission;
- exemption from income tax of up to 50% on the profits accrued from the export of goods produced by an enterprise;
- an investor may pay income tax to the Treasury on behalf of foreigners employed in the enterprise and may then deduct such payments from the assessable income of the enterprise;
- income tax on the income of the above-mentioned foreigners may be paid at the rates applicable to citizens of Myanmar;
- expenses incurred in respect of research and development for the enterprise which is actually necessary and carried out in Myanmar may be deducted from assessable income;
- carry forward of losses for 3 years following the exemption or relief period;
- exemption or relief from customs duty or other indirect taxes, or both, on machinery, equipment, instruments, spare parts and materials used in the business, which are imported during the construction period; and
- exemption or relief from customs duty or other indirect taxes, or both, on imported raw materials for the first 3 years of commercial production following the end of the construction period.

It is not clear whether there are any incentives or impediments to the rubber-based products sector in the Myanmar tax system.
7. The Philippines

The Philippines does not offer any sector-specific incentives for the rubber-based products sector. Investments may be considered as a priority investment area only if the activity is located in the Autonomous Region of Muslim Mindanao (“ARMM”) and subject to the General and Specific Guidelines.

8. Singapore

The income of non-residents from trading through consignees in rubber produced outside Singapore is exempt income. This relates to the trading of rubber as a commodity.

9. Thailand

Thailand provides incentives applicable to the rubber-products based sector if Thai rubber is used under rules governed by the Board of Investment (“BOI”). Prioritised projects are identified in the list of promoted projects maintained by the BOI.

- Prioritised projects – a project ‘housed’ within a Thai corporation and specified by the BOI as a prioritised project is entitled to the following tax incentives, regardless of where it is located:
  - an entire (100%) tax holiday of up to 8 years;
  - a further 50% corporate tax rate reduction for up to 5 years;
  - a Thai dividend withholding tax exemption (normally, 10% of the dividend) for dividends paid out of 100% tax holiday profits within the 100% holiday period;
  - a ‘double’ income tax deduction for certain annual ‘infrastructure’ expenditure (e.g. transportation, electricity etc costs);
  - an additional 25% tax depreciation (a total of 125% of the capital cost) of certain infrastructure costs (e.g., ‘spur’ rail links, waters storage costs etc); and
  - an exemption of import duty on machinery, raw materials & other inputs to production.

- Replacement machinery
  - Notification of BOI No. 1/2546 of 2 May 2003 provides that machinery imported by projects in the shoe industry (certain types of shoes fall under the ‘rubber-based products’ category – refer to items 1986, 1991 and 1993) to replace old machinery, are exempted from import duty, provided that certain conditions are met.

10. Viet Nam

Investment is encouraged in the production of high-quality materials for production of footwear for export (certain types of shoes fall under the ‘rubber-based products’ category – refer to items 1986, 1991 and 1993).

- An EIT rate of 15% for a period of 12 years from the commencement of production or business activity is available if the taxpayer is engaged in an investment project on the list of encouraged projects.
- Projects or enterprises entitled to this reduced rate also enjoy a full tax exemption for 2 years and a 50% reduction of tax payable for the next 3 years (or a 2 year tax exemption if they are manufacturing or production enterprises located in an industrial zone and exporting less than 50% of output).
I. TEXTILES AND APPAREL PRODUCTS SECTOR

1. Brunei Darussalam

Brunei Darussalam does not provide any incentives specific to the textiles and apparel products sector. Brunei Darussalam offers the following non-industry specific tax incentives:

- Pioneer status: exemption from tax for up to five years, plus extensions of initially five years and later three years. Dividends paid out of profits are exempt in the hands of shareholders.
- Expanding enterprise exemption: tax holidays for businesses which invest to expand production of ‘approved products.’

Brunei Darussalam does not have any features in its taxation system that act as an impediment to the textiles and apparel products sector.

2. Cambodia

Cambodia provides general, non-sector specific incentives for Qualifying Investment Projects (“QIPs”) which are granted an automatic tax holiday of 3 years and an extension of up to another 3 years, depending on the characteristics of the project. The exemptions take effect from the year the project derives its first profit or after 3 years of operations, whichever occurs first.

The sector is eligible for QIP incentive discussed above unless it is for the production of product for the textile industry with investment capital less than US$ 500,000 or the production of garments, textiles, footwear, hats with investment capital less than US$ 500,000.

3. Indonesia

Tax holidays of up to eight years are offered for new projects in 22 categories of industries, including textiles.

4. Lao PDR

It is not clear whether there are any incentives or impediments to the textiles and apparel products sector in the Lao PDR tax system.

5. Malaysia

The manufacture of certain textiles and textile products is a promoted activity and eligible for Pioneer Status or Investment Tax Allowance and Reinvestment Allowance.

6. Myanmar

The Foreign Investment Commission may grant any enterprise which produces goods or renders services an exemption from income tax for a period up to 3 consecutive years, including the year in which the production of goods or rendering of services commences. The exemption period may be extended if the enterprise is successful and the investment is beneficial to Myanmar.

The Foreign Investment Commission may also grant any or all of the following exemptions or reliefs:
- exemption or reduction of income tax for an enterprise which places funds in a reserve and reinvests those funds in the enterprise within one year;
- accelerated depreciation of machinery, equipment, buildings or other capital assets used in the enterprise at rates fixed by the Foreign Investment Commission;
- exemption from income tax of up to 50% on the profits accrued from the export of goods produced by an enterprise;
- an investor may pay income tax to the Treasury on behalf of foreigners employed in the enterprise and may then deduct such payments from the assessable income of the enterprise;
- income tax on the income of the above-mentioned foreigners may be paid at the rates applicable to citizens of Myanmar;
- expenses incurred in respect of research and development for the enterprise which is actually necessary and carried out in Myanmar may be deducted from assessable income;
- carry forward of losses for 3 years following the exemption or relief period;
- exemption or relief from customs duty or other indirect taxes, or both, on machinery, equipment, instruments, spare parts and materials used in the business, which are imported during the construction period; and
- exemption or relief from customs duty or other indirect taxes, or both, on imported raw materials for the first 3 years of commercial production following the end of the construction period.

It is not clear whether there are any incentives or impediments to the textiles and apparel products sector in the Myanmar tax system.

7. The Philippines

The Philippines does not offer any sector-specific incentives for the textile and apparel products sector. Investments may be considered as a priority investment area only if the activity is located in the Autonomous Region of Muslim Mindanao (“ARMM”) and subject to the General and Specific Guidelines.

Fashion garments is the only “preferred area of investment” relevant to the textile and apparel products sector listed by the Board of Investments (“BOI”) and approved by the President. Fashion garments essentially refer to wearing apparel for a specific season with a distinct style and colour based on international trends. Otherwise investments may be considered as a priority investment area only if the activity is located in the Autonomous Region of Muslim Mindanao (“ARMM”) and subject to the General and Specific Guidelines. In addition, projects that cost at least the Philippine Peso equivalent of US$ 1 million may qualify for pioneer status.

8. Singapore

Singapore offers investment allowance incentives for the textile and apparel products sector, the types of projects that qualify include the automation of textile and garment factories.

- Investment allowance, which is an additional deduction over and above the normal capital allowance claimable of up to 100% of the fixed capital expenditure incurred. The allowance most commonly granted is 30%.
- Dividends paid out of an ‘investment allowance account’ are exempt from tax in the hands of the recipient shareholders.

In order to qualify, the fixed capital expenditure on an approved project must be incurred within 5 years.

9. Thailand

Thailand provides incentives applicable to the textile and apparel products sector if Thai grown fabric based products are used under rules governed by the Board of Investment (“BOI”). It is assessed on an individual case basis if intended investment is over Thai baht 500 million. Prioritised projects are identified in the list of promoted projects maintained by the BOI.

- Prioritised projects – a project ‘housed’ within a Thai corporation and specified by the BOI as a prioritised project is entitled to the following tax incentives, regardless of where it is located:
  - an entire (100%) tax holiday of up to 8 years;
  - a further 50% corporate tax rate reduction for up to 5 years;
  - a Thai dividend withholding tax exemption (normally, 10% of the dividend) for dividends paid out of 100% tax holiday profits within the 100% holiday period;
  - a ‘double’ income tax deduction for certain annual ‘infrastructure’ expenditure (e.g. transportation, electricity etc costs);
  - an additional 25% tax depreciation (a total of 125% of the capital cost) of certain infrastructure costs (e.g., ‘spur’ rail links, waters storage costs etc); and
  - an exemption of import duty on machinery, raw materials & other inputs to production.

- Replacement machinery
  - Notification of BOI No. 1/2546 of 2 May 2003 provides that machinery imported by projects in the textile industry to replace old machinery, are exempted from import duty, provided that certain conditions are met.

10. Viet Nam

Investment is encouraged in the production of electrical insulating materials (item no. 1354), the manufacture of textile and garment-making equipment; the production of silk, fibre of various kinds, and special fabric for industrial use; and the production of high-quality materials for production of garments for export.

- An EIT rate of 15% for a period of 12 years from the commencement of production or business activity is available if the taxpayer is engaged in an investment project on the list of encouraged projects.

- Projects or enterprises entitled to this reduced rate also enjoy a full tax exemption for 2 years and a 50% reduction of tax payable for the next 3 years (or a 2 year tax exemption if they are manufacturing or production enterprises located in an industrial zone and exporting less than 50% of output).
J. TOURISM AND TRAVEL RELATED SERVICES SECTOR

1. Brunei Darussalam

Brunei Darussalam does not provide any incentives specific to the tourism and travel related services sector. Brunei Darussalam offers the following non-industry specific tax incentives:

- Pioneer status: exemption from tax for up to five years, plus extensions of initially five years and later three years. Dividends paid out of profits are exempt in the hands of shareholders.
- Expanding enterprise exemption: tax holidays for businesses which invest to expand production of ‘approved products.’

Brunei Darussalam does not have any features in its taxation system that act as an impediment to the tourism and travel related services sector.

2. Cambodia

The tourism and travel related services sector is specifically ineligible for QIP incentives if it means tourism service providers, tourism agents, tourism information and tourism advertising.

Some investment projects may qualify for QIP incentive unless they are:

- investment in any transportation services, except investment in the railway sector;
- investment capital of less than US$ 4,000,000 in training and educational institutes that provide training for skill development in tourism;
- hotels below 3-star grade;
- complex tourism centres with hotel containing less than 100 rooms or tourist inns of less than 30 houses and tourist estates (resort) less than a minimum area of 10 hectares;
- natural tourism and creation of natural tourism site with size less than 1,000 hectares of land with investment capital less than US$ 1,000,000; or
- complex resort including hotel, theme park, sport facilities, zoo with less than 50 hectares.

3. Indonesia

Incentives for investments in less developed provinces in the hotels and tourism sector, including:

- carry-forward of losses for up to 8 years; and
- reduction of the land and building tax to 0.25% for the first 8 years.

Incentives are granted to hotels in tourist centres including:

- the rate of the Development Tax is 5%; and
- the maximum fee for a permit to build a hotel in a tourist centre is IDR 50 million.

The regulations that cover the above detailed facilities has recently been revoked.
4. Lao PDR

It is not clear whether there are any incentives or impediments to the tourism and travel related services sector in the Lao PDR tax system.

5. Malaysia

Incentives are available to the different sectors relating to tourism, including the hotel business, tour operators, recreational projects, operation of luxury yachts etc.

- Hotel business and tourism related activities are promoted activities and are eligible for Pioneer Status or Investment Tax Allowance as in the following:
  - establishment of medium and low cost hotels (up to a three-star category hotel as certified by the Ministry of Tourism);
  - expansion/modernisation of existing hotels;
  - establishment of tourist projects;
  - expansion/modernisation of tourist projects;
  - establishment of recreational campus; and
  - establishment of convention centres.

Hotel and tourism project operators who invest in expansion, modernization and renovation may apply for another round of Pioneer Status or Investment Tax Allowance.

- Hotels registered with the Ministry of Tourism are eligible for the Industrial Building Allowance (IBA) initial allowance of 10% and annual allowance of 3% on the capital expenditure incurred on the construction or purchase of a building used in the hotel business.

- Group Inclusive Tours
  - Resident companies which are engaged in a tour business are exempted from tax in respect of the income derived from the business of operating group inclusive tours, provided at least 500 foreign tourists a year are brought into Malaysia. The exemption is granted at the statutory income level. Group inclusive tour means a tour package to or of Malaysia or any place within Malaysia undertaken by tourists from outside Malaysia, inclusive of transportation by air, land or sea and accommodation. The incentive is effective until Year of Assessment 2006.

- Domestic Tours
  - To encourage domestic tourism, resident companies that operate domestic tour packages with at least 1,200 local tourists per year will be granted exemption in respect of the income derived from the domestic tours. The exemption is granted at the statutory income level. A domestic tour means any tour package or travel within Malaysia participated in by local tourists inclusive of transportation by air, land or sea and accommodation. This incentive is effective until Year of Assessment 2006.

- Conferences Held in Malaysia
  - Effective from Year of Assessment 1997, a conference promoter resident in Malaysia will be eligible for income tax exemption on income derived from bringing at least 500 foreign participants into the country in respect of conferences held in Malaysia. Conference promoter means a company incorporated under the Companies Act 1965, or an association or organisation registered under the Societies Act 1966, performing the duties of promoting and organising conferences.
including the arranging of accommodation, tours and sightseeing for foreign participants.

- **Trade Exhibitions Held in Malaysia**
  - Effective from Year of Assessment 2002, income derived from the organisation of international trade exhibitions held in Malaysia will be eligible for income tax exemption subject to the following conditions: the international exhibition is approved by MATRADE; and the organiser of the international trade exhibition brings in at least 500 foreign visitors per year.

- **Chartering Services of Luxury Yachts**
  - Effective for applications received by the Ministry of Finance from 20 October 2001, income derived by a company in providing chartering services of luxury yachts will be granted income tax exemption of 100% for a period of 5 years.

  The amounts that are exempted from tax under the above incentives are transferred to an exempt income account for the purpose of franking tax-exempt dividends by companies. Redistributions by shareholder companies of such exempt dividends are also exempt from tax.

- **Hotels and tour operators are eligible for double deduction on certain overseas promotional expenditure.** The expenses qualifying for such double deduction are those incurred on:
  - publicity and advertisements in any mass media outside Malaysia;
  - publication of brochures, magazines and guidebooks, including delivery costs that are not charged to the overseas customers;
  - market research into new markets overseas, subject to the prior approval of the Minister of Tourism;
  - fares in respect of travel overseas for the purposes of negotiating or securing a contract for advertising or participating in trade fairs, conferences or forums approved by the Minister of Tourism. Such expenses are subject to a maximum of RM300 per day for accommodation and RM150 per day for sustenance for the duration of the stay overseas;
  - holding of overseas trade fairs, conferences or forums approved by the Minister of Tourism; and
  - maintenance of sales offices overseas for the purposes of promoting tourism to Malaysia.

6. **Myanmar**

The Foreign Investment Commission may grant any enterprise which produces goods or renders services an exemption from income tax for a period up to 3 consecutive years, including the year in which the production of goods or rendering of services commences. The exemption period may be extended if the enterprise is successful and the investment is beneficial to Myanmar.

The Foreign Investment Commission may also grant any or all of the following exemptions or reliefs:

- exemption or reduction of income tax for an enterprise which places funds in a reserve and reinvests those funds in the enterprise within one year;
- accelerated depreciation of machinery, equipment, buildings or other capital assets used in the enterprise at rates fixed by the Foreign Investment Commission;
- exemption from income tax of up to 50% on the profits accrued from the export of goods produced by an enterprise;
- an investor may pay income tax to the Treasury on behalf of foreigners employed in the enterprise and may then deduct such payments from the assessable income of the enterprise;
- income tax on the income of the above-mentioned foreigners may be paid at the rates applicable to citizens of Myanmar;
- expenses incurred in respect of research and development for the enterprise which is actually necessary and carried out in Myanmar may be deducted from assessable income;
- carry forward of losses for 3 years following the exemption or relief period;
- exemption or relief from customs duty or other indirect taxes, or both, on machinery, equipment, instruments, spare parts and materials used in the business, which are imported during the construction period; and
- exemption or relief from customs duty or other indirect taxes, or both, on imported raw materials for the first 3 years of commercial production following the end of the construction period.

It is not clear whether there are any incentives or impediments to the tourism and travel related services sector in the Myanmar tax system.

7. The Philippines

Subject to the guidelines/qualifications/conditions of the Investments Priorities Plan, the establishment of tourism economic zones, tourist accommodation facilities, tourist estates, and eco-agri tourism facilities, historic-cultural heritage projects and services provided by tourist operators as endorsed by the Department of Tourism (“DOT”) are qualified to the entitlement of tax incentives in E.O. 228

Tourism estates/zones with a minimum area of fifty hectares may qualify for pioneer status. (Tourism estates/zones refers to areas with defined boundaries suitable for development into an integrated tourist complex).

8. Singapore

- Approved Tourism events: event companies staging or organising world-class events and activities for qualifying tourism events approved from 1 April 2005 to 31 March 2010 will be taxed at a concessionary tax rate of 10%
- Investment allowance is an alternative to the pioneer industry and export incentives:
  - The types of projects that qualify include projects promoting the tourism industry (other than hotels) as well as flagship concept projects in retail, food & beverage, and entertainment. The following incentives are available:
  - an investment allowance, which is an additional deduction over and above the normal capital allowance claimable, of up to 100% of the fixed capital expenditure incurred (the allowance most commonly granted is 30%); and
  - dividends paid out of an ‘investment allowance account’ are exempt from tax in the hands of the recipient shareholders.

The fixed capital expenditure on an approved project must be incurred within 10 years in the case of expenditure for promotion of the tourist industry.
• Deduction for hotel refurbishment expenditure:
  - Deduction of up to 150% is allowed for qualifying expenditure incurred in an approved hotel refurbishment project during a qualifying period as specified by the Minister of Finance.
  - The deduction is available for applications made on or before 30 June 2003 in respect of projects to be completed on or before 30 June 2006.

• Industrial building allowances have also been extended to include approved hotels in Sentosa Island (a tourist resort) as well as for approved projects for the promotion of the tourist industry (other than a hotel).

9. Thailand

Thailand may provide incentives for the tourism and travel related services sector under rules governed by the Board of Investment (“BOI”). It is assessed on an individual case basis if intended investment is over Thai baht 500 million.

10. Viet Nam

• Hotel projects and investment projects in the service provision field are ineligible for enterprise income tax reduction
  - The reduced enterprise income tax incentive available under the Foreign Investment Law does not apply to hotel projects (except those in mountainous, island and difficult areas), or investment projects in the service provision field.

• Activities eligible for investment incentives (under the Enterprise Income Tax Law) List A (activities eligible for investment incentives) includes investment in tourism and eco-tourism.
  - Investment in these areas entitles an investor to preferential tax rates of 10%, 15% or 20%.
  - The nature of the incentive granted depends on the type of investment, and the nature and location of the enterprise.

In order to benefit from the incentives above, the investment must be in a qualifying activity and the project employs at least 100 labourers in urban centres, 200 labourers in areas with difficult socio-economic conditions, or 50 labourers anywhere else.

K. WOOD BASED PRODUCTS SECTOR

1. Brunei Darussalam

Brunei Darussalam does not provide any incentives specific to the wood based products sector. Brunei Darussalam offers the following non-industry specific tax incentives:

• Pioneer status: exemption from tax for up to five years, plus extensions of initially five years and later three years. Dividends paid out of profits are exempt in the hands of shareholders.

• Expanding enterprise exemption: tax holidays for businesses which invest to expand production of ‘approved products.’

Brunei Darussalam does not have any features in its taxation system that act as an impediment to the wood based products sector.
2. Cambodia
The wood based products sector is eligible for QIP, unless it is investment in production and processing of wood products using wood from natural forests. Forestry exploitation is a prohibited area of investment, but timber plantations with a size greater than 1,000 hectares are eligible for QIP.

3. Indonesia
Incentives for investments in less developed provinces in the forestry sector, including:
- carry-forward of losses for up to 8 years; and
- reduction of the land and building tax to 0.25% for the first 8 years.

4. Lao PDR
Resources exploitation tax is levied on all persons who exploit natural resources. The tax rates vary according to the type of natural resources and production, and the area and conditions involved. Limited exemptions are available. It is not clear whether these represent incentives or impediments to the wood-based products sector.

5. Malaysia
- The manufacture of certain wood and wood products is a promoted activity eligible for Pioneer Status or Investment Tax Allowance (ITA) and Reinvestment Allowance. Besides these main incentives, there are also other incentives for resource based industries:
  - To ensure regular supply of rubberwood for the furniture industry, a non-rubber plantation company that plants at least 10% of its plantation with rubberwood trees is eligible for the Accelerated Allowance whereby the write-off period on the capital expenditure incurred for land preparation, planting and maintenance of rubberwood cultivation is accelerated from two years to one year.
  - Companies that are at least 51% Malaysian owned and are in the rubber, oil palm and wood based industries producing products which have export potential are eligible for another round of Pioneer Status or Investment Tax Allowance (ITA) for their reinvestment for expansion purposes. Activities located in promoted areas i.e. the States of Sabah, Sarawak and the designated “Eastern Corridor” of Peninsular Malaysia are eligible for higher levels of exemption/allowance under Pioneer Status or ITA in accordance with that given for promoted areas.

6. Myanmar
The Foreign Investment Commission may grant any enterprise which produces goods or renders services an exemption from income tax for a period up to 3 consecutive years, including the year in which the production of goods or rendering of services commences. The exemption period may be extended if the enterprise is successful and the investment is beneficial to Myanmar.

The Foreign Investment Commission may also grant any or all of the following exemptions or reliefs:
- exemption or reduction of income tax for an enterprise which places funds in a reserve and reinvests those funds in the enterprise within one year;
- accelerated depreciation of machinery, equipment, buildings or other capital assets used in the enterprise at rates fixed by the Foreign Investment Commission;
- exemption from income tax of up to 50% on the profits accrued from the export of goods produced by an enterprise;
- an investor may pay income tax to the Treasury on behalf of foreigners employed in the enterprise and may then deduct such payments from the assessable income of the enterprise;
- income tax on the income of the above-mentioned foreigners may be paid at the rates applicable to citizens of Myanmar;
- expenses incurred in respect of research and development for the enterprise which is actually necessary and carried out in Myanmar may be deducted from assessable income;
- carry forward of losses for 3 years following the exemption or relief period;
- exemption or relief from customs duty or other indirect taxes, or both, on machinery, equipment, instruments, spare parts and materials used in the business, which are imported during the construction period; and
- exemption or relief from customs duty or other indirect taxes, or both, on imported raw materials for the first 3 years of commercial production following the end of the construction period.

It is not clear whether there are any incentives or impediments to the wood-based products sector in the Myanmar tax system.

7. The Philippines

The Philippines provides tax holidays which can apply to the wood based products sector under the pioneer enterprise provisions of the Omnibus Investments Code 1987 ("OIC") provided that the final product involves or will involve substantial use and processing of domestic raw materials, whenever available; taking into account the risks and magnitude of investment:

- Additional deduction for labour expense is available when the Income Tax Holiday ("ITH") is not availed.
- Projects (whether production or processing) that cost at least the Philippine Peso equivalent of Ten Million Dollars U.S. $10,000,000 may qualify for pioneer status.

8. Singapore

There are no sector specific tax incentives for the wood-based products sector in Singapore.

9. Thailand

Thailand provides incentives applicable to the wood based products sector if Thai grown wood is used under rules governed by the Board of Investment ("BOI"). Prioritised projects – a project 'housed' within a Thai corporation and specified by the BOI as a prioritised project is entitled to the following tax incentives, regardless of where it is located:

- an entire (100%) tax holiday of up to 8 years;
- a further 50% corporate tax rate reduction for up to 5 years;
- a Thai dividend withholding tax exemption (normally, 10% of the dividend) for dividends paid out of 100% tax holiday profits within the 100% holiday period;
- a ‘double’ income tax deduction for certain annual ‘infrastructure’ expenditure (e.g. transportation, electricity etc costs);
- an additional 25% tax depreciation (a total of 125% of the capital cost) of certain infrastructure costs (e.g. ‘spur’ rail links, waters storage costs etc); and
- an exemption of import duty on machinery, raw materials & other inputs to production.

10. Viet Nam

- Investment is particularly encouraged (timber processing excluded) in the processing of forestry (except timber) products where more than 50% of products from domestic material sources are exported; and forestry.
  - A reduced enterprise income tax (EIT) rate of 15% applies for the duration of the project if the project is listed as a particularly encouraged project.
  - An EIT rate of 10% for 15 years from the commencement of production or business activity is available if the taxpayer is engaged in an investment project listed as being particularly encouraged.
  - Foreign investment enterprises investing in projects where investment is particularly encouraged and in regions with particularly difficult socio-economic conditions have an exemption on import duties on raw materials used for production for a period of 5 years from the commencement of production.
  - In addition, investments in particularly encouraged projects or areas are entitled to a full tax exemption of up to 4 years and a 50% reduction of tax payable for the next 9 years.

- Fields in which investment is encouraged (wood products excluded) in technical services for forestry industries; and processing of forestry (except wood) products.
  - An EIT rate of 15% for a period of 12 years from the commencement of production or business activity is available if the taxpayer is engaged in an investment project on the list of encouraged projects.
  - Projects or enterprises entitled to this reduced rate also enjoy a full tax exemption for 2 years and a 50% reduction of tax payable for the next 3 years (or a 2 year tax exemption if they are manufacturing or production enterprises located in an industrial zone and exporting less than 50% of output).

- Activities eligible for investment incentives (under the Enterprise Income Tax Law) List A (activities eligible for investment incentives) comprises processing of forestry products and technical services for forestry products.
  - Investment in these areas entitles an investor to preferential tax rates of 10%, 15% or 20%.
  - The nature of the incentive granted depends on the type of investment, and the nature and location of the enterprise.
  - In order to benefit from the incentives above, the investment is in a qualifying activity; and the project employs at least 100 labourers in urban centres, 200 labourers in areas with difficult socio-economic conditions, or 50 labourers anywhere else.
APPENDIX 3: ABOUT THE AUTHORS

Ian Farrow

Ian Farrow is a Senior Manager with KPMG Australia’s taxation practice with a special focus on taxation policy issues in Australia and within the Asia Pacific. Ian has been a leading member of a number of national and international tax policy engagements including tax reform for the Hong Kong Government and the Government of Singapore. He has also served on a technical reference group for an AusAID funded capacity-building project for the Timor-Leste Ministry of Planning and Finance. Ian’s formal qualifications include Bachelor of Economics, Master of Business Administration and Master of Taxation degrees. He is a Fellow of the Taxation Institute of Australia and a Member of the Australian Institute of Energy.

Sunita Jogarajan

Sunita Jogarajan is a Senior Consultant with KPMG Australia’s tax practice with a special focus on corporate taxation issues. In addition to her work for KPMG she is also a Lecturer on taxation law in the Faculty of Law at the University of Melbourne. Sunita’s previous experience involved international comparatives of tax reform, particularly in developing countries. The countries of focus in her research included Viet Nam, Ghana and Pakistan. Sunita’s international corporate tax issues have included thin capitalisation, controlled foreign company rules and residency issues for Australian and international multi-national companies. Sunita’s qualifications include Bachelor of Laws (Hons) and Bachelor of Commerce degrees. She is a Member of the Institute of Chartered Accountants of Australia and the International Fiscal Association.