Features of the Cambodia Singapore Double Taxation Agreement (DTA) and Case Studies

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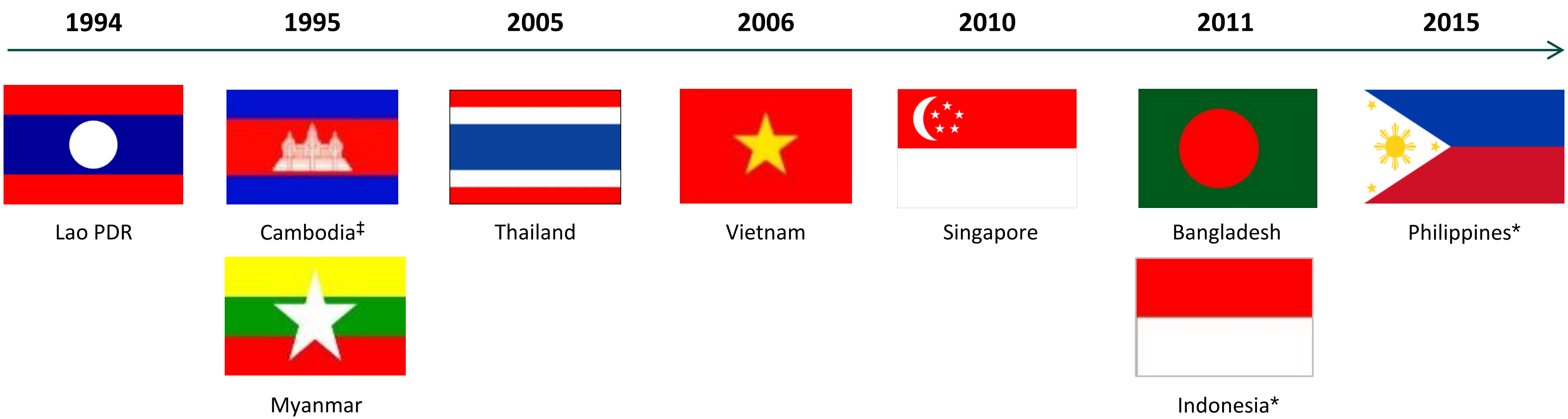
29 Jun 2016

What makes us unique?

“We are pioneers in emerging markets”



*DFDL collaborating firms | ‡In commercial cooperation with Sarin & Associates

DFDL Organization

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BUSINESS UNITS

Bangladesh	Cambodia‡	Indonesia*	Lao PDR	Myanmar	Philippines*	Singapore	Thailand	Vietnam
Dhaka	Phnom Penh	Jakarta	Vientiane	Yangon Naypyidaw	Manila	Singapore	Bangkok, Phuket, Samui	Hanoi Ho Chi Minh City

REGIONAL PRACTICE GROUPS

- Banking and Finance
- Corporate and M & A
- Energy, Mining and Infrastructure
- Real Estate and Construction
- Taxation

ASIAN DESKS

- China Desk
- India Desk
- Japan Desk
- Philippines Desk

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Agenda

1. What is International Double Taxation?
2. Distributive Articles
(Dividends, Interest, Royalties, Technical Fees)
3. Business Profits and Permanent Establishments
4. Capital Gains
5. Employment Income
6. Case Studies
7. Conclusion

What is international double taxation?

"International double taxation occurs when two or more states imposes taxes on the same taxpayer for the same subject matter".

Source vs Residency Principle

Many governments tax individuals and/or enterprises on income using different approach:

> Source Principle

If a country considers certain income as taxable when such income arises within its jurisdiction e.g. dividend, interest payments, rental payments.

I.E. Residents and non-residents are both taxed on income sourced from the country

> Residence Principle

According to this principle residents of a country are subject to tax on their worldwide income and non-residents are only subject to tax on domestic sourced income.

I.E. Residents of the country are taxed on their worldwide (local and foreign) income.

Source vs Residence

The country of residence eliminates double taxation through a tax credit or exemption

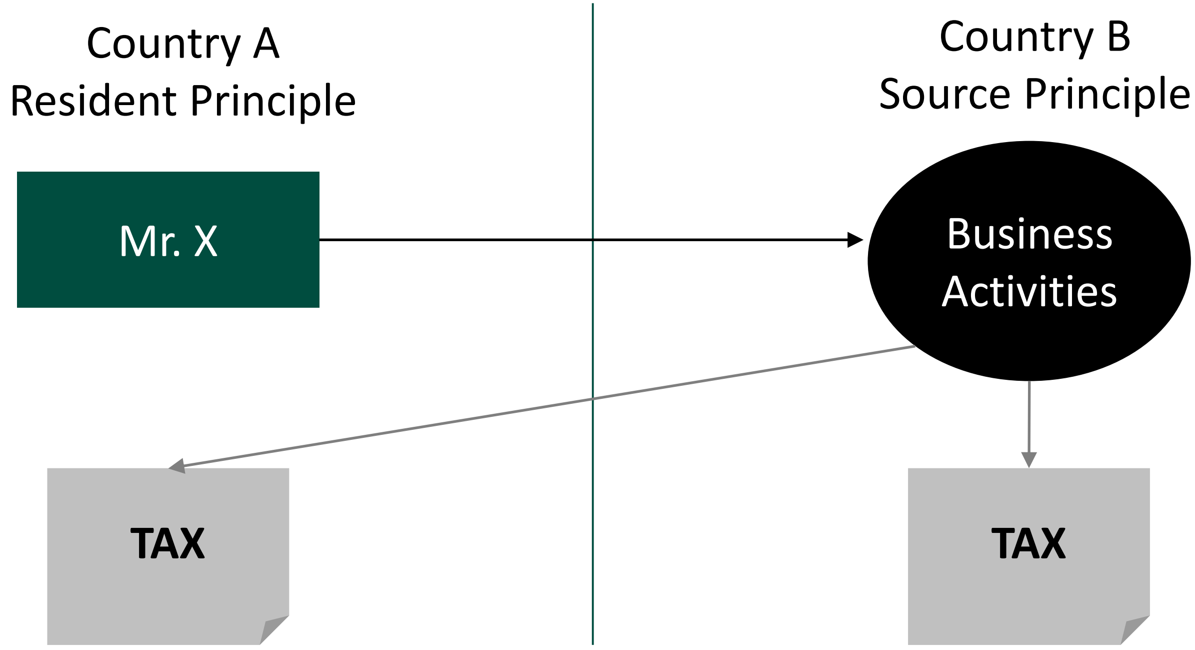
Two fundamental principles

The country of source may in turn reduce both the scope of its tax and rates of applicable tax

International Double Taxation

<u>Example</u>

A resident person of **Country A** with business activities in **Country B** may be liable to tax on the income or profits arising from the business activity in **Country B** under the source principle. This same income may be subject to tax in **Country A** under the residence principle.



Objectives of DTAs

D — Achieve relief from double taxation

T — Set out taxing rights of countries

A — Prevent tax evasion and avoidance

Treaty: Agreement between Governments

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D Treaties are part of international law

T Vienna Convention on the Law on Treaties – 1969

A *Professor Klaus Vogel - "A tax treaty neither generates a tax claim that does not otherwise exist under domestic law nor expands the scope or alters the type of an existing claim"*

How do tax treaties work?

- Reduce withholding taxes
- Define the thresholds for activities to create a taxable presence
- Provides a framework for resolving disputes and arbitration
- Provides a mechanism for exchange of information between tax authorities

Model templates for DTA

OECD

UN

US

Articles of the Singapore Cambodia DTA

(1) Persons Covered
(2) Taxes Covered
(3) General Definitions
(4) Resident
(5) Permanent Establishment
(6) Income from Immovable Property
(7) Business Profits
(8) International Transport
(9) Associated Enterprises
(10) Dividends
(11) Interest
(12) Royalties
(13) Fees for Technical Services
(14) Capital Gains
(15) Independent Personal Services

Articles of the Singapore Cambodia DTA

(16) Dependent Personal Services

(17) Directors Fees

(18) Artistes and Sportspersons

(19) Pensions and Social Security Payments

(20) Government Service

(21) Students

(22) Other Income

(23) Methods for Elimination of Double Taxation

(24) Non-Discrimination

(25) Mutual Agreement Procedure

(26) Exchange of Information

(27) Members of Diplomatic and Consular Posts

(28) Entry into Force

(29) Termination

Who does the tax treaty apply to?

Article 1 (1)

"This agreement shall apply to persons who are **residents** of one or both of the Contracting States, except as otherwise provided for in the Agreement"

What taxes does it cover?

Article 2

- Tax on Profit including:
- Withholding Tax,
- Additional Profit Tax on Dividend Distribution,
- Capital Gains Tax and Tax on Salary.

- In Singapore the DTA applies to **Income Tax**.

- *It does not cover VAT, Specific Tax, Custom Duties etc.*

Terms used in a treaty – Article 3 General Definitions

Article 3 (1) (d)

“the term person includes an individual, a company and any other body of persons”

Article 3 (2)

“Any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State”

Examples – profits, resident, beneficial owner, employment,

Dual Residence – Tie Breaker Test

Article 4 Resident

If an individual is a resident of both Contracting States, their status is determined as follows:

- *They shall be deemed to be a resident only of the State in which they have a permanent home available to them, if they have a permanent home available to them in both States, they shall be deemed to be a resident only of the State with which there personal and economic relations are closer (centre of vital interests)*

- *If the State in which there centre of vital interests cannot be determined or they have no permanent home available to them in either State, he small be deemed to be a resident only of the State of which he is a national;*

- *In any other case, the competent authorities of the Contracting State shall settle the question by mutual agreement.*

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DTA – Withholding Taxes

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	KH WHT	DTA
Royalties	14%	10%
Dividends	14%	10%
Interest	14%	10%
Technical Fees	14%	10%

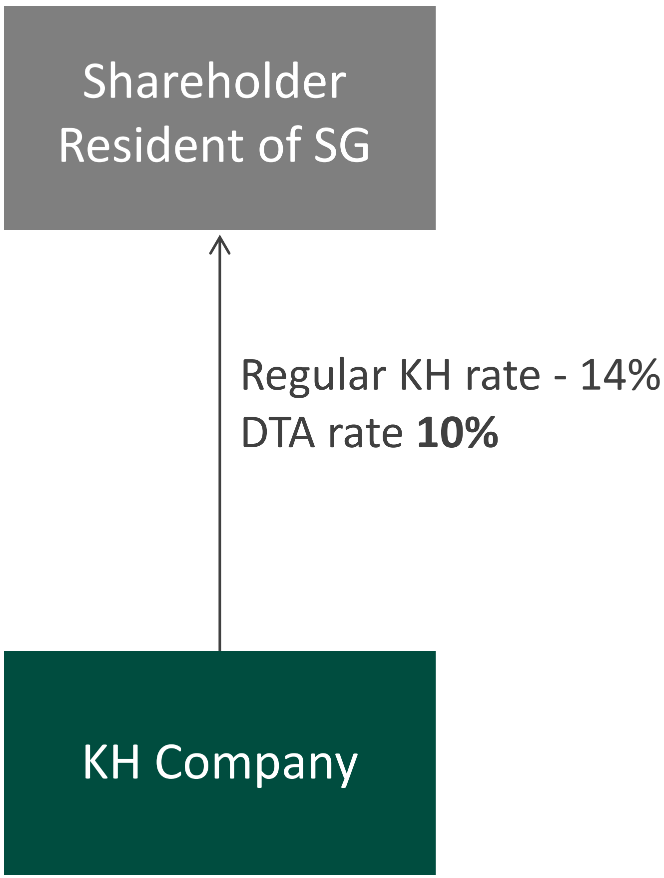
Dividends

Article 10

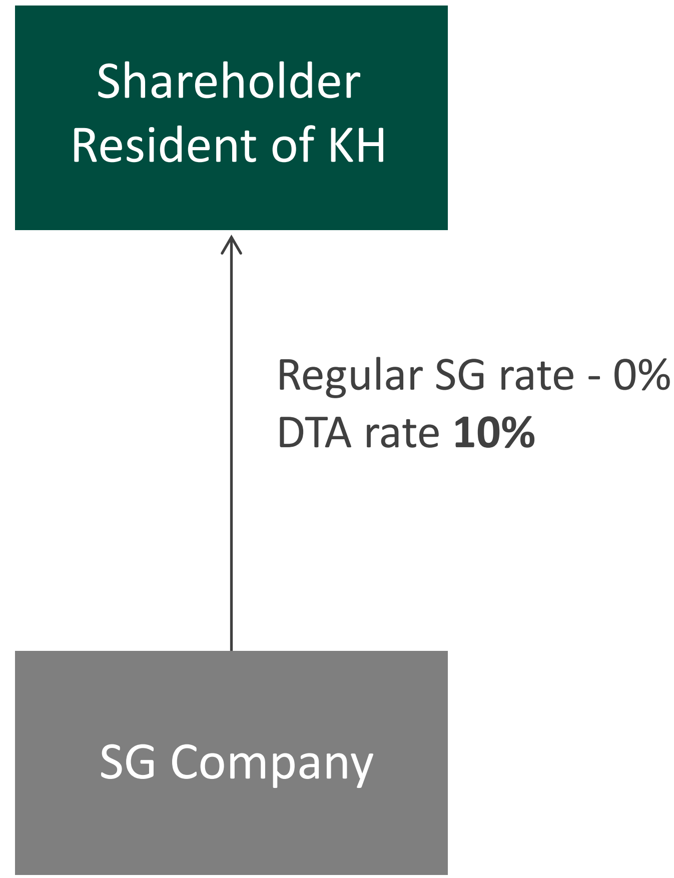
"If the <u>beneficial owner</u> of the dividends is a resident of the other Contracting State, the <u>tax charged shall not exceed 10%</u> of the gross amount of the dividends"

Dividends

Singapore (SG)



Cambodia (KH)



Interest

Article 11

"If the <u>beneficial owner</u> of the interest is a resident of the other Contracting State, the tax charged shall not exceed 10% of the gross amount of the interest"

Interest

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Singapore (SG)

Shareholder
Resident of SG

Regular KH rate - 14%
DTA rate **10%**

KH Company

Cambodia (KH)

Shareholder
Resident of KH

Regular SG rate - 17%
DTA rate **10%**

SG Company

Article 12

Payments for the use of copyrighted literary, artistic, or scientific works, patents, trademarks, plans, formulas, and scientific, commercial, or industrial information or equipment

Prakas on Tax on Profit

The granting of permission to use the right to publish and to sell literary, artistic, and scientific works, or other similar rights, a production patent, a brand name, a trade mark, a drawing, a template model, a project, a formula, a scheme , trade secrets. A know-how, or skill, or information related to a knowledge or experience in the field of commerce, science……

Royalties

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Singapore (SG)

Shareholder Resident of SG

Regular rate - 14%
DTA rate 10%

KH Company

Cambodia (KH)

Shareholder Resident of KH

Regular rate - 17%
DTA rate 10%

SG Company

Technical Services

Article 13

Fees for technical services are defined as consideration of any kind "for the rendering of any managerial, technical, or consultancy services", including the services of technical or other personnel.

The 10% rate does not apply if the enterprise has, or during the provision of the services, creates a Permanent Establishment, in which case the fees form part of the income of the Permanent Establishment.

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Business Profits - Article 7 and 5

Article 7 (1)

“The profits of an enterprise of a Contracting State shall be taxable only in that State, unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein”

Article 7 and 5

The fundamental principle for a DTA is that for business income;

- A person (whether an individual or a company) from one country (Country A);
- Will be taxable in the other country (Country B) only; and
- If they have a PE in Country B.

If there is a PE, only the income attributable to such PE in Country B will be subject to tax in Country B.

Business Profits - Article 7 and 5

Article 5 (1)

"the term permanent establishment means <u>a fixed place </u>of business through which the business of an enterprise is wholly or partly carried on"

Article 5 (2)

Article 5 (2) PE includes especially: a place of management, a branch, an office, a factory, a workshop, a mine, oil or gas or gas well, a quarry or any other place of extraction of natural resources.

Permanent Establishment - Article 5 (con't.)

Article 5 (3)

"the furnishing of services, including consultancy services, in a Contracting State

…. through employees or other personnel, ….

But only if the activities for a period of periods aggregating more than six (6) months within a twelve (12) month period

Permanent Establishment - Agency

Has and habitually exercises in that State an <u>authority to conclude contracts in the name of the enterprise</u>, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business would not make this fixed place of business a permanent establishment under the provisions of that paragraph

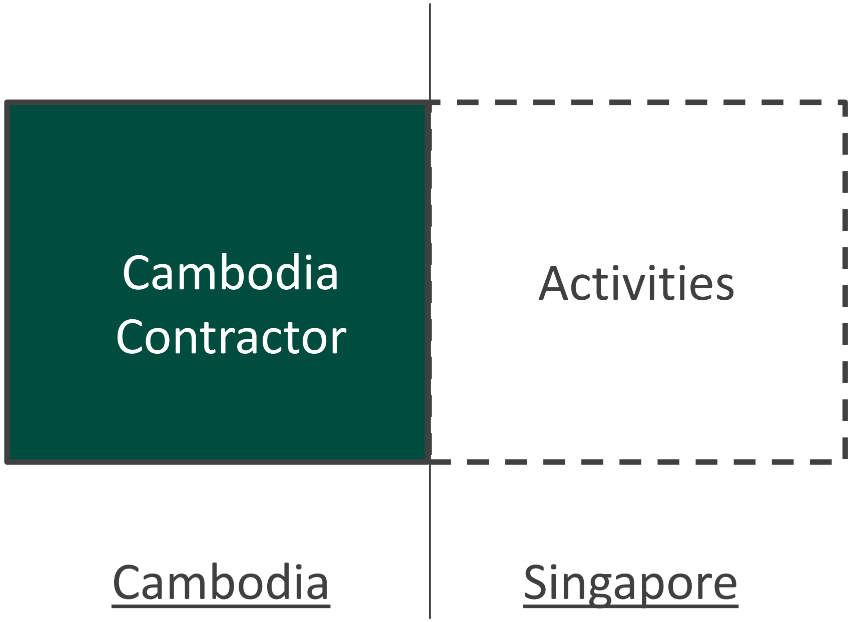
Permanent Establishment – Negative List

Certain activities of a preparatory or auxiliary character will *not* constitute a PE. The term PE shall not include the following:

- The use of facilities solely for storage, display or *delivery of goods/merchandise belonging to the enterprise.*
- The maintenance of a stock of goods/merchandise solely for *storage, display or delivery.*
- The maintenance of a stock of goods/merchandise solely for processing by another enterprise.
- Maintaining a fixed place of business solely for purchasing or collection of information for the enterprise.
- Maintaining a fixed place of business solely for the carrying out any other activity of preparatory or auxiliary character.
- Maintaining a fixed place of business solely for any combination of activities mentioned in (a) to (e), provided that the overall activity resulting from such combination is preparatory or auxiliary in character

Example # 1

- A Cambodian contractor successfully wins a tender for a project in Singapore.
- The project will be for a period of five months



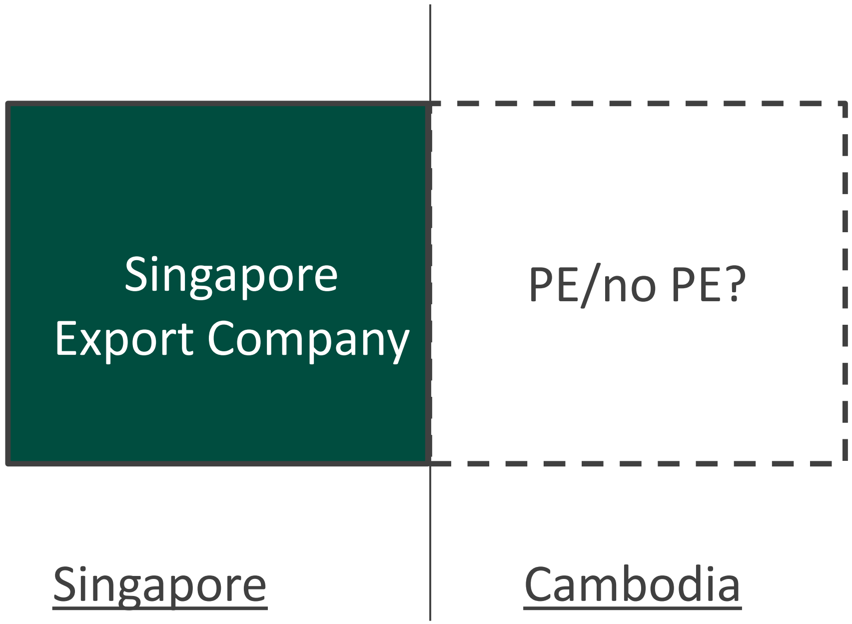
Example # 2

A Singaporean company has a representative based in Cambodia who:

- regularly take instructions from Singapore,
- reports to Singapore,
- regularly enters into sales contracts on behalf of the Singaporean company
- The representative renders these services exclusively to the Singaporean company and is remunerated by the Singaporean company.

PE under Article 5?

The Singaporean company is deemed to have a PE in Cambodia because of the presence of the representative in Cambodia who regularly and habitually concludes contracts on behalf of the Singaporean company.



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Capital Gains Tax

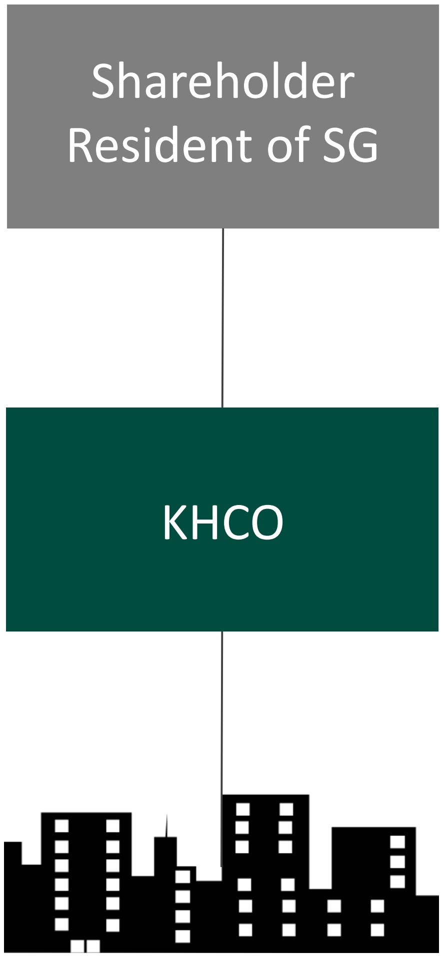
Article 14

- *Gains derived by a resident of a Contracting State from the <u>sale of immovable property</u>, situated in the other Contracting state, may <u>be taxed in that other State</u>*

- *the sale of shares deriving more then 50% of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State*

- *Sale of shares other than above shall be taxable only in State of "which the alienator is resident"*

Capital Gains Tax



Gains derived by a resident of a Contracting State –

- Singapore shareholder in KHCO
- Sells shares in KHCO for a gain
- *from the sale of shares deriving more then 50% of their value directly or indirectly from immovable property.*
- The shares are in a landholding company.
- *May be taxed in that other State*

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Employment Services

Income	Tax Treaty Rate	KH TOS Rate	SG Tax Rate
From the exercise of employment	Possible exemption for non-residents	0% - 20% for residents 20% for non-residents	0-17% per month

Conditions for exemption:

- If the recipient is present in the other State for a period or periods not exceeding in the *aggregate 183 days in a 12 month period*; and
- The remuneration is paid by, or on behalf of, *an employer who is not a resident of the other State*; and
- The remuneration *is not borne* by a resident of the other Contracting State or a permanent establishment or a fixed base which the employer has in the other State.

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Elimination of Double Taxation

	Item (1)	Item (2)	Item (3)
Country A Residence			
Income	$100		
Tax		$20	
Relief (DTA)		($17)	
Tax Payable			$3
Country B Source			
Income	$100		
Tax		$17	
Total Tax Payable Globally			**$20**

DTA – Withholding Taxes

	Without Deduction of Service Fee	With Deduction of Service Fee	Effect of DTA
Profit before service deduction	100.00	100.00	100.00
Service fees	-	80.00	80.00
Taxable profit	100.00	20.00	20.00
Profit tax @ 20%	20.00	4.00	4.00
Profit after tax	80.00	16.00	16.00
Profit tax payable	20.00	4.00	4.00
WHT on dividend @14%	11.20	2.24	1.60
WHT on dividend @10%			
WHT on service fee @ 14%	-	11.20	8.00
WHT on service fee @10%			
Total tax payable	**31.20**	**17.44**	**13.60**
Tax saving	-	13.76	17.60*

Case study 1 – The Starbucks Case

Sales 2015
400 million

Pre-tax Profit
34 million

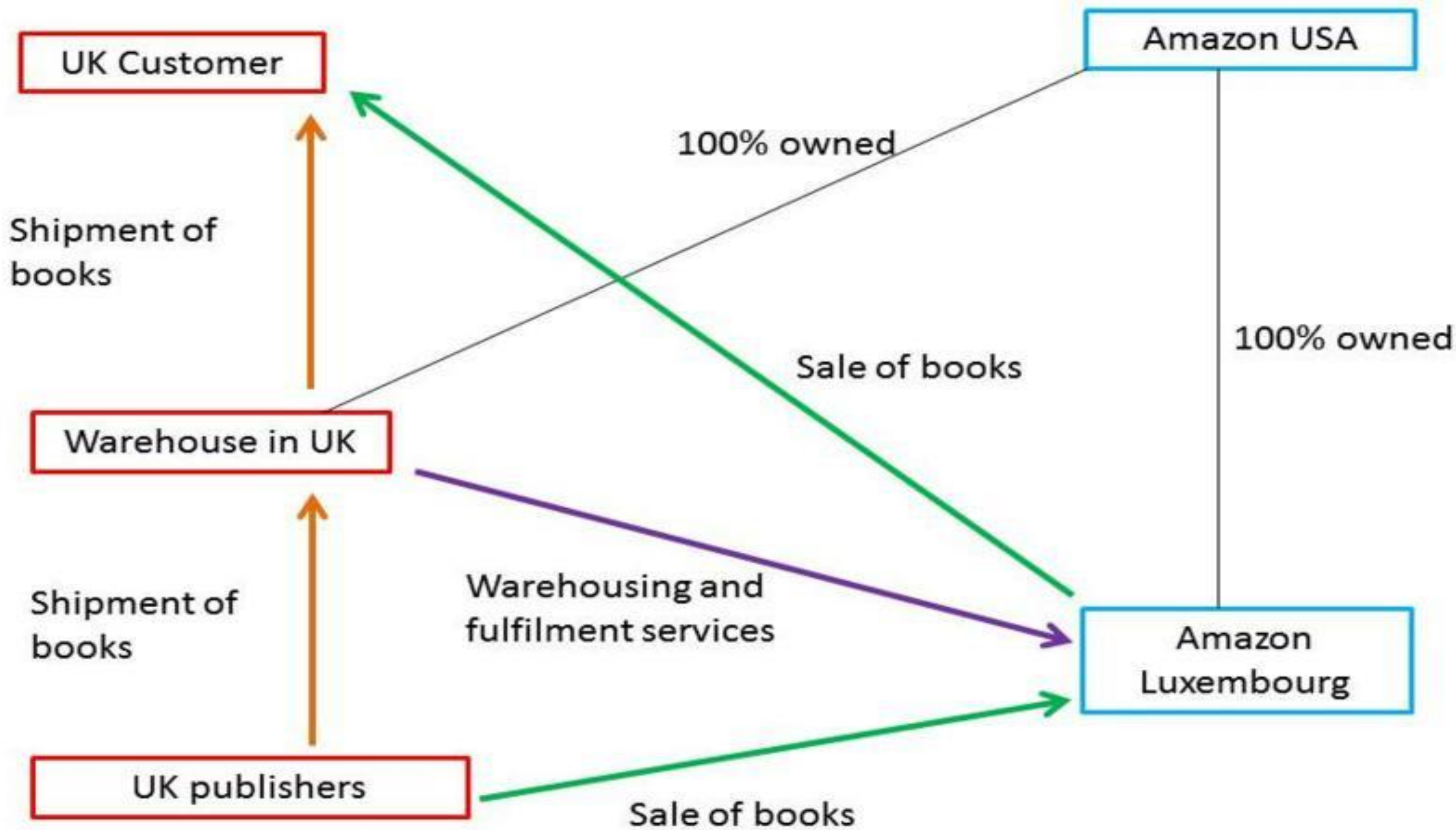
Taxes
8 million

Loan + Interest

Royalties

DTA – anti -avoidance

The Amazon Case…….



Case study

Mr. Tony Stark, a American who has resident in Singapore for five years, has been sent by his SG-based employer to work in Cambodia. He will continue to be paid by the SG-based employer.

Mr. Stark flies in and out of Cambodia during the 12 month period. The SG-based employer re-charges Mr. Stark's salary to its project office in Cambodia.

- Is Mr. Stark liable for ToS in Cambodia?
- If so, what part of his income needs to be reported in Cambodia?
- If he is subject to tax in Cambodia, can he claim exemption from taxation in Singapore?
- What would be required for him to obtain tax treaty relief?

Is Singapore the most Tax efficient location?

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Anywhere

Shareholder

NO WHT on:

- Dividends
- Capita Gains

Singapore

Dividends and Capital Gains **not taxable** in Singapore

SG CO

	WHT
• Dividend	**10%**
• Interest	**10%**
• Royalty	**10%**
• Management Fee	**10%**
• Capital Gain	**0%**

Cambodia

KH CO

Thank you

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