An Introduction to Tax Treaties Throughout Asia

- Double Taxation Agreements and Your Asian Investment Strategy
- Key Tax Rates Around Asia
- Anti-Avoidance Rules Across Asia
- Bilateral Investment Treaties
“Tax, used properly, greases the wheels of international commerce,” as one of our clients recently put it. That’s a rather different sentiment to the old adage about death and taxes, but it is one that is becoming increasingly valid, and especially so throughout Asia. As world trade continues to grow (even in these troubled economic times, global trade grew over 2 percent in 2012), the reduction of trade barriers, tariffs, and customs duties is becoming increasingly common. Part of this is the remit of the World Trade Organization, which monitors and provides a legal platform for international commerce. However, another significant growing trend in the promotion of global trade is the creation of new trade and tax agreements.

In this issue of Asia Briefing Magazine, we take a more regional view of the subject, and look at the various types of trade and tax treaties that exist between Asian nations. These include bilateral investment treaties (BITs) - which are somewhat unfashionable, yet still the major focal point of bilateral trade between many smaller emerging nations - and also the meatier double tax treaties (DTAs) and free trade agreements (FTAs) that directly affect businesses operating in Asia. China’s own FTA with ASEAN abolishes import duties on thousands of products, and manufacturing in say Vietnam to service the China market is beginning to make a lot of sense if your product falls under the treaty remit. The DTAs that go along with this can, under the correct structure, permit employees to be based in foreign countries without tax penalty, and may even allow service offices to be established abroad without being subject to local profits taxes. Together, such trade agreements are a powerful combination.

Simply put, tax treaties are changing the nature of global logistics and the global supply chain, and are having a profound impact on Asia’s business landscape. We hope this introduction is useful and helps our readers understand and begin to make business cases for examining pertinent treaties to take advantage of what amounts to the ongoing dismantling of regional and global trade barriers.

With best wishes,
An Introduction to Tax Treaties Throughout Asia

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Double Taxation Agreements and Your Asia Investment Strategy

– By Chris Devonshire-Ellis, Christian Fleming and Alex Tangkilisan, Dezan Shira & Associates

Double taxation has been dubbed “one of the most visible obstacles to cross border investment,” leaving room for a significant amount of money to be saved under the almost 3,000 double taxation avoidance agreements (DTAs or DTAAs) signed between nations across the globe. To combat such obstacles, DTAs aim to prevent the same income from being taxed by two or more states, while also eliminating tax evasion and encouraging cross-border trade efficiency.

DTAs are mostly of a bilateral nature and, while DTA-signing countries are not all members of the Organization for Economic Cooperation and Development (OECD), DTAs are generally based on model conventions developed by the OECD or (less commonly) the United Nations. And while about 75 percent of the actual words of any given DTA are identical with the words of any other DTA, the applicability and specific provisions of each treaty can vary substantially.

From an investor’s perspective, confusion about international taxation can arise when investors are subject to two different and potentially conflicting tax systems. For example, Hong Kong and Singapore adopt a “territorial source” principle of taxation, which means that only profits sourced locally are taxable. Meanwhile, other countries such as China and the United States, are on the worldwide tax system, and resident enterprises can be required to pay tax on income sourced both inside and outside of the country. DTAs not only provide certainty to investors regarding their potential tax liabilities, but also act as a tool to create tax-efficient international investments.

DTAs apply to individuals and companies of the countries or jurisdictions who are parties to the agreement, with the aim to prevent double taxation by allowing the tax paid in one of the two countries to be offset against the taxes payable in the other country, and/or by providing exemptions or reduced tax rates for specific income types such as royalties, interest, and dividends.

Withholding Tax and Profit Repatriation

DTAs also affect the repatriation of profits and earnings, as the location of profit taking and distribution can be manipulated favorably under the correct circumstances. This means that profits may be permitted to be taken in a lower cost jurisdiction than would normally be the case and distributed from there back to the overseas headquarters. This makes complete sense when developing a business in Asia, as capital injections and investments can then be made from the lower tax jurisdiction.

The distribution of dividends back to the home domicile can also be arranged in a beneficial and less tax burdensome manner than would otherwise be possible. Many preferred holding company jurisdictions maintain DTAs that limit or eliminate the level of withholding taxes payable on dividends coming from subsidiary countries and going to parent companies. For example, Hong Kong has a DTA in place with China that lowers dividend withholding taxes from the general rate of 10 percent down to just 5 percent (provided certain capital holding requirements are met). What this means for foreign businesses is that they have the option to create a corporate structure such that profits from a China subsidiary may be remitted to a Hong Kong holding company at a 5 percent withholding tax rate on dividends, before then being passed on to the overseas parent company with no additional tax obligations. In contrast, if the China subsidiary were to remit directly to the parent company in a country that does not hold a DTA with China, it may be taxed at a withholding tax rate of 10 percent. Such reductions can represent significant tax savings over a period of time, being realized instead as additional profits.

Permanent Establishments

DTAs also exist to define areas where companies may not be considered to be generating taxable income in one or the other country. Within these, a key area is the concept of permanent establishment (PE) status.

There are three general types of PEs that are recognized throughout the world: fixed place PEs, agency PEs, and service PEs. These are typically defined as follows:

<table>
<thead>
<tr>
<th>Type of PE</th>
<th>Requisites</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed Place PE</td>
<td>• Fixed place of business</td>
</tr>
<tr>
<td></td>
<td>• Business of the foreign entity is wholly or partly carried out here</td>
</tr>
<tr>
<td>Agency PE</td>
<td>• Authority to conclude contracts on behalf of the foreign enterprise</td>
</tr>
<tr>
<td></td>
<td>• Secures and delivers orders wholly or almost wholly on behalf of the foreign enterprise</td>
</tr>
<tr>
<td>Service PE</td>
<td>• Foreign enterprise furnishes or performs services in the foreign country</td>
</tr>
<tr>
<td></td>
<td>• Staff works in the foreign country for a total of 6 months or 183 days during a 12-month period</td>
</tr>
</tbody>
</table>
Triggering PE status is an issue of great importance as it defines the taxable status of particular legal structures and trade. A typical DTA, for example, contains clauses related to the PE concept and this can favorably impact on the total investment needed to enter the target market. It can also impact upon the type of legal vehicle actually required to be incorporated and, in some cases, does away with the need for one altogether.

The concept of PE is primarily used to determine a specific state’s right to impose tax on the business activities of foreign companies operating in that country. Where a resident of a country carries on business in another country with which the resident’s country has a DTA, the profits derived will not be subject to tax in the other country unless the business is carried on through a PE. Once an enterprise triggers PE status in a country, that enterprise will be subject to the host country’s relevant business taxes, and any qualifying staff will be subject to individual income tax in the country as well. As such, it is critical for foreign businesses operating within Asia in any capacity to stay on top of their PE applicability and the relevant tax rates in the region.

With further regards to PE qualifications, the OECD Model Income Tax Treaty defines a PE as a “fixed place of business through which the business of an enterprise is wholly or partly carried on.” However, while most DTAs do use the OECD definition, countries are allowed to define what constitutes a PE independently.

This can have highly beneficial results. For example, a well-structured incorporation can carry out effective services for its parent company - in some cases to the extent of billing local companies on their behalf - without triggering tax exposure in the secondary country. It depends upon how the PE issue is addressed within the specific DTA. Singapore, for example, has favorable DTAs with many other countries, which when properly structured at the local incorporation level, do away with any profits tax liability altogether, even while maintaining an office in the country. Such tax structuring and usage of DTAs is becoming more common, and precise evaluation of how a PE is determined under the terms of each treaty becomes important to understand.

Conclusion
In addition to the abovementioned taxation implications, DTAs lay out the ground rules for many other bilateral tax agreements. The nature of these differ significantly depending upon each individual treaty, however each should be studied in detail to ascertain both the required legal structure and the scope of trade. International businesses intending to trade with Asia and/or establish a physical presence would be wise to examine the applicable treaties and seek professional advice over the legal and financial implications prior to contemplating the legal structure itself.

Case Study: Using DTAs to Offset Profits Tax and Eliminate PE Liabilities
A recent study carried out by Dezan Shira & Associates Singapore involved extensive use of the Singapore-Spain DTA for a company based in Madrid looking to set up a service office as a limited liability company in Singapore. The Spanish company’s Singapore entity was charged with operating as a regional hub for promotional activities and conducting invoicing on behalf of the Spanish entity’s significant online business. A detailed study of the DTA’s PE clauses resulted in the following conclusions concerning the use of the DTA in avoiding profits tax in Singapore:

• Consulting fees received should not be taxable in Singapore since the service activities are conducted outside Singapore at a fixed place of business in Spain. As such, the income should not be considered to be accruing in Singapore.
• The income will not be deemed to be derived in Singapore under Section 12(7) as no services pertaining to this income are being performed in Singapore. As a result, no withholding tax should be due on such payments made by the clients in Singapore.
• On this basis, the income would be considered foreign sourced income. However, there is a risk that such income could be considered remitted into Singapore if either the fees are paid into a Singapore bank or used to satisfy trade or business debts in Singapore (such as your own company subsidiary in Singapore). To alleviate this risk, the income received should not be paid or used in this manner.

This business case and use of the Spain-Singapore DTA was enough to permit the client to establish operations without the risk of incurring double taxation in Singapore, and was an integral part of the client’s expansion into Asia. Without the DTA, the business model would not have been viable.
### Key Tax Rates Around Asia

#### Glossary
- **CIT** = Corporate income tax
- **VAT** = Value-added tax
- **GST** = Goods and services tax

#### Laos

<table>
<thead>
<tr>
<th>Country</th>
<th>Key Tax Rates</th>
<th>Withholding Tax*</th>
<th>Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Laos</td>
<td><strong>CIT</strong></td>
<td>28%</td>
<td>10%</td>
</tr>
<tr>
<td><strong>VAT</strong></td>
<td></td>
<td>10%</td>
<td>10%</td>
</tr>
</tbody>
</table>

* Withholding Tax: Rates may be reduced under DTAs

#### Malaysia

<table>
<thead>
<tr>
<th>Country</th>
<th>Key Tax Rates</th>
<th>Withholding Tax*</th>
<th>Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malaysia</td>
<td><strong>CIT</strong></td>
<td>25%</td>
<td>5%/10%</td>
</tr>
<tr>
<td><strong>GST</strong></td>
<td></td>
<td>0%</td>
<td>15%</td>
</tr>
</tbody>
</table>

* Withholding Tax: Rates may be reduced under DTAs

#### Myanmar

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<tr>
<th>Country</th>
<th>Key Tax Rates</th>
<th>Withholding Tax*</th>
<th>Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Myanmar</td>
<td><strong>CIT</strong></td>
<td>25%</td>
<td>0%</td>
</tr>
<tr>
<td><strong>VAT</strong></td>
<td></td>
<td>0%</td>
<td>15%</td>
</tr>
</tbody>
</table>

* Withholding Tax: Rates may be reduced under DTAs

#### Cambodia

<table>
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<tr>
<th>Country</th>
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<th>Withholding Tax*</th>
<th>Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cambodia</td>
<td><strong>CIT</strong></td>
<td>20%</td>
<td>14%</td>
</tr>
<tr>
<td><strong>VAT</strong></td>
<td></td>
<td>10%</td>
<td>20%</td>
</tr>
</tbody>
</table>

* Withholding Tax: Rates may be reduced under DTAs

#### India

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<tr>
<th>Country</th>
<th>Key Tax Rates</th>
<th>Withholding Tax*</th>
<th>Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td><strong>CIT</strong></td>
<td>30%/40%</td>
<td>12.5%</td>
</tr>
<tr>
<td><strong>VAT</strong></td>
<td></td>
<td>0%</td>
<td>4.95%</td>
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</table>

* Withholding Tax: Rates may be reduced under DTAs

#### Indonesia

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<th>Country</th>
<th>Key Tax Rates</th>
<th>Withholding Tax*</th>
<th>Individuals</th>
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</thead>
<tbody>
<tr>
<td>Indonesia</td>
<td><strong>CIT</strong></td>
<td>25%</td>
<td>10%</td>
</tr>
<tr>
<td><strong>VAT</strong></td>
<td></td>
<td>0%</td>
<td>5%</td>
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</tbody>
</table>

* Withholding Tax: Rates may be reduced under DTAs

#### Brunei

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<th>Country</th>
<th>Key Tax Rates</th>
<th>Withholding Tax*</th>
<th>Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei</td>
<td><strong>CIT</strong></td>
<td>21%</td>
<td>0%</td>
</tr>
<tr>
<td><strong>VAT</strong></td>
<td></td>
<td>0%</td>
<td>15%</td>
</tr>
</tbody>
</table>

* Withholding Tax: Rates may be reduced under DTAs

#### China

<table>
<thead>
<tr>
<th>Country</th>
<th>Key Tax Rates</th>
<th>Withholding Tax*</th>
<th>Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td><strong>CIT</strong></td>
<td>25%</td>
<td>3%/6%/11%/17%</td>
</tr>
<tr>
<td><strong>VAT</strong></td>
<td></td>
<td>10%</td>
<td>10%</td>
</tr>
</tbody>
</table>

* Withholding Tax: Rates may be reduced under DTAs

#### Hong Kong

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<thead>
<tr>
<th>Country</th>
<th>Key Tax Rates</th>
<th>Withholding Tax*</th>
<th>Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hong Kong</td>
<td><strong>CIT</strong></td>
<td>16.5%</td>
<td>0%</td>
</tr>
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</table>

* Withholding Tax: Rates may be reduced under DTAs

#### Philippines

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<th>Country</th>
<th>Key Tax Rates</th>
<th>Withholding Tax*</th>
<th>Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Philippines</td>
<td><strong>CIT</strong></td>
<td>30%</td>
<td>0/7%/12%</td>
</tr>
<tr>
<td><strong>VAT</strong></td>
<td></td>
<td>15%</td>
<td>20%</td>
</tr>
</tbody>
</table>

* Withholding Tax: Rates may be reduced under DTAs

#### Singapore

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<thead>
<tr>
<th>Country</th>
<th>Key Tax Rates</th>
<th>Withholding Tax*</th>
<th>Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Singapore</td>
<td><strong>CIT</strong></td>
<td>17%</td>
<td>7%</td>
</tr>
</tbody>
</table>

* Withholding Tax: Rates may be reduced under DTAs

#### Thailand

<table>
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<th>Country</th>
<th>Key Tax Rates</th>
<th>Withholding Tax*</th>
<th>Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thailand</td>
<td><strong>CIT</strong></td>
<td>20%</td>
<td>7%</td>
</tr>
</tbody>
</table>

* Withholding Tax: Rates may be reduced under DTAs

#### Vietnam

<table>
<thead>
<tr>
<th>Country</th>
<th>Key Tax Rates</th>
<th>Withholding Tax*</th>
<th>Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vietnam</td>
<td><strong>CIT</strong></td>
<td>25%</td>
<td>10%</td>
</tr>
</tbody>
</table>

* Withholding Tax: Rates may be reduced under DTAs

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* CIT: Domestic companies taxed at 30%, foreign companies at 40%  
* Dividends: There is a 15% dividend distribution tax paid by the company  
* Div.: Dividend with respect to ordinary income  
* Roy.: Royalty income  
* *: Indicates individuals and non-residents are subject to different rates  
* DTAs: Double Tax Avoidance Agreements
DTAs in Asia

* Note: These maps should serve as general reference only. For advice concerning a particular DTA within Asia, please email asia@dezshira.com
Anti-Avoidance Rules Across Asia

By Rohan Maitra, Dezan Shira & Associates

The advent of general anti-avoidance rules (GAAR) is a relatively recent phenomenon, and anti-avoidance rules have been passed into law by several countries in response to the increasing use of sophisticated legal means to avoid taxes levied in certain jurisdictions.

Common legal means to avoid taxation in different countries can include the following:

- The establishment of a company or subsidiary in an offshore jurisdiction;
- The use of a “tax haven” – a region where the rate of taxation is officially extremely low or nonexistent;
- Exploitation of vague legal definitions – for example, the difference between “business” and “personal” expenditures; or
- Investments known as “tax shelters,” which are exempt from certain taxes such as home ownership, individual retirement accounts and pension plans.

In response to these methods, governments around the world have worked to reduce the practice of tax avoidance through a combination of restrictions on certain investments and strengthening enforcement measures against the shifting of profits. GAAR is one of many tools that governments use in this regard.

Basically, anti-avoidance rules give the relevant tax authorities the right to withhold certain tax benefits from transactions, or to deny these benefits altogether if it is clear that the entities involved are only attempting to obtain a reduction in taxes. This is called the "substance over form" principle, in which the issue is not simply the legality of the use of tax avoidance, but rather to determine whether the sole reason for the procedure is to avoid paying taxes, and it has become a crucial part of GAAR legislation in many countries.

Anti-Avoidance Rules in China

The PRC’s initial foray into anti-avoidance rules emerged with the release of Circular 2 in 2008, which introduced China’s Corporate Income Tax (CIT) Law. In addition to implementing the new tax system, the new law also included China’s first incarnation of anti-abuse provisions, directly aimed at tax reduction and avoidance.

Under the Act’s provisions, transfer pricing regulations have also been widened to apply to domestic transactions as well as international transactions, which has resulted in higher barriers for tax avoidance. Further, these new regulations have called a number of previous Supreme Court decisions into question, including a prominent case involving telecommunications titan Vodafone.

Indian tax and judicial authorities are currently in the process of reviewing previously-closed cases to see if the regulations merit reconsideration of the decisions. If the cases are reopened and the decisions are changed, these companies and others may face retrospectively-applied taxes.
of the new GAAR rules would directly impact those using the "Mauritius route." Mauritius is one of India's largest providers of foreign investment – accounting for around 40 percent of India's FDI inflows - and many different press outlets in India have theorized that investors who invest in India through Mauritius have been taking advantage of India's double tax treaty with the country to reduce their capital gains taxes.

Under the current circumstances, however, these investments will not be impacted until 2016, when the GAAR is actually implemented. The regulations do, however, include new Mauritius-specific anti-avoidance provisions - entities looking to invest in India from that location will likely have to provide stronger proof of investment in Mauritius, and the burden of "substance over form" proof will likely be strengthened as well. Furthermore, Indian governmental authorities are actually considering updating their double tax treaty with Mauritius, which may result in an additional batch of regulations on investments from the country.

Anti-Avoidance Rules in ASEAN

Although there are as of yet no generalized anti-avoidance rules in the ASEAN Economic Community (AEC), several ASEAN countries have nonetheless adopted – or are in the process of adopting - anti-avoidance statutes within their own jurisdictions and are gradually changing their tax laws to conform to global anti-avoidance standards. Thailand, for instance, has no official GAAR, but anti-avoidance measures still exist (which include more thorough audits of companies that are suspected of tax avoidance and other abuses).

Anti-avoidance is also likely to be a very important topic as the AEC continues finalizing its regulations and legal requirements. When the ASEAN-specific regulations take full effect in 2015, many of the countries involved will see a reduction in their corporate tax rates, and the anti-avoidance measures can play an important role in bolstering revenue streams to the countries.

Malaysia

In dealing with transactions, Malaysia has implemented many anti-avoidance rules in response to tax avoidance. Malaysia's rules allow its tax authorities to deny or disregard certain transactions on the basis of their being undertaken solely for tax benefits, or to deny the benefits to the transactions. Additionally, Malaysia has implemented provisions aimed at shareholder continuity, living accommodations, and time periods of transactions.

Myanmar

Although Myanmar has no formalized GAAR as of 2013, its high number of DTAs with other countries has forced it to adopt a stronger stance on this issue than have most of ASEAN's member states. Under Myanmar's Income Tax Law, tax authorities have the right to assess and reassess whether a tax payer has fraudulently tried to avoid paying required taxes. Additionally, although no laws against thin capitalization exist, there are certain limits on the deductibility of interest that help to guard against this strategy.

Singapore

As one of the world's most open and fastest–growing economies, Singapore has had to deal with anti-avoidance in many different situations over the years. Singapore's current system of anti-abuse regulations allows its tax authorities (IRAS) to disregard transactions or benefits if the sole intent in the transaction is to alter the paying party's tax rate. If the transaction is found to be carried out for genuine commercial reasons, however, then all applicable benefits are provided. Singapore also has regulations regarding transfer pricing regulations that generally focus on the “arm’s length” principle, which states that the price paid in any transaction between two related parties must be equal to the price the purchasing party would pay were no relationship to exist.

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All the relevant business and individual tax rates across all countries in Asia.

India’s Taxes For Foreign Invested Entities

Our guide to the applicable taxes when establishing a business in India.

The China Tax Guide (Sixth Edition)

A complete, in-depth overview of all the taxes foreign investors in China need to be aware of.
Bilateral Investment Treaties

By Chris Devonshire-Ellis, Dezan Shira & Associates

Bilateral investment treaties (BITs) are an oft-ignored part of bilateral trade, commerce and investment between two countries, and have often been superseded by other, more detailed trade agreements such as DTAs. Nonetheless, for many countries, BIT agreements remain the only basis through which they can mutually and legally recognize the protocols and parameters of bilateral investments, and particularly so in the case of many lesser developed countries in Asia, Africa, the Middle East and Latin America. For such countries, BITs may be the only form of agreement in place with major trading powers such as China, India and even the United States.

The purpose of a BIT between two countries is reciprocal encouragement, promotion and protection of investments in each other’s territories by companies based in either country. These treaties typically cover the following areas:

- Scope and definition of investment;
- Admission and establishment;
- National treatment;
- Most-favored-nation treatment;
- Fair and equitable treatment;
- Compensation in the event of expropriation or damage to the investment;
- Guarantees of free transfers of funds; and
- Dispute settlement mechanisms, both state-state and investor-state.

To illustrate the wide use of BITs, we list below the details of the agreements held by China and India as examples of how widespread their use actually is:

China’s BIT Agreements include:
- Africa: Botswana, Cameroon, Cote D’Ivorie, Djibouti, Ethiopia, Egypt, Ghana, Madagascar, Morocco, Tunisia and Uganda
- Americas: Argentina, Benin, Bolivia, Canada, Chile, Colombia, Cuba, Ecuador, Guyana, Jamaica, Mexico, Peru, Trinidad & Tobago and Uruguay
- Asia & Oceania: Australia, Brunei, Cambodia, Indonesia, Japan, Laos, Mongolia, New Zealand, Philippines, Singapore, Sri Lanka, Thailand, North Korea, South Korea and Pakistan
- Europe: Albania, Austria, Belgium-Luxembourg, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Netherlands, Norway, Portugal, Romania, Russia, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom
- Middle East: Bahrain, Iran, Jordan, Lebanon, Kuwait, Syria, Qatar and UAE

India’s BIT Agreements include:
- Africa: Egypt, Ghana, Mauritius, Morocco and Mozambique
- Americas: Mexico, Argentina and Colombia
- Asia & Oceania: Australia, Indonesia, Kazakhstan, Nepal, South Korea, Sri Lanka and Thailand
- Europe: Austria, Belgium-Luxembourg, Bosnia, Croatia, Czech Republic, Denmark, France, Germany, Greece, Hungary, Italy, Netherlands, Portugal, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom
- Middle East: Oman

China has been entering into BITs with other countries since the early 1980s, when the nation began its path to reforms under then Premier Deng Xiaoping. Although many have now been superseded by more complicated and sophisticated trade agreements such as DTAs and other bilateral mechanisms, many smaller emerging nations only have such bilateral trade treaties with China.

China has over 80 BITs in place, and continues to use them in its bilateral relationships. So while the China-Switzerland BIT was ratified back in 1987, others still continue to be put into position, such as the recent BIT agreement between China and Canada that was negotiated at the Vladivostock APEC summit last year.

India has nearly 40 BITs in place, and continues to use them in its bilateral relationships. For example, while the BIT signed between India and Germany was ratified back in 1995, others still continue to be put into position. The recent BIT agreement between India and Nepal was negotiated as recently as 2011.

India’s BIT agreements include:
- Africa: Egypt, Ghana, Mauritius, Morocco and Mozambique
- Americas: Mexico, Argentina and Colombia
- Asia & Oceania: Australia, Indonesia, Kazakhstan, Nepal, South Korea, Sri Lanka and Thailand
- Europe: Austria, Belgium-Luxembourg, Bosnia, Croatia, Czech Republic, Denmark, France, Germany, Greece, Hungary, Italy, Netherlands, Portugal, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom
- Middle East: Oman

Asia’s various BIT, DTA and FTA agreements can be downloaded in their entirety from the ASEAN Briefing website. To access these documents, simply visit www.aseanbriefing.com and click on the “Tax Treaties” section.
China - China has a comprehensive series of tax treaties both multilaterally with ASEAN and bilaterally with most of the trade bloc’s member states. Through its free trade agreements in particular, import-export duties are being abolished on thousands of products and, as a result, China will likely begin to lose part of its production capacity to low-cost ASEAN members such as Vietnam that will import products duty free into China. However, it also frees up ASEAN markets across Southeast Asia for Chinese products – creating a boom for both Chinese and ASEAN manufacturers and sourcing companies. It also enhances China’s ability to trade with India through an ASEAN intermediary company.

India - Like China, India also has substantial FTAs and DTAs with ASEAN and its members states. This means that Indian companies looking to set up a subsidiary in an ASEAN nation can take advantage of not just the ASEAN FTA with India, but crucially also the ASEAN agreement with China (and vice versa for Chinese companies). As such, Indian-Chinese bilateral trade through the use of ASEAN subsidiaries and relevant tax treaties looks to dramatically increase in the coming years. Much of that will pass through ASEAN service offices set up by companies from both countries, taking advantage of their respective ASEAN DTAs, while using countries such as Singapore as a trading base.

Singapore - Singapore has been positioning itself as a massive service center for intra-Asian trade. Setting up a foreign subsidiary here (and thus qualifying for the ASEAN benefits via a Singapore subsidiary) is easy and inexpensive. Add to that superb logistics, port and warehousing infrastructure, a world class banking system, and complete free trade means the country’s position as a regional trade hub is unrivalled. Understanding the benefits that Singapore’s extensive collection of DTAs can bring to international trade throughout the region should be a priority item for any international business looking to trade in or with Asia.

Vietnam - As a member of ASEAN, Vietnam is committed to many tax treaties, and is active in adding its own. In addition to China, Vietnam also offers free trade to all ASEAN nations, and is part of free trade agreements between ASEAN and other countries. Vietnam is currently negotiating bilateral deals with key partners such as European Union (EU), the United States, Canada and will be part of the Trans-Pacific Strategic Economic Partnership Agreement. Meanwhile, the abolition of import duties on thousands of products under the terms of the ASEAN-China FTA will push Vietnam, and its lower operating costs, as a secondary manufacturing supplier to China.

Treaties between ASEAN, its members countries and all other nations can be obtained from the ASEAN Briefing website at www.aseanbriefing.com. If you are interested is setting up a business anywhere in China, India, Hong Kong, Singapore, Vietnam or any other Asian country, please contact Dezan Shira & Associates for assistance: asia@dezshira.com.
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