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India Introduces Optional Lower Corporate Tax Regime to Boost Economy

By Sakate Khaitan and Abbas Jaorawala

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India has historically been known as a high-tax jurisdiction for corporations. However, since 1991, the government has worked to improve the corporate tax regime with a goal of enticing investment and promoting industry. A series of measures introduced in September 2019 is the latest step seeking to make Indian companies more attractive for both domestic and international investors. Major parts of this effort involve the enactment of special optional regimes that result in lower taxes and a general reduction in corporate tax rates.

BACKGROUND: INDIA'S CORPORATE TAX PROVISIONS

Prior to economic liberalisation in 1991, the base corporate tax rate for a domestic Indian company was as high as 50%. Over a period of time, the Income-Tax Act, 1961 (the Act) has brought down the base corporate tax rate for Indian companies to 30%. However, the effective tax rate is higher due to applicability of a surcharge and education cess – in the last decade, the effective tax rates for Indian companies have broadly been in the range of 31% to 35% depending on their level of taxable income.

Actual tax payments of Indian companies often do not reflect the headline rate of tax, as various tax holidays, exemptions, and deductions are available based on the activity or the geographical area where activities are undertaken. To ensure that companies with low or nil taxable income based on tax exemptions or special deductions pay some tax, a Minimum Alternate Tax[1] (M.A.T.) rate of 18.5%, exclusive of surcharge and cess, is applied to book profits when the M.A.T. yields greater tax than the amount due under normal corporate income tax provisions. The excess of M.A.T. over the normal tax calculation can be offset in future years where tax under the normal provisions is higher than M.A.T.[2] This offset amount is popularly known as M.A.T. Credit.

However, the total tax payable by companies and their shareholders is not limited to the normal corporate tax or M.A.T., if applicable. Additional taxes are payable once profits are distributed to shareholders as explained below:

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- An Indian company declaring or distributing a dividend is required to pay Dividend Distribution Tax (D.D.T.) at an effective rate of 20.56%[3].
- While a dividend is tax-free in the hands of the non-resident shareholders, Indian-resident shareholders other than companies and approved or charitable institutions are required to pay an additional dividend income tax of 10% exclusive of surcharge and cess, for dividends in excess of I.N.R. 1 million[4].

Even without considering the additional dividend income tax in the hands of resident shareholders, the total tax paid by Indian companies on profits distributed to shareholders ranges from approximately 41% to 46%, depending on the facts and circumstances.

REDUCING THE CORPORATE TAX RATE

As corporate tax rates across the globe have decreased and other jurisdictions have emerged as less expensive alternates to India for conducting business, India reassessed its corporate tax rates and regimes in order to stay competitive.

Comparatively, the current corporate tax rates in certain relevant jurisdictions are as under:

Country	Corporate tax rate
United States of America	21%
United Kingdom	19%
China	25% (special rates of 10%, 15%, and 20% are available to certain small businesses and businesses focussed on high technology)
Thailand	20% (lower tax rates apply to small companies)
Vietnam	20%

The Indian Finance Minister publicly acknowledged the need for lower corporate taxes while presenting his government's first full-fledged Union budget in February 2015. He stated that the reduction was required to complement the overhaul of the Indian indirect tax system through the introduction of the Goods and Services Tax and to address the global perception of India as a high-tax jurisdiction. Some of the key highlights of his 2015 budget speech were:

- India's corporate tax rate of 30% was higher than the rates prevalent in the other major Asian economies and thereby made Indian manufacturing uncompetitive.
- In order to increase investment, growth, and employment, the standard corporate tax rate would be reduced from 30% to 25% over the next four years.
- The lower corporate tax rate would be complemented by the withdrawal of certain special tax exemptions and incentives which resulted in avoidable litigation.

The government followed up on its promise to reduce the corporate tax rate by extending a corporate tax rate of 25%, exclusive of surcharge and cess, to the following types of companies:

1. **Small and medium companies (S.M.C.s) having prescribed turnover:** The latest turnover threshold is I.N.R. 4 billion (approximately U.S. $56.18 million) in Financial Year (F.Y.) 2017-18[5]. Additionally, S.M.C.s have been eligible to claim special tax exemptions and deductions, whereby the actual tax pay-outs could be lower than 25%.
2. **New manufacturing companies set up after 1 March 2016[6]:** However, such companies were not permitted to avail themselves of any special tax exemptions or deductions which may otherwise be available.

For companies other than the above, the headline tax rate of 30%, exclusive of surcharge and cess, continued to apply. Such companies were, however, not barred from claiming available special tax exemptions or deductions.

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Even with the above-mentioned tax rates, exclusive of D.D.T., the effective corporate tax rates have been in the range of 26% to 35%, depending on the amount of taxable income and the nature of activities. With India phasing out various special tax exemptions and deductions and simultaneously experiencing a slowdown in the economy, the government was prompted to revaluate how it might make Indian industry more attractive for domestic and foreign investment.

MEASURES TO ENHANCE THE CORPORATE TAX REGIME

Although a full-fledged Union budget was announced in July 2019[7], the government has since introduced a series of measures (the Ordinance) in September 2019[8] to make investing in Indian companies more attractive for both domestic and international investors. Amongst other measures, the Ordinance seeks to reduce corporate tax rates for Indian companies, as summarised below:

25.17%[9] effective corporate tax rate

- To promote growth and investment, with effect from F.Y. 2019-20, a domestic company will have an option to pay corporate tax at the rate of 22%. The effective tax rate will be 25.17%, inclusive of tax, surcharge, and cess.
- If this lower rate is adopted, a company will not be eligible to avail itself of specified tax exemptions and incentives, including the carryover of loss brought forward from tax exemptions and incentives.
- When this rate is elected, a company will not be required to pay M.A.T. on book profits. However, the company will not be eligible to offset brought forward M.A.T. Credit[10].
- Once exercised, the option cannot be withdrawn. However, if the company defaults on any of the conditions prescribed, the option will not be available for the year of default and onwards, and the headline tax rate of 30% (exclusive of surcharge and cess) will apply.

17.16% effective corporate tax rate for new manufacturing companies[11]

- This option is provided to attract fresh investment in manufacturing facilities in India and to boost the government's 'Make-in-India' initiative.
- With effect from F.Y. 2019-20, a new domestic company incorporated on or after 1 October 2019 (with fresh investment in manufacturing) and commencing production by 31 March 2023 has the option to pay income tax at the rate of 15%. Once the surcharge and cess are taken into account, the effective tax rate will be 17.16%.
  - ◊ To obtain the low rate of tax, certain conditions must be satisfied. In particular, the company:
  - ◊ should be engaged in the business of manufacturing or production and research in relation to the same[12];
  - ◊ should not be formed by splitting up or reconstructing a business already in existence and should not use any machinery or plant previously used in India for any purpose (unless otherwise specified); and
- should not avail specified tax exemptions or incentives, including the carry-forward of losses arising from tax exemptions or incentives.
- Such companies are exempt from M.A.T. and are not eligible to offset income tax with M.A.T. Credit[10].
- Transactions with closely connected or related parties will be subject to transfer pricing and fair

value benchmarking. Any additional profits attributable to the company from any adjustments arising on these transactions will be taxed at an effective rate of 34.32% (inclusive of surcharge and cess).

- Short-term capital gains or any other income not related to the manufacturing or production activities will be taxed at an effective rate of 25.17% (inclusive of surcharge and cess).

- Once exercised, the option cannot be withdrawn. However, if the company defaults on any of the conditions prescribed, the option will not be available for the year of default and onwards, and the headline tax rate of 30% (exclusive of surcharge and cess) will apply. In certain situations, the company may be able to exercise the option of 25.17% effective corporate tax rate mentioned above.

Companies not availing the above options for now[13]

- A company not opting for the above options will continue to pay tax at the corporate tax rate of 25% or 30%, both exclusive of surcharge and cess. The rate of M.A.T. on such companies is reduced to 15%, exclusive of surcharge and cess.

- After the expiry of a tax holiday/ exemption period, these companies can opt to pay corporate tax under Section 115BAA of the Act at the rate of 22%. The rate is increased to 25.17% when surcharge and cess are taken into account. These companies would then be exempt from M.A.T and also not be eligible to offset income tax with M.A.T. Credit[10]. Once exercised, the option cannot be withdrawn, as explained above.

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ANALYSIS OF OPTIONS CREATED BY THE ORDINANCE

In addition to the 25% and 30% standard corporate tax rates, the government has now introduced two new options that enable certain companies to pay an effective tax of 17.16% or 25.17% on taxable income arising in India. Any company exercising this option cannot access certain tax exemptions and deductions.

The following corporate tax regimes are available to an Indian company from F.Y. 2019-20 onwards:

Nature of company	Turnover up to I.N.R. 4 billion in F.Y. 2017-18 *(not preferring new option)*	Incorporated in or after F.Y. 2018-19; or turnover exceeding I.N.R. 4 billion in F.Y. 2017-18 *(not preferring new option)*	Manufacturing company incorporated on or after 1 March 2016	New Option I: Manufacturing company incorporated on or after 1 October 2019	New Option II: Any other company
Corporate tax rate	25%*	30%*	25%*	15%*	22%*
Availability of exemptions and deductions	Yes	Yes	No	No	No
Option for lower tax rate	Yes (22%*)	Yes (22%*)	Yes (22%*)	N/A	N/A
Applicability of M.A.T.	Yes	Yes	Yes	No	No

* Indicates tax rate exclusive of surcharge and cess for sake of simplicity.

> **India Introduces Optional Lower Corporate Tax Regime to Boost Economy**

Given the bouquet of corporate tax rates available, many domestic and international corporations with existing or proposed operations in India must evaluate which option is the most tax efficient. When considering the various options, it is first important to understand the nature of the specific tax exemptions and deductions which must be relinquished in order to qualify for the lower tax rates and exemption from M.A.T.:

Provision of the Act	Tax benefit
Section 10AA	Tax holiday for units established in Special Economic Zones and earning export profits (expiring next year)
Section 32(1)(iia)	Additional depreciation for entities engaged in production or manufacturing (no sunset date as of yet)
Section 32AD	Allowance for investment in certain notified backward areas
Section 33AB	Deduction for taxpayers in the business of tea, coffee, and rubber production
Section 33ABA	Deduction for deposit with Site Restoration Fund
Sections 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(2AA) and 35(2AB)	Deduction for expenditure on research and development
Section 35AD	Deduction for expenditure on certain specified infrastructure-related businesses (such as cross-country natural gas pipeline network, two-star and above hotels, hospital, etc.)
Sections 35CCC and 35CCD	Deduction for expenditure on agricultural extension and skill development projects
Chapter VI–A deductions	Deductions for income from businesses situated in specified areas, etc. (Section 80JJAA deduction for payment of remuneration to new employees shall continue to be allowed)

All carry-forward losses arising from the above list of tax exemptions or deductions automatically lapse[14]. Accordingly, unless the Indian company is expected to claim any of the above tax exemptions or deductions, the company may be inclined to opt for paying an effective tax of 17.16% or 25.17%, tax, as applicable. Since the option is permanent, careful consideration of future activities is required before availing this immediate benefit.

HOLISTIC COMPARISON OF TAX RATES

The decision to adopt a corporate tax rate should also consider the impact of D.D.T. and additional dividend tax on resident shareholders.

Notably, one of the feasible alternatives to an Indian company is an Indian Limited Liability Partnership (L.L.P.) subject to permissibility of activities under India's foreign direct investment (F.D.I.) policy. Neither the D.D.T. nor the additional dividend tax apply in case of an L.L.P. This is explained under different scenarios in the table on page 18.

The following observations arise from that table:

1. The L.L.P. is the most tax-efficient structure to undertake operations in India, if commercially feasible, unless the shareholder group consists entirely of non-residents. Organisations looking to set up manufacturing operations in India and who do not prefer L.L.P.s may overlook a marginal increase in tax cost and set up new manufacturing companies.
2. A company may continue with extant higher tax provisions only if it is eligible for specified tax exemptions or deductions, including the M.A.T. Credit or losses attributable to the exemptions or deductions, each of which may result in actual tax payments being lower than the tax payment under the new options.

3. Manufacturing companies incorporated on or after 1 March 2016 (and covered under the earlier specific 25% base corporate tax rate regime) will be inclined to utilize the new option of paying tax at the effective tax rate of 25.17%.

OPPORTUNITIES ARISING FROM THE ORDINANCE

The Ordinance provides considerable food for thought for heads of tax management in Indian companies. These include the following planning opportunities.

Use of L.L.P.s for Indian operations

In recent years, India's F.D.I. policy has permitted foreign investment in an Indian L.L.P. operating in a sector eligible for 100% F.D.I. under the automatic route with no F.D.I.-linked performance conditions. Given that an L.L.P. is not liable to pay D.D.T. and the resident shareholders do not pay additional dividend income tax, the tax advantages of using an L.L.P. are considerable. In addition, L.L.P.s are less regulated than companies and are now even permitted to access debt financing from abroad.

Once the L.L.P. structure is adopted, foreign partners may be drawn into an Indian tax net, as the L.L.P. may create a permanent establishment for a foreign partner. Consideration of a special purpose entity to invest in the partnership may limit the scope of review by Indian tax authorities. However, any gain from the disposition of the shares of a foreign partner may be subject to Indian withholding tax. An exemption from the withholding tax in India could be explored under the applicable Indian tax treaty.

As an alternative to starting a new business in the L.L.P. form, corporate management may wish to consider a tax-efficient migration of operations from an existing private Indian company to an Indian L.L.P. The potential application of the General Anti-Avoidance Rule (G.A.A.R.) should be taken into account. If the main purpose of a transaction is to enable an enterprise to claim a tax benefit in India, the benefit can be denied by the tax authorities under G.A.A.R., subject to facts, conditions, and relevant checks and balances. A careful non-tax related reason for the migration should be identified.

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While from a tax perspective an L.L.P. is most efficient, for foreign investors, other considerations such as control, transparency, consolidation, and possible taxation of the L.L.P.'s profits in the foreign partner's jurisdiction may tilt the balance in favour of a company.

Contract and toll manufacturing

The government has recently clarified that while foreign direct investment in the manufacturing sector benefits from an automatic route. This benefit applies to investment in contract manufacturing enterprises. Accordingly, manufacturing activities may be conducted either by the Indian entity itself or through a contract manufacturing arrangement with a corporation in India. The arrangement may be on a principal-to-principal basis or a principal-to-agent basis.

Certain existing companies in India with expansion plans are also considering establishing a sister or daughter company that can claim the beneficial of the 17.16% tax rate. This should, however, be tested from a G.A.A.R. perspective to ensure such a structure is not considered to be splitting up or reconstructing a business already in existence.

Certain companies may wish to consider spinning off existing manufacturing facilities into a new company through sale or demerger. However, this should be carefully analysed given that one of the conditions to avail the 17.16% tax rate is that the new company should not be formed by splitting up or reconstructing a business already in existence.

The new the company should not use any machinery or plant previously used in India for any purpose, unless the value is less than 20% of the total value of machinery or plant of the company.

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CONCLUSION

The tax ordinance has met the long-standing demand of domestic and foreign investors to reduce the effective corporate tax rates for Indian companies, while also exempting them from M.A.T. With the tax rate of 17.16%, India has positioned itself as an attractive jurisdiction for undertaking manufacturing operations. This along with the simplification of labour laws, is expected to boost investments in India and support the Make-in-India initiative of the government.

However, on account of the D.D.T. and additional dividend income tax, companies may still continue exploring other tax-efficient ways of structuring business operations, such as the L.L.P. owned by a foreign special purpose vehicle. Given the different permutations and combinations possible, the tax planning and strategy of existing and proposed business operations in India requires in-depth tax analysis that compares new benefits of low taxes with lost deductions.

[1] Section 115JB of the Act.

[2] Section 115JAA of the Act.

[3] Section 115-O of the Act.

[4] Section 115BBDA of the Act.

[5] The F.Y. in India is from 1 April to 31 March.

[6] Section 115BA of the Act.

[7] Finance Act (No. 2), 2019.

[8] The Taxation Laws (Amendment) Ordinance, 2019 which has become The Taxation Laws (Amendment) Act, 2019 on 11 December 2019.

[9] Section 115BAA of the Act.

[10] Circular No. 29/2019 dated 2 October 2019 followed by amendment to Section 115JAA of the Act.

[11] Section 115BAB of the Act.

[12] It has been clarified that businesses of (i) development of computer software, (ii) mining, (iii) conversion of marble blocks or similar items into slabs, (iv) bottling of gas into cylinders, (v) printing of books or production of cinematograph film, or (vi) any other notified business will not be eligible to avail this option.

[13] Announced through the press release accompanying the Ordinance.

[14] The clarification through Circular No. 29/2019 dated 2 October 2019 categorically states that carried-forward depreciation will also not be permitted for offset.

[15] The Ministry of Corporate Affairs had issued an internal memorandum in March 2019 barring incorporation of L.L.P.s for manufacturing activities. However, following representations of stakeholders that L.L.P.s are not barred from manufacturing under the L.L.P. Act, 2008, the memorandum was withdrawn. Accordingly, for now, L.L.P.s can be incorporated in India for both manufacturing and service business, subject to the sector being eligible to receive 100% F.D.I. under the automatic route with no F.D.I.-linked performance conditions.

[16] Since surcharge rates vary depending on the legal status of the shareholder, the same has not been considered for sake of simplicity.

See 'Holistic Comparison of Tax Rates' paragraph on page 15

Nature of company	Turnover up to I.N.R. 4 billion in F.Y. 2017-18 *(not preferring new option)*	Incorporated in or after F.Y. 2018-19; or turnover exceeding I.N.R. 4 billion in F.Y. 2017-18 *(not preferring new option)*	Manufacturing company incorporated on or after 1 March 2016	New Option I: Manufacturing company incorporated on or after 1 October 2019	New Option II: Any other company	L.L.P.[15]
Taxable income	100.00	100.00	100.00	100.00	100.00	100.00
Tax (highest)	29.12	34.94	29.12	17.16	25.17	34.94
Balance profit	70.88	65.06	70.88	82.84	74.83	65.06
D.D.T. (Balance profit * 20.56 / 120.56)	12.09	11.10	12.09	14.13	12.76	NIL
Distributed income	58.79	53.96	58.79	68.71	62.07	65.06
Total tax till this point	41.21	46.04	41.21	31.29	37.93	34.94
Additional dividend tax of resident shareholders (10% without surcharge and education cess[16])	5.88	5.40	5.88	6.87	6.21	NIL
Income in hands of shareholders post tax	52.91	48.56	52.91	61.84	55.86	65.06
Total tax paid	47.09	51.44	47.09	38.16	44.14	34.94

Canadian Tax 101 – An Introduction to the Foreign Investor

By Dean Smith

Cadesky U.S. Tax Ltd. (Canada)

Canada is an attractive place to conduct business. It benefits from the Comprehensive Economic and Trade Agreement (C.E.T.A.), unofficially known as the Canada-Europe Trade Agreement; the North American Free Trade Agreement (N.A.F.T.A.), scheduled to be replaced by the U.S.-Mexico-Canada Agreement; the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (C.P.T.P.P.); and other trade agreements. It has enacted investor protection laws and has low corruption, minimal levels of red tape, and a tax system that provides for tax-free treatment of intercompany dividends received from foreign subsidiaries.

Canada has a well-developed tax system based on concepts that give credence to contractual provisions between parties, albeit subject to a general anti-abuse rule. This article provides an introduction to that tax system for the benefit of a foreign investor looking to expand operations to North America.

GENERAL

Canada imposes an income tax on individuals, corporations, and trusts. Income taxes are levied at the Federal and provincial or territorial levels of government. Canada has ten provinces[1] and three internal territories[2].

Federal income taxation is imposed pursuant to the Canadian Income Tax Act (the Act). Three separate government bodies play a role in income taxation in Canada. The Department of Finance (Finance Canada) is responsible for analysing and developing tax policy and for implementing tax legislation. The Canada Revenue Agency (C.R.A.) is responsible for administering the Act and collecting taxes. The Department of Justice is involved when tax disputes go to court.

Residents of Canada are subject to tax on worldwide income. Non-residents are subject to Canadian taxation on Canadian-source income only, though exemptions or reductions may be permitted by virtue of a tax treaty. Non-residents will be subject to regular income tax on three types of income:

- Employment income exercised in Canada,
- Profits from a business carried on in Canada, and

- Gains from the disposition of taxable Canadian property (T.C.P.), such as Canadian real property.

Other types of income, such as interest, dividends, rents, and royalties are subject to a flat non-resident withholding tax. The provinces, in general, do not impose any taxes on non-business income earned by a non-resident.

When capital property is sold, one-half of a capital gain (known as a taxable capital gain) is included in the computation of taxable income and is taxed at the taxpayer's applicable tax rate.

The Federal government also imposes a value-added tax (V.A.T.) called the Goods and Services Tax (G.S.T.) or Harmonized Sales Tax (H.S.T.), depending on the province in which the supply takes place.

Canada does not impose wealth taxes, capital taxes, or stamp duties. Municipalities impose a property tax on the assessed value of real property interests. Land transfer taxes are levied on the sale or transfer of real property interests, but an exemption exists in the event of death for assets passed to heirs or estates. All provinces impose probate fees.

TAX TREATIES

Regarding income tax treaties and other agreements, as of 1 December 2019:

- 93 income tax treaties are in force; four have been signed but are not yet in force; and eight are under negotiation.
- Canadian tax treaties generally follow the Model Tax Convention on Income and on Capital (Model Treaty) of the Organisation of Economic Cooperation and Development (O.E.C.D.).
- 24 tax information exchange agreements are in force; one has been signed but is not yet in force; and five under negotiation[3].
- Canada has 58 social security agreements with other countries in force[4].

Canada is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument) of the O.E.C.D. It came into force on 1 December 2019 and will begin to apply to affected income tax treaties as of 1 January 2020. It has adopted minimum standards except for binding arbitration for treaty disputes.

FREE TRADE DEALS

In addition to C.E.T.A., N.A.F.T.A., and C.P.T.P.P., free trade agreements are in effect with the following countries: Chile, Colombia, Costa Rica, Honduras, Israel, Jordan, Korea, Panama, Peru, and Ukraine.

CORPORATION TAX

Residence

A corporation that is resident in Canada is taxed on its worldwide income. A foreign corporation doing business in Canada would be subject to Canadian tax only on its Canadian-source income, subject to a limitation under an applicable income tax treaty.

With limited exception for certain corporations formed prior to 27 April 1965, a corporation that is formed under Federal or provincial law is deemed to be a tax resident in Canada. Corporations formed elsewhere may be considered tax-resident in Canada if managed and controlled in Canada on principles formulated under English case law. Typically, this means the place where central management and control is exercised. For many foreign companies, the mind and management issue should not be a factor in determining residency status in Canada. It becomes an issue for private foreign companies where the owner/manager moves to Canada. As such, it is possible that a corporation may be a tax resident in Canada and elsewhere. In those circumstances, taxpayers must refer to an applicable income tax treaty to determine a company's residence.

Business income

Canada taxes the profits of taxpayers carrying on business. The term 'business' implies a certain level of activity in comparison to passive investment.

The starting point in determining a corporation's taxable income is its accounting income computed in accordance with generally accepted accounting principles or generally accepted business practices. Accounting income is then modified by specific rules contained in the Act.

In general, an expenditure is deductible in computing taxable income if it has been incurred for the purpose of gaining or producing income and is reasonable in the circumstances. Capital outlays, accounting reserves, expenses associated with exempt income, and expenditures for recreational facilities and club dues are not deductible.

A foreign company that is resident in a treaty country and doing business in Canada may be exempt from Canadian corporate tax if the company does not maintain a permanent establishment (P.E.) in Canada. Where the company has a P.E. in Canada, Canadian tax would be imposed only on the income from activities associated with the P.E. Where a foreign company does not have a P.E. in Canada, Canadian-source income is exempt from Canadian taxation. Nonetheless, the foreign company must file a Canadian corporate tax return to disclose its reliance on the treaty.

If a company is carrying on business in more than one province through a P.E. in each province, the business must apportion its business income to each province. The method of apportionment is based on revenues earned and wages paid in each province.

Property income

Dividends, interest, rents, and royalty income are taxable in Canada when received. Compound interest securities are subject to accrual requirements, generally on an annual basis. Other income is taxed as received or allocated, depending on the circumstances.

Canada exempts intercompany dividends. Dividends received from a taxable Canadian corporation will not be subject to a second level of corporate taxation when paid to a Canadian-resident corporation. Dividends received from a foreign corporation are subject to a somewhat different rule.

Dividends received from a foreign corporation will be excluded if the foreign entity is a foreign affiliate and the dividend is paid out of the foreign corporation's exempt surplus. In broad terms, a foreign affiliate is a non-resident corporation in which the Canadian-resident corporation's equity percentage is not less than 1% and the total of the equity percentages in the corporation of the taxpayer and each person related to the taxpayer is not less than 10%. Special interpretive rules apply to preclude double counting. Exempt surplus refers to the foreign corporation's tax adjusted retained earnings from active business income carried on in a country with which an income tax treaty or an information exchange agreement is in force with Canada.

Capital cost allowance

Though a general deduction on capital expenditures is denied, depreciation under the capital cost allowance (C.C.A.) is deductible. Under this system most assets are grouped into particular classes and the entire class is depreciated at a set percentage on a declining balance method. Leasehold improvements are depreciated on a straight-line basis over the life of the assets.

The claiming of the C.C.A. is not mandatory. Catch-up claims are not permitted. If a property is disposed of in excess of its undepreciated capital cost (U.C.C.), the C.C.A. is recaptured as ordinary income. The balance results in a capital gain and only half is taxable. A terminal loss results if all the assets in a class are disposed of by the end of the year but a positive balance remains in the class.

In the 2018 Fall Economic Statement, the government announced provisions allowing for an accelerated depreciation on certain classes of assets, including (i) specified clean energy equipment (Class 43.1 and

43.2), (ii) manufacturers and processors machinery and equipment (Class 53), and (iii) and enhanced first-year allowance.

> **Canadian Tax 101 An Introduction to the Foreign Investor**

Rates and filings

Corporation tax returns are due six months after the fiscal year-end. The general Federal corporate tax rate for 2019 is 15%. Canada does not permit the filing of consolidated tax returns. Consequently, corporate groups must plan the coordination of tax liabilities and loss utilisation within the corporate group.

For all provinces other than Alberta and Quebec, a joint Federal/provincial/territorial return is filed. Alberta and Quebec require the filing of separate provincial tax returns. Provincial and territorial rates vary from 10% to 16% and are paid in addition to the Federal tax. Tax is due if the corporation conducts business in a province or territory through a P.E. If not, an additional 10% Federal tax applies.

Thin capitalization

Canada imposes limits on how much deductible interest can be paid to specified non-resident investors. A non-resident is specified if, along with any related parties, it owns 25% of the shares of any class of the capital stock of the corporation and the debt owing to specified non-residents exceeds 150% of equity. The disallowed interest expense is recharacterized as dividends subject to non-resident withholding tax. The non-resident withholding tax rate is 25%. Where a treaty exists, the dividend withholding tax rate is reduced to 15% in general and 5% when the shareholder is a foreign corporation owning 10% or more of the voting power in the Canadian company.

Transfer pricing

In general, Canada follows the O.E.C.D. guidelines set out in its 1995 document, *Transfer Pricing for Multinational Enterprises and Tax Administrations*. Canada's transfer pricing legislation embodies the arm's length principle and requires that, for tax purposes, the terms and conditions agreed to between related parties be those expected had the parties been unrelated. Under the arm's length principle, related parties would be treated as if they are separate entities. The principle requires a comparison of prices or margins between related parties on cross-border transactions with prices or margins on similar transactions between unrelated parties. It is a factual determination as to whether a taxpayer has adhered to the arm's length principle.

Methodologies such as the comparable uncontrolled price (C.U.P.) method, the resale price method, the cost/plus method, the profit split method, and the transactional net margin method (T.N.M.M.) are examples of strategies devised to determine an arm's length transfer price. Recently, however, tax authorities have attempted to allocate or apportion profits based on relative costs. This reflects certain views of the O.E.C.D. expressed as part of the B.E.P.S. Action Plan.

Where the Canadian tax authorities have determined that the transfer price employed does not reflect the price that would have been charged between arm's length parties, the income for Canadian tax purposes can be adjusted accordingly. Depending on the amount of the adjustment (percentage and dollars), penalties may be imposed.

A company's transfer pricing methodology is routinely examined by C.R.A. to determine whether an appropriate transfer pricing methodology is in place and contemporaneous documentation exists to support its methodology. Companies may apply to C.R.A. for an Advance Pricing Arrangement (A.P.A.) to reduce its risk of adjustment.

Scientific research and experimental development credits

The scientific research and experimental development (SR&ED) program encourages businesses to conduct research and development (R&D) that leads to new, improved, or technologically advanced products, processes, devices, and materials. Qualifying SR&ED expenditures are deducted as business expense. The may also be claimed as investment tax credits (I.T.C.s) that reduce income taxes payable.

Qualifying SR&ED expenditures include wages, materials, and equipment leases, overhead that is directly related to R&D, and eligible work by contractors. Experimental development, i.e., technological advancement, applied research, the advancement of knowledge for a practical purpose and basic research, and the advancement of knowledge for its own sake, are activities that would qualify. Eligible activities include engineering, design, operations research, mathematical analysis, computer programming, data collection, testing, and psychological research. In order to claim such expenditures, an assessment on scientific or technological eligibility of the claimed activities needs to be performed.

Foreign companies may qualify for a non-refundable investment tax credit at the basic rate of 15% on qualified SR&ED expenditures. As such, foreign companies may consider moving R&D activities to Canada to take advantage of the Canadian R&D credits. Canadian-Controlled Private Corporations may be entitled to cash refunds of I.T.C.

Withholding considerations when undertaking activities in Canada

Whenever a non-resident of Canada performs services in Canada other than in the capacity as an employee, the payor must withhold and remit 15% of the payment to C.R.A. Where a chain of transactions exists, the withholding tax obligation applies to non-residents paying other non-residents for services performed in Canada. Consequently, if a U.K. general contractor wins a contract in Canada and hires a U.S. company as a subcontractor, the Canadian-resident payor withholds and remits 15% of the payment made to the U.K. general contractor, and the U.K. general contractor withholds and remits 15% of the payment made to the U.S. subcontractor.

The 15% withholding is not the final tax. The withholding is a payment on account of the non-resident's potential tax liability in Canada. The non-resident would then file a Canadian income tax return to calculate the final tax liability. If the non-resident taxpayer can demonstrate it is exempt from Canadian tax pursuant to a treaty, the full 15% withholding tax is refunded. If the non-resident has a P.E. in Canada, the 15% withholding tax will be applied against the ultimate tax liability.

If a non-resident obtains a waiver from C.R.A., the 15% withholding may be reduced by reason of an income tax treaty or to reflect anticipated expenses.

INDIVIDUALS

Residence

No statutory definition of residency for individuals exists in the Act. Case law provides that residence status is based on particular facts and circumstances. Significant ties to Canada include presence plus a home available for use, immediate family in Canada, and children attending school in Canada.

Canada has a sojourner rule under which a non-resident who spends more than 183 days in Canada during the calendar year is deemed to be resident throughout the entire year. In counting days, any part of a day counts as a full day. There are no exceptions for day of arrival or departure.

When an individual is considered a resident of a foreign country and Canada under each country's tax law, sole residence is determined under the residence tiebreaker of an applicable treaty. Canada’s treaties generally follow the O.E.C.D. Model Treaty in this regard and applies several tests to resolve the matter in specific order. The tests are permanent home, centre of vital interest, habitual abode, nationality, and mutual agreement. The first test that resolves the issue is applied, without going further.

Employment income

Income from employment includes all amounts received as salary, wages, commissions, director’s fees, bonuses, gratuities, and taxable benefits.

Taxable benefits take many forms. Employer-provided housing, schooling, automobiles, and membership dues are examples of typical taxable benefits. Exceptions exist for employer-provided board and lodging where the employee is in Canada on a temporary basis and the employee has maintained a principal residence elsewhere.

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Employer-provided stock options exercised, while in Canada, would be subject to Canadian taxation. If certain conditions are met, a deduction may be given in computing the employee's taxable income. If the options were owned prior to the employee moving to Canada, the full employment benefit would be included in income, but the employment benefit would need to be sourced between Canada and the foreign country on a reasonable basis. The portion considered foreign source would be eligible for a foreign tax credit in Canada.

All remuneration received by a resident of Canada is taxed in Canada, including items relating to a pre-Canadian period of employment but received on a deferred basis after Canadian tax residence is established. All compensation for services performed outside Canada should be received prior to the establishment of Canadian residence. Items relating to a period of Canadian employment would be taxable in Canada, even if the amount is paid after the employee has left Canada.

There are no special concessions for the compensation of individuals who are arriving residents of Canada.

Business income

The rules for individuals carrying on business in Canada are similar to the rules for corporations carrying on business in Canada. It may be easier, however, for a foreign individual to have a P.E. in Canada. Often, C.R.A. asserts that an individual conducting a business in Canada maintains a P.E. in Canada if a Canadian telephone number or Canadian mailing address exists for the business.

Property income

Similar to corporations, interest, dividends, rents, and royalties are taxed when received. Dividends from taxable Canadian corporations are taxed at a reduced rate through a partial integration system involving a gross-up of the dividend to reflect taxes imposed on pre-tax income and a tax credit mechanism for the taxes triggering the gross-up.

Many non-residents who move to Canada on a temporary basis maintain ownership of their foreign principal residence but let it to offset some of the carrying costs. As a Canadian resident, the foreign-source rental income must be reported. Tax depreciation and C.C.A. may be claimed to reduce net rental income, but losses cannot be created or increased through the use of tax deprecation.

Capital gains

One-half of the net capital gains (i.e., taxable capital gains) on the disposition of capital property are included in the calculation of taxable income. Allowable capital losses (one-half of the net loss) can be applied only against taxable capital gains. Unused capital losses may be carried back three years and forward indefinitely.

The Federal government provides incentives for Canadian residents to start Canadian active businesses in Canadian corporations. When a start-up business is successful and a Canadian-resident individual sells the shares for a gain while the corporation is a Qualified Small Business Corporation, the gain may qualify for a capital gains exemption, subject to a lifetime cap that increases with inflation. To be a Qualified Small Business Corporation, at least 90% of the fair market value of the company's assets must be used in an active business carried on primarily in Canada. Where a capital loss arises on the disposition of shares or debts of certain small business corporations, 50% of the loss may be deducted against all types of income not just capital gains. These types of allowable capital losses are known as allowable business investment losses (A.B.I.L.).

A capital gain arising on the disposition of an individual's principal residence is not subject to tax. A principal residence can be located in a foreign jurisdiction. Families can designate only one property per calendar year as a principal residence.

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When a taxpayer becomes a resident of Canada, all capital assets owned by the taxpayer are deemed to be acquired at fair market value on the date residence commences. When a taxpayer ceases to be resident in Canada, all capital assets are deemed to be sold at fair market value pursuant to Canadian departure tax rules. The resulting taxable capital gain for appreciation during the period of Canadian residence is included in the last Canadian tax return. If the individual has not been resident in Canada for more than 60 months, any assets owned at the time Canadian residence commenced are excluded from the departure tax rules.

Other

If a particular item of income, other than employment, business, property, or capital gains, is not specifically listed in the Act, it is not subject to taxation. Other types of income listed in the Act include the receipt of pensions (Canadian or foreign), annuities, employment income, Canadian Old Age Security (O.A.S.), government pension plans such as the C.P.P., and withdrawals from Registered Retirement Savings Plans (R.R.S.P.). Income from lottery winnings is not listed and not subject to tax in Canada.

Tax year, returns, and rates

The Canadian tax year is the calendar year. In general, personal tax returns are due by the following 30 April. Self-employed individuals have until 15 June to file, though taxes should be paid by 30 April. Penalties and interest will be applied to late-filed returns that have a balance due. Below are the 2019 Federal tax rates.

Combined Federal/provincial returns are filed for all jurisdictions except Quebec. Quebec residents are required to file a separate Quebec form in addition to the Federal form.

Income tax rates are graduated. In 2019, the maximum Federal tax rate was 33%, reached at taxable income of C.D.N. $210,371. Provincial tax rates vary. The rate that applies depends on the province or territory of residence on 31 December of the taxation year. The maximum Ontario tax rate for 2019 was 20.53% (after applying the top surtax rate of 56%) and when added to Federal tax results in a maximum combined rate of 53.53%.

Trusts

Persons moving to Canada may have connections to foreign trusts. Canadian tax implications will depend on the residence of the trust. As with an individual, the residence of a trust or estate is determined by reference to applicable facts and circumstances. Historically a trust was considered to be resident where the trustee, executor, administrator, heir, or other legal representative who manages the trust or controls the trust assets resides. In recent years, C.R.A. also takes into account:

- Control over changes in the trust's investment portfolio,
- Responsibility for the management of any business or property owned by the trust,
- Responsibility for any banking, and financing, arrangements for the trust,
- Control over any other trust assets,
- Ultimate responsibility for preparation of the trust accounts and reporting to the beneficiaries, and
- The power to contract with and deal with trust advisors, such as lawyers and accountants.

Notwithstanding the general rules, if a trust has a resident contributor or resident and connected contributor, a trust may be resident in Canada for income tax purposes. The Canadian courts have also looked at the concept of mind and management in determining the residence of a trust. This approach implies that some non-resident trustees may not be exercising their fiduciary responsibilities appropriately and that they are acting as agents on behalf of others, who may be the settlors or beneficiaries of the trust.

Trust income or capital gains may be attributed to the person transferring property to the trust if the transferor has a right of reversion or retains a power of appointment. In addition, if the property can be disposed of only with the concurrence of the initial transferor who is Canadian resident, any income or loss or taxable capital gain or allowable capital loss from the property, or property substituted for it, will be attributed to that person while resident in Canada.

In general, trusts are taxed at a flat rate that is equal to the highest marginal tax rate. However, a testamentary trust may qualify as a Graduated Rate Estate (G.R.E.) for up to 36 months from the testator's date of death.

Resident and deemed-resident trusts are taxable on worldwide income. When trust income is distributed to a beneficiary, the distribution is deductible for the trust and taxed in the hands of the beneficiary.

G.S.T., H.S.T., AND PROVINCIAL SALES TAXES

G.S.T./H.S.T. is a V.A.T. that applies to most supplies of goods and services in Canada. Registrants making taxable supplies must collect tax from the customer at the applicable rate. If the supply is zero-rated or exempt, no tax is due. Zero-rated supplies include basic groceries; agricultural products, such as wheat, grain, and raw wool; prescription drugs; and international passenger air travel. Exempt supplies include most health, medical, and dental services; long term rentals of residential accommodation; and most services provided by financial institutions.

Registrants must pay Input G.S.T./H.S.T. on goods or services imported into Canada for use, consumption, or supply in the course of commercial activities. Registrants remit additional tax or receive a refund a refund of tax for the difference between the G.S.T./H.S.T. collected and the Input G.S.T./H.S.T. paid.

Rates

Canada imposes a 5% Federal G.S.T. on taxable supplies made in Canada. Most provinces have a provincial sales tax. Alberta, Nunavut, the Northwest Territories, and the Yukon do not impose any provincial sales tax. Five provinces eliminated provincial sales tax in order to be harmonized with the Federal G.S.T. In those provinces, the G.S.T. is known as the H.S.T. The H.S.T. rate is 15% in New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island. The rate in Ontario is 13%. The provincial portion of the H.S.T. is the amount in excess of the base G.S.T. rate of 5%. The G.S.T./H.S.T. is collected by C.R.A. on behalf of the Federal government and those provinces who harmonized.

The province of Quebec imposes its own V.A.T., in addition to the Federal G.S.T., called the *Taxe de ventu du Québec* (T.V.Q.). The current rate is 9.5%, and the tax is applied to the price after G.S.T. is imposed. The effective rate is 9.975%.

The retail sales tax rate is 7% in British Columbia and Manitoba and 6% in Saskatchewan.

CONCLUSION

In sum, Canada has a well-developed tax system that is monitored by a highly professional C.R.A. Canada is a party to income tax treaties with many countries and trade agreements with Europe, the U.S., and Pacific economies. As a result, Canadian businesses can benefit from low import duties in major markets and attractive provisions in its tax law that can be used to reduce the effective tax rate for global business.

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[1] Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, and Saskatchewan.

[2] Northwest Territories, Nunavut, and Yukon.

[3] Finance Canada, 'Tax information exchange agreements', modified 9 July 2014.

[4] Government of Canada, 'Canada's social agreements with other countries', modified 21 November 2018.

John Chown – A Look Back on My Career

By John Chown
'Active Retired' Adviser (United Kingdom)

Editor's Note: John Chown is one of two tax advisers awarded Life Member status by the International Tax Specialist Group in recognition of a long and meritorious career as an international tax adviser. He was there when relatively few individuals provided expert advice to the financial services industry and governments on cross-border tax policy.

INTRODUCTION

Tax did not become my career until eight years after graduation from university[1], but what happened in those years is highly relevant. My father, a successful industrialist with international interests, took me to meetings with tax advisers (including Counsel) saying 'you need to know enough so that the accountants can't talk down at you'. Finding it interesting, I thought it was just one of the skills needed for a general manager.

During military service (where my final job gave me excellent management experience), I attended a voluntary course of lectures on economics and, discovering it very interesting, began reading up on it and decided to switch my degree course from physics to economics. Then, after a gap year in Canada, I became a fast track corporate trainee, but the directors at the company did not like original ideas.

Researching the job market, I was introduced to Roy, who ran a boutique merchant bank in the City. He had the opposite approach of the company I left and encouraged me. Learning that I knew *a little* about tax, I was asked to do some research on a tax point for one of their projects. Upon discovering that I knew more than 'a little', I was given a central role in the project which involved exploiting the Anglo-Irish Double Tax Agreement. Their U.K. accountant was Joe Smith of Coopers, and their Irish one was Leslie Chance. Both were very encouraging, taught me a lot and we kept in touch. With Leslie, we handled an acquisition in Ireland, and later worked together advising the Irish government on their plan to make Ireland a good home for international investors.

Otherwise my role was to check out deal proposals. In two cases, the paperwork looked fine, but the clients 'smelled wrong'. To persuade my bosses, I had to find enough dirt to abort the project. Both clients were convicted for major frauds a few years later, and I became a connoisseur of fraud.

My boss was asked by the Iraq government to advise on setting up the Stock Exchange in Baghdad. Having done the background research, I was booked to go out ahead as a guide, just before the Iraqi government fell. This was disappointing, but great experience, which was useful later.

Banks could then have 'hidden reserves' and some stockbroker friends identified a bank which seemed seriously undervalued. We were invited to join the stockbroker's team and quietly bought control. Our two firms then moved our activities there. It was no longer the same: it was time to return to monetary economics.

Peter Bauer, my Cambridge teacher and friend, sent me to a firm advising large companies on foreign exchange exposure. Unfortunately, the potential clients mostly believed (wrongly) in 'Bretton Woods rules'[2]. Before meetings with finance directors, I studied their accounts, and the conversation sometimes went into tax matters. One kept in touch, and my tax firm later advised his company on a foreign bond issue.

One assignment was a major report on the future market for privately printed banknotes on which I was helped by Jim Leontiades, an L.S.E. PhD student, on a summer project. We remained friends, and he returns to the story later.

Tax assignments grew, and I suggested we should recruit someone to help me on this. I was told it was 'a flash in the pan' so I decided to go it alone. Meanwhile, the newly independent government of Zambia had asked the company for help in repatriating their London listed mining companies. Being allowed to carry over the tax work, I explained that the British government had not collected tax from the companies because of double tax relief (D.T.R.). I showed the Zambian government how to reduce their net acquisition by buying the assets rather than the companies.

INDEPENDENCE AT LAST

The first couple of years proved a hard struggle. Joining the International Fiscal Association (I.F.A.) was very helpful and gave me at least two new mentors, Ash Wheatcroft, Professor of Tax Law at L.S.E., and Alun Davies, Head of Tax at R.T.Z. and a future International Chairman of I.F.A. Alun recruited me to the Institute of Directors (IoD) Tax Committee on which I served for over 30 years. The, then tiny, London office of Arthur Andersen was also very supportive. The lawyers had not gone international yet, and the other accountants said, 'we don't need anyone to specialise in international tax: we have offices in 80 countries'!

I.F.A. became too big and our smaller group found it difficult to talk to each other at an overcrowded conference. We considered having informal meetings. When Arnold Sherman became independent, we formalised a joint venture in Jersey. He later introduced us to I.T.S.G. – just what we needed! Another valuable friend was George Stathopoulos, but just before we joined I.T.S.G., he retired to promote young Greek artists. He would have been an excellent member.

We expected to get early work from medium-sized companies setting up their first international venture, but we found more were making a second venture, having been badly advised on the first. Very large companies (who had tax departments with a budget for going outside their regular advisers) needed specialist advice on international mergers, acquisitions, and financing transactions involving tax and other laws of different countries. The lawyers would tell us what we could or couldn't do, and our task was to 'optimise within constraints' (an economist's job) and find a solution which worked.

In our early days, we had a good small team, but later, there was a fairly large turnover as our 'trainees' were head-hunted by larger firms. Our method of working was perhaps incompatible with a large structured firm. We never really found a solution to retention but finished with a good, if too small, team.

John Chow - A Look Back on My Career

Having three good tax people, we advertised for a 'young man' who could do the preparatory work analysing a client, thus saving professional time. The best candidate was a young woman from Jamaica. It didn't occur to us to offer her a lower salary, and she was able to take on much more than we expected.

The London head of a Canadian broker (a good friend) had a large private portfolio and wanted to delegate the record-keeping outside his office, so she took this on. He was happy for me to see what he was doing, and we discussed investments. Discovering an advantage for some U.K. taxpayers to invest via a Channel Islands investment trust, we set one up! He had the clients and the investment expertise, while I knew Guernsey which proved very welcoming.

Investment management became a good side-line. Arthur Andersen sent us some non-Doms as, they said, none of the other advisers understood their tax requirements. This activity grew and we soon reached the stage where we advertised and found an excellent young lady from an investment trust which didn't take her seriously as a woman. She took a lively interest in other activities as well.

Her father worked at the British Embassy in Beirut, then a financial centre which I had been planning to visit. Spending the Christmas break with her parents, she asked if she could add on a week's unpaid leave. We did better, sending her on an expenses-paid business trip to write a report about the financial centre and its future. Cost-effective for me and tax efficient for her! With great support from the British Embassy, she wrote an excellent report concluding, correctly, that the financial centre had a limited future.

PRIVATE CLIENTS

When directors of client companies asked about their own tax problems, we did our best to help. My friend, John Staddon, Policy Head at the IoD, wanted to leave and asked my advice on which of three job offers he should take. I persuaded him to chuck them and join us. It became a major profit centre, expanding our connections with foreign broking firms in London. He looked after their key people, often American non-Doms, and this also led to more corporate work. When there was a major relevant change in tax law, we advised all the big ones – except Merrill Lynch. They only discovered there was a problem when their accounts were audited. They then came to us!

When John Staddon retired, we recruited Kevin Offer, who kept nearly all of the clients and continued building up the business. He left my old firm when I did and is now enjoying being a partner of Hardwick & Morris.

FOREIGN EXCHANGE

My best subjects at Cambridge were international monetary policy and financial markets[3]. This knowledge proved invaluable in analysing international tax problems. It was also useful in looking after investments[4].

In 1989, while taking a very active role in the European Monetary Union (E.M.U.), Professor Geoffrey Wood and I wrote 'The Right Road to Monetary Union', in which the basic thesis was that a basket currency would give the economic advantages without damaging political consequences. Brussels wanted the latter; however, I concluded that the structure of the 1995 proposals was a disaster waiting to happen. My 2001[5] forecast stated that the 'pensions time bomb' could destroy E.M.U. by 2025 if something wasn't done and it hadn't collapsed already.

THE FOREIGN EXCHANGE TAX TRAP

In 1962, while working with the finance director of a machinery exporter on financing deals for clients, he mentioned casually that his company was planning to make a 10-year Eurobond issue in Swiss Francs. The exchange rate then being CHF 10.3 to the pound, I asked, 'What will you bet that the pound won't fall below CHF 9 in the next ten years'? He said, 'I am not a betting man', but I explained that the loan would be betting the company! Asked to advise on the tax situation, I discovered a huge tax trap. If a U.K. company borrowed dollars to acquire an American asset and then sterling was devalued, the sterling value of the assets and the potential Capital Gains Tax (C.G.T.) liability would rise, but the C.G.T. rules did not allow for the loss on liabilities! Dramatic mismatch. They cancelled the issue and made a rights issue. In 1972, the rate was CHF 3. A huge loss was avoided!

I explained this in the *Financial Times* and a subsequent book, but few people took any notice. Alun Davies and our friends the tax heads of Shell and BP already knew about the issue and after the 1967 devaluation, the four of us were on a Confederation of British Industry (C.B.I.) working group. The group had seven other corporate members. Each was millions of pounds out of pocket, and none understood what had hit them! This became a key subject.

SOME INTERESTING CLIENTS

Several other are clients brought us good publicity and helped expansion.

Rothmans

McKinsey used us on the tax aspects of their assignments. The most interesting was Anton Rupert in South Africa who had bought 'control'[6] of a series of major tobacco companies. McKinsey advised that competition law required the European Economic Community (E.E.C.) ones to merge, and Rupert asked McKinsey to explore the opportunities **without talking to the merchant banks**. This was tremendous for us! Everyone assumed the holding company would be in the Netherlands, but I knew the key people on exchange control and tax policy at the Treasury and knew they were worried that when we abolished exchange control (it didn't happen), British investors would be much keener to invest abroad than Continental ones. I asked them whether they would like to see a cross-border merger negotiated with a U.K. holding company even though there would be some loss of tax. They were delighted, and all the planning was really done by the three of us meeting (no juniors present) and sorting things out. We analysed costs and benefits to both the company and the government. I handled the companies while they 'sold' it to all the departments concerned. Hardly anyone else was involved.

When I was put up for membership of the, then new, Association of Corporate Treasurers, their first response was that I wasn't a treasurer. Fair enough, but a week later, they invited me to become a fellow and asked me to join their Taxation and Technical Committee. This was great fun, teaching treasurers how to deal with attempts by banks to sell them dodgy and overpriced products. This brought in a lot of new business.

AT&T

As a result of an anti-trust suit, AT&T was forced to demerge by creating 'Baby Bells'. The brokers asked if it would be a tax-free reconstruction in the U.K. and, when I said it wasn't clear, asked us to negotiate with H.M.R.C. The company had made arrangements with a City firm, but I knew the partner concerned, and we agreed to work jointly. H.M.R.C. asked us for an opinion from an American lawyer confirming that it would not count as a 'scheme of arrangement' under U.S. law. They also asked us to send them the I.R.S. ruling in due course – which eventually arrived at 57 pages long. They invited us to a meeting next day, so we studied the document. We needn't have bothered, as they simply showed us their two-page draft, which was fine by us, but we suggested we should show up the Americans by getting it on one page! They were amused by this, and we did it. The ruling was addressed to the two of us by name and was circulated to investors. Good publicity!

Some years later, Penny Prime had a call from H.M.R.C. questioning the ruling that had been given. She found the file and read it out. The caller said that H.M.R.C. could not understand how they had given such a favourable ruling and commented, 'Surely Mr Chown would not pull the wool over the eyes of H.M.R.C.' to which she replied, 'Indeed not'.

Lloyd's of London

When there had been major corporation tax reforms in Europe, I had been involved, arguing for the imputation system and dealing mostly with Alan Lord at the Revenue. We got on well. Later, he became Chief Executive of Lloyd's of London, and they wanted the Revenue to accept their basis of calculating reserves for unsettled losses (a major issue in insurance). The Revenue did not like negotiating with someone who had been one of theirs. Alan appointed me as a tax policy adviser who had given the Revenue a hard time in the past! We took on a young French student (four languages – useful for reading reports) at the London Business School for a summer project and did a comparison showing, *inter alia*, how much Munich Reinsurance had benefitted by German rules. We won but, after I gave evidence to a House of Lords committee, the trade journal of the re-insurance industry headlined its report, 'John Chown accuses Munich Reinsurance of fiddling its tax', which is not what I said! Alan sent me, at their expense, to Munich Reinsurance to pacify them. I came back with an assignment to help Munich Reinsurance.

Canary Wharf

An American group had the job of building a 'second city' in Canary Wharf and had arranged to finance this by having tax efficient leases with banks. Unfortunately, in the relevant year the banks had a bad year (related to Latin America) and had no 'taxable capacity'. Margaret Thatcher having promised to help, turned to her adviser Tim Bell, and he brought me in. The operation was successful, but the patient died, so to say. To the horror of the banks who wanted their immediate cut, I thought we could find taxable capacity among the newly privatised companies. Instead, with Bell's help, we negotiated a change in the law, but a general election meant the implementation was delayed and it was too late. Canary Wharf had to call in the receivers, but the Finance Director made sure I was paid up to date. He then went on to become Finance Director of the Royal Bank of Scotland where we had further dealings.

Tioxide

Tioxide, where the Finance Director was the son of a colleague of my father, gave us several projects. Their Italian tax adviser wanted to reconstruct their Italian subsidiary to create a 'step up of basis', enabling the group to claim depreciation for a second time. We had to look at the U.K. tax consequences to make sure the Italian tax saving did not restrict D.T.R., so we created securities treated as loan capital at one end and preference capital at the other. Just before leaving for Milan to discuss, I happened to see the head of corporate tax at the Revenue and asked how much cooperation they gave the Italians on exchange of information. 'As much as they give us', he said. I said, 'that's fine', and he asked how much we were taking them for. I said, 'several million pounds', and he wished us 'Good luck'.

Later, they wanted to take a substantial profit on an interest rate swap. They had two offers, and we were asked to compare them in after-tax terms. I ran them through my model (which used an analysis based on the yield curve), and it seemed that one offer was actually worth £250,000 more than the real economic value. I called them and asked them to bring in their computer expert so that the analysis could be confirmed. It was and they went ahead. When we had a lunch to celebrate, they asked me how this mistake arose, and I explained that the banks seemed to be using an over-simplified model, ignoring the shape of the yield curve which normally worked in their favour but had the opposite effect if the transaction was being unwound! They asked how quickly the bank would notice they had made a mistake, but I pointed out that they would have 'sold' the risk on to a third party. The company's headquarters were then in Hammersmith, and a few weeks later we heard that the Hammersmith Council had lost a lot of money in swap transactions — pure coincidence?

The Rolling Stones

Two friends of mine left Rothschilds and bought control of a small family-owned bank which had run out of family, and we did some work together. Someone brought them the Rolling Stones as a client, and when they had a tax problem, they invited me to lunch to meet their dreadful agent, Allen Klein, who was their problem. He had been collecting U.S. earnings for them and holding it back to postpone U.K. tax. He had 'lent' them half the retained funds, but they had spent it and wanted more! When they asked for more, he said he would pay it all as a taxable distribution at the then tax rates. Out of that he would claw back the loan! He had them over a barrel. I didn't like his attitude and determined to deal with him.

The solution drew on my experience with stockbrokers! Under the then 'prior year basis' of taxation (and the 'commencement and cessation' rules), tax could be saved by organising a partnership and creating a tax 'dropout' for the year after a particularly good year. We arranged for them to sue Klein for all the outstanding funds, then wait until the funds were actually received (it took a year longer than we expected), and then emigrate. Astonishing as it may seem today, they escaped tax completely on the prior year fund when they were still resident in the U.K. but not in their new country, France.

PUBLIC POLICY

Public policy, always an interest, became a serious concern with Jim Callaghan's disastrous 1965 budget on which the Labour Party had done no research in opposition. Will Hopper asked me to present to his American clients, and Nils Taube asked for a paper for his U.K. ones. This was then published[7].

Nils, Will, and I regularly met to discuss the issues and what we could do about all this, and they brought in Bob Buist. The four of us went on to found the Institute for Fiscal Studies.

Ted Heath, Shadow Chancellor, brought me in on his team, and became Prime Minister after Wilson's 1970 defeat. Ted was not 'free market' enough for me, but Enoch Powell and Keith Joseph became very supporting. They passed me on to Margaret Thatcher, and I became a major tax policy adviser to her Chancellors.

Bill Clarke (editor of *The Banker*) was leading a city mission to Teheran and invited me to join them. The result was an article entitled 'Will Teheran become an International Financial Centre?', (1975) and the conclusion implied 'no'. While that issue was current, the Shah fell! I accepted Bill's next invitation to Colombia, and since then, I have been on dozens of such missions.

Jim Leontiades, newly appointed Dean of the Cyprus Business School, invited me over on a small project. As I knew, the Central Bank had a tender out on how they could join the E.E.C. while remaining a financial centre. They asked me to apply and finding they had an adequate budget, I put together a team which won the project. They took most of our advice, but not the warning not to get too involved with the Russians!

When Communism collapsed, I began to help the newly independent countries on capital market friendly tax policies. Poland, Hungary, and Romania were among my clients. Estonia, Nils Taube's birthplace, became our best 'client' and is still at the top of the tables for user friendly tax systems.

Visiting Russia, I found that the Embassy wanted someone to compete with the Americans who claimed a monopoly on tax matters and introduced me to the splendid unbureaucratic 'Know How Fund' with whom it was a joy to work — until it was abolished by Clare Short. After that, there were several major assignments in Russia, Poland, and Mongolia. We continued to work informally with most of the C.E.E. countries[8] and continued to visit them, both independently and informally, with International Financial Services London.

LATER EVENTS

There is less of interest to say about the later years. Having handed over effective control to my partners (John Dewhurst, Kim Desai, and Kevin Offer), I was less involved with day-to-day advice and spent a lot of time on public policy work. When I retired (in retrospect, later than I should), I found that people still wanted to talk to me, although I was no longer regulated and insured. Working from home, with invaluable help from Penny Prime a couple of days a week, I only do what interests me (a full-time job in these chaotic days).

I had already been liaising with a group putting together investors and high-tech projects, mainly then on tax planning, but I discovered another role. When advising companies, I had made a point of looking beyond the problem and analysing their business model. On this principle, I would look at draft proposals intended for potential investors and/or users of the output, analysing and suggesting changes in the proposal and asking questions which an adviser might well ask. The danger was that they wouldn't ask the questions but simply turn the project down. My reward was the opportunity to make early stage investments – on something I had researched myself. U.K. law gives generous incentives to those approved new enterprises, distorting the risk/reward basis in favour of the taxpayer! This strategy has proved very profitable. It is sometimes said that older people should only invest in 'safe' securities, but I invest for my children and grandchildren, and (in the U.K.) unquoted investments are free of inheritance tax after two years. When such companies wanted to find international agents or co-venturers, the I.T.S.G. network proved invaluable.

CONCLUSION

This article tells, I hope, an interesting story, inevitably dealing with successes — although there were a few disasters. It is also mainly about my history, which is not quite the same as the history of the firm. There is much more which could be said, but I do not want to tax the patience of the reader too much!

1 Selwyn College, Cambridge University.

2 Bretton Woods rules was the name given to a system of monetary management among the U.S., Canada, Western European countries, Australia, and Japan after the 1944 Bretton Woods Agreement. Under the Bretton Woods rules, each country was obligated to adopt a monetary policy under which external exchange rates were maintained within 1% of agreed rates by having currency linked to gold. The system lasted until 1971, when the U.S. announced that it would no longer link the U.S. dollar to gold.

3 My Adam Smith Prize was for a dissertation on fixed versus floating exchange rates.

4 This was always an interest. I served for many years as a member of my College Investment Committee.

5 'Tax Efficient Foreign Exchange Management', John F Chown. Woodhead-Faulkner, Cambridge, 1990. ISBN 0 85941 595 3.

6 He had a concept of `partnership in industry' by which he never had legal control of a company – but was usually only one vote short!

7 John Chown, 'The Corporation Tax - a Closer Look', Institute of Economic Affairs, 1965.

8 The Central and Eastern European, or C.E.E, countries are comprised of Albania, Bulgaria, Croatia, the Czech Republic, Hungary, Poland, Romania, the Slovak Republic, Slovenia, and the three Baltic States: Estonia, Latvia, and Lithuania.

Arnold Sherman – Some Thoughts on My Life as an International Tax Consultant

By H. Arnold Sherman
Retired Adviser (Canada)

> **Editor's Note:** Arnold Sherman is one of two tax advisers awarded Life Member status by the International Tax Specialist Group in recognition of a long and meritorious career as an international tax adviser. He was there when relatively few tax directors provided expert advice to their employers on cross border tax matters. Later on, he established his own tax advisory practice based in Calgary, Canada. Effective this month, Arnold closed his professional practice. At close to 89 years of age and having qualified as a chartered accountant in 1954, there are few cross border tax plans, if any, that Arnold has not designed, commented on, or improved.

My professional career as an international tax planner began in 1959, when I was promoted to take charge of the corporate income tax function of the Massey Ferguson (M-F) group of companies, headquartered in Toronto and quoted on the Toronto Stock Exchange. M-F had operating subsidiaries in about a dozen countries, manufacturing and distributing farm and industrial machinery.

While there had been limited attempts in earlier years to reduce the group's overall tax liabilities, I saw my function as inculcating 'tax consciousness' both at the head office and throughout the operating subsidiaries. My approach was strongly supported by senior management. By the time I left the group at the end of 1977, I had achieved my target.

While working at M-F, I had a secretary (remember them?) but no tax professional staff. When tax compliance work, or work on matters of detail, was required, I engaged the services of tax managers from the accounting firm that handled M-F's audit. The tax manager reported jointly to me and to a tax partner. A year or so after I left M-F, I passed through Toronto and was amazed to see an M-F corporate tax group of six professionals replacing me.

In those 'good old days', tax avoidance was not frowned upon as it is today. It was effectively a game played by those responsible for preparing tax legislation, on the one hand, and tax professionals employed by corporations and their tax advisers, on the other.

Government employees wrote the law; we took advantage of loopholes, and they tried to close the loopholes as soon as they found out about them. Unlike the situation today, no 'social morality' was involved, and the concepts of 'improper tax avoidance' and perceived 'abuse' of tax legislation by tax advisers did not exist. The tax professionals' objective was to minimise the tax liability of their client by legal means, thereby benefiting taxpayers and corporate shareholders.

To illustrate, let me describe one of my very successful tax plans: M-F agreed to purchase a large German company which had been manufacturing tanks during World War II but thereafter reverted to the manufacture of industrial and farm machinery. Canadian management forecast that the German company would incur significant losses for the first three years after acquisition. On the other hand, M-F's U.S. subsidiary, primarily manufacturing agricultural tractors, was extremely profitable, even though it paid a substantial royalty to a related company resident in what we used to call a tax haven.

I had the U.S. subsidiary set up a German branch, which purchased the German assets. Three years of German branch losses then offset U.S. taxable income. A very successful plan, which was stopped thereafter by the U.S. Congress, which changed the law at the behest of I.R.S. to prevent the losses of foreign branches from being used to offset U.S. domestic taxable income in the context of a double deduction within a group. The loophole was closed as soon as it was discovered but too late to stop our plan. Today, since the plan was set up specifically to reduce taxes, with no other business purpose, it would almost certainly not have been considered unless combined with a business purpose having economic substance.

In 1978, I was invited to create, and head up, the tax function for a multinational group of companies based in Monaco and primarily owned by a single individual, Baron Heine Thyssen-Bornemisza, who was best known as an art collector. The group's major subsidiary, based in the United States, was run from Monaco, but the I.R.S. refused to allow a deduction from U.S. taxable income for the operating costs incurred in Monaco. I was asked specifically to solve this problem, and I did so, as the loss of the deduction resulted in U.S. income tax of several million dollars annually.

Unfortunately, my solution required that two members of Thyssen-Bornemisza's senior management based in Monaco, both U.S. citizens, would no longer be able to evade U.S. personal tax by (apparently) not filing U.S. personal tax returns. These individuals hired a major U.S. accounting firm to prove that my plan would not work. They were unsuccessful.

When I was asked to renew my three-year employment contract in Monaco, this was a factor in my decision not to do so but to return to Canada instead. When employed by a corporation, solving a problem at the cost of upsetting two of its senior employees is one of the hazards of international tax planning.

On my return to Canada in 1981, I was asked to head up the corporate tax function of Dome Petroleum in Calgary. At that time Dome was Canada's leading locally owned and publicly quoted oil company.

My principal achievement there was to recommend a 'triple dip'. Dome was planning to purchase a major fixed asset, so I prepared a plan whereby interest on the funds borrowed for the purchase would be deductible three times from taxable income. While I was certain that my plan would work, management got cold feet and only accepted a revised plan for a double dip. Even this would effectively offset tax by interest costs claimed in two countries.

Unfortunately, management decided to purchase a competing oil company soon thereafter. Over-borrowed, the banks called their loans and Dome Petroleum collapsed in 1982. I was let go, together with most of Dome's employees and decided to set

Arnold Sherman - Some Thoughts on My Life as an International Tax Consultant

up a consulting company to practice as an international tax consultant.

My major client for about 20 years was the Bata Shoe Organization, run from Toronto and supervising related companies in about 90 countries, the majority based in developing countries. Bata employees had never in the past considered their income tax liability as anything other than a fixed cost, like the cost of electricity or water. There had been no significant tax planning at any level.

For the next 20 years or so, I travelled extensively, visiting all major subsidiaries, and most others, a number of times. I always made detailed notes following each visit and copied them to Toronto senior management. My first visit was always to explain to local staff and their tax advisers the concepts of tax planning and tax minimization. Subsequent visits all began by my asking the question of each company and its tax advisers: 'How much tax have you saved the company since my last visit?' In at least one case, the local tax adviser was mortally offended by my question, and a physical confrontation was avoided only by the action of the local audit partner, who told the tax partner that my question made sense! In some cases, such as this one, it was necessary to change the local tax adviser.

My fondest memory is of a visit to a Bata subsidiary based in an African country. I asked the local manager how he had settled the company`s enormous tax assessment based on gross income, which we had discussed on my previous visit. He said that they had paid U.S.D. $20,000 to the tax auditor. I told him this was not permitted and that I would have to report the payment to senior management in Toronto. He said, 'But I have a receipt', then he led me to a locked cupboard and took out the receipt, signed by the tax auditor, for me to copy and take to Toronto. The story has a sad ending. Shortly thereafter, the manager was killed in a plane crash – not unusual in Africa. I had one or two narrow escapes during my travels in Africa, while flying. It is impossible to calculate how much tax was saved by tax planning over the 20-year period. My personal guess is at least U.S.D. $20 million.

Mr. Bata senior, who ran the group successfully for many years, retired and was replaced by his eldest son, who unfortunately did not understand the concept of tax planning, did not like living in Canada, and moved the management of the group to Switzerland, where it remains.

While my consulting work for Bata took a great deal of time, I had many other clients during this period, including other shoe manufacturers. One specialty I developed was advising individuals and companies who planned to change their tax residence. I am still consulted from time to time about the required tax planning for such moves. I have worked over the years in over 70 different countries and have consequential knowledge of the tax systems and have worked with local tax advisers in these countries. This has helped a great deal when advising clients.

I wonder whether I could have had such a successful career in the current tax environment. The current concept of 'unacceptable tax avoidance' severely limits the possibilities of reducing tax liabilities by taking advantage of tax loopholes. Will future tax professionals be limited to tax compliance work? I doubt it! Creative tax planners will still find tax planning possibilities for their clients, whatever the obstacles. Hopefully, the battle between those writing tax legislation and those finding loopholes will never end, but the tax legislation preparers currently seem to have the upper hand. Nonetheless, as Persian philosophers wrote many centuries ago, this too shall pass.

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PROFESSIONAL STATUS

- Partner, Cadesky Tax
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- Past Chair tax committee – American Chamber of Commerce in Canada (Amcham)
- Practicing in taxation since 1989
- Frequent speaker at conferences and seminars

MEMBERSHIPS

- Canadian Institute of Chartered Accountants
- Institute of Chartered Accountants of Ontario
- Institute of Chartered Accountants of Manitoba
- Society of Trust and Estate Practitioners
- The Estate Planners Council of Toronto
- British Canadian Chamber of Trade and Commerce (BCCTC)
- American Chamber of Commerce in Canada (AmCham)
- International Fiscal Association
- Canadian Tax Foundation

ACADEMIC BACKGROUND

- CICA – In Depth Tax Course
- Chartered Accountant (Ontario and Manitoba)
- Certified Public Account (Illinois)
- Certified Financial Planner
- PhD in Financial Accounting – University of Waterloo (1999) – KPMG Doctoral Fellow
- Honours Bachelor of Commerce (1987) Lyman Hooker scholarship

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EXPERTISE

Practice limited to international tax planning. Has worked full time in international taxation for more than 50 years. Personal experience with the tax systems of more than 60 countries. Particular expertise in individual and corporate residence; tax-effective corporate structures; double tax treaties; offshore jurisdictions.

PROFESSIONAL HIGHLIGHTS

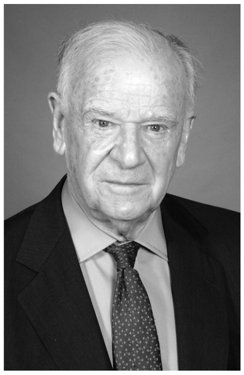
- In charge of the world-wide tax function of Massey-Ferguson Limited, Toronto, Canada, 1962-1977
- International Tax Counsel, Thyssen-Bornemisza N.V., Monte Carlo, Monaco, 1978-1980
- Director Taxation, Dome Petroleum Limited, Calgary, Canada, 1981-1982
- Author of book Migration Canada (Deventer,The Netherlands: Kluwer Law & Taxation Publishers, 1985)
- Author of many articles in professional journals
- Editorial Consultant to the International Bureau of Fiscal Documentation 1994 - 2009.
- Quality Consultant to the International Bureau of Fiscal Documentation from 2009.
- Lecturer for the International Tax Academy, Amsterdam, The Netherlands and for the Institute of Chartered Accountants of Alberta

AFFILIATIONS

- Canadian Institute of Chartered Accountants (life member)
- Institute of Chartered Accountants in England and Wales (Fellow)
- Chartered Institute of Taxation (U.K.) Member of the International Tax Sub-Committee since 2001
- International Fiscal Association (Council Member - Canadian Branch, since 1973)
- Society of Trust and Estate Practitioners
- International Tax Planning Association
- Canadian Tax Foundation
- Member of the Advisory Board of the International Bureau of Fiscal Documentation (Amsterdam) 1994 - 2009

LANGUAGES

English, Portuguese, French



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PROFESSIONAL HIGHLIGHTS

- Founder of Chown Dewhurst LLP (previously J F Chown & Company Limited), a leading independent specialist firm in London, England.
- Co-founder and Executive Committee member of the Institute for Fiscal Studies
- Steering Committee member of the International Tax Specialist Group
- "Friend" – Official Monetary and Financial Institutions Forum (OMFIF)
- Honorary Life Fellow of the Institute of Directors, after 30 years' service on its Taxation and Economic Committee.
- Fellow and ex-member of the Taxation and Technical Committee of the Association of Corporate Treasurers
- Author of *A History of Monetary Unions* (London and New York: Routledge, 2004) and *A History of Money - from AD 800* (London and New York: Routledge, 1994). Many other books, articles and reviews on tax and finance, mainly for Central Banking.

AFFILIATIONS

- Selwyn College Cambridge (Honorary Fellow) and Investment Committee
- Institute of Directors
- Institute for Fiscal Studies
- Association of Corporate Treasurers
- Political Economy Club
- Ad Hoc Council
- Russo-British Chamber of Commerce
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- International Fiscal Association
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EXPERTISE

Sakate is the senior partner of Khaitan Legal Associates and heads its corporate, insurance, tax and financial services practice. He has extensive experience working with Indian and foreign companies, HNI's and Government Authorities/companies. Sakate's corporate practice includes advising on mergers and acquisitions, JVs, private equity, investment funds, tax, complex financial products and a full range of corporate transactions including but not limited to cross border transactions. He also regularly advises clients on general corporate matters, capital markets, structured and corporate finance, employment and real estate matters.

PROFESSIONAL HIGHLIGHTS

- Sakate has served and continues to serve on the Boards of several companies including Urban Infrastructure Restate Fund, Ozone Networks, ECE Industries, Lazard Birla Indian Investment Fund and Manjushree Plantations Limited (B K Birla Group Company).
- Sakate is a regular speaker on Indian law issues both nationally and internationally and has contributed to several publications including Real Estate Finance: Law, Regulation and Practice (LexisNexis Butterworths, 2008), International Computer and Internet Contracts & Law (Thompson Sweet & Maxwell), Data Protection and Law, India Business Law Journal, Managing Partner, Mondaq (voted most popular article in October 2007), Outsourcing to India: The Offshore Advantage, and India chapter of Getting the Deal Through publications for Insurance & Reinsurance, Restructuring & Insolvency and Securities Finance.
- Sakate has also been recognized as a leading lawyer for Investment Funds and Insurance (Legal 500), Corporate and M&A (Chambers and Partners), Rising Star 2013 for Insurance related matters (Thomson Reuters) and awarded deal maker for 2013 in the restructuring category (India Business Law Journal), the Best Investment Fund Lawyer (India), 2009 (European CEO), Included in Who's Who Business Professionals and achievers 2008-2009 edition.

AFFILIATIONS

- Member of the Bar Council of West Bengal
- Member of the Law Society England & Wales
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Abbas is a chartered accountant with experience of over ten years in direct taxation (domestic and cross-border / international taxation) and exchange control regulations.

Abbas has advised several foreign and domestic clients on matters relating to direct tax. He regularly works with international clients looking at India entry as well as clients looking at inorganic expansion. Abbas teams up with other professionals like lawyers and also works independently on mandates.

Prior to foraying in independent practice, Abbas spent four years with a leading national accounting and tax firm of India.

Abbas has extensive experience in bringing sound technical knowledge to assignments whether compliance or advisory and meeting client's objectives.

He has conducted various internal and external presentations / trainings on technical topics and his articles have been published by leading journals and media houses such as Taxmann, Taxsutra, Bloomberg Quint and International tax review.