Pharma & Life Science Industry

Asia Pharmaceutical Newsletter

November 2009

Welcome

The PricewaterhouseCoopers Pharma & Life Sciences experts in the Asia region are pleased to present the first issue of the Asian Pharma newsletter. This newsletter aims to bring you highlights on Pharma and Healthcare related topics in the region. The territories involved include Australia, Cambodia, China, India, Indonesia, Japan, Korea, Malaysia, New Zealand, Philippines, Singapore, Taiwan, Thailand and Vietnam.

Our Pharma & Life Science experts in each of these territories will report on a quarterly basis the trends in the Pharma and Healthcare sector, including new regulations, pricing and reimbursement issues, tax and accounting topics, news on compliance and mergers and acquisitions.

In this first issue we also highlight the National Preventative Health Strategy, launched by The Australian Government in September 2009.

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Special Report: Preventative Healthcare in Australia

Recent Australian data shows there has been an increasing trend of chronic disease burden associated with three lifestyle risk factors; obesity, tobacco and alcohol. As a result of these increasing trends, the life expectancy of Australians is expected to decrease by 2 years over the next 20 years or less. This correlates to life expectancy figures not seen since 2001 for males and 1997 for females.

To try and rein in this trend the Australian Government launched the National Preventative Health Strategy in September 2009 specifically to implement a range of interventions designed to reduce the burden of disease caused by the three lifestyle risk factors mentioned above. To monitor the ongoing trends, the Minister for Health and Ageing established the Preventative Health Taskforce which provides evidence-based advice to both health providers and Governments on the outcomes of preventative health programs, and strategies aimed at reducing the burden of preventable chronic disease.

The Preventative Health Strategy is aimed at transforming Australia into the Healthiest country by 2020. The strategy itself provides a "roadmap" for a series of strategic actions to be implemented between now and 2020. The idea is to promote "making healthy choices" which will in effect help people achieve and maintain a healthy weight, reduce the number of people smoking and those exposed to passive smoking, and reduce the consumption of unsafe levels of alcohol.

Click here for more details on the National Preventative Health Strategy

Accounting

Asia Pacific Region

As mergers and acquisitions are gaining momentum across all industries, business combinations are moving back into the main focus of accounting at year-end. For pharmaceutical companies, the new guidance under IFRS 3(R) on pre-existing relationships and re-acquired rights in business combinations are highly important. In almost no other industry the variety of license agreements, research co-operations, right transfers and supply agreements between entities is as extensive as in the pharmaceutical industry. That is why pharmaceutical companies planning acquisition of suppliers, research partners or customers in the next financial year should start today to prepare for these accounting challenges.

The revised business combinations standard, IFRS 3 (Revised 2008), is mandatory for accounting periods beginning on or after 1 July 2009. However, entities should consider how their accounting for future acquisitions will be affected by the revised standard in advance of its application date. These standards under IFRS 3 (Revised 2008) will affect entities who have an existing relationship with the entity they are acquiring. For example, a pre-existing contractual relationship would include an existing supply agreement between the two parties, whereas a non-contractual relationship would include a lawsuit between the two entities.

In case of an acquirer has existing contractual or non-contractual relationship with an acquiree, the relationship have to be treated as being settled in the consolidated financial statements. A separate intangible asset is not created. Therefore, the buyer must recognise the settlement of the relationship as a separate transaction outside of the business combination. The amount paid or received to settle the relationship is recognised as a gain or a loss in the entity's consolidated income statement at the lower of a termination penalty and the favourable or unfavorable element. In so far the settlement of a pre-existing relationship will also increase or decrease the amount of consideration allocated to the business combination and with that increasing or decreasing the goodwill included in the business combination.

In other cases the acquirer might have sold rights (for example, marketing, distribution or franchise rights) to the acquiree. On the acquisition date, these rights are re-acquired and form separate intangible assets that have to be recognised in the consolidated financial statement. These rights form part of the net assets acquired and have to be reflected in the purchase price allocation. As the intangible asset is recognised separately in the consolidated balance sheet, it will reduce the amount of goodwill which is recognised in the business combination. The intangible asset has measured and amortised in accordance to the contractual terms over its remaining contractual period.

Pricing & Reimbursement

Australia

Australia has what is regarded as one of the best healthcare systems in the Organisation for Economic Co-operation and Development (OECD). The country continues to be the biggest spender per person in the Asia Pacific Region, while using price controls through the Pharmaceutical Benefits Scheme (PBS) to manage healthcare expenditure and in particular the cost of pharmaceuticals.

While recent reforms introduced in 2007 were considered to be the most ambitious reforms to the PBS in the last 50 years, the Australia government recently announced in the May 09 Budget - without any prior industry consultation – that the creation of a new therapeutic group linking two of the largest selling drugs on the market (Pfizer's Lipitor® and AstraZeneca's CRESTOR®) into a single group.

As these changes to the PBS are happening, the Australia Government has also moved to shift the cost of listing new drugs onto the industry through "cost recovery" measures. These measures will result in the cost of submissions to list on the PBS commencing at $119,500 for major and $12,500 for minor submissions, from 1 January 2010. There will be no refunds for rejected submissions and resubmissions will be charged as new submissions. This could add up to $500,000 to the cost of listing a new drug onto the PBS.

These budget changes will essentially decrease the incentive for innovation into new drugs, as there will be no guarantee that they will be able to maintain their higher prices until patent expiry. The Australian Government, like many around the world, is trying to contain the cost of healthcare while also trying to maintain universal access to low cost drugs for their citizens. PwC notes that this interplay within Australia will have real and far reaching impacts for the whole healthcare industry and patients and should be monitored closely as a precursor as to what other jurisdictions may look to adopt in meeting their own healthcare challenges ahead.

Philippines

The Philippines government enacted the Republic Act 9502 (the "Act"), otherwise known as the "Universally Accessible Cheaper and Quality Medicines Act of 2008" in the Philippines on 6 June 2008. The Act, more popularly known by its ubiquitous name "Cheaper Medicines Act", seeks to allow Filipinos more access to quality, low-cost medicine. The joint Implementing Rules and Regulations (IRR) to operationalize the Act was signed in November 2008 after a series of consultations with consumer groups, pharmaceutical organisations, hospital organisations and other stakeholders.

On 10 June 2009, the Department of Health (DOH) prepared a list of 21 drugs recommended for the voluntary price slash as provided in the IRR. Drug companies volunteered 16 of the 21 drugs under the price slash scheme that include medicines for hypertension, diabetes, common bacterial infections, amoebiasis and cancers among others. In addition, certain pharmaceutical companies also undertook to reduce by about ten to fifty percent the prices of 22 other drugs and medicines not included in the initial list recommended by the DOH.

On 28 July 2009 President Arroyo signed Executive Order No. 821 mandating the Maximum Drug Retail Price (MDRP) over the remaining 5 essential drugs that failed to satisfy the recommended price slash by the government. The reduction of the prices of these drugs and medicines commenced on 15 August 2009 and was fully implemented on 15 September 2009.

Regulatory

India

The Technical Expert Group's (TEG) recommendations on patent issues were recently accepted by the Indian government as both the innovator and generic sectors in India. The Government of India had set up TEG with Dr Mashelkar as its chairman, a former director general of the Council of Scientific and Industrial Research, on 5 April 2005 on the twin issues of "evergreening of patents" and "exclusion of micro-organisms from patentability" as Section 3(d) of the amended Patent Act was ambiguous.

The recommendation says that India would not be compliant with the World Trade Organisation's Intellecutical Property (IP) rules, specifically Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), if it limited the granting of patents for pharmaceutical substances to new chemical entities, since on appearance it amounts to a statutory exclusion of a field of technology. However, it adds that efforts must be made to provide drugs at affordable prices to the people of India and to prevent the granting of frivolous patents and evergreening.

The TEG also suggests that detailed guidelines should be formulated and rigorously used by the Indian Patent Office for examining patent applications in the pharmaceutical sector so that the "remotest possibility" of granting frivolous patents is eliminated.

This came much after Novartis' cancer drug Glivec was denied patent on grounds of section 3(d). This section of the amended Act does not recognise incremental innovation of known substances unless it significantly improves the efficacy of the substance. Dispute on patentability of this high priced cancer drug of Novartis has been going on for the last three years. Although it is a clear case of incremental innovation, Novartis is not willing to give up its claim for patent and now it has approached Supreme Court.

Japan

Pharmaceutical Manufacturers Association's Office of Pharmaceutical Industry Research (OPIR) conducted research of the clinical development time needed for new drug regulatory approval in the country. The research found that in 2008, the median review period of new drug applications stood at 19 months, including 21.9 months for regular reviews and 15.6 months for priority reviews, 1 month shorter than that of 2007. However, there still are large gaps from the goals set by the Pharmaceutical and Medical Devices Agency (PMDA) for financial year 2011: 12 months for ordinary products and 9 months for priority products. The research was conducted by a questionnaire and the response rate of 2008 is 98.7%.

According to Mr Ishibashi the research fellow from OPIR, it takes a long time before "receiving additional inquiries" and for "expert discussions" to occur and he also pointed out that a standardised operation process and process improvement at the last stages of approval as well as by increasing the number of staff members, was needed.

The clinical development time of foreign owned pharmaceutical companies takes about 4 months longer than for Japanese companies. Mr Ishibashi pointed out that the reason was that foreign ownd companies needed to communicate with headquarters for reference items.

Korea

After several rounds of investigations conducted by the Korea Free Trade Commission (KFTC) on sales and marketing practices in the pharmaceutical industry which resulted in the imposition of hefty fines on more than a dozen domestic and foreign-based pharmaceutical companies for engaging in unfair business practices, the Korean Pharmaceutical Manufacturers Association (KPMA) and the Korean Research-based Pharmaceutical Industry Association announced a new voluntary code of conduct to increase transparency.

Regulatory

The new code of conduct, effective on 1 August 2009 provides more specific guidance on the definition of rebates and establishes monetary limits on various forms of sales and marketing activities including but not limited to free samples, offer goods, donations, participation or other support for seminars and events, lecture and consulting fees. The voluntary code of conduct was introduced in tandem with the Ministry of Health, Welfare and Family Affairs' release of stricter regulations on illegal rebate activities. In addition to the temporary suspension of business, imposition of fines or possible jail time for the illegal rebate provider and disqualification the illegal rebate recipient, the new regulations include reductions in the medical reimbursement price of drugs covered by the Health Insurance Review Agency.

The Ministry of Health, Welfare and Family Affairs reported that illegal rebates amounted to KRW 2 trillion won in 2008, representing approximately 20% of the prescription drug costs paid by the national health insurance program. Since 2007, the KFTC has imposed over KRW 40 billion in fines on pharmaceutical companies doing business in Korea. The KFTC has also recently started investigations on hospitals. The investigations are expected to continue given their view that rebates are considered a major cause of high drug prices, a lack of competitiveness in the pharmaceutical industry, and unnecessary or ineffective prescriptions.

Singapore

On 22 October 2009, Singapore was accepted into the Mutual Acceptance of Data (MAD) framework of the giving a further boost to the biomedical sciences sector in Singapore and enhancing Singapore's position as a medical hub in the region.

This means that the drugs and vaccines which are developed and tested in Singapore will now be able to gain quicker access to markets in the 30 OECD member countries. Research data from Singapore's Good Laboratory Practice (GLP) compliant companies will be accepted and recognised in these countries. This change removes the need for costly and labour-intensive duplicative testing overseas. This would also encourage more laboratories to join the GLP programme in order to benefit under the OECD-MAD membership.

Among the OECD members, many are developed countries like Australia, Japan, UK and US, which are key biomedical export markets. Singapore, being the only developing country in Asia to be accepted into the OECD's MAD framework, would be an ideal location for biomedical research activities as it would provide better access to these markets.

Taiwan

The Taiwan government recently launched its Diamond Action Plan for Biotech Takeoff, which consists of four major areas, namely strengthening the pre-clinical development in the industrial value chain, establishing a biotechnology venture capital fund, promoting an integrated incubation mechanism, and creating the Taiwan Food and Drug Administration (TFDA).

The TFDA is now in the final stages of preparation before its scheduled opening on 1 January 2010. It will integrate the operations of four existing agencies to cover the licensing, sales and distribution of food and pharmaceutical products in Taiwan. The aim is to create a scientifically-based uniform system for the management, inspection and research of drugs, food, cosmetics, medical equipment and biological products.

The scope of the TFDA's operations will encompass the administration of foodstuffs, new traditional medicines, drugs, controlled drugs, medical devices, and cosmetics, planning and formulation of laws and regulations, inspection, registration, and evaluation of imported products (including border control), laboratory accreditation, risk assessment and consumer protection measures. In addition to its emphasis on risk assessment and management, TFDA will also help strengthen the development of the biotech sector.

PwC views the creation of the TFDA as a positive for Taiwan's biotech and pharmaceutical industries, as it will greatly improve administrative efficiency, enhance the transparency of inspection and approval processes (especially for new drugs), and will strengthen efforts to harmonize Taiwan's standards with the most appropriate international standards.

Tax

Australia

The Australian Government released a Consultation Paper on the new Research and Development (R&D) Tax Incentive to be introduced for income years commencing after 30 June 2010. The new program has a number of principles, including:

- Eligible R&D activities must involve innovation and high levels of technical risk. Supporting R&D activities should remain eligible, but subject to some limitations, and the location the owner of Intellectual Property (IP) will no longer be relevant.
- A 40% R&D Tax Credit should be available to all Australian companies with grouped turnover >A$20m.
- A 45% Refundable R&D Tax Credit should be available to all Australian companies with a grouped turnover <A$20m.

A major issue raised for consultation relates to limiting the amount of "supporting R&D activity" that can be claimed. All of the proposed options are likely to severely reduce the incentives available and increase the complexity and administrative burden in separately identifying core R&D and supporting R&D plus associated expenditure.

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China

Chinese State Administration of Taxation (SAT) Training

The Chinese SAT hosted a national training session for over 100 Transfer Pricing (TP) officials across the country in September 2009, focusing on the pharma industry. The multilateral dialogue featured an in-depth review of the global operations and value chain of pharma MNCs. SAT officials were keen to understand the overall pharma supply chain and how much profit should be retained by local subsidiaries for the functions they performed. They questioned whether the cost plus method was always appropriate for formulation, local packaging and distribution functions currently most often performed by Chinese subsidiaries.

PwC Observations & Recommendations

- Chinese tax authorities are following their global counterparts and are moving towards more sophisticated transfer pricing enforcement including focussing on specific industries.
- It is likely that multinational pharma companies will receive closer scrutiny from tax authorities in relation to the areas earlier in future. Some local tax authorities had already started making such inquiries.
- Taxpayers should revisit their TP policies to ensure their functions and risks profiles are aligned with the compensation they earn in China. Documentation to support their TP will be a key element at the inquiry stage.
- Taxpayers should also prepare to enter into in-depth communication and exchange of ideas on their business model and transfer pricing policies with tax authorities.

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New Requirements Under Double Tax Agreements

Foreign enterprises or individuals deriving income from China may be subject to Chinese tax in respect of such China-sourced income. Some may be eligible for favourable income tax treatments (treaty benefits) under the relevant Double Tax Treaties (DTAs) concluded by China with the countries/regions where these foreign enterprises or individuals are tax residents. To better assess the eligibility and manage the granting of such treaty benefits, SAT has recently issued circulars specifically addressing the implementation of the Dividends and Royalties Articles under the DTAs. In Feburary 2009, a circular was issued that set out the criteria which the taxpayer has to meet in order to claim the relevant treaty benefit for dividends received from a China tax resident enterprise. It sends out a signal that the SAT is tightening up on the granting of treaty benefits for dividends.

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Tax

Similarly, the SAT has issued a circular in September 2009 addressing the implementation issues relating to the Royalties Article under DTAs. It elaborates the core factors in determining Royalty income which is eligible for the preferential treaty rate under DTAs and how to distinguish it from service payments. Generally, the core factors and positions are close to OECD Model Convention.

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In addition, in order to standardise the past diversed practices amongst local-level tax bureaus in granting treaty benefits and to counter any abusive use of treaty benefits, for the first time, SAT has introduced detailed administrative and procedural rules to govern the claiming and granting of treaty benefits under the DTAs. It is worth noting and complying with these requirements in order to secure the relevant treaty benefits. These rules became effective from 1st October 2009.

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India

Draft Direct Tax Code Released

India's Finance Minister has introduced a draft Direct Tax Code (DTC) to replace the existing tax law from 2011 and has invited public comments. The DTC seeks to end the current tax incentives schemes for export oriented and backward area manufacturing units, though incentives eligible under the current law are sought to be grandfathered. While the DTC continues the 150% deduction for in-house R&D costs, it seeks to terminate the 125% deduction for outsourced R&D.

Tax Provisions for Limited Liability Partnership (LLP)

For tax purposes LLPs are to be considered to be a non-transparent entity, however, unlike companies, LLPs are not subject to distribution tax (DDT) and Minimum Alternative Tax (MAT) (a special levy on Indian companies based on accounting profits). While LLPs provide tax efficient structuring opportunities, there is no clarity at this stage whether foreign invested LLPs are permissible.

Dual Goods and Service Tax (GST) Proposed

The Government of India proposed a dual GST from April 2010 whereby a Central Goods and Services Tax (CGST) and a State Goods and Service Tax (SGST) will be levied on the taxable value of supply of goods and services. The aggregate rate of GST is expected to be 16% and will accentuate the growth of Indian pharma industry by reducing transaction costs.

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Indonesia

The Indonesian Tax Authority (ITA) recently issued a regulation to set maximum amounts of promotion expenses for pharma industry for tax purposes. The maximum amount is 2% of the turnover but may not exceed Rp. 25 billion. Amounts beyond the threshold are not claimable as a tax-deductible expense. pharma companies are required to support amounts claimed with a nominative list containing at least the parties to which promotion-related payments have been made along with the relevant amounts. Inability to provide the nominative list in the Corporate Income Tax Return will lead to non-deductibility of promotion expenses. Where promotion expenses are shared between producers and distributors, the deduction can only be claimed by the producers. For goods not manufactured in Indonesia, the promotion expense can only be claimed by the sole importer. The Association of Pharmaceutical industry has shown that its biggest interest pertains to the issuance of this regulation as this will significantly impact pharmaceutical businesses. The regulation, which still calls is effective retroactively from 1 January 2009.

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Tax

Japan

A foreign dividend exemption system has been introduced in Japan to replace the existing taxation and foreign tax credit system. The change from a taxation and credit system to an exemption system requires corresponding amendments to both the Federal Trade Commission (FTC) and Controlled Foreign Company (CFC) rules. It is expected that these tax reforms will present significant planning opportunities for Japanese pharma companies on their global corporate structures. Large Japanese pharma companies such as Takeda, Eizai and Daiichi-Sankyo have made significant investments in the US and EU and other pharma companies like Shionogi and Dainippon have been seeking pharma investment from overseas. The new dividend-exemption system is not expected to give rise to any significant impact for foreign-invested Japanese subsidiaries.

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Korea

Investigation on Pharma Industry Rebates

The Fair Trade Commission (FTC) of Korea made investigations into the habitual rebate practices between the hospitals and pharmaceutical companies twice in 2007 and 2009. The result of the investigation was that 17 pharmaceutical companies were required to take corrective measures and were imposed a surcharge - a further 5 companies were prosecuted.

Pharma companies have provided economic profits continuously for hospitals through various means, such as client entertainment, supporting participation in domestic and foreign medical conferences, excessive gifts, cash & gift cards and other services. In the past, tax deductibility of such rebates and entertainment expenses had been target of challenge by the Korean tax authorities. Due to the FTC investigations, it is expected that the Korean tax authorities will increase focus on this issue and accordingly, it is likely to request pharma companies to submit results of the FTC investigation. Therefore, further prior review and preparation of proper documentations should be required from tax perspective.

Consolidated Tax Return

Under the revised Corporate Income Tax Law of Korea, a domestic entity and its fully-owned (100%) subsidiaries can now elect for a consolidated tax return filing instead of the current separate tax return filings from the fiscal year starting on or after 1 January 2010. Once adopted, it cannot be revoked for five years. The consolidating company and its subs must file an application to the head of National Tax Service (NTS) via relevant district tax office of the consolidating company no later than three months before the starting date of the fiscal year subject to tax return consolidation. The consolidating parent company shall be liable to file the consolidated tax return and make the tax payment within four months from the fiscal year-end, but the consolidated subsidiary shall have secondary liability for the tax payment. Upon introduction of the new system, a feasibility study is strongly recommended for applicable companies to determine the anticipated tax savings and to undertake the necessary prior actions, including restructuring the ownership structure.

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Tax

Malaysia

Tax Incentives and Promoted Activities

Malaysia continues its focus on developing a viable and sustainable Biotechnology sector. Tax incentives available to companies granted "Bionexus status" are some of the more competitive and attractive available. These include:

- Tax holiday by way of a 100% exemption on statutory income for up to 10 years or or investment tax allowance of 100% of qualifying capital expenditure incurred against 100% of statutory income for 5 years.
- Enhanced treatment of business losses and certain R&D expenditure.
- 10 year Industrial Building Allowance on buildings used solely for the purpose of biotechnology activities.
- Concessionary tax rate upon expiry of tax incentive period.
- Tax deduction for seed capital or early stage financing in respect of an investment in a Bionexus company.
- Import duty and sales tax exemptions on raw materials/ components and machinery and equipment.

There are also existing incentives available for R&D activities in the form of various double deductions for approved in-house research projects, or for payments to approved research institutes, or R&D companies. Intensifying Research, Development and Commercialisation activities was also identified as one of the strategic focuses of the Malaysian Budget 2010 proposals.

The Malaysian government has included healthcare services as one of the sectors of focus for the Iskandar Development Region (IDR), with various fiscal and non-fiscal incentives available. Included as promoted activities under healthcare services are Healthcare Research and Development and Integrated Laboratory Services. In addition, the recent Budget 2010 proposed a concessionary tax rate on employment income for Malaysian and foreign knowledge workers residing in Iskandar Malaysia and working in a qualifying activity, which includes biotechnology and healthcare services.

Case Law Development – Deductibility of 'Congress' Expenses

In a decision earlier this year of the Special Commissioners of Income Tax, involving a subsidiary of a global pharmaceutical company, it was held that certain expenses incurred by the taxpayer on promotional activities to sponsor doctors, pharmacists and health care professionals to attend congresses related to products of the taxpayer, were not considered as "entertainment" expenses, and were therefore allowed a deduction for tax.

These expenses however did not include amounts incurred on the cost of meals to speakers, entertainment, contributions and gifts for which the taxpayer did not claim a deduction for in the first instance.

In finding for the taxpayer, the Special Commissioners considered the dominant purpose of the expenses incurred was to promote a company's business/product. In addition, the Commissioners applied the test of consideration in determining whether the expenses incurred were entertainment in nature, and held that there was consideration given by both the Speakers and the Doctors attending the Congress, such that the expenses could not be considered as entertainment in nature.

The case is currently pending an appeal by the Inland Revenue Board the High Court. This decision is a key development for the pharmaceutical industry as such expenses form a large portion of expenses for Pharma companies in Malaysia and have always been a focus by the tax authorities.

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Tax

New Zealand

New Double Tax Agreements (DTAs) signed with Singapore and Australia

The new DTAs with Australia and Singapore will lower the current Withholding Tax (WHT) rates on interest, dividends and royalties. WHT on royalties paid between New Zealand and these territories has been reduced to 5%. The reduction in WHT rates will also enable companies to repatriate profits to shareholders at a reduced rate (as low as 0% between New Zealand and Australia). The new DTAs will come into force once both countries have given it legal effect. DTA between the United States and New Zealand, with similar reductions in the WHT rates, is currently being negotiated.

Repeal of Tax Credit

The R&D tax credit regime has been repealed from the 2009/10 income year onwards. An R&D tax credit claim can still be made in relation to the R&D activities carried out in the 2008/2009 income tax year. In general, as tax returns for the period do not need to be filed until 31 March 2010, there is still a window of opportunity to claim the R&D tax credit for this period.

Tax Planning for Loss Making MNCs

The Inland Revenue Department (IRD) has expressed its intention to closely monitor the loss-making New Zealand MNCs in relation to Tax Planning (TP) reviews. In their review, the IRD may look for evidence of loss-shifting arrangements. These include increased inbound management fees, royalties or interest charges from offshore affiliates; outbound subsidies and support payments; and losses that are inconsistent with an MNC's limited risk profile. Additionally, IRD will also pay attention to tax planning structures and schemes involving intangible property.

It is important that New Zealand entities are comfortable that they have sufficient transfer pricing documentation and robust tax structures and schemes to support their position.

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Singapore

In Singapore, several R&D tax reform measures were recently introduced which would benefit companies that invest mainly in R&D, such as those in the pharma and other life sciences industries. These include:

- Liberalised R&D Tax Deductions: To bolster Singapore's attractiveness as an R&D hub and to encourage R&D projects in Singapore, an enhanced tax deduction of up to 150% of the qualifying expenses incurred for R&D activities carried out in Singapore (whether in-house or outsourced) will be allowed even when the R&D expenses are not incurred in respect of the existing trade or business. (This could represent a tax saving of up to S$25.50 per S$100 spent on R&D).
- R&D Tax Allowance: A new scheme, known as the R&D Tax Allowance (RDA) Scheme, was introduced to encourage profitable Small and Medium-sized Enterprises (SMEs) to engage in R&D activities in Singapore. Under this new tax concession, companies engaged in R&D activities in Singapore will be able to claim R&D tax allowances of up to $150,000 which are available for set-off against taxable income, subject to certain conditions.
- R&D Incentive for Start-up Enterprises: This new scheme effectively provides a cash grant for research-intensive start-up companies that do not produce taxable profits in their initial years. The scheme allows qualifying start-up companies to convert their tax losses into a cash grant up to certain threshold per year, provided they incur at least S$150,000 of qualifying expenditure in that year on R&D activities carried out in Singapore.

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Tax

Taiwan

The Taiwan tax authorities have for years regarded fees paid by a Taiwan company to a foreign entity for services rendered outside of Taiwan but utilized within Taiwan to be Taiwan-sourced, and imposed a 20% Withholding Tax (WHT). Due to limited tax laws and regulations, determination of Taiwan-sourced income has become a long standing issue between tax authorities and taxpayers. In an attempt to draw a clearer line between Taiwan-sourced and non-Taiwan-sourced incomes, the Taiwan Ministry of Finance (MOF) has stipulated the principles for determining if income is Taiwan sourced under different categories of income. The ruling takes effect on 3 September 2009, and is unable to apply retroactively unless the case is still pending a final decision such as undergoing tax remedy procedures.

Key Points in the Guideline for pharma companies:

- Royalty: Royalty obtained within Taiwan refers to fees received for any one of the following types of intangible assets used within Taiwan: (1) registered copyright, patent, trademark, operating right, corporate name and brand name etc.; or (2) non-registered secret formula or process, design or model, and the information concerning industrial, commercial or scientific experience, etc. Contributing the right to use intangibles within Taiwan as consideration for investment is included in the scope of royalty. Where the intangible licensed to a Taiwan entity is used for toll manufacturing, contract manufacturing or contract R&D performed outside of Taiwan, the corresponding royalty paid by the Taiwan enterprise is still Taiwan-sourced income.
- Gain on Disposal of Intangibles: A gain on disposal of property within Taiwan is Taiwan-sourced income. Property consists of real estate, movable property and intangibles. Disposal of intangibles within Taiwan include (1) patents, trademarks, operating rights, corporate names and trade names, which are registered pursuant to Taiwanese laws; and (2) other intangibles that are owned by an individual domiciled in Taiwan and/or a profit-seeking enterprise with head office in Taiwan but excluding those registered overseas
- Cost Sharing Agreement: When a Taiwanese profit-seeking enterprise enters into a joint technical cooperation and development agreement with other foreign enterprises, the payment of R&D costs allocated shall not be deemed as Taiwan-sourced income if: (1) all participants involved jointly own the intellectual property; (2) all participants involved are able to obtain reasonably-anticipated profits; (3) no payments of royalties are involved and (4) no tax avoidance.

Following the announcement of the Guideline, taxpayers are encouraged to revisit their current arrangements, and to evaluate how the Guideline will potentially alleviate their tax burden.

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