EY Asia Pacific Roundtable

Ernst & Young Foreign Desk Roundtable: A Comparative Tax Tour of Asia

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Asia's tax system has many nuances that differ significantly from those in North America and Europe. To help define and understand these nuances and their impact on countries doing business in Asia, Ernst & Young LLP recently brought together the U.S.-based Foreign Tax Desks[1] from Asia who have firsthand experience of the countries and understand the needs of U.S. multinational enterprises (MNEs) operating there. The panelists included **Sanjay Chakrabarti** (India), **Sandy Chu** (China), **Jeff Hongo** (Japan), **Anthony Loh** (Thailand), and **Julian Wong** (Malaysia). **Lisa Lim**, head of the Asia Pacific Business Group for Ernst & Young's International Tax Services, moderated the roundtable. *Journal* Managing Editor **Robert Gallagher** also participated.

The discussion focused on three key topics that affect most Asia-bound companies: permanent establishment (PE); the implications of political changes and their impact on investment policies and tax policy, particularly in Thailand and Malaysia; and transfer pricing and tax controversy.

Permanent Establishments

Lisa: Let's begin with permanent establishments (PEs). In a global economy, multinationals generally structure their international activities under a global business unit. People travel all over the world to visit their customers and vendors and to make sure their supply chain is operating effectively. But with travel comes the PE issue. And this has been very dear to the hearts of certain Asian governments. Some countries have been particularly aggressive as to how they will assert PE taxation on foreign corporations.

The country leading this movement is India. Sanjay, the Indian government has been visiting businesses and asserting PE, which led to a lot of cases going to court, even to the Supreme Court level. Some of these cases have achieved tax fame. What's going on in India and what does it all mean to tax directors?

Sanjay: The government's efforts to examine business operations and declare a PE in India are not particularly new. In fact, three recent judgments in this area—*Morgan Stanley*, *Rolls Royce*, and *Galileo*—each reflect a specific segment of triggering a PE. [2]

In the *Morgan Stanley* case, it was the presence of employees that primarily created the PE. In the final ruling, the Supreme Court held that the people on so-called deputation to the Indian subsidiary of Morgan Stanley could trigger a PE.

Lisa: "Deputation" is a British term. In American lingo, it would be having a U.S. employee who is seconded to work in India.

Sanjay: Yes, the terms can be confusing. But whichever you use, the essential factors are the documentation and the agreed arrangement between the employee and the employer regarding their role and responsibility. The India tax officer may recognize and notice official "deputations" faster, as that was the term used in the *Morgan Stanley* ruling. But, in either case, it's the arrangement that matters. Now, the *Morgan Stanley* ruling is very fact sensitive. Not every person who goes to India, even under deputation, or secondment, creates a PE, but there is likely to be greater scrutiny from the tax office every time they see a deputation into the country.

Lisa: So let's discuss the facts of the *Morgan Stanley* case. Morgan Stanley U.S. sends employees of its overseas affiliates on a deputation, or a secondment, to work with a Morgan Stanley entity in India. This entity charges its related party a cost-plus fee for its services. In this case, the authorities claimed that this resulted in a PE in India for Morgan Stanley U.S.

Sanjay: Right. Actually the employees came under two separate arrangements. One set of employees represented "stewardship services," which meant they were responsible for safeguarding the interest of the U.S. company. The costs of these people were borne by the U.S. company. They were sent to ensure risk management, to train and to ensure that the quality of the products met Morgan Stanley's global standards. In tax treaty terminology, these were preparatory and auxiliary services and did not trigger a PE.

Lisa: So far, so good.

Sanjay: Yes, but the second situation was found to be truly a deputation, or secondment, since the employees were involved in running the actual operations of the Indian company. The Supreme Court noted that these employees, who continued to report to the U.S. corporate entity, were being paid out of the U.S. entity. Then their costs were charged back to the Indian entity. In this structure, the foreign company continued to have authority over these employees. This description led to a new term—a "lien on employment." The court said that because personnel continued to have a right under their employment with the U.S. company, the U.S. company could trigger a PE.

Lisa: How was Morgan Stanley able to resolve this?

Sanjay: Fortunately, it resolved itself in a way. Although the Supreme Court held that there was a PE, they also looked at how much income was attributable to it. After all,

having a PE is only the first step—the tax exposure is based on the attribution of profit to the PE. In this case, there was a silver lining. The price that the Indian entity charged the U.S. entity was considered sufficient, so no additional profits needed to be attributed to the Indian operations. At the end of the day, the Indian company was deemed by the Supreme Court to have charged an adequate, arm's-length markup to the U.S. company.

Robert: Is that a transfer pricing analysis that they're doing for the arm's-length issue?

Sanjay: You bring up a very interesting point. While they're saying that transfer pricing is adequate, they haven't really gone into analyzing it from a transfer pricing perspective. This is controversial because it's not clear how the court decided on a markup. And this is not the only instance. Other recent rulings have used a formulary method to arrive at the profit attribution.

Lisa: This is an interesting development, Sanjay, because a lot of U.S. and European multinationals have offices in India. Some of them are conducting research, some are doing transactions, and some are operating call centers and back-office operations. Many of the people that manage these activities could be sent from foreign countries on two- or three-year assignments. If the government deems that the markup charged by these companies in India is not arm's length, then the companies could be asked for additional profits. So it's clearly important to plan carefully in structuring these types of employee arrangements.

Robert: Do you think this will have a chilling effect on sending employees to India? Have you heard from any of your clients that they are concerned about it, that they might pull back? Or is it too early to know that?

Sanjay: If you need employees in a country, then you need employees—that's really the bottom line. But corporations should look at appropriately planning the deputation arrangement or secondment by considering the principles laid down in this ruling. Even in a worst-case scenario, as long as the Indian company transacts with the foreign company on an arm's-length basis, there should be no further attribution, at least on the PE front. The key takeaways include the importance of appropriately drafting the secondment arrangement and defining the role and responsibility of both the employer and the employee.

Lisa: Based on those rulings and the specific financial guidelines set by the tax authorities, there are many implications that need to be considered by corporations before they decide the terms for sending employees to India. Moving on—what are the key points of *Rolls Royce?*

Sanjay: Rolls Royce has an office in India. The arrangements stated that the office was working as a communication channel, transferring information from the head office to Indian customers and sending any feedback from the Indian customers back to the head office. The premise was that they were not a rep office conducting sales and marketing support for the overall operations in India. Such a structure definitely doesn't trigger a PE in India. But a survey by tax officers who examined the correspondence found people in the office who were listed as responsible for client relationships. They attended meetings with customers and, based on the minutes of the meetings, the tax officer claimed they did much more than operate as merely a communication channel.

To avoid triggering a PE, one key condition is that the office should not “negotiate and conclude” contracts on behalf of the foreign company. Many companies solve that problem simply by sending the contract outside of India for signature. However, the tax

authorities do not interpret this condition in such a narrow manner and, in my view, they may be right. After all, when you set the contract terms to the point that it's almost ready for signing, that looks like “negotiating” a contract.

In any event, this situation is not uncommon. Foreign corporations start out planning their presence in India with a rep office. Then, as business grows, the commercial folks take over. In a lot of cases, the role of the office changes from being a mere communication channel to an actual sales and marketing outfit. And all this might happen without the knowledge of the tax department.

Lisa: What was the full judgment on Rolls Royce?

Sanjay: First, the ruling defined this activity as a PE in India. A more critical decision is the calculation of the amount of profit attributable to it and, therefore, held to be taxable. In the case of Rolls Royce, 35% of the profits in relation to the Indian revenues were attributed to India.

Lisa: Interestingly, India is in essence introducing worldwide formulary apportionment by doing this, and it is not a numbers-based economic analysis. If the Rolls Royce profit margin on the jet engines were 30%, India would take 35% of that 30%. Normally, we would do a transfer pricing analysis and ask questions such as, “Where are the intangibles held? Where are the manufacturing profits? Where are the sales profits?” Instead, India just set the amount arbitrarily at 35%. This is clearly a scenario for other multinationals to avoid.

Sanjay: Absolutely. The solution is to avoid triggering a PE by setting up your structure differently, especially for marketing and sales operations. Of course, business needs will generally prevail. Thus, the tax director should plan accordingly and have an upfront economic transfer pricing analysis done so that you can justify your stand on transfer pricing in the event a PE is found to exist.

On PE attribution, one final point that merits discussion is the recent ruling of the Mumbai High Court in favour of SET Satellite. It held that payment of an arm's-length price to the dependent agent in India would extinguish all further tax liability regarding the foreign company. While this is a welcome development, it is worth noting the 2008 update to the OECD model tax convention. In it, the OECD recognizes that, depending on the functional and risk analysis, there is a possibility of additional profit attribution to the foreign company in the case of a dependent agent PE. This applies even when the dependent agent has been remunerated on an arm's-length basis. Nonetheless, the ruling reinforces the importance of transfer pricing analysis for determining the arm's-length price.

Lisa: Thank you, Sanjay. You've set the stage for scaring everybody. But other Asian countries are considered friendlier on this issue. Jeff, what are the similarities with the PE issue in Japan?

Jeff: The Japanese authorities have dealt with PE much longer than both China and India, and it's certainly an issue. Japan has similar theories as China and India, but in practice has chosen to address them with the question of how to enforce PE, which is similar to India. The authorities are saying, “We're not really going to address PE alone. We're going to attack it more on the transfer pricing.” They focus on the compensation for the functions that people are performing in Japan, regardless of whether they are there as part of a branch or a subsidiary.

Sanjay, you mentioned that in the *Rolls Royce* ruling, India concluded the communication or liaison office was doing more than just relaying information back and forth between the customer and the head office. Similar situations happen in Japan where the subsidiaries that are supposedly just doing liaison work are in fact doing more than that.

A lot of that may be cultural. In Japan, business is relationship driven. So companies can set up a marketing office and say that no one is really negotiating, no sales contracts are being signed in the country, and everything is done elsewhere. But if you really think about it, the customers are Japanese. For example, say you've got a marketing office that has only two people. They're Japanese, and they go out socializing with customers at night, and pretty much that's when things are negotiated.

That's something tax authorities are looking at. From their perspective, if employees in Japan are negotiating, then many functions are performed there, even if the contracts are signed elsewhere. And it's considered more of a transfer pricing issue. If they are getting cost-plus 10%, is that really an appropriate markup? That's when the authorities try to enforce PE. Fortunately, they do accept an analytical approach to calculating the appropriate value. That may be a reflection of the longer history and experience with Western business and authorities.

Lisa: Good point. Let's move to China, which is our other major emerging country. China has publicized PE a great deal since 2007, first in the Chinese tax reform legislation, and then with the detailed implementation rules. PE has also been addressed in the China/Hong Kong double tax treaty and in the two protocols. Sandy, how is PE being enforced and analyzed in China right now?

Sandy: PE risk in China is more real now than in the past. It is one of the key priorities of the Chinese authorities. China has been stepping up its efforts in strengthening the enforcement of PE, and has issued more circulars on this issue in the past two years than ever before. [3] Having said that, the PE concept is still not well known to all the Chinese tax authorities around the country. That means the challenges we are facing in the written domestic tax rules are not entirely clear and their interpretation could be very different depending on the location.

Lisa: Give us an example of how the interpretations could vary.

Sandy: From a practical perspective, the most controversial area is how to apply the six-month rule. In some parts of China, this may be aggressively interpreted. For example, instead of looking at work on a project-by-project basis, all the work may be added together to determine a six-month period. Or perhaps one workday out of a month in China might be counted as one month for purposes of the six-month period. And then, if Chinese tax officials are still not satisfied with all the information being submitted by a taxpayer, they could say that the foreign company has a PE in China. Having a PE may be a problem because of the troublesome way the Chinese authorities tax a PE. The profit margin of the PE is determined via a specified profit rate mechanism, which is between 10% and 40%. The final outcome is largely subject to negotiations with the authorities and this process can be lengthy.

Lisa: Theoretically, China has state-level guidelines. If you happen to be a resident of a treaty country, the treaty defines what activity is exempt from PE. Also, China issued a circular defining the activities under domestic law that would not trigger a PE. But what's the practical reality today?

Sandy: Just five years ago, PE wasn't defined or aggressively enforced. Since then, China issued a few circulars with guidance on what activities would be considered "auxiliary liaison" and what would not. The one you're referring to is Guo Shui Fa (2006) No. 35, issued by the State Administration of Taxation [SAT] in 2006, which is the first time that auxiliary and liaison activities have been properly defined.

There are three questions that determine a PE in China: (1) does the office provide services to group companies and not solely to its head office?; (2) is the nature of the Chinese business consistent with that of the head office?; and (3) does the business constitute a major part of the business of the head office? If you answer "yes" to any of these questions, the activity would not be considered auxiliary and liaison; thus, a PE would be created in China.

Lisa: What's happening with representative offices [ROs] today?

Sandy: ROs have been widely used by foreign investors as their first entrance to the Chinese market. [4] As China opened up trading and distribution sectors to foreign investors, ROs became obsolete. That was mostly because of the tax inefficiency and the limited scope of activities that they can carry out, since they were only allowed to conduct liaison and auxiliary activities. However, in practice, many ROs have been performing activities beyond the category of liaison and auxiliary activities. For example, they may have a significant number of employees, conduct quality assurance and quality control activities, and be heavily involved in the negotiation and conclusion of sales/purchase contracts as well as in procurement activities. All of these appear to significantly exceed the permissible scope of activities of an RO, so they may be subject to challenge by the Chinese tax authorities. More recently, foreign companies have been considering using a wholly foreign owned entity for service/consulting or distribution/trading activities instead. But even though China has not been aggressively asserting PE for many companies, we shouldn't underestimate the possibility of attack.

Lisa: What is the push behind PE enforcement?

Sandy: I think the key motive of the recent interest in PE is to find more tax revenues. Historically, Chinese tax authorities didn't pay much attention to the activities of ROs. Then, when China became a WTO member in 2001, [5] it had promised to reduce customs duty rates significantly and make China a level playing field, reducing the corporate income tax from 33% to 25%. China has learned a lot from Western countries and has become smarter over the years. China tax authorities are becoming more aware that they can raise tax revenues through a number of different channels, such as PE taxation, tax audit, transfer pricing audit, and so forth.

Lisa: Let's talk about traveling employees, because that's the other hot topic in China, particularly in Hong Kong. As a gateway to China, Hong Kong has many employees who manage Chinese operations and deal with Chinese vendors. Especially in southern China, it's common to see Hong Kong employees traveling there four or five days a week. In the past, this issue had not been examined by China. What do you see in terms of the new legislation and how does it affect these types of arrangements?

Sandy: Such employees' activities could potentially create a PE exposure for their Hong Kong companies even under the provisions of the China-Hong Kong tax treaty. They could also be subjecting themselves to China's individual income tax. Hong Kong, as part of mainland China, receives very favorable treatment by the Chinese government. For example, the treaty provides that China does not impose corporate tax on a PE under the tolling/consignment manufacturing arrangement between entities in these two places.

Under a consignment manufacturing arrangement, the Hong Kong principal would frequently send employees to China to manage and control the manufacturing operation. Based on the special arrangement, China would not assess China corporate taxes on the PE. However, this does not mean that individuals who traveled to China would not be subject to individual income tax. Hong Kong companies should now carefully review the situation when they send their employees to China on frequent business trips. And outside of the tolling/consignment manufacturing area, where PE is still a real issue, there are ways to potentially minimize the PE exposure if the situation is properly structured.

Lisa: But there are still limitations on the amount of time an employee can work in China and fall under the treaty exception.

Sandy: Yes. As I mentioned, China and Hong Kong signed a second protocol to their treaty on January 30, 2008, that defined the timing of the six-month period for triggering PE status. In the past, they debated whether someone entering China one day a month for six months consecutively would trigger the PE. But they've negotiated a compromise resolution, which is good news to taxpayers, and they now determine the PE based on the total number of days. In other words, you will only trigger a PE if you are in China conducting taxable activities for more than 183 days in the aggregate.

Lisa: These changes reflect the evolving political environment toward foreign investors. In the past, China had not been asserting PE on employees traveling from overseas to manage the activities of their Chinese offices and manufacturing facilities. But with the broadening of the tax base, the theoretical risk is turning into a practical risk.

Jeff, businesses in Japan are not so focused on manufacturing. You mentioned enforcement and in the private equity arena the authorities have some challenges there. Can you explain that and let us know what you think will happen?

Jeff: Certainly. Over the years, private equity funds have invested in Japan as well as in Korea and other parts of Asia. Now they're starting to turn those around and are selling them. This opens up new questions about the gains associated with the sale. Are they taxed in these countries? And is there a PE?

In Japan, the tax authorities are having a difficult time asserting and enforcing PE, so they are trying to find some other ways to tax. First, the tax authorities look at this from a transfer pricing perspective. Many activities happen in the local country. Due diligence and local expertise, whether for real estate or equity investments, is usually provided in the local country. The services are provided through service contracts or consulting arrangements. So the tax authorities check whether the companies involved in the deals are compensated at arm's length, especially where the transfer price is set with a cost-plus arrangement. Another way they might capture taxes is to look at the treaty and see if the fund has sufficient economic substance in the treaty jurisdiction to be entitled to treaty benefits.

Lisa: Korea is different. Can you tell us more about it?

Jeff: Korea is different because the authorities don't approach it as a PE issue, but they do watch for treaty shopping and substance issues. Private equity funds sometimes invest in Korean businesses using holding companies in treaty-favorable jurisdictions. At some point, the Korean companies are sold, presumably at a substantial gain. That gain is not taxed in Korea because of the treaty. Korean authorities now routinely question

whether the holding company has sufficient economic substance or if it was set up just for tax purposes.

Lisa: Private equity funds are so interesting because of the capital gains they generate. PE assertion is different because you have to understand where the key decisions are made and by whom.

Jeff: As I mentioned earlier, many activities happen in the local country, such as due diligence and provision of local expertise, and these services are provided through service contracts or consulting arrangements. Still, I think the authorities are finding it hard to assert PE and they are exploring other methods because these are not necessarily the decision makers.

Sanjay: That's quite a contrast to India, where the tax authorities, while examining the capital gains aspect, don't attack the PE issue but instead ascertain the source principle. Traditionally, a company outside India couldn't be bothered by Indian taxation. But in several recent cases, the tax officer held that if the value of a business, even of a sale of shell companies outside India, is really sourced from the business in India, then the capital gain should be taxable in India because the source of the income is based in India.

Lisa: Let's turn to Thailand. Anthony, can you explain how the tax authorities look at PE and your experience in dealing with them?

Anthony: PE is something very elusive in Thailand. Everyone talks about PE, but defining it and getting it to work are very difficult, whether at the local level or at the national taxation office, where they are a lot more sophisticated.

Generally, the authorities are not aggressive when it comes to identifying PE, so an issue may be discovered because of whistleblowers or disgruntled ex-employees of a company's accounting department. They may suspect some tax issue and suggest that the tax authorities look into it.

Still, the question is how do they address the issue? We've seen a few cases where the authorities identified a PE, but because of the lack of experience in dealing with it, their conclusion was to tell the taxpayer to file a return and pay tax based on the 5% of gross sales prescribed by tax law. But what if the company does not have all the financials in the country? How does it file a return? Plus, a company would need to attach an audited financial statement with its tax return. However, Thai accountants would not sign the audited financial statement of a PE. In one case, the tax authority basically said we don't care how it's done, just find someone to sign it and file the return and pay the 5% tax.

Lisa: I hope it wasn't you who signed it! (laughing)

Anthony: Oh, no. Given all these issues, when it comes to a situation where we understand that a transaction would give rise to a PE, we take a different approach. In one particular situation, rather than trying to avoid having a PE, we approached the authority upfront and said we were concluding certain transactions that potentially could give rise to PE exposures. We discussed how we could address this from a practical perspective and negotiated an APA [advanced pricing agreement]. We recognized that there was a PE and asked how much profit would be attributable to it. But the next question was whether the 5% guideline (which was issued decades ago, before the concept of transfer pricing was used in the Asia-Pacific region) would be applied, or the

OECD and Thai transfer pricing principles. In the end, we negotiated the price based on the very limited functions of the entity, using transfer pricing principles.

For anyone who has a PE, it will always be better to consider a unilateral or bilateral APA.

Lisa: You bring up something very practical. In Thailand, if you have a significant PE risk, you are better off just going to the authorities, because they will negotiate an APA with you and lock in what your PE profits ought to be, in line with OECD and transfer pricing principles. That's much better than waiting for an audit to take place and then negotiating with the less sophisticated tax agents who want to charge 5%.

Sandy: It is a good idea. China, in general, encourages taxpayers to enter into APAs with the Chinese tax authorities. This would be considered a win-win situation—the Chinese tax authorities do not need to worry about the entity for a few years and the taxpayer knows they won't be subject to transfer pricing scrutiny for at least that same time. However, since PE was not a major concern in the past in China, an APA to resolve PE exposure has not been common there. This is something a taxpayer should keep in mind. On one hand, it could minimize the administrative burden of the negotiation with the tax bureau on the deemed profit rate basis, the income attributable to the PE, etc. On the other hand, since this is still a relatively new concept for China, the tax bureaus are not as knowledgeable and the time and resources involved in getting an APA could be extensive.

Robert: Is this a new development? I'm familiar with APAs for transfer pricing of course, but in the PE context, are you seeing more of this?

Lisa: The PE APAs were always in the context of supply-chain structures. Sometimes goods are stored in local countries for further processing and delivery to customers, and that can cause significant PE exposure relating to ownership of inventory and delivery of goods.

Robert: And the amounts are much bigger for this type of activity, right? The risks and so forth?

Lisa: Yes, you bring up a good point. If you assert a PE, the sales from the principal to a local customer could be subject to local taxation. Australia has negotiated this type of APA where the principal does not have sales activity but only ownership of inventory.

Robert: What about Thailand?

Lisa: Thailand issued an APA. The Philippines also issued a ruling. Japan, I think, is working on one.

Jeff: Yes, Japan is working on one. Korea is also working toward one.

Anthony: The APA concept is so new and unfamiliar in countries like Thailand that it can take time to work them out. When you start talking about an APA, the tax authorities will ask, "What is that? What is it to us?" In my particular case, it took about a year or so of monthly discussions before they became comfortable with the concept, in the context of supply-chain planning. In Thailand, Korea and many other countries, a supply-chain PE could be triggered because of the VAT registration requirement, so it's best to talk to them upfront, acknowledge the PE, and demonstrate that the company is paying its fair share of tax. In addition, it's important to point out that if the country agrees to this

concept, more taxpayers will have the incentive to declare that they have a PE rather than trying to avoid it. Then both sides can sleep soundly at night.

Lisa: And they don't have to worry about FIN 48.

Anthony: Correct. The tax authority doesn't have to go after them and they have a stable source of revenue.

Sandy: Anthony, can you explain the difference between having a taxable presence versus a legal presence in Thailand?

Anthony: Well, sometimes a structure with actual legal entity isn't required in Thailand. For instance, in a supply-chain arrangement, we can have a Singapore principal, which is a non-Thai corporate entity, control certain activities or own raw materials in Thailand. It could engage a Thai toll manufacturer to render conversion services and then arrange to have the finished goods delivered to the local distributor. Under this example, Singapore has a *taxable* presence in Thailand but not a *legal* presence. In this situation, it would be very difficult for the Thai tax authority to assess the level of profit that the Singapore principal should be declaring in Thailand because of the absence of PE financial statements. So it's far easier on everyone to declare a PE and agree upfront with the tax authority on the allocable profits and resulting taxes.

Lisa: Julian, you have been very quiet so far. How are things in Malaysia with PE?

Julian: Well, the simple reason I've been quiet is that Malaysia has been quiet about PEs. Historically, the taxation of PEs has not been a major issue in Malaysia and remains a theoretical risk, mostly because we have a withholding tax on services performed by a nonresident in the country. So if you conduct services in the country and you don't have a fixed operational base, you are already taxed upfront under the withholding tax system. The obligation is imposed on the customer that is actually making payment. That's a final tax. So it's a very simple process, and very clean in terms of tax administration.

Secondly, if a multinational company has a long-term outlook and wants to sell goods and do business in Malaysia, it would want a more permanent set-up in the country anyway. Because there is significant localization, you need to know the culture and you need to be in the country long enough to actually know how to sell. It makes sense to establish something permanent like a branch—which means a formally registered taxable body/unit of the foreign person—or a subsidiary.

Also, as a country, we offer a lot of tax incentives to attract foreign investment. So, as opposed to India, for example, with their strict PE rules, Malaysia encourages companies to send high-level people over to work. In fact, it offers a tax incentive to create a regional presence in Malaysia. But once again, since the incentives are tied to the condition of establishing a legal presence in Malaysia, PE never becomes a major issue.

For these reasons, the Malaysian tax authorities tend to focus on other areas of tax, particularly transfer pricing and other low-hanging fruit during tax audits. Having said this, I'm not saying it's never going to be a risk; it's still a risk if you don't manage the situation appropriately. Malaysia allows foreign MNEs to set up representative offices to collect and analyze information, perform market surveys, and liaise with clients. But they cannot conduct business since such entities are granted the administrative concession of not being taxed in Malaysia. One such rep office was set up in Malaysia to conduct these activities but ultimately had a head count of 24 people when the Malaysian tax authorities started asking questions. Typically, you would see only two or three employees, so the

growth was obvious. Ultimately, if you plan appropriately and are not too aggressive about it, the issue of PE in Malaysia can be managed.

Sandy: China has over a hundred people in some rep offices.

Julian: I guess that's going to cause some concerns!

Sanjay: The first time the sales and marketing issue was brought up by the tax office in India, it was based on a survey of the company, which had a rep office there for over 25 years. By the time they surveyed it, the office had more than 300 employees defined as a communication channel.

Robert: You obviously don't need 300 people—

Lisa: And it's clearly not only preparatory.

Anthony: I was wondering, in Malaysia, India, and China, typically what titles would the rep office employees have? Marketing manager or a sales manager?

Sanjay: In India, it's not merely about titles. In some situations, the tax office found simple things like evaluations where the employee has to describe what he did in the year to get a promotion or a bonus. And this evaluation form obviously talks in detail about the employee's contribution to the sales effort. Also, of late, the tax offices have effectively used the Internet to come up with information about the taxpayer's activities.

Lisa: To summarize, Asian governments looking to protect their own tax base often focus on PE. I would rate India as the most aggressive, China as the next one to watch. China just reduced its tax rate, so obviously PE then becomes more important. And then I would say in Japan, the risk is higher with respect to private equity funds, because this is where potentially significant gains are reported. Thailand and Malaysia are very practical countries. In Thailand, because of the significant manufacturing base, the PE assertion addresses manufacturing activities and there is a solution through APAs. Malaysia offers a level of certainty with business incentives and other ways of taxing services. As such, PE taxation is more of a theoretical concept.

Impact of Political Change

Lisa: Let's talk a bit about political changes. On March 8, 2008, Malaysia held its parliamentary elections and the ruling party was dealt a significant blow. Its majority—its overwhelming majority—was reduced significantly.

Julian: Now it's just a simple majority.

Lisa: So what do these results mean and how does that affect foreign companies?

Julian: To explain the current political situation, in the recent election the ruling party that has governed Malaysia for the last 50 years was voted back into power but with a much smaller majority. So they are still in Parliament as the ruling party but the opposition is now in power in five key states. Two of these states make up the industrial heartland of Malaysia, where the majority of factories are located. This was a big change, as we have never had a credible party before to oppose the ruling coalition. As such, the question on everybody's mind now is how the opposition will govern these five states and

how the federal and state governments, which belong to two different political parties, can work together.

Fortunately, it looks like most of Malaysia's investment policies will remain the same for two key reasons. First, the ruling party is still in power and investment policies such as tax incentives are determined by the federal government. Second, the opposition says they're able to do a better job than the current government. They are saying, "We're also pro-business, so don't worry about things and continue investing here." Both parties want the current policies to remain or even be improved, since foreign direct investments are the lifeblood of the country.

The economy is still stable. More important, the political climate is still stable. Though the stock market tumbled almost 10% when markets opened after the election, over the course of the following week the market went back up, so confidence is also coming back. And from a checks-and-balances point of view, this is democracy—real democracy—at play. There was no unrest of any sort and polling went smoothly. It gives me great comfort to suggest that the impact of these elections will not be felt by investors and things may actually improve. So, long term, this change bodes well as it demonstrates the political maturity of the country. One prediction I can make with a degree of certainty is that the government's proposed introduction of a VAT or goods-and-services tax will be deferred even further. Such a tax is inflationary and would prove unpopular, with oil prices being so high and the price of basic necessities increasing.

Lisa: Thank you, Julian. What you describe is great for foreign multinationals because it looks like the foreign investment policy will remain welcoming. With the checks and balances in place, Malaysia will grow even stronger. And the deferral of the VAT system is also positive, because then companies will have fewer costs to deal with.

Julian: That's right. And we won't have the added complexity with a VAT system in place.

Lisa: If you recall, from the 1980s to the 1990s, Malaysia was the manufacturing hub of Southeast Asia. After the Asian economic crisis in the mid-90s, more plants were built in China and Thailand. How does this impact Malaysia in terms of its tax policy and incentives?

Julian: Interesting question. Over time, China and India have developed very rapidly, and places like Vietnam and Thailand followed the same low-cost manufacturing model. To avoid head-on competition and price wars, Malaysia has tried to turn away from using cost as a factor to attract investment. Instead, it focused on moving up the value-added chain, using tax incentives to encourage businesses that stayed to gradually move up the value scale. Malaysia also wants to diversify its economy into services. Similar to India, Malaysia is now focused on offshore placement of services like call centers or other business placement outsourcing activities. And our tax incentive system also helps manufacturers diversify by including manufacturing services such as procurement or supply-chain management on the list of qualifying activities. Now they look to businesses that wish to establish a regional presence in Malaysia because that's where the most value is added.

Lisa: Anthony, Thailand also saw significant political change. Over a year ago, Prime Minister Thaksin Shinawatra was forced out of power in a coup. Military government ruled for over a year, elections were held, and the pro-taxing government won. So what does this mean for foreign investment in Thailand? How does it impact the investment climate and tax policy?

Anthony: The remarkable thing is that this new government will be in place for only two years, rather than the usual four years, because the military government took up part of its term. So the new government will try very hard to make sure the economy is in the best shape possible to ensure they win the next elections. And they know the current grievance is that the military government didn't do very well in terms of economics. They pushed a self-sufficient economy and, as a result, trade was not pushed or heavily promoted. This new government takes a very different approach. They are promoting trade and investment and going on road shows to the U.S. and Europe to tell people that Thailand is back on track. They are promising similar tax policies to the ones that attracted foreign investment before.

When we look at the situation in Thailand, it's important to understand what "attracting investment" means from a tax perspective. Will the tax authority work against the promotion of trade? Would they want to be aggressive and try to collect the most revenue? The reality is that Thailand is still progressing and still needs a lot of revenue, but for many years Thailand has had a revenue collections surplus. Though attention has been pulled away from foreign investment issues lately, my impression is that the tax authority will support investment into Thailand, and it will be business-friendly. So they will not be too aggressive in trying to collect revenue beyond standard international concepts.

Lisa: It's very good to hear that the political changes in both Malaysia and Thailand should be good for foreign investors by offering more certainty and more checks and balances.

Anthony: That's right. And this new Thai government is trying to introduce many more incentives. For example, Hong Kong and Malaysia have a regional head office concept that they are now considering. From a cost perspective, from an infrastructure perspective, Thailand is just as competitive, but it had never considered this option.

Lisa: So we're seeing healthy competition for investment in Southeast Asian countries.

Jeff: Yes. Despite political change, they are business-friendly and they welcome investment. I take it that the government is speaking with one voice?

Anthony: Yes.

Jeff: That's important. In Japan, the government is speaking with two voices—the Prime Minister and the tax authority. It's like they've got two heads. The Prime Minister is telling people, "Yes, we'd love to have direct foreign investment." But then the tax authorities, who are the ones who write the tax policies, seem to suggest, "No, we are not encouraging foreign investment," which is why the tax rate in Japan has not been reduced as a means to attract foreign investments by offering tax holidays/incentives.

Sandy: China too. China has not changed much on the political front and the leadership remains the same. But China currently has a big headache because they want to keep improving the economy as a whole. They want to improve the welfare of about 1.3 billion people, but the majority of them are still farmers with very low income. At the same time, there are other major issues like air pollution and other environmental concerns. So they don't want to just rely on being a manufacturing powerhouse any more. They don't want foreign investors to focus on using cheap materials, labor, and other such resources. They want to encourage foreign direct investment with advanced or new technology. That's one of the reasons they have been reducing the export VAT refund

rates over the last few years—to discourage foreign investors coming to China simply to manufacture for export purposes.

They changed the tax law too. While meeting the WTO commitments to create a level playing field for everyone doing business in China, they also took away a lot of tax incentives. In the past, the effective tax rate could be as low as 10% or 15% for foreign investors in China. But now they will all be subject to the new standard rate of 25%. Though this is a reduction from 33%, there is no income tax holiday, and the corporate income tax burden is effectively increased for many foreign-invested enterprises. The few tax incentives left in the new corporate income tax law apply only to certain special situations.

Lisa: It's interesting that they are addressing some of their environmental issues through tax policies, and making sure that whatever foreign investment they attract will benefit the country in the long run.

Controversy and Transfer Pricing Dispute Resolution

Lisa: Let's shift gears and talk about tax controversy and, most significantly, transfer pricing dispute resolution. Each Asian country has its own trends and cultural nuances. When Western corporations go into Asia, they often assume that dispute resolution is handled similarly. Particularly in the U.S., a disagreement with tax authorities may mean going to court. But that may not work well in Asia where they use other forms of dispute resolution. The history of conflict regarding this area of cross-border business is strongest in Japan. In the late 1980s and early 1990s, the U.S. aggressively pursued Japanese multinationals regarding transfer pricing in the U.S. The National Tax Authority (NTA) retaliated by using aggressive audits to go after U.S. companies operating in Japan. Jeff, where do we stand with tax controversy and what are some of the trends you are seeing in Japan in dispute resolution?

Jeff: The tax authorities are again focusing on Japanese multinationals, but this time regarding their own transfer pricing with an affiliate in any other country. The old targets were Japanese subsidiaries of European and U.S. corporations. That has now expanded to include Japanese companies doing business with their affiliates in Southeast Asia, China, and other parts of Asia. The authorities also have started to address new types of transactions beyond the traditional sale of tangible goods, looking into intellectual properties and services as well. Transfer pricing receives growing attention because of the revenue it can generate. The assessment in 2000 and 2001 totaled around $1.1 billion U.S. In 2005, the total amount they assessed was something like $3.5 billion U.S. So the value of transfer pricing adjustments rose significantly in the last few years.

Lisa: I remember seeing a published list of foreign MNEs that faced transfer pricing audits and their initial assessments.

Jeff: Yes, in the newspaper. Up until a couple of years ago, the Japanese tax authorities published a ranking of the top taxpayers, both individuals and corporations. That may be where the data came from. But they do make it public. And, though it may be hard for Americans to understand, that's part of the controversy issue.

Lisa: You don't want your name to appear.

Jeff: At least from a U.S. corporate perspective, big U.S. taxpayers don't want something like "U.S. MNE KK with $100 million in assessment in transfer pricing" to appear in public.

In terms of transfer pricing, they tend to use APAs, both bilateral and unilateral. Japanese tax authorities are putting tremendous resources into APAs, including an entire national division. Transfer pricing audits and controversies are handled by the national offices rather than the local offices.

Lisa: Japan is one country where the cultural nuance is very important. If a U.S. MNE were to tell you as their tax practitioner, "Let's take this to court," how would you react?

Jeff: I'd have to simply say "no."

Lisa: Why?

Jeff: The Japanese try to avoid open litigation or open conflict. They want to talk internally and develop a mutual understanding or agreement. If audit disagreements occur on some issues, the tax authorities and taxpayer need to talk and decide on an amicable resolution. Some taxpayers do end up in litigation, usually because of global competition and their need to consider tax expenses and effective tax rates internationally. But still, most Japanese multinationals tend to negotiate outside of the court system. And rightly or wrongly, they also worry about maintaining a good relationship with the tax authorities.

Lisa: Is the tax authority a revered figure or a respected office?

Jeff: The tax authorities are shown respect by taxpayers. It's the government and there is a certain level of respect for the government. Culturally, it's considered one's duty to pay tax in Japan. Therefore, being on the list of top taxpayers can be a positive thing because it says, "I pay my dues. I am a taxpayer and a good citizen." It's an area of pride.

Lisa: You emphasized that Japanese society favors harmony, and harmony means you don't come into open conflict. Therefore, companies prefer settlements with the tax auditor. Or if they need international expertise, they can use an international APA that would be handled by people who are well versed with such tax principles to negotiate on their behalf. Open conflicts like court cases could affect the long-running relationship and show a lack of the respect usually accorded tax officials. That sets the stage for the traditional Asian way of dealing with the government. And Japan is up there in terms of being very traditional. Korea is very similar because, as you had pointed out, Korea and Japan tend to be similar culturally.

Jeff: True. Korean companies don't like to go to court, either. They prefer a discussion with the tax authorities to achieve overall harmony. They value that.

Lisa: Let's go to the other end of the spectrum. Sanjay, how about India?

Sanjay: It really is literally the other end of the spectrum, Lisa, because currently the Indian tax environment thrives on litigation. There is no process or mechanism for a settlement, so it's either you're liable to tax or you're not. It's all or nothing, absolutely. So litigation becomes one of the given choices. We keep hoping for India to introduce the Advanced Price Mechanism [APM] so the government can agree to appropriate pricing upfront. But the budget was announced in February and APM wasn't mentioned. Corporate taxpayers look for budgeting certainty and want to project tax liability for each transaction, and that's difficult to achieve in India.

Robert: Is an APM the same as an APA?

Sanjay: Yes, it's the Indian term. And given its effective implementation in countries such as Thailand and China, you'd think India would soon look at the APA.

Lisa: Sanjay, what path is appropriate for a foreign multinational that receives a significant adjustment? What are the levels and how long does it take to reach a settlement?

Sanjay: The key principle to use when considering litigation in India is a cost-benefit analysis. It's not important whether you are right or wrong, but how long you are willing to chase a resolution. If litigation reaches the Supreme Court, it could go on for 14 to 16 years. I must add that the government is making sincere efforts to reduce the time taken for litigation. For example, they started bunching appeals. Perhaps 100 appeals on the same topic will get bunched together and be addressed in one hearing over two or three days. They're also considering creation of a common authority to hear all transfer pricing cases and they're looking at an international tax tribunal for ruling upon all the international tax cases. But we definitely have a long way to go. And until we get there, U.S. companies need to swim through the litigation process and live with an element of uncertainty.

Lisa: What about going for a ruling?

Sanjay: That's an option. Increasingly, both U.S. and European companies seek what we call an "Authority for Advanced Ruling" to get a decision on a specific transaction upfront. It takes six to eight months. Once the ruling is issued, it's binding both on the taxpayer and the revenue authority. By and large, foreign MNEs that want certainty will opt for an advanced ruling. Unfortunately, it's still not available for transfer pricing.

Lisa: In terms of dispute resolution, let's say we go for a ruling on a tax matter and it's negative. What is the recourse? Can you go to the Supreme Court?

Sanjay: Yes, you can go to the Indian Court to contest an advance ruling, but the matter would need to be significant to take it to that level. By and large, companies opt for an advanced ruling when they have a very strong case and are fairly sure of the outcome. Otherwise, they weigh the advantage of achieving certainty versus taking their chances with the normal process. There is no simple answer. But, as I said, if certainty is a key driver, then, yes, an advanced ruling is a very good option.

Lisa: So because there is no mechanism for a settlement, in India you either pay or you don't pay. And if the amount is immaterial or not worth a fight, you pay. But if the amount is material, you certainly want to keep fighting. When do companies bring it up to competent authority? Or when can they bring it up to competent authority?

Sanjay: At any time, so long as the matter is pending. If you do, the Indian litigation comes to a standstill until the competent authority fails to give a ruling. Having said that, even a competent authority procedure is expensive and very time-consuming. Also, the ruling of the competent authority is limited to that particular fact pattern and year, so it doesn't have broad or long-term value. In short, the competent authority route also has its pros and cons.

Lisa: India is very challenging. With that, let's go to China. As Sanjay said earlier, this is the Internet age. The Chinese tax officials can read about what India is doing. So how do we deal with China?

Sandy: Let's start with transfer pricing, which is a priority for China. Even though they are behind other countries, they have made a lot of progress for the last several years. China turned to Australia and other developed Western countries to learn about transfer pricing and quickly set up an internal transfer pricing team within the Chinese tax authority. In recent years, they issued quite a few transfer pricing regulations, including the APA regulation, which was established only about four years ago. The new corporate income tax law just took effect at the start of this year. It formalized the cost sharing arrangement and transfer pricing provisions. The contemporaneous documentation requirements for transfer pricing are expected to come out soon, though there is still speculation on the timing of issuance.

Litigation is almost not in the dictionary of the taxpayers in China. It is so uncommon. Chinese taxpayers tend to resolve any dispute individually with the local tax bureau. There is a system in which you can go up the chain to litigation, but that's very rare. Usually, companies settle if they have a good relationship with the local authority. In complex situations, companies would use third-party advisors because of their experience, expertise, and relationship with the senior official of the tax bureau.

Even more important is that taxpayers really don't want their names in the newspapers or other publications. They don't even want to be known as the top taxpayer or receive any recognition for that. There may be some benefits to being a top taxpayer—you might get more attention from the local government officials, who would visit and see how things are going or inquire if you need any help. But some MNEs don't want attention of this kind. They just want to get on with business and do whatever they need to do to comply with the law.

Lisa: So it sounds like in China it's more of, "Let's keep it low-key. Let's settle with the tax officials or, if not, let's deal with the bosses." And on more complex transactions, APAs would be the answer to resolving some of those difficult issues.

Sandy: That's exactly right. The Chinese government encourages APAs, especially ones that involve entities in different provinces. And they don't have the resources to deal with controversy. They would rather you come forward and settle it for three years so they won't need to review you again for at least that long. At the SAT level, only a handful of tax officials specialize in transfer pricing. As a result, there are limited resources available to carry out transfer pricing audits.

Lisa: Well, at least you can see the light at the end of the tunnel in China, because you know that there is going to be a resolution. It makes me look at India and smile. Anthony, what about Thailand?

Anthony: Well, once you hear about India, Thailand is really very easy. Generally, tax controversy arises because of the expectations of revenue collections. Each revenue area has a budget and the budget is based on the expectations of collections from each company. If for any reason you file a return below expectations, generally they will understand what happened. But occasionally they will say, "I have a budget target to meet. Can you add back certain items that you took as deductions?" And there are situations where companies showed losses in prior years, so tax authorities figured they might not be able to collect revenue for the next few years. They might ask if you will waive all the losses and write them off—start from scratch. Typically U.S. multinationals

would be shocked because it's their right to take the deductions based on the loss carried forward from the previous year. They might want to refuse.

Lisa: So it's all about meeting the budget in Thailand. It doesn't have anything to do with technical arguments. The scenario is more about, “I'm short. Can you help me out?” So the local practice of revenue collection is something foreigners would have to factor in when they're investing in certain countries.

Anthony: Yes. While some international tax director sitting in the U.S. may want to say, “Let's litigate,” the finance director in Thailand will say, “No, no, no. Let's settle.” Settlement is a way of life in Thailand. Of course, if the tax authorities ask you to add back a million dollars in expenses, you don't necessarily have to. You could respond by asking how short they are on their budget and offer perhaps a quarter of a million instead. It's a give-and-take culture, unlike India where it's all or nothing.

Another more creative approach could be to defend the company's decision not to pay an additional amount with transfer pricing documentation. U.S. multinationals might consider this “controversy” because they have too little profit and have evidence to show that everything is arm's length. If you do decide to disagree with the authorities, they will issue an assessment, which you can dispute at a tribunal committee. The committee is formed by the government anyway, with the tax authority. If you disagree with the outcome again, you can go to court.

Of course, if you go to court, you openly fight the authority and, in the Thai tax society, face-saving is really very important. You might win the court case, but the tax authority will make your life difficult in the future. If you're that taxpayer, you might find that your refund check comes much slower than others' because of protracted tax audit procedures. So you might win the battle but you've lost the war.

Jeff: Is the budget a single number for the overall tax bureau or the country? Or is a collection amount allocated to each agent?

Anthony: The central government will set a total budget and it is cascaded down.

Jeff: So each agent that comes to the office has sort of his own target? Oh, that can be dangerous.

Anthony: In fact, sometimes the different revenue offices fight over the same budget because there are situations where the same entity has locations in different areas. If a company knows that one area is easier to deal with, it might try to move the governing office, but the other office will fight the move and might make it very difficult to relocate.

Lisa: So let's hope the growth in Thailand continues to be very robust, so that budgets are met and foreign entities are not called upon to contribute more!

Anthony: Right. Fortunately, with this new government, controversy has been reduced to a great extent. We see fewer issues this year compared to last year.

Sandy: If they were on deficit, they would ask you to pay more. But what if they were on surplus? Would they return money to you?

Anthony: No, no, no, no.

Sanjay: Ah, it's a one-way street called Tax.

Lisa: Julian, how is Malaysia looking at tax collection and controversy?

Julian: Well, Malaysia has collection targets as well, and transfer pricing audits take in a large share of the revenue. When transfer pricing guidelines came out in 2003, Ernst & Young, along with the other professional firms, ramped up. We created a new transfer pricing team, held training sessions with people from other jurisdictions, conducted seminars, and prepared clients for the issues that transfer pricing can create for a company. But the audits didn't come! The government had only one central transfer pricing team at that time and they were not very experienced in conducting transfer pricing audits. They also lacked industry knowledge and the focus was on smaller, more basic trading entities or manufacturers.

Since then, things have changed dramatically. The government's transfer pricing team now reviews more industries, like oil and gas and pharmaceuticals. They've grown from one small team to three, for the north, central, and south regions. They also now target what we call "multiple function entities" and corporate groups. And in addition to the simple sales and purchases activities, they now cover services and things like management fees, royalties, office allocations, and recently even intercompany loans. It's grown very significantly, very quietly. Companies should now focus on their transfer pricing and how prepared they are for an audit because the tax authorities can only get more aggressive and better at what they do.

Conflicts also tend to get settled in Malaysia like in other Asian countries. The courts are a last option. In Asian culture, the Inland Revenue Board is seen as an extension of the government and multinationals are reluctant to be seen as going against the government or being a bad corporate citizen. But I would like to compare this trend in general tax audits to transfer pricing audits, because differences emerge in taxpayer attitudes when it comes to transfer pricing audits.

In a tax audit, the government might go back three years to address common issues for an industry, such as pharmaceuticals. If they win a case with one company, they can apply the same treatment across an industry—so they know what they are looking for when they audit you. Going to court is also very time-consuming. It detracts from other activities relevant to managing the business. Most taxpayers would prefer to settle and get an audit over with, especially in situations where there is no easy answer to the issues raised.

On the other hand, companies normally take a firmer approach with transfer pricing. Adverse transfer pricing adjustments as a result of audits are very expensive and have longer-term implications because they affect all sales moving forward. In addition, companies may set transfer pricing margins to be similar all over the world. If companies pass audits in other countries and fail in Malaysia, it either points to a systematic need to adjust their entire transfer pricing system or it implies that the Malaysian authorities are being too aggressive in their interpretation of what the correct transfer price should be. So multinationals are increasingly putting their foot down and saying, "No. I don't want to settle. I want to take this to the very end. We may even take this to court if we have to."

Lisa: Thanks, Julian. Most of Asia—let's exclude India for now—prefers the harmonious way of settling with the tax authorities. We see trends emerging between transfer pricing and non-transfer pricing, because transfer pricing has long-term consequences. For countries with APAs, that's the best way to explore it. With Malaysia …

Julian: Malaysia is starting to explore it. The Inland Revenue Board is getting more comfortable with the idea of APAs. When they initially developed a transfer pricing regime, they took baby steps and were only willing to explore APAs, perhaps on the assumption that they would be at a disadvantage in negotiations with more developed tax jurisdictions. But after five or six years, they feel more confident and are giving us signs that they're ready to explore both bilateral and unilateral APAs.

Lisa: That's great. It's important for companies to understand that in most Asian countries, there is an advantage to being the first mover, because the tax authorities want to learn and you create a lot of good will. At the other end of the spectrum, of course, is India, because there is no settlement mechanism and going to court or going to the competent authority is the only answer.

I once read that given its size and diversity, Asia is not so much a "homogeneous physical entity" as it is "a cultural concept incorporating a number of regions and peoples." [6] I think that our discussion today comparing the development, direction, and local perspectives and the contrast among the different authorities in only five of Asia's 37 countries may speak to that perception. These countries may be considered under the one umbrella of "Asia," but there are some definite and considerable differences that companies must address in each area in which they want to do business on the world's largest and most populous continent.

1

For an EY Roundtable on the evolution of the Foreign Desk program and its ongoing relevance to international tax, see "Ernst & Young and the Global Tax Arena: The View From the Desk," 19 JOIT 20 (April 2008).

2

Rolls Royce Plc v. DDIT, 113 TTJ 446; Galileo Int'l Inc v. DDIT, 19 SDT 257; Morgan Stanley & Co v. DIT, 292 ITR 416. See "Indian Tax Tribunal Issues Judgments on PEs and Profit Attribution," *EY Foreign Desk*, 19 JOIT 10 (April 2008).

3

See Circular Guo Shui Han [2007] 403 issued by the SAT on April 4, 2007, discussed in Lau, Ng, DeWitt, and Lee, "Hong Kong Signs Comprehensive DTA With Luxembourg," 19 JOIT 49 (May 2008). Other PE-related circulars issued recently include Guo Shui Fa (2006) No. 35, Guo Shui Han (2006) No. 694, Guo Shui Han (2006) No. 970, and Guo Shui Han (2008) No. 685.

4

See Teunissen, Semenov, Ho, and Wong, "Recent Trends for Alternative Fund Investments in China," 18 JOIT 20 (May 2007).

5

See Ip, "Investing in China After WTO Accession: Ten FAQs on Regulatory Changes," 13 JOIT 57 (October 2002); Wang, "What Does China's Entry Into the WTO Mean for Investors?," 12 JOIT 4 (August 2001).

6

See "Asia" entry in *Encyclopedia Britannica* (Chicago, 2006).

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