Singapore and the One Belt One Road Initiative: Potential tax implications for investors in the land route

By

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This research is devoted to shed some light on the tax systems of central Asian countries and to improving the existing tax treaty network between central Asian countries and Singapore. The aim is to identify which provisions require modifications to facilitate trade and investment within the central Asian region while not giving room for base erosion. While Singapore already has a broad network of treaties and quite extensive knowledge in international tax law, most of the central Asian countries have very limited treaty networks in place with treaties not adequately reflecting the current economic structures and relevant trading partners. The research will identify areas where taxpayers need to pay attention to and governments might consider changing existing tax treaties in order to adapt them to the current economic realities and the new global standards stipulated through the BEPS project to ensure stable and sustainable growth in the region.

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I. The One Belt One Road Initiative

This research paper analyses Singapore's role in the land route of the One Belt One Road (OBOR) project. Section I will outline the general concept of the One Belt One Road project and provide details on Singapore's possible role in this project. Potential tax issues will be flagged. Section II will briefly give an overview of different national tax systems of the central Asian countries. This part will also examine whether there are any special economic regimes for investment in the Central Asian countries along OBOR. Section III will focus on Singapore's double tax treaties (DTTs) with counties of the land route of the New Silk Road regarding financing and infrastructure projects. It contains an analysis of Singapore's tax treaties with a special focus on permanent establishments, business profits, dividends, interest, royalties and capital gains. Furthermore, the elimination of double taxation and anti-avoidance provisions will be analyzed. Section IV will point out possible conclusions from both a national perspective and from a tax treaty perspective.

A. Overview

Due to ongoing globalization and economic integration, there remains a significant need for quicker and more efficient transportation of goods and services between different economies worldwide. Also known as the New Silk Road project, One Belt One Road (OBOR) focuses on establishing a trade channel between China, Southeast Asia, Central Asia, Africa and the European Union.[2]

The New Silk Road project covers more than 60 countries across Asia from the Chinese mainland to Europe and Africa and includes more than 60% of the world's population. 30% the world's GDP, and 35% of world trade are affected by the New Silk Road Project. The project is set to promote a seamless flow of capital, goods and services between Asia and the rest of the world, by promoting further market integration and forging new ties among communities. To do so, it focuses on five key areas, namely policy coordination, infrastructure development, investment and trade facilitation, financial integration, and cultural and social exchange. These key areas link together in order to plan and develop large scale infrastructure-projects, to build additional facilities to enable connectivity along the New Silk Road, to facilitate cross border investments and supply chain coordination and to enhance monetary policy coordination and bilateral financial cooperation.

Over the last few decades, Central Asian countries lagged behind in terms of economic development. Currently, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan are moving at different speeds towards a market economy and privatization of state-owned enterprises. Gradually, the region as a whole is progressing towards integration and market liberalization, with the motor of development being the oil, gas and mining sector.[3]

Despite this recent economic upswing, the geographic remoteness of the Central Asia region has been seen as an obstacle to the development of infrastructure and trade. The fact that most of the countries are landlocked and that the closest seaport is at considerable distance leads to high transport costs. Nevertheless, transport is one of the most significant factors for economic development in a region. Therefore, investment in infrastructure, such as rail, roads and pipelines, is necessary to exploit trade and investment opportunities. Most Central Asian countries are stepping aboard this train, but the openness of individual economies remains varied.[4]

In order to take advantage of the centrality of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, China's leader Xi Jinping presented the newly launched Silk Road project in autumn 2013. It is a collection of land and maritime routes, forming a transport corridor between China, Africa and Europe and all countries along the way. Nevertheless, besides being a functional channel from Asia to the European Union, the Silk Road project also focuses on boosting economic development in the countries concerned. It covers various different investment projects, mainly focusing on infrastructure.[5]

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[2] K. Bradsher, *Hauling New Treasure along the Silk Road*, The New York Times (21 July 2013). For more information on the maritime Silk Road, *see* R. Wang & C. Zhu, *Annual Report on the Development of the Indian Ocean Region (2015): 21st Century Maritime Silk Road* (Springer 2016).

[3] United Nations Conference on Trade and Development, *Investment Guide to the Silk Road*, at 3 (2014).

[4] United Nations Conference on Trade and Development, *Investment Guide to the Silk Road*, at 4 (2014).

[5] M. Schüller & T. Nguyen, *Vision einer maritimen Seidenstraße: China und Südostasien*, GIGA Focus Global 7, at 1, 2 (2015); M. Kaczmarski, *The New Silk Road: A Versatile Instrument in China's Policy*, OSW Commentary 161, at 1 (2015).

In principle, there are two possibilities for shipping goods from China to Europe: the maritime route, known as the Maritime Silk Road, and the land route, known as the Silk Road Economic Belt. As for the Maritime Silk Road, the focus of the Chinese government lies in expanding the already existing waterways between China and Europe.[2] However, because only 30 ports carry out 80% of world trade, making use of these means of transport causes bottlenecks and delays, in cases when goods are shipped to remote harbours.[6] Therefore, the following sections are focused on the land route of the One Belt One Road Project.

The land route does not consist of only one possible way for transport, but again more alternatives. On the one hand, transport can take place by road; on the other hand, goods can be shipped by rail. Finally yet significantly, transport by pipeline is also possible, as it is being used to import gas from Kazakhstan and Turkmenistan to China.[7] However, before any transportation of goods is possible from China to the central Asian region or to Europe, a wide variety of projects still will need to be implemented, in order to construct all necessary infrastructure.

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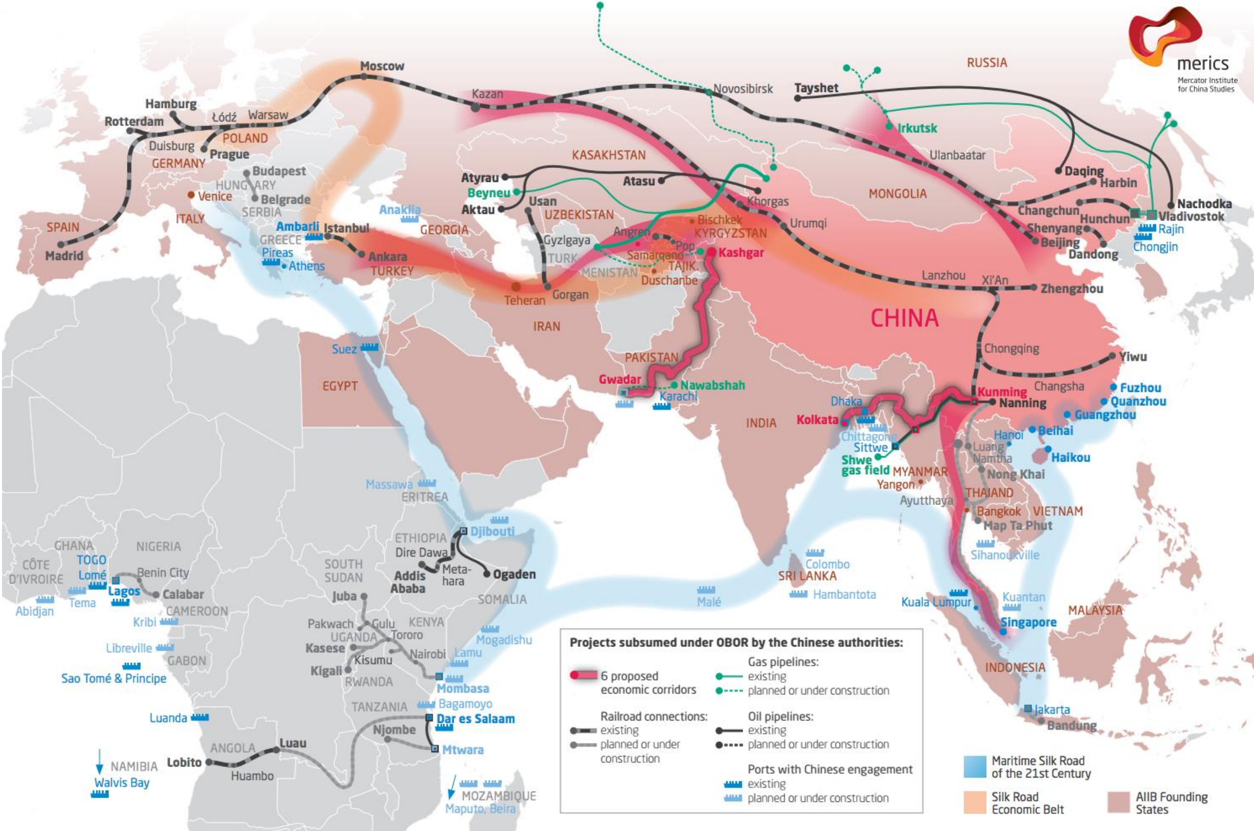

Figure I-1: Overview of the One Belt One Road Initiative

Figure I-1[8] provides an overview of the different projects planned under the One Belt One Road Initiative. It includes the Maritime Silk Road as well as the land route with rail and pipeline infrastructure projects. Furthermore, also road construction is planned.[9]

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[6] IRU, *Euro-Asian Road Transport Links - Reopening the Silk Road*, available at https://www.iru.org/en_project-euroasian (accessed 2 Feb. 2016).

7 J. Fishelson, *From the Silk Road to Chevron: The Geopolitics of Oil Pipelines in Central Asia*, J. Rus. & Asian Studies (2007), available at http://www.sras.org/geopolitics_of_oil_pipelines_in_central_asia (accessed 30 Jan 2016).

[8] Graph taken from Zen Soo, *ZTE to play integral role in creating 'information superhighway' to connect One Belt, One Road countries*, in South China Morning Post on 02 December, 2016, http://www.scmp.com/business/article/2051219/zte-play-integral-role-creating-information-superhighway-connect-one-belt (accessed 6. April 2018).

[9] For planned road construction projects see Kollmann, *The Role of Border Crossing Procedures in the Transportation of Goods along the New Silk Road: The Impact of Technical and Administrative Requirements,* in Lang / Owens, Kluwer 2018 (forthcoming).

B. Singapore's Role in the One Belt One Road Project

From an economic perspective, Singapore and China are related very closely. This becomes especially evident when examining the figures related to China's inbound and outbound investments. 33% of all outward investments from China related to the OBOR project flows through Singapore, while 85% of inbound investments for the initiative makes its way into China through Singapore.[10] As Chinese companies investing abroad might still face challenges when raising money in the host country,[11] Singapore's banks can service these Chinese investors.

Singapore and China have been working together very closely over the last decades, evidenced by past joint projects between China and Singapore. For example the Suzhou Industrial Park project was jointly developed by China and Singapore in the 1990s; later the Tianjin Ecocity was developed and by 2010 Singapore engaged in developing the western region of China. However, not only the construction of physical substance and the provision of funding, but also the know-how transfer played an important role. Chinese delegations were trained in Singapore and delegations from Singapore went to China to help build the project, transfer software and train how to use software.[12] Accordingly, in Singapore, investing in infrastructure has been combined with creating a supply chain ecosystem that develops technological, financial, legal, banking and a myriad of other supporting mechanisms. The city's strong pool of talent helped support the business projects. These capabilities are overlaid with a stable, corruption-free government and competent workforce, complementing each other effectively.

Even though the One Belt One Road Project is led by China, this does not mean that non-Chinese engagement is not allowed. Opportunities for Singaporean companies arising from the OBOR project are manifold. Especially in partnership with Chinese investors, capital projects and infrastructure can be supported with the supply of high-tech equipment, technology and intellectual property; with assistance in engineering, procurement, construction and project finance and with the joint development of new marketing strategies for Chinese businesses for the OBOR countries' markets.

The examples above show that Singapore acted as China's sparring-partner, with its expertise in financing, planning, designing and building large international projects across sectors. However, to continue this role successfully, Singapore needs to discover and ascertain the needs of China in its future development phases, so that Singapore can play a valuable role in China's future projects. Furthermore, Singapore can help global businesses to capture the vast potential emerging from China's One Belt One Road initiative with its expertise in sectors ranging from logistics and financial services, to infrastructure and professional services (legal, accountancy, consulting).

However, as mentioned above, China is not the only player in the OBOR project. Singapore can also make use of its central position in Southeast-Asia and play a role in the development of the markets of its neighbor countries.[13] Singapore may also leverage the Chinese investment partnerships for accessing the markets in the central Asian countries itself. Accordingly, Singaporean entities can provide support, know-how and financing for joint projects which are undertaken locally in the central Asian region. In brief, Singapore's engagement in the OBOR project can lead to better trade with the One Belt One Road markets with improved infrastructure.

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[10] Warren Fernandez, *Singapore can play key role in Belt and Road*, in The Straits Times on January 25, 2018, referring to an interview with Mr Chan Chun Sing, former Minister in the Prime Minister's Office and NTUC chief during a session at the World Economic Forum on the One Belt, One Road Initiative. http://www.straitstimes.com/world/europe/spore-can-play-key-role-in-belt-and-road-chun-sing (accessed 5. April 2018).

[11] Wu Gang, *Four Things to Know About Economic Zones Along the Belt and Road*, Caixin, 14 May 2017, https://www.caixinglobal.com/2017-05-14/101090194.html (accessed 13 April 2018).

[12] Warren Fernandez, *Singapore can play key role in Belt and Road: Chan Chung Sing*, in The Straits Times on January 25, 2018, http://www.straitstimes.com/world/europe/spore-can-play-key-role-in-belt-and-road-chun-sing (accessed 5. April 2018).

[13] Compare the work done by Dong Yue, The Impact of Double Tax Treaties on Inward FDI in ASEAN countries, SMU-TA Centre for Excellence in Taxation; and Xu Diheng, Investment Tax Risks from China to ASEAN under the Belt and Road Initiative, SMU-TA Centre for Excellence in Taxation.

C. Potential Tax Issues for the One Belt One Road Project

(a) General Tax Issues

Since the One Belt One Road Project covers a variety of different countries, it is no surprise that also the tax systems of these countries are all differing from each other. Even though there is no comprehensive study on the different VAT and CIT systems of the One Belt One Road countries yet, the countries along the New Silk Road do all levy a variety of different taxes and even their income taxes are designed in a differing way.[14] Hence taxation will impact investment decisions. Since there is very limited harmonization of tax systems in central Asian countries, the interaction of the different national tax systems will lead to a variety of tax issues.

In addition to the different national tax systems, the treaty network of the central Asian countries is very limited. The same holds true for transfer pricing rules in central Asia.[15] Furthermore, past experience has shown that the tax administrations of central Asian countries are inexperienced and often lack the knowledge to apply complex international tax rules and transfer pricing principles.[16]

However, to attract foreign investment, it is expected that central Asian countries will predominately make use of free trade zones and introduce tax incentives.[17] This could lead to fierce tax competition among the countries on the land route of the New Silk Road, which, however would put pressure on the different domestic fiscal regimes. As investors might "shop around" to minimize their tax burden, such a race to the bottom might not be beneficial for the overall development of the One Belt One Road Project.

To resolve these potential tax issues, central Asian countries may wish to consider a multilateral approach to coordinate their international tax provisions and preferential tax regimes. A multilateral approach with minimum standards and best practices for tax incentives would be desirable, thereby facilitating a closer economic integration. At the current stage of development, such a multilateral approach can be considered as wishful thinking only. A great amount of research, coordination and integration will need to be undertaken, until central Asian countries will be able to align their tax systems.[18] However, until then, the labyrinth of different national tax systems will continue to be in place.

(b) Tax Issues related to Singapore

As mentioned, Singapore is a place for Chinese companies to raise funds for investment in the infrastructure projects. Chinese companies start establishing financing corporations and FinTech companies in Singapore so that they can use the professional, sound and innovative regulation, and financial center activities of the city.[19]

For Singapore as a financing hub for the One Belt One Road Initiative, it is particularly interesting which of the OBOR countries could be a strategic destination for investment. Furthermore, local talent and knowledge as regards the setting up of development projects enable Singapore to also act as a holding location for investments into central Asian countries. In this regard, a variety of tax issues can arise as concerns on the one hand, the flow of cash, and on the other hand, the physical presence in central Asian countries. Tax treaties can help to avoid any potential double taxation which might result from these investment activities. However, since Singapore does not have a

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[14] For a brief overview of the differing tax systems of the One Belt One Road countries see below, Section II Tax Systems in selected OBOR Countries.

[15] For an overview of transfer pricing practices and rules compare EY, *Worldwide Transfer Pricing Reference Guide 2016-2017*, http://www.ey.com/Publication/vwLUAssets/ey-worldwide-transfer-pricing-reference-guide/$FILE/ey-worldwide-transfer-pricing-reference-guide.pdf (accessed 6. April 2018).

[16] Jeffrey Owens, *Will Tax derail the Belt and Road initiative?*, in Lang / Owens, XXX, Kluwer 2018 (forthcoming).

[17] Meyer, Klaus E., and Hung Vo Nguyen, *Foreign investment strategies and sub-national institutions in emerging markets: Evidence from Vietnam*, 42.1 Journal of management studies 2005, 63-93, at 72.

[18] A similar exercise is undertaken at the level of the European Union at the moment with the planned launch of the Common (Consolidated) Corporate Tax Base. This project proved not to be successful in its first attempt in 2011. However, in 2016 a relaunch of the proposal took place and consolidations are still ongoing to harmonize European Corporate Income Tax rules.

[19] PR Newswire Association, *Ping An leverages FinTech to follow the "One Belt, One Road" initiative: Lu International platform goes live in Singapore,* PR Newswire, 17. Jul 2017.

complete treaty network with the OBOR countries, also domestic withholding taxes on dividends, interest and royalties are of interest. Accordingly, both national tax regimes and Singapore's tax treaties with OBOR will be examined in the next sections below.

II. Tax Systems in selected OBOR Countries

This section will give a brief overview of the national tax systems of selected One Belt One Road countries.[20] A focus will be placed on provisions relevant to foreign investors. First, the table will show whether the country located on the OBOR has a double tax treaty (DTT) with Singapore (SG). This column is only inserted for purposes of background information, as Singapore's tax treaties will be examined in the next section below.[21] As this section focuses on the national tax systems in the OBOR countries, any further information depicts the local countries' tax systems without taking into account their tax treaties.[22]

Accordingly, the local corporate income tax rate (CIT) and possible preferential tax rates or tax incentives will be shown. Furthermore, the treatment of capital gains and the possibility of carrying forward tax losses will be included in the table. Then, the tax treatment of non-residents will be described, i.e. with which type of income foreign residents are taxable in the OBOR country and what type of activities can constitute a permanent establishment (PE) in the respective country. Moreover, the table shows what amount of tax is withheld on different payments from the OBOR country as source country. The withholding tax rates (WHT) are shown separately for dividends, interest and royalties and also other type of payments are included in the table if withholding tax can be levied. Lastly, the table will show whether there are any special economic zones (SEZ) in the respective OBOR countries and which type of tax exemption is granted in the special economic zone.

A. Table for comparing selected One Belt One Road Countries' national tax system

	DTT with SG	CIT				non-residents		WHT				SEZ
		Rate	Tax incentive	Capital gains	loss car-ryforward		PE	Dividends	Interest	Royalties	Other	
Afghani-stan	No	20%	7% for supplies, construction, etc. provided to public entities	Capital gains subject to standard rate	three years tax loss carry forward	any nonresidents income from Af-ghanistan is taxa-ble at source at 20%	place of business: where business is carried on	20%, final tax			10-15% for rent of im-movable property	

[20] Since there was no data available for Islamic Republic of Iran, this country was omitted.

[21] See Chapter III Singapore's tax treaty network below.

[22] The information was extracted from EY, *Worldwide Corporate Tax Guide 2017*, April 2017; PWC, W*orldwide Tax Summaries: Corporate Taxes 2017 / 18*, 1 June 2017.

Belarus	Yes	18% 25% for banks & insurance companies	10% for science and technology parks	Capital gains subject to standard rate	ten years tax loss carry forward	18% for nonresidents income sourced through a PE, 12% for capital gains without PE	place of business; services for 90 days and construction sites form a PE	10%	0 / 10% on non-formalized borrowings	15%	15% for income from server capacity and R&D activities	six SEZs with tax exemption for 10 years starting when profitable
China	Yes	25%	15% for High-Tec enterprises and 10% for software enterprises	Capital gains subject to standard rate	five years tax loss carry forward	nonresidents pay 20% tax on Chinese source income	establishment engaging in business operations, management, labor, construction, sign contracts	10%				tax holiday for companies in the 5 SEZ: exemption for the first two years and 50% reduction for the three years
Kazakhstan	Yes	20%	6% for agricultural producers	Capital gains subject to standard rate	ten years tax loss carry forward	20% tax withheld for all payments to nonresidents	15% branch profits tax; place of business; services for 183 days; agencies and construction sites form a PE	15%			20% for all other payments to foreigners	100% CIT reduction in the 10 SEZ
Kyrgyzstan	No	10% profit tax	tax exemption for residents of Innovation Technology Park; 0% tax rate for entities in gold industry	Capital gains subject to standard rate	five years tax loss carry forward		permanent place of business	10%			10% on services; 5% on communication and transportation	tax neutral regime in four SEZ, but 0.1-2% fee levied on sales

Mongolia	Yes	10% for first MNT3 billion and dividends, interest and royalties; 25% for excess amounts	50% tax credit for income from production of certain food; 50% or 90% tax credit for activities in remote provinces excluding extracting & construction; 90% for agriculture, food, clothing and construction materials	Capital gains subject to standard rate; 2% for immovable property	two years tax loss carry forward, use is restricted to 50% of taxable income (four years for mining, no restriction in amount used)	nonresidents taxed with Mongolian source income	legal situation uncertain, PE only can only be registered if entity resident in a DTT country	20%				50% CIT discount in SEZs
Pakistan	Yes	31%; 35% for banking companies; 25% for small companies	tax exemption for electricity projects; computer software development; 90% exemption for certain investment schemes	Capital gains on public securities taxed at 0-18% depending on duration of holding; other subject to standard rate; 5-10% for immovable property	six years tax loss carry forward, capital losses only off settable against capital gains.	nonresidents with a branch are taxed with Pakistan source income attributable to the branch	place of business including construction site for more than 90 days	12.5%; 7.5% for entities engaged in power generation; 25% for investment schemes	10%; 20% for nonresidents with a PE in Pakistan	15%; 20% for nonresidents with a PE in Pakistan	generally 15% for technical services; up to 20% on all payments to nonresidents	
Russia	Yes	15.5-20% depending on region	regional tax incentives for special industries can be negotiated; reduced rates for IT company, R&D super deduction	Capital gains subject to standard rate; 0% for certain shares disposed by Russian residents	unlimited tax loss carry forward; can be offset up to 50% of the tax base	nonresidents' Russian source income is taxed at 10-20%.	place through which a foreign entity carries out business activities in Russia	15% to foreign residents; 13% (final rate) to Russian residents	15-20%	20%	10% on freight income; 20% on all payments to nonresidents	SEZs for industry, tech and tourism, different tax benefits

Tajikistan	No	23%; 13% for enterprises producing goods;	simplified system with 5-6% tax rate for small businesses; exemptions for agriculture, hydroelectric power production and certain government projects	Capital gains subject to standard rate; exemption for securities on Tajikistan stock exchange	three years tax loss carry forward	any nonresidents income from Tajikistan is taxable at source	PE subject to branch profits tax of 15% after CIT; activities carried out through a fixed place in Tajikistan, regardless of duration, including service, construction, and agency PE	12%; exemption for securities on Tajikistan stock exchange	12%	15%	5-6% for insurance, transport and telecommunications; 15% for all other	Four SEZs with CIT exemption of 2-5yrs depending on investment amount
Turkey	Yes	20%	different tax exemptions on R&D and software development activities	Capital gains subject to standard rate; 75% exemption for shares held >2yrs	five years tax loss carry forward	nonresidents activities in Turkey are subject to tax	activities carried out through a fixed place in Turkey regardless of duration	15%; participation exemption possible; branch profit repatriation is regarded as dividend	0% on interest payments to foreign banks; 10% on other loans; up to 18% on other	20%	20% on rental and services	Free trade zones exist; investment incentives with CIT reduction of up to 100%
Turkmenistan	No	2-8% depending on size; 20% for oil & gas and government held entities	negotiable on case-by-case basis	Capital gains subject to standard rate	three years tax loss carry forward	nonresident are subject to tax with Turkmenistan source income	20% CIT on PE; permanent place through with commercial activity is conducted including through an authorized person	15% branch profit repatriation is regarded as dividend	15%		6% on lease of vessels and aircrafts; 15% on all other payments	

Ukraine	Yes	18%; additional 3% for insurance activities; additional 10% on gambling activities	tax holidays for smaller companies;	Capital gains subject to standard rate	tax loss carry forward without limitations	nonresidents are taxed on Ukraine source income	fixed place of business, including servers; services and construction works >6 months	15%; national participation exemption applicable	15%		15% for engineering services, lease payments, agency and brokerage fee, sale of real estate and securities; 6% on freight services	
Uzbekistan	Yes	7.5%; 15% for banks; simplified tax regime for small businesses with 5% tax rate; additional local infrastructure development tax of max 8%	50% CIT exemption for profitable mobile services companies; tax exemption for extractive sector for exploration period and joint ventures are granted 7yrs CIT holiday from start of extraction	Capital gains subject to standard rate	five years tax loss carry forward; maximum deductible amount is 50% of the taxable income	nonresidents pay tax on Uzbekistan source income	additional 10% net profits tax; entrepreneurial activity carried on (for 183 days) in Uzbekistan including agency PE	10%; domestic payments are excluded from CIT base at the recipient entity		20%	20% on services, rent and other income including capital gains	seven SEZs with tax exemptions fro 3-10yrs depending on investment amount

B. Interpretation of Table

(a) Differences in corporate income tax rates

From the table above it can be seen that the different countries national corporate income tax rates are around 20%, with a substantive amount of countries having lower tax rates for smaller companies. This reflects a general trend spotted by the OECD that countries continue to lower their corporate income taxes, with average tax rates of 32.2% in 2000 falling to 24.7% in 2016.[23] When comparing the OECD statistics with the table above, it can be seen that many of the OBOR countries have CIT rates below the OECD average. Solely China's CIT rate of 25% is slightly higher than the OECD average.

A significant exception from this is Pakistan with a general CIT rate of 31% and an even higher CIT rate of 35% for banks and insurance companies. Also in Belarus, with a general CIT rate of 18%, the CIT rate is 7% higher for banks and insurance companies. The same holds true for Uzbekistan, where the CIT rate is 15% for banks compared to an average CIT rate of 7.5% for all other corporate taxpayers, and for Ukraine, which adds 3% to the general CIT rate of 18% for insurance companies.

Most of the OBOR countries, however, have a CIT rate of even below 20%. Significant deviations include Kyrgyzstan, Turkmenistan and Uzbekistan with a CIT rate of maximum 10%. In this regard, it is also remarkable that Turkmenistan has a higher CIT rate (20%) for companies engaging in the oil and gas sector, which is contrary to other countries treatment of oil and gas companies (see next section below). Also Tajikistan has a lower tax rate of 13% compared to 23% standard CIT rate for companies engaging in the production of goods.

In most countries, the same corporate income tax rate applies in the whole country with no additional local income tax being levied on corporations. However, in Russia the CIT rate depends on the specific region. Solely in Uzbekistan there is a local tax on profits charged at a maximum of 8% (Infrastructure Development Tax).

(b) Preferential Tax Regimes and Special Economic Zones

Most of the OBOR countries offer a lower tax rate or a preferential tax regime for certain types of activities. In many countries, i.e. Belarus, China, Kyrgyzstan, Pakistan, Russia, Tajikistan and Turkey, lower tax rates are applicable to companies engaging in the High-Tec, information technology (IT) or software industry. Other countries, i.e. Kazakhstan, Mongolia and Tajikistan apply lower CIT rates to companies engaging in agricultural production like farming, poultry farms, production of milk, etc. In contrast to Turkmenistan, which has a higher tax rate for companies engaging in the oil and gas sector, Uzbekistan and Tajikistan provide for exemptions for the extractive sector. Similarly, Kyrgyzstan applies a 0% CIT rate on taxpayers engaging in the extraction and the trade with gold.

The majority of the countries along the land route of the New Silk Road have set up Special Economic Zones (SEZs) or Free Trade Zones in their territories. These SEZs are characterized by generous exemptions from CIT as well as in some cases also value added tax, personal income taxes, social security contributions, and other property taxes. Quite often, such a CIT exemption is dependent upon a certain sum which needs to be invested. Mostly, the duration of the tax exemption is determined by the amount invested, i.e. the higher the investment amount, the longer the tax exemption is granted. Many of these special economic zones set up special administrative centers responsible for the companies' registration, customs issue and tax administration.[24]

Countries like Afghanistan, Pakistan or Turkmenistan do not have any special economic zone yet. It is likely, however, that these countries would prioritize implementing SEZs in the future, as can be seen from the example of Pakistan: It was stated by the Federal Minister for Planning, Development & Reform, Ahsan Iqbal, that the "development of special economic zones (SEZs) is the most important phase of China Pakistan Economic Corridor (CPEC)

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[23] OECD, Tax Policy Reforms 2017: OECD and Selected Partner Economies, Paris 2017, OECD Publishing, p. 54. https://read.oecd-ilibrary.org/taxation/tax-policy-reforms-2017_9789264279919-en (accessed 12 April 2018).

[24] Wu Gang, *Four Things to Know About Economic Zones Along the Belt and Road*, Caixin, 14 May 2017, https://www.caixinglobal.com/2017-05-14/101090194.html (accessed 13 April 2018).

which would prove as a milestone in relocation of Chinese industries and flourishing of Pakistan's local enterprises."[25] It can thus be expected that more special economic zones will be implemented in the OBOR countries in the future.

Solely Turkmenistan does not apply any preferential tax regime, neither has it any special economic zones, which might be due to the low CIT rate of 2-8% depending on the size of the company. However, in Turkmenistan tax and investment incentives may be negotiated on a case-by-case basis.

(c) Taxation of Non-Residents

All of the countries included in the table above operate a residence-based system, whereby residents of the country are taxed on their worldwide (local and foreign) income, while nonresidents are taxed only on their local income. In most of the countries entities which are registered pursuant to the respective countries laws (legal seat) or which have their place of (effective) management in the respective country are considered a resident. The countries Belarus, Kyrgyzstan, Ukraine and Uzbekistan only consider the legal seat of the companies as relevant for residency, i.e. companies cannot become a tax resident because of establishing a place of management in those countries.[26]

The concept of permanent establishment is commonly known in all of the OBOR countries depicted above and in many cases quite broadly defined as a place where business is carried out. The only exception from this is Mongolia, which in principle also allows foreign PEs, but the legal situation is uncertain. This means that currently only residents of countries with which Mongolia has a double tax treaty are allowed to register their Mongolian PE. The degree of permanence and the substance necessary to establish a PE varies however between the countries. In Turkey and Tajikistan for example, all business activities carried out regardless of the duration constitute a PE. On the other hand, in Uzbekistan the entrepreneurial activity needs to be carried out for more than 183 days. Further examples include Belarus, where services performed for more than 90 days form a PE and Kazakhstan, where services performed for 183 days form a PE. Pakistan included a 90 day threshold for construction PEs, whereas Ukraine has a 6 months threshold for construction PEs.

All in all, it can be seen that national legislation on permanent establishments differ. What can constitute a PE in one country will likely be regarded differently in the neighbor country along the OBOR. There are no uniform standards for the permanence and the fixedness of an establishment to constitute a PE, neither are there for the type of activities that can constitute a PE.

It also needs to be pointed out that in Turkmenistan and in Uzbekistan the tax rate for permanent establishments is higher than the one of legal entities. In detail, in Turkmenistan the CIT rate on permanent establishments of foreign legal entities is 20%, whereas Turkmen legal entities are subject to 8% CIT (2% in case of small or medium sized entities) and in Uzbekistan PEs of foreign entities pay a 10% net profits tax, which is levied on accounting profits less CIT.

(d) Withholding taxes

All of the countries analyzed levy withholding taxes on dividends, interest and royalties. The withholding tax (WHT) rates are generally between 10% and 20%. Afghanistan, China, Kazakhstan, Kyrgyzstan and Mongolia do levy the same rate on all three different types of payments.

As regards the withholding tax on dividends, in Tajikistan there is an exemption for securities traded on the national stock exchange and in Uzbekistan domestic dividend payments are excluded from the CIT base at the recipient entity. In this context it might be worth mentioning that Turkey and Ukraine there is a general participation exemption for dividends. On the other hand, in Turkey and in Turkmenistan the repatriation of branch profits is regarded as a dividend and hence withholding tax is levied in both countries in the amount of 15%.

As regards the withholding tax on interest, in Belarus interest on bonds, including state and corporate bonds and certain loans is exempt from tax. Turkey does not levy WHT on interest in case the payment is made to a foreign bank. In Uzbekistan domestic interest payments are excluded from the CIT base at the level of the recipient entity.

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[25] CPEC, *Special Economic Zones (SEZs) important component of CPEC*, 12 July 2017, http://www.cpecinfo.com/news/special-economic-zones-(sezs)-important-component-of-cpec/MzQ0Mg== (accessed 13 April 2018).

[26] EY, *Worldwide Corporate Tax Guide 2017*, April 2017; PWC, W*orldwide Tax Summaries: Corporate Taxes 2017 / 18*, 1 June 2017.

In Pakistan, the withholding tax rate on interest is 10% and the withholding tax on royalties is 15% if the income is earned by a non-resident without a PE in Pakistan. If the non-resident has a PE in Pakistan, the WHT rate is 20% for both types of payments.

Furthermore, most of the OBOR countries levy withholding taxes on other types of payments. Certain countries, i.e. Kazakhstan (20%), Pakistan (20%), Russia (20%), Tajikistan (15%) and Turkmenistan (15%), apply a general WHT rate on all types of payments, unless specifically captured under a different WTH rate. There exists a special WHT rate for payments for all type of services in Kyrgyzstan (10%), Turkey (20%), and Uzbekistan (20%); Pakistan levies 15% WHT on technical services and Ukraine levies 15% WHT on engineering services. As regards further specialized technical services, it is worth mentioning that Belarus levies 15% WHT for income from server capacity and R&D activities; Kyrgyzstan levies 5% WHT on payments for communication and transportation and Tajikistan levies 5-6% WHT on payments for insurance, transport and telecommunications. Furthermore, Russia (10%) and Ukraine (6%) levy withhold tax on income from freight services. Another common category of income for countries to levy WHT is leasing and letting of certain property. For example, Afghanistan (10-15%), Turkey (20%), Ukraine (15%) and Uzbekistan (20%) levy WHT on the lease payments for (immovable) property and Turkmenistan levies withholding tax in the amount of 6% on the lease of vessels and aircraft.

From the description of the different withholding tax rates the OBOR countries levy on different types of payments, the conclusion can be drawn that there are only few similarities between the different OBOR countries. Even though most withholding tax rates are between 5 and 20%, there is no general approach to determine for which type of payment would trigger WHT.

C. Discussion

The overview of selected OBOR countries national tax systems shows that they have widely differing laws and regulations. What is more, regulatory systems in many developing countries are still incomplete, which leads to a situation of uncertainty as regards future tax periods.[27] Along with different administrative practices of the tax authorities, such differences may result in obstacles for investors' operations. In brief, the variety of different tax systems and tax practices along the OBOR undoubtedly raises a number of issues in terms of investments made into these countries.

At the current point in time, investors can solely study the tax system and familiarize themselves with the tax practices of the designated host country. To provide a prominent example, Chinese entities are being provided with information on the OBOR countries tax systems by China's State Administration of Tax (SAT). The SAT has issued tax guidelines covering the main overseas investment destinations along OBOR, aimed at promoting development of the Chinese companies overseas and preventing tax risks.[28] The guidelines describe the most important tax aspects and bilateral tax agreements between China and the OBOR country and will be further updated and expanded in the future.[29]

In the long run, however, the new Silk Road Project demands coherence. Central Asian countries need to comply with the standards provided by the OECD and the UN in their work on international taxation to provide the investors with more tax certainty. Uncoordinated enforcement of treaty overriding national tax provisions would be detrimental for the development of the central Asian economies, potentially dampening inward foreign direct investment and knowledge-based capital transfers.[30] Similarly, unilateral aggressiveness in tax audits may cause countless cases of tax litigation with uncertain prospects and might even trigger adverse responses in the investors' home countries.[31] Instead, the countries in central Asia should use international coordination to its best advantage in particular in the area of international taxation.[32]

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[27] EY, *Navigating the Belt and Road: Financial sector paves the way for infrastructure*, August 2015, p. 9.

[28] Silk Road Briefing, *China Issues Tax Guidelines For OBOR Trade*, 3 May 2017, https://www.silkroadbriefing.com/news/2017/05/03/china-issues-tax-guidelines-obor-trade/ (accessed 17 April 2018).

[29] Silk Road Briefing, *China Issues Tax Guidelines For OBOR Trade*, 3 May 2017, https://www.silkroadbriefing.com/news/2017/05/03/china-issues-tax-guidelines-obor-trade/ (accessed 17 April 2018).

[30] OECD, *Interconnected Economies: Benefiting from Global Value Chains*, Paris 2013, p. 209.

[31] Tavares & Owens, *Global Tax Policy Post-BEPS and the Perils of the Silk Road*, Asia-Pac. Tax Bull. 2016, Journals IBFD.

[32] Tavares & Owens, *Global Tax Policy Post-BEPS and the Perils of the Silk Road*, Asia-Pac. Tax Bull. 2016, Journals IBFD.

III. Singapore's tax treaty network

As of April 2018, Singapore has concluded 88 double tax treaties, 84 thereof[33] are currently in force and four thereof[34] are already signed but not ratified yet. Singapore also concluded one Agreement with Bermuda on the Exchange of Information (EOI) for Tax Matters. Additionally, special tax treaties limited to e.g. income arising from the international operation of ships / air transport were concluded with eight countries.[35]

In general, Singapore's DTTs follow the Organization of Economic Co-operation and Development Model Convention on Income and on Capital (OECD MC), even though there are certain deviations. Nevertheless, pursuant to a guidance released by the Inland Revenue Authority of Singapore (IRAS), reference can be made to the OECD Commentary for the interpretation of Singapore's DTTs.[36]

A. Overview of DTTs concluded with selected OBOR countries

Country	Date of Conclusion	Effective Date
Afghanistan	no treaty	
Belarus	22 March 2013	1 January 2014
China	11 July 2007	1 January 2008
Kazakhstan	19 September 2006	1 January 2008
Kyrgyzstan	no treaty	
Mongolia	10 October 2002	1 January 2005
Pakistan	13 April 1993	1 January 1987
Russia	9 September 2002	1 January 2010
Tajikistan	no treaty	
Turkey	9 July 1999	1 January 2002 for Turkey 1 January 2003 for Singapore
Turkmenistan	no treaty	
Ukraine	26 January 2007	1 January 2010
Uzbekistan	24 July 2008	1 January 2009

The table shows Singapore's tax treaties concluded with the selected OBOR countries, whose national laws were already described in Chapter II Tax Systems in selected OBOR Countries. Although Singapore has not published its own model tax treaty, the DTTs nevertheless have a certain structure in common. As mentioned, they generally resemble the OECD MC but they also contain elements of the United Nations Model Convention (UN MC), as will be shown below.[37] Accordingly, the personal and substantive scope are established by Arts 1, 2 and 4; the allocation rules can be found in Arts 6 to 20 or 21; the methods for the elimination of double taxation are provided for in Arts

[33] The 84 tax treaties in force are concluded with the countries Albania, Australia, Austria, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Brunei, Bulgaria, Cambodia, Canada, China, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Fiji, Finland, France, Georgia, Germany, Guernsey, Hungary, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, Republic of Korea, Kuwait, Laos, Latvia, Libya, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Mongolia, Morocco, Myanmar, Netherlands, New Zealand, Norway, Oman, Pakistan, Panama, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Rwanda, San Marino, Saudi Arabia, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Uzbekistan and Vietnam.

[34] The four double tax treaties signed but not ratified yet are concluded with the countries Ghana, Latvia, Nigeria and Tunisia.

[35] The eight limited tax treaties were concluded with Bahrain, Brazil, Chile, Hong Kong, Oman, Saudi Arabia, United Arab Emirates and United States of America.

[36] Inland Revenue Authority of Singapore, IRAS e-Tax Guide: Avoidance of Double Taxation Agreements (DTAs), 11 October 2017, https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax_Guides/etaxguide_Income%20Tax_Avoidance%20of%20Double%20Taxation%20Agreements%20(DTAs).pdf (accessed 17 April 2018).

[37] United Nations (UN), Model Tax Convention (2011). All references to the UN Model and its Commentary are (unless otherwise indicated) to the 2011 version.

22 or 23; and special provisions, including rules on non-discrimination, the mutual agreement procedures, the exchange of information, and the application of domestic anti-avoidance rules, can be found in Arts 23 or 24 and the subsequent articles.

In the following sections the tax treaties with Belarus, China, Kazakhstan, Mongolia, Pakistan, Russia, Turkey, Ukraine and Uzbekistan will be examined in detail. It will be analyzed to what extent these tax treaties follow the OECD MC or the UN MC and to what extent they contain specific provisions. Accordingly, a focus will also be placed on the reasons for the deviations, different tax policies towards different countries and changes over time. Furthermore, the countries' positions in the OECD's Multilateral Instrument (MLI), which serves as a tool to implement new provisions mainly countering tax avoidance, will be analyzed. In this regard, as of 22 March 2018, only China, Pakistan, Russia and Turkey as well as Singapore have signed the MLI. Thus, only Singapore's treaties with those four countries could be amended by the MLI.

B. Analysis of Provisions in selected Tax Treaties

(a) Treaty Entitlement

Personal Scope (Arts 1 and 4 OECD MC)

Art 1 and Art 4 OECD MC establish the personal scope of a tax treaty. Under Art 1 (1) OECD MC, the convention shall apply to persons who are residents of one or both of the contracting states. All treaties examined adopted this provision literally.

With the OECD's project on base erosion and profit shifting (BEPS), which aims to tackle tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations, the OECD introduced two further paragraphs into Art 1 OECD MC. The OECD MC 2017 Art 1 (2) was newly introduced and deals with mismatches caused by hybrid entities, i.e. entities which are treated as transparent in one contracting state and as opaque in the other. Furthermore, there was a new Art 1 (3) introduced in the OECD MC. This rule contains a so-called "saving clause" that preserves a contracting state's right to tax its own residents.

However, both newly introduced paragraphs to Art 1 OECD MC are not included in Singapore's tax treaties with the OBOR countries and will also not be introduced by the MLI. In this regard, Singapore explicitly made reservations to both provisions.[38] Pakistan also made explicit reservation to both provisions.[39] China made a reservation for the hybrid mismatch provision of Art 1 (2) OECD MC,[40] whereas Turkey made a reservation for the saving clause in Art 1 (3) OECD MC.[41] Russia did not make any reservation on these two provisions.[42] As for the treaties examined there is always at least one country which made a reservation, hence these two newly introduced paragraphs of the OECD MC will not be introduced into any of the treaties examined.

In order to be entitled to treaty benefits, the taxpayer has to be a "person" and a "resident" of Singapore or the other contracting state. The term "person" is defined in Art 3 (1) (a) and (b) OECD MC and includes an individual, a company and any other body of persons, with the term "company" being defined as any body corporate or entity treated as body corporate for tax purposes. All the treaties examined follow this definition. The tax treaty with Belarus contains a special definition of the term "company" for Belarus, which is any legal person or any entity which is treated as a separate entity for tax purposes.[43] This is because the concept of body corporate does not exist in

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[38] Singapore, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-singapore.pdf (accessed 18 April 2018).

[39] Pakistan, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-pakistan.pdf (accessed 18 April 2018). Please note that this list of reservations and notifications made by Pakistan is conditional upon confirmation upon deposit of the instrument of ratification, acceptance or approval.

[40] China, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-china.pdf (accessed 18 April 2018).

[41] Turkey, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-turkey.pdf (accessed 18 April 2018).

[42] Russia, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-russia.pdf (accessed 18 April 2018).

[43] Art 3 (1) (e) (i) DTT Belarus - Singapore.

the domestic law of Belarus.[44] This deviation is not substantial, since also the term "body corporate" can be understood as an entity to which the tax system attributes legal capacity,[45] and the definition of "person" is not intended to be exhaustive and should be interpreted broadly.[46]

Art 4 OECD MC outlines the meaning of the term "resident". This is "any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof." Singapore's treaties with the OBOR countries deviate from this standard, in a way that all treaties but the ones with Turkey and Pakistan also include the place of registration/incorporation in the examples to establish residency.[47] The treaty with China also includes the place of head office.[48] One reason for this could be that such a place of registration/incorporation would generally not qualify as a criterion of a similar nature as they are solely formal factors and lack the factual territorial link to the contracting state.[49] This might be less obvious with the place of the head office, but again it can be regarded as a merely formal criterion, e.g. in case the place of effective management is located elsewhere. Hence a place of registration/incorporation or a place of head office would thus not be able to establish residency in one contracting state, so that the explicit inclusion is not merely a clarification but an expansion of the definition of residency. In this regard, it is worth mentioning that the meaning of the examples – domicile, residence, place of management – has to be determined, primarily, from national law.[50]

The greatest deviation from Art 4 (1) OECD MC can be seen in the DTT with Pakistan, which states that a resident of a contracting state is "any person, who is resident in a Contracting State for tax purposes of that State".[51] This sentence omits all connecting factors and hereby makes it clear that for determining residency under the DTT a reference to the domestic law of Singapore or Pakistan needs to be made. Hence, residents for purposes of domestic taxation should be regarded as residents for the purposes of the Pakistan-Singapore tax treaty as well.

Under Singapore's tax treaties with the OBOR countries, the term "resident of a contracting state" also covers – with the exception of the DTTs with Kazakhstan and Pakistan – the contracting states and/or their governments, and political subdivisions or local authorities or statutory bodies thereof. Such a provision provides for legal clarity, since the contracting states, their subdivisions and local authorities might not be regarded as a resident under the general rules of Art 4. This is because such bodies would, if at all, only be subject to limited tax liability and thus not fulfill the criteria of Art 4. Whether under the two DTTs with Kazakhstan and Pakistan the contracting states might nevertheless be regarded as residents depends on national practice.[52] The assumption of the residency of the contracting states without express regulation seems to be in line with the opinion of most of the states.[53]

The second sentence of Art 4 (1) OECD MC[54], pursuant to which a person is not considered as a resident if he is only liable to tax in respect of income from sources in that State, was not included in any of the treaties examined. This could result from the fact that Singapore explicitly reserved the right not to include the second sentence of paragraph 1 in its agreements.[55] Accordingly, source taxation in a contracting state might lead to residency in this contracting state, which in case of dual residency affects the application of the tie breaker rule.[56] This might be particularly relevant in the case of third country dual residents, where pursuant to a tiebreaker with a third country DTT

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[44] OECD, Model Tax Convention on Income and on Capital: Condensed Version 2017, OECD Publish-ing 2017, positions on Article 3, p. 612.
[45] Reimer / Rust, *Klaus Vogel on Double Taxation Conventions*, Fourth Edition, 2015, Art 3, m.no 27.
[46] OECD Commentary on Art 3, para 2.
[47] See also above, Section II(c) Taxation of Non-Residents, outlining that under their national law, certain countries only consider the legal seat of the companies as relevant for residency.
[48] Art 4 (1) DTT China - Singapore.
[49] Reimer / Rust, Klaus Vogel on Double Taxation Conventions, Fourth Edition, 2015, Art 4, m.no 63.
[50] OECD Commentary on Art 4, para 8.
[51] Art 4 (1) DTT Pakistan - Singapore.
[52] Lehner in Vogel / Lehner, *DBA*, 2015, Art 4, m.no 151.
[53] Prillinger, SWI 2009, 246 (252).
[54] Art 4 (1) 2nd Sentence reads as follows: "This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein."
[55] OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing 2017, positions on Article 4 (1), p. 614.
[56] Wassermeyer*, DBA Singpaur Art. 4 Ansässige Person*, 140. EL Jan 2018, m.no 20.

the loosing state of the tie breaker would be limited to source taxation.[57] Furthermore, the contracting states' national laws could include a provision pursuant to which a person would be deemed to be a non-resident only with respect to certain types of income.[58]

If a person is treated as a resident in both contracting states according to Art 4 (1) OECD MC, the "tie-breaker rules" in Art 4 (2) and (3) OECD MC can be used to determine which of the contracting states is considered to be the state of residence for the purpose of applying tax treaty provisions. As the corresponding provision to Art 4 (2) OECD MC is restricted to individuals, only Art 4 (3) of the DTTs will be examined in more detail. Accordingly, if a person other than an individual is resident in both contracting states due to their domestic tax laws, Art 4 (3) of all the treaties examined first and foremost determines residence for treaty purposes by referring to the place of effective management. This is in line with Art 4 (3) of the OECD MC in its version prior to 2017.[59]

The place of effective management is to be determined solely in accordance with tax treaty law and is not to be confused with the place of management, which has to be determined according to the national tax laws of the contracting states, mentioned in Art 4 (1) OECD MC. The OECD Commentary in its version prior to 2017 assumes that the place of effective management is "the place where the key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made".[60] This definition is also included in the Protocol of the DTT Belarus – Singapore, whereas in the Protocol of the DTT Singapore – Turkey the place of effective management is defined as "the office where substantial business activities are carried on and the management and control of the business is exercised".

If, however, the place of effective management cannot be determined, all the DTTs apart from the ones with Mongolia and Pakistan require the matter to be determined by mutual agreement procedure.[61] The competent authorities of the contracting states would thus need to take into account "various factors, such as where the meetings of the person's board of directors or equivalent body are usually held, where the chief executive officer and other senior executives usually carry on their activities, where the senior day-to-day management of the person is carried on, where the person's headquarters are located, which country's laws govern the legal status of the person, where its accounting records are kept, ..."[62] The DTT with Ukraine adds to the mutual agreement procedure a presumption that in the absence of an agreement the entity is not resident in either of the contracting states. This leads to the consequence that the entity is not entitled to treaty benefits. Such a provision could be aimed at counteracting the use of dual resident entities for tax planning purposes.[63]

Substantive Scope (Art 2 OECD MC)

Art 2 of the OECD MC determines the substantive scope and thereby specifies the taxes to which a tax treaty applies. Since Singapore has no tax on capital, it made a reservation to the right not to include any reference to such tax on capital in Art 2 (1) of its DTTs.[64] Accordingly, Singapore's double tax agreements with the OBOR countries are concluded only with respect to taxes on income (but not on capital).

In Art 2 (1) all the treaties examined refer to taxes on income imposed on behalf of a contracting state or of its political subdivisions or local authorities, irrespective of the manner in which they are levied. Only in the case of Russia, Art 2 (1) contains a reference that the DTT applies to "taxes on income imposed in each Contracting State, in accordance with the laws of each Contracting State..." This vague wording leaves it unclear as to whether taxes

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[57] Reimer / Rust, *Klaus Vogel on Double Taxation Conventions*, Fourth Edition, 2015, Art 4, m.no 43.
[58] Reimer / Rust, *Klaus Vogel on Double Taxation Conventions*, Fourth Edition, 2015, Art 4, m.nos 45 et seq. It is further argued that taxation based on the remittance principle is not covered by Article 4 (1), 2nd Sentence OECD MC as solely the technical levying of the tax, i.e. by remittance, should not lead to source taxation.
[59] Due to a number of tax-avoidance cases involving dual resident companies the OECD decided to change the tie breaker rule from the place of effective management to the mutual agreement procedure.
[60] OECD Commentary on Art 4, para 24, in its version prior to 2017.
[61] See also Singapore's position in OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing 2017, positions on Article 4 (3), p. 614.
[62] OECD Commentary on Art 4, para 24.1.
[63] Reimer / Rust, *Klaus Vogel on Double Taxation Conventions*, Fourth Edition, 2015, Art 4, m.no 130.
[64] OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing 2017, positions on Article 2 (1), p. 611.

imposed by local authorities and political subdivisions are covered from the treaty.[65] As the wording stipulates "taxes ... imposed *in* each Contracting State"[66], it can be argued that also local authorities and subdivisions should be covered.

Art 2 (2) OECD MC defines what can be understood as taxes on income. This abstract reference is relevant for identical or substantially similar taxes that are imposed after the date of signature in addition to, or in place of, the existing taxes.[67] Most of Singapore's DTTs with the OBOR countries also contain such a provision, except for the DTT with Pakistan. All other treaties examined cover in Art 2 (2) "all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property". Apart from the fact that capital taxes are not covered, in comparison to the OECD MC also taxes on the total amount of wages or salaries paid by enterprises are missing. This likely stems from the fact that Singapore does not have payroll withholding. As explained by the OECD Commentary, interest and penalties accessory to taxes are generally not considered to be covered by a DTT.[68] This is also explicitly stipulated in the protocol to the DTT between Singapore and Ukraine.

Art 2 (3) OECD MC provides for a non-exhaustive list of existing taxes to which a tax treaty applies. Under the treaties examined these taxes are, in the case of Singapore, solely the income tax, which is levied on individuals and on corporations. All the treaty partners also listed their taxes on individual and on corporate income taxes, with Pakistan[69] and Turkey also applying the treaty to a surcharge / levy imposed on the income taxes. Pursuant to the provision modelled after Art 2 (4) OECD MC, which is included in all the DTTs examined, the DTT also applies to identical or substantially similar taxes that are imposed after the date of signature in addition to, or in place of, the existing taxes.

As the treaty with Pakistan does not contain any general description as to what can be understood as a tax on income, one might assume that this is because the treaty should be limited to the taxes enumerated in Art 2 (2) DTT Pakistan – Singapore.[70] However, this is not the case, because the DTT enumerates the taxes with the introductory phrase "in particular", which hints that also other similar taxes could be covered. More importantly, the DTT includes a provision modeled after Art 2 (4) OECD MC, so that future similar taxes are also covered by the DTT. Nevertheless, the definition of what is a tax on income must be derived from Art 2 (1) and the list of taxes covered by the agreement.

(b) Permanent Establishments and Business Profits

Permanent Establishment (Art 5 OECD MC)

With respect to the PE concept used in Singapore's DTTs with OBOR countries, Article 5 follows to a large extent the OECD MC in its version prior to 2017, but also included elements of the UN Model. The following paragraphs will thus focus on the versions of the OECD MC and the UN MC in their pre-BEPS version. A separate paragraph will focus on the changes introduced by the MLI.

Pursuant to Art 5 (1) of all the treaties examined, a PE is a fixed place of business through which the business of an enterprise is wholly or partly carried on. This provision is included in all treaties examined and fully correspondents with the OECD MC. In Art 5 (2) OECD MC and the DTTs examined, there is a list of examples of what constitutes a PE, i.e. a place of management, a branch, an office, a factory, a workshop, and a mine, an oil or gas well, a quarry or any other place of extraction of natural resources. In the treaties examined, three included sales outlets,[71] and two included warehouses.[72] These inclusions do not lead to an extension of the scope, as the enumeration in Art 5 (2) is merely exemplary.

Building sites and construction or installation projects are specifically mentioned in Art 5 (3) OECD and UN MC. All the DTTs examined in principle follow Art 5 (3) UN MC. The UN MC differs from the OECD MC in two respects: Firstly,

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[65] See Chapter II Tax Systems in selected OBOR Countries above for the Russian CIT, which is in principle a state tax, but the CIT rate depends on local regions.
[66] Highlights inserted by the author.
[67] Reimer / Rust, *Klaus Vogel on Double Taxation Conventions*, Fourth Edition, 2015, Art 2, m.no 4.
[68] OECD Commentary on Art 2, para 4.
[69] Art 2 (2) (b) DTT Pakistan - Singapore
[70] These are in the case of Singapore the income tax and in the case of Pakistan the income tax, the super tax and the surcharge.
[71] Art 5 (2) (g) DTT Belarus – Singapore; Art 5 (2) (g) DTT Singapore – Pakistan; Art 5 (2) (g) DTT Singapore – Ukraine.
[72] Art 5 (2) (f) DTT Singapore – Pakistan; Art 5 (2) (g) DTT Singapore – Ukraine.

the scope of the provision is wider since it includes assembly projects and supervisory activities[73] in connection with building sites. Secondly, the required duration is reduced from twelve to six months. However, the duration requirements of most of the DTTs differ, e.g. some DTTs refer to more than 12 months,[74] and the DTT with Pakistan refers to a period of 183 days.[75] Singapore's DTT with Kazakhstan also includes "installation or structure used for the exploration of natural resources, or supervisory services connected therewith, or a drilling rig or ship used for the exploration of natural resources", with a 9 months threshold.[76] It can therefore be concluded that Singapore's Tax Treaty policy with the OBOR countries is to include Art 5 (3) UN MC to its treaties, but with a 12 month threshold. This leads to a broader tax base in the source country, by extending the activities and thus expanding the scope of the PE definition.

Moreover, the DTTs examined – with the exception of the DTT Pakistan[77] – include a service PE provision similar to the one proposed by Art 5 (3) (b) UN MC, i.e. an enterprise is deemed to have a PE in the other contracting state due to the performance of services[78] exceeding a period or periods aggregating more than six months within any twelve-month period.[79] Again, the duration requirements of some of the DTTs examined differ, i.e. they vary from 3 months in the DTT with Russia, to 6 months in the DTTs with China, Mongolia, Turkey and Ukraine; to 183 days in the DTT with Uzbekistan; to 9 months in the DTT with Kazakhstan and 270 days in the DTT with Belarus. This is a further measure for the source country to secure its taxing right.

Art 5 (4) excludes a number of places of business from the status as a PE if the facility is merely of a preparatory or auxiliary character. All treaties follow this provision, but the ones with Mongolia and Pakistan both exclude letter (f), i.e. the possibility that a combination of activities mentioned in Article 5 (4) (a) to (e) OECD is carved out from being a PE. Pakistan also excludes letter (e) – this is the rather general provision that any other preparatory or auxiliary activities do not constitute a PE only if they are exercised for taxpayer, but instead the DTT with Pakistan enumerates "a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character for the enterprise" not to constitute a PE.[80]

An agent can also constitute a PE for an enterprise in the other contracting state. The requirements are set forth in Art 5 (5) OECD MC.[81] The agent must have, and habitually exercise, in a contracting state an authority to conclude contracts in the name of the enterprise. However, if the activities of the agent are restricted to preparatory or auxiliary activities listed in Art 5 (4) OECD MC, the agent cannot be regarded as a PE. Most of the treaties follow the OECD MC. In Art 5 (5) (b) the UN MC also contains a provision that broadens the scope at source so that also an agent who maintains and regularly delivers a stock of goods on behalf of an enterprise is regarded as an agency PE. This provision is included in the DTTs with Pakistan and Turkey. The DTT with Pakistan also includes a further addition to the agency PE, again to broaden the scope in the source country, pursuant to which a person who "habitually

[73] No supervisory activities for construction PEs are included in the DTT with Turkey.
[74] Art 5 (3) (a) DTT Belarus – Singapore; Art 5 (3) (a) DTT Kazakhstan – Singapore; Art 5 (3) (a) DTT Singapore – Ukraine; Art 5 (3) (a) DTT Singapore – Uzbekistan.
[75] Art 5 (3) DTT Pakistan – Singapore.
[76] Art 5 (3) (b) DTT Kazakhstan – Singapore. In this regard it is worth mentioning that the protocol of the DTT interprets the term "any other place of extraction of natural resources" in Art 2 (f) to include also "a drilling rig, a ship, an installation structure or equipment, if such rig, ship, structure or equipment, as the case may be, is used for the extraction of natural resources".
[77] The DTT with Pakistan contains in Art 13 a separate provision dealing with technical services. See also below, Section III(e) Other Provisions of Relevance.
[78] Art 5 (2) (g) (ii) DTT Singapore – Turkey includes supervisory activities in the service PE provision. Art 5 (3) (b) DTT Mongolia – Singapore and Art 5 (2) (f) DTT Russia – Singapore seem not to include connected projects, as they omitted the respective phrase.
[79] Singapore also made a reservation to the OECD MC to also include services furnished by "employees or other personnel engaged by the enterprise for such purpose but only where the employees or other personnel are present in the State for the same project or a connected project for a period or periods aggregating more than a period to be negotiated". See OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing 2017, positions on Article 5 (3), p. 617.
[80] Art 5 (4) (e) DTT Pakistan – Singapore.
[81] Singapore made a reservation to the OECD MC to include Arts 5 (5) and (6) in their version prior to 2017. See OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing 2017, positions on Article 5 (3), p. 619.

secures order ... exclusively or almost exclusively for the enterprise itself or [related enterprises]",[82] constitutes an agency PE.

According to Article 5 (6) OECD MC, an enterprise shall not have a PE solely because it uses an independent agent in the source state, provided that such an agent is acting in the ordinary course of their business. Most DTTs examined follow the OECD Model, but the DTTs with China, Pakistan[83] and Ukraine follow the UN MC. The difference to the OECD MC is that it includes a second sentence, which stipulates that an agent is not independent if there is no arm's length relationship.

The DTTs examined do not contain a provision on insurance companies modelled after Art 5 (6) UN MC. However, all treaties have fully adopted Art 5 (7) OECD MC, stating that a subsidiary does not automatically constitute a PE of the parent company.

Provisions introduced by the MLI

None of the PE provisions in the DTTs examined were altered by the MLI, since most of the countries made reservations or the alternatives chosen do not match. For example, the countries China[84] and Pakistan[85] made reservations to all provisions which would alter their PE concept. Irrespective of the choice of the treaty partner, the provisions on PEs in their tax treaties will not be altered.

On the other hand, Russia[86] and Turkey[87] both wish to introduce a provision on artificial avoidance of permanent establishment status through commissionaire arrangements and similar strategies in their DTT with Singapore.[88] In this respect, Art 12 MLI replaces (i) the meaning of when an agent would constitute a PE, including those who habitually conclude contracts, or habitually play the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the overseas enterprise; and (ii) the carve-out for an independent agent acting in the ordinary course of business to prevent applying this provision where an agent acts almost exclusively for closely related persons. However, as Singapore made a reservation to this provision,[89] the articles in the DTTs with Russia and Turkey will remain unchanged in this regard.

As regards the specific activity exemptions in Art 5 (4) OECD MC, which should be restricted by the MLI to cases which are of preparatory or auxiliary nature, Russia[90] and Turkey[91] both chose to apply for Option A and also apply the anti-fragmentation rule. Option A is stricter than Option B in a way that it makes specific activity exemptions subject to an overarching preparatory or auxiliary condition.

On the other hand, Singapore made a reservation to the anti-fragmentation rule and chose to apply Option B, which allows to preserve the existing exemption for certain specified activities and to ensure that those exceptions will

[82] Art 5 (5) (c) DTT Pakistan – Singapore.

[83] Art 5 (6) 2nd Sentence DTT Pakistan – Singapore follows the 1980 UN MC.

[84] China, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-china.pdf (accessed 18 April 2018).

[85] Pakistan, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-pakistan.pdf (accessed 18 April 2018). Please note that this list of reservations and notifications made by Pakistan is conditional upon confirmation upon deposit of the instrument of ratification, acceptance or approval.

[86] Russia, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-russia.pdf (accessed 18 April 2018).

[87] Turkey, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-turkey.pdf (accessed 18 April 2018).

[88] Both countries notified their DTT with Singapore pursuant to Art 12 (5) of the MLI.

[89] Singapore, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-singapore.pdf (accessed 18 April 2018).

[90] Russia, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-russia.pdf (accessed 18 April 2018).

[91] Turkey, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-turkey.pdf (accessed 18 April 2018).

apply irrespective of whether the activity is of a preparatory or auxiliary character. Since Singapore and the contracting partners have chosen different options and hence there is no match, the options do not apply.[92] As a result the MLI does not lead to a change of Singapore's tax treaties with the OBOR countries.

Business Profits (Art 7 OECD MC)

Art 7 OECD MC deals with business profits. In the distributive rule in Art 7 (1) OECD MC it assigns the exclusive taxation of business profits to the state of residence. In its second sentence it contains an exception from this general rule so that the PE state also has a taxing right, but it may only tax so much of the profits of the enterprise as is attributable to that PE. None of the DTTs examined include the "force of attraction" principle as recommended by the UN MC,[93] which provides that the enterprise, once it carries out business through a PE in the source state, can be taxed on business profits in that state arising from transactions of the same or similar kind outside the PE. However the DTT with Pakistan stipulates in the protocol that Pakistan will apply the source of attraction principle for interpreting Art 7 (1) and hence will also attribute profits from sales of goods or merchandise, or profits from similar business activities in Pakistan effected through the PE.

The quantification of the amount of profits which are attributable to the PE in the source state depends on the following paragraphs of Art 7. In this respect, the DTTs examined do not follow the authorized OECD approach ("AOA"),[94] but rather follow the OECD Model in its version prior to 2010. Art 7 (2) OECD (and the current UN) MC 2008, which is followed in all DTTs examined, contains the central directive on which the attribution of profits to a PE should be based, namely the separate entity approach. According to this approach, the profits attributed to a PE are the profits which a PE would have made if it were an entirely separate enterprise under conditions and at prices prevailing in the ordinary market.[95]

The general principle outlined in Art 7 (2) of the DTTs is further specified in Art 7 (3) of the DTTs, pursuant to which expenses, which are incurred for the purposes of the PE have to be allowed as deductions in the contracting state where the PE is situated. In this regard, most of the DTTs follow the OECD MC in its version prior to 2010. Art 7 (3) of the UN MC is more restrictive, in a way that royalties and similar payments between the PE and the head office are not taken into account. It serves as a model for the Art 7 (3) in the DTTs with Pakistan, Ukraine and Uzbekistan. The DTTs with Kazakhstan, Mongolia and with Ukraine contain a reference to the separate entity approach also in this paragraph and only allow for a deduction of expenses if these are reasonably allocable to the PE.[96] Moreover, the DTTs with Pakistan, Turkey and Uzbekistan stipulate that the deduction can only be made if this is possible pursuant to the national law of the PE's host state.[97] Such a clause is a mere clarification, since also pursuant to the OECD's interpretation the profits of the PE need to be determined in any case pursuant to the national law of the state where the PE is situated.[98]

Art 7 (4) OECD MC in its version prior to 2010 provides for the use of indirect methods, by allowing the determination of profits to be attributed to a PE on the basis of an apportionment of the total profits of the enterprise to its various parts. This method cannot be applied by reference to domestic law only but must be in conformity with the principles of Art 7 of the DTT. To do so, the OECD Commentary in its version prior to 2010 set out a range of criteria, namely the number of people employed; the wage/salary sums paid; the book value of assets used; and the turnover or cash flow made by the individual unit (PE or head office), to characterize the profitability.[99] The DTTs with

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[92] OECD, *Explanatory statement to the multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting*, 7 June 2017, par 180; https://www1.oecd.org/tax/treaties/explanatory-statement-multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf (accessed 24 April 2018).

[93] Art 7 (1) (b) and (c) UN MC.

[94] Under the guiding principle of the AOA, included in the current version of Art 7 (2) OECD MC, a functional analysis would have to be carried out before transactions within various parts of a single enterprise are priced at arm's length, giving rise to a profit element. China, Russia and Singapore explicitly made a reservation to the OECD to use the pre 2010 version of Article 7 and will also interpret it according to the Commentary prior to 2010: OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing 2017, positions on Article 7, pp. 625 and 627.

[95] OECD Commentary on Art 7, para 14, in its version prior to 2010.

[96] Art 7 (3) DTTs Kazakhstan – Singapore; Mongolia – Singapore and Singapore – Ukraine

[97] Art 7 (3) DTTs Pakistan – Singapore, Singapore – Turkey and Singapore – Uzbekistan, with the last one using the wording "taking into consideration any applicable tax law or regulation". It is not entirely clear whether the word "any" solely refers to the law of the source state.

[98] Hemmelrath in Vogel / Lehner, *DBA,* 6. Auflage 2015, Art 7, m.no 137.

[99] OECD Model Commentary on Art. 7, m.no 54 as it read between 2008 and 2010 (previously, m.no. 27)

Belarus, China, Mongolia, Pakistan and Ukraine contain this provision in Art 7 (4). As the DTTs with Kazakhstan, Russia, Turkey and Uzbekistan do not contain this provision, it can be concluded that these countries prefer a direct method for allocating profits.[100]

The taxpayer's choice as to whether to apply the direct or the indirect method (if possible at all) for the attribution of the profits to the PE shall be made on a one-time basis as stipulated in Art 7 (6) OECD MC in its version prior to 2010. Changes from direct to indirect methods and vice versa or changes within the methods are disallowed, unless there are good and sufficient reasons to opt for another method or to make slight changes within either approach.[101] As many jurisdictions provide for several options for the attribution of profits to a PE, this paragraph provides the taxpayer with some tax certainty as neither the taxpayer nor the tax authorities may unjustifiably make a change in the method.[102] Accordingly, all DTTs but the one with Pakistan contain this provision. Nevertheless, according to the principle of good faith also the DTT with Pakistan does not allow for frequent and unjustified modifications of the profit allocation method.[103]

Article 7 (5) OECD MC prior to 2010, even though deleted afterwards, can be found in the majority of the DTTs examined, but the treaties with Pakistan, Russia and Turkey. Pursuant to this provision, no profits shall be attributed to a PE by reason of the mere purchase by that PE of goods or merchandise for the enterprise. This resembles Art 5 (4) (d) OECD MC, pursuant to which an enterprise, that established an office in another jurisdiction merely for the purchase of goods, would not have a PE there. For the three DTTs that do not contain this provision it can be concluded that – in case there exists a PE – all purchase functions or activities need to be included in the allocation of profits between the head office and the PE.[104]

Finally, all DTTs examined include the subsidiarity rule modelled after Art 7 (4) OECD MC.[105] This rule clarifies the relation between Art 7 of the DTT and other distributive rules. According to this rule, the provisions of other articles of the respective tax treaty shall not be affected by the provisions of Art 7, where profits include items of income which are dealt with separately in those other articles.

In accordance with Art 14 UN MC and OECD MC in its version prior to 2000, all the DTTs examined but the one with Pakistan still contain a separate distributive rule on income from independent personal services. This article was deleted from the OECD MC in the year 2000 as "there were no intended differences between the concepts of permanent establishment, as used in Art 7, and fixed base, as used in Art 14, or between how profits were computed and tax was calculated according to which of Art 7 or 14 applied".[106] The provision modelled after the old Art 14 OECD MC assigns the exclusive taxing right for income from professional services or similar activities to the residence state. However, if there is a fixed base regularly available in the other contracting state for the purpose of performing the independent services, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. Even if a resident of one contracting state does not maintain a fixed base in the other state, the DTTs assign primary taxation to this other state on the basis of the time the taxpayer has spent, and performed his activities, i.e. for a period of 183 days and more in any 12 month period. In this regard, the most significant deviations are that the DTT with Turkey refers to 183 days per calendar year;[107] the DTT with Belarus refers to 270 days and the DTT with Russia to 90 days in any 12 month period.[108]

(c) Dividends, Interest and Royalties

Arts 10, 11 and 12 OECD MC are the allocation rules for dividends, interest and royalties. In principle, the taxing right for dividends, interest and royalties is allocated to the residence state, but the source state has a limited taxing

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[100] It cannot be concluded that the indirect method is forbidden, e.g. if it is required to comply with the arm's length principle of Art 7 (2) of the treaties. Hemmelrath in Vogel / Lehner, *DBA,* 6. Auflage 2015, Art 7, m.no 142.

[101] Reimer / Rust, *Klaus Vogel on Double Taxation Conventions*, Fourth Edition, 2015, Art 7, m.no 147.

[102] Baker & Collier, *The attribution of profits to permanent establishments: General Report*, IFA Congress 2006, p. 64

[103] Reimer / Rust, *Klaus Vogel on Double Taxation Conventions*, Fourth Edition, 2015, Art 7, m.no 149.

[104] Reimer / Rust, *Klaus Vogel on Double Taxation Conventions*, Fourth Edition, 2015, Art 7, m.no 146.

[105] It is based on Art 7 (7) of the pre-2010 OECD MC, and literally identically included in Art 7 (6) UN MC.

[106] OECD Commentary on Art 14.

[107] Art 14 (1) (b) DTT Singapore – Turkey.

[108] Art 14 (1) (b) DTT Belarus – Singapore; Art 14 (1) (b) DTT Russia – Singapore.

right. All three allocation rules are based on the "beneficial ownership" concept.[109] This means that the source state's right to tax with respect to dividends, interest and royalties is only restricted if the resident of the other contracting state qualifies as beneficial owner of the dividends, interest, or royalty concerned.

The OECD MC does not settle procedural questions on how taxation in the source state may take place. This means that each state can use the procedures in its own laws.[110] Since the source state only has a restricted taxing right, the OECD MC provides in Art 10 (2) and Art 11 (2) for a mutual agreement procedure (MAP) for the competent authorities to settle the mode of application of the limitations included in these paragraphs. The UN MC also includes a MAP in Art 12 (2). Most of Singapore's DTTs with the OBOR countries, do however not provide for a MAP in this respect.[111]

A common feature is that Arts 10, 11, and 12 of the reviewed DTTs provide that, if the dividends, interest or royalties derived are effectively connected with a PE of a nonresident in the source state, such dividends, interest or royalties should be treated as business profits governed by Art 7. All DTTs examined follow the OECD MC in its version before 2000, i.e. they also extend this provision to the fixed base of taxpayers who provide independent personal service in the source state.[112] Thus, under these treaties, Art 14 (independent personal services) shall apply if the dividends, interest or royalties derived are effectively connected with a fixed base in the source state.

A further common feature of Arts 11 (5) OECD MC and 12 (5) UN MC is that they include a provision defining the source of the interest or royalties. The wording encapsulates the principle that the state of source of the interest or royalties is the State of which the payer is a resident. The exceptions to this general principle are if the payment has an obvious economic link with a PE or a fixed base in the other contracting state. In this case the interest or royalties will be deemed to arise in the state in which the PE or the fix base is situated. This paragraph is included in all the DTTs examined for interest and for royalties. Three DTTs specify national Government and governing bodies of political subdivisions along with the residents as possible sources of the interest or royalties.[113]

A notable feature is that some of the Singapore's DTTs with the OBOR countries contain specific anti-avoidance provisions in their Arts 10, 11, and 12. As some of the DTTs will be amended by the MLI, which includes a more general anti-avoidance provision covering the respective DTT as a whole, the provisions will be described below.[114]

Dividends (Art 10 OECD MC)

Art 10 (1) and (2) OECD MC provide for a shared taxing right between the source and the residence state. All DTTs examined follow this division. The DTT with Russia includes in Art 10 (1) distributions paid by a real estate investment funds to be covered by the allocation rule for dividends, which extends the scope of Art 10. This is because investment funds generally are not treated as bodies corporate for tax purposes, i.e. they do not qualify as companies in the meaning of a DTT.[115] It might also be possible that investment funds do not qualify as residents, as they are only subject to limited tax liability. As a result, the distribution paid by an investment fund would generally not qualify as a dividend within the meaning of Art 10, unless treated differently by national law.

As regards the taxing rights for the source state, modelled after Art 10 (2) OECD MC in its version before 2017,[116] the DTTs examined vary greatly. Pursuant to the OECD MC, the tax rate withheld at source is limited to 5% of the gross amount for dividends paid out to a company, which is the beneficial owner, resides in another Contracting State and holds directly at least 25% of the capital of the company paying out the dividends; in other cases of beneficial ownership the rate of 15% applies.

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[109] The term beneficial owner is not defined in the OECD MC and also not in the DTTs examined. It is hence a much disputed concept. Many countries apply their corresponding provision to Art 3 (2) OECD MC and refer to their national laws for the interpretation of this concept, but literature argues that at the term must be interpreted autonomously within the context of the treaty. Cf Reimer / Rust, *Klaus Vogel on Double Taxation Conventions*, Fourth Edition, 2015, Pre Arts 10-12, m.no 25.

[110] OECD Commentary on Art 10, m.no 19; OECD Commentary on Art 11, m.no 12; OECD Commentary on Art 12, m.no 5.

[111] DTTs with Belarus, Kazakhstan, Mongolia, Russia, Turkey and Uzbekistan.

[112] The DTT with Turkey only makes a reference to independent service for Turkish residents performing their services from a fixed base in Singapore.

[113] Arts 11 (6) and 12 (5) DTT Kazakhstan – Singapore; Arts 11 (5) and 12 (6) DTT Pakistan – Singapore and Arts 11 (7) and 12 (5) DTT Singapore – Turkey.

[114] See Section III(e) Other Provisions of Relevance.

[115] Reimer / Rust, *Klaus Vogel on Double Taxation Conventions*, Fourth Edition, 2015, Art 10, m.no 108.

[116] I.e. not including any time threshold but also not excluding any exception for partnerships.

All of the DTTs examined limit the taxation at source to 5%, provided that recipient of dividends is their beneficial owner with 25% shareholding.[117] In other cases many DTTs limit the taxing right at source to 10%.[118] Solely the DTT with Ukraine follows the 15% source tax rate. The DTTs with Belarus and Uzbekistan stipulate that the maximum withholding tax rate is 5% in any case.[119] The DTT with Pakistan contains three different rates between 10% and 15% making a closer differentiation as regards to whether the company paying the dividends is engaged in an industrial undertaking.[120]

Six of the DTTs examined contain a special provision stipulating that the source state will refrain from taxing dividends paid to other states or their statutory bodies or national banks.[121] This paragraph aims to ensure the application of the sovereign immunity principle, i.e. that contracting states are immune from the jurisdiction of the courts of another sovereign state,[122] and stretches this principle to the taxation of dividends.[123] In this respect, the DTT with Mongolia also provides for no taxation at the source state in case of production sharing contracts or similar contracts relating to oil and gas sector concluded by the Government with a resident of the other contracting state.[124] This provision aims to further the investment into government-led oil and gas projects.

The DTTs with Kazakhstan and with Turkey provide for branch profits tax – a tax on net profit of permanent establishment in a host state.[125] Apparently, this clause exists in DTCs with the countries, which operate such a tax pursuant to their national law.[126]

All the DTTs examined in general follow the definition of dividends in Art 10 (3) OECD MC, stating that dividends must arise from equity participation in a company's profit and not from rights that constitute debt claims. However, only the DTTs with Turkey[127] and Uzbekistan follow the OECD model.[128] All of the DTTs contain a simpler dividend definition generally referring to income from shares or other rights, i.e. there is no reference to "jouissance" rights, mining shares and founder's shares included in the DTT.[129] Nevertheless, since all DTTs examined contain as a last resort a reference to rights which are treated like dividends under national law, the absence of certain examples does not result in material differences to the OECD MC.[130] This reference to the source state's national law allows countries, which adopted Islamic finance instruments or similar and normally treat the respective income as dividends, to use the same treatment on international level.[131]

The DTTs examined do not contain a specific rule on how to treat income derived from tax transparent entities, e.g. from participation in certain forms of non-incorporated partnerships or consortia. In the mineral extraction industry and infrastructure projects, these are popular business arrangements. The reviewed DTTs do not specifically cover such type of income, leaving the treatment to the domestic law of the source state.

Three of Singapore's DTTs reviewed contain a provision on Singapore's taxation of dividends. This provision references the current dividend taxation system, pursuant to which for dividends paid by a Singapore resident company

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[117] Art 10 (2) Russia – Singapore contains a 15% holding requirement; and Art 10 (2) DTT Singapore – Ukraine has a 20% holding requirement.

[118] Art 10 (2) DTT China – Singapore; Art 10 (2) Kazakhstan – Singapore; Art 10 (2) Mongolia – Singapore; Art 10 (2) Russia – Singapore; and Art 10 (2) Singapore – Turkey.

[119] Art 10 (2) DTT Belarus – Singapore; Art 10 (2) DTT Singapore – Uzbekistan.

[120] Art 10 (2) DTT Pakistan – Singapore, with (4) (b) containing a definition of what can be understood as an industrial undertaking.

[121] Art 10 (3) DTT Belaurs – Singapore; Art 10 (3) DTT Kazakhstan – Singapore; Art 10 (3) and (4) DTT Mongolia – Singapore; Art 10 (3) and (4) DTT Russia – Singapore; Art 10 (3) and (4) DTT Singapore – Turkey; Art 10 (3) DTT Singapore – Ukraine.

[122] OECD Commentary on Art 1, m.no 52.

[123] Reimer / Rust, *Klaus Vogel on Double Taxation Conventions*, Fourth Edition, 2015, Art 10, m.no 67.

[124] Art 10 (8) DTT Mongolia – Singapore.

[125] Art 10 (9) DTT Kazakhstan – Singapore, rate limited to 5%; Art 10 (6) DTT Singapore – Turkey, rate limited to 10%.

[126] See Kazakhstan's reservation, OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing 2017, positions on Article 10 (5), p. 634; See also above, Section II Tax Systems in selected OBOR Countries.

[127] Art 10 (5) DTT Singapore – Turkey does contain mining shares.

[128] Art 10 (5) DTT Russia – Singapore also includes distributions paid by real estate investment funds.

[129] This is most likely because concepts as "jouissance" shares, "jouissance" rights, mining shares and founders' shares do not exist in many countries domestic legislations. See Reservations, OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing 2017, positions on Article 10 (4), p. 634.

[130] Tischbirek & Specker in Vogel / Lehner, *DBA* 2015, Art 10, m.no 225.

[131] Especially since DTTs normally do not explicitly cover the income from Islamic finance instruments.

to a resident of the other contracting state who is the beneficial owner of such dividends “there is no tax in Singapore which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company”.[132] The paragraph then further outlines that – should Singapore impose a tax on dividends in the future – such a tax may only be charged in accordance with current source taxation restrictions of Art 10 (2) of the DTTs. This provision clarifies that, should Singapore introduce the taxation of dividends, Singapore may only levy WHT in accordance with the restricted rates of Art 10 (2) of the respective treaty.

Interest (Art 11 OECD MC)

According to Art 11 (1) OECD MC, the residence state is given the right to tax interest income. However, if the “beneficial owner of the interest is a resident of the other Contracting State”, Art 11 (2) OECD MC grants the source state a restricted right to tax, in the amount of 10% of the gross amount of the interest. All treaties examined follow this division, but the one with Russia, which gives the resident state the exclusive right to tax interest income.[133] In all other cases, the source state’s right to tax is limited, with rates varying from 5%[134] to 12.5%[135]. Three DTTs have lower withholding tax rates at source if interest is paid to a financial institution.[136] Such a lower rate could be granted to offset the bank’s own financing costs, which are not taken into account by a gross base withholding tax on interest. Moreover the DTT with Kazakhstan provides for a most-favoured nation (MFN) clause in the protocol, pursuant to which, should Kazakhstan limit its taxation at source on interest and royalties to a rate lower than 10% in a treaty with any other country, the same revised rate shall also apply to the DTT with Singapore.

Similar to dividends, most of the DTTs examined but the ones with Russia and Uzbekistan contain a provision exempting interest paid to the contracting state, subdivisions or governmental banks themselves. A potential reason for this could be the principle of sovereign immunity, or to stipulate the financing of development projects.[137]

The DTTs examined in general follow the definition of interest in Art 11 (3) OECD MC, which refers to income from debt-claims of every kind. The DTT with Russia does not include interest secured by mortgage and interest carrying a right to participate in the debtor’s profits.[138] This could mean that mortgage secured interest could be treated as income from immovable property and interest relating to a right which participates in the debtor’s profits could be treated as dividends. Penalty charges for late payment (except for the DTT with Turkey)[139] and the excessive amount of the non-arm’s length interest payment between associated persons are not regarded as interest covered by Art 11 OECD MC.

Lastly, Art 11 (6) OECD MC has the purpose to restrict the application of Art 11 in cases where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid is not at arm’s length. This provision gives the source country the right to tax the excess part of the interest payments, exceeding the arm’s length amount. This wording was adopted in all of the treaties examined.

Royalties (Art 12 OECD MC)

Contrary to the earlier examples of dividends and interests, the OECD MC allocates taxing rights in respect of royalties differently. According to Art 12 (1), the residence state of the recipient of royalties has the exclusive right to tax this income, but only if such recipient is a beneficial owner of the royalties. Art 12 (1) of the UN Model, on the contrary, allows the residence state of the immediate recipient of the royalties (whether beneficial owner or not) to tax this income, but Art 12 (2) UN MC provides a restricted right to tax to the source state, if the “beneficial owner of the royalties is a resident of the other Contracting State”.

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[132] Art 10 (8) (a) Kazakhstan – Singapore; Art 10 (9) (a) Mongolia – Singapore; Art 10 (3) DTT Pakistan – Singapore.

[133] Art 11 (1) DTT Russia – Singapore.

[134] Art 11 (2) DTT Belarus – Singapore and Art 11 (2) DTT Singapore – Uzbekistan.

[135] Art 11 (2) DTT Pakistan – Singapore.

[136] Art 11 (2) (a) DTT China – Singapore, providing for a rate of 7% instead of 10%; Art 11 (2) (a) DTT Mongolia – Singapore, providing for a rate of 5% instead of 10% and Art 11 (2) (a) DTT Singapore – Turkey, providing for a rate of 7.5% instead of 10%. Art 11 (3) DTT Belarus – Singapore exempts interest paid to banks from taxation at source.

[137] Reimer / Rust, *Klaus Vogel on Double Taxation Conventions*, Fourth Edition, 2015, Art 11, m.no 68; see also in the previous section above on dividends.

[138] Art 11 (3) DTT Russia – Singapore.

[139] Art 11 (5) DTT Singapore – Turkey. This means that under the DTT with Turkey such penalty charges for late payment are treated as interest. See OECD Commentary on Art 11, m.no 22.

All of the DTTs examined follow the UN Model, granting the source state a right to tax in the amount of 5%[140] to 10%[141]. The DTT with China, in the protocol, sets out a lower rate for royalties paid for the use of or the right to use any industrial, commercial or scientific equipment (i.e. 6% instead of 10%). Considering the fact that Singapore may position itself to engage in the infrastructure and other projects in OBOR countries rather than other way round, this allocation of taxing right to source countries seem to work towards financial interests of these other countries. However, the DTTs among other OBOR countries are also mostly based on UN Model with a limited taxing right at source – which suggests that UN Model is an effective standard in the central Asian region.

Art 12 (2) OECD MC and Art 12 (3) UN MC contain an autonomous definition of royalties, pursuant to which royalties are "payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience."[142] However, all DTTs examined but the ones with Russia and Uzbekistan additionally include "the use of, or the right to use industrial, commercial or scientific equipment"[143] in their royalty definition, which resembles the royalty definition under the UN MC. This inclusion extends the scope of Art 12, as the use of such equipment would not be covered by the definition of royalties otherwise. One reason for such inclusion may be the extensive use of imported equipment in infrastructure projects, where the OBOR countries often lack the necessary local equipment.

The enumeration is conclusive, i.e. any elements not mentioned are not included in the definition of royalties. In this respect, it is worth mentioning that most of the DTTs examined include software in their definition of royalties, which extends the application of Art 12 also to payments for the use of software.[144] In the DTTs which do not include the reference to software in Art 12,[145] income from software would generally be covered by Art 7.[146] This is because standard end-user software does only permit to use the software but does not grant the right to reproduction, modification, etc. Renting out as such could only be covered by the term equipment, but, as the software is only information and not a tangible good, it is not covered by the equipment clause.[147]

In general, the full transfer of ownership, i.e. the alienation of a right is not included in the definition of royalties. Thus it is generally covered by Article 13 OECD MC. However, the DTT with Turkey also enumerates the alienation of rights in Art 12 (3) and the DTT with Pakistan includes alienation in the catalogue as a separate paragraph in its Art 12 (4). As a result, in the DTT with these two countries the taxing right for the alienation of rights is shared between the source country and the residence country.

Lastly, Art 12 (4) OECD MC stipulates that the excessive amount of the non-arm's length royalty payment between associated persons is not treated as royalties. This provision was adopted fully by all DTTs examined.

(d) Capital Gains (Art 13 OECD MC)

Art 13 OECD MC is the allocation rule for capital gains from the alienation of property. It consist of five independent sub-allocation rules for gains from the alienation of particular types of property. Most of the DTTs examined follow these five sub-allocation rules:

Art 13 (1) OECD MC deals with gains from the alienation of immovable property[148] and allocates the taxing right to the state where the immovable property is located, i.e. the source state. All the DTTs examined follow the OECD MC and contain this provision.

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[140] Art 12 (2) DTT Belarus – Singapore; Art 12 (2) DTT Mongolia – Singapore and Art 12 (2) DTT Russia – Singapore.
[141] Art 12 (2) DTT China – Singapore; Art 12 (2) DTT Kazakhstan – Singapore; Art 12 (2) DTT Pakistan – Singapore and Art 12 (2) DTT Singapore – Turkey.
[142] Art 12 (3) DTT Pakistan – Singapore does not include „copyright of literary, artistic or scientific work including cinematograph films, and films or tapes for radio or television broadcasting".
[143] The Protocol of the DTT Belarus – Singapore includes transport vehicles for cargo transportation in this definition.
[144] Art 12 (3) DTT Belarus – Singapore; Art 12 (3) DTT China – Singapore; Art 12 (3) DTT Kazakhstan – Singapore; Art 12 (3) DTT Mongolia – Singapore; Art 12 (3) DTT Singapore – Ukraine and Art 12 (3) DTT Singapore – Uzbekistan.
[145] DTTs with Pakistan, Russia and Turkey.
[146] OECD, *TAG on treaty characterization issues arising from E-Commerce*, 5 February 2001, CFA(2001)I2, Annex 2, cases 5 and 6.
[147] Reimer / Rust, *Klaus Vogel on Double Taxation Conventions*, Fourth Edition, 2015, Art 12, m.no 196.
[148] The term immovable property is defined by reference to Art 6 of the respective DTT, which generally refers to the domestic law of the contracting states.

Art 13 (4) OECD MC treats gains from the alienation of shares in real estate-rich companies in the same way as gains that fall under Art 13 (1), i.e. the taxing right is allocated to the source state where the immovable property is located. Without such a provision it would be possible to avoid taxation in the source state by interposing an entity.[149] Most of the DTTs examined contain such a provision, but the threshold for the immovable property proportion of the entity varies between 50%[150] and 75%[151]. In many cases this allocation rule does not apply to gains derived from the alienation of shares quoted on a recognized stock exchange,[152] possibly because for publically listed entities it can be presumed that they would not be interposed that easily.[153] The DTTs with Kazakhstan and with Ukraine cover also capital gain from alienation of an interest in a partnership (in case of Kazakhstan also trusts) which predominately derive their value from immovable property.[154]

The DTT with China contains a specific provision dealing with the alienation of shares other than just described above. Such capital gains may be taxed in the source state if the recipient of the gains, at any time during the twelve-month period preceding such alienation, held a participation of at least 25%.[155] This provision corresponds with Art 13 (5) UN MC, and aims to improve the taxing position of the source country.

Art 13 (2) of the OECD MC allows the state, where the PE of an enterprise of the other contracting state is located, to tax the gains from the alienation of such PE or its movable property. The UN MC extends this provision to also cover gains from the alienation of a fixed base of independent professional services or its movable property. The DTTs concluded by Singapore and the central Asian countries follow the wording of UN MC and provide for a shared taxing right with the state where the PE / fixed base is situated having the primary taxing right.[156]

For gains derived by a resident of a contracting state from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, many of the DTTs examined provide an exclusive taxing right to the residence state.[157] The difference to the OECD MC 2017 is that the model targets enterprises (entrepreneurial gains) only and the enterprises need to operate the vehicles themselves. The OECD MC is only followed by the DTTs with Turkey and with Ukraine. In contrast to the OECD MC, Art 13 (3) UN MC provides for an exclusive taxing right for the state in which the place of effective management of such enterprise is situated. The UN MC is followed by the DTTs with Mongolia and Pakistan. One further deviation from the models can be seen in the DTT with Uzbekistan, which includes also road or railway vehicles in this provision.[158]

A special provision is included in the DTT with Turkey. Pursuant to Art 13 (5) of this DTT capital gains derived by the government of the contracting state of other property, i.e. not immovable property, PE property, vessels and vehicles, are taxable in the government state

The final paragraph of Art 13 OECD MC allocates the exclusive right to tax to the resident state of alienator. All DTTs examined but the one with Pakistan contain a provision modelled after Art 13 (5) OECD MC.

(e) Other Provisions of Relevance

Methods to Avoid Double Taxation (Art 23 OECD MC)

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[149] Reimer / Rust, *Klaus Vogel on Double Taxation Conventions*, Fourth Edition, 2015, Art 13, m.no 50 stating that before the introduction of this provision interposing an entity could lead to double non-taxation.
[150] Art 13 (4) DTT China – Singapore and Art 13 (2) DTT Kazakhstan – Singapore.
[151] Art 13 (4) DTT Belarus – Singapore; Art 13 (2) DTT Mongolia – Singapore; Art 13 (3) DTT Russia – Singapore and Art 13 (2) DTT Singapore – Ukraine.
[152] Art 13 (4) DTT Belarus – Singapore; Art 13 (2) DTT Kazakhstan – Singapore; Art 13 (2) DTT Mongolia – Singapore; Art 13 (3) DTT Russia – Singapore and Art 13 (2) DTT Singapore – Ukraine.
[153] OECD Commentary on Art 13, m.no 28.7.
[154] The same threshold as with corporate entities applies and for the DTT with Ukraine shares in real estate rich entities are regarded as immovable property as well.
[155] Art 13 (5) DTT China – Singapore.
[156] Special reference is made to the DTT with Turkey, which stipulates in Art 13 (2) that Art 12 takes precedence over Art 13. This is in line with Turkey's position on royalties, as Turkey included the alienation of rights in its Art 12. The same reasoning should apply for the DTT with Pakistan, see the previous section above on royalties.
[157] Art 13 (3) DTT Belarus – Singapore; Art 13 (3) DTT China – Singapore; Art 13 (4) DTT Kazakhstan – Singapore; Art 13 (4) DTT Russia – Singapore and Art 13 (3) DTT Singapore – Uzbekistan.
[158] Art 13 (3) DTT Singapore – Uzbekistan.

Art 23 OECD MC offers contracting states a choice between the exemption method and the credit method in order to avoid double taxation. Art 23B (1) OECD MC, containing the credit method, lays down the basic rule and stipulates the maximum amount up to which credit shall be given for tax paid in the source state. All the DTTs examined follow the credit method, but the wording used in the different DTTs varies widely. In most of the DTTs examined, Singapore does not limit the tax credit to a maximum amount. This means that the tax credit is not limited up to the part of the domestic tax which is attributable to the items of income taxed in the source state, but the Singapore allows a higher amount to be credited. In effect, Singapore gives up taxes on income from domestic sources which results in a loss in revenue.[159] This ensures that the taxpayer might still benefit from Singapore's low tax rate, even if the other contracting state's tax rate is higher. However, all the treaty partners included the maximum credit. Only the DTTs with Pakistan, Turkey and Uzbekistan provide for a bilateral maximum tax credit.[160]

Additionally, Singapore unilaterally includes in all the DTTs examined a clause that the tax credit shall take into account the profits of a company of the contracting state out of which a dividend to Singapore is paid. The minimum shareholding in the foreign company is 10%, in the DTT with Mongolia[161] it is 25%. Only in the DTT with China this provision is applied bilaterally, i.e. China also takes into account the taxes paid in Singapore in respect of the income of which dividends are paid.[162] This provision likely stems from Singapore's national tax legislation, which adopts a one-tier tax system for dividends. This means that all Singapore dividends are tax exempt in the shareholder's hands.

Furthermore, some of the DTTs examined contain a tax sparring credit. Such a tax sparring credit ensures that tax benefits offered by the source state are not siphoned off by the residence state (provided that the amount of tax collected by the source state is lower than the residence state's tax), but that the taxpayer benefits from such tax incentives in the source state. To do so, the residence state calculates the credit as if the tax in the source state remained at the unreduced level. Singapore unilaterally applies a tax sparring credit in its DTTs with China, Russia and Turkey,[163] and a bilateral tax sparring credit is included in the DTTs with Mongolia and Pakistan.[164]

The countries Belarus, Kazakhstan, Mongolia and Ukraine include in their DTT with Singapore a provision modelled after Art 23B (2) OECD MC.[165] This provision is applicable unilaterally for those countries. Pursuant to this provision, Belarus, Kazakhstan, Mongolia and Ukraine as a residence state may take the amount of exempted income into consideration when determining their tax on income. This is a safeguarding provision for the principle of progression, so that the residence state may take into account for calculating the progression income which "may be taxed" in the source state and also income which "shall be taxable only" in the source state.

Technical Services

As nowadays services become more and more important, there have been ongoing discussions about including a provision on technical services in tax treaties.[166] From the tax treaties examined, the one with Pakistan contains a provision on fees for technical services in its Art 13.[167] The provision stipulates that, in principle, fees for technical services arising in one contracting state and paid to an enterprise of the other contracting state may be taxed in that other state (=residence state). However, as outlined in Art 13 (2) of the DTT, the source state also has a taxing

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[159] Reimer / Rust, *Klaus Vogel on Double Taxation Conventions*, Fourth Edition, 2015, Art 23, m.no 50.

[160] Art 23 (2) and (3) DTT Pakistan – Singapore; Art 23 (2) and (3) DTT Singapore – Turkey and Art 23 (1) and (2) DTT Singapore – Uzbekistan.

[161] Art 23 (2) (a) DTT Mongolia – Singapore.

[162162] Art 22 (1) (a) DTT China – Singapore, with a minimum shareholding of 20% in the Singaporean company.

[163] Art 22 (3) DTT China- Singpaore; Art 23 (3) DTT Russia – Singaore; and Art 23 (4) DTT Singapore – Turkey, limited to 10 years.

[164] Art 23 (1) (c) and (2) (b) DTT Mongolia – Singapore; Art 22 (4) DTT Pakistan – Singapore, laying out the amount of credit for dividends, interest and royalties.

[165]Art 22 (1) DTT Belarus – Singapore; Art 22 (1) (b) DTT Kazakhstan – Singapore, referring to income which is "taxable only" in Singapore; Art 23 (1) (b) DTT Mongolia – Singapore; Art 22 (1) DTT Singapore – Ukraine.

[166] The UN Committee of Experts on International Cooperation in Tax Matters has discussed this issue at various meetings of its committee. A. Báez Moreno, *The Taxation of Technical Services under the United Nations Model Double Taxation Convention: A Rushed – Yet Appropriate – Proposal for (Developing) Countries?*, 7 World Tax J. (2015), Journals IBFD.

[167] The other DTTs examined contain a service PE provision; see above, Section III(b) Permanent Establishments and Business Profits.

right at 10% of the gross amount of the fees. This article also outlines that the term technical services covers managerial, technical or consultancy services, but not construction services or income from employment.[168] This provision is included to strengthen the taxing position of the source country, which would otherwise not be entitled to tax such income.

Prevention of Treaty Abuse (Art 6 MLI)

BEPS Action 6 on treaty abuse recommended that parties choose from three alternative approaches to counter treaty abuse.[169] Two of these approaches are included in Art 7 of the MLI, namely the Principal Purpose Test (PPT) and a simplified Limitation on Benefits (LOB) article combined with a PPT. The MLI does not provide for the third option, a complex LOB provision. If countries wish to include this provision, they can negotiate a complex LOB on a bilateral basis.

As this is a minimum standard, the signatories of the MLI must include a provision on treaty abuse. Singapore decided to adopt the PPT to prevent treaty abuse and to include the discretionary benefits provision of Art 7 (4) MLI, which gives a competent authority discretion to grant treaty benefits to a taxpayer upon request, even if the taxpayer fails the PPT.

The PPT is outlined in Art 7 (1) MLI and stipulates that "a benefit under the Covered Tax Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement".

As regards the treaty partner's positions, China[170] and Pakistan[171] also chose to include the PPT with the provision on discretionary benefits, and Turkey[172] also chose to apply the PPT, with China notifying the DTT with Singapore already including a provision to prevent treaty abuse in its Arts 10 (6), 11 (8) and 12 (7). On the other hand, Russia[173] chose to include the simplified LOB provision into its treaties, also notifying that the DTT with Singapore already includes a provision to prevent treaty abuse in its Arts 10 (9), 11 (6), 12 (7) and 22 (2). As a result, the PPT will apply to all four tax treaties and replace the already existing provisions in the DTTs with China and with Russia. Even though Russia did not opt for the PPT and hence there is no match, the PPT will apply nevertheless, because Singapore did not allow for asymmetrical application of the MLI's simplified LOB under Article 7 (7) (b) MLI.[174]

Not only Singapore's DTTs with China and Russia contain treaty abuse provisions. Of the DTTs examined the ones with Kazakhstan and Ukraine provide for a main purpose test limited to interest and royalties.[175] These provisions are applied to deny reduced withholding taxation on interest and royalties in cases when "it was the main purpose or one of the main purposes" to take advantage of reduced taxation at source. This main purpose test is somewhat similar to a PPT, but restricted in scope.[176] The DTT with Kazakhstan also contains an obligation to notify the competent authorities of the other contracting state in case treaty benefits were denied because of the main purpose test.[177] This means that the source state may deny benefits first and only afterwards has the obligation to notify the

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[168] Art 13 (3) DTT Pakistan – Singapore.

[169] OECD, *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 – 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris (2015).

[170] China, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-china.pdf (accessed 18 April 2018).

[171] Pakistan, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-pakistan.pdf (accessed 18 April 2018).

[172] Turkey, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-turkey.pdf (accessed 18 April 2018).

[173] Russia, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-russia.pdf (accessed 18 April 2018).

[174] For details on the PPT in Singapore's tax treaties see B. Kuźniacki, *Introduction of the Principal Purpose Test and Discretionary Benefits Provisions into Singapore's Tax Treaties: Not as Black as It Is Painted: Part 1 – Reasons*, 24 Asia-Pac. Tax Bull. 2 (2018), Journals IBFD.

[175] Arts 11 (8) and 12 (7) DTT Kazakhstan – Singapore and Arts 11 (8) and 12 (7) DTT Singapore – Ukraine.

[176] Kuzniacki, *Introduction of the Principal Purpose Test and Discretionary Benefits Provisions into Singapore's Tax Treaties: Not as Black as It Is Painted*, Asia-Pacific Tax Bulletin, 2018 (Volume 24), No. 2, IBFD Journals online.

[177] Arts 11 (9) and 12 (8) DTT Kazakhstan – Singapore.

other contracting state. Nevertheless, such a notification obligation could intend to ensure a coordinated application of the treaty provisions.[178]

As a provision countering double-non taxation, two of the DTTs examined contain a limitation on relief provision.[179] Under a remittance-based system of taxation the residence state does not tax the whole worldwide income but only the part that is remitted. The limitation on relief provision is a remittance based clause that makes the exclusion or limitation of source taxation dependent on the remittance and thus taxation in the residence state. Accordingly, the limitation on relief provision applies to ensure that treaty benefits are granted only to income that has been remitted to Singapore and, therefore, may be taxed in Singapore under its remittance-based taxation system. Both DTTs do not apply this provision for income derived by the Government of Singapore.[180]

A further change introduced by Art 6 of the MLI is the language of the preamble of the DTTs. It consists of expressing the common intention "to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance", including through treaty shopping arrangements. Singapore notified all its DTTs but the ones with Belarus and Uzbekistan, which implies that Singapore would like to replace the wording in the DTTs with the wording of Art 6 (1) MLI. Art 6 (3) also includes optional wording that may be added to the preamble of a referring to the desire to develop an economic relationship or to enhance cooperation in tax matters. Singapore also chose to include that language by notifying its DTTs.[181] China,[182] Pakistan,[183] Russia[184] and Turkey[185] followed the same approach, thus the language in the preamble of all four DTTs will be changed.[186]

C. Discussion

The rationale of DTTs is to relieve a taxpayer in either country of their liability to pay some or all of the tax due on the same income or capital. They generally create bigger certainty and set limits to the taxation of cross-border investments through allocating taxing rights between the investment recipient countries and the residence country of the investor. DTTs are responsible for mitigating double taxation by harmonizing tax definitions, defining taxable bases, assigning taxing jurisdictions, and indicating the mechanisms to be sued to remove double taxation when it arises. Accordingly, having a broad and functioning treaty network with the OBOR countries is a way to smoothen out tax friction.

The analysis above showed that Singapore's treaty network with the central Asian countries is already extensive but still not complete. For example, in the central Asian region the largest countries are covered but there are no DTTs with Afghanistan, Kyrgyzstan, Tajikistan and Turkmenistan. In order to promote Singapore as a residence country, investors might wish to see a further expansion of Singapore's tax treaty network to also cover these smaller countries.

Generally DTTs tend to shift taxing powers from the source state to the residence state. As regards the OBOR project, the central Asian countries will mainly constitute net capital importing countries, with the capital streaming predominantly from Singapore into their economy, and capital income flowing the other way around. Hence, the shift in taxing powers from the source country to the residence country caused by the DTT potentially leads to revenue loss from reduced withholding tax rates next to the cost of treaty negotiation and administration. Nevertheless, an

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[178] Reimer / Rust, *Klaus Vogel on Double Taxation Conventions*, Fourth Edition, 2015, Art 11, m.no 144.
[179] Protocol Art 5 DTT Pakistan – Singapore and Art 22 DTT Singapore – Turkey.
[180] Protocol Art 5 DTT Pakistan – Singapore and Art 22 (2) DTT Singapore – Turkey.
[181] Singapore, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-singapore.pdf (accessed 18 April 2018).
[182] China, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-china.pdf (accessed 18 April 2018).
[183] Pakistan, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-pakistan.pdf (accessed 18 April 2018).
[184] Russia, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-russia.pdf (accessed 18 April 2018).
[185] Turkey, *Status of List of Reservations and Notifications at the Time of Signature*, 7 June 2017, http://www.oecd.org/tax/treaties/beps-mli-position-turkey.pdf (accessed 18 April 2018).
[186] Pursuant to Art 6 (5) MLI, if not all countries had made such notification, then the language on Art 6 would have be added to the existing preamble language.

often observed feature of the tax treaties is that Singapore's tax treaties with OBOR countries grant more taxing rights to the source country than outlined in the OECD MC. For example, this is the case with the provision on permanent establishments in many of the DTTs examined, which include a service PE. What is common to all treaties is that the source country is granted a taxing right for dividends, interest and royalties. So there are no big surprises for the taxpayer in this respect. In the context of the OBOR project, this might lead to a loss of tax revenue for Singapore, as Singapore will likely take the role of the residence country for most of the projects.

Suggestions for possible improvement to level the playing field in central Asia could be the harmonization of construction and service PE timeframe. Currently, a project with the same characteristics may constitute a PE in one central Asian country and entail tax and compliance issues, but not in the other. This situation is worsened by (non-)inclusion of certain activities in the definition of construction PE, such as assembly or supervision of construction project. For more predictable results, having more harmonized treaties – with standardization of certain key provision - could reduce the level of complexity in doing cross-border business in the central Asian region.

As concerns the elimination of double taxation, most of the treaties examined contain favourable provisions for Singaporean residents. For example, for Singaporean residents most of the treaties do not contain a maximum credit, they contain a clause that the tax credit shall take into account the profits of a company of the contracting state out of which a dividend to Singapore is paid and a tax sparring provision. This makes Singapore a taxpayer-friendly residence country. However, it needs to be kept in mind that these provisions are mostly applied unilaterally, so the other state might not provide his residents with these types of benefits.

The same is true for the anti-avoidance provision, where Singapore chose to implement the principal purpose test with the provision on discretionary benefits. The vague and general language of the PPT ensures discretionary power for tax authorities, and thus might be preferable to lengthy technical rules like the MLI LOB rule.

IV. Conclusion

From the analysis above, it can be seen that the domestic tax systems of the central Asian countries differ remarkably. Differences under the Anglo American law system, the Continental legal system and the Islamic legal system in corporate income tax laws will inevitably lead to cross-border tax coordination issues under the OBOR countries. What is more, regulatory systems in many developing countries are still incomplete. Furthermore, the implementation of BEPS measures has started. Changes to domestic tax systems can be expected, which leads to a situation of uncertainty as regards future tax periods.

In general, the analysis shows that the tax rates are rather low in the central Asian countries. Sometimes there is a higher tax rate for foreign PEs, sometimes there is an additional branch profits tax for foreign PEs. Viewed from the perspective of tax rates, taxpayers might be tempted to rather make use of foreign subsidiaries instead of PEs.

Furthermore, it that can be expected is that taxpayers will make use of the special economic zones to a greater extent. Such special economic zones can be of interest especially in countries where there is no treaty to protect the taxpayer from taxation at source. Additionally, these special economic zones sometimes follow a one-stop-shop principle for all administrative purposes of investors, e.g. company registration, customs clearance, tax administration, etc. In other words, the investor can benefit from lower taxes and less administrative burden in the special economic zones. The central Asian countries are well aware of positive effects of SEZs to attract FDI, so it can be expected that there will be even more SEZs established in the future.

As a general trend, it can be expected that permanent establishments will be created more easily in the source country. On the one hand, in the central Asian countries' national laws the definition of permanent establishment is quite broad. On the other hand, due to the BEPS developments countries will tend to assume PEs more easily. Even though Singapore opted not to adopt the provisions on the avoidance of PE through commissionnaire arrangements and also opted to preserve the current specific activity exemptions, some treaty partners chose a stricter approach. It might be possible that these treaty partners' tax administrations will implement the BEPS measures in their national law and hence will tend to assume a PE more easily in the future. In such situations, it is important for a taxpayer to be protected by a treaty with the option for a mutual agreement procedure, should there be taxation not in accordance with the tax treaty. Otherwise, Singapore might think about unilaterally granting a credit for taxes paid in the other country.

The fundamental principle to deal with these issues relies on coordination mechanisms under the OBOR initiative. In the bilateral context, issues can be solved through consultations on the national level. However, if put in the multilateral framework of the OBOR initiative, it is necessary to establish a multilateral tax cooperation mechanism that will not only provide a communication platform for all countries, but also enhance the multilateral tax collection and administration cooperation.

In the long run, countries might want to think about establishing an international tax forum, where they can discuss about jointly establishing special economic zones and to work on model provisions for their tax treaties or even establish a central Asian model tax treaty. Considering economic situations and tax collection and management abilities of countries in central Asia, such an effective international tax coordination platform might take time to be established. To start with, a more feasible idea could be to promote joint-working mechanisms in the process of implementing the OBOR initiative through dialogue mechanisms and other flexible means. As these dialogues get more established, further progress might be achieved.