Kaizen CPA Limited
Rooms 2101-05, 21/F., Futura Plaza
111 How Ming Street, Kwun Tong, Hong Kong
T: +852 2341 1444
E: info@kaizencpa.com

Shenzhen, China
Rooms 1203-06, 12/F.
Di Wang Commercial Centre
5002 Shennan Road East
Luohu District, Shenzhen
T: +86 755 8268 4480

Shanghai, China
Room 603, 6/F., Tower B
Guangqi Culture Plaza
2899A Xietu Road
Xuhui District, Shanghai
T: +86 21 6439 4114

Beijing, China
Room 303, 3/F.
Interchina Commercial Budg.
33 Dengshikou Street
Dongcheng District, Beijing
T: +86 10 6210 1890

Taipei, Taiwan
Room 303, 3/F.
142 Section 4
Chung Hsiao East Road
Daan District, Taipei
T: +886 2 2711 1324

Singapore
138 Cecil Street
#13-02 Cecil Court
Singapore 069538
T: +65 6438 0116

New York, USA
202 Canal Street
Suite 303, 3/F.
New York
NY 10013, USA
T: +1 646 850 5888

Seychelles - An Alternative China Investment Gateway

While Hong Kong remains as the primary conduit for foreign investment into China, Seychelles is an attractive niche China investment gateway; with Seychelles companies increasingly being used as tax-efficient vehicles to hold equity investments in Chinese companies.

The Seychelles / China Double Taxation Avoidance Agreement (“DTA”) provides for certain China tax relief which is not available under the Hong Kong / China DTA. While the Hong Kong / China DTA caps Chinese withholding tax at 5% if the Hong Kong company owns 25% or more of a Chinese company, it only caps Chinese withholding tax at 10% if the Hong Kong company owns less than 25% of a Chinese company. In contrast, under the Seychelles / China DTA, irrespective of whether a Seychelles company holds more or less than 25% of the issued shares in a Chinese company, Chinese withholding tax on dividends is capped at 5%. Therefore, the Seychelles / China DTA has a distinct advantage over the Hong Kong / China DTA in cases where a shareholding stake of less than 25% in a Chinese company is being acquired. This will be particularly relevant to medium to large investors in the areas of Chinese investment mutual funds and in other “non-controlling” China investments.

The use of DTA solutions (whether Hong Kong, Seychelles or other) for China investment is especially relevant in light of the recent comprehensive tax changes in China. Following enactment of the Enterprise Income Tax ("EIT" Law (effective from 1 January 2008), Chinese withholding tax at the rate of 20% applies to outbound payments of China-sourced income to a non-resident without an establishment or place of business in China (although most foreign investors are eligible for a 10% Chinese withholding tax rate). While tax concessions (including exemption from Chinese withholding tax) granted to Foreign Investment Enterprises prior to April 2007 continue to apply for a limited period (5 years in most cases), new foreign businesses setting up in China are subject to the rates under the EIT Law. Significantly, China is also becoming increasingly serious about tax collection and enforcement.

To enjoy the tax relief available under the Seychelles / China DTA, a foreign investor will need to establish a Seychelles Company Special Licence (CSL). A CSL is a Seychelles domestic company (incorporated under the Companies Act 1972), which is granted a special licence under the Companies (Special Licence) Act 2003. Unlike the popular Seychelles IBC (which is a tax exempt company similar to the typical Caribbean offshore company), the CSL is tax resident in the Seychelles, and may access Seychelles growing network of DTAs. As a pre-requisite to enjoyment of the tax relief under the Seychelles / China DTA, a CSL must be structured such that its place of effective management is Seychelles (which will involve, at minimum, the appointment of Seychelles resident directors, the passing of Board resolutions and the signing of legal documents in Seychelles and the use of a Seychelles bank account).

While a CSL is technically liable to Seychelles business tax at the rate of 1.5% on worldwide taxable income (gross income less allowable deductions), under the Seychelles / China DTA withholding tax paid in China can be credited and set-off against the 1.5% Seychelles business tax payable by the CSL to discharge all Seychelles business tax liability. Another significant benefit under the Seychelles / China DTA is avoidance of Chinese tax on capital gains made by a CSL selling shares held by it in a Chinese company if the CSL holds less than 25% of the issued shares in the Chinese Company and provided that the assets of the Chinese Company do not principally consist of immovable property (real estate). Once again, this will be of relevance to foreign investors acquiring stakes of less than 25% in Chinese companies. China has already indicated plans to enforce taxing of capital gains on Chinese shares disposals. A CSL is also exempt from Seychelles withholding taxes on dividends, interest and royalties and from stamp duty on property transfers, share transfers and other business transactions. As with a Hong Kong company, a CSL is required to prepare and file annual audited accounts.

Many investors may also welcome some distance between the location of their intermediary holding vehicle and China. Hong Kong is, after all, part of China and there is an increasing level of exchange of tax information as between the Hong Kong and Chinese authorities. While the Hong Kong investment gateway will surely remain as the main entry route for many investors into China, the Seychelles CSL / DTA solution offers better tax savings for medium to large foreign investors looking to acquire holdings of less than 25% in Chinese companies.

If you wish to obtain more information or assistance, please visit the official website at www.kaizencpa.com or contact us through the means:

T: *+852 2341 1444*

M: *+852 5616 4140, +86 152 1943 4614*

WhatsApp/Line/WeChat: *+852 5616 4140*

Skype: *kaizencpa*

E: *info@kaizencpa.com*