General tax update for financial institutions in Asia Pacific

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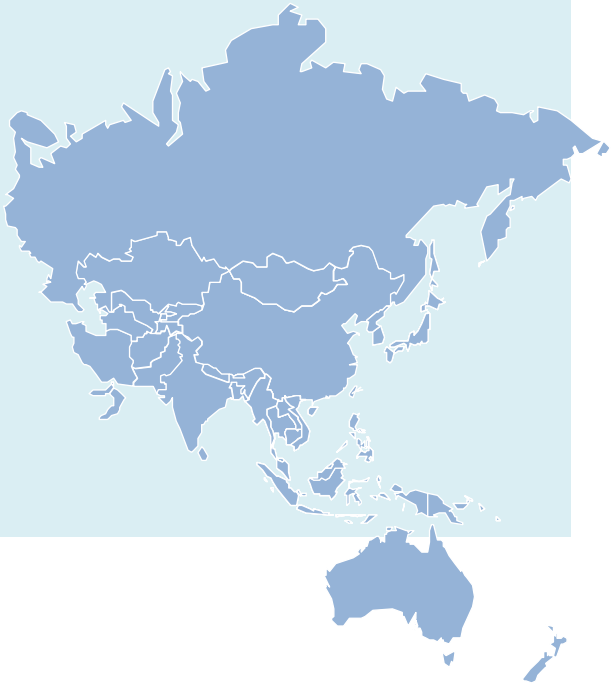
As expected, many jurisdictions are implementing a range of BEPS inspired changes to local tax legislation. These include a large number changes to local withholding rules and to the procedures for accessing double taxation treaties. We recommend clients review their structures and operations in the light of these continual changes.



Highlights

- Proposed implementation of Anti-hybrid Rules
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- Proposed simplification of the "Taxation of Financial Arrangements" ("TOFA") regime

- Ministry of Finance (MOF) and State Administration of Taxation (SAT) issued implementation rules on VAT reform applied to financial service sector

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- Cash Reserve Taxation of a company operating an insurance business
- Deductibility of expenses incurred from risk participation transactions

- New rulings regarding the clarification on deductions for payment of premium to Malaysia deposit insurance corporation

- Finance (Miscellaneous Provision) Act 2015 came into operation
- Protocol to the tax treaty between India and Mauritius

- NRWT and related party changes introduced in the Omnibus Tax Bill
- GST on cross-border services rules enacted
- NZ Government released three reports on foreign trusts, taxation of inbound investments and BEPS

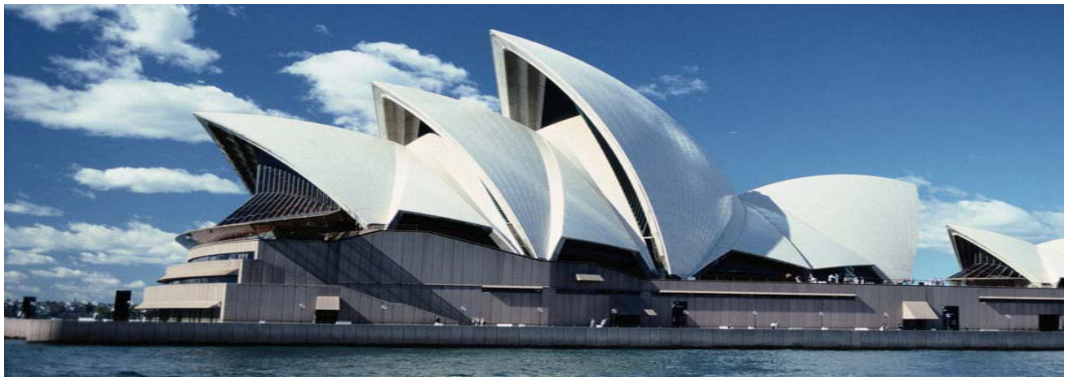
- Clarification on proper tax treatment of passed-on gross receipts tax
- Procedure for claiming tax treaty benefits for dividend, interest and royalty income of Non-resident income earners
- Suspension of effectiveness of all issuances promulgated within the period covering June 1 - 30, 2016

- Tax reduction for retail bond issuances

- Draft CFC and PEM rule

- Cabinet approved proposed new Property Tax law
- Additional deduction for capital expenditures incurred within 31 December 2016
- Changes to withholding tax for financial lease

Australia



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Legislative developments

Proposed implementation of Anti-hybrid Rules

As part of the Federal Budget for the 2016 -17 financial year, the Government announced its commitment to implementing Action 2 of the OECD's BEPS Action Plan ("Neutralising the Effects of Hybrid Mismatch Arrangements") on 3 May 2016, taking into account the recommendations made by the Board of Taxation. Broadly speaking, Action 2 of the BEPS Action Plan recommended neutralising the effects of hybrid mismatch arrangements that occur due to different treatments of an entity or instrument under the tax laws of two or more jurisdictions.

In broad terms, the key recommendations of the Board of Taxation to the Government are as follows:

- The implementation of a rule that denies an Australian taxpayer an exemption for its receipt of a 'non-portfolio dividend' where the non-resident payer of the 'dividend' obtains a tax deduction for the payment in its home jurisdiction;
- The implementation of a rule that denies an Australian taxpayer a tax deduction for the payment of a return on an instrument where the foreign recipient of the return is not taxable on the return in its home jurisdiction (typically because of the availability of a dividend exemption in its home jurisdiction);
- Further consultation should be undertaken on whether and how any such rules should apply to regulatory capital issued by banks and insurance companies.

In this regard, the Board recognised the complexities of these instruments and did not want to make a recommendation without considering the issues in further detail. The Treasurer has recognised this complexity and has asked the Board to undertake a further review to examine how best to implement rules to eliminate hybrid mismatch arrangements that arise in relation to regulatory capital. This further report is to be provided to the Treasurer by the end of July 2016.

The Treasurer has specifically asked the Board to examine how to implement the OECD recommendations "to eliminate deductible/frankable hybrid mismatch arrangements" in a best way:

- The anti-hybrid rules should come into force from the later of 1 January 2018 or 6 months following the date of Royal Assent to the enabling legislation. This date of effect is designed to ensure that taxpayers have sufficient time to restructure existing hybrid arrangements; and
- Subject to one or two potential exceptions (in relation to third party arrangements where there is a significant detriment to investors and changes affecting regulatory capital issuances of banks/insurance companies), there should not be any grandfathering of existing hybrid arrangements.

Regulated entities (e.g. banks and insurance companies) will appreciate the acknowledgement that further work is required to determine how the anti-hybrid rules should apply to regulatory capital instruments.

Proposed measures for enhancing access to asset-backed financing

As part of the Federal Budget, the Government announced that it will amend the tax law "to remove key barriers to the use of asset backed financing arrangements, which are supported by assets, such as deferred payment arrangements and hire purchase arrangements". The proposed amendments will clarify the tax treatment of such arrangements "and ensure that they are treated in the same way as arrangements based on interest bearing loans or investments".

The new measures are proposed to apply from 1 July 2018.

Although not made clear in the announcement, it is understood that this is a reference to Islamic financing and other similar transactions where no "interest" is payable.

A Discussion Paper on Islamic finance had been released by the Board of Taxation in October 2010. The Board's subsequent report to the Government in June 2011 was released on 4 May 2016.

It appears from the Board's report that the current proposal is to amend the existing financing arrangement rules in the tax law, rather than introducing a new specific regime for asset-backed financing.

In particular, the key recommendations of the Board of Taxation are as follows:

- Access to interest withholding tax exemptions should be made available for publicly-offered Islamic finance products that exhibit equivalent economic characteristics to debentures or to those debt interests that are currently eligible for the exemption;
- The States and Territories should be encouraged to provide relief from stamp duty, so that it does not arise where there is a synthetic disposal or acquisition that would not have occurred had it not been to give effect to a financial arrangement;
- Increased certainty should be provided regarding the application of the general income tax provisions to particular financial arrangements used to support Islamic finance products. This should be achieved by the following means:
  - an amendment to the income tax law to ensure that, in respect of a deferred payment arrangement whose main purpose is the raising or provision of debt finance, the finance gain or loss is treated the same as interest on a conventional borrowing;
  - an extension to the application of the hire-purchase provisions (which re-characterise an arrangement as a notional sale and loan); and
  - in consultation with industry, the Australian Taxation Office ("ATO") should provide guidance on the current taxation treatment of Islamic finance products to resolve particular areas of uncertainty.

Proposed simplification of the TOFA regime

As part of the Federal Budget, the Government announced on 3 May 2016 that it proposes to reform the "Taxation of Financial Arrangements" ("TOFA") regime in order to reduce the scope of the regime, decrease compliance costs and increase certainty. This represents the culmination of two years of work by the Board of Taxation and Treasury to overhaul the TOFA framework.

The reform is proposed to apply for income years starting on or after 1 January 2018.

The key components of the proposed reform are as follows:

- A strengthened and simplified link of the TOFA regime to financial accounting that will presumably reduce compliance costs associated with the "reliance on financial reports" election. This is something that the banking industry has been advocating for some time.
- Simplified "accruals" and "realisation" methods for taxpayers who do not make the "reliance on financial reports" election.
- A revamped tax-hedging method that removes the direct link to accounting hedging, and makes the tax-hedging method easier to access. Amongst other things, the

revamp is intended to expand the types of risk management arrangements that can qualify for the tax-hedging method, including hedging a portfolio of assets. This is likely to be of particular interest for funds undertaking portfolio hedging.

- Simplified rules for the taxation of foreign exchange gains and losses.

The Budget also indicated that previously announced but un-enacted TOFA measures, some going back to 2004, will be addressed in this latest reform process. This includes the welcome extension of the range of entities that can use a non-AUD functional currency for tax purposes.

The Budget announcement suggests the proposed reform will remove the majority of taxpayers from the TOFA rules. However, with the "reliance on financial reports" method generally embedded in the banking sector, these changes are likely to offer little for banks other than a possible reduction in compliance costs associated with quantum and timing testing.

Proposed introduction of a new suite of Collective Investment Vehicles

As part of the Federal Budget for the 2016-17 financial year, the Government announced on 3 May 2016 that it will introduce a new tax and regulatory framework for two new types of collective investment vehicles ("CIVs"):

- a corporate CIV – to apply for income years starting on or after 1 July 2017;
- a limited partnership CIV – to apply for income years starting on or after 1 July 2018.

Combined with the recent Asia Region Funds Passport developments, these changes are intended to enhance the international competitiveness of the Australian managed funds industry by allowing fund managers to offer investment products using CIV entities that are commonly used overseas.

The announcement is short on detail other than stating that new CIVs will be required to meet eligibility criteria similar to those imposed on "managed investment trusts" ("MITs"), such as being widely held and being involved primarily in passive investment activities.

Tax incentives for innovation

On 5 May 2016, the *Tax Laws Amendment (Tax Incentives for Innovation) Act 2016* received Royal Assent after being passed by Parliament without amendment. The tax incentives introduced by this legislation apply largely with effect from 1 July 2016, and they are of considerable interest and relevance for the financial technology ("FinTech") sector.

Please refer to Issue 55 for further details regarding the tax incentives.

Attribution Managed Investment Trusts ("AMIT") regime

On 5 May 2016, the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* received Royal Assent after being passed by Parliament. This legislation has implemented a new tax regime for AMIT's. The new regime generally applies to tax years starting on or after 1 July 2016. However, trustees of AMITs are able to make a choice to apply the regime for a tax year starting on or after 1 July 2015.

Please refer to Issue 54 for further details regarding the AMIT regime.

Taxation rulings and determinations

Taxpayer Alert 2016/4 – Cross-border leasing arrangements involving mobile assets

On 26 April 2016, the ATO issued Taxpayer Alert 2016/4, which summarises the ATO's concerns regarding certain cross-border leasing arrangements involving mobile assets such as vessels. The arrangements being reviewed are those in which related foreign entities are interposed to lease an asset from a foreign owner to an Australian operator of the asset.

Broadly, the ATO has two stated concerns:

- Whether the interposed foreign entity has been established for the purpose of gaining favourable treatment under the tax treaty between Australia and the residence country of the interposed foreign entity, such that Australia's anti-avoidance rules should apply (particularly if the interposed entity has limited commercial substance); and
- Whether the amount of income taxed in Australia is consistent with the economic contribution made by the Australian operations and meets the arm's length requirements of Australia's transfer pricing rules.

The ATO has also indicated in this Taxpayer Alert that it is developing guidance on the transfer pricing and profit attribution issues associated with common cross-border leasing arrangements.

We understand that, although this Taxpayer Alert originally emanated from the ATO's concerns with certain vessel leasing arrangements, it may have triggered broader concerns within the ATO about the head-lease/sub-lease arrangements used for other types of mobile assets (such as aircraft).

Taxation Ruling TR 2016/2 – the taxation of swaps under the default "accruals" and "realisation" methods in the TOFA regime

The TOFA regime contains a special rule to deal specifically with swaps (section 230-120). This rule is difficult to interpret, understand and apply in practice, and importantly, it has been drafted in isolation from financial accounting principles and practices.

On 25 May 2016, the ATO released Taxation Ruling TR 2016/2 to provide guidance to taxpayers on the TOFA treatment of the common derivative financial instruments (e.g. interest rate swaps, cross-currency swaps, credit default swaps, and total return swaps).

The ruling explains the ATO's view of the key terms in the section, and provides the ATO's analysis of several hypothetical examples regarding the application of the default "accruals" and "realisation" methods under the TOFA regime to swaps.

However, the ruling does not deal with swaps which are subject to the elective tax-timing methods under TOFA (i.e. the "fair value" method, the "reliance on financial reports" method, or the hedging method). Given that the "reliance on financial reports" method is generally embedded in the banking sector, this ruling is likely to be of limited interest for banks.

Treasury Discussion Paper on the GST treatment of Digital Currency

On 3 May 2016, the Treasury released a Discussion Paper on the GST treatment of digital currency, launching the public consultation process on how to "address the double GST treatment of digital currencies".

Discussions between the ATO and industry regarding the tax treatment of digital currency commenced in 2014. In December 2014, the ATO concluded that digital currency is neither money nor a foreign currency. Rather, the ATO is of the view that digital currency is a form of intangible property that is neither "money" nor an input-taxed supply.

The ATO's characterisation means that the supply of digital currency to the consumer may be a taxable supply for GST purposes, and the supply of the good or service paid for with the digital currency may also be a taxable supply – resulting in double taxation.

The Treasury Discussion Paper raises two main issues that need to be addressed in overcoming the GST "double taxation" treatment:

- Whether "digital currencies" should be identified through a stand-alone definition or a list determined by the Treasurer or Commissioner of Taxation; and
- The treatment of "digital currencies" for GST purposes – that is, whether the definition of "money" for GST purposes should be expanded to include digital currencies, or whether the supply of digital currency should be treated as input-taxed for GST purposes.

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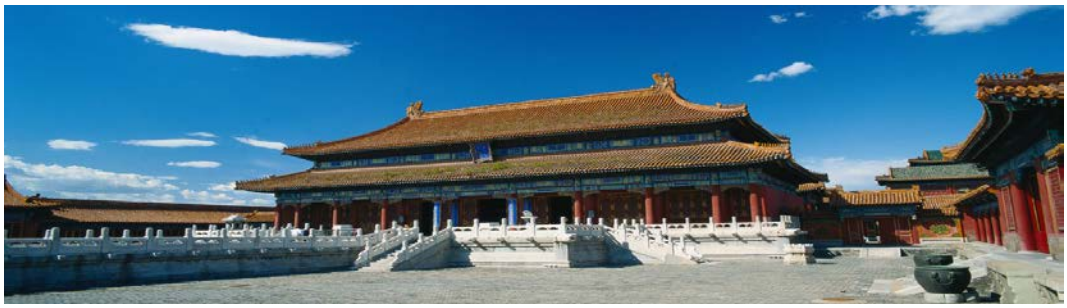
China



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Legislative developments

Ministry of Finance (MOF) and State Administration of Taxation (SAT) issued implementation rule on VAT reform applied to financial service sector

Following the issuance of Caishui [2016] No. 36 which announced the application of VAT to all sectors across China, MOF and SAT followed up with a series of implementation rules to clarify VAT treatments on certain issues.

Caishui [2016] No. 46 clarifies the following issues for financial services industry under the VAT regime:

- Interest income derived from the reverse repurchase financial products in pledge-style carried out by financial institutions and policy-based financial bonds held by financial institutions will be VAT exempted;
- Life insurance and health insurance products with a term of longer than 1 year would qualify VAT exemption; and
- The 3% simplified VAT method may be applied by certain financial institutions which finance agricultural activities. Financial service income derived by rural cooperative banks and rural commercial banks (at county level and below) may qualify. Furthermore, financial institutions which provide agriculture-related financial services as well as the interest income derived from the agriculture-related loans provided by certain branches at county level of Agricultural Bank of China, may qualify.

Caishui [2016] No. 68 further clarifies VAT treatment of services in regard of reinsurance arrangements:

- VAT exemption may apply if a Chinese reinsurer provides reinsurance services to an offshore insurer which is wholly consumed outside of China; and
- Reinsurance services take on the same VAT treatment as the underlying insurance policy which is being reinsured.

Circular Caishui [2016] No. 70 sets out an expanded scope of VAT exemptions for interbank funding arrangements, including interest income derived by a financial institution from the following transactions:

- Interbank placements;
- Interbank lending of funds amongst financial institutions;
- Interbank payments by direction;
- Purchase - type reverse repo;
- Holding bonds issued by financial institutions;
- Interbank deposits;
- The purchase of central bank bills by a commercial bank; the carrying out of currency swaps and currency deposits between PBOC and a commercial banks; and
- Interbank lending by a domestic bank and its offshore headquarters / parent company (and vice versa), or by a domestic bank and its offshore branch or wholly-owned subsidiary, vice versa.

While Circular 70 will be welcomed by the financial service sector as it expands the scope of VAT exemptions. However, the amount of input VAT which needs to be transferred out is likely to increase significantly due to the exempted supplies.

Hong Kong

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Legislative developments

CRS / AEOI: Hong Kong legislation gazetted

After the passage of the Inland Revenue (Amendment) Bill 2016 in the Legislative Council on 22 June 2016, Common Reporting Standard ("CRS") will become effective in Hong Kong from 1 January 2017. Under the CRS framework, a reporting financial institution in Hong Kong is required to identify and report to the Hong Kong Inland Revenue Department ("IRD") financial accounts held by tax residents of overseas reportable jurisdictions (including individuals, entities and controlling persons of certain entity accounts) on an annual basis starting from 2018.

The basic requirements behind CRS are similar to the US Foreign Account Compliance Act ("FATCA"). However, there are some key differences between the two regimes. In particular, CRS is based upon tax residence rather than US citizenship under FATCA.

Another major difference is the increased scope and volume of reporting is much broader. For more details, please find the link below:

https://home.kpmg.com/cn/en/home/insights/2016/06/crs-aeoi-hong-kong-legislation-gazetted.html

New Corporate Treasury Centre ("CTC") regime in Hong Kong

The Inland Revenue (Amendment) (No. 2) Ordinance 2016 ("the Ordinance") was passed by the Legislative Council on 26 May 2016. The purpose of the Ordinance is to encourage multinational corporations ("MNCs") to consider establishing or relocating their regional CTCs in Hong Kong.

The Ordinance introduces the following tax measures:

- Concessionary profits tax rate of 8.25% for certain profits of qualifying CTCs under prescribed conditions;
- To enable deduction of interest paid on intra-group loans; and
- To deem interest income and other gains on certain intra-group lending as taxable.

For more details, please find the link below:

https://home.kpmg.com/cn/en/home/insights/2016/09/tax-alert-10-hk-corporate-treasury-centres-hk-inland-revenue-department-issues-guidance.html

The Ordinance also enacts new rules, treating certain regulatory capital securities (RCSs) as debt securities regarding profits tax and stamp duty compliance, so as to implement the Basel III capital adequacy requirements. These rules contain a number of significant changes for banking groups carrying on business in Hong Kong.

IRD issues guidance on extension of offshore funds exemption to PE funds

The IRD issued its Departmental Interpretation and Practice Note ("DIPN 51") on 31 May 2016 in which it outlines how it intends to interpret and apply legislation enacted in July 2015 (Inland Revenue (Amendment) (No. 2) Ordinance 2015) to extend the existing tax exemption for offshore funds to offshore private equity funds.

For more details, please find the link below:

https://home.kpmg.com/cn/en/home/insights/2016/06/ird-issues-guidance-on-extension-of-offshore-funds-exemption-to-.html

Other developments

Hong Kong and Latvia conclude Double Tax Agreement

Hong Kong concluded a Double Tax Agreement ("DTA") with Latvia on 13 April 2016. Under the DTA, Latvia's withholding tax on Hong Kong residents is as follows:

	Latvian Non-treaty Withholding	Treaty Withholding Rate
Dividends	0%/15%/30%	0%/10%
Interest	0%/10%/15%	0%/10%
Royalties	0%/15%/23%	3%

The conclusion of the DTA is significant as it removes Hong Kong from Latvia's list of low tax jurisdictions. The DTA continues Hong Kong's efforts to expand its DTA network with economies included as part of China's Belt and Road initiative.

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India

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Legislative developments

Amendments to the Finance Bill 2016 (the "Bill")

The Bill was introduced by the Finance Minister in the Lok Sabha on 29 February 2016. On 5 May 2016, the amendments to the Bill have been tabled in the Lok Sabha. The key amendments are summarised as follows:

- Unlisted shares held for 24 months or less would be treated as short-term capital asset

  As per Section 2(42A) of the Finance Act 2014, any capital asset held by the taxpayer for a period of not more than 36 months immediately preceding the date of its transfer is treated as a short-term capital asset. The aforesaid period is 12 months in the case of shares in a company. An amendment was made by the Finance (No. 2) Act 2014 to provide that the said period of 12 months won't be applicable in respect of shares not listed on the recognised stock exchange. Hence, with effect from 1 April 2015, the unlisted share is treated as a short-term capital asset if it is held for not more than 36 months immediately preceding the date of its transfer.

  It is now proposed that the period of 36 months would be replaced by 24 months in the case of unlisted shares. In other words, unlisted shares of a company would be treated as a short- term capital asset if it is held for a period of 24 months or less immediately preceding the date of its transfer.

- Relief to certain non-residents from the withholding tax under Section 194LBB

  The Finance Act, 2015 had inserted a special taxation regime in respect of Category I and II AIFs registered with the SEBI. Under this regime, the income of the investment fund (non-business income) is exempt in the hands of the AIF. However, income received by the investor from the AIF (other than the income which is at the level of AIF) is taxable in their hands.

  The existing provisions of Section 194LBB provide that in respect of any income credited or paid by the AIF to its investor (resident or non- resident), a TDS shall be made by the AIF at the rate of 10 per cent of the income. This TDS regime has created certain difficulties to non-resident investors whose income was not taxable as per the relevant tax treaties. They were not able to claim the benefit of lower or nil rate of taxation.

  The Bill proposed to amend the Section 194LBB to provide that tax shall be deducted at the rate of 10 per cent where the payee is a resident. Where the payee is non-resident (including a foreign company), the tax shall be deducted at the rates in force. It also proposed to insert a proviso that where the payee is a non-resident, no tax shall be deducted in respect of any income which is not chargeable to tax in India.

- Transfer of shares through a recognised stock exchange located in IFSC

  The Bill proposed that no STT and CTT shall be levied on transfer of securities carried out through recognised stock exchange located in IFSC where the consideration for such transaction is paid or payable in foreign currency. Further, it proposed to provide that long-term capital gains arising from transfer of equity shares, equity oriented mutual fund or units of business trust shall be exempt from tax if the transaction is undertaken in foreign currency through a recognised stock exchange located in an IFSC, even if STT is not paid in

respect of such transactions. It also proposed that short-term capital gains arising from the transfer of underlying securities shall be taxable at 15 per cent if the transaction is undertaken in foreign currency through a recognised stock exchange located in an IFSC, even if STT is not paid in respect of such transactions.

India and Mauritius sign a protocol amending the India - Mauritius tax treaty.

On 10 May 2016, India and Mauritius signed a protocol amending the India-Mauritius tax treaty (the tax treaty) at Mauritius. For more details, please see Mauritius update on page 23 and the link below: https://home.kpmg.com/content/dam/kpmg/pdf/2016/05/tnf-india-treaty-may10-2016.pdf

Tax court case summaries

Mere technical error in the return of income would not defeat the claim of tax treaty benefit held in the case of Pramerica ASPF II Cyprus Holding Limited v. DCIT (ITA No. 1113/MUM/2015).

The Mumbai Bench of the Tribunal in the case of Pramerica ASPF II Cyprus Holding Limited (the taxpayer) held that mere technical error in the income-tax return filed would not defeat the claim of the taxpayer for entitlement to tax treaty benefits. Non-filing of Schedule-SI in the form of the return of income was an inadvertent omission, and it was required to be accepted by the tax department. Therefore, the taxpayer was entitled to claim the tax treaty benefits, and its income is liable to be taxed at the lower rate of 10 per cent.

The Tribunal also held that there was an inadvertent error of the taxpayer in considering interest income on accrual basis. The interest income is liable to be taxed on payment/receipt basis since Article 11(1) of the India-Cyprus tax treaty (tax treaty) provides for taxation of interest income on payment/receipt basis and not on an accrual basis.

For more details, please see the link below:

https://home.kpmg.com/content/dam/kpmg/pdf/2016/05/tnf-india3-april19-2016.pdf

Allotment of bonus shares cannot be considered as received for an inadequate consideration, and therefore, it is not taxable as income from other sources held in DCIT v Dr. Rajan Pai (ITA. 1290/Bang/2015, AY 2012-13).

The Bangalore Bench of the Tribunal in the case of Dr. Rajan Pai (the taxpayer), held that when there is an issue of bonus shares, there is a detriment suffered by the recipient shareholder, through the depression in the value of the shares held by him/her. There is a consideration flowing out, which is exactly counterbalanced by the value of the bonus shares received. Accordingly, the bonus shares can never be considered as received without consideration or for inadequate consideration, and therefore, it is not taxable under Section 56(2)(vii)(c) of the Act under the head 'Income from other sources.

For more details, please see the link below:

https://home.kpmg.com/content/dam/kpmg/pdf/2016/06/tnf-india6-june-16-2016.pdf

Taxation rulings and determinations

CBDT clarifies on taxability of income from the transfer of unlisted shares.

With a view to reduce litigation and maintain consistency in approach of assessments, the CBDT had issued a Circular regarding characterisation of income from transactions in listed shares and securities.

With regard to determine the tax treatment of income arising from the transfer of unlisted shares, the CBDT felt that there was a need to have a consistent view in assessments pertaining to such income. Accordingly, the CBDT has issued a clarification that the income arising from the transfer of unlisted shares would be considered as 'capital gain', irrespective of the period of holding, with a view to avoid disputes/litigation and to maintain consistency. Further, the above clarification would not necessarily be applied in the following situations:

- The genuineness of transactions of unlisted shares itself is questionable or
- The transfer of unlisted shares is related to an issue pertaining to lifting of corporate veil; or

- The transfer of unlisted shares is made along with the control and management of the underlying business.

The AO would take the appropriate view in such situations.

CBDT amends General Anti-Avoidance Rules

The GAAR were introduced in the DTC in 2009 to stop 'Impermissible Avoidance Arrangement' entered into by a person to avoid taxes. The GAAR had been introduced to deal with aggressive tax planning involving use of sophisticated structures.

The Finance Act 2013 introduced the GAAR provisions in the Act. The Finance Act, 2016 provides the effective date as 1 April 2017 (AY 2018-19). Subsequently, the CBDT, notified the rules relating to application of GAAR.

Recently, the CBDT issued Notification No. 49/2016 on 22 June 2016, and has amended the GAAR rules. The amendments are as following:

- As per Rule 10U(1)(d), the GAAR provisions are not applicable to any income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person from transfer of investment made before the 30 August 2010. The date of 30 August 2010 has been substituted with 1 April 2017.
- As per Rule 10U(2), the GAAR provisions are applicable to any arrangement, irrespective of the date on which it has been entered into, with tax benefit obtained from an arrangement on or after the 1 April 2015. The date of 1 April 2015 has been substituted with 1 April 2017.

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Indonesia

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Legislative developments

Indonesian Tax Amnesty Bill 2016

On 28 June 2016, the Indonesian parliamentary commission approved the long awaited Tax Amnesty Bill ("the Bill"). The Bill aims to raise an additional IDR 560 trillion (approximately USD 42 billion) through an expansion of the country's tax base, including a legislated 'clearance levy' (in Bahasa Indonesia "*uang tebusan*") which projected to raise IDR 165 trillion (approximately USD 13 billion). Under the Bill, the tax amnesty programme runs until 31 March 2017, whereby qualified taxpayers may apply for formal tax amnesty approvals from the Ministry of Finance by submitting up to three applications at the relevant tax office.

The highlights of the Bill include :

- Applicable to all Indonesian tax residents, including permanent establishments (in Bahasa Indonesia "*Bentuk Usaha Tetap*"*('BUT')* and taxpayers that have not registered at relevant tax offices. However, taxpayers that are being investigated by the prosecutor or under judicial review process in the Court or has been sentenced for criminal charges with regard to their tax affairs are excluded.
- Waiver of (i) tax due, (ii) administrative sanctions and (iii) tax criminal sanctions for the assets reported in the Declaration Letter for any open tax obligations up to the previous fiscal year;
- Tax audits, preliminary evidence investigation and tax investigations would not be conducted nor continued (if currently in process) for the tax year's under consideration;
- Related Indonesian tax liabilities on transferring title of tangible property (i.e. Immovable property) would be waived.
- The Bill's amnesty coverage extends to Corporate Income Tax, Value-Added Tax ('VAT') and Sales Tax on Luxury Goods ('STLG').

Furthermore, certain other fiscal implications are triggered upon participating in this tax amnesty programme, which include:

- The repatriated offshore assets are required to be re-invested in Indonesia for at least three years from date of repatriation;
- The onshore assets may not be transferred out of Indonesia within a three-year period subsequent to the date of the Confirmation Letter issued by the relevant tax office in response to the Declaration Letter;
- Carry forward of any available accumulated tax losses, any current tax losses or VAT overpayments for the following month or fiscal year, as the case may be, will not be permitted.
- A pre-requisite for participating the programme is that all outstanding tax liabilities shall be settled.
- Any request for refund regarding tax overpayment will not be permitted.

To qualify the Tax amnesty programme, certain requirements have to be met, such as paying the clearance levy, submitting the Declaration Letter to relevant tax offices, etc.

As mentioned above, a clearance levy on non-declared assets will be charged at rates varying from 2% to 10%, depending on the period in which the taxpayer submits the Declaration Letter. In this regard, we set out various clearance rates which will apply accordingly in the table below:

Clearance levy rates	July 2016 – September 2016	October 2016 – December 2016	January 2017– March 2017
Offshore assets declaration – no repatriation	4%	6%	10%
Offshore assets declaration – repatriation and invested in Indonesia for at least three years	2%	3%	5%
Onshore assets – kept in Indonesia for a least three years	2%	3%	5%

The above clearance levy rates are calculated based on a 'taxable base' subject to Net Asset Value ('NAV') of the non-declared assets less the related outstanding liabilities. Moreover, such calculation will be performed in Indonesian Rupiah ('IDR') with a limitation placed on the qualifying liabilities which can be used in the calculation depending on such taxpayer's profile.

Considering the tax benefits presented in the Bill, the tax amnesty programme not only allows all amnesty participants' unpaid corporate income tax, VAT and STLG to be pardoned, but also creates tax certainty with respect to upcoming fiscal years.

Lastly, as newly enacted legislation, certain matters within the Bill need clarification under its implementing regulations, e.g. fair value valuation requirements for assets, supporting evidence for assets declared, etc.

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Japan

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Legislative developments

Japan consumption tax rate increase delayed by two and a half years

On 1 June 2016, Prime Minister Shinzo Abe made an announcement on the planned increase in the consumption tax rate from 8% to 10% as follows:

- The planned increase in the consumption tax rate has been postponed over concerns that the increase could stifle domestic demand and trigger an economic downturn;
- The increase should be postponed to 1 October 2019, i.e. by two and a half years, at which point in time a multiple tax rate system should be introduced;
- A mandate for this decision to delay the consumption tax increase was sought in the Upper House election held on 10 July (which the ruling coalition won).

Regarding the background to the above, the Japanese government had planned to increase the consumption tax rate in two stages. The first stage to increase the consumption tax rate from 5% to 8% was implemented on 1 April 2014 as planned. The second increase in the tax rate from 8% to 10% which was originally due to happen on 1 October 2015 was postponed to 1 April 2017. Such increase will now be delayed from the original plan for four years in total.

It is expected that a bill to amend the Consumption Tax Law to postpone the increase in the tax rate will be submitted to and discussed in an extraordinary session of the Japanese parliament (Diet) later this year.

Japan-Taiwan tax agreement enacted

Japan has maintained its relationship with Taiwan on the basis of non-governmental, working-level relations through the Interchange Association (Japanese side) and the Association of East Asian Relations (Taiwanese side) and these associations had signed the 'Agreement between the Interchange Association and the Association of East Asian Relations for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income' (Tax Agreement) on 26 November 2015.

On 15 June 2016, the Interchange Association announced that the Tax Agreement had entered into force on 13 June 2016.

The Tax Agreement will become applicable as follows:

- In the case of Japan:

Taxes levied on the basis of a taxable year	Taxes for any taxable years beginning on or after 1 January 2017
Taxes not levied on the basis of a taxable year	Taxes levied on or after 1 January 2017
Provision for exchange of information	Information that relates to taxes for taxable years beginning, or taxes levied, on or after 1 January 2017

- In the case of Taiwan:

Taxes withheld at source	Income payable on or after 1 January 2017
Taxes on income which are not withheld at source	Income for any taxable year beginning on or after 1 January 2017
Provision for exchange of information	Information that relates to taxes for taxable years beginning, or taxes levied, on or after 1 January 2017

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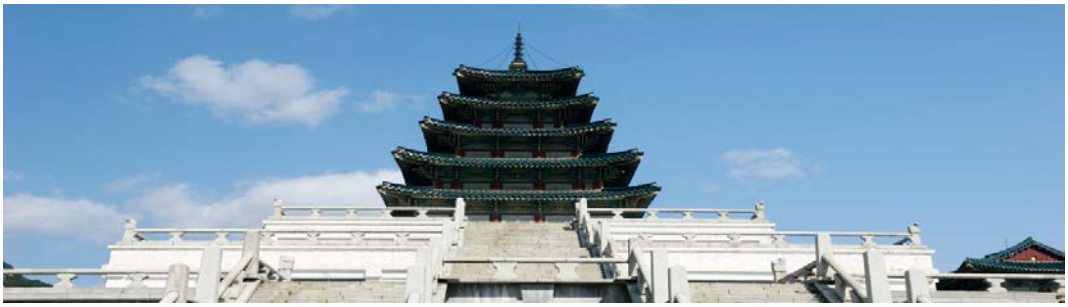
Korea



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Legislative developments

Cash Reserve Taxation of a company operating an insurance business

The Korean Government has established a new tax levy, known as the "Cash Reserve Taxation", to motivate companies to utilize their business profits through investment, payroll increases, or dividend distributions. Cash Reserve Taxation, has come into effect for three years as of 1 January 2015 to 31 December 2017.

A company subject to Cash Reserve Taxation is required to utilize the current business profit by certain percentage (80% or 30%) to facilitate investment, provide employee salary increases, or distribute as dividends for three years starting from 1 January 2015. If the utilization does not reach the required level ("unutilized business profit"), Cash Reserve Tax at 10% of unutilized business profits will be imposed on the company.

In this regard, when calculating for such Cash Reserve Taxation, an authoritative interpretation [Seomyunbeobryungbeobin-3779, 2016.06.23] rules for an entity operating an insurance business shall apply. Under the relevant rules, a reserve for dividend insurance loss preservation and reserve for guarantee accumulated in accordance to the Insurance Business Act and Insurance Business Supervisory Regulation is an allowance for bad debt or reserve for bad debt amount of the relevant business year obligated to be accumulated by a financial entity or mutual benefit association under Article 46-3 Paragraph 2 of the Enforcement Regulations of the Corporate Income Tax Law ("CITL"). Therefore, such amount shall be deducted when calculating for the business income subject to corporate income tax of an entity for cash reserve taxation purposes.

Deductibility of expenses incurred from risk participation transactions

The Ministry of Strategy and Finance ("MOSF") has provided guidance to the effect that an expense incurred by a foreign bank's branch in Korea associated with transferring credit risk to its head office by way of undertaking a risk participation or a stand-by letter of credit (L/C) trade that are excluded from the scope of offering credits pursuant to the Bank Act shall not fall within the scope of "fees incurred from guarantee transactions" which are non-deductible under the Article 64 Paragraph 1 (2) of the Enforcement Rules of the CITL.

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Malaysia

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Taxation rulings and determinations

Clarification on Income Tax (Deduction for Payment of Premium to Malaysia Deposit Insurance Corporation) Rules 2013

The above Rules provide that qualifying financial institutions (including takaful operators and insurance companies) are allowed to claim a tax deduction on qualifying deposit insurance premiums paid to the Malaysia Deposit Insurance Corporation in a Year of Assessment.

The Malaysian Inland Revenue Board (MIRB) has stated that the above premium is only allowed to be deducted against the taxable income of a general insurance/takaful business and not a life insurance/family takaful business.

Public ruling

The MIRB issued the public ruling 3/2016: Tax Treatment on Interest Income Received by a Person Carrying on a Business.

This Ruling explains when interest income can be classified as business source income and when it should be treated as passive income from Year of Assessment 2013. Interest is only to be assessed as business income if:

- The debenture, mortgage or other source to which the interest relates forms part of the stock in trade of a person; or
- The interest is receivable by a person in the course of carrying on a business of lending money and that business is licensed under any applicable law.

The full text of the Public Rulings is available at http://www.hasil.gov.my

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Mauritius

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Legislative developments

The following sections of the Income Tax Act 1995 and VAT Act 1998 brought by the Finance (Miscellaneous Provision) Act 2015 came into operation on 1 June 2016.

Income Tax Act 1995:

- Time limit to require returns is reduced from 4 to 3 years.
- Time limit to issue notice of assessment is reduced from 4 to 3 years.
- Time limit to issue assessment in respect of tax under Annual Tax Return, PAYE or TDS is reduced from 4 to 3 years.
- Time limit to amend an assessment has been reduced from 4 to 3 years.
- Time limit for claim of refund of excess income tax has been reduced to 3 years.

VAT Act 1998:

- The public sector agency has to deduct VAT on goods and service as follows:

Goods and services exceeding Rs 300,000 in respect of:	Rate of Deduction
Contract for the construction or repair of any building, road or other structure or execution of any works, and includes mechanical or electrical works	30 per cent
Any other contract	50 per cent

The time limit to require information/documents and the issue of assessment has been reduced from 4 to 3 years.

Taxation rulings and determinations

Tax Ruling 165

A and B are two companies in Mauritius which have a secondment from C (''the employer''), four international assignees (''IAs'') who are foreign nationals.

The points of issue were whether certain payments made in relation to relocation of the IAs to Mauritius were subject to tax in Mauritius.

The Mauritius Revenue Authority ("MRA") clarified the following with respect to the queries raised:

- The relocation cost in connection with shipment of personal effects and flights to/ from Assignment is not considered as a taxable benefit in kind and therefore not subject to PAYE.
- The insurance premiums paid by the ABC Group under its international Health Scheme on behalf of the IAs are taxable in the hands of the IAs in Mauritius whereas the refund of medical expenses to the IAs under the Scheme will not be taxed in the hands of the IAs.
- Employees being provided with awards under a Corporate Share plan or a Cash plan become subject to income tax on the awards to the extent of the proportionate period of their employment in Mauritius.

- The taxable value of shares vested to ABC Group employees will be either the closing price of the shares on the public stock exchange on the date of vesting or the amount of cash payment made available to the IAs in lieu of shares.

Tax Ruling 166

A company was incorporated as a private company with limited liability. The company holds a Freeport Licence from the Board of Investment (BOI) and is engaged in freeport activities.

The company derived its revenue from both physical trading and paper trading.

The points of issue were whether receipts from paper trading are taxable for the following periods:

- Period before 1 July 2003;
- Period starting 1 July 2003 and ending on 30 June 2011;
- Period after 30 June 2011.

The MRA clarified that:

- Receipts from paper trading prior to 1 July 2003 were taxable.
- Receipts derived from paper trading between the period 1 July 2003 and 30 June 2011 were exempt from income tax.
- Thereafter, the income of a freeport operator became exempt from income tax.

Tax Ruling 167

A Swiss national set up a Foundation for the benefit of a class of beneficiaries residing in France. The Foundation holds a Category 1 Global Business Licence as well as a Tax Residence Certificate.

The MRA clarified the following with respect to the queries raised:

- A Foundation is treated as a company for income tax purposes in accordance with Section 2 of the Income Tax Act.

The Foundation is entitled to treaty benefits from the Double Taxation Convention between Mauritius and France unless it deposits a declaration of non-residence with the Director General under Section 49A of the Income Tax Act.

Taxation rulings and determinations

Statement of purchases of goods and services

The Mauritius Revenue Authority has issued a Statement of Practice (SP 14/16) on 20 June 2016 in relation to the Statement of purchases of goods and services.

Companies having an annual turnover exceeding MUR 100Million are required to file a statement electronically to the MRA providing details of goods and services purchased locally.

The due date for filing the statement electronically is by:

- 28 July 2016 for the period 01 January 2015 to 30 June 2015;
- 31 August 2016 for the period 01 July 2015 to 30 June 2016.

Details to be provided are listed below in respect of goods and services from local suppliers only. Imports are excluded.

- date of invoice;
- invoice number;
- name of supplier;
- Business Registration Number ("BRN") of the supplier or NIC number;
- brief description of goods/services;
- invoiced amount exclusive of VAT;
- invoiced amount of VAT, if any; and
- amount paid.

The penalty for late submission of statement is MUR 5,000 per month up to a maximum of MUR 20,000. On conviction, there is a fine of up to MUR 50,000.

Other developments

Mauritius-Morocco Double Taxation Avoidance Agreement ("DTAA")

The DTA between the Republic of Mauritius and the Kingdom of Morocco has been approved by the Moroccan Council of Ministers on 23 June 2016.

Mauritius – Ivory Coast DTAA negotiations

Following a meeting between officials from Ivory Coast and Mauritius, held in Abidjan on 20 April 2016, negotiations for a tax treaty between Ivory Coast and Mauritius are underway. The treaty is expected to be signed in the near future.

Protocol to the tax treaty between India and Mauritius

On 10 May 2016, Mauritius and India signed a protocol amending the Mauritius-India Tax Treaty.

The provisions of the Protocol amending the Treaty shall come into force after each States' internal procedures have been completed.

The key changes applicable to a Mauritius company investing/doing business in India have been set out below.

Summary of key changes		
Article	**Taxing rights/Rates under Treaty**	**Changes brought by Protocol**
Capital gains on sale of shares	• Taxing right to Mauritius	• Sale of shares acquired before 1 April 2017: Taxing right to Mauritius • Sale of shares acquired on or after 1 April 2017: o Gains arising between 1 April 2017 and 31 March 2019: Taxable in India at 50% of domestic rate subject to Limitation of Benefits conditions o Gains arising on sale of shares acquired on or after 1 April 2019: Taxable at full domestic rate in India
Interest	• Taxed as per domestic rates in India • Exemption for banks	7.5% (except for bank interest income on debt claims existing before 1st April 2017 which continue to be exempt)
Fees for Tech Services	Not covered	10%

IPAs – Investment Protection Agreements

1) On 7 May 2016, Mauritius and Sao Tome and Principe signed an Investment Protection Agreement ("IPA").
2) On 20 April 2016, Ivory Coast and Mauritius signed an IPA in Abidjan.
3) IPA signed with Zambia on 14 July 2015 enters into force as from 6 May 2016.

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New Zealand

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Legislative developments

Taxation (Annual Rates for 2016-17, Closely Held Companies, and Remedial Matters) Bill introduced

An omnibus Tax Bill was introduced to Parliament on 3 May 2016. It changes the tax rules for closely-held companies, widens the application of the non-resident withholding tax ("NRWT") rules (discussed further below), and implements the recent related-party debt remission (and capitalisation) announcement. A number of GST changes and various "remedial" amendments have also been included in the Tax Bill.

- Changes to NRWT and related party lending

In 2015, Officials indicated their concern regarding a non-resident's ability to shift profits out of New Zealand with minimal or no tax paid under the NRWT rules. Officials proposed changes that would increase the cost of related party debt funding for New Zealand businesses.

The Tax Bill confirms that NRWT, rather than Approved Issuer Levy ("AIL"), will apply to back-to-back loans and loans made by a group of non-residents "acting together". Additionally, AIL can only be applied if the borrowing is with a foreign unrelated financial institution or widely held company and the NZ borrower has paid (in the previous year) or is expected to pay interest of at least NZ$500,000 to non-residents (in the current or following year).

The Tax Bill also removes the NRWT exemption for offshore and onshore branch exemptions. New Zealand banking groups have the option to pay AIL, instead of NRWT, on interest payments to associated non-resident lenders.

For existing branch funding arrangements, limited transitional rules (of between 2 and 5 years depending on the type of arrangement) will apply.

NRWT will extend to "income" arising under the financial arrangements rules rather than simply "interest paid" for related-party cross-border financing arrangements. The liability to pay NRWT will also be triggered under those rules.

Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill enacted

The Tax Bill received Royal Assent on 13 May 2016. It provides for a number of changes to the student loan scheme, a new residential land withholding tax to act as a collection mechanism for the two-year land bright-line test, and provides for the collection of GST on cross-border services and intangibles, including internet downloads and online services (discussed further below).

- GST on cross-border services

From 1 October 2016, non-resident entities that supply services, from offshore, to New Zealand resident consumers will be required to register for and charge GST at 15% on those services (if supplies exceed or are expected to exceed NZ$60,000 in a 12 month period).

This change will affect non-resident insurers that provide "non-life" insurance to customers who are tax resident in New Zealand. (This may affect both general and life insurers who are considered to provide non-life insurance under the GST rules.) This could see an increase in the cost of insurance for either the New Zealand customer or the non-resident insurer, depending on

the wording of the contract and the ability for the non-resident insurer to gross up premiums to include GST.

GST at the standard rate will apply to supplies made to consumers only (B2C) and not to GST registered businesses (B2B).

Insurers who provide non-life insurance to customers in New Zealand should ensure that they are aware of how the changes will affect their business, determine whether they will need to register for GST and ensure they have the processes in place to deal with the changes.

Taxation rulings and determinations

Independent review of New Zealand's foreign trusts regime

The Government commissioned an independent review of the adequacy of New Zealand's foreign trust tax rules as a response to the Panama Papers. The review concluded that New Zealand's disclosure regime is "light handed" and may be exploited.

The review's recommendations include:

- More detailed disclosure (e.g. about the settlors, beneficiaries, trustees and any persons effectively exercising control) on establishment of a New Zealand foreign trust;
- Annual returns including financial statements to be provided to Inland Revenue;
- A register of foreign trusts, which is searchable by Government agencies;
- An annual fee of $500 to cover administration costs of the new regime;
- Early extension of New Zealand's Anti-Money Laundering (AML) laws to lawyers and accountants. AML due diligence and reporting requirements will apply when they establish/administer New Zealand foreign trusts; and
- Providing more and better guidance on how AML requirements apply to trusts.

The Government has yet to formally accept the recommendations and its response is expected shortly.

Taxation framework for inbound investment

An Officials' Issues Paper has been released outlining New Zealand's framework for taxing inbound foreign investment, how those rules have developed and whether the current policy settings are still appropriate in a post-BEPS world.

Broadly, it concludes that the current taxation of foreign investment through the company and non-resident withholding tax rules, buttressed by the thin capitalisation and transfer pricing rules, is appropriate. This is consistent with the (explicit or implied) conclusions of previous reviews and changes made to New Zealand's anti-avoidance regimes.

Cabinet Paper on New Zealand's response to Base Erosion and Profit Shifting (BEPS)

The detail of New Zealand's BEPS implementation is covered in a Cabinet Paper. This is effectively a stocktake of measures to date and those to come. It broadly confirms a number of actions already signalled. What might be described as mechanical items, such as New Zealand's implementation of AEOI and country-by-country reporting, are confirmed with a firmer timeline of the more substantive issues:

- Consultation on measures to address hybrid mismatches and interest deductibility will follow the consultation on the inbound tax policy settings. The Cabinet Paper and the draft inbound investment tax framework document strongly suggest that New Zealand's measures will be consistent with the OECD's recommendations. The tax results for hybrid arrangements and financing are likely to change.
- The OECD recommendations on tax treaty changes (including changes to the transfer pricing guidelines) will be implemented either by New Zealand signing the multilateral instrument for BEPS tax treaty measures by 31 December 2016, or by relevant legislation.

An Officials report on diverted profits taxes and multi-national tax avoidance is being prepared. These taxes have been implemented by the UK and Australia in advance of global implementation of the OECD's recommendations.

Business tax proposals announced

The Government has announced the next phase of Inland Revenue's Business Transformation changes, this time aimed at business taxation. The business tax proposals being consulted on include:

- Changes to the use of money interest and penalties rules.
- A new accounting-based method to calculate and pay provisional tax.
- Changes to the tax regime for contractors and extending these rules to labour hire firms.
- Allowing Inland Revenue to report tax debt to credit rating agencies and to share information with the Companies Office about serious offences.

Other developments

Country-by-country reporting

The Minister of Revenue announced on 18 May 2016 that New Zealand has joined the OECD initiative which would allow all participating jurisdictions to exchange information on the economic activity of large multinational companies in each country.

The recent Agreement was signed by officials from NZ, Canada, China, Iceland, India and Israel, taking the total number of signatories to the Agreement to 39 countries.

Investment income reporting

The Government released an Officials Issues Paper on investment income reporting to Inland Revenue. This broadly increases the information provided to Inland Revenue as well as its frequency.

This will be covered in more detail in the next update.

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Philippines

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Taxation rulings and determinations

Revenue Memorandum Circular (RMC) No. 62-2016 – clarification on proper tax treatment of passed-on Gross Receipts Tax (GRT), dated 13 June 2016

The RMC is issued to clarify proper tax treatment of "passed-on" GRT as follows:

All banks, non-bank financial intermediaries (NBFI) performing quasi-banking functions, financing companies and other financial intermediaries (FI) not performing quasi-banking functions doing business in the Philippines are directly liable for GRT pursuant to Sections 121 and 122 of the Tax Code.

The "passed-on" GRT shall form part of the tax base upon which the GRT is based or on "actual or constructive receipt" of income. Since banks, NBFIs, financing companies and other FIs not performing quasi-banking functions doing business in the Philippines are directly liable for GRT on gross receipts derived by them from business operations. The "passed-on" GRT shall be considered as receipt of gross income specified under Section 32(A) of the Tax Code.

As an illustration, assume that ABC Bank shifted 5% GRT due on the interest collectible from XYZ Co. for loans extended by ABC to XYZ, as follows:

Interest collectible from XYZ Co.	P10,000.00
Add: "Passed-on" GRT (5%)	500.00
Total amount to be collected	P10,500.00

The tax base for GRT purposes upon actual receipt by ABC Bank of interest and "passed-on" GRT shall be as follows:

	Tax Base	**GRT Rate**	**GRT Due**
Interest Received	P10,000.00	5%	P500.00
"Passed-on" GRT	500.00	7%	35.00
	P10,500.00		P535.00

The "passed-on" GRT to the banks and NBFIs are considered as other fees and charges. Based on the illustration, the P10,000 interest paid and the P500 "passed-on" GRT (as other fees) can both be claimed as deductible expenses for income tax purposes subject to the actual remittance of the GRT.

For income tax purposes, banks and NBFIs shall treat the "passed-on" GRT as receipt of income.

Please see Annex A for full texts of Sections 32 (A), 121, and 122 of the Tax Code.

Revenue Memorandum Order (RMO) No. 27-2016 – procedure for claiming tax treaty benefits for dividend, interest and royalty income of non-resident income earners, dated 23 June 2016

The RMO provides for the new procedures in claiming preferential tax treaty benefits on dividend, interest, and royalty income of non-residents pursuant to effective tax treaties, as follows:

In lieu of the mandatory tax treaty relief applications, preferential treaty rates for dividends, interests and royalties are granted outright by withholding final taxes at applicable treaty rates as shown in Annex A of the RMO.

Domestic withholding agents shall file the appropriate BIR Forms 1601-F and 1604-CF with the appropriate revenue district office where the withholding agents are registered. Payment of pertinent final taxes due shall be made to the authorized agent banks.

In the event of an audit investigation, withholding agents shall keep the supporting documents enumerated in Section 6 (3) of the RMO for substantiation of the claim for preferential treaty rates. The BIR reserves the right to request other additional documents in the course of audit.

Applications for ruling under Section 28 (B)(5)(b) of the Tax Code for a preferential rate of fifteen percent (15%) on inter-corporate dividends paid to a non-resident foreign corporation (NRFC) shall apply to NRFC which country of residence/domicile:

- Has no effective tax treaty with the Philippines;
- Has a worldwide system of taxation; and
- Allows credit against the tax due from the NRFC dividend taxes deemed to have been paid in the Philippines equivalent to fifteen percent (15%).

The NRFC shall file an application with the International Tax Affairs Division (ITAD) of the BIR together with the supporting documents enumerated in Section 7 of the RMO.

Any violation of the provisions of the RMO shall be subject to penalties provided for in Section 250 and other pertinent provisions of the Tax Code.

Failure to supply accurate and complete information on BIR Forms 1601-F and 1604-CF shall be a ground for the denial of ailment of preferential treaty rates and the disallowance of the pertinent expense of the withholding agent.

For income other than dividends, interests and royalties, the provisions contained in, and the procedures required in, RMO No. 72-2010 shall continue to apply, and obtaining a ruling shall continue to be required.

All applications for preferential treaty rates on dividends, interests and royalties already filed with the ITAD of the BIR prior to the effectiveness of this RMO shall still be processed and the corresponding ruling shall be issued.

Revenue Memorandum Circular No. 69-2016 - suspension of effectiveness of all issuances promulgated within the period covering June 1-30, 2016, dated 1 July 2016

We note that in light of the recent change in administration, the BIR issued **RMC No. 69-2016** on 01 July 2016 suspending effectiveness of all BIR issuances promulgated within the period covering 01 June to 30 June 2016, including RMC No. 62-2016 and RMO No. 27-2016 discussed above, until further notice.

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Singapore

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Legislative developments

Tax deduction for retail bond issuances

Currently, expenses incurred in relation to bonds issued for capital purposes (e.g. to raise funds to finance the acquisition of capital assets) are capital in nature and hence not deductible. Expenses incurred in relation to bonds issued for specific revenue purposes (e.g. to raise funds to finance the acquisition of trading stock) are eligible for tax deduction if they meet the deduction rules under the Singapore Income Tax Act.

To promote retail bond issuances, which will increase the range of investment options available to retail investors, a tax deduction of up to 200% will be granted for qualifying expenditure incurred on qualifying bonds issued by specified issuers, subject to meeting the conditions and expenditure cap under the concession.

The current and new tax treatments of such expenses are summarised as follow:

Nature of expenses	***Current tax treatment***	***New tax treatment***
Capital	Not deductible	200% tax deduction
Revenue	100% tax deduction	A further 100% tax deduction

The tax concession will take effect from 19 May 2016 and will be available for 5 years.

Issuers who intend to claim tax deduction on the qualifying expenditure under the concession are required to disclose the relevant details in their tax returns / tax computations at the point of filing their income tax returns.

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Taiwan

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Legislative developments

Taiwan's legislative body recently passed the third reading of the draft amendment to the Income Tax Act (Article 43-3 and 43-4) which incorporates regulations concerning Controlled Foreign Company ("CFC") and Place of Effective Management ("PEM") rules into the Income Tax Act.

While the version of the draft amendment which passed the third reading by the Legislative Yuan is not yet available, however, based on the information currently available, the main points of the draft amendment are as follows:

CFC regime:

- Definition of CFC and taxation

  Where a domestic company and its affiliates directly or indirectly holds more than 50% of the shares of a foreign affiliate (located in a low tax jurisdiction), i.e. a CFC, or exerts significant influence on the CFC, the domestic company is required to report the profit of the CFC, based on the domestic company's shareholding percentage in the CFC, as the domestic company's investment income in its annual corporate income tax return.

  The aforementioned "low tax jurisdiction" refers to jurisdiction where the tax rate is less than 70% of Taiwan's own corporate income tax rate (the current rate of which is 17%), or if the said jurisdiction only impose tax on income sourced within the said jurisdiction.

- Exception to the CFC regime
  - If the CFC has substance and commercial activities in the jurisdiction which it is located.
  - If the CFC profit level is below the threshold as prescribed by the Ministry of Finance.

- Limitation of utilization of prior tax loss

  The tax loss of the CFC can be carried forward for 10 years if it has been certified by a CPA (from either the jurisdiction where the CFC is located or Taiwan) and assessed by the tax authority.

- Avoidance of double taxation

  When the CFC distribute dividend in the future to its domestic company shareholder, the portion of such dividend distributed that has already been previously subject to corporate income tax in Taiwan pursuant to the CFC regime will not subject to corporate income tax in Taiwan again. Where the dividend has been subject to withholding tax in the jurisdiction where the CFC is located, foreign tax credit on the withholding tax levied can be claimed within 5 years starting from the year of which such dividend was reported as the investment income by the domestic company shareholder of the CFC.

- If the foreign affiliate is regarded both as a PEM and CFC, the PEM regime shall prevail.
- The CFC regime will not be applied retroactively.

PEM regime:

- Applicable entities:

  The PEM regime is applicable to companies which is set up in accordance with laws of foreign jurisdiction but its effective place of management is within Taiwan

- Key criteria for PEM:

Major decisions on business operations, finance, and personnel matters are made by individuals residing in Taiwan or company with its headquarter in Taiwan, or if such decisions are made within Taiwan

The financial statements, accounting books and board director meetings or shareholder meetings minutes are prepared or stored in Taiwan.

The main business operation activities are effectively performed in Taiwan.

- Taxation

  The said company with its PEM in Taiwan would be viewed as a company having its head quarter in Taiwan and subject to corporate income tax based on its worldwide income. Furthermore, it would need to meet the relevant Taiwan withholding tax and alternative minimum tax reporting obligation.

- The PEM regime would not be applied retroactively. Thus, if the earnings distributed is attributable from years prior to when the PEM regime becomes effective, such earnings would not be regarded as Taiwan sourced income.

KPMG Taiwan observations:

Although the version of the proposed amendment which passed the third reading by the Legislative Yuan has not yet been formally promulgated, nonetheless, based on the currently available information on the amendment, if a foreign company is regarded as a CFC under then the taxation on income, attributable to such CFC, in Taiwan may occur at the earlier point in time compare to the scenario where there is no CFC regime in place.

Furthermore, the if the CFC has been subject to foreign withholding tax from another jurisdiction on the earning that the CFC receives from such jurisdiction, such withholding tax may not be available as foreign tax credit for the domestic Taiwan company which is required to report the CFC's income in its Taiwan income tax return.

To address the aforementioned potential issues, companies may need to further evaluate and study the appropriate planning strategy and mitigation measures that are suitable to their needs.

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Thailand

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Legislative developments

Proposed Property Tax to replace House and Land Tax

In early June 2016, the Cabinet approved a proposed Property Tax law, which is intended to replace the current House and Land Tax. Currently, the tax is collected at 12.5% of the annual rental or the annual value assessed by the local authorities, whichever is higher. Under the new Property Tax law, every owner of land and any permanent building will be subject to property tax at the rates ranging from 0.03% to 3%, depending on the type of property. While the Property Tax rate is lower than the current House and Land Tax, the tax base has been expanded with the expectation that it will lead to an increase in revenue collection.

Additional Tax Deductions For New Capital Expenditure

In April 2016, the Thai government has issued a Royal Decree No. 604 to promote and incentivize capital spending on certain eligible assets, provided the expenditure in respect of such assets is incurred during the period 3 November 2015 – 31 December 2016.

The new law provides that, in addition to the normal tax depreciation that can be claimed on assets, a tax deduction for the costs incurred by a juristic taxpayer to acquire, expand, change or improve (not repair) an eligible asset can be claimed as a tax deduction, apportioned over a set number of years. The eligible assets include permanent building, machinery, parts, equipment, tool, appliance, furniture, computer program and vehicles (excluding passenger cars, except where such passenger cars are leased as part of the taxpayer's business).

The criteria as specified in a Notification of Director General No. 266 must be met which include such as the asset must be new and qualify for tax depreciation and be acquired and ready for use before 31 December 2016.

Changes to Withholding Tax Imposed on a Finance Lease

With effect from 1 June 2016, all rental payments, including in respect of a finance lease, will be subject to 5% withholding tax. Previously a 5% withholding tax was imposed on all rental payments, except where the rental payment was in respect of a finance lease, in which case, no withholding tax was imposed. Therefore, on and after June 1, 2016 regardless of whether a lease arrangement is classified as a finance lease or an operating lease for commercial, legal and accounting purposes, the rental payment will be subject to Thai withholding tax. This WHT will be applicable on the entire amount of the lease payment and not just on the notional interest component.

Tax rulings and determinations

To stimulate the Thai economy, the reduced VAT rate of 7% (from the 10% statutory rate) was extended for many years and will end September 2016. The government has recently indicated that it would like to continue and keep the VAT rate at 7% for at least one more year.

Other developments

The tax authorities have recently formed a team to focus on digital trading and e-commerce businesses. It is possible that the interest of the tax authorities will not be limited to domestic operators, but will extend to cross-border businesses.

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