General tax update for financial institutions in Asia Pacific

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There is significant legislation change affecting finanical institutions across the region, the implementation of transparency and other BEPS measures continues at a rapid pace.

Highlights

- OECD publish discussion draft on branch mismatch arrangements
- ATO guidance on "negative interest rates"
- Release of the "Second Johnson Report" by the Financial Services Council "Australia as a Financial Centre: Seven Years On"

- SAT enhances TP reporting and documentation
- Further VAT implementation rules
- Private securities fund management businesses are now open for foreign investors

- The Inland Revenue Department published Hong Kong guidance notes on CRS and corporate treasury centres

- Central Board of Direct Taxes notifies rules with respect to non-furnishing of Permanent Account Number by non-residents and furnishing of alternative documents

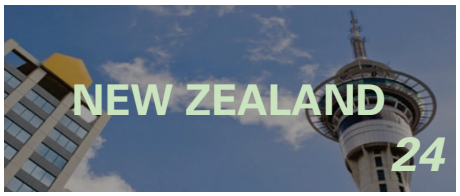
- Amended tax treatment under transfer of land and buildings rights

- Amended Japan-Germany tax treaty

- Key draft amendments in 2017 Tax Reform Proposal
- Tax ruling in light of tax treatment on gains from derivatives transactions paid to non-resident

- Public rulings and guidelines issued by the Malaysian Inland Revenue Board

- Key tax measures in the Finance Bill 2016 in relation to Income Tax Act and VAT Act



- Business Tax, Automatic Exchange of Information and foreign trust legislation introduced
- New Zealand Government releases proposals to adopt OECD hybrid mismatch recommendations
- Investment income reporting proposals detailed

- Goods and Services Tax remission on expenses for prescribed funds managed by prescribed fund managers in Singapore

- Extension of exemption from securities transaction tax on bonds transaction

- Tax exemption for qualified debt reconstructions retroactively from 1 January 2015
- Amendment to Royal Decree 604: additional deduction for capital expenditure incurred within 31 December 2016
- Proposed amendment of Foreign Business Law include services related to commercial bank

- New regulations on payment intermediary services, non-cash payments and people permitted to open bank account
- New regulations on regulating syndicated loans by credit institutions to customers
- New regulations on the scope for foreign exchange transactions, requirements, orders and procedures for permitting foreign exchange transactions of credit institutions, branches of foreign banks

Australia

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Legislative developments

Branch mismatch arrangements

On 22 August 2016, the Organisation for Economic Co-operation and Development (OECD) released a Public Discussion Draft on "Branch Mismatch Structures" under Action Item 2 of the Base Erosion and Profit Shifting ("BEPS") Action Plan ("Discussion Draft"). This Discussion Draft takes the OECD's BEPS work on Hybrid Mismatch arrangements one step further by proposing to apply similar principles to offshore branches. It makes recommendations for domestic laws that would neutralise the effect of certain branch mismatch arrangements.

This Discussion Draft is of interest to financial institutions, given the prevalent use of cross-border branch structures by financial institutions. In the Federal Budget handed down on 3 May 2016, the Australian Government had announced a commitment to implementing the recommendations of BEPS Action Item 2, and that commitment presumably extends to neutralising branch mismatch structures.

A branch mismatch arrangement would arise if, by way of example, a company in country A makes a payment (which is deductible in country A) to a branch in country B, and that payment is not taxable in either country B or country C (where the head office of the recipient is located). According to the solutions advocated in the Discussion Draft, in those circumstances, it would be expected that the deduction should be denied in country A, or otherwise the receipt of the amount should be taxable in either country B or country C.

It is by no means clear from the Discussion Draft how these principles should be applied to inter-branch "transactions" between the branch and head office or between branches. It is also not clear how these principles should be applied in situations where such transactions are "recognised" for tax purposes by overseas jurisdictions (or where they operate as a proxy for the allocation of external income and expenses between the head office and branch), but disregarded for Australian tax purposes.

If history is any guide, it is likely that, once the OECD's report is issued in final, the Australian Government will ask the Board of Taxation to consider the final report and to make detailed recommendations on how it should be implemented in Australia.

Legislative amendments to the Goods and Services Tax ("GST") regime

Amendments to the GST regime commenced to have effect from 1 October 2016. The reforms (which have significant implications for the financial services sector) aim to remove Australian GST obligations from non-residents that make supplies to Australian-based business recipients which are registered for GST. The following three main changes were introduced:

- Disconnecting supplies that were previously connected with Australia

  Under the new regime, a number of supplies will be disconnected from Australia, in instances where imposing GST on a non-resident would otherwise result in nil GST revenue for the Australian Taxation Office (ATO). Some of the scenarios that may be captured under the new rules are:

  • Ownership transfer of leased goods between non-residents, where the leased goods are in Australia (subject to certain criteria), including sales of leased aircraft between two non-resident financiers (subject to certain criteria);

  • A supply of intangibles or services where the activity is done in Australia and the recipient is an Australian-based business, registered for GST;

  • A supply of intangibles made by a non-resident to another non-resident, where the activity is done in Australia but the non-resident acquires the supply in relation to the non-resident's offshore enterprise.

  Also, Australian financiers that purchase intangibles or services from offshore should look out for purchases that were previously treated as taxable by suppliers but are now being treated as disconnected, because reverse charge GST may be payable. Examples include software as a service provided by a non-resident using an Australian server. Prior to 1 October 2016, this supply could have been taxable, but it may now be disconnected.

- Expansion of GST-free status

  From 1 October 2016, a supply contract entered into with a non-resident but provided to an Australian entity will be GST-free (previously such a supply was subject to GST). These changes will likely impact financial institutions who enter into global engagements with an offshore parent entity but provide the services to an Australian business entity. In turn, the amendments expand the application of the reverse charge rules for Australian business recipients.

  Examples include global advisory service contracts (including broker arrangements) where (prior to 1 October 2016) GST applied to the Australian advisor's supply to the non-resident because the Australia service was provided to another Australian entity. Such arrangements generally resulted in blocked GST because the non-resident was not registered for GST. From 1 October 2016, the Australian advisory services are GST-free where the service is provided to an Australian based GST registered business. This change impacts both supplies and purchases by financial institutions. Supplies of these services should be GST-free, but Australian financiers that benefit from these services (through a global arrangement) may be required to account for reverse charge GST. It should be note that the reverse charge GST rules now include supplies from associates for nil or inadequate consideration.

- Changes to the test for carrying on an enterprise

  The amendments update the "Permanent Establishment" ("PE") test for GST purposes to focus on individuals. Previously, the PE test looked at carrying on business and included the use of substantial equipment in Australia. The revised test requires individuals (including employees, officers and agents) working in Australia for over 183 days over a 12 month period to create a PE risk for the non-resident entity for GST purposes. A PE based solely on substantial equipment in Australia may not be a PE from 1 October 2016 for GST purposes.

Taxation rulings and determinations

D Marks Partnership case

On 22 June 2016, the Full Federal Court handed down its decision in D Marks Partnership by its General Partner *Quintaste Pty Ltd v Commissioner of Taxation* [2016] FCAFC 86. The Court held that:

- a purported limited partnership structure failed to qualify for tax treatment as a "corporate limited partnership" (i.e. as a company); and
- redeemable shares issued by a related company to the partnership were debt interests for tax purposes.

The second issue involved the interpretation and application of Division 974 of the Income Tax Assessment Act 1997. Division 974 contains the tax rules dealing with the debt/equity distinction, and is relevant for hybrid financial instruments.

In this case, the redeemable shares had been issued by the company for A$1 each, and their terms and conditions stated that they were automatically to be redeemed within 10 years after their issue.

If the redeemable shares had been treated as giving rise to an equity interest in the company (as the taxpayer submitted), the recipients of the dividends on the shares (i.e. the partners in the partnership) would have been entitled to claim imputation benefits in respect of the dividends.

The Court examined elements of the debt test in Division 974, in particular, whether the company had received a "financial benefit" in return for issuing the shares, and whether the company had an "effectively non-contingent obligation" to repay the subscription price.

The question was whether a "financial benefit" (i.e. something of economic value) had been received by the company issuing the shares (given that it only received $10 as the subscription proceeds). By a majority of 2:1, the Court found that the subscription proceeds of $10 constituted something of economic value. The majority's approach would preclude the need to undertake "an evaluation of the economic significance of a receipt to a recipient" in applying the debt test. The majority rejected the taxpayer's submission that an amount of $10 is inconsequential in the context of the company's other assets.

The Court also said "that the redemption was not made to depend upon any prior payment by [the shareholder] of the issue price", and therefore the company had an "effectively non-contingent obligation" to repay the subscription price.

Announcements/circulars/determinations/rulings/practice statements issued by the Tax Departments

Negative interest rates

In recent years, several central banks have cut key interest rates below zero, raising the question of how receipts and payments based on negative interest rates should be characterised for tax purposes.

Under section 160ZZZA of the Income Tax Assessment Act 1936, the Australian branch of a foreign bank or foreign financial entity is entitled to claim a tax deduction for the notional interest payment arising from an intra-bank loan, although the amount of the deduction is limited by reference to the London Inter-Bank Offered Rate (LIBOR).

The ATO has recently provided the following guidance to the Australian Financial Markets Association (AFMA) and its affected members regarding the Australian tax treatment of interest for Australian branches of foreign banks when the LIBOR is negative:

> *"The Commissioner is of the view that the clear effect of an applicable LIBOR rate at or below zero on section 160ZZZA of Pt IIIB of Income Tax Assessment Act 1936 (ITAA 1936) is that the notional amount of interest under that section is capped at zero, and a deduction is denied for interest on intra-bank borrowings. Section 160ZZZA does not*

result in assessable income being derived by the Australian branch of a foreign bank when there is a negative applicable LIBOR rate for intra-bank borrowings. If no amount of interest is taken under section 160ZZZA to be paid by an Australian branch, it follows that paragraph 160ZZZJ(1)(a) is not satisfied. No withholding tax would be payable where no interest was paid or taken to be paid."

The ATO's view in the above guidance should be uncontentious; representing the only logical conclusion when one considers the mechanics of section 160ZZZA. However, the above guidance does not address the more fundamental question of how a payment or receipt calculated on a negative interest rate should be characterised from an Australian tax perspective. That is, is such a payment in the nature of interest, or is it simply a fee charged by a borrower for holding the lender's funds?

The answer to this question will have numerous implications: notably whether a withholding tax liability arises on the payment of negative "interest" or, if the amount paid is in fact a fee, the GST consequences.

Negative interest rates add another layer of uncertainty in the Australian tax landscape that ultimately needs to be addressed.

Offshore permanent establishments

On 10 August 2016, the ATO issued a Taxpayer Alert (TA2016/7) in respect of certain arrangements involving PEs. The Taxpayer Alert is directed at arrangements whereby an Australian company's offshore PE derives income but has in place specific intra-group arrangements (e.g. loans, licences of intellectual property, or service arrangements) under which income is routed back to the Australian group.

The ATO is concerned that in certain industries (for example, in the financial sector), the Australian group engaging in this type of arrangement is not returning the appropriate amount of taxable income for Australian tax purposes (because, for example, the amount of taxable income being returned in Australia does not reflect the substantive economic contribution made in Australia).

We understand that, although this Taxpayer Alert appears to be targeted at specific arrangements that are considered aggressive, the tax treatment of inter-branch transactions continues to be an area of ATO focus for financial institutions (and other taxpayers generally).

Other developments

The Second Johnson Report

In November 2009, the Australian Financial Centre Forum had released the Government-commissioned Report "Australia as a Financial Centre" (known as the original "Johnson Report"). The Johnson Report had noted that Australia had arguably the most efficient and competitive full service financial sector in the Asia-Pacific region. It identified several barriers to the increased export of financial services from Australia and the establishment of Australia as a Financial Services Centre. It also made a range of policy (including tax policy) recommendations on how the barriers could be overcome.

In June 2016, the Financial Services Council ("FSC") released a report titled "Australia as a Financial Centre: Seven Years On - the Second Johnson Report". The FSC is a body that represents the interests of its members who include Australia's leading fund managers.

The Second Johnson Report provides a report card on the ten key recommendations of the original Johnson Report.

It is evident from the Second Johnson Report that since November 2009, some progress has been made in exporting Australia's expertise in funds management. For example, investments by foreign fund managers into Australian Managed Investment Trusts (MITs) has doubled from $20.3 billion to $43.6 billion over the past five years.

However, the proportion of total exports represented by financial services has remained static at 3.6% over that period. In terms of legislative reform, only the Investment Manager Regime (IMR) has been legislated since the original report. All other measures either remain in progress or have been parked.

Based on a survey of fund managers which fed into the Second Johnson Report, it appears that export barriers have in fact increased over this period, and many of the barriers relate to Australia's current tax policy settings, for example:

- The rates and complexities of Australia's withholding tax regime;
- The tax mismatch between the timing and character of foreign exchange gains and losses on derivatives versus the portfolio of assets which they hedge, resulting in volatility in fund distributions. The reforms to the "Taxation of Financial Arrangements" (TOFA) regime announced by the Government in May 2016 regarding portfolio hedging are intended to address this issue, but these reforms will only apply from 1 January 2018;
- The inability for managed funds to offer classes of units which are segregated for tax purposes (i.e. hedged v unhedged and multiple currency) adds a level of complexity and cost for foreign investors. Fortunately, the recent introduction of the Attribution Managed Investment Trust (AMIT) regime should go some way to resolving this issue.

The commencement of the Asia Region Funds Passport (which Australia will participate in) will create a single market for the distribution of fund products. The success of this regime will be critical to the future growth of the Australian funds management industry.

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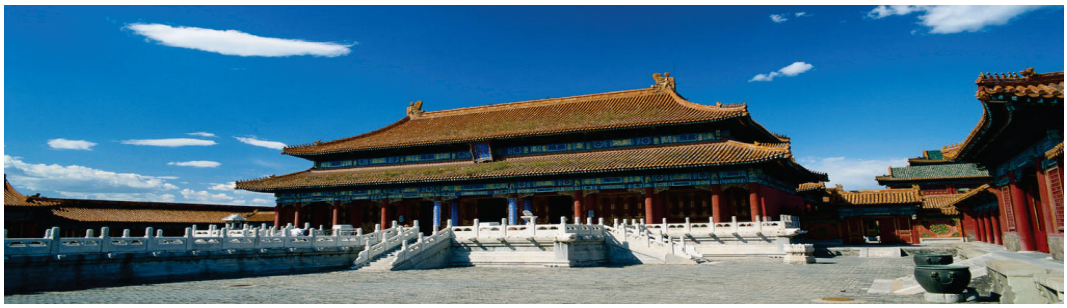
China



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Legislative developments

Announcement on the Enhancement of the Reporting of Related Party Transactions and Administration of Contemporaneous Documentation released

China Security Regulatory Commission ("CSRC") issued CSRC Announcement [2016] No. 8 clarifying its opinions for institutions operating securities, futures and funds under the VAT reform.

State Administration of Taxation ("SAT") issued notice regarding the issuance of VAT invoices by the insurance institutions for the Vehicle and Vessel Tax ("VVT") collected under entrustment (SAT Announcement [2016] No. 51)

On 13 July 2016, the SAT released an Announcement on the Enhancement of the Reporting of Related Party Transactions and Administration of Contemporaneous Documentation ("Announcement 42"). Announcement 42 replaces the current documentation regulations as prescribed under SAT Circular on Implementation Measures for Special Tax Adjustments (Trial Implementation), Guoshuifa [2009] No. 2 ("Circular 2"). It also replaces and modernizes the existing related party transaction reporting forms as specified under SAT Announcement on PRC Annual Reporting Forms on Related Party Transactions, Guoshuifa [2008] No. 114 ("Circular 114"). Although the timing of the release of China's revised comprehensive transfer pricing regulations is uncertain at this stage, Announcement 42 should be considered the first of a series of regulations to localise OECD/G20 BEPS Project recommendations in China.

Other developments

Private securities fund management businesses for foreign investors

On 30 June 2016, Asset Management Association of China issued "Q&A on private securities fund registration (No. 10)" ("Q&A 10"), allowing qualified Wholly Foreign-Owned Enterprises ("WFOE") and Sino-foreign joint venture enterprises to set up private securities fund management institutions to carry out private securities fund management business, including investments in securities on secondary market. The Q&A 10 also specified the entry conditions and procedure.

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Hong Kong

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Legislative developments

CRS: Hong Kong guidance published

Under the CRS framework, financial institutions in Hong Kong are required to identify and report to the Inland Revenue Department ("the IRD") the financial accounts held by tax residents of overseas reportable jurisdictions (including individuals, entities and controlling persons of certain entity accounts) on an annual basis. The IRD will pass this information to the tax authority in the relevant overseas jurisdiction. Report will commence from 2018 with respect to 2017 account information. Over 100 jurisdictions have committed to CRS, but the IRD will exchange information only with jurisdictions with which Hong Kong has a tax treaty or a tax information exchange agreement in place, and with which Hong Kong has entered in to a supplemental agreement providing for such exchange.

To facilitate compliance with the CRS requirements, the IRD has recently published guidance on a number of issues, including:

- encouraging financial institutions to collect the place of birth information to assist foreign tax administrations to identify the taxpayers concerned even though this is not required under Hong Kong law;
- clarifying classification and obligations of certain clearing houses;
- excluding certain accounts from "financial allowance" for CRS due diligence and reporting;
- providing flexibility on timing for obtaining self-certifications for new accounts opening; and
- providing template self-certification forms for individuals , entities and controlling persons.

For more information, please find the link below:

https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2016/09/tax-alert-11-hk-CRS-hk-guidance-published.pdf

Corporate Treasury Centres ("CTCs") in Hong Kong

The Inland Revenue (Amendment) (No. 2) Ordinance 2016 ("the Ordinance") gazetted on 3 June 2016 bringing into law a concessionary Profits Tax rate for Qualifying Corporate Treasury Centres ("QCTCs"). It also deems certain interest income and other gains as Hong Kong sourced and taxable. Amendments to the existing interest deduction provisions were also made to allow deductions for interest incurred on certain intra-group lending transactions. To clarify a number of areas relating to the QCTCs regime and the interest deduction provisions, the IRD released Departmental Interpretation and Practice Notes No.52 Taxation of Corporate Treasury Activity ("DIPN 52"). Key comments disclosed in DIPN 52 are summarised below:

- deductibility of interest expenses on money borrowed from associated corporations;
- additional specific anti-avoidance provisions for interest expense deduction;
- "operations test" would be applied to a corporation carrying on an intra-group financing business in Hong Kong regardless of whether it is a QCTC; and
- clarification on the type of corporation that can qualify for the new CTC regime.

For more details, please find the link below:

https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2016/09/tax-alert-12-hk-intra-group-financing-activities.pdf

Other developments

Double Taxation Agreement with Russia

The Agreement between Hong Kong and Russia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income has come into force on 29 July 2016, after the completion of ratification procedures on both sides. It will be in effect in Hong Kong for any year of assessment beginning on or after 1 April 2017 (i.e. year of assessment 2017/18).

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India

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Legislative developments

Central Board of Direct Taxes ("CBDT") notifies rules with respect to non-furnishing of Permanent Account Number ("PAN") by non-residents and furnishing of alternative documents

Section 206AA of the Income Tax Act ("the Act") provides for deduction of tax at higher rates, when the deductee fails to furnish the correct PAN to the person responsible for deducting tax at source. In that case, the deductor shall deduct tax at the rates higher of (i) the rates specified in the relevant provisions of the Act, or (ii) the rate or rates in force, or (iii) the rate of 20 percent.

The CBDT has issued a notification and introduced Rule 37BC in the Rules in relation to relaxation from deduction of tax at source at a higher rate under Section 206AA of the Act. It provides that a non-resident deductee without a PAN shall not be subject to higher withholding tax in respect of interest, royalty, fees for technical service ("FTS") and payments on transfer of any capital asset, if the deductee furnishes the specified details and documents to the deductor. The Rules are summarised as follows:

- As per Rule 37BC(1), in the case of a non-resident, being a non-company (domestic or foreign) and not having PAN, the provisions of Section 206AA shall not apply to the specified payments if the deductee furnishes the details and the documents specified in sub-rule (2) to the deductor.
- Rule 37BC(2) specifies that the deductee shall furnish the following details and documents to the deductor:
    - name, e-mail, contact number;
    - address in the country or specified territory outside India of which the deductee is a resident;
    - a certificate of the dudctee's tax residency in any country or specified territory outside India from the government of that country or specified territory, if its law provides for the issuance of such certificate;
    - Tax Identification Number of the deductee in the country or specified territory of his residence. In case no such number is available, then a unique number on the basis of which the deductee is identified by the government of that country or the specified territory of which he claims to be a resident.
- Consequential changes have been introduced in Form No. 27Q, which is a quarterly statement of deduction of tax under Section 200(3) of the Act, in respect of specified payments. Accordingly, the information mentioned in the Rule 37BC needs to be furnished in the Form No. 27Q.

Tax court case summaries

Shinsei Investment I Limited [AAR. No.1017 of 2010]

The applicant, a subsidiary of Shinsei Bank Limited-Japan ("SBL"), is a company incorporated in Mauritius and holds a valid tax residence certificate ("TRC"). It does not have a PE in India.

The applicant held 75 per cent and 99 per cent of shares in Shinsei AMC ("SAMC") and Shinsei Trustee ("ST") which are the asset management and trustee company of Shinsei Mutual Fund ("SMF") respectively. The SBL is the sponsor and settler of SMF. SAMC and ST are registered with SEBI in terms of SEBI (Mutual Funds) Regulations, 1996 (MF Regulations).

Pursuant to a Share Purchase Agreement ("SPA") in 2010, the applicant and its other shareholders proposed to sell their stakes in SAMC and ST to Daiwa and its affiliates.

The Authority for Advanced Rulings ("AAR") held that, the capital gains arising from the transfer of shares is not taxable in India in view of Article 13(4) of the India-Mauritius tax treaty (tax treaty). The AAR distinguished the decision of the Bombay High Court in the case of Aditya Birla Nuvo Ltd (AB Nuvo) and upheld the applicability of the tax treaty to the transaction of transfer of shares of its Indian subsidiaries.

The AAR also held that since the applicant taxpayer is not liable to capital gains tax in India, no return of income is required to be filed in India. Further, MAT related provisions are not applicable in view of clarification issued by the government.

For more information, please find the link below:

http://aarrulings.in/it-rulings/uploads/pdf/1473270870_aar-1017-shinsei-ruling.pdf

Praful Chandaria v. ADDIT(IT) [ITA No.: 4313/Mum/2011]

Recently, the Mumbai Bench of the Income-tax Appellate (the Tribunal) in the case of Praful Chandaria (the taxpayer) dealt with a case where a Singapore resident entered into the call option agreement with a Mauritian company granting an option valid for 150 years to the Mauritian company to call upon him to sell the entire shareholding in an Indian company. The Tribunal held that there is no alienation of shares, as per the call option agreement, but a valuable and substantive right in the shares of an Indian company has been given to a non-resident company. Such valuable right/interest in shares would certainly be a capital asset, and therefore, its transfer shall be considered as a transfer of an asset under the Act which is assessable under the head 'capital gain'. However, the capital gain is not taxable in India under Article 13(6) of the India- Singapore tax treaty, since the taxing right has been given to the resident state (i.e. Singapore).

For more information, please find the link below:

http://itatonline.org/archives/wp-content/uploads/Praful-Chandaria-Call-Option-Capital-Gains.pdf

Mahindra-BT Investment Company (Mauritius) Limited [AAR. No 991 of 2010]

Recently, the AAR in the case of Mahindra-BT Investment Company (Mauritius) Limited (the applicant) held that the capital gains arising from the transfer of shares are not taxable in India in view of Article 13(4) of the India-Mauritius tax treaty (tax treaty). The AAR while agreeing with the commercial rationale of the holding structure held that there is nothing wrong in the applicant holding the shares of an Indian company and eventually transferring the same to another company which fulfils conditions stipulated in the Option Agreement. The AAR examined the minutes of the Board meetings held in Mauritius where key financial decisions were taken and held that the control and management of the applicant was not wholly in India as contemplated in Section 6(3) of the Income-tax Act, 1961.

For more information, please find the link below:

http://aarrulings.in/it-rulings/uploads/pdf/1473270531_aar-991-mahindra-bt-ruling.pdf

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Indonesia

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Legislative developments

Amended tax treatment under transfer of land and buildings rights

The Indonesian Government has recently released Government Regulation No. 34 of 2016 ("GR-34") which amends the Government Regulation No. 71 of 2008 ("GR-71") with respect to the final income tax imposed on income derived from the transfer of land and building rights which was previously subject to 5% Final Income Tax. A key component under GR-34 is a 50% reduction in the 5% Final Income Tax imposed on income derived by the seller from the transfer of land and building rights and/ or Sale and Purchase Agreements on land and Building rights (referred to in Bahasa Indonesia as "PPJB"), except transfers of low-cost houses/ flats with a 36 square meterage size or less by taxpayers in the real estate business (i.e. real estate developers) which continue to be subject to 1% final Income Tax. The Final Income Tax rate has now been reduced to 2.5% under GR-34.

Expanded Scope

Under GR-34 the tax scope being broadened to not only cover transfers of land and building rights, but also to tax income from transfers of land and building rights involving PPJB at the abovementioned 2.5%. Previously such transfers were treated as a non-final tax amount where the sellers were subject to tax on their gain at the prevailing income tax rates (i.e. corporate taxpayers at 25% or in the case of an individual, at the progressive income tax rates depending on the level of income earned).

Amended Tax Base

Previously the final income tax was based on the higher of the actual transaction price and the government listed price (referred to as the "NJOP") issued by the Indonesian Tax Office. Under GR-34, NJOP is no longer adopted as the tax basis for purposes of computing the final income tax. In this regard, the following new tax bases are adopted:

Taxable Event	Tax Base
Transfer of right to or PPJB with related party	Value that should have been received or earned
Transfer of right to or PPJB with a third party	Value that is actually received or earned
Transfer of right via asset swap, waiver, conveyance, grant, inheritance, or other manners as agreed between the parties	Value that should have received or earned based on market prices

Similar to GR-71, GR-34 stipulates that the abovementioned Final Income Tax is payable prior to the signing of the transfer deed at the notary. Further, specific timing rules apply with respect to remitting the Final Income Tax on transfer of land and building rights with PPJB which is computed on the gross amount, including any deposit, finance charges, levies and any other payments made by the buyer.

Exemptions

Certain tax exemptions stipulated in GR-34 resulting in the non-imposition of the Final Income Tax on transfer of land and building rights and/ or PPJB. In this regard, the following additional events have been regulated (note: the list is not exhaustive):

- Transfer of land and building rights under a merger, consolidation, or business expansion that have been given approval to adopt book value as the transfer value by the Ministry of Finance;
- Transfer of buildings in the context of a Build, Operate and Transfer ("BOT"); Build, Transfer and Operate, or utilisation of state owned assets in the form of land and buildings.

Other comments

It is worth noticing the abovementioned GR-34 purely regulates the seller's obligation to comply with the applicable Final Income Tax on sale of land and building rights and/ or PPJB. In this regard, notwithstanding the 50% reduction in the final Income Tax applied to the seller on qualifying land and buildings, the separate 5% final duty (commonly referred to as Duty on Acquisition of Land and Building Rights "BPHTB") is still applied on the buyer as being otherwise regulated under regional government law.

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Japan

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Legislative developments

Amended Japan-Germany Tax Treaty

On 30 September 2016, the Ministrsy of Finance of Japan announced that mutual notifications necessary for the entry into force of the Agreement between Japan and the Federal Republic of Germany for the Elimination of Double Taxation with respect to Taxes on Income and to Certain Other Taxes and the Prevention of Tax Evasion and Avoidance ("New Treaty") signed on 17 December 2015 were completed on 28 September 2016.

The New Treaty entered into force on 28 October 2016 (the thirtieth day after the date of receipt of the latter notification), and in principle will be applicable as follows:

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
Germany	Taxes withheld at source	Amounts paid on or after 1 January 2017
	Other taxes	Taxes levied for periods beginning on or after 1 January 2017

[Press release of the Ministry of Finance of Japan]

This New Treaty will supersede the current agreement concluded in 1967 (partly amended in 1980 and in 1984) by amending the business profits provision, expanding the reduction in taxes at source for investment income, introducing anti-abuse provisions, provisions for arbitration proceedings in mutual agreement procedures and for assistance in the collection of taxes, etc.

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Korea

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Legislative developments

2017 Tax Reform Proposal

The Ministry of Strategy and Finance announced Korea's 2017 Tax Reform Proposal on 28 July 2016. The amendments are expected to be finalized and passed by the National Assembly in December 2016. Key draft amendments that affects the foreign financial industry are summarized as below:

Annual limitation of utilizing carried forward tax loss

Under the current tax law, domestic companies' use of carried forward tax loss has been limited to 80% of the taxable income on an annual basis. However, Korean branches of foreign companies were allowed to offset 100% of the taxable income.

Under the 2017 proposed tax law, to improve fair and equal taxation between domestic and foreign companies, the proposed amendment sets the equal limits of 80% of the taxable income on the Korean branches of foreign companies. If legislated, this rule will be applicable to fiscal year starting from 1 January 2017.

Extension of tax refund request period for non-residents and foreign companies

Under the current tax law, the time limit to request for a tax refund in connection with tax treaty exemption or reduced tax rate benefits to be claimed by non-resident and foreign company taxpayers is three years. Under the 2017 proposed tax law the proposed amendment extends the time limit on claiming a tax refund to five years to strengthen the rights of non-residents and foreign company taxpayers.

If legislated, this rule will be applicable to fiscal year starting from 1 January 2017.

Requirement for Country by Country Report ("CbC report")

The current tax law generally requires taxpayers to submit both the Master File and the Local File. Under the proposal, the CbC report, in addition to the Master File and the Local File, is required to be submitted as a part of the transfer pricing documentation. The CbC report would be required for any multi-national enterprise with consolidated sales of over 1 trillion won and would be required to be submitted by the ultimate parent company of the multi-national enterprise. If the parent company resides in a country that does not require the CbC report or does not facilitate the exchange of the CbC report, it would be the obligation of the domestic entity to submit the CbC report. The CbC report is required to include information on country specific income taxes, a list of companies by respective jurisdiction, main business activities, the number of employees, etc.

If legislated, this rule will be applicable to fiscal year starting from 1 January 2017.

Tax ruling in light of tax treatment on gains from derivatives transactions paid to non-resident

A recent National Tax Service (NTS) tax ruling (Sajeonbupryungkujo-206, 2016.06.23) classified the Korean sourced income derived from Fixed Income ("FX") forward and paid by a Seoul Branch of a foreign bank to a Cayman fund as other income.

According to the ruling, in a situation where foreign financial institutions ("the Investors") set up a Fund in Cayman Island whose entity type is limited partnership for Cayman Tax purpose for investing in Korean shares, and the Cayman Fund contracted FX forward with a Korean branch of a foreign financial institution for hedging FX risk the Investors are exposed, gain derived from the derivatives and paid by the Korean branch of the foreign financial institution should be classified as other income and subject to 22% withholding tax ("WHT") or exempted from WHT based on the applicable tax treaties.

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Malaysia

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Announcements/circulars/determinations/rulings/practice statements issued by the Tax Departments

Public Rulings

The Malaysian Inland Revenue Board ("MIRB") has issued the following public rulings:

Public Ruling 6/2016: Group Relief for Companies

Group relief is available to companies which are incorporated and tax resident in Malaysia, subject to the conditions set out in Section 44A of the Income Tax Act 1967 ("the ITA"). Broadly, a company may surrender not more than 70% of its current year adjusted loss in the basis period for a year of assessment to one or more related companies within the same group.

This Ruling explains the qualifying criteria and procedures in claiming group relief for companies which are resident and incorporated in Malaysia.

Public Ruling 7/2016: Basis Period For Companies Under Liquidation

This Ruling explains the determination of the basis period for companies under liquidation.

For details, please refer to the link below:

http://www.hasil.gov.my

Guidelines

The MIRB has issued the following:

Guidelines on Tax Clearance Letter Applications (dated 31 July 2016)

The new guidelines set out the application procedures and documentary requirements in relation to tax clearance applications for companies, limited liability partnerships ("LLPs"), Labuan companies and Labuan LLPs.

Revised Guidelines on the Reduction of Penalty and Waiver of Increase in Tax (dated 1 August 2016)

The key changes relate to the extension of the offer of reduced penalties and waiver of increase in tax to transfer pricing ("TP") audits, subject to the following eligibility criteria:

a) The TP audits must be completed between 1 March and 15 December 2016.

b) The reduced penalty rates for voluntary disclosure do not apply to TP audits (which remain subject to the penalty rates for voluntary disclosure set out in the TP Audit Framework 2013).

c) Payment in relation to the TP audit must be made in full within 30 days from the date of the notice of assessment/ additional assessment.

The guidelines are available at http://www.hasil.gov.my

Other developments

Good and Services Tax ("GST") Audit Framework

A copy of the GST Audit Framework ("the Framework") is now available at the Royal Malaysian Customs Department's website.

The purpose of the Framework is to facilitate the auditing process and to ensure that the tasks can be carried out in a systematic, transparent and fair manner.

Amongst others, the Framework sets out the following:-

- Who can be audited;
- The audit process (implementation);
- Documents required for audit;
- Rights and responsibilities of the person being audited; and
- Appeals for a review against the decision made by the audit office.

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Mauritius

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Legislative developments

The Finance Bill 2016 was enacted on 7 September 2016. It contains the tax measures as announced in the Budget 2016. We have listed some key measures below:

Income Tax Act ("ITA")

New Corporate Social Responsibility ("CSR") Framework

The Finance Act 2016 provides for the setting up of a new National CSR Foundation ("Foundation") whereby companies should remit their CSR Fund to the Foundation as follows:

- At least 50% of the CSR Fund set up on or after 1 January 2017 up to 31 December 2017;
- At least 75% of the CSR Fund set up on or after 1 January 2018;
- Any remaining amount of CSR Fund set up;
- Before 1 January 2019, fund shall be used by a company to implement a CSR Programme in accordance with its own CSR Framework.

Where a company is required to file Advance Payment System ("APS") return, it shall remit 25% of the above mentioned CSR fund payable to Mauritius Revenue Authority ("MRA") in each of the first 3 quarters and the remaining 25% in its annual return and where APS is not applicable for a company, the CSR fund shall be remitted to MRA in its annual return.

Moreover, the Foundation has also outlined several activities under which no CSR money shall be spent by a company.

However, the above provisions should not be applicable to Companies which contribute to an approved CSR programme which fits within the priority areas of intervention.

Amended Tax Returns

The Finance Act 2016 provides that a penalty of MUR 2,000 per month (not exceeding MUR 20,000) will henceforth be applicable when the amended tax return is filed with MRA. This will be applicable when the amended tax return is filed after the statutory filing date.

An amended tax return made by a company or a societé must be submitted electronically and the taxpayer must provide reasons for each alteration made to the previous return.

The penalty of MUR 2,000 per month until a new tax return is submitted will not be applicable where the amended return is submitted by an individual and the amendments relate only to emoluments or to the amount of personal reliefs and deductions.

Penalties for loss over-claimed

Where a loss has been claimed in excess of the actual loss incurred or brought forward, a penalty of 5% of the loss over-claimed shall be applicable.

The penalty of 5% may be offset against the correct amount of loss carried forward, hence reducing the loss to be carried forward.

Tax Deduction at Source ("TDS")

Management fee payable to an individual by any corporate entity shall henceforth attract TDS. The withholding rate shall be 5% if the recipient is a resident of Mauritius or 10% if otherwise.

Payments to accountants/ accounting firms and tax advisers/ or their representatives shall attract TDS at 3%.

Assessment beyond 3 years statutory limit

The Director General of the MRA shall require approval from Independent Tax Panel to raise assessment beyond 3 years statutory limit in case a taxpayer has not submitted a tax return and is liable to tax. Previously, this was possible only in the case of fraud.

Transfer of losses upon takeovers or mergers

In case of a takeover, any company may now transfer any unrelieved losses where the Minister has deemed such take-over to be in the public interest. This was previously authorized only for companies in the manufacturing sector.

The acquiree company may remain in operation as a going concern.

VAT Act

Reverse charge

Reverse VAT Charge is now extended to Non-VAT registered persons on the supply of services received from abroad where non-VAT registered persons are defined as persons that are required to be registered under the Business Registration Act or as the law may prescribe.

Such non-VAT registered persons will have to submit a return to the MRA and pay the applicable VAT amount to the MRA without being able to claim the same amount as input VAT.

This is not applicable on individuals receiving supply of services from abroad for personal purposes.

Other developments

Protocol to the tax treaty between India and Mauritius

The India-Mauritius protocol has come into operation on 19 July 16.

Rotation of audit firm

An audit firm appointed by a listed company shall not audit the accounts of that company for a continuous period of more than 7 years.

Changes in the Financial Services Act ("FSA")

An entity which is licenced or registered as a law firm in a foreign country may apply for a Global Legal Advisory Services Licence.

The Financial Services Commission ("FSC") will be granting Investment Banking Licence as per procedures specified under the FSC rules. A licensee holding an Investment Banking Licence may conduct the activities of an investment dealer, investment advisor, asset management, distribution of financial services and such other activities as may be specified in the FSC rules.

No approval will be required from the FSC for transfer of shares or legal or beneficial interest of less than 5% in a licensee unless such transfer results in a change in control in the licensee. This applies to category 1 and 2 global business licences and all licences issued under relevant acts as defined by the FSA.

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New Zealand

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Legislative developments

Taxation (Business Tax, Exchange of Information and Remedial Matters) Bill

An omnibus Tax Bill was introduced to Parliament on 8 August 2016. It contains:

- Business tax changes, including a new software-based Accounting Income Method ("AIM") for calculating provisional income tax and a series of other proposals to enhance compliance.
- A requirement for New Zealand financial institutions to review and report non-resident account holders (and their financial account information) to Inland Revenue, who will automatically exchange this information with other participating countries under the OECD's Automatic Exchange of Information ("AEOI") initiative; and
- Enhanced disclosure requirements for New Zealand foreign trusts, following the independent review's recommendations earlier this year.

Business tax changes

- Eligible businesses will be able to rely on AIM-capable software to calculate and pay tax as income is earned. A minimum of six payments a year will be required. Eligible businesses for the AIM will generally be those with less than NZ$5 million of turnover. Larger taxpayers will need to use a large business AIM-capable software package (approved by Inland Revenue).
- Changes to the interest rules to limit their application for underpayments of provisional tax during the year, if certain conditions are met.
- New withholding tax rules for contract payments made to both resident and non-resident contractors, including a default rate of 45% where a contractor has not provided a New Zealand tax file number.

AEOI

New Zealand's commitment to AEOI will be implemented through a specific set of rules that give the OECD's Common Reporting Standard ("CRS") and its commentary the force of New Zealand law. Key features include:

- Requiring New Zealand financial institutions to undertake due diligence on all account holders ("the wider approach"). This will mean residents of a country that has not signed up to AEOI will need to be reviewed. It will be optional for New Zealand financial institutions to report these accounts to Inland Revenue.
- Allowing regulations and determinations to be made on which entities and financial accounts are excluded from AEOI obligations. These will also be used to prescribe the countries that New Zealand will exchange information with.
- Specific civil penalties for New Zealand financial institutions, and account holders, who fail to take specific actions or provide information required under AEOI. The account holder penalties will also apply to FATCA non-compliance.
- Confirming a 1 July 2017 start date and a 31 March mandatory reporting period for AEOI.

Foreign trust enhanced disclosure requirements

The omnibus Tax Bill also implements the recommendations made by the Government Inquiry into Foreign Trust Disclosure Rules (covered in more detail in issue 56). These include:

- Registration of foreign trusts with Inland Revenue.
- Provision of trust details (including information relating to settlors, beneficiaries and the trust deed) on registration.
- Annual returns which update trust information and provide details of settlements and trust distributions, as well as the annual accounts.
- Registration and annual return fees.

A failure to comply will mean a foreign trust is subject to New Zealand tax on its worldwide income. Inland Revenue will provide access to a register of foreign trusts to the Police and the Department of Internal Affairs.

Taxation rulings and determinations

TrustPower Limited v Commissioner of Inland Revenue (CIR) [2016]

In July 2016, the New Zealand Supreme Court released its decision on an appeal by TrustPower (a New Zealand electricity company). A 2015 New Zealand Court of Appeal decision had ruled that TrustPower's expenditure to procure consents for four proposed electricity generation projects was capital (i.e. non-deductible).

The Supreme Court confirmed the Court of Appeal's judgement. With limited exceptions, the general rule is that expenditure for a proposed capital project will be capital.

The decision did not follow a 2008 Inland Revenue interpretation statement (IS 2008/02) on the deductibility of project feasibility expenditure. That interpretation statement has been revoked. An updated, albeit draft, position has since been released – see the interpretation statement below.

CIR v Vector Limited [2016]

In August 2016, the Court of Appeal released its decision on an Inland Revenue appeal. Vector (an electricity grid owner) had successfully argued in the High Court that income it derived from granting access rights to its distribution system was not taxable.

Inland Revenue's principal argument was a specific provision made the receipts "other revenues" from specified uses of land and therefore taxable. The Court of Appeal agreed with the High Court. "Other revenues" in the relevant context referred only to revenue (not capital) receipts. Importantly, the Court of Appeal concluded that to tax capital receipts, a specific intention to do so must be evident. No such intention was evident in the relevant provision being relied upon by the New Zealand Commissioner.

Announcements/circulars/determinations/rulings/practice statements issued by the Tax Departments

Draft revised IRD interpretation statement on feasibility expenditure

Following the TrustPower v CIR (2016) decision (see above), Inland Revenue has revised its existing guidance (IS 2008/02) on the deductibility of project feasibility expenditure.

IS 2008/02 suggested that feasibility expenditure is capital when a commitment, or decision, has been made to proceed. This approach, referred to as the point of "commitment approach", was rejected by the Supreme Court in TrustPower.

The new draft has provisionally concluded that feasibility expenditure is only deductible if it is:

(1) not directed towards a specific capital project, or

(2) is so preliminary as not be directed towards "materially advancing" (or making tangible progress on) a specific capital project.

Inland Revenue has stated the Supreme Court's approach must be applied from the date of the TrustPower judgement. However, past positions which are consistent with commitment approach in IS 2008/02 will not be actively reviewed.

Hybrid mismatch rules

In September 2016, the New Zealand Government released a hybrids consultation document. It outlines the case for implementing the OCED BEPS Action 2 Recommendations: Hybrid Mismatch Arrangements. It considers and proposes matters of technical detail relevant to their New Zealand implementation.

A comprehensive application of the OECD hybrid rules is proposed. The proposals would deny deductions or remove tax exemptions relating to hybrids to prevent "double non-taxation". This is justified by the draft framework for taxing inbound investment (discussed in issue 59). The Government considers that a common approach will produce benefits which outweigh the risk of reduced investment in New Zealand.

The KPMG member in New Zealand considers the proposals are wide ranging across many of New Zealand's tax rules. The proposals could therefore affect commercial arrangements in unexpected and potentially unintended ways. Careful consideration of the proposals is required.

Other developments

Investment income reporting proposals

An Officials' Issues Paper proposes to increase the frequency and detail of investment income reporting to Inland Revenue, by investment income payers.

Currently, summary information of tax deducted from investment income is provided with payments. Payers of investment income (including banks and managed funds) must provide information to the recipients of that income.

Inland Revenue is proposing that more investor level details (e.g. name, tax file number, address and date of birth, in addition to taxable income and tax paid) be provided more frequently (i.e. each month or as payments are made). Inland Revenue will store this information in each recipient's tax account. The aim is to allow for better matching of investors' details for tax (and non-tax) purposes and support pre-population of investment income information in investors' tax returns.

To encourage investors to provide the correct identity details, including their tax file number, a non-declaration rate of 45% is proposed.

The KPMG member firm in New Zealand notes that there may be significant costs in upgrading reporting systems, particularly if an investment income payer is operating legacy tax withholding systems. There is also concern that the many reporting requirements for investment income payers are not being co-ordinated so that opportunities for simplification and for eliminating duplication are not being taken.

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Singapore

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Legislative developments

Goods and Services Tax ("GST") remission on expenses for prescribed funds managed by prescribed fund managers in Singapore

Under the GST remission scheme, funds that meet all qualifying conditions will be able to recover GST incurred on all business expenses (except disallowed expenses under the GST Regulations 26 and 27) based on a fixed recovery rate determined annually, without having to register for GST. Currently, the GST remission is available to qualifying funds up till 31 March 2019.

The fixed recovery rate for expenses incurred during the period from 1 January 2017 to 31 December 2017 is 88%.

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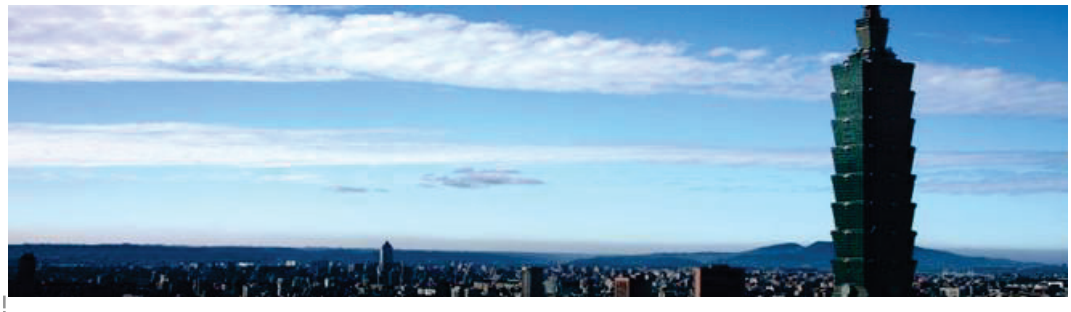
Taiwan



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Legislative developments

The extension of exemption from securities transaction tax on bonds transaction

In accordance with the Securities Transaction Tax Act, the sale of Taiwan securities is subject to securities transaction tax ("STT"). However, there is an exemption on sale of company bonds and financial bonds until 31 December 2016. Recently, the Ministry of Finance, via Executive Yuan, proposed a draft amendment to the Securities Transaction Tax Act while extends the aforementioned exemption from STT on sale of company bonds and financial bonds for an additional 10 years after the current expiration date of 31 December 2016.

If the proposed amendment is passed by the legislature, the aforementioned exemption treatment on company bonds and financial bonds would be extended to 31 December 2026. The amendment is currently still under the legislative process.

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Thailand

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Legislative developments

Tax exemption for qualified debt reconstruction

On 30 August 2016, the Royal Decree No. 623 was issued to provide an income tax exemption to a debtor of a financial institution for income derived from debts discharged by that financial institution. This applies where such financial institution has complied with the rules of debts reconstruction as designated by the Bank of Thailand. This exemption will only be provided for debts discharged from 1 January 2015 onwards.

Following the issuance of the Royal Decree No 623, Ministerial Regulation No 321 was issued on 12 September 2016 to allow the creditor, who is a financial institution, to write off bad debts without having to comply with the rules and conditions on writing off bad debts as specified in clause 4, 5 and 6 of the Ministerial Regulation No .186. This only applies to the portion of debts discharged from 1 January 2015 due to debt reconstruction under the guidance of debt reconstructions for financial institutions designated by the Bank of Thailand.

Announcements/circulars/determinations/rulings/practice statements issued by the Tax Departments

Recent amendments to Royal Decree 604

In issue 56, the additional deduction for new capital expenditure investment incurred during the period 3 November 2015 – 31 December 2016 under the Royal Decree No 604 was discussed. Royal Decree (No 622) was issued amending the regulations. The key amendment in Royal Decree No 622 relates to the requirement for the asset to be ready for use before 31 December 2016. Specifically, this requirement no longer applies to machinery and permanent buildings. That is, even if these assets are not ready for use after 31 December 2016, the additional tax deduction will still be available, provided the expenditure is incurred during the period 3 November 2015 – 31 December 2016. In the case of a permanent building, the application for construction license is required to be submitted by 31 December 2016. It should be noted that this amendment does not apply to any assets other than machinery and permanent buildings.

While the capital expenditure must be incurred by the end of the year, the amendment provides some flexibility to taxpayers in terms of installation of machinery and completion of construction.

Other developments

Relaxation of Foreign Business Act

Further to the Thai Cabinet's approval on 12 July 2016 of the draft Ministerial Regulation to allow foreigners to conduct certain service businesses without the requirement to obtain a foreign business license ("FBL") under the Foreign Business Act ("FBA"), it is expected that such Regulation may be issued in the next few months.

In the draft Ministerial Regulation, two of six service businesses which are no longer restricted for foreigners under the FBA include "Services related to or necessary for commercial banks (including acting as an agent for the collection of insurance premiums, providing hire-purchase and leasing arrangements, etc.) and certain legislated asset management services;"

Although the relaxation under the FBA is welcomed, due to the other Thai licensing requirements and regulations in the banking, insurance and asset management industries, it is not expected that

the relaxation will have a significant impact for these service categories as specific licenses under those laws may still be required.

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Vietnam

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Legislative developments

New regulations on payment intermediary services, non-cash payments and people permitted to open bank account

Decree No. 80/2016/ND-CP dated 1 July 2016 (the "Decree"), amends and adds a number of regulations on payment intermediary services, non-cash payments and people permitted to open a bank account.

Former regulations only allowed non-bank enterprises to provide payment intermediary services, the new Decree now allows the commercial banks, foreign bank branches to provide payment intermediary services. However, banks and bank branches are allowed to provide only e-wallet services.

For non-cash payments, only the following means of payment are accepted: Cheques, payment orders, collection orders, bank cards and other payment instruments as prescribed by the State Bank. Using the other payment instruments shall be deemed illegal.

Under this Decree, persons aged 15 but under 18 have right to open bank account (payment account), regardless of the possession of personal property. In addition, legally incapacitated persons, limited legal capacity persons, person with limited recognition and behavior control as prescribed in Vietnamese law shall be allowed to open payment accounts with their guardians or legal representatives.

The Decree is effective from 1 July 2016.

Guidance on the details of the implementation of the Law on Insurance Business and amendments to certain articles of the Law on Insurance Business

The Government issued Decree 73/2016/ND-CP ("Decree 73") on 1 July 2016 detailing the implementation of the Law on Insurance Business and amendments to certain articles of the Law on Insurance Business.

The notable changes introduced by Decree 73 are summarized as follows:

<u>New regulations for licensing of insurance enterprises, foreign branches and insurance broker enterprises</u>

Decree 73 defines the general requirements on the licensing of insurance enterprises, foreign branches, insurance broker enterprises as follows:

For organizations and individuals investors:

- Not falling within the scope and not entitled to establish and manage enterprises;
- Capital contributions must be in form of cash. It is not permissible to use capital from borrowings, or the investment trust funds of other organizations or individuals for capital contributions;
- Investors that are organizations contributing 10% or more of the charter capital are required to have conducted a profitable business for three consecutive years before the year of license

submission and have not incurred cumulative losses prior to the submission of the license application;

- Investors that are organizations contributing the charter capital and operating in sectors that require a legal capital must undertake that their owners' equity less the minimum legal capital is at least equal to the amount of capital to be contributed;
- If a corporate investor is an insurance enterprise, insurance broker enterprise, commercial bank, financial enterprise or securities enterprise, it must fulfill and maintain financial safety conditions and obtain permission by competent authorities to make the said investments as per specialized laws.

For insurance enterprises, foreign branches and insurance broker enterprises being incorporated:

- Have the charter capital or allocated capital at least equal to the legal capital;
- Have incorporated the type of business, charter, the regulation of organization and operation for foreign branches;
- Have planned managerial and operational personnel fully meeting conditions.

In addition to the above general requirements, insurance enterprises, foreign branches and insurance broker enterprises must satisfy specific requirements defined in Decree No. 73.

Decree 73 also defines the legal capital, licensing, procedure for licensing or changing License for establishment and operation of insurance enterprises, foreign branches and insurance broker.

The organizational structure of an insurance enterprise or insurance broker enterprise

Under Decree 73, the organizational structure of an insurance enterprise or insurance broker enterprise consists of head office, branches, operating center, accounting dependent affiliates, representative offices, business facilities and transaction office. Especially, foreign branches are not permitted to establish inferior branches in Vietnam.

For insurance business, insurance enterprises and foreign branches are entitled to sell insurance products only in specified manner: directly, via insurance agencies and insurance brokers, via auctions, via electronic transactions and other methods.

In addition, Decree 73 also defines reinsurance, insurance brokerage, financial structure, insurance agencies, providers and users of cross-border services of insurance and insurance brokerage, representative offices, funds for the protection of the insured, management supervision, inspection and penalty.

Decree No. 73 became effective on 1 July 2016.

New regulations on regulating syndicated loans by credit institutions to customers.

The Governor of the State Bank of Vietnam ("SBV") issued Circular No. 24/2016/TT-NHNN dated 30 June 2016 on revising and supplementing Circular No.42/2011/TT-NHNN dated 15 December 2011 issued by the SBV on regulating syndicated loans by credit institutions to customers. The main content is as follows:

- Revising Article 7 of Circular No.42/2011/TT-NHNN to abolish regulations on conditions of granting syndicated loans.
- Revising governing scope and implementers mentioned in Circular No.42/2011/TT-NHNN, thereby promulgating on:
    - Granting syndicated loans by credit institutions, foreign banking branches to those customers who invest in projects, production and business plans in Vietnam; and those customers are residents investing in projects overseas;
    - Granting syndicated loans without the participation of foreign credit institutions to non-residents who invest in projects overseas.

In the case of granting syndicated loans to non-resident who invest in projects overseas with the participation of foreign credit institutions, the credit institutions and foreign credit institutions negotiate the syndicated lending terms in line with provisions on foreign exchange management.

- Revising regulation on lead arranger accordingly, members negotiate to assign coordinating member on arranging syndicated loans, coordinating member on granting syndicated credit, and coordinating member on receiving secured assets in accordance with current laws of Vietnam. The foreign credit institutions participating in granting syndicated credit are not allowed to be coordinating member for payment transactions.

This Circular is effective from 30 June 2016.

New regulations on loans for supporting housings under Government Decree No 02/NQ-CP dated 7 January 2013

The Governor of the State Bank of Vietnam ("SBV") issued Circular No. 25/2016/TT-NHNN ("the Circular"), which was effective on 1 August 2016, to amend and add a number of articles to Circular No. 11/2013/TT-NHNN dated 15 May 2013 on prescribed on loans for supporting housings under Government Decree No 02/NQ-CP dated 07 January 2013. The Circular focuses on the following matters:

Extension object

For clients being individuals, households who borrow loans for purchase, hiring, purchase-hiring of social houses and for hiring, purchase of commercial houses, construction, renovation and repair houses, the disbursement for housing assistance by the banks from the refinancing sourced from the State Bank will be no later than 31 December 2016. This time limit applies to the loans credit contracts signed before 31 March 2016 and reported by the State Bank at periodical data report on 10 May 2016.

Regulations on the settlement of disbursements of credit contracts signed before 31 March 2016 between bank and the group of individual clients during the period from 1 June 2016 to the effective date of the Circular

Bank's disbursements during the period from 1 June 2016 to the effective date of this Circular shall be refinanced by the State Bank if the credited contracts can satisfy the following conditions:

- signed before 31 March 2016 for clients being individuals, households who borrow loans for purchase, hiring, purchase-hiring of social houses and for hiring, purchase of commercial houses, construction, renovation and repair houses.
- reported by the State Bank at periodical data report on 10 May 2015.

For disbursements satisfying the required conditions, the banks shall apply the annual loan interest rates for housing assistance announced by the State Bank from the time of disbursement, but not beyond the duration which the loan interest rate applies as stated in Clause 4, Article 4, Circular No. 1/2013/TT-NHNN.

Where the amount of the interest is greater than the loan interest for housing assistance, the Bank shall refund the difference between the actual interest received and the loan interest calculating by reference to the interest rates for housing assistance in not more than 2 months from the effective date of the Circular or offset for clients no later than 2 latest interest periods after being refinanced by the State Bank.

New regulations on the scope for foreign exchange transactions, requirements, orders and procedures for permitting foreign exchange transactions of credit institutions, branches of foreign banks

On 5 October 2016, the Governor of the State Bank issued the Circular No. 28/2016/TT-NHNN ("the Circular") to amend and supplement a number of articles of Circular No.21/2014/TT-NHNN dated 14 August 2014 on guidance on foreign exchange transactions.

The main amendments are summarized below:

Amendments of permitting basic foreign exchange transactions

Credit institutions, branches of foreign banks may conduct basic foreign exchange transactions prescribed in the Circular after obtaining the approval within the scope prescribed by the State Bank.

Conducting basic foreign exchange transactions on the domestic and international market of commercial banks

Amendments have been made to some foreign exchange transactions on the domestic and international market, including opening payment accounts for credit institutions; receiving term-deposits from foreign credit institutions; making foreign exchange transactions, foreign exchange swap with foreign financial institutions to prevent and mitigate risk from contracts signed with domestic customers.

The scope of foreign exchange transactions on the domestic and international market of non-bank credit institutions, co-operative banks

The Circular amends specifically the scope of foreign exchange transactions of factoring companies, consumer credit companies, co-operative banks.

The Circular stipulates requirements, dossiers for permitting basic foreign exchange transactions on the domestic and international market

The Circular amends regulations on requirements, dossiers for basic foreign exchange transactions on the domestic and international market as follows:

- Amending or rescinding irrational requirements, dossiers, which includes:
  - Rescinding requirements, dossiers in relation to personnel;
  - Amending regulations on requirements, dossiers related to facilities, equipment, information technology systems to be suitable with practice and relating to foreign exchange transactions;
  - Rescinding regulations related to business plans, providing foreign exchange services regarding foreign exchange transactions.
- Amending or rescinding requirements, dossiers to facilitate administrative procedures:
  - Amending regulations on requirements, dossiers related to risk management procedures regarding foreign exchange transactions. Credit institutions only need to submit to the State Bank general regulations on risk management for all foreign exchange transactions (not in respect to each foreign exchange transaction);
  - Amending regulations on requirements, dossiers in that credit institutions do not need to provide its procedures when submitting application, instead, the credit institution is responsible for developing and issuing regulations on implementing the business after permitting issuance (change from pre-audit activities to post-audit activities);
  - Rescinding former regulations so that commercial banks may conduct basic foreign exchange transactions upon establishment.

Regulations on transferring of basic foreign exchange transactions

The Circular amends regulations on transferring of basic foreign exchange transactions as follows:

- The State Bank may transfer the whole basic foreign exchange transactions on the domestic and international market with credit institutions.
- Credit institutions need to submit an application for transferring, granting license on foreign exchange operation, regulations on risk management related to foreign exchange transactions.

Regarding transferring of other foreign exchange transactions continues to comply with the regulations on the scope, dossiers in Circular 21 are placed to ensure strict management with complicated, risky foreign exchange transactions.

The Circular is effective from 18 November 2016.

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