General tax update for financial institutions in Asia Pacific

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The implementation of BEPS measures is now in full swing. As expected, we are starting to see divergence in the implementation of the measures. Of particular interest is the Indonesian implementation of Master/ Local File and CbC reporting which provided a very short window for compliance and mandated entity by entity reporting for CbC.

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Highlights

- Release of Exposure Draft legislation containing proposed amendments to the debt/equity tax rules
- Release of Consultation Paper on Collective Investment Vehicle non-resident withholding taxes
- Draft Australian Taxation Office guidance on fixed trusts

- Further VAT implementation rules

- Consultation paper on BEPS launched in Hong Kong
- Trading of stocks under the Shenzhen-Hong Kong Stock Connect programme started

- India signs the third Protocol with Singapore to amend India-Singapore tax treaty
- Central Board of Direct Taxes ("CBDT") circular issued on applicability of Indirect Transfer Provisions
- Revised tax treaty between India and Cyprus

- Indonesian implementation of BEPS Action Plan 13

- Outline of the 2017 tax reform proposals

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- 2017 Tax reform proposal approved by the National Assembly
- Revisions of due date for submission of Master File and Local File requirements
- Cost incurred by domestic branch of foreign bank in relation to transferring its credit risk to its head office or other foreign branches are deductible

- Finance Act 2017 and 2017 Budget Proposals were gazetted

- Tax holiday incentives in Mauritius
- Investment in securities by Category 2 Global Business Licence companies ("GBC2")

- Two Taxation Bills reported back to NZ Parliament
- New Zealand Inland Revenue's 2015/16 Multinational Enterprises Compliance Focus Guide released
- New Zealand Inland Revenue releases draft guidance on application of Automatic Exchange of Information

- The Supreme Court declared that the reckoning of the phrase "twenty or more lenders" should be at the time when the government securities are sold to investors
- The suspension of the effectivity of RMC No. 62-2016 (Clarification on Proper Tax Treatment of Passed-on Gross Receipts Tax) has been lifted by the Bureau of Internal Revenue

- The Value Added Tax Amending Act was passed in Parliament
- The Budget Proposals for 2017 were presented in Parliament

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- Amendment of the Securities Transaction Tax Act and the signing of Taiwan-Poland double taxation treaty

- New regulations on overdraft and overnight lending operations in the interbank electronic payment made at the State Bank of Vietnam to credit institutions and overseas bank branches.
- New regulation on for the offering and transaction of covered warrant
- New regulation on receivable amount proportions of the Asset Management Company of the Vietnamese credit institutions

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Australia

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Legislative developments

Exposure Draft legislation containing proposed amendments to the Debt/Equity Tax Rules

On 11 October 2016, the Government released Exposure Draft ("ED") legislation which proposes to amend the "related schemes" and "equity override" (section 974-80) provisions of the debt/equity tax rules in Division 974 of the Income Tax Assessment Act 1997.

By way of background, broadly speaking, the debt/equity tax rules classify financing schemes as debt or equity according to their economic substance, and contain integrity rules that are designed to prevent taxpayers from artificially splitting a single scheme into multiple schemes to achieve favourable tax outcomes. Section 974-80 treats a debt instrument as equity for tax purposes if the interest paid on the instrument funds the return on an equity instrument.

The proper scope and application of the related schemes provisions in section 974-80 have been unclear since they were enacted, and the potential consequences of their application have been draconian. When the Australian Taxation Office ("ATO") began examining payments (and loans) between stapled entities in the property and infrastructure sectors for compliance with section 974-80, it became clear that section 974-80 had been drafted much more broadly to achieve its original policy objective than required.

The ED aims to address the uncertainty and compliance costs that arise from the current rules by proposing a single new aggregation rule to replace the existing related scheme provisions and the existing section 974-80.

In particular, the new aggregation rule would treat two or more schemes as a single aggregated (debt or equity) scheme only where:-

- the pricing, terms and conditions of one scheme are interdependent with, or affect the economic consequences of, the pricing, terms and conditions of one or more other schemes in a way that would change the debt or equity treatment of the schemes if viewed separately; and
- it would be concluded that the schemes were 'designed to operate' to produce their combined economic effect.

Importantly:

- there are specific carve-outs from the aggregation rules;
- the 'designed to operate' question includes a non-exhaustive list of specific factors that must be taken into account; and
- the Commissioner will have the ability to make a determination that it would be unreasonable for aggregation to apply in specific circumstances.

In addition, a draft legislative instrument has been released containing specific examples of the application of the new rules. It is interesting to note that these examples illustrate the practical application of the core provisions, but they may also extend or narrow the operation of the core provisions.

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Subject to transitional provisions, the new aggregation rule is expected to apply prospectively to instruments issued on or after a date yet to be fixed within the period commencing on the date of Royal Assent and ending 6 months after the date of Royal Assent.

These amendments are of particular interest and relevance for the tax treatment of stapled instruments and stapled groups.

Consultation paper on Collective Investment Vehicle non-resident withholding taxes

The current rate and complexity of withholding tax applied to distributions made by Australian funds has had a significant adverse impact on the ability of Australian funds in international competition. On 3 November 2016, the Minister for Revenue and Financial Services released for public consultation a much-anticipated Consultation Paper on "Collective Investment Vehicle non-resident withholding taxes" ("the Consultation Paper").

The Consultation Paper has sought industry views on the following policy options for reforming Australia's withholding tax regime:-

- no policy change (i.e. maintaining the status quo, and not introducing any new withholding tax concessions for non-residents);
- applying a uniform 5% non-resident withholding tax rate to all withholdable payments from Australian Collective Investment Vehicles ("CIVs") and Managed Investment Trusts ("MITs") that qualify for the Asia Region Funds Passport ("ARFP"), which is due to start in late 2017; or
- applying a uniform 5% non-resident withholding tax rate to all withholdable payments (excluding rental income and taxable Australian real property gains) across all Australian CIVs and MITs (irrespective of whether or not they qualify for the ARFP).

The Consultation Paper also invited suggestions for any "alternative proposals" and was open for comment until 2 December 2016.

Many fund managers would welcome a reduction in the withholding tax rate to 5%, and the removal of the disparities in the withholding tax rates applied to interest, unfranked dividends, royalties, capital gains, fund payments etc.

However, the proposed changes would still place Australian funds at a headline disadvantage in comparison to foreign funds that do not impose non-resident withholding taxes, such as Singapore and Irish / Luxembourg Undertakings for the Collective Investment of Transferable Securities ("UCITS") which are distributed throughout Asia. Although, it could be argued that those jurisdictions predominantly operate as conduits, whereas Australia already has an equivalent conduit regime which equally exempts foreign income from Australian tax when distributed to foreign investors.

Following recent policy initiatives (the Investment Manager Regime, the new Attribution MIT regime, the Asia Region Funds Passport and the planned CIV regime), the implementation of a competitive withholding tax regime could be viewed as the final piece in the tax policy jigsaw to remove the remaining structural barriers and further encourage the export of Australian managed funds.

Taxation rulings and determinations

Draft ATO guidance on fixed trusts

On 26 October 2016, the ATO released draft Practical Compliance Guideline ("PCG") 2016/D16, which outlines the factors that the Commissioner will consider in determining whether to exercise his discretion to treat a trust as a fixed trust for the purpose of the trust loss provisions.

Despite the term 'fixed trust' being used in various contexts in Australia's tax legislation, the legislation sets out a strict definition that excludes virtually all trusts from satisfying it. The Federal Court decision in *Colonial First State Investments Ltd v Commissioner of Taxation [2011]*

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FCA 16 reaffirmed this conclusion and resulted in significant concerns that, strictly speaking, many unit trusts (even those used for managed funds) may not actually qualify as fixed trusts.

The status of a trust as a fixed trust is significant for a number of reasons, including its ability to utilise tax losses and to flow franking credits through to investors.

The guidance from the Commissioner is welcome by the funds management sector, although the draft PCG highlights the divide between trusts that are "attribution managed investment trusts" ("AMITs") and those which are not. AMITs receive deemed fixed trust treatment automatically if they are registered managed investment schemes ("MIS") or otherwise if their members have "clearly defined rights" to all income and capital of the trust (to be ascertained against the example trustee powers in Law Companion Guideline LCG 2015/4).

According to draft PCG 2016/D16, the factors that the Commissioner will consider in deciding whether to exercise his discretion include:-

- the circumstances in which the interest in the trust is capable of not vesting or being defeated;
- the likelihood of the interest not vesting or being defeated;
- the nature of the trust; and
- any other relevant factors, such as the purpose for which the discretion is being used (including whether it is used to obtain a tax benefit).

The draft PCG also provides some practical examples of the application of these factors, and these include:-

- a listed unit trust subject to the Australia Securities Exchange listing rules and the Corporations Act 2001 - it would only be in exceptional circumstances that the Commissioner would not exercise the discretion;
- a power of redemption over units conferred on the trustee - this would have an unfavourable impact where consent of unitholders or beneficiaries is not required and the units are redeemed at a price less than market value;
- a power of the trustee to amend the terms of the trust - this would have a neutral impact provided that the trustee does not exercise a power that could adversely impact the unitholders' entitlements or where the amendment power requires 100% of unitholders to approve the change.

Given the productive consultation that occurred between the funds management industry and the ATO in preparing LCG 2015/4, an alternative approach could have been to draft the PCG as an administrative safe harbour where the Commissioner will not focus compliance resources if a trust exhibits the same characteristics as the LCG (this type of administrative safe harbour is contemplated in PCG 2016/1).

The guidance is stated to apply before and after the date of issue. This raises a question for trustees that are currently adopting the AMIT regime, as in addition to considering AMIT qualification and system issues, the status of a trust also needs to be considered for pre-AMIT periods once the PCG is finalised.

Draft Taxation Determinations regarding investments in foreign trusts - TD 2016/D4 and TD 2016/D5

On 30 November 2016, the ATO issued two draft Taxations Determinations (TD 2016/D4 and TD 2016/D5) which address the Australian tax treatment of capital gains derived by foreign trusts in respect of assets that are not "taxable Australian property" ("TAP").

The implication of TD 2016/D4 is that a non-TAP capital gain of a foreign trust is not allocated to the beneficiaries in the usual manner, nor is it taxed in the hands of the trustee. Instead, according to this draft TD, the distribution of the capital gain constitutes statutory income in the hands of the beneficiary under section 99B of the Income Tax Assessment Act 1936.

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Furthermore, in TD 2016/D5, the ATO has gone a step further and concluded that the capital again tax ("CGT") discount is not available to reduce the assessable amount in the hands of the Australian investor.

These draft TDs can lead to range of adverse outcomes for any Australian residents investing offshore through a trust, for example:-

- an investment by the Australian resident through a foreign trust will not attract the CGT discount on non-TAP capital gains made by the foreign trust;
- the Australian investor's proportionate share of the capital gain made by the foreign trust (constituting statutory income) cannot be offset against the Australian investor's capital losses;
- there is potential for the Australian investors to be taxed on the statutory income under the "transferor trust" rules, which can impose an interest charge on subsequent distributions from the foreign trust.

These draft TDs have the potential to undermine the attractiveness of offshore investments by Australian residents and Australia's ability to operate as a regional financial centre.

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China

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Taxation rulings and determinations

The Ministry of Finance ("MOF") and the State Administration of Tax ("SAT") jointly issued Circular Caishui [2016] 140 (Circular 140)

Circular 140 sets out additional clarification on the VAT rules applicable to financial service industry which are summarised below:-

- Distinguishes VAT treatment between returns on principal protected products (subject to VAT at 6%), and returns from non-principal protected products (not subject to VAT);
- Clarifies that if a taxpayer holds asset management products (such as funds, trusts, wealth management products) until maturity, the relevant income should not be considered as from trading of financial products and does not fall within the VAT taxable scope;
- Extends the scope of eligible taxpayers for bad debt relief to include securities companies, insurance companies, finance leasing companies, securities funds management companies, securities investment funds and other entities established with approval from People's Bank of China, China Banking Regulatory Commission, China Securities Regulatory Commission or China Insurance Regulatory Commission to engage in finance and insurance businesses;
- Clarifies that asset managers shall be the VAT taxpayers of asset management products;
- Allows losses from financial products trading incurred during the period from January to April 2016 to be carried forward to set off profits earned in the post-VAT reform period;
- Extends the scope of qualified finance leasing companies mentioned in Circular 36.

In addition, SAT issued SAT Announcement [2016] No. 86, a notice regarding the issuance of VAT invoices by the insurance institutions with respect of co-insurance contracts on 24 December 2016.

For more information, please find the link below:

https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/01/china-tax-weekly-update-01.pdf

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Hong Kong

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Legislative developments

Consultation paper on BEPS launched in Hong Kong

The Hong Kong Government launched a public consultation exercise on 26 October 2016 to gauge views on the implementation of the OECD's anti-base erosion and profit shifting ("BEPS") initiatives. The most significant proposal is for the adoption of a formal transfer pricing regime in Hong Kong, with mandatory documentation requirements.

The consultation paper (click here) includes the following proposals:–

- Codifying transfer pricing ("TP") rules in Hong Kong's tax legislation, based on the arm's length standard. The transfer pricing regime will be extended to cover financial and business arrangements such as the making of loans and cost contribution arrangements. These obligations will seemingly apply to cross-border as well as domestic transactions.
- Mandating preparation of transfer pricing documentation based on the three-tier country-by-country ("CbC") reporting approach (including a master file and local file).
- Exchanging CbC reports with other countries with which Hong Kong has concluded a tax treaty (including a tax information exchange agreement, or TIEA) as well as a competent authority agreement providing for such exchange.
- Providing a statutory basis for the existing Advance Pricing Agreement ("APA") regime.
- Amending Hong Kong's tax treaties by signing up to the OECD-coordinated multilateral instrument ("MLI") to counter the use of hybrid entities and hybrid instruments. To prevent treaty abuse, Hong Kong proposes to adopt the "principal purpose test" but not a "limitation-on-benefits" rule in her treaties.
- Introducing legislation to formalize the adoption of mutual agreement procedures ("MAP") and mandatory arbitration to resolve treaty disputes.
- Providing for spontaneous exchange with Hong Kong's tax treaty (and TIEA) partners of past and future rulings relating to preferential regimes, transfer pricing (including APAs), downward adjustments of taxable profits, permanent establishment status, related party conduits, as well as other rulings that might give rise to BEPS concerns.
- Enhancing HK's tax credit system by extending the time period for claiming credits and by requiring taxpayers to take all reasonable steps to minimize taxes payable overseas.

The new TP rules will require many businesses in Hong Kong to prepare TP documentation to support their related party transactions. A number of submissions have been made by industry bodies and other interested parties before the consultation deadline at the end of 2016. Below are some highlighted common themes and suggestions from the submissions made:

- The proposed TP rules will apply to both international and domestic related party transactions if the requirements under the new TP rules are met. However, many respondents have suggested that mandatory TP documentation requirements (if any) should only apply to international related party transactions. Domestic related party transactions should be addressed under the existing tax anti-avoidance provisions.

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- Respondents have mostly argued that the proposed materiality threshold is too low. The threshold to prepare TP documentation should be increased or based on the size and materiality of the related party transactions. De minimus transactions should need not to be documented.
- Safe harbor rules (e.g., for low value services) should also be introduced to limit the documentation requirements and eliminate the need for additional benchmarking.
- If TP documentation is mandatory, penalty protection should be granted to taxpayers who make significant efforts to prepare and provide such TP documentation.

The draft legislation is expected to be released during the first half of 2017.

For more information, please find the links below:

https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2016/10/tax-alert-13-hk-consultation-paper-on-beps.pdf

https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/01/china-tax-weekly-update-01.pdf

Other developments

Shenzhen-Hong Kong Stock Connect – A New Chapter In Connecting the Capital Markets in Mainland China and Hong Kong

Following the China Securities Regulatory Commission's ("CSRC") and the Hong Kong Securities and Futures Commission's ("SFC") announcement on 25 November 2016, the trading of stocks under the new Shenzhen-Hong Kong Stock Connect programme started on 5 December 2016. At the same time, the Ministry of Finance ("MOF"), the State Administration of Tax ("SAT") and CSRC issued a notice explaining the tax treatment of stocks traded under the Shenzhen programme[1].

The PRC tax treatment of stocks traded under the Shenzhen programme, including PRC Corporate Income Tax ("CIT") / Individual Income Tax ("IIT"), Value Added Tax ("VAT") and Stamp Duty, is summarized below:-

Investors		PRC CIT / IIT		PRC VAT	Stamp Duty
		Capital Gains	Dividends		
Hong Kong and foreign investors investing in PRC shares via Shenzhen-Hong Kong Stock Connect or QFII / RQFII	Individuals / Corporations	Temporarily exempt	Withholding tax rate of 10% generally (subject to potential tax treaty relief)	Exempt	Seller subject to Hong Kong Stamp Duty of 0.1% on the sale of A-shares
	QFII / RQFII	Temporarily exempt from CIT on gains derived from 17 November 2014 onwards; pre-17 November 2014 gains are taxable		Exempt	
PRC investors investing in Hong Kong shares via Shenzhen-Hong Kong Stock Connect	Individuals	Temporarily exempt from IIT for three years (from 5 December 2016 to 4 December 2019)	IIT at 20%	Exempt	Both seller and purchaser of Hong Kong listed shares are subject to Hong Kong Stamp Duty of 0.1%

[1] *Tax Treatment For the Pilot Programme of Shenzhen-Hong Kong Stock Connect*, Caishui [2016] No 127, issued on 1 December 2016.

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	Corporations	CIT at 25%	CIT at 25% (other than interest in qualifying H-shares)		

For more information, please find the link below:

https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2016/12/tax-alert-14-hk-shenzhen-hk-stock-connect.pdf

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India

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Legislative developments

India signs the third Protocol with Singapore to amend India-Singapore tax treaty

The Government of India has signed the third Protocol with Singapore amending the India - Singapore tax treaty (tax treaty). This is in line with India's treaty policy to prevent double non-taxation and revenue loss, also to combat the menace of " black money" through the automatic exchange of information. This is reflected in India recently revising tax treaties with Mauritius and Cyprus as well as the joint declaration signed with Switzerland.

India and Singapore shall announce the Protocol after completion of the respective procedures. The Protocol shall take effect no later than 1 April 2017.

For more information, please find the link below:

http://www.in.kpmg.com/taxflashnews/KPMG-Flash-News-Protocol-to-the-India-Singapore-tax-treaty-2.pdf

Taxation rulings and determinations

Central Board of Direct Taxes ("CBDT") circular on applicability of Indirect Transfer Provisions

Ever since the provisions of indirect transfer have been introduced under the provisions of the Income Tax Act, 1961 ("Act"), investors have been awaiting for clarification of the applicability of such provisions on various structures.

As per the indirect transfer provisions, where a non-resident transfers any shares or interest in an offshore company or entity and the shares or interest of the offshore company or entity derive substantial value from assets located in India, such transfer is taxable in India.

In the Finance Act 2015, the Government of India provided the much awaited clarification that shares of the offshore company shall be deemed to be deriving substantial value from assets located in India if the value of such Indian assets represents at least 50% of the value of all the assets of the offshore company.

Uncertainty still persisted with respect to the applicability of indirect transfer provisions to multiple situations where the applicability of such provisions could have resulted in double taxation. Accordingly, representations were made to CBDT to clarify such situations and Circular No. 41 of 2016 was issued to clarify provisions of indirect transfer under the Act. The CBDT issued 19 FAQs in the circular.

For more information, please find the link below:

https://portal.ema.kworld.kpmg.com/tax/in/Documents/KPMG-Flash-News-CBDT-Circular-%20FAQs-on-indirect-transfer-provisions-under-the-Act-1.pdf

Other developments

Key highlights of the revised tax treaty between India and Cyprus

India has signed a revised tax treaty with Cyprus along with its Protocol. Key aspects of the revised tax treaty are summarised as follows:-

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- Providing for source-based taxation of capital gains arising from alienation of shares, instead of residence-based taxation under the existing tax treaty. However, a grandfather clause has been provided for investments made prior to 1 April 2017, in respect of which capital gains would continue to be taxable under residence-based concept;
- Expanding the scope of permanent establishment ("PE") and reducing the tax rate on royalty in the country from which payments are made to 10% from the existing rate of 15%, in line with the tax rate under Indian tax laws;
- Providing for assistance between the two countries for collection of taxes;
- Updating the provisions related to exchange of information to accepted international standards, which will enable exchange of banking information and allow the use of such information for purposes other than taxation with the prior approval of the competent authorities of the country providing the information; and
- Updating the text of other provisions in accordance with the international standards and consistent policy of India in respect of tax treaties.

The provisions of revised tax treaty will enter into force after the completion of necessary internal procedures in both countries and is expected to take effect in India in respect of income derived in fiscal years beginning on or after 1 April 2017.

For more information, please find the link below:

https://portal.ema.kworld.kpmg.com/tax/in/Documents/KPMG-Flash-News-Key-highlights-of-the-revised-tax-treaty-between-India-and-Cyprus-1.pdf

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Indonesia

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General overview

The Indonesian Ministry of Finance has issued Ministry of Finance Regulation number 213/PMK.03/2016 ("PMK 213') titled "The type of additional documents and/or information mandatory to be kept by taxpayers who conduct transactions with related parties and its procedures for management".

PMK 213, which has immediate effect from its date of promulgation on 30 December 2016, has made substantial changes to the existing transfer pricing documentation circular legislated under Director General of Tax PER-32/PJ/2011 ("PER 32"). It is worth noting that PMK 213 has not repealed PER 32, which implies that the existing PER 32 requirements would concurrently have to be met in accordance with Indonesian Transfer Pricing Regulations.

In summary, PMK 213 requires three types of transfer pricing documentation:-

- Master File, providing a broader overview of the business group operations (i.e. ownership structures, financing activities etc.);
- Local File, providing information on the Indonesian taxpayer (i.e. identification of the business activities, information on related party transactions etc.); and
- Country by Country ("CbC") Report, requiring, inter-alia, to disclose the income allocation, taxes paid, permanent employee headcount, list of business group members etc.

PMK 213 stipulates the value thresholds for preparation of Master File and Local File as follows:-

Master File and Local File Threshold Requirements

A Master File and Local File will be required to be prepared and available by no later than four months subsequent to the end of the applicable tax year if the Indonesian taxpayer has conducted related party transactions in the current year and any of the following value thresholds have been exceeded:

- The taxpayer has gross revenue in the prior tax fiscal year exceeding IDR 50 billion (approximately equating to USD 3,738,880);
- The taxpayer has performed affiliated transactions for tangible goods in respect of the prior tax fiscal year exceeding IDR 20 billion (approximately equating to USD 1,495,440);
- The taxpayer has performed either intra-group service transactions, interest payments, utilisation of intangible goods or other affiliated transactions in respect of the prior tax fiscal year exceeding IDR 5 billion (i.e. other than affiliated transactions for tangible goods) (approximately equating to USD 373,860); or
- The taxpayer has performed affiliated transactions with an affiliated party domiciled in a country or jurisdiction with an income tax rate lower than the Indonesian corporate income tax rate (i.e. currently 25%) and no value threshold.

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PMK 213 does not specify separate thresholds for the preparation of Local file and Master file. Accordingly, on the basis the specific thresholds have been met, both Local File and Master File will need to be prepared by the Indonesian taxpayer. Although Local File and Master File is not required for submission as attachments to the Corporate Income Tax Return but only upon the Director General of Tax request (such Local File and Master File should in any event be ready by no later than four months subsequent to year end), it should be summarized in the format provided in PMK 213 as attachment to the relevant Corporate Income Tax Return. That is, in the event the threshold applies for the tax fiscal year ended 30 December 2016, the Local File and Master File should be available within four months (i.e. 30 April 2017) with the summary attached to the 2016 Corporate Income Tax return.

Furthermore, PMK 213 does not repeal nor modify the existing requirements of transfer pricing documentation. Accordingly, transfer pricing documentation will still be required to be prepared for affiliated transactions exceeding IDR 10 billion per transaction counterpart (approximately equating to USD 747,776). In addition, PMK 213 does not exempt domestic related party transactions. Therefore such value of domestic affiliated transactions should be taken into account in determining whether the specific threshold criteria has been exceeded.

In the event the specific value thresholds have not been met, such transactions below the threshold are still subject to review by the Indonesian Tax Office under the terms of Indonesian Tax Law (i.e. considering the deductibility in complying with the arm's length principle etc.). Accordingly, we suggest the Indonesian taxpayers carefully consider the extent to which it may be commercially appropriate to analyze and document such transactions, irrespective of the threshold.

Country-by-Country ("CbC") Report Threshold Requirements

A CbC report must be prepared and made available by no later than twelve months subsequent to the applicable tax fiscal year if any of the following value thresholds have been exceeded:

- A Indonesian taxpayer classified as a parent entity, as defined with PMK 213, which has consolidated gross revenue exceeding IDR 11 trillion (approximately equating to USD 823 million); or
- A Indonesian taxpayer whose parent entity is domiciled in a country or jurisdiction where such location:
    - Has a CbC regime legislated within its domestic tax law;
    - Has no Exchange of Information ("EoI") agreement concluded with the Indonesian Government; or
    - Has an EoI agreement with the Indonesian government but any such CbC report could not be obtained by the Indonesian government for whatever reason.

Accordingly, an Indonesian taxpayer may be required to file a CbC report in Indonesia regardless whether it is the ultimate parent entity of the multinational enterprise.

Other Observations

The Master File, Local File and CbC reporting should be prepared in Bahasa Indonesia or where such Indonesian taxpayer has obtained the approval to prepare its books and records in a foreign language (i.e. English), such transfer pricing documentation may be prepared in the foreign language (i.e. English) and translated to Bahasa Indonesia.

Indonesian taxpayers should note that under PMK 213, the failure to prepare Master and Local File will be deemed as "not complying with the arms' length principle". In addition, failure to deliver the Master File and Local File within the regulated deadline will result in such documents not being considered as "Transfer Pricing Documents".

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Japan

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Legislative developments

Outline of the 2017 tax reform proposals

The ruling coalition (the Liberal Democratic Party and New Komeito) agreed on the Outline of the 2017 Tax Reform Proposals ("Proposal") on 8 December 2016. The proposal itself is only an indicative outline and is unclear with respect to some of the contemplated changes. The details of the tax reform will be unveiled in the bills revising the tax laws and the succeeding amended tax laws, cabinet orders and ministerial ordinances. The final tax reform could differ from the Proposal depending on the outcome of discussions in the Diet.

The followings summarise the potential effects to financial institutions in this tax reform.

Withholding tax on interest income from Repo transactions

Under the current tax laws, interest and lending fees paid by specified financial institutions (broadly, Japanese financial institutions) to foreign financial institutions in respect of certain bond gensaki repo transactions and securities lending transactions are tax-exempt under certain conditions. This exemption rules will be expanded as follows:-

	To be newly included
(1) Scope of specified financial institutions	Certain persons among those who mainly make call loans or act as intermediaries for the lending and borrowing of such call money in the course of trade Clearing agencies of financial instrument transactions
(2) Scope of foreign financial institutions	Foreign companies who are engaged in financial instruments obligation assumption services
(3) Scope of tax-exempt income	Interest and lending fees arising from bond gensaki repo transactions meeting the following conditions: • Transactions are conducted between foreign companies other than foreign financial institutions(*) and specified financial institutions by use of book-entry Japanese Government Bonds and satisfy certain conditions (e.g. the transaction period does not exceed 3 months.) • Transactions commence from 1 April 2017 to 31 March 2019.

(*) The following companies will be excluded from "foreign companies other than foreign financial institutions".

- Affiliated companies of specified financial institutions
- Companies located in jurisdictions which have not concluded tax treaties with Japan

Detailed procedural rules for new transactions discussed in (3) above will be established.

The above amendments discussed in (1) and (2) will be applied to interest and lending fees arising from transactions commencing on or after 1 April 2017.

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Japanese Anti-Tax Haven (CFC) rules

Background

The Japanese CFC regime is a mechanism to include the income derived by certain foreign companies as taxable income of their Japanese shareholding companies under certain criteria to deter tax avoidance by utilizing foreign subsidiaries of Japanese companies.

Under the 2017 tax reform, the Japanese CFC regime will be extensively amended in light of the final report of Action 3 (Designing Effective Controlled Foreign Company Rules) of the BEPS Project, which was released by the Organisation for Economic Co-Operation and Development ("OECD") on 5 October 2015.

Key Points of Amendments

- The tax rate exemption rule whereby the CFC regime would only apply to a Foreign Related Company whose effective income tax rate is less than 20% will be abolished, thereby resolving under-inclusion issues (i.e. where the effective income tax rate of a Foreign Related Company is 20% or more, even if it generates income without economic substance, such income is automatically exempt from the CFC regime.).
- A Foreign Related Company whose effective income tax rate is 20% or more will be exempt from applying the Economic Activity Tests.
- A Foreign Related Company whose effective income tax rate is 20% or more is subject to the CFC regime only when it is one of three types of company (a Paper Company, a Cash Box or a Black-List Company). (Note that a threshold test of 30% will be set up)
- The Exemption Tests (to be renamed as the Economic Activity Tests) will be amended and it is expected that over-inclusion issues such as for aircraft leasing companies will be resolved.
- The scope of passive income will be expanded.
- A *de facto* control test will be added to the criteria of a Foreign Related Company and Japanese shareholder subject to the income inclusion rules.

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Korea

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Legislative developments

The National Assembly approved the 2017 tax reform proposals

The 2017 tax reform proposals include the proposals of Country-by-Country ("CbC") report filing requirement, annual limitation of utilizing 80% of carried forward tax loss and extension of tax refund request period to 5 years for non-residents and foreign companies. The details of these proposals that were explained in Issue 57 are all effective with no change or amendments.

Revisions to Master File and Local File requirements

The National Assembly also approved the 2017 tax reform proposals to extend the filing due date for the Master file and Local file submission to 12 months after the fiscal year end date. Under the current tax law, the Master File and Local File must be submitted by the filing due date of a corporate income tax return, which is 3 months after the fiscal year-end. Further, the draft Enforcement Decrees provide that transactions covered under an advance pricing agreement would be exempt from inclusion in the Local File. The amended law has become effective for the Master File and Local File submitted to the Korean tax authority on or after 1 January 2017.

Taxation rulings and determinations

Ruling: Josim 2016-Seo 3196

A ruling (Josim 2016Seo 3196) by the tax authorities provides that the costs incurred by local branch of a foreign bank from risk participation or stand-by Letter of Credit ("LC") transaction for transfering its credit risk to its head office or other foreign branches are not falling into the non-deductible cost specified under the Article 64 (1)(2) of Enforcement Decree of Corporate Income Tax Law. The relevant Article specifies that cost incurred from a guarantee transaction between local branch and its foreign head office is not deductible to the local branch.

Both risk participation transaction and stand-by LC transaction are frequently incurred in the banking industry. It is used by the local branch of foreign bank to transfer its credit risk to its head office or other foreign branches when its customer fails to redeem its loan or the local branch guarantees payment for its customer.

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Malaysia

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Legislative updates

2017 Budget Proposals

Reduction of Corporate Income Tax based on the Increase in Chargeable Income ("CI")

To reduce cost of doing business and encourage businesses to strive in order to increase their CI during the current challenging global economic situation, it is proposed that reductions in the income tax rate based on the percentage of increase in CI as compared to the immediate preceding year of assessment ("YA") to be given to the companies and entities subject to meeting certain criteria.

The reduction of the income tax rate is as follows:-

Percentage of Increase in CI as Compared to the Immediate Preceding YA	Percentage Point Reduction	Income Tax Rate Applicable for Increase in CI (%)
Less than 5.00	Nil	24
5.00 – 9.99	1	23
10.00 – 14.99	2	22
15.00 – 19.99	3	21
20.00 and above	4	20

The proposal is subject to the statutory order to be gazetted and would be effective for YA 2017 and YA 2018.

Increase in Stamp Duty Rate

It is proposed in the 2017 Budget Speech (but was not mentioned in the Finance Act 2017) that the stamp duty on instruments of transfer of real estate with value in excess of RM1,000,000 be increased from 3% to 4% with effect from 1 January 2018.

Extension for Income Tax and Stamp Duty Exemptions for Islamic Banking and Takaful Business

It is proposed that the following incentives given to International Currency Business Unit which operates Islamic banking and Takaful business activities transacted in foreign currencies be extended for another 4 years:-

- Full tax exemption on income received by Islamic banks licensed under the IFSA and financial institutions licensed under the FSA operating Islamic banking business transacted in foreign currencies including transactions with Malaysian residents;
- Full tax exemption on income received by Takaful companies and Takaful unit licensed under the IFSA and FSA operating takaful business transacted in foreign currencies including transactions with Malaysian residents; and
- Full stamp duty exemption on instruments executed pertaining to Islamic banking and takaful activities transacted in foreign currencies.

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The proposal extends the tax incentive period up to YA 2020 for first two items whilst the third item is extended for instruments executed up to 31 December 2020. The third proposal item has been effected via Stamp Duty (Exemption) (No.3) Order 2016.

Income Tax Rules 2016

Deduction for Expenditure on Issuance of Retail Debenture and Retail Sukuk

The following tax deductions are allowed to be deducted by a company resident in Malaysia pursuant to the above Rules:-

- double deduction on qualifying additional expenses incurred on the issuance of retail debentures and retail sukuk structured under the principles of Murabahah or Bai' Bithaman Ajil (based on the concept of Tawarruq), Mudharabah, Musyarakah, Istisna' or any Shariah principle other than the principle mentioned in the next bulletpoint, approved or authorised by the SC under the Capital Markets and Services Act 2007; and
- a deduction on additional expenses incurred on the issuance of retail sukuk under the principle of Ijarah or Wakalah comprising a mixed component asset and debt, approved or authorised by the SC under the Capital Markets and Services Act 2007.

The Rules are effective from YA 2016 to YA 2018.

Automatic Exchange of Financial Account Information

The above Rules which establish rules and procedures to be followed by the Malaysian Financial Institutions for automatic exchange of information of financial accounts under the Common Reporting Standard ("CRS") regime have been released. CRS builds upon other information sharing legislation, such as Foreign Account Tax Compliance Act and the European Union Savings Directive.

The Rules entered into force on 1 January 2017.

Country-By-Country Reporting

The above Rules sets out the country-by-country reporting rules. It will be used in assessing the level of transfer pricing risks and other Base Erosion and Profit Shifting related issues in Malaysia.

The Rules entered into force on 1 January 2017.

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Mauritius

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Legislative updates

Tax holiday for corporations

Entities holding the following licences issued by the Financial Services ("FSC") on or after 1 September 2016 will be granted a 5-year tax holiday:-

- Global Treasury Management Activities Licence;
- Global Legal Advisory Services Licence;
- Investment Banking Licence;
- Overseas Family Office (Single) Licence; or
- Overseas Family Office (Multiple) Licence.

A tax holiday of 8 years has been granted to corporations holding a Global Headquarters Administration Licence with the FSC on or after 1 September 2016.

In order to become eligible for the tax holidays, the corporations should meet the minimum employment and substance requirements as specified by the FSC.

The abovementioned tax holidays are valid as from the income year in which the corporation is granted the abovementioned licences by the FSC. The above tax holidays are limited in time to enable the take-off of certain activities and should not be considered as a tax practice which is harmful.

Tax holidays for employees on emoluments

Employees resident in Mauritius are eligible to a 5-year tax holiday on their emoluments subject to the following criteria:-

- Emoluments are derived from a corporation licensed by the FSC;
- The asset base being managed by the employee should be an average of USD100 million over the last financial year;
- The employer must submit a declaration to the FSC, to the effect that the employee has managed an asset base averaging USD100 million over the last financial year, signed by two directors and certified by the auditors; and
- Employees are issued with an Asset Manager Certificate, a Fund Manager Certificate or An Asset and Fund Manager Certificate by the FSC on or after 1 September 2016.

The 5-year tax holiday is valid as from the income year in which the employee is granted the above mentioned certificate(s) by the FSC.

The Certificate will be issued by the FSC to the employee on an annual basis, subject to the employee continuing to satisfy the above criteria.

Other tax holidays

Non-citizens of Mauritius who make investments of more than USD25 million on or after 1 September 2016 are eligible for a 5-year tax holiday.

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Companies wholly owned by non-citizens of Mauritius making investments of more than USD25 million in Mauritius are eligible for a 5-year tax holiday.

In order to be eligible for the tax holidays, terms and conditions of the Board of Investment should be complied with.

The 5-year tax holiday is valid for a period of 5 succeeding income years as from the income year in which the investment is made.

Investment in securities by Category 2 Global Business Licence companies ("GBC2")

The Financial Services Act ("FSA") has been amended to allow a GBC2 to invest in any security listed on a securities exchange licensed under the Securities Act.

For the purpose of opening securities account and investing in listed securities, GBC2s may now enter into a business relationship with licensed investment dealers. The investment dealers will need to conduct all due diligence as per provisions of Code on the Prevention of Money laundering and Terrorist Financing issued by the FSC.

Furthermore, the clearing and settlement facilities of the securities exchanges will have to submit to the FSC a monthly summary of purchases and sales in terms of number of shares transacted and amount under each security made by the GBC2.

Taxation rulings and determinations

Income Tax Rulings

TR168

A French national who is tax resident in Mauritius received dividends of Euro10 million from a company resident in Mauritius and holding a Category 1 Global Business Licence.

The Mauritius Revenue Authrity ("MRA") confirmed that in accordance with the Income Tax Act ("ITA"), dividend paid by a Mauritius resident company and dividend received by the Mauritian tax resident are exempt from income tax in Mauritius.

It also clarified that, unless provided in the ITA, emoluments, dividends and interests paid by an exempt body of persons or exempt persons will be subject to income tax in Mauritius.

TR170

A domestic company owned by two French residents acquired an immovable property under the Integrated Resort Scheme ("IRS"). The company was not engaged in any commercial activity in Mauritius and the acquisition of the property was done with the intention of the shareholders to settle in Mauritius. The purchase of the property was financed out of personal savings of the shareholders in the form of a loan to the company. The shareholders decided to sell the property by selling all their shares in the company holding the property.

The ruling confirmed that the gains or profits derived by the shareholders from the sale of their shares in the company will fall within the ambit of paragraph 6(a) and 6(b) of the Article 1 of the Protocol of the Convention between France and Mauritius.

As per the aforementioned paragraphs, gains arising on disposal of shares in a company owning immovable property in Mauritius are subject to the same tax treatment as gains arising on disposal of immovable property in Mauritius and gains arising on disposal of shares forming a substantial part of the capital of a Mauritian company may be taxed in Mauritius. Since the gains constitute capital gains, they will not be subject to tax in Mauritius.

TR171

A company incorporated in Mauritius and holding a Category 1 Global Business Licence has started its operation in the business of acquiring and holding financial instruments in overseas jurisdictions. The company has royalty obligation payments to non-residents for the use or right to use a Software Licence. The company has incurred a gross loss in its first year of operation but will

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derive gross income in subsequent years from foreign sources. The company does not have any Mauritian source income.

The ruling confirmed that royalty paid to a non-resident by a company holding a Category 1 Global Business Licence out of its foreign source income is exempt from income tax in Mauritius.

Other developments

Foreign Account Tax Compliance Act ("FATCA")

Registration of Sponsored Investment Entities

From 1 January 2017 onwards, Sponsored Investment Entities will no longer be able to use the Global Intermediary Identification Number ("GIIN") of their Sponsoring Entity.

Sponsored Investment Entities should make use of their own GIIN from 1 January 2017 onwards.

Common Reporting Standard ("CRS")

Due diligence for New Account Opening

Mauritius entities classified as Financial Institutions will be required to have new account opening procedures in place from 1 January 2017.

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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

The Finance and Expenditure Select Committee of New Zealand's Parliament ("FEC") reported back the Taxation (Annual Rates for 2016-17, Closely Held Companies, and Remedial Matters) Bill on 24 November. It now awaits enactment.

The Bill widens the application of New Zealand's non-resident withholding ("NRWT") rules, changes the tax rules for closely-held companies and the treatment of certain related-party debt remissions (and debt capitalisations), and contains a number of changes to good and services tax ("GST") and various remedial amendments. Please refer to our previous update in the second quarter of 2016, which summarises the Bill as introduced.

The FEC changes to the Bill are largely aimed at clarifying the rules and correcting drafting errors.

One of the FEC's substantive recommendations is leaving unchanged the existing Approved Issuer Levy ("AIL") eligibility requirements. The Bill, as introduced, limited the ability to deduct AIL (instead of NRWT) on interest payable to non-residents to prescribed circumstances, such as if the New Zealand borrower or foreign lender are financial institutions or widely-held companies. The FEC's recommendation retains the status quo.

This should mean that Financial Institution lending arrangements, which currently rely on the AIL concession, are unaffected. However, the remaining changes do need to be considered.

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

The FEC also reported back the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill on 28 November. It also awaits enactment.

The Bill includes new disclosure requirements for foreign trusts, implements Automatic Exchange of Information ("AEOI") from 1 July 2017, and contains various business tax proposals (including a new method for calculating provisional income tax payments and safeguards from application of interest charges where tax is underpaid).

Our previous update in the third quarter of 2016 summarises the Bill as introduced. Similar to the other Tax Bill, the FEC's recommended changes are largely fine tuning rather than policy changes.

In relation to the implementation of AEOI, the FEC has capped penalties for non-compliance and extended the period where financial institutions can argue it has made "reasonable efforts to comply" (for penalties protection purposes).

Taxation rulings and determinations

2015/16 Multinational Enterprises Compliance Focus Guide

In November 2016, Inland Revenue launched its 2015/16 Multinational Enterprises Compliance Focus Guide.

It provides insights into Inland Revenue's monitoring of all New Zealand businesses, including their:-

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- Tax governance and control structures. For the first time, Inland Revenue is actively encouraging companies to publicly disclose tax-related information, including a reconciliation between cash tax paid and accounting tax expense, and an explanation of major differences;
- Compliance with international tax regimes, including transfer pricing, cross-border financing and controlled foreign company ("CFC") rules. Transfer pricing continues to feature prominently as a risk area, which is closely tied to a number of the OECD BEPS initiatives; and
- Their responses to Base Erosion and Profit Shifting ("BEPS") developments, both in New Zealand and internationally.

The Guide also covers Inland Revenue's Business Transformation project. It notes key business tax and GST/Pay as you earn ("PAYE") legislative and administrative reforms will be implemented within a 2017-19 timeframe. Under business transformation, taxpayers will need to provide Inland Revenue more information in a format that can be easily matched and monitored.

Inland Revenue draft guidance on Automatic Exchange of Information ("AEOI") released

In December 2016, Inland Revenue released draft guidance on how AEOI under the OECD's Common Reporting Standard ("CRS") will operate in New Zealand. The aim is to provide practical guidance to New Zealand Financial Institutions ("NZFIs") and others on how the CRS is intended to apply from 1 July 2017.

The draft guidance is based on the reported-back Taxation (Business Taxation, Exchange of Information, Remedial Matters) Bill (see above), which has not been enacted. The draft guidance is therefore subject to the terms of the final legislation.

The draft guidance contains information on:-

- When an entity will be a NZFI;
- When a NZFI will be reporting / non-reporting Financial Institute;
- The types of "financial accounts" subject to CRS due diligence;
- The CRS data that needs to be reported;
- Record keeping and sanctions for NZFIs and their investors; and
- The application of the CRS to particular types of entities, such as trusts, partnerships, collective investment vehicles and estates.

Consideration should be given to whether the draft guidance means a particular entity or structure is an NZFI given the broad definition under the CRS. If the NZFI definition applies, whether the draft guidance provides workable guidance and examples on how to carry out CRS due diligence should be considered. Feedback on the draft guidance was due by 28 February 2017.

Other developments

Business Transformation – Proposals for Modernising the Tax Administration Act

In December 2016, the New Zealand Government released a Discussion Document, Making Tax Simpler – Proposals for Modernising the Tax Administration Act. The document proposes a number of changes to New Zealand's Tax Administration Legislative Framework, including:-

- Supporting Inland Revenue's information sharing with other Government agencies and narrowing taxpayer confidentiality rules so they do not apply to non-taxpayer specific information;
- Outlining rules for collection of third-party data, including for Inland Revenue's risk profiling and audit purposes, and transparency about its collection;

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- Reducing the cost of getting Inland Revenue "certainty", particularly for small and medium-sized enterprises, in relation to binding taxation rulings and expanding the scope of the rulings regime;
- Explicitly recognising the role of various intermediaries in the tax system; and
- Extending Inland Revenue's administrative powers, including its "care" and "management" discretion to correct errors and allowing greater use of Government regulations to support Inland Revenue's Business Transformation initiatives.

The proposals are expected to have a wide impact.

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Philippines

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Tax Court case summaries

Banco de Oro, et. al. vs. Republic of the Philippines, et. al., G.R. No. 198756

Under the Tax Code, interest income from long-term deposit or investment in the form of savings, common or individual trust funds, deposit substitutes, investment management accounts and other investments evidenced by certificates shall be exempt from income tax. A deposit substitute is an alternative form of obtaining funds from the public other than deposits. The term "public" means borrowing from twenty or more individual or corporate lenders at any one time.

The Supreme Court declared that the phrase "twenty or more lenders" should be estimated at the time when the government securities are sold to investors. Under the auction method used by the Bureau of Treasury ("BTr") to originate government securities, the Government Securities Eligible Dealers ("GSED") are acting as agents of the BTr. Thus, the existence of twenty or more lenders should be estimated from the time when the successful GSED-bidder distributes the government securities to the final holders. When the GSED sells the government securities to twenty or more investors, the government securities are deemed to be in the nature of a deposit substitute, and are taxable as such.

The subject decision in this case is to be applied prospectively. Previous interpretations of the Commissioner of Internal Revenue on an ambiguous law are entitled to great weight, and taxpayers who relied on the same cannot be prejudiced in their rights.

Taxation rulings and determinations

Bureau of Internal Revenue ("BIR") issuances

BIR issued the Revenue Memorandum Circular ("RMC") No. 127-2016 [2 December 2016] and at the same time lifted suspension of effectivity of Certain Revenue Issuances Provided Under Revenue Memorandum Circular No. 69-2016 dated 1 July 2016 and RMC No. 62-2016 (Clarification on Proper Tax Treatment of Passed-on Gross Receipts Tax).

RMC No. 62-2016 clarifies that all banks, non-bank financial intermediaries performing quasi-banking function, financing companies and other financial intermediaries not performing quasi-banking functions conducting business in the Philippines are directly liable for gross receipt tax ("GRT"). The passed-on GRT should form part of the tax base upon which the GRT is calculated and shall be considered as receipt of gross income classified as other fees and charges.

On the other hand, the customer / client / borrower can claim the passed-on GRT as a deduction for income tax purposes.

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Sri Lanka

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Legislative developments

Value Added Tax ("VAT") Amending Act passed

The Value Added Tax Amending Act was passed by Parliament on 26 October 2016. The following is a synopsis of the Amending Act.

Revision of VAT rate

The VAT rate on supply of Financial Services has been increased to 15%.

Registration threshold for VAT

The registration threshold for VAT has been revised to Rs3 million for a taxable period of three months or Rs12 million in the twelve months period with effect from 2 May 2016.

Changes to VAT Compliance – Financial Services

The taxable period has been increased from six months to twelve months with effect from 1 January 2017. The Return is required to be lodged within six months from the end of the taxable period. An interim estimate should be submitted to the Revenue Authorities at the end of every six months period.

Change in charging scope of Financial VAT

Supplying of leasing facilities under any operating lease agreement is removed from Financial VAT and is now under the charging scope of mainstream VAT.

Definition - Similar services as a finance company

A non-Central Bank of Sri Lanka registered person carrying on similar services as a finance company is defined to include any person or body of persons, corporated or unincorporated, whose business or part of whose business consists of the acceptance of money by way of deposit, debenture or bond or in any other form, and on the payment of interest, profit or discount thereon, or provision of loans for the receipt of interest, no matter such acceptance is on its own behalf or on behalf of any other person or not.

Exclusion of liability

Sale of shares not carried out as a business by a company is not chargeable for Financial VAT.

The Budget Proposals for 2017 were presented to Parliament

Corporate Income Tax

It is proposed to revise the Corporate income tax rate to create a three-tier tax rate structure of 14%, 28% and 40%. Banking, Finance and Insurance sectors will be subject to income tax at 28%. The current income tax rate of 10% applicable on Funds will be increased to 14%. Certain sources of income (such as dividends, interest income from deposits, treasury bills and bonds) of certain persons which are currently taxed at 10% will be taxed at 14%.

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Withholding Tax ("WHT")

The WHT on interest income from deposits accruing to any individuals will be increased to 5% from the present rate of 2.5%. Interest income up to Rs1.5 million per annum received by senior citizens will be exempt from income tax.

WHT will be re-introduced on specified fees where the payment exceeds Rs50,000 per month.

Financial Transactions Levy ("FTL")

A FTL of 0.05% will be introduced on total cash transactions, including easy cash, by banks and other financial institutions. FTL will be treated as expenditure for income tax purposes.

Capital Gains Tax ("CGT")

CGT will be imposed on gains from disposal of immovable properties at the rate of 10%.

Notional Tax Credit

Income on instruments such as Treasury Bills, Bonds or Corporate Debt Securities which are subject to upfront tax will be taxed on net interest income and credit will not be granted for tax withheld.

Removal of Exemption

Prevailing tax exemption on certain dividends, interest and profits from investments in listed securities and other instrument will be removed. The current exemption on dividend received from investment in Unit Trusts and Mutual Funds for the Corporate Sector will be removed.

Exchange Control Regulations

The current Exchange Control Act will be repealed and a Foreign Exchange Act will be introduced.

An investment Inflow Management Act will be introduced to facilitate the inward remittances of foreign exchange with minimum restrictions.

Restrictions imposed on international borrowings by Non-Bank Financial Institutions will be increased beyond 35% of the total assets indicated in the Balance Sheet.

Colombo International Financial Centre

The Government intends to establish a Financial Centre in Sri Lanka.

Consolidation of Financial Institutions

The government encourages the consolidation of Private banks to meet the requirements of the Basel III.

New Income Tax Act

The current Inland Revenue Act will be re-drafted.

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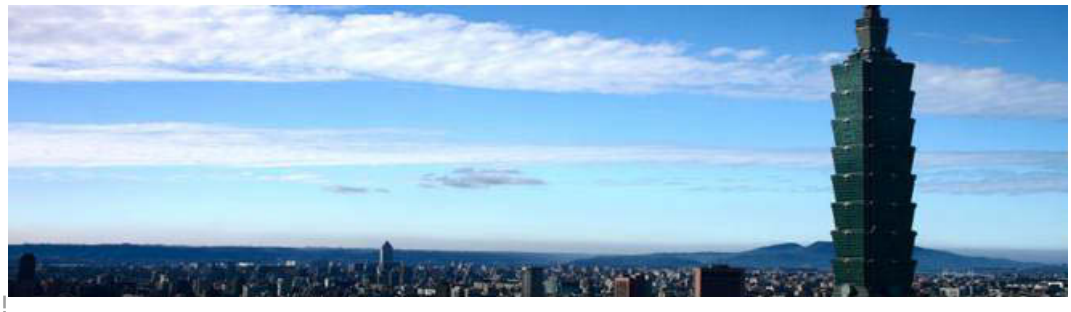
Taiwan



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Legislative developments

Securities Transaction Tax Amendment

Article 2-1 of the Securities Transaction Tax Act has recently been amended. The amendment includes the extension of the exemption treatment from securities transaction tax on the sale of corporate bonds and debenture. In addition, the amended Article also extends the exemption to trading in certificates of a listed exchange traded fund ("ETF") that mainly invests in bonds, i.e. bond ETF.

The exemption will be in force until 31 December 2026.

Other developments

Taiwan-Poland double taxation Treaty

The Taiwan-Poland double taxation treaty ("DTA") was signed on 21 October 2016 and has become effective on 1 January 2017.

Similar to other double taxation treaties, under the terms of the DTA, the tax resident of each country would only pay tax on the income generated by their permanent establishments in the other country. Further, the DTA also provides for reduced withholding taxes on dividends, interest and royalties. The reduced rates are as follows:-

- Dividend: 10%
- Interest income: 10%, 0% (for certain specific types of interest)
- Royalty: 3% (for royalty relating to the use of, or the right to use, industrial, commercial, or scientific equipment), 10% (royalties in all other cases)

Unlike the adoption for income tax exemption treatment, for adoption of reduced withholding rate pursuant to the DTA, no pre-approval from the tax authority will be required.

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Vietnam

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Legislative developments

New regulation on the offering and transaction of covered warrants

The Ministry of Finance has issued Circular No. 107/2016/TT-BTC (Circular 107/2016) dated 29 June 2016 on guidelines for the offering and transaction of covered warrants. The Circular focuses on the following matters:-

Offering and listing of warrants activities

Circular 107/2016 specified records and registration procedures for warrants offered as follows:-

- Warrants' initial registration must contain: type of warrants, method of implementing the warrant; base information of stock; time of warranty (from 3 months to 2 years); exercise price, offering registration price, conversion rates; number of warrants must be at least 1,000,000 units and in multiples of 10; limit offered based on Circular 107/2016;
- Additional offers can only be applied when the amount outstanding exceeds 80% of those issued and maturities are greater than 30 days;
- Offering registration should be submitted with one copy and attached thereto the online file to the State Securities Committee; and
- The issuer must publish the prospectus and issue a written notice on the website of the Department of Stock Exchange and of the issuer within 3 days from the date of getting the certificate of offering warrant.

In addition, Circular 107/2016 also stipulated security assets payment, distribution of warrant, suspended and cancelled offers, delisted listed warrant or suspended from trading and adjustments.

Activities of the warrant issuers

Circular 107/2016 stipulated warrant issuers should have two main activities as follows:-

- Making offered market activities: Issuing organizations must create the market to create liquidity. Warrants in self-employment account for market maker may not pledge or mortgage deposit, loan or collateral.
- Limitation risk activities of the issuers:
    - The issuers must have at least one employee in a risk management department who work relates to the offered warrant;
    - Issuing organizations must have sufficient securities for the risks avoidance plan;
    - Hedging transactions performed on an independent account for hedging or proprietary trading of the issuer; and
    - The issuers must report to the Stock Exchange of hedging activities daily from the date of listing warrants.

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Circular 107/2016 is effective from 1 January 2017.

New regulation on receivable amount proportions of the Asset Management Company of the Vietnamese credit institutions

On 27 December 2016, The SBV issued Circular No. 33/2016/TT-NHNN (Circular 33/2016) stipulating the receivable amount proportions of the Asset Management Company of Vietnamese credit institutions in terms of the rate on the bad debt recovery and the rate of the remaining original debt amount at the end of the period of the bad debt re-purchased by the Asset Management Company by the special bonds.

Accordingly, Circular 33/2016 stipulates the authority, principles and basis for determining the rates of the Asset Management Company of Vietnamese credit institutions.

- Jurisdiction: the SBV is authorized to decide the rate of receivable amounts of the Asset Management Company of Vietnamese credit institutions;
- Circular 33/2016 indicates the principles after implementing the identified rate of the receivable amount:-
    - Ensuring that the Asset Management Company has sufficient revenue to fully offset the operational cost in accordance with the law and minimize the costs for credit institutions in selling debts;
    - Encouraging the bad debts handling process;
    - Financial Planning for the fiscal year and the corporate classification of previous fiscal year are two based elements used by the SBV to identify the rate of receivable amounts;
    - The procedures to identify the rate of receivable amounts of the Asset Management Company of the Vietnamese credit institutions is stipulated as following:-
        - The Asset Management Company must report the expected rates of receivable amounts to the SBV no later than 1 March of the fiscal year;
        - The Department of Finance – Accounting collects the opinions from the Inspection Agents, the Bank Supervisors and the Department of Personnel after receiving the expecting report;
        - The Department of Finance – Accounting will then present the SBV to have document for collecting the agreement of The Department of Finance in no longer than 10 days; and
        - The SBV will decide and notify the Property Management Company and the credit institutions about the latest of receivables rate on 31 March of the fiscal year.

Circular 33/2016 was effected from 15 February 2017 and replaced Circular No. 20/2014/TT-NHNN.

New regulation on calculating the interest in receiving cash at bank activities and loans between the State Bank and credit institutions and other organizations

The SBV issued Circular No. 38/2016/TT-NHNN (Circular 38/2016) dated 30 December 2016 providing guidance on calculating the interest in receiving cash at bank activities and loans between the State Bank and credit institutions and other organizations.

In this regards, the most notable thing is that all the formulas used in calculating the interest on deposits and loans will produce an annual interest rate. However, based on the current guidance from Decision 652/2001/QD-NHNN (the Decision), interest would be based on the specific interest rates, including yearly, monthly, daily and hourly interest rates.

Moreover, the Decision also regulated that the State Bank and credit institutions record interest on transactions cash at bank, loans and borrowing cash based on the "accrual basis accounting" principle and financial regulations.

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Circular 38/2016 was effected on 15 February 2017.

New regulation on capital adequacy ratio to banks, foreign bank branches (SB) in Vietnam

The SBV issued Circular No. 41/2016/TT-NHNN (Circular 41/2016) dated 30 December 2016, which regulated capital adequacy ratio to banks, foreign bank branches (SB) in Vietnam.

Accordingly, the State Bank without subsidiaries shall regularly maintain the capital adequacy ratio determined on the basis of financial statements ("FS") of the bank at least 8%.

In addition, Circular 41/2016 also stipulates the State Banks with subsidiaries should maintain:-

- The capital adequacy ratio determined on the basis of FS of the bank at least 8%;
- The consolidated capital adequacy ratio determined on the basis of consolidated FS of the bank at least 8%;

In case a subsidiary is an insurance business, the percentage of consolidated capital adequacy is determined on the basis of the consolidated financial statements of the bank which does not consolidated a subsidiary company engaging in insurance business according to the principles of accounting and financial reporting laws for credit institutions.

Circular 41/2016 will be effective from 1 January 2020; however, the State Bank has the ability to make capital adequacy ratio before 1 January 2020 may submit written application to register in advance.

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