General tax update for financial institutions in Asia Pacific

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Issue 59, June 2017

The implementation of BEPS measures is now well underway as are the AEOI local implementation processes. Financial Institutions can expect a rapid series of measures over the coming months putting significant pressure on both internal and external resources.

Highlights

- Taxpayer Alert 2017/1 – Re-characterisation of income from trading businesses
- Consultation Paper on stapled structures

- Ministry of Finance and State Administration of Taxation released supplementary notice on issues concerning VAT policies for asset management products
- SAT Released the Long-awaited Announcement on Special Tax Investigations, Adjustments and Mutual Agreement Procedures
- SAT published a discussion draft on "Due Diligence Administrative Measures on Non-residents' Financial Account Information in Tax Matters" for public comments

- The Hong Kong government plans to expand the list of reportable jurisdications for 2017 under the Common Reporting Standard
- The IRD issued practice note providing guidance on application of the new Regulatory Capital Securities rules to banks
- Hong Kong government introduces concessionary tax regimes for certain aircraft leasing activities

- The Finance Minister of India presented the Union Budget for the financial year 2017-18
- Central Board of Direct Taxes issued guiding principles for determination of the place of effective management of a company
- CBDT clarified on implementation of General Anti-Avoidance Rules under the Income-tax Act

- A revised Indonesia-india Avoidance of Double Taxation Agreement came into effect.
- Amendment to the implementation of the income tax treatment based on the provisions of an international agreement

- Guidance released on CbCR requirement
- Korea-Hong Kong signed for Automatic Exchange of Financial Account Requirement.

- The Finance Act 2017 was gazetted
- 2017 Budget Proposals were presented

- VAT reverse charge became applicable on non-VAT registered persons

- 2016 Taxation Bills enacted and 2017 Tax Bill introduced
- Consultation on NZ BEPS measures relating to transfer pricing, interest limitation and the Multilateral Instrument
- NZ Government announces NZ Superannuation eligibility age to rise

- Bureau of Internal Revenue, Revenue Regulations (RR) No. 3-2017, 24 February 2017 Implemented the Tax Provision of Republic Act No. 10693

- Singapore budget 2017 tax updates
- Asia Bond Grant Scheme

- Reform of the imputation system were proposed

- Extension of Additional Tax Deductions for New Capital Expenditure until 31 December 2017
- All penalties, criminal fines and surcharges imposed under any tax laws can no longer be claimed as a deductible expense

- New regulations on lending activities of credit institutions and foreign bank branches.
- New regulations on providing derivate products for commodity price of commercial banks
- New regulations on securities margin trading

Australia

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Taxation rulings and determinations

Taxpayer Alert 2017/1 – Re-characterisation of income from trading businesses

On 31 January 2017, the Australian Taxation Office ("ATO") issued Taxpayer Alert 2017/1, which outlines the ATO's concerns regarding arrangements which attempt to fragment a single integrated trading business in a contrived way into separate businesses / entities (but with the same economic owners). Under these arrangements, a substantial part of income from an integrated business carried on by an operating entity ("Operating Entity") that would otherwise be subject to Australian corporate tax (at the rate of 30%) is re-characterised as passive income derived by a trust ("Asset Trust") which is ultimately subject to Australian tax at a lower rate on distribution to investors.

The ATO's focus is on circumstances where:-

- the Operating Entity (which is typically a company or a trust taxed as a company) claims a tax deduction for payments to the Asset Trust (for the use of a property or financial asset);
- the Asset Trust distributes its income to investors who are taxed on a flow-through basis at concessional rates; and
- even though the Operating Entity is taxed at the corporate tax rate (30%), it does not have a significant amount of taxable income, largely due to deductions claimed in respect of the payments to the Asset Trust.

Stapled structures are one mechanism used in these types of arrangements, but the ATO's concerns are not confined to arrangements involving stapled structures. The ATO has described the following as examples of the types of stapled structures under scrutiny:-

- finance staples;
- synthetic equity staples;
- royalty staples; and
- rental staples.

The ATO has outlined various tools in its arsenal that it may seek to apply to eliminate the tax benefit purportedly generated by these types of arrangements. They include the following:-

- disallowing tax deductions for the payments made by the Operating Entity to the Asset Trust;
- applying Division 6C of Part III of the Income Tax Assessment Act 1936, on the basis that the Asset Trust "controls" the Operating Entity's trading business, such that the Asset Trust is a "public trading trust". This would result in the Asset Trust being taxed as a company at 30%, and it may compromise the Asset Trust's status as a "Managed Investment Trust" ("MIT") for tax purposes; and
- treating the payments made by the Operating Entity as "non-arm's length income" in the hands of the Asset Trust under Subdivision 275-L of the Income Tax Assessment Act 1997

(if it is a MIT), such that the excess amount of income would be taxed at 30% in the hands of the trustee.

Any financial institutions that are involved in structures exhibiting the features that the ATO is concerned with should re-examine those arrangements.

Also, any financial institutions that have provided financial accommodation to these types of structures should be mindful of the flow-on ramifications which may arise from the application of any of the tools in the ATO's arsenal against these structures, for example:

- the loss of the Asset Trust's status as a flow-through or tax-neutral vehicle;
- the loss of the Asset Trust's status as a MIT;
- the impacts on the borrower's credit risk rating (and loan-to-valuation ratios);
- any breaches of covenants or warranties in the transaction documents (e.g. triggering pre-emptive rights to change the terms of the financing);
- the financier's ranking in the event of a winding-up.

Other developments

Consultation Paper on Stapled Structures

On 24 March 2017, the Australian Government released its Stapled Structures Consultation Paper ("Consultation Paper") seeking submissions on potential policy options to address tax issues regarding stapled structures, the taxation of real property investments, and the re-characterisation of trading income.

The objective of the consultation process is to look at the options available for eliminating inappropriate re-characterisation of active income to passive income, whilst ensuring that Australia's tax regime is internationally competitive for foreign investment into Australian real estate and infrastructure assets.

While the Consultation Paper is intend to provide a basis for consultation, it is quite clear that the Government is envisaging some very significant changes to the income tax treatment of stapled structures. The extent of any impacts on stakeholders will become more apparent as the consultation process evolves, but already it seems clear that infrastructure and stapled property groups, foreign investors, and financiers will potentially be affected.

Traditional Australian real estate investment trusts ("A-REITs") which derive rental income from unrelated third parties and which do not have material cross-staple transactions are not of significant concern to the Government and are expected to retain flow-through tax treatment for their rental income. However, even these groups could be affected by some of the proposals flagged in the Consultation Paper, for example, the introduction of a specific A-REIT regime, and the potential treatment of staled groups as a consolidated entity for tax purposes.

Importantly for financiers that are looking to fund significant projects and transactions, the Consultation Paper creates additional uncertainty by potentially burdening borrower "security groups" with tax liabilities which have not been factored into financial models previously.

Financiers need to be mindful of the indirect impacts of any changes to the income tax treatment of stapled structures – for instance, potential impacts on asset values, and changes to the pricing and serviceability of debt.

Foreign investors (e.g. foreign pension funds) that currently enjoy sovereign immunity or Australian withholding tax exemptions or concessions will need to consider the extent to which any proposed changes will affect their after-tax rates of return from Australian investments.

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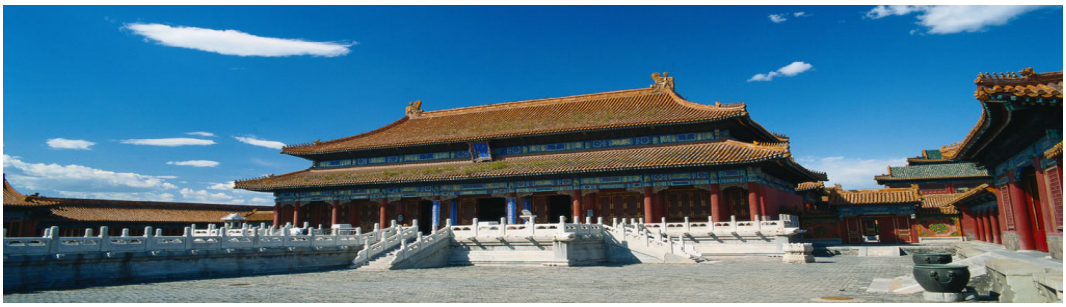
China



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Caishui [2017] No.2

Ministry of Finance ("MOF") and State Administration of Taxation ("SAT") jointly announced supplementary notice on issues concerning VAT policies for asset management products. Effective from 1 July 2017, managers of asset management products shall pay VAT for their taxable activities during the operation of asset management products. Where taxable activities occur before 1 July 2017 during the operation of asset management products and VAT has not been paid for such activities yet, VAT will not need to be paid; where VAT has already been paid, the amount of VAT paid may be offset against the amount of VAT payable in the subsequent months after 1 July 2017.

Caishui [2016] No.127

MOF, SAT and China Securities Regulatory Commission ("CSRC") issued Circular 127 announcing temporary exemptions from Chinese income taxes and Value Added Tax (VAT) for trading gains derived by foreign investors on trading listed shares, which transacted through Shenzhen-Hong Kong Stock Connect. Going the other direction, temporary income tax and VAT exemptions are also provided for the trading gains derived by Chinese investors from listed shares in Hong Kong, which transacted through Shenzhen-Hong Kong Stock Connect.

Announcement on Special Tax Investigations, Adjustments and Mutual Agreement Procedures ("Announcement 6")

SAT released its long-awaited Announcement 6. This followed on from the release of China's revised transfer pricing compliance regulations earlier in June 2016. Announcement 6 integrates some of the OECD BEPS work, particularly in relation to intangibles, into domestic regulations. It also consolidates previous regulations on self-adjustments and outbound payments, and incorporates some of the existing practices adopted for transfer pricing audits.

Other developments

SAT published a discussion draft on "Due Diligence Administrative Measures on Non-residents' Financial Account Information in Tax Matters" for public comments. According to the timeline, financial institutions in China shall conduct due diligence procedures beginning from 1 January 2017, identifying the financial accounts of non-resident individuals and enterprises and collecting and reporting the relevant information to SAT. Such information will be exchanged with the competent tax authorities of other jurisdictions on a regular basis and China is expected to engage in the first information exchange in September 2018.

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Hong Kong

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Common Reporting Standard ("CRS"): Proposed Expansion of the List of Reportable Jurisdictions

Under the CRS framework, financial institutions in Hong Kong are required to identify and report to 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. CRS reporting will commence from 2018 with respect to 2017 account information.

Hong Kong has signed bilateral Competent Authority Agreements (BCAA) with Japan and the UK for the exchange of CRS information from 2018 (with respect to 2017 data), and with Korea for the exchange of CRS information from 2019 (with respect to 2018 data). In view of the targeted approach adopted by Hong Kong, financial institutions are only required to report to the IRD for the first CRS reporting period (due in May 2018) the financial accounts held by tax residents of Japan and the UK.

As a result of international pressure for Hong Kong to accelerate this process, the Hong Kong government has added 73 jurisdictions (in addition to Japan and the UK) to Hong Kong's list of reportable jurisdictions for CRS purposes. The additions include all EU member states, all of Hong Kong's tax treaty partners which have committed to CRS, and other jurisdictions which have expressed an interest to the OECD in exchanging CRS information with Hong Kong. The new jurisdictions include Australia, Canada, China, France, Germany, India, Malaysia, Russia and Switzerland.

These changes are effective from 1 July 2017. Except for Korea, CRS information for the new 73 jurisdictions needs to be provided to the IRD with effect from 1 July 2017 (compared with 1 January 2017 for Japan and the UK).

The IRD indicated that, notwithstanding it will collect all financial data with respect to residents of these 73 new reportable jurisdictions, it will only exchange CRS information with jurisdictions which have a legal basis that allows for the automatic exchange of financial account information. This would include either updating or the signing of Comprehensive Double Taxation Agreements or Tax Information Exchange Agreements and concluding a BCAA with the relevant jurisdiction. The Hong Kong government is currently exploring an alternative legal basis for CRS information exchange, such as requesting Mainland China to extend its accession to various multilateral tax agreements to cover Hong Kong.

For more information, please find the link below:

https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/06/tax-alert-12-crs-bill-expansion-jurisdictions.pdf

Regulatory Capital Securities – IRD Practice Note issued

On 22 February 2017, the IRD issued Departmental Interpretation and Practice Note 53 ("DIPN 53") outlining its view on the application of the Regulatory Capital Securities ("RCS") rules enacted in June 2016.

DIPN 53 covers the key definitions of RCS and excluded securities. It provides a number of examples of the calculation of interest paid in respect to RCS.

The main item of interest in DIPN 53 is the application of detailed anti-avoidance measures. There are extensive comments on the application of the rules related to Specified Connected Persons and the restrictions imposed on deductions for payments made to related parties. This includes examples of funding raised via RCS issued to an offshore holding company.

The DIPN can be found at the link below:

http://www.ird.gov.hk/eng/pdf/e_dipn53.pdf

For more information, please find the link below:

https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/03/tax-alert-5-hk-regulatory-capital-securities-ird-practice-note-issued.pdf

Hong Kong government introduces concessionary tax regimes for certain aircraft leasing activities

The Hong Kong Government gazetted a bill ("the Bill") on 10 March 2017 which introduces a concessionary tax regime for certain aircraft leasing activities. The new rules are expected to apply from the 2017/18 year of assessment.

The main benefits of the proposed regime are two-fold:

- Aircraft leasing income earned by "qualifying aircraft lessors" will be taxed at 1.65% of net rental receipts. (This is achieved by applying a tax rate of 8.25% - i.e. one half of the normal Hong Kong profits tax rate – to 20% of the gross rental receipts less deductible expenses such as funding costs, but excluding tax depreciation.)
- A 8.25% tax rate will apply to "qualifying aircraft leasing management activities". This is widely defined to include, in addition to the standard lease management activities of procuring and leasing aircraft, a range of financing activities such as providing loans to associated companies to acquire aircraft, providing loans to airlines to acquire aircraft from qualifying lessors and providing residual value guarantees.

The new rules will apply to companies centrally managed and controlled in Hong Kong which conduct only qualifying activities.

For more information, please find the link below:

https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/04/tax-alert-10-concessionary-tax-regime-aircraft-leasing-activities.pdf

https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/05/tax-alert-11-hk-changes-extend-the-scope-proposed-aircraft-leasing-regime.pdf

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India

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Key highlights of the Union Budget 2017 Proposals

The Finance Minister of India presented the Union Budget for the financial year 2017-18 on 1 February 2017 before the Parliament. The key proposals are highlighted below:-

- It is proposed that indirect transfer provisions shall not apply in case of transfer of investments made by a non-resident in Category I and II Foreign Portfolio Investors ("FPIs") registered under the Securities and Exchange Board of Indian ("SEBI") (Foreign Portfolio Investors) Regulations, 2014. This provision is applicable with effect from Assessment Year 2012-13;
- It is proposed that the sunset clause with concessional rate of 5 percent on interest income derived by a FPI from rupee denominated bonds of an Indian company or Government security to be extended to 30 June 2020;
- It is proposed that the sunset clause with concessional rate of 5 percent on interest income derived by a non-resident under a loan agreement or on long-term bond including long-term infrastructure bond to be extended to 30 June 2020;
- It is proposed to provide tax neutrality on conversion of preference shares into equity shares of that Company - such transaction shall not be regarded as transfer;
- The Finance Act 2016 provided that gains arising on account of appreciation of rupee at the time of redemption of rupee denominated bond of an Indian company subscribed by a non-resident investor shall be ignored for the purpose of computation of full value of consideration. In order to further provide relief in respect of gains arising on account of appreciation of rupee, the said appreciation of rupee shall be ignored for the purposes of computation of full value of consideration at the time of redemption of rupee denominated bond of an Indian company to secondary holders. Further the transfer of rupee denominated bond of an Indian company issued outside of India by one non-resident to another non-resident shall not be regarded as transfer and hence, shall be outside the purview of capital gains taxation;
- It is now proposed to limit the exemption of long term capital gains only to the cases where STT has been paid at the time of acquisition of such shares on or after 1 October 2004. However, to protect the exemption for genuine cases where the Securities Transaction Tax ("STT") could not have been paid, it is also proposed to notify transfers for which the requirement of payment of STT shall not be applicable in order to avail of the exemption[1];
- Cost of acquisition of the shares in an Indian company by a foreign company in a tax neutral demerger of foreign company shall be taken as the cost of acquisition of the shares by the demerged foreign company;

[1] CBDT has issued draft notification notifying the condition of chargeability to STT shall not apply to all transactions of acquisitions of equity shares entered into on or after 1 October 2004 other than the specified transaction. Comments/ suggestions were invited from stakeholders on the draft notification by 11 April 2017.

For more details, please refer to the link below:

http://www.in.kpmg.com/taxflashnews/KPMG-Flash-News-CBDT-draft-notification-under-Section-10-38-of-the-Act-2.pdf

- Concessional tax rate of 10% in respect of long term capital gains derived from transfer of share in a private limited company by a non-resident shall be applicable retrospectively with effective from Assessment Year 2013-14;
- Surcharge of 10% to be levied on individuals, Hindu Undivided Family ("HUF"), Association of Persons ("AOP"), Body of Individuals ("BOI") and artificial juridical persons where taxable income is above INR 5 million and up to INR 10 million;
- To ensure timely filing of returns, it is proposed to levy a fee if the return was filed after the due date;
- Time limit for filing revised tax return is proposed to be at the earlier of 1) the end of the relevant assessment year or 2) completion of the assessment;
- Time limit for completion of assessment to be reduced from 21 months to 18 months for Assessment Year 2018-19 and to 12 months for subsequent years;
- Time limit for completion of re-assessment to be increased from nine months to 12 months for notices issued after 1 April 2019

Please note that unless otherwise specified, the above provisions shall be applicable with effective from Assessment Year 2018-19

For more details, please refer to the link below:

http://www.in.kpmg.com/TaxFlashNews-INT/Union-Budget-2017-18-3.pdf

Proposed amendments to the Finance Bill, 2017 relating to investors

It was proposed in the Bill that indirect transfer provisions shall not apply to transfer of investments made by a non-resident in Category I and II FPIs registered under the SEBI (Foreign Portfolio Investors) Regulations, 2014, with effect from 1 April 2012.

It is now proposed that indirect transfer provisions shall not apply to transfer of investments made by a non-resident by way of investment, directly or indirectly, in a Foreign Institutional Investor ("FII") from Assessment Year 2012-13 to Assessment Year 2015-16. As proposed in the Bill, exclusion of FPIs (Category I and II) from indirect transfer related provisions continues.

For more details, please refer to the link below:

http://www.in.kpmg.com/TaxFlashNews-INT/KPMG-Flash-News-Proposed-amendments-to-the-Finance-Bill-2017-1.pdf

Central Board of Direct Taxes ("CBDT") clarifications on implementation of General Anti-Avoidance Rules under the Income-tax Act

CBDT has issued a Circular to answer specific questions on the implementation of the provisions of General Anti Avoidance Rules ("GAAR"). The clarifications attempt to address the interaction between the Limitation of Benefit ("LOB") article and the domestic anti-avoidance provisions by stating that if the case is sufficiently addressed by the LOB article in the tax treaty, there shall not be an occasion to invoke GAAR. However, some of the clarifications provided in the Circular are subjective in nature and it may lead to further litigation.

For more details, please refer to the link below:

http://www.in.kpmg.com/TaxFlashNews-INT/CBDT-clarifications-on-implementation-of-General-Ati-Avoidance-Rules-1.pdf

CBDT issues guiding principles for determination of the place of effective management of a company

Prior to the amendment of Section 6(3) of the Income Tax Act, a company is said to be a resident in India in any previous years if it is an Indian company or the control and management of its affairs is situated wholly in India during that year. The provisions of the Section 6(3) of the Income Tax Act were amended with effect from 1 April 2016 to provide that a company is said to be resident in India in any previous year if it is an Indian Company or Place of Effective Management

("POEM") is in India. These provisions have come into effect from 1 April 2017 and it is applicable from Assessment Year 2018-19 onwards.

The CBDT has issued the final guiding principles to be followed for determination of POEM.

The final POEM guiding principles are similar to the draft with an attempt to provide contextual clarity on several open issues. The final guidelines provide clarification on 'income', 'value of assets', 'number of employees' and 'payroll' with regard to determining 'active business outside India' which were not present in the draft. These guidelines are not intended to cover foreign companies or to tax their global income, merely on ground of presence of Permanent Establishment ("PE"), a foreign company completely owned by an Indian Company, some of the directors are residents in India, etc. An important exception has been provided for 'interest' income earned by a banking companies / Public Financial Institutions. Any interest income earned by them shall not be considered as passive income. The guidelines provide certain illustrations to provide clarity on various aspects.

For more details, please refer to the link below:

http://www.in.kpmg.com/TaxFlashNews-INT/KPMG-Flash-News-POEM-Guidelines-4.pdf

Tax court case summary

Asara Sales and Investments Private Limited V. ITO (ITA No. 1345/Pun/2014)

The taxpayer was engaged in the investment holding activity by mainly holding shares in group companies and derived income from capital gains, dividend income and some nominal interest.

The assessing officer("AO") held that long term capital loss ("LTCL") on the off-market sale of shares of a listed company would not be set off in the current year against the long term capital gain ("LTCG") of sale of unlisted shares nor allowed to carry forward to be set off in future. The Commissioner of Income Tax (Appeals) ("CIT(A)") upheld the order of the AO and also treated the transaction as a colourable device to evade tax where the off market sale of listed shares and sale of shares of unlisted group companies occurred on the same day.

The Income Tax Appellate Tribunal observed on the facts of the case that the taxpayer had made a business decision to sell the shares to a group company to repay its loan. It did not have control over that group company. Further, the taxpayer had chosen off-market transaction to avoid transferring its shares to strangers. Accordingly, the Tribunal rejected the tax department's plea that the transaction was a colourable device to avoid taxes and held that LTCL on off-market sale of listed shares of a subsidiary company is allowed to be set-off against the LTCG on sale of unlisted shares.

For more details, please refer to the link below:

http://www.in.kpmg.com/TaxFlashNews-INT/KPMG-Flash-News-Asara-Sales-and-Investments-Private-Limited-1.pdf

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Indonesia

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Legislative developments

Revised Indonesia-India Avoidance of Double Taxation Agreement ('DTA')

A revised India-Indonesia DTA ('revised DTA') came into effect from 1 January 2017 for Indonesia and from 1 April 2017 for India. The revised treaty replaces the 1987 Indonesia-India DTA ('current DTA').

We have set out below the main changes to the current DTA which are now in effect for Indonesia:-

No.	Description	Current DTA	Revised DTA
I	WHT on dividends	• 10% WHT for a company which holds at least 25% of the shares in other company • 15% WHT in all other cases	• 10% in all cases
II	WHT on Royalties and technical services fees	• Royalties: 15% WHT • Service Fees: generally exempted under the business profits article provided certain conditions are met.	• Royalties: 10% • Service Fees (including technical, management and consulting services): 10%
III	Branch Profits Tax ('BPT')	• 10%	• Maximum rate of 15%. (The rate is not applicable for Oil and Gas PSC i.e. 20%).
V.	Capital gains on sale of shares	• Exempt from Indonesian tax (taxed only in resident state i.e. India)	• Gains derived from the alienation of shares deriving more than 50% of their value directly or indirectly from immovable property situated in the source state (i.e. Indonesia) may be taxed in Indonesia

In terms of other noteworthy changes to the revised DTA, the following changes have been incorporated into the current Article 5 - Permanent Establishment (PE):-

- The time threshold test for a building site or construction, assembly or installation project or supervisory services constituting a PE is increased from 163 days to 183 days;
- A drilling rig or working ship used for exploration or exploitation of natural resources would constitute a PE if used for a period more than 183 days; and
- The scope of the agency PE is expanded to include activities requiring habitually securing orders, wholly or almost wholly for the enterprise.

In addition, a Limitation of Benefits ('LOB') article has been inserted into the revised DTA which includes the provision that a resident of a Contracting State shall not be entitled to the benefits of the DTA if its affairs were arranged in such a manner as if its main purpose or one of the main purposes was to obtain benefits under the Treaty.

Amendment to the implementation of the income tax treatment based on the provisions of an international agreement

Under Ministry of Finance Regulation 157/PMK.010/2015, it is stipulated that in the event provisions on Income Tax on an International Agreement are different to the provisions stated under the Indonesian Income Tax Law, the treatment shall be based on the provisions of such international agreement until the end of the said international agreement.

In this regard, the revised regulation under the Ministry of Finance No 5/PMK.010/2017 adds the Asian Infrastructure Investment Bank and the European Investment Bank to the list of international organizations whose income tax treatment is based on the provisions of international treaties. This Regulation came into force on 19 January 2017.

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Guidance on the Country-by-Country Report ("CbCR") requirement by Ministry of Strategy and Finance ("MOSF")

MOSF released a guidance on the CbCR requirements as to provide CbCR filing obligor and scope of the entities, 'Notice 2017-5, CbCR Filing Obligators and Scope of Covered Entities', on 21 March 2017. According to the guidance, CbCR filing obligor is one of the followings:-

- In case the ultimate parent company is a domestic company or a resident of Korea, the filing obligator is the domestic parent company preparing the consolidated financial statements whose consolidated revenue exceeds KRW 1trillion during the preceding fiscal year.
- In case the ultimate parent company is a foreign company or a non-resident of Korea, the filing obligator is a Korean affiliated company of a multinational group whose consolidated revenue exceeds 750 million Euros (or equivalent) in the preceding fiscal year, if any of the following conditions are met: i) there is no obligation to submit a CbCR under the laws and regulations of the country where the ultimate parent company is established; or ii) there is no arrangement for the exchange of CbCR information between Korea and the country where the ultimate parent company is established.

The filing obligator may be exempted from the CbCR requirement in the following cases, provided that the information relating to the filing obligator is submitted to the tax office:-

- Where another domestic affiliate which is under the same multinational group submits a CbCR; or
- If the ultimate parent company requests an affiliate located in a third country to submit a CbCR on behalf of the company and the CbCR is exchanged between Korea and the country where the affiliate is located.

Korea and Hong Kong sign the Agreement on Automatic Exchange of Financial Account Information

MOSF announced that Korea and Hong Kong have signed a bilateral agreement on the automatic exchange of financial account information in Hong Kong on 23 January 2017. Once this agreement comes into force with ratification by the National Assembly, the annual automatic exchange of financial account information between the two countries will begin from 2019. The type of information to be exchanged will include personal identification information (e.g. name, address, tax identification number); financial account information (e.g. account number, name of financial institution where the account is set up); and other financial information (e.g. outstanding balance at financial accounts and amount and type of income such as interest and dividends).

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Malaysia

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Legislative developments

Finance Act 2017

The Finance Act 2017 was gazetted on 16 January 2017 and some of the key changes are as follows:

Review of Corporate Income Tax Rate for Small and Medium Enterprises ("SMEs") and Limited Liability Partnerships ("LLPs")

Effective from Year of Assessment ("YA") 2017, the rate for chargeable income of up to RM500,000 (i.e. 19%) for SMEs and LLPs has been reduced by 1% to 18%.

Withholding Tax ("WHT") on Payments for Services Performed Outside Malaysia and Expansion of the Scope of Royalty

Effective from 17 January 2017, the gross income of a non-resident person from the following special classes income will be deemed to be derived from Malaysia and subject to WHT irrespective of whether the services are performed in Malaysia or outside Malaysia:-

- amounts paid in consideration of services rendered by the non-resident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, such person; and
- amounts paid in consideration of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme.

The proviso, which was introduced on 21 September 2002, to exclude payments for the above services rendered outside Malaysia from being subject to WHT has been revoked.

In addition, the definition of royalty has been expanded to include amongst others, the use of or right to use software.

It awaits to be seen what approach the Malaysian Inland Revenue Board would adopt towards cases where the royalty definition under the relevant double taxation agreement differ from the definition of royalty in the domestic tax legislation.

Restriction of Tax Exemption on Interest Income

Effective from YA 2017, the exemption for the interest income as specified below would not apply to interest paid or credited to a company in the same group:-

- Interest paid or credited to any company not resident in Malaysia, other than such interest accruing to a place of business in Malaysia of such company;
    - in respect of securities issued by the Government; or
    - in respect of sukuk or debenture issued in Ringgit Malaysia, other than convertible loan stock, approved or authorized by, or lodged with, the Securities Commission ("SC").
- Interest paid or credited to any person in respect of sukuk originating from Malaysia, other than convertible loan stock;
    - issued in any currency other than Ringgit; and

- approved or authorized by, or lodged with, the SC, or approved by the Labuan Financial Services Authority.

In addition, in respect of interest paid for sukuk, tax exemption would also not apply to interest paid or credited to-

- a bank licensed under the Financial Services Act 2013 ("FSA");
- an Islamic bank licensed under the Islamic Financial Services Act 2013 ("IFSA"); or
- a development financial institution prescribed under the Development Financial Institutions Act 2002 ("DFIA").

Exemption for Real Estate Investment Trust ("REIT") / Property Trust Fund ("PTF")

Effective from YA 2017, the income tax exemption available to a REIT or PTF, is only be given to a REIT or PTF which is approved by the SC and must be listed on Bursa Malaysia.

Restriction of Tax Exemption on Interest Income Received by a Unit Trust

Effective from YA 2017, the income of a wholesale money market fund in respect of interest derived from Malaysia and paid or credited by:-

- a bank licensed under the FSA;
- an Islamic bank licensed under the IFSA; or
- a development financial institution prescribed under the DFIA,

is only exempted from tax provided that it complies with the criteria set out under the relevant guidelines issued by the SC.

The SC has issued Guidelines on Tax Exemption for Wholesale Money Market Fundson the above exemption which sets out the qualifying criteria which must be fulfilled by a wholesale money market fund for the purpose of tax exemption on its income in respect of interest derived from Malaysia and paid or credited by the relevant financial institutions.

A certification from the SC confirming the fulfilment of such criteria is required to be obtained.

For a full version of the Guidelines, please find the link below:

https://www.sc.com.my/wp-content/uploads/eng/html/resources/guidelines/Guidelines_Tax_Exemption_for_Wholesale_Money_Market_Funds.pdf

Offences and Penalties for Non-Compliance with Country-by-Country ("CBC") Reporting and Mutual Administrative Assistance ("MAA") Requirements

Effective from 17 January 2017, the following provisions have been implemented, which introduce various offences and penalties for non-compliance with the CBC reporting and MAA requirements.

Offence	Penalty Upon Conviction
(a) Failure to furnish a CBC Report	• Fine between RM20,000 to RM100,000; • Imprisonment for a term not exceeding 6 months; or • Both the above fine and imprisonment term.
(b) Incorrect returns, information returns or reports to implement or facilitate MAA arrangements	
(c) Failure to comply with the MAA rules	

For (a) and (c) above, the court may make a further order that the convicted person shall comply with the requirements within 30 days, or such other period as the court deems fit, from the date the order is made.

Amendment to the Definition of "Labuan Non-Trading Activity" and "Labuan Business Activity"

Effective from 17 January 2017, the following amendments have been made to the Labuan Business Activity Tax Act 1990:

- The definition of 'Labuan non-trading activity' is amended to provide that the holding of investments in properties by Labuan entities must be in properties situated in Labuan;
- The proviso (b) in the definition of 'Labuan business activity' is amended to provide that a Labuan entity may only hold shares (previously investments) in a domestic company with residents and in Malaysian currency.

Goods and Services Tax - Time of Supply for Imported Services

Effective from 1 January 2017, the time of supply of imported services shall be treated to have been made at the earlier of the following dates:

- the date when any payment is made by the recipient; or
- the date when any invoice is received from the supplier who belongs in a country other than Malaysia or who carries on business outside Malaysia.

Taxation rulings and determinations

Pursuant to the Income Tax (Deduction for Expenses in Relation to Secretarial Fee and Tax Filing Fee) Rules 2014 ("the Rules"), a person resident in Malaysia is allowed to claim a tax deduction on secretarial fees and tax filing fees subject to prescribed conditions.

The maximum total amount deductible per Year of Assessment ("YA") is RM5,000 for secretarial fees and RM10,000 for tax filing fees in aggregate.

The Malaysian Inland Revenue Board ("MIRB") has issued Guidelines on Deductibility of Expenses related to Secretarial Fee and Tax Filing Fee ("the Guidelines") to set out the scope of tax deductible and non-tax deductible expenses under the Rules. The key points are as follows:-

- The tax deduction on tax filing fees is restricted to the preparation and submission of tax return, excluding tax advisory services or preparation of tax computation.
- The scope of tax deductible secretarial fees includes advisory services relating to company meeting, preparation of Directors' resolution, issuance of shares, submission of forms pursuant to Companies Act 2016 and other company related matters, excluding general meeting expenses.
- Reimbursement / out of pocket expenses such as telephone and fax, printing and stationery, postage, travelling and accommodation are not tax deductible.
- The first claimable amount for the tax filing fee is in respect of YA 2016 Tax Return which will be incurred in YA 2017.

The MIRB's views do not appear to be in line with the wordings used in the Rules and further clarification has been sought from the MIRB on its intended treatment of expenses.

Other developments

Guidelines on Tax Exemption for Wholesale Money Market Funds ("the Guidelines")

According to the Finance Act 2017, gazetted on 16 January 2017, the income of a wholesale money market fund in respect of interest derived from Malaysia and paid or credited by:

- a bank licensed under the Financial Services Act 2013;
- an Islamic bank licensed under the Islamic Financial Services Act 2013; or
- a development financial institution prescribed under the Development Financial Institutions Act 2002,

is exempted from tax provided that it complies with the criteria set out in the relevant Guidelines issued by the Securities Commission ("SC").

The SC has issued the Guidelines on the above exemption, which set out the qualifying criteria which must be fulfilled by a wholesale money market fund for the purpose of tax exemption on

its income in respect of interest derived from Malaysia and paid or credited by the relevant financial institutions.

A certification from the SC confirming the fulfilment of such criteria is required to be obtained.

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Mauritius

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Legislative developments

VAT Reverse Charge

The Finance Act 2016 provided that VAT reverse charge would be applicable on non-VAT registered persons as from 2 February 2017. However, on 31 January 2017, the Mauritius Revenue Authority ("MRA") has on issued a communique stating that the above amendment due to take effect is being deferred, until further notice.

Tax court case summary

Supreme Court judgment with respect to apportionment of expenses attributable to capital gains

Facts

Company A ("Co A") holds a Global Business Licence and is an investment holding company. Co A derived dividend, interest and gain on disposal of investment.

It has treated all its expenses relating to the taxable income and capital gains as allowable expenses.

Supreme Court's Judgment

The Supreme Court has held that:

- A company cannot benefit from non-taxable capital gains and also from deductions of the expenses which have produced such capital gains;
- Capital gains and exempt income are both excluded from the definition of gross income. Hence, expenses incurred to produce non-taxable income are considered to be capital in nature and/ or attributable to exempt income and thus should be treated as non-allowable as per Section 18 and 26 of the Income Tax Act 1995;
- The expenses incurred to produce two types of income: one is revenue income which arises in the trading activities and the second is capital gains which arises upon disposal. Hence, the expenses cannot be said to have been incurred "exclusively" or solely for the production of gross income.

The Supreme Court has therefore held that common expenses attributable to capital gains should be treated as non-allowable as per the formula below:

(Capital Gains/(Income + Capital Gains) * Allowable expenses)

Taxation rulings and determinations

Tax Ruling (March 2017)

Facts

A company ("Co A"), resident in Mauritius, is engaged with the provision of educational services and is registered with the Tertiary Education Commission ("TEC") but is not registered with the Mauritius Qualification Authority ("MQA").

Co A has entered into an Agreement with Company B ("Co B") which offers degree programmes. Co B is a UK registered not-for-profit body corporate and is also registered as a Scottish Charity.

Co A and Co B are not related entities and have entered into this Agreement whereby they will collaborate to provide higher education to students in Mauritius and in particular, to facilitate learning so as to enable students to attain degrees which are conferred by Co B as the sole awarding body.

Co B will provide different services to Co A in terms of:-

- Preparation of teaching materials and assistance to lecturers in Co A, library systems, graduation and brand etc. at a per student per annum charge;
- Provision of fly-in fly-out staff for academic delivery, quality assurance, online support and assessment marking on a cost plus basis.

Co B will not receive any allocation of the Mauritius student tuition fee.

Ruling:

- On the basis that Co B will not have a permanent establishment in Mauritius, it would not be subject to tax in Mauritius and hence no Tax Deduction at Source ("TDS") would be applicable on the payments made by Co A to Co B.
- The payments made to Co B in respect of services provided in terms of library systems and brand will not be considered as a royalty payment made by Co A but will be treated as business profits.
- The staff will be exempt from tax in Mauritius as per Article 15(2) of the Double Taxation Avoidance Agreement between UK and Mauritius on the basis that the fly-in fly-out staff from Co B are tax resident in UK.
- Co B will not have any statutory obligation to register for VAT purposes in Mauritius since educational service represent an exempt supply as per Item 16(a) of the First Schedule of the VAT Act.
- Reverse charge will not be applicable since educational service is an exempt supply.

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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 Act 2017

The Taxation (Annual Rates for 2016-17, Closely Held Companies, and Remedial Matters) Bill received Royal Assent on 30 March 2017.

This new legislation widens the application of New Zealand's ("NZ") 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 GST changes and various remedial amendments. Please refer to our previous updates (including issue 58) for further information on the measures in the new Act.

Taxation (Business Tax, Exchange of Information and Remedial Matters) Act 2017

The Taxation (Business Tax, Exchange of Information and Remedial Matters) Bill received Royal Assent on 21 February 2017.

This new legislation includes disclosure requirements for NZ foreign trusts, implements Automatic Exchange of Information ("AEOI") under the Common Reporting Standard ("CRS") 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). Please refer to our previous updates (including issue 58) for further information on the measures in the new Act.

Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Bill introduced

On 6 April 2017, the New Zealand Government released the Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Bill.

The Tax Bill contains new investment income reporting rules for banks, companies and other payers from 1 April 2020 (or 1 April 2019 for early adopters):-

- Interest and dividend payers will need to provide investment income information electronically by the 20th of the month following payment to Inland Revenue. Those making payments exempt from NZ withholding tax will need to provide information yearly by 20 April (or monthly at their preference).
- The information will include name, contact details, NZ taxpayer identification number ("TIN"), date of birth (if held), the tax rate applied, amount/type of investment income, tax withheld (and credits attached), and for NZ investment entities that are Portfolio Investment Entities ("PIEs") whether the fund is a retirement scheme.
- PIEs will need to report their investors' Prescribed Investor Rate (i.e. tax rate) details six monthly to Inland Revenue.
- Until the new monthly reporting rules apply, existing year-end reporting will need to be completed by 15 May (rather than 31 May currently).
- A new non-declaration Resident Withholding Tax ("RWT") rate of 45% will apply for interest income from 1 April 2018, while new investors in multi-rate PIEs will need to provide NZ TIN.

The PIE will need to close the account if the TIN is not notified within six weeks of account opening.

- An electronic database of RWT exempt investors will be maintained by Inland Revenue. Payers of investment income will need to validate recipients' status against this database.
- Annual withholding certificates will only need to be provided to investment income recipients who have not provided their NZ TINs.
- There will be the ability for payers to self-correct withholding tax errors in the same year (or in the following tax year if below $2,000 or 5% of the payer's withholding tax liability, whichever is higher).

Other measures in the Tax Bill include:

- New rules for determining the timing and amount of employee share scheme benefit income and its deductibility for employers.
- New rules for reporting employee income and Pay As You Earn ("PAYE") information by employers. These and the investment income reporting changes detailed above support Inland Revenue's Business Transformation (see earlier updates for more information on Business Transformation).
- Various other changes, including a discretion for NZ Inland Revenue to issue NZ TINs to non-residents without requiring a NZ bank account if the Commissioner is satisfied with the applicant's identity. (The NZ bank account requirement was added to the NZ TIN process in 2016 as part of new identity verification measures.)

Use of money interest rate changes to take from May 2017

The new Taxation (Use of Money Interest Rates) Amendment Regulations 2017, which come into force on 8 May 2017, will:

- decrease the taxpayer's paying rate of interest on unpaid tax from 8.27% to 8.22% per annum, and
- decrease the NZ Commissioner's paying rate of interest on overpaid tax from 1.62% to 1.02% per annum.

New Zealand's use of money interest regime is designed to encourage taxpayers to pay the right amount of tax at the right time.

Taxation rulings and determinations

Consultation on three new NZ BEPS measures

On 3 March 2017, the New Zealand Government announced consultation on three new Base Erosion and Profit Shifting ("BEPS") measures.

Avoiding a NZ taxable presence and transfer pricing rule changes

The proposals include:

A rule to stop large MNEs (those with global turnover of more than €750m) avoiding a NZ taxable presence (Permanent Establishment or "PE") by using a NZ related party to support local sales activities. The rule will apply:

- Where there are sales to NZ consumers or businesses;
- A related entity in NZ (e.g. a subsidiary or dependent agent) carries out activities in NZ (e.g. using local employees) to bring about those sales;
- Some or all of the sales are not attributed to a NZ PE; and
- The arrangement is designed to defeat the intention of NZ's tax treaties ("DTAs").

Strengthening NZ's transfer pricing rules by:-

- Allowing the NZ Inland Revenue ("IR") to disregard transfer pricing arrangements where legal form does not align with economic substance. This will effectively allow IR to re-characterise transactions to impute what it considers to be "arm's length conditions".
- Shifting the burden of proof for transfer pricing disputes from IR to taxpayers and extending the period IRD can challenge a transfer pricing issue to from 4 years to 7 years.
- Increasing IR's powers to access information, including allowing it to issue an adjustment to large MNEs that are "uncooperative" based on the information available at the time. This will still be subject to the normal disputes process, although the disputed tax will need to be paid earlier in the process.

Further limiting interest deductibility

While the Government is not proposing to replace the current thin capitalisation interest limitation rules (which are based on debt/assets), it is proposing a number of changes to strengthen the rules:-

- Limiting the interest rate on related party debt to that based on the credit rating of the parent (plus a margin). This is designed to anchor the NZ deductible interest to a MNE's total cost of funds. Special rules are proposed where there is no identifiable parent or the there is no credit rating.
- Requiring an adjustment to "assets" in the thin capitalisation calculation to require these to net-off against "non-debt liabilities" in the balance sheet other than interest-free loans (e.g. trade creditors and provisions).
- A number of specific changes, including a special exemption for certain infrastructure projects controlled by a single non-resident, removing the ability to use valuations for thin capitalisation that differ from financial statement values and removing the ability to measure assets and debt on the last day of the income year.

Implementing the Multilateral Instrument ("MLI") in NZ

The NZ Government has reiterated its aim to sign the MLI in mid-2017. The latest consultation outlines how the MLI will operate in practice to amend New Zealand's DTAs, how the substantive provisions will address BEPS concerns, and the NZ implementation process and next steps.

Other developments

AEOI developments – public feedback on reportable jurisdictions

On 29 March 2017, the NZ Government called for public submissions on the jurisdictions that New Zealand will exchange Common Reporting Standard ("CRS") information with.

The start date for CRS obligations in New Zealand is 1 July 2017. In anticipation of that, Inland Revenue is planning to publish its initial list of reportable jurisdictions by the end of May. The final list will be confirmed by Government Regulation.

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Philippines

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Taxation rulings and determinations

Bureau of Internal Revenue, Revenue Regulations ("RR") No. 3-2017, 24 February 2017 Implementing the Tax Provision of Republic Act No. 10693 "("Microfinance NGOs Act")

A Microfinance Non-Governmental Organization ("NGO") must secure a Certificate of Accreditation from the Microfinance NGO Regulatory Council as a condition to avail itself of incentives under the Microfinance NGOs Act.

A duly registered and accredited Microfinance NGO shall pay a 2% tax based on its gross receipts from microfinance operations pertaining to lending activities and insurance commission (which are bundled and form an integral part of the qualified lending activities of the Microfinance NGO) in lieu of all national taxes and subject to the conditions provided under the RR.

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Singapore

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Legislative developments

Singapore budget 2017 tax updates

The 2017 Budget Statement was tabled in the Parliament on 20 February 2017. The following highlights are relevant to the Singapore financial services sector:-

Corporate income tax ("CIT") rebate

CIT rebate is given to all companies to help them deal with rising business costs. It was announced that the CIT rebate cap for Year of Assessment ("YA") 2017 will be raised from S$20,000 to S$25,000 (rebate rate unchanged at 50%). In addition, the CIT rebate will be extended to YA2018 at a reduced rate of 20% of tax payable, capped at S$10,000.

Extending the withholding tax exemption on payments for structured products

Currently, withholding tax exemption is allowed on payments made to non-resident non-individuals for structured products offered by financial institutions for contracts that are renewed or extended during the qualifying period from 1 January 2007 to 31 March 2017, subject to conditions.

To continue promoting Singapore as a financial hub, the qualifying period for the withholding tax exemption has been extended till 31 March 2021. All other conditions of the scheme remain the same.

Refining the Finance and Treasury Centre ("FTC") scheme

Currently, the FTC scheme grants concessionary tax rate of 8% on qualifying income derived by approved FTCs from qualifying services provided to approved network companies and qualifying activities carried out on its own account with funds obtained from qualifying sources.

It was announced in Budget 2017 that the qualifying counterparties for certain transactions would be streamlined to ease the compliance burden of approved FTCs. The change will apply to new or renewal incentive awards approved from 21 February 2017.

Further details of the change are expected to be released.

Extending the tax incentive schemes for Project and Infrastructure Finance

Currently, the tax incentive schemes for Project and Infrastructure Finance include:-

- exemption of interest and other qualifying income from Qualifying Project Debt Securities issued for prescribed infrastructure projects;
- exemption of qualifying income from qualifying offshore infrastructure projects / assets received by approved entities listed on Singapore Exchange ("SGX");
- concessionary tax rate of 10% on qualifying income derived by an approved infrastructure trustee-manager / fund management company from managing qualifying SGX-listed business trusts / infrastructure funds in relation to qualifying infrastructure projects; and
- remission of stamp duty payable on instrument of transfer relating to qualifying infrastructure projects / assets to qualifying entities listed or to be listed on the SGX.

The scheme has expired on 31 March 2017.

It was announced in Budget 2017 that the first three tax incentives have been extended till 31 December 2022, with the exception of the stamp duty remission has been phased out with effect from 1 April 2017. All other conditions of the schemes remain the same.

Further details of the extension are expected to be released.

Asian Bond Grant Scheme

In order to further develop Singapore's bond market and strengthen Singapore's value proposition as Asia's leading bond centre, the Monetary Authority of Singapore has introduced the Asian Bond Grant Scheme ("the Scheme"). The Scheme aims to co-fund 50% of eligible expenses paid to Singapore-based service providers (e.g. arranger fees, legal fees, auditors' fees, credit rating fees and listing fees) attributable to the issuance of certain qualifying Asian bonds in Singapore, up to a grant amount of SGD 400,000 (where the qualifying issuance is rated) or SGD 200,000 (where the qualifying issuance is unrated).

Funding is available for valid applications relating to issuances that take place during the funding period from 1 January 2017 to 31 December 2019 (both dates inclusive), subject to conditions. Funding is available once for each qualifying issuer and only in relation to eligible expenses.

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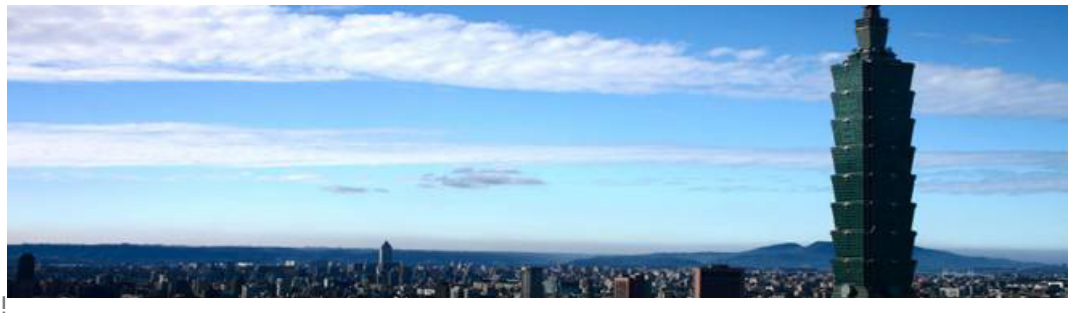
Taiwan



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Other developments

Proposed Reform of the Imputation System

Under the current imputation system, when a Taiwanese company distributes its after-tax profit, such as dividends, to its individual resident shareholders, the said company would also allocate the corporate income tax paid by the company on its profit, as imputed tax credit, to the individual resident shareholder receiving the dividend.

The individual resident shareholders can use the imputation tax credit received to offset their personal income tax liability. Effectively, such imputation system prevents double taxation on the dividend.

The Ministry of Finance is currently studying the possibility and feasibility of reforming the imputation system. The proposed reform measure may effectively abolish the imputation system and the dividend would be taxed separately rather than included in the individual income tax reporting. As this study is still underway no proposed amendment has been put forth yet.

Notwithstanding the foregoing, since the imputation system is not available to non-resident shareholders, the impact of such reform will likely only affect individual resident shareholders.

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Thailand

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Taxation rulings and determinations

Extension of Additional Tax Deductions for New Capital Expenditure until 31 December 2017

In May 2016, the Thai government issued Royal Decree No 604 to promote and incentivize capital spending on certain eligible assets, provided the expenditure in respect of such assets was incurred during the period 3 November 2015 – 31 December 2016. On 24 January 2017, the Cabinet provided their approval to extend this tax incentive for one more year. Therefore, expenditure incurred on eligible assets during the period 1 January 2017 – 31 December 2017 will qualify for the additional deduction, however, such deduction has been reduced from 100% to 50%. The 50% additional deduction, which applies over and above the normal tax depreciation that can be claimed on assets, shall apply as follows:-

- For expenditure incurred on the cost of new assets actually paid for within the 2017 year, provided the asset is ready for use before 31 December 2017. In the case of machinery and permanent buildings, an exception is allowed where the assets will only be ready for use after 31 December 2017; and
- For expenditure incurred on the remaining cost of assets acquired in the 2016 year and the 100% additional deduction has been claimed, provided the cost is actually paid for in the 2017 year .

All penalties, criminal fines and surcharges imposed under any tax laws can no longer be claimed as a deductible expense

Section 65(6) of the Revenue Code provides that penalties, criminal fines and surcharges are disallowable expenses in the determination of taxable net profits. However, following the Board of Taxation's Ruling No. 10/2528 issued in 1985, it was confirmed that the disallowance under Section 65(6) only applies to penalties, criminal fines and surcharges imposed under the Revenue Code.

On 27 February 2017, the Board of Taxation repealed the Board of Taxation Ruling No. 10/2528 and issued a new Board of Taxation Ruling No. 40/2560. The new ruling confirms that Section 65(6) of the Revenue Code shall apply to penalties, criminal fines and surcharges under all tax laws and for all types of taxes. The ruling became effective on 18 March 2017.

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Vietnam

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Legislative developments

New regulations on lending activities of credit institutions and foreign bank branches.

The Governor of the State Bank of Vietnam ("SBV") issued Circular No.39/2016/TT-NHNN ("Circular 39/2016") on 30 December 2016 to promulgate regulations on the lending activities of credit institutions and foreign bank branches.

Circular 39/2016 stipulates common legal framework for lending activities of credit institutions and foreign bank branches (herein after called as credit institutions) to their customers (who are not credit institutions) in accordance with 2010 Law on Credit Institutions, 2015 Civil Codes and other applicable regulations concerning with lending activities and development trend of lending activities towards international practices, thereby meeting state management requirements for lending activities of credit institutions and improving the transparency of lending activities.

The key points of Circular 39/2016 are as follows:

- General provisions stipulates: governing scope, implementers, principles of providing loans and borrowing, borrowing conditions, capital demands which are not eligible for lending, types of loans, currencies used for lending and borrowing, debt payment, lending limitations and interest rates, lending fees, collateral security, information provision, assessment and lending approval, debt refund and debt payment reschedule, overdue debt management, debt resolution, exemption and exemption and reduction of interest rates and fees, internal regulations, lending agreement, monitoring capital utilization, penalty and compensation, etc.
- Specific provisions divided into two Items: (1) stipulates specifically lending activities for business purpose; (2) stipulates lending activities for living demands; regulations on lending methods and duration and lending dossier archives.

Circular 39/2016 became effective from 15 March 2017.

New regulations on providing derivative products for commodity price of commercial banks

On 30 December 2016, the Governor of the State Bank of Vietnam has issued the Circular No. 40/2016/TT-NHNN ("Circular 40/2016") guiding regulation on providing derivative products for commodity price of commercial banks.

Circular 40/2016 includes four sections guiding regulation on providing derivative products for commodity price and other basic information:-

- Governing scope, subjects of application, explanation, principle of providing derivative products for commodity price, conditions for clients using derivative products for commodity price, application for the use of derivatives for commodity prices, internal regulations, accounting.
- Regulations on providing derivative products for commodity price for customers through over-the-counter markets.
- Regulations on providing derivative products for commodity price for customers through foreign goods exchanges.

- Rights and obligations of organizations, individuals relating to providing derivative products for commodity price activity.
- Effectiveness and implemented organization.

Circular 40/2016 became effective from 1 March 2017.

New regulations on securities margin trading

The State Securities Commission issued Decision No.87/QD-UBCK ("Decision 87") on 25 January 2017 on securities margin trading:-

- Shares on the UpCOM premium list shall not be permitted to be margin traded; approved securities for margin trading purchases mainly comprise shares and fund certificates listed on Stock Exchange;
- Approved securities for margin trading purchases are not securities in the case that the listing company received conclusions from the tax office on its breach of the law on tax;
- When securities are no longer on the list of approved securities for margin trading purposes, securities company is still permitted to consider such securities as secured assets for margin trading loans, unless otherwise agreed with the client.
- The broker shall regulate the initial margin ratio and the maintenance margin ratio which shall not be less than 50% and 30% respectively.

Decision 87 became effective from 1 April 2017, and replaces Decision No.637/QD-UBCK in 2011 and Decision No.09/QD-UBCK in 2013.

New regulations on operational capital, use of capital and assets; revenue, expenses; allocation of profit and appropriation of funds; management and use funds applicable to Vietnam Asset Management Company for Credit Institution

Ministry of Finance has issued Circular No. 01/2017/TT-BTC ("Circulate 01/2017") on 5 January 2017 providing guidance on operational capital, use of capital and assets, revenue and expenses, allocation of profit and appropriation of funds and management and use funds applicable to Vietnam Asset Management Company for Credit Institution.

The main contents of this Circulate 1 are as follow:

<u>Operational capital, use of capitals and assets of Vietnam Asset Management Company for Credit Institution</u>

- According to Circular 01/2017, operating capital of Vietnam Asset Management Company for Credit Institution includes Owner's investment capital and paid-in capital.
    - Owner's investment capital includes charter capital of VND 2.000 billion, investment and development fund and other owner's investment capitals as prescribed.
    - Paid-in capital includes bonds in return for bad debts at market price, special bonds and other paid-in capitals.
- Circular 01/2017 regulates that Vietnam Asset Management Company for Credit Institution shall uses capital for business purpose based on conservation and development principles as follows:-
    - Special bond is only used in return for bad debts of credit institution and other legitimate capitals are used to purchase bad debts at market price;
    - Investing in and purchasing fixed assets with the purpose of Asset Management Company's activities;
    - External investment;
    - Making appropriation for risk provision into its operational costs;

- Repairing and upgrading the guarantee assets which is recalled the loan from Vietnam Asset Management Company.

Revenue and expense of Vietnam Asset Management Company for Credit Institution

- Circular 01/2017 regulates principles of revenue recognition of Asset Management Company for Credit Institution as follow:
    - Accounting into revenue is on 31 December or the time of payment of special bonds in respect of income calculated on ending-term remaining historical debit balance of debts purchased by special bond.
    - Accounting up to the end of the month in respect of income from recalling bad debts purchased by special bond.
    - The accounting into revenue is at the time when rights and obligations are transferred in respect of revenue from sale of credit.
- Circular 01/2016 provides guidance on expense recognition of Vietnam Asset Management for Credit Institution regarding expense of purchasing bad debts at market price. Such expenses are accounted when generating revenue from handing of bad debts.
    - According to Circular 01/2017, the following expenses shall not be considered as cost: non-business expenses; penalties on administrative violations; expense without legitimate invoices/documents and other illegitimate expense.

Allocation of profit and appropriation of funds

According to Circular 01/2017, profit of Vietnam Asset Management for Credit Institution after compensation and conducting financial obligations is to be appropriated 30% into development and investment fund; bonus and welfare fund for employees; fund for awarding manager, inspector. The remaining profit (if any) after appropriation shall be submitted to the Government Budget.

Circular 01/2017 became effective on 21 February 2017. Moreover, the Decision also regulates that the State Bank and credit institutions should record interest on transactions cash at bank, loans and borrowing cash basing on the "accrual basis accounting" in accordance with principle and financial regulations.

New regulations applied for Asset Management Company

The Ministry of Finance issued Circular No. 04/2017/TT-BTC ("Circular 04/2017") on 16 January 2016 providing guidance on the distribution of the difference between the book value less the selling price of the debt purchased by the Asset Management Company under Clause 2 of Article 1 Decree 18/2016/ND-CP.

- Circular 04/2017 regulates the following credit institutions acquired bad debts by the Asset Management Company of Vietnamese credit institutions:
    - Business credit institutions suffering losses during the debt financing year.
    - Credit institutions having business results in a year of debt selling of credit institutions which suffer losses because of being accounted as operating expenses for the whole differential value.
- The allocation of the differential value when the asset management companies of credit institutions that purchase bad debts from credit institutions are guided by Circular 04/2017 as follows:-
    - Credit institutions account the entire differential in the pending expense account at the time of debt sale and shall account the distributed amount to the operating expenses in the year on 31 December of the year.
    - The time for allocation the differential amount is no more than 5 years from the year of selling debts.

  - Credit institutions are allowed to decide how much they will allocate to their annual operating costs during the allocation period. In cases where a credit institution has a higher profit before the allocation, the amount must allocate to the operation expenses in the year and it is not less than the profit before the allocation.

- In addition, the Circular 04/2017 also stipulates that credit institutions must allocate cost differences in accordance with regulations, monitor the distribution difference and report on allocation performance into the Financial Statement per period (quarter/ year) of credit institutions.

Circular 04/2017 became effective from 4 March 2017.

Taxation rulings and determinations

The Ministry of Finance issued Circular No.334/2016/TT-BTC ("Circular 334/2016) on 27 December 2016 to amend and supersede Appendix No.2 and No.4 of Circular 210/2014/TT-BTC providing guidance on accounting policy applicable to securities companies.

This Circular became effective from the signed date and shall be applied from the fiscal year 2016.

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