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Tax update

Legislative developments

On 7 December 2010, Tax Laws Amendment (2010 Measures No. 4) Bill 2010 received Royal Assent and became Tax Laws Amendment (2010 Measures No. 4) Bill 2010 ('the Act').

The Act includes measures to:

- Amend the taxation of financial arrangement (TOFA) provisions in Division 230 of the Income Tax Assessment Act 1997 (ITAA 1997) to make minor policy refinements and technical amendments and corrections (as outlined in Issue 36). In particular, the Act seeks to clarify the taxation treatment of financial arrangements.

The amendments to the TOFA regime apply to income years commencing on or after 1 July 2010, unless a taxpayer elects to apply the TOFA regime to income years commencing on or after 1 July 2009.

- Amend the foreign currency gains and losses provisions in Division 775 of the ITAA 1997 to extend the scope of a number of cost compliance savings measures and make technical amendments to ensure the provisions operate as intended.

The amendments to the foreign currency gains and losses provisions became effective 17 December 2003.

- Extend the transitional period in the debt/equity rules to 1 July 2010 for treating certain upper Tier 2 capital instruments (issued prior to 1 July 2001) as debt for tax purposes, provided a taxpayer did not elect to apply the debt/equity rules in Division 974 of the ITAA 1997 from 1 July 2001.

On 9 February 2011, the Income Tax Amendment Regulations 2011 (No. 2) ('the Regulations') received Royal Assent. The Regulations give effect to consequential amendments to the income tax law following the repeal of the foreign investment fund (FIF) and deemed present entitlement rules. The amendments repeal or amend provisions in the income tax law which relate to the FIF and deemed present entitlement rules.

The Regulations commenced on 15 February 2011 (i.e. the day after they were registered on the Federal Register of Legislative Instruments on 14 February 2011).

On 17 February 2011, the assistant treasurer released exposure draft legislation which proposes amendments to the controlled foreign company rules ('Tax Laws Amendment (Foreign Source Income Deferral) Bill 2011: Main Provisions – Exposure Draft') and introduces the foreign accumulation fund rules ('Tax Laws Amendment (Foreign Source Income Deferral) Bill 2011: Foreign Accumulation Funds – Exposure Draft').

These reforms follow from the Federal Government's review of Australia's foreign source income attribution rules as announced in the 2010 Federal Budget.

Australian case law

On 18 January 2011, the Federal Court of Australia handed down its decision in *Colonial First State Investments Limited v Commissioner of Taxation* [2011] FCA 16.

This case considers proposed amendments to the constitution of a wholesale trust to allow for the streaming of capital gains. Broadly, the court held that, inter alia:

- the interposition of a custodian did not deny the unit holder status as a beneficiary
- on the wording of the trust deed, the trustee had no ability to determine whether amounts would be characterised as income or capital.

On 11 February 2011, the High Court of Australia referred to the Full High Court of Australia an application for special leave to appeal by American Express Wholesale Currency Services Pty Limited ('American Express') against the decision of the Full Federal Court of Australia in *Commissioner of Taxation v American Express Wholesale Currency Services Pty Limited* [2010] FCAFC 122 ('the case'). The Full High Court of Australia heard the application for special leave to appeal on 3 May 2011.

The case considered the extent to which American Express was entitled to claim input tax credits (under Goods and Services Tax (GST) law) for expenses incurred in relation to its credit card and charge card businesses. Under a new tax system (Goods and Services Tax Act 1999), an input tax credit is not available for acquisitions related to the making of input taxed supplies such as financial supplies.

American Express sought to argue that late payment fees received in respect of its credit card facility and amounts described as 'liquidated damages' received in respect of its charge card facility were not 'revenue derived from input taxed supplies'. The Full Federal Court disagreed and held that the amounts received constituted revenue derived from input taxed supplies.

The Full Federal Court's decision means that American Express was entitled to fewer input tax credits and thus should have a higher GST liability.

Taxation ruling

ATO PBR 1011671577593 ('Interest Rate Swaps') – indicates that certain interest rate swaps held by an entity (at the time it becomes a member of an existing tax consolidated group) which were 'in the money' and had measurable market value at the joining time could be allocated a tax cost base as part of the tax cost-setting process undertaken at the joining time (i.e. a tax cost-setting amount).

A tax deduction for the tax cost setting amount in respect of the 'in the money' interest rate swaps was considered to be available to the tax consolidated group (i.e. the purchaser of the joining entity) at the time of realisation of the swaps. This is on the basis that, broadly:

- the interest rate swaps were revenue assets (as they were entered into to hedge or manage financial risks associated with the taxpayer's business and income producing activities)
- a deemed payment equal to the tax cost setting amount of the 'in the money' interest rate swaps could be taken into account in determining whether an amount is incurred under the general deduction provisions (refer Section 8-1 of the ITAA 1997) in respect of the maturity/expiry of the swaps.

Other developments

On 16 December 2010, the assistant treasurer announced that the government intended to update Australia's trust taxation laws and rewrite the trust income tax provisions in Division 6 of Part III of the ITAA 1936 into the ITAA 1997 to address issues highlighted by the recent High Court of Australia's decision in *Commissioner of Taxation v Bamford* [2010] HCA 10 and to respond to Recommendation 36 of Australia's Future Tax System review.

Broadly, the Government considers that the High Court of Australia's decision in *Bamford* identified ongoing discrepancies between the treatment of trust income under trust law and tax law, where tax outcomes for beneficiaries of trusts may not match the amounts they are entitled to under trust law and the trust deed. There is also uncertainty in relation to the

extent to which amounts derived by trustees retain their character (e.g. as capital gains or franked dividends) when they flow through a trust to the beneficiaries.

On 4 March 2011, the assistant treasurer announced that the government would adopt two Board of Taxation recommendations to clarify the tax law for trusts in Australia including:

- aligning the concept of 'income of a trust estate' with 'net income of a trust estate'
- enabling the streaming of capital gains and franked distributions.

The Government released a discussion paper for consultation as part of the announcement.

The proposed amendments are intended to apply from the 2011 income year.

Also, on 16 December 2010, the Basel committee for banking supervision released 'Basel III: A global regulatory framework for more resilient banks and banking system' which outlines:

- global regulatory standards on banking capital adequacy and liquidity as agreed to by the governors and heads of supervision
- rules, text and timelines for the implementation of the Basel III framework.

On 17 December 2010, the Australian government announced that Australia's financial system will comply with the new international standards and the Reserve Bank of Australia (RBA) and Australian Prudential Regulatory Authority announced a framework for implementing the standards in Australia.

Broadly, the intent was that Australian institutions would comply with the new international standards by establishing a secured liquidity facility with the RBA to cover any shortfall between the requirement to hold high quality liquid assets under the global standards and the volume of liquid assets available in the Australian market. In return for the liquidity facility, the RBA would charge a market-based fee which would be set at the same level for all banks accessing the facility.

On 17 December 2010, the Board of Taxation released a discussion paper as part of its review of the taxation treatment applicable to collective investment vehicles (CIVs). The review follows from the release of the 'Johnson Report' on 15 January 2010 (i.e. a report released by the Australian Financial Centre Forum titled 'Australia as a Financial Centre: Building on our Strength') which recommended, inter alia, that the Board of Taxation consider the scope for providing a broader range of tax flow through CIVs.

The review is intended to have regard to the following principles:

- CIVs are widely held investment vehicles (with typically long term portfolio investors) that undertake primarily passive investment activities, consistent with the eligible investment rules in Division 6C of the Income Tax Assessment Act 1936
- tax treatments of a CIV should be determined by the nature of its investment activities as opposed to the structure of the entity through which the funds are pooled
- tax outcomes for investors in a CIV should be broadly consistent with the tax outcomes of direct investment, other than the flow through of tax losses (which should be subject to special rules for their utilisation).

On 17 January 2011, the Assistant Treasurer announced a proposal to broaden the 'look-through' treatment of instalment warrants for Australian income tax purposes to cover instalment warrants and receipts over:

- direct and indirect interests in listed securities
- unlisted securities in widely held entities
- bundles of the above assets.

In March 2010, the federal government announced proposed amendments to clarify that an investor in an instalment warrant (over a listed security only) is the owner of the security for Australian income tax purposes.

The government has now decided to treat the investor in instalment warrants as the owner for Australian income tax purposes where the warrant is over a broader class of securities.

The Treasury has indicated that an exposure draft of legislation (and explanatory memorandum) in relation to the proposals above will be released for consultation early 2011.

The proposed amendments are intended to apply from income year 2008.

On 19 January 2011, the assistant treasurer announced a proposal to provide an exemption from Australian income tax for 'relevant investment income' derived by foreign funds (which are taken to have a 'permanent establishment' in Australia).

The change uses an Investment Manager Regime framework to provide an exemption for offshore funds engaging domestic investment advisers.

It has been proposed that 'relevant investment income' include gains and losses derived by foreign funds from the following investments:

- portfolio interests (i.e. interests of at least 10%) in entities (including companies listed on the Australian Securities Exchange) except to the amount of the gain or loss gives rise to an Australian withholding tax liability
- financial arrangements (e.g. derivatives) and foreign exchange transactions, except to the extent they are in respect of an underlying interest that is otherwise taxable (e.g. taxable Australian property).
- The proposed amendments follow from the release of the 'Johnson Report' on 15 January 2010 which found that the lack of certainty and consistency of the tax treatment of cross-border financial transactions potentially deterred foreign investors from investing in Australia.

The proposed amendments are intended to apply from income year 2011.

On 21 January 2011, the Australian Taxation Office (ATO) released a further revised draft of the 'ATO International dealings schedule - financial services 2011' which will need to be prepared and lodged with the 2011 income tax return of the following entities:

- a financial services entity (excluding superannuation funds) with a gross turnover of at least \$250 million
- general or life insurance entity
- foreign bank.

Taxpayers obliged to complete the International Dealings Schedule will not be required to complete a Schedule 25A and/or Thin Capitalisation Schedule.

The ATO anticipates that an International Dealings Schedule will be mandatory for all taxpayers from income year 2012.

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New Administrative Measures for Private Equity Funds in China

The National Development and Reform Commission (NDRC) issued Fagaibancaijin [2011] No. 253 (Circular 253) on 31 January 2011. The circular sets out the registration and disclosure requirements of Equity Investment Companies (EICs) in trial areas (including Beijing, Tianjin, Shanghai, Jiangsu, Zhejiang and Hubei). The key points of Circular 253 are as follows:

- EICs are companies established as limited liability companies or companies limited by shares in accordance with the PRC Company Law and PRC Partnership Enterprise Law. EICs may only invest in equity interests in companies that are not openly tradable.
- Both domestic and foreign EICs with injected and committed capital of more than CNY500 million located at the trial areas are generally required to perform registration with NRDC.
- EICs shall also notify the NDRC and the local registration coordination department within ten working days of the occurrence of certain major events in their operations (e.g., increases or reductions of the capital of the EICs, de-mergers and mergers).

For further information on Circular 253, please refer to Issue 1 of China Alert: Financial Service Focus. A link to this publication is provided below:

<http://www.kpmg.com/cn/en/IssuesAndInsights/ArticlesPublications/Newsletters/China-alert-Financial-Service-Focus/Documents/china-alert-FS-1102-01.pdf>

New Administrative Measures for Representative Offices (ROs) in China

The State Administration for Industry and Commerce (SAIC) issued Gongshangwaiqizi [2011] No. 26 (Circular 26) and Gongshangwaiqizi [2011] No. 27 (Circular 27) on 16 and 17 February 2011 respectively which tightened the administrative measures for ROs. Specifically, Circular 26 prescribes the format for business registration certificates and the annual reports of ROs; and Circular 27 sets out the procedure for implementing the rules that govern the registration administration of ROs of foreign enterprises.

Circular 27 states that:

- All ROs of foreign enterprises are required to re-certify with the local offices of the SAIC. Both the business registration certificates of ROs and the representative certificates of the individual representatives need to be replaced.
- ROs can begin registration 1 March 2011. Registration must be completed by 30 June 2011.
- Local offices of the SAIC will consider whether the ROs only carry out non-profit making activities and will cancel the registration of any excess representatives of the ROs (maximum is four).

- If an RO fails to carry out the re-certification in time, the RO can be subject to a penalty ranging from CNY10,000 to CNY30,00, and the business registration certificate of the RO can be revoked.

For further information on Circular 26 and Circular 27, please refer to Issue 8 of China Alert. A link to this publication is provided below:

<http://www.kpmg.com/cn/en/IssuesAndInsights/ArticlesPublications/Newsletters/ChinaAlerts/Documents/china-alert-1103-08.pdf>

Imposition of National Security Risks Control on Foreign Acquisition of Chinese Enterprises

The State Council issued Guobanfa [2011] No. 6 (Circular 6) on 3 February 2011 which sets out the security review system for foreign investors seeking to acquire Chinese enterprises. The key points of Circular 6 are as follows:

- National security reviews are required where foreign investors are considering acquiring effective control of the following businesses:
 - Military related enterprises
 - Enterprises involved in operations concerned with national security, such as important agricultural products, energy and resources, infrastructure facilities, transportation services, critical technologies and manufacturing heavy equipment
- An acquisition for USD300 million or below should still be subject to the above national security review

For further information on Circular 6, please refer to Issue 9 of China Alert. A link to this publication is provided below:

<http://www.kpmg.com/cn/en/IssuesAndInsights/ArticlesPublications/Newsletters/ChinaAlerts/Documents/china-alert-1103-09.pdf>

Vodafone settles PRC Withholding Tax (WHT) on disposal of stock listed in Hong Kong Stock Exchange

Vodafone made a PRC WHT payment of CNY2.19 billion in relation to the capital gains arising from the sale of its 3.2% shareholding in China Mobile Limited (a Hong Kong incorporated company listed on the Hong Kong Stock Exchange) in September 2010. The payment was based on the capital gains being considered PRC-sourced despite China Mobile Limited being incorporated under the laws of Hong Kong: according to an announcement made by the company in August 2009, the company considered itself to be a PRC tax-resident enterprise on the basis that its place of effective management was considered to be in the PRC (as the recognition criteria under a PRC tax circular, Guoshuifa [2009] No. 82, issued by the State Administration of Taxation (SAT) on 22 April 2009, were all satisfied). Any PRC-sourced income derived by a non PRC resident enterprise shareholder should be subject to PRC WHT at the rate of 10%.

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2011-2012 Budget

Hong Kong's financial secretary presented the 2011-2012 Budget on 23 February 2011. Despite an operating account surplus of HKD 60.7 billion (USD 7.79 billion) for 2010-2011 and projected financial reserves of HKD 591.6 billion (USD 75.9 billion), the financial secretary did not take the opportunity to lower Profits tax rates or allowances for 2011-12.

The Profits tax rate for corporations will remain at 16.5% and capital allowances remain unchanged. Stamp duty rates and thresholds remain unchanged, although a Special Stamp Duty on transactions in residential property was introduced in November 2010 to address perceived concerns over increases in property prices.

Effective Date of New Double Tax Agreement with the United Kingdom

The new DTA with the United Kingdom takes effect in Hong Kong from 1 April 2011. The effective date in the United Kingdom is 1 April 2011 for corporate tax and 6 April 2011 for income tax and capital gains

For further details on the United Kingdom DTA please refer to :

<http://www.kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Newsletters/General-Tax-Update/Documents/General-tax-update-1011-37.pdf>

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Tax update

The finance minister presented the Union Budget 2011 amidst low expectations of any major tax policy reforms given the proposed enactment of the Direct Tax Code (DTC) Bill 2010 on 1 April 2012. We summarise below certain key direct tax budget proposals relevant to the financial services sector.

Key direct tax proposals

Corporate Tax

- The Corporate tax rate remains unchanged.
- The surcharge for domestic companies is reduced to 5 percent from 7.5 percent and for foreign companies to 2 percent from 2.5 percent.
- The basic rate of the Minimum Alternate Tax (MAT) increased to 18.5 percent from 18 percent.
- Where the total income of an Indian company includes dividends declared, distributed or paid by a foreign subsidiary company (i.e. an Indian company holds more than 50 percent of the nominal value of the foreign subsidiary's equity), such dividend income is to be taxed at the reduced rate of 15 percent with no deductions for any expenditures incurred in relation to the derivation of the dividend.
- The contributions made by an employer in a pension scheme on account of an employee are allowed as deductions in computing the employer's income to the extent the contributions do not exceed 10 percent of the employee's salary during that year.
- Effective 1 June 2011, the rate of additional income tax on income distributed by mutual funds is to be revised as follows:

Nature of Fund	Nature of Recipient	Existing Rate	Revised Rate
Money market mutual fund or liquid fund	Individual or Hindu Undivided Family (HUF)	25%	25%
	Any other person	25%	30%
Fund other than money market mutual fund or liquid fund	Individual or HUF	12.5%	12.5%
	Any other person	20%	30%

Note: Income distributed by equity oriented funds will continue to be exempt.

- Dividend Distribution Tax will apply to developers of Special Economic Zones (SEZ) for dividends declared, distributed or paid on or after 1 June 2011. Such dividends continue to be tax exempt for the shareholders.

Tax Incentives

- Income of a notified Infrastructure Debt Fund will be exempt with effect from 1 June 2011 provided the Fund is set up in accordance with the prescribed central government guidelines.

Non-resident related provisions

- A range of anti-avoidance measures will be introduced from 1 June 2011 in respect of transactions with persons in jurisdictions notified by the central government which do not effectively exchange information with India. These measures include:
 - Deeming parties in notified jurisdictions as associated enterprises
 - Subjecting the transactions to Indian transfer pricing provisions.
 - Restricting payments / expenditure to financial institutions in notified jurisdictions, unless an authorization for seeking information is provided to tax authorities, and for any other expenditure (including depreciation), unless prescribed documents and information is maintained and furnished to tax authorities.
 - Deeming any amount received or credited from persons located in notified jurisdictions as income if the taxpayer fails to offer an explanation about the source or beneficial owner or provides an unsatisfactory explanation in this regard.
 - Subjecting payments to persons in notified jurisdictions on which tax is deductible to withholding tax at the higher of the following:
 - Rates in force
 - Rates provided under the relevant provisions of the Act
 - 30 percent.

Note: The term person is widely defined to include a permanent establishment of a person who otherwise is not a resident of the notified jurisdiction.

- Effective 1 June 2011, a 5 percent withholding tax is imposed on the interest received by non-residents from an infrastructure debt fund notified by the central government.
- Effective 1 June 2011, non-residents having a liaison office in India with approval from the Reserve Bank of India are mandated to submit a prescribed annual information statement in respect of their activities to the tax authorities within 60 days from the end of the financial year.

Transfer Pricing

- The arm's length range of +/- 5 percent of the value of an international transaction is to be replaced by such percentage(s) as may be notified by the central government.
- Effective 1 June 2011, transfer pricing provisions are also applicable to international transactions other than those specifically referred by the assessing officer which come to the notice of the transfer pricing officer (TPO) during the course of the proceedings.
- Effective 1 June 2011, 'Powers of survey' to conduct on-the-spot enquiry and verification have been given to the TPO.
- Due to practical difficulties in accessing contemporaneous comparable data, the due date for the companies to file a return of income and for furnishing an accountant's report for international transactions is extended from 30 September to 30 November.

Provisions Relating to Limited Liability Partnerships (LLP)

- Alternate Minimum Tax (AMT) will now apply to LLPs.
- Where the regular income tax payable by a LLP is less than the AMT, the adjusted total income of the LLP is liable to tax at the rate of 18.5 percent.
- Adjusted total income means total income as increased by deductions under Chapter VI-A and Section 10AA (SEZ).
- Excess of the AMT paid over the regular income tax payable is allowed as a tax credit for carrying forward and can be set off against the excess regular income tax over the AMT during the following ten years.

Other Direct Tax Provisions

- Time limit for obtaining approval by private provident fund trusts is extended from 31 December 2010 to 31 March 2012.
- Effective 1 June 2011, in order to facilitate prompt collection of information on requests received from tax authorities outside India under the tax treaties, the notified income-tax authorities have powers vested in a civil court as well as the power to call for information for the purposes of making an enquiry or investigation in respect of any person or class of persons.
- Effective 1 June 2011, while determining the time limit for completion of assessment or reassessment (including search cases), the lesser of the time taken in obtaining / exchanging of information from foreign tax authorities or a period of six months is to be excluded.

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VAT on Leasing (DGT Circular No. SE-129/PJ/2010)

This circular defines operating lease, financial lease, sale and leaseback and the respective VAT treatments. Consistent with previous stipulations, financial lease is defined as a lease transaction with an option to buy while an operating lease is a lease transaction without such option. Sale and leaseback is defined as a sale of the goods by the lessee to the lessor with those goods being leased back to the lessee. In particular, this circular revokes VAT SE-10/PJ.42/1994.

The VAT treatment on each type of lease is set forth as follows:

Financial lease

Assets sourced from an external supplier:

- The leased asset is deemed to be delivered by the supplier directly to the lessee.
- The lessor is not required to register as a taxable entrepreneur ('pengusaha kena pajak') since the lessor is providing a non-VAT-able financial service.
- The supplier should issue a VAT invoice directly to the lessee.
- The tax base to be stated in the tax invoice is the supplier's sale price of the asset.

Assets sourced from the lessor's inventory:

- The lessor is considered as having conducted two types of delivery: a delivery of a non-taxable financial service and a delivery of taxable goods.
- The lessor is required to register as a taxable entrepreneur as the lessor must issue a tax invoice on the delivery of taxable goods.
- The tax base to be stated in the tax invoice is the sale price of the asset excluding any interest component.

The use of qualitate qua method (q.q. method)¹ in a tax invoice is valid only for tax invoices issued before the date of this circular (i.e. 29 November 2010).

¹ The use of qualitate qua (q.q.) method is where the supplier issues a tax invoice to the lessor q.q. (on behalf of) the lessee, thus allowing the lessee to claim the input VAT credit while recognizing the lessor as the actual purchaser of the asset. This method is rescinded, and although the lessee will still be able to claim the input VAT, the lessor will not be recognised as the buyer of the asset.

Sale and leaseback

With option to buy (financial lease):

- The sale of the assets to the lessor is not considered as a taxable delivery but as a transfer of assets for collateral.
- It is not a taxable service. It is treated as a finance lease.

Without option to buy (operating lease):

- The sale of the assets to the lessor is taxable according to prevailing VAT Law provisions.
- It is a taxable service because it is treated as an operating lease.

KPMG Notes:

This circular resolves previous VAT issues with sales and lease back transactions. An important note pertains to the issuance of VAT invoice under the q.q. method, which is common for the delivery of the leased goods from the suppliers to the lessee. Any tax invoices issued after 29 November 2010 still using the q.q. method should be amended to ensure their validity.

Withholding Tax on Interest or Return on Government Securities Issued in International Markets (MOF Regulation No. 226/PMK.011/2010)

This regulation stipulates that no withholding tax applies to income in the form of interest or discount or premium on government securities issued in international markets for 2010 budget year. To clarify, international markets issuance is the issuance of government securities in foreign currency outside of Indonesia.

The government securities under this regulation comprise of government bonds and government shares securities (government sukuk).

KPMG Notes:

The issuance of this regulation provides certainty on the withholding tax exemption for income from foreign currency denominated government bonds issued outside Indonesia.

Revision of VAT on Banking Services (DGT Circular No. SE-121/PJ/2010)

On 23 November 2010, the Directorate General of Taxation (DGT) issued a circular letter on the VAT imposition on banking services.

For further information regarding the circular letter issued on 23 November 2010, please refer to Issue 38.

<http://www.kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Newsletters/General-Tax-Update/Documents/General-tax-update-1101-38.pdf>

Recently, the DGT issued a revision to this circular letter. The revision changes the wording of the examples contained in Attachment II of the original circular in order to make it consistent with the body of the circular. In particular, the modifications clarify that the following services will only be taxable services for VAT purpose if the income is received from non-customers:

- 'Income received in relation to bank drafts, traveller checks, and payment order transactions'
- 'Income from telexes, swift, and SKN (Sistem Kliring Nasional)'

KPMG Notes:

This inconsistency has been previously noted in our coverage of the circular on its original issuance. This rectification is the result of the concern raised by the industry related to the issue. This revision resolves the confusion in implementing the circular pertaining to the income pointed out above..

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Tax update

Status of proposed amendments to tax legislation

The Japan government had proposed a number of amendments to Japan's tax legislation including reductions of various corporate tax rates, amendments to losses carried forward rules etc. However, as a result of the severe earthquake on 11 March 2011, it is unclear whether any of the proposed legislative amendments will be implemented. We will provide you with an update on the status of the changes in the June 2011 issue of the General Tax Update for Financial Institutions in Asia Pacific.

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Tax update

Korean Foreign-Exchange Prudential Stability Levy Bill (Korean Bank Tax)

On 7 March, 2011, the Strategy and Finance Committee of the Korean National Assembly passed the Foreign Exchange Prudential Stability Levy bill.

If the bill is passed in the Legislation and Judiciary Committee of the Korean National Assembly and the General meeting of Korean National Assembly, it will enable the government to levy Bank tax on non-core foreign borrowing. This is one of three sets (Forward Position Regulation, reinstatement of Foreign Bond Investment Tax, and Bank Levy) of remedies aimed at curbing sudden capital flows into the domestic market.

The proposed Bank tax rate forecast provided last year by the Ministry of Strategy and Finance was 20bp for foreign currency liabilities with maturity periods of less than one year, 10bp for foreign currency liabilities with maturity periods of one to three years, and 5bp for foreign currency liabilities with maturity periods of more than three years. However, it has been determined that levying a rate of 5bp on long-term foreign liabilities with maturity periods of over five years is inappropriate and a collateral condition should be included in the bill. The full details of these changes have yet to be announced.

Regional domestic banks, with head offices outside metropolitan areas in Korea, will be subject to the Bank tax on foreign currency liabilities at a comparably reduced rate.

Investment income on KTB and MSB earned by a foreign investor

The tax exemptions for interest income and capital gains on Korean Treasury Bonds (KTB) and Monetary Stabilization Bonds (MSB) earned by non-residents and not attributable to a permanent establishment in Korea were abolished on 30 November 2010: interest income and capital gains from KTB and MSB are now subject to tax in Korea. However, income from the bonds acquired prior to 12 November 2010 remains exempt from tax.

These changes are effective for income generated after 1 January 2011.

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Finance Act 2011

The Finance Act 2011 which incorporates some of income tax proposals from the 2011 Budget has been gazetted. The changes introduced include the ability for the director general of the Inland Revenue Board to impose penalties where a taxpayer fails to deduct and remit withholding tax by the due date but claims a deduction for the payment in its tax return.

Service Tax (Rate of Tax) (Amendment) Order 2010

The Order to effect the proposal in the Budget 2011 to increase the service tax rate from 5% to 6% has been gazetted. The above Order is effective 1 January 2011.

Thin Capitalisation Rules

The Malaysia Ministry of Finance has informed that the implementation of the thin capitalisation rules has been deferred to the end of December 2012.

For further information regarding the Budget 2009 proposals on thin capitalisation, please refer to Issue 30.

http://www.kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Newsletters/General-Tax-Update/Documents/General_tax_update_0901_30.pdf

Public Ruling

The Inland Revenue Board of Malaysia has recently issued a public ruling on interest expense and interest restrictions. The public ruling is effective the year of assessment 2011 and deals with the following:

- Deductibility of interest expense in computing the adjusted income of a person from a source
- Restrictions on the amount of interest expense deductible against gross business income
- Computation of allowable interest expenses for non-business income.

The public ruling also applies to gains or profits received and expenses incurred in lieu of interest in transactions conducted in accordance with Syariah principles.

The full public ruling is available at:

<http://www.hasil.gov.my/>

Double Taxation Agreement (DTA)

Malaysia – Germany and San Marino

The Malaysian government ratified the DTAs with Germany and San Marino on 21 December 2010 and 28 December 2010, respectively. The DTAs took effect 1 January 2011.

Protocols - Malaysia –France/Netherlands/United Kingdom

The above protocols, which were signed as part of Malaysia's commitment to implementing the internationally agreed on tax standards on transparency and exchange of information, entered into force on 1 December 2010, 19 October 2010 and 28 December 2010, respectively.

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Tax update

Income Tax Ruling – trust treated as company under the Income Tax Act

Facts:

Company A Ltd intends to set up a Mauritius subsidiary, B Ltd, which will hold a Category 1 Global Business Licence ('GBL 1 Licence'). B Ltd will be the 100% beneficial owner of a US trust which will be engaged in aircraft leasing. Currently a Bermuda company is the beneficiary of the trust. The nature of the trust will be similar to that of a bare trust in that the beneficiary; i.e. B Ltd will be considered as the owner of the aircraft for US tax purposes. B Ltd will have full control of the aircraft with power to instruct the trustee, and the interests and rights of the trust will be transferred to B Ltd when it sets up.

The US trust will lease an aircraft from a Cayman Islands company under a finance lease and the principal and interest payments will be payable to the latter company. The US trust will lease the aircraft on operating lease to a South African airline company for a period of 10 years. The sole income of the US trust will be the rental income from the South African airline company. It will not derive any Mauritius sourced income.

The ruling confirmed that:

- The US trust will be considered as a company in accordance with the Income Tax Act.
- B Ltd is the beneficial owner of the US trust, and therefore is not entitled to claim relief under the Mauritius-South Africa Double Taxation Agreement. Instead, B Ltd will be liable for tax on any distribution it receives from the trust.
- As B Ltd will not be involved in any leasing activities but will receive distribution income from the US trust, it will not be entitled to any capital allowances.

Income Tax Ruling – whether source of income can be determined by reference to the type of income

Facts:

M Limited is a private company incorporated and domiciled in Mauritius, and holds a GBL 1 Licence. It receives dividend income, subscription fees, management fees, satellite fees and other fees from different countries.

The ruling confirmed that for the purpose of claiming foreign tax credits:

- The source of income can be determined either by reference to the type of income or to the country from where the income is derived.
- For a particular year of assessment, M Limited has the option to claim foreign tax credits in respect of actual tax paid on income derived from one or more specific countries or one or more types of income. For income derived from any other countries or other types of income, a presumed tax credit of 80% of the Mauritius tax chargeable on that income can be claimed. No written evidence to support the actual foreign tax paid is required where the 80% presumed tax credit is claimed. This is in accordance with the provisions of Regulations 6 (3)(b) and 8 (3) of the Income Tax (Foreign Tax Credit) Regulations 1996. However, the credit for actual tax paid must not exceed the amount of Mauritius income tax payable on that foreign source income, as laid down by Regulation 6 (1) of the regulations.

- If M Limited opts to compute the amount of credit for foreign tax by reference to all foreign source income derived by it in accordance with Regulation 6 (3)(a), the amount of credit shall be the higher of the actual foreign tax paid or 80% of the Mauritius tax chargeable with respect to all foreign source income. Again the credit for actual tax paid must not exceed the amount of Mauritius income tax payable on all foreign source income, as laid down by Regulation 6 (1) of the aforementioned regulations.

VAT Ruling – whether VAT is applicable on commission income and entry fee and management fee

Facts:

Company P Ltd is licensed under the Financial Services Act to carry out the distribution of financial products, viz. the shares of F Ltd, which is an authorized mutual fund, listed (but not traded) on the Stock Exchange of Mauritius. P Ltd is the exclusive distributor of F Ltd.

In accordance with the terms and conditions of the distribution agreement with F Ltd, P Ltd markets offers and sells shares to existing and new clients. It may also subcontract with intermediaries acting as introducers of clients to P Ltd. P Ltd charges F Ltd a commission in the form of a distribution fee (also referred to as an upfront fee or entry fee) amounting to 2% (net of VAT) on clients' gross subscription monies, i.e. the gross amount to be invested. The commission is incorporated in the offer price at the time of purchase of the shares, in much the same way as an investor would pay a brokerage fee to an investment dealer. Out of the distribution fee, P Ltd may in turn pay commissions to intermediaries in accordance with the terms of their respective agreements.

P Ltd is also licensed under the Securities Act 2005 to act as investment adviser (unrestricted category). In accordance with the discretionary investment management mandate, the company manages investment portfolios of securities for its clients. For its services, P Ltd charges an entry fee of up to 3% on the total value of the portfolio placed under its management, and a monthly management fee of the market value of the portfolio at the end of each month.

Currently, VAT is being levied by P Ltd on the distribution fee, the entry fee and the management fee.

The ruling confirmed that:

- The distribution of shares of an authorized mutual fund by a licensed distributor of financial products falls within the purview of item 50(c) of the First Schedule to the VAT Act 1998 which provides for 'the issue, transfer or receipt of, or dealing with any stocks, bonds, shares, debentures and other securities, including the underwriting and the settlement and clearing of such securities.' It is therefore an exempt supply.
- The entry fees and management fees earned by a licensed investment adviser falls within the purview of item 50(e) of the above Schedule and are therefore also exempt supplies.

Treaty update

- On 8 December 2010, Australia and Mauritius signed an exchange of information agreement relating to tax matters. Australia and Mauritius also signed an agreement to allocate taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure for transfer pricing adjustments.
- The income tax treaty and protocol between Mauritius and Bangladesh, signed on 21 December 2009 entered into force on 15 September 2010. The treaty generally applies to Mauritius and Bangladesh from 1 January 2011 and 1 July 2011 respectively.

The treaty was concluded in English and generally follows the OECD Model Convention.

The maximum rate of withholding tax on dividends is 10%, whereas the treaty does not provide any limitations on the taxation of interest and royalties. Bangladesh agrees to apply a rate lower than 10% on dividends if, subsequent to the Mauritius-Bangladesh treaty, any such lower rate is provided for in any treaties entered into between Bangladesh and any other states (most-favoured-nation treatment).

The treaty makes no specific reference to special tax regimes in either Mauritius or Bangladesh.

Philippines

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Tax update

Revenue Regulations No. 1-2011 dated 24 February 2011

The remittances of all overseas contract workers (OCWs) or overseas Filipino workers (OFWs) shall be exempt from the payment of documentary stamp tax (DST) as imposed under Section 181 of the Tax Code.

OCWs and OFWs are Filipino citizens employed in foreign countries whose salaries and wages are paid by an employer abroad and are not borne by any entity or person in the Philippines. To qualify for the exemption, OCWs must be duly registered with the Philippine Overseas Employment Administration (POEA) with a valid Overseas Employment Certificate (OEC).

OCWs and OFWs sending their remittances through the banking system by crediting a beneficiaries or recipient's account in the Philippines and having the funds withdrawn through an automatic teller machine (ATM), shall be the responsible for showing valid proof of entitlement when making arrangement for the remittance transfers.

For seafarers or seamen to qualify for the exemption, they must be duly registered with the POEA with a valid OEC and Seafarers Identification Record Book (SIRB) or Seaman's Book issued by the Maritime Industry Authority (MARINA).

Revenue Regulations No. 4-2011 dated 15 March 2011

These regulations set out the rules for allocating costs and expenses between the Regular Banking Unit (RBU), the Foreign Currency Deposit Unit (FCDU), Expanded Foreign Currency Deposit Unit (EFCDU) or Offshore Banking Unit (OBU) operations of a depository bank given that these are governed by different income taxation regimes under the Tax Code of 1997 (as amended).

Generally, costs attributable to the RBU operations of a bank are deductible while costs or expenses incurred by banks from operations of their FCDU, EFCDU or OBU are not deductible for profit tax purposes.

In computing the amount allowable as deduction from RBU operations, all costs and expenses should be allocated between the RBU and FCDU, EFCDU or OBU using the following bases:

- specific identification – expenses which can be specifically identified to a particular unit shall be reported and declared as the cost or expenses of that unit
- allocation – common expenses or expenses that cannot be specifically identified for a particular unit shall be allocated based on a percentage share of gross income earnings of a unit to the total gross income earnings subject to regular income tax and final tax, including those exempt from income tax.

The same method of allocation is also applicable to other financial institutions with reference to allocating cost and expenses among income earnings derived from active business operation which are subject to regular income tax, passive activities which are subject to final tax and other activities producing income which are exempt from income taxes.

This issuance was published in the Manila Bulletin on 17 March 2011 and shall be effective 15 days from publication.

Singapore

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Tax update

Payments made to non-residents in connection with non-financial derivatives

Section 12(6) of the Singapore Income Tax Act (SITA) outlines the circumstances under which interest, commission, fees and any other payments in connection with a loan or indebtedness or services relating to any loan or indebtedness are deemed to be derived in Singapore. Payments made to a non-resident falling within the ambit of Section 12(6) of the SITA are subject to withholding tax under Section 45 of the SITA, unless exemptions are available under the SITA or relief is available under a relevant tax treaty.

The Inland Revenue Authority of Singapore (IRAS) has clarified that payments exchanged or made in respect of non-financial derivatives do not fall within the ambit of Section 12(6) of the SITA if the non-financial derivatives satisfy the following conditions:

- the derivative does not effectively give rise to the creation of any loan or indebtedness
- the payment is not or is not effectively a return for the use of money or provision of credit
- the payment is made is at arm's length.

Singapore withholding tax is applicable to payments exchanged or made to non-residents for non-financial derivatives if these conditions are met.

The IRAS has defined non-financial derivatives as derivatives whose payoffs are linked in whole to the payoffs or performance of underlying non-financial assets. These derivatives could take the form of forward, futures, swaps or options. The examples of non-financial derivatives provided by the IRAS include commodity derivatives, emission derivatives and freight derivatives.

Singapore Budget 2011

Liberalisation of the Withholding Tax Exemption Regime for Banks

Currently, payments which fall under Section 12(6) of the SITA made by approved banks to overseas banks and branches are exempted from Singapore withholding tax by virtue of a Ministerial remission under Section 92(2) of SITA.

It has been proposed that the scope of the this withholding tax exemption be expanded with effect on 1 April 2011 to include Section 12(6) payments made to all non-resident persons (excluding permanent establishments in Singapore) if the payments are made for trade or business purposes.

In addition, effective 1 April 2011, the entities covered would be expanded to include:

- Banks licensed under the Banking Act or approved under the Monetary Authority of Singapore (MAS) Act
- Finance companies licensed under the Finance Companies Act
- Approved financial institutions licensed under the Securities and Futures Act that engage in lending as part of their regulated activity of dealing in securities in Singapore.

The changes to the withholding tax exemption apply to:

- Payments liable to be made during the period from 1 April 2011 to 31 March 2021 on contracts which take effect before 1 April 2011
- Payments liable to be made on contracts which take effect on or after 1 April 2011 to 31 March 2021.

A sunset clause of 31 March 2021 would be introduced for the revised withholding tax exemption.

The MAS is expected to release further details of the changes shortly.

Extension Of Tax Incentive Schemes For Project Finance

It has been proposed that the sunset clause for the existing package of tax incentive schemes for project finance, other than the Financial Sector Incentive (Project Finance) scheme (FSI-PF scheme), be extended until 31 March 2017.

The FSI-PF scheme will lapse on 31 December 2011. Taxpayers will then have to apply for the Financial Sector Incentive (Credit Facilities Syndication) scheme and/or Financial Sector Incentive (Bond Market) scheme if they wish to avail themselves to similar tax benefits provided under the FSI-PF scheme.

Further details pertaining to the proposed changes were expected to be released by the MAS by the end of April 2011.

Changes to the Tax Incentive Scheme for Trustee Company

Currently, trustee companies approved under Section 43J of the SITA can enjoy a concessionary tax rate of 10% on income derived from providing qualifying trustee and custodian services, trust management and administration services. In addition, approved companies for the incentive can enjoy the 10% concessionary tax rate with no pre-determined expiry date.

To streamline the scheme and align the administration of the incentive with other tax incentive schemes, the Singapore Government has proposed the following changes to the scheme:

- A sunset clause of 31 March 2016 to be introduced
- A 10-year award tenure to be offered to recipients of the scheme approved on or after 1 April 2011
- All existing recipients of the scheme will automatically transit to the new framework on 1 April 2011. With the transition, they will enjoy the benefits provided by the scheme for a period of 10 years up till 31 March 2021
- The list of qualifying activities will be expanded to include the provision of trustee and custodian services in respect of the issue of units of foreign Collective Investment Schemes and foreign Business Trusts effective 1 April 2011.

The MAS was expected to release further details of the changes of scheme by the end of April 2011.

Renewal of Tax Exemption Scheme for Income Derived from Structured Products

The existing tax exemption scheme for income derived from structured products by non-resident non-individuals will be extended to 31 March 2017.

There are no changes to the current tax exemption for income derived from structured products by individuals.

Extension of tax deduction for Employee Equity-Based Remuneration (EEBR) scheme

Currently, no deduction is allowed for costs incurred by a company for the purchase of its parent company's shares through a special purpose vehicle (SPV), where the shares are held as treasury shares for the purpose of granting employee stock options to its employees.

It has been proposed that with effect from the Year of Assessment (YA) 2012, tax deductions be granted for costs incurred by a company to acquire its parent company's shares through a SPV for fulfilling its obligations under its EEBR scheme where:

- The SPV is set up as a company or a trust solely to administer the EEBR scheme for companies within the group
- The SPV acquires the parent company's shares from the parent company or the market and holds them in trust for the employees of the companies within the group for the EEBR scheme.

The quantum of tax deduction is the lower of:

- The amount paid by the company to the SPV for the parent company's shares
- The cost incurred by the SPV to acquire the parent company's shares,

less any amount paid by the employees for the parent company's shares.

Further details of this scheme are expected to be released by the IRAS by the end of June 2011.

Enhancement of the Finance and Treasury Centre Incentive

The Finance and Treasury Centre incentive provides a concessionary tax rate of 10% on income derived from qualifying treasury management activities undertaken on behalf of approved network companies of a group.

To qualify as an approved network company, at least 25% of the issued capital of the company must be beneficially held by the Finance and Treasury Centre or the company must beneficially hold at least 25% of the Finance and Treasury Centre. For a Singapore company to qualify as an approved network company (commonly referred to as a Local Network Company or LNC) of the Finance and Treasury Centre, the total annual revenue of the LNC must not exceed 10% of the group's annual total revenue globally (hereinafter referred as the revenue ratio).

Currently, for the purposes of the revenue ratio, the annual total revenue of an LNC includes revenue derived from related and unrelated parties.

It has been proposed that related party transactions be excluded from the calculation of annual total revenue of an LNC to determine the revenue ratio.

A sunset clause of 31 March 2016 was also introduced for new applications under the FTC incentive.

Introduction of Foreign Tax Credit (FTC) Pooling System

An FTC pooling system will be introduced and be effective from the YA 2012 to support businesses that are globalising and earning large shares of their income overseas. It is envisaged that the FTC pooling system will provide businesses with greater flexibility in using their FTCs, encourage remittances of foreign income to Singapore by reducing the Singapore tax payable on such income, and simplify tax compliance.

Under the FTC pooling system, the FTC will be computed on a pooled basis rather than on a source-by-source and country-by-country basis for each particular stream of remitted foreign income. The amount of the FTC granted will be based on the lower of the aggregate foreign taxes paid or the aggregate Singapore tax payable on the pooled foreign income.

Resident taxpayers can elect to include their remitted foreign income in the FTC pool if the following conditions are satisfied:

- Foreign income tax is paid on the foreign income in the foreign jurisdiction from which the foreign income is remitted
- Headline tax rate of the foreign jurisdiction from which the foreign income is remitted is at least 15% at the time the income is received in Singapore
- Singapore tax payable on the foreign income exists and the taxpayer is entitled to claim an FTC on the income under Sections 50 to 50B of the SITA.

The IRAS is expected to release additional details of this scheme by the end of June 2011.

Sri Lanka

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Tax update

Implementation of fiscal proposals

Certain budget proposals for the 2011 financial year, presented in Parliament on 22 November 2010, have been administratively enforced by paper notice, and took effect 1 January 2011. Below is a summary of notices applicable to banks and financial institutions.

- VAT on Financial Services (VAT on FS)

VAT on FS, which is computed on profit before VAT on FS and income tax (subject to certain adjustments), has been reduced from 20% to 12%.

The requirement to furnish monthly returns has been replaced with bi-annual returns, the first of which will be due for the six month period commencing 1 January 2011.

- Share Transaction Levy (STL)

STL, which is imposed on the proceeds from the sale of listed shares for both the vendor and purchaser, has been increased from 0.2% to 0.3%.

Relaxation of exchange control regulations with effect from 1 January 2011

Permission has been granted to Sri Lankan residents to acquire, hold and transfer shares of overseas companies and sovereign bonds issued by specified foreign governments and governmental institutions subject to specified guidelines. The guidelines provide guidance on the manner that the investment should be made, requirements of repatriation of dividends / interests and proceeds from sale, minimum investment criteria etc. The guidelines state that these regulations will not apply to companies limited by guarantee, NGOs and any persons against whom legal proceedings are pending under the Exchange Control Act.

Taiwan

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Tax update

Thin capitalisation rules

The Legislative Yuan enacted an amendment to the Taiwan Income Tax Act to introduce the thin capitalisation rules on 26 January 2011. Starting from the 2011 tax year, the thin capitalisation rules, codified as Article 43-2 of the Taiwan Income Tax Act, disallow a deduction for excess interest expenses on debts made between related parties when the debt-to-equity ratio exceeds a prescribed threshold. Companies claiming interest deductions will be required to disclose the debt-to-equity ratio and relevant information in the annual income tax return.

In view of the unique characteristics of the financial services industries, the thin capitalisation rules specifically exempt banks, credit cooperatives, financial holding companies, bill finance corporations, insurance companies and securities firms from this rule.

Detailed guidance on the scope of related parties, debt and equity, the prescribed threshold for the debt-to-equity ratio and other compliance requirements will be separately issued by the Ministry of Finance (MOF) after the thin capitalisation rules come into effect. This specific guidance is currently being discussed by the MOF and the National Tax Administration, with the latter being commissioned to study the relevant rules in other Asian countries.

KPMG observations

The introduction of the thin capitalisation rules is expected to have significant implications for multinational corporations. Though the MOF has not yet officially issued the guidance (including the debt-to-equity ratio), the draft guidance states that the maximum allowable debt-to-equity ratio is three to one.

Taxpayers should consider the MOF's guidance once issued, determine the impact that the new thin capitalization rules are likely to have on their businesses in Taiwan, and decide whether any changes should be made to their level of related party debt funding.

Vietnam

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Tax update

Circular No.18/2011/TT-BTC on 10 February 2011 to amend Circular 130/2008/TT-BTC on Corporate Income Tax (CIT)

The Ministry of Finance (MOF) issued Circular No.18/2011/TT-BTC on 10 February 2011, providing supplemental guidance to Circular No. 130/2011/TT-BTC dated 26 December 2008 in respect of CIT and becoming effective from the tax year 2010. The highlighted points under Circular 18 are listed below:

Tax period

Where the enterprise wishes to change its tax period from a calendar year to a financial year or vice versa, the tax period of the year in which the change occurs shall not exceed 12 months.

Deductible expenses for CIT purposes

- Depreciation of fixed assets temporarily not in operation for a period less than nine months due to seasonal production or a period less than 12 months for fixed assets under repair shall be deductible during that period for tax purposes provided that the enterprise informs the tax office of the reason for the interruption by the deadline of submission of the CIT finalisation return.
- Expenses for uniforms of employees paid in cash and/or in kind are now capped at VND5,000,000 (approximately USD250) per person each year, compared with VND1,500,000 in the current regulations.
- Housing benefits and tuition fees for general level schooling for the children of expatriates in Vietnam which are clearly stated in the employment contract and supported by legitimate invoices and documents shall be deductible for CIT purposes under Circular 18.
- Circular 18 confirms that long-term land use rights with an indefinite term are not permitted for depreciation, while land use rights with definite terms supported by legitimate invoices/documents and are part of the business production shall be allocated to deductible expenses on a straight line basis based on the permissible term of use in accordance with regulations.

Loss carried forward

- Circular 18 confirms losses can be carried forward continuously and entirely for five years from the year in which the losses arose. Circular 18 does not clarify whether it is compulsory for enterprises to carry forward losses if they are currently enjoying a tax holiday. Further guidance in this regard from the Vietnam tax authorities is expected.
- According to Circular 18, losses incurred during quarters of the tax year are now permitted to be offset against income of the following quarter of that fiscal year.

Changes in invoice regimes from 1 January 2011

The MOF issued Circular No.153/2010/TT-BTC on 28 September 2010 to provide guidance for the implementation of Decree No. 51/2010/ND-CP regarding invoices for the sale of goods and provision of services.

With the issuance of Decree 51 and Circular 153, changes have been made to the printing, issuance, use and management

of invoices in Vietnam. The most important changes are as follows:

- The regulations have introduced different types of invoices such as (i) export invoices used for the export of goods and services; (ii) value added invoices used for domestic sale of goods and services of entities declaring VAT in accordance with the tax credit method; (iii) sales invoices used for the domestic sale of goods and services and reserved for entities declaring tax directly on the basis of added value.
- The Government encourages the use of electronic invoices. Under the new regulations, any organisations, household businesses or proprietary businesses with a tax code may issue electronic invoices, subject to the regulations on electronic transactions and MOF regulations on electronic invoices, which are expected to be issued in the future.
- The new regulations now permit all organisations and individuals to print their own invoices or have them printed by authorised printing houses.
- Decree 51 and Circular 153 also provide specific procedures and requirements for (i) issuing invoices, (ii) dealing with invoices that have been printed but have not yet been issued, (iii) destroying invoices, (iv) dealing with the illegal use of invoices and with other breaches of the regulations on invoices.

The new invoice regulations come into effect on 1 January 2011.

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