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General tax update for financial institutions in Asia Pacific

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Highlights

Australia

- Legislative changes to the GST Act
- Phasing down of interest withholding tax on offshore borrowings deferred
- Entitlement of GST credits changed for borrowings made through deposit accounts
- Legislative changes proposed for tax consolidation groups
- Amendments to the taxation of financial arrangements
- Taxation rulings
- Tax authority decision on investments by non-resident private equity investors
- Other developments
- Proposed changes to Australia's taxation of trusts regime

China

- PRC source taxation applies to gains realised on disposal of a foreign incorporated PRC resident enterprise
- Renminbi Qualified Foreign Institutional Investors Pilot Program
- Extension of effective period of some tax preferential policies for financial institutions engaging in agricultural finance extended
- 2012 pilot program for VAT reforms in Shanghai

Hong Kong

- New double taxation agreements with Malta
- Treaties coming into effect

India

- Interest received on income tax refunds can be set-off against the interest paid on delayed payments of income tax
- A certificate issued by a chartered accountant has no decisive impact on taxability of income in the hands of a non-resident but is only prima-facie evidence
- Capital gains on transfer of shares in Indian company by Mauritian subsidiary of UK entity is not chargeable to tax in India

Japan

- New tax measures for Sharia-compliant financing structures
- Surtaxes for reconstruction funding and other items under the 2011 tax reform

Korea

- New corporate tax rate
- Application form for reduced withholding tax under the tax treaty
- Amendments to tax exemption for interest income on foreign currency denominated bonds derived by a foreign company

Malaysia

- 2012 Budget Highlights
- Recent Income Tax Rules Gazetted
- Public Rulings
- Service tax treatment for free zones, tax-free Islands and joint development areas

New Zealand

- New Zealand – Hong Kong double tax agreement in force
- Taxation Review Authority decision on tax residency
- Supreme Court decision on diversion of personal services income
- 2011 New Zealand general election
- Proposals to improve GST cross-border neutrality
- Omnibus Taxation Bill introduced

Philippines

- Court decision on withholding tax liability for the agent
- New regulations on tax credit certificates issued by taxation authority
- New regulations for implementation of personal equity and retirement accounts
- Circular issued addressing income tax exemption for mandatory social security contributions
- Circular issued regarding redemption period on foreclosed property

Singapore

- GST remission on expenses for prescribed funds managed by prescribed fund managers in Singapore

Sri Lanka

- 2012 budget highlights

Taiwan

- New tax ruling on warrant transactions

Thailand

- Reduction of corporate income tax rate
- Permission for upgrading foreign bank branches into subsidiaries
- Tax relief for victims of natural disasters
- Temporary reduction of social security contribution for 2012

Vietnam

- New decree on issuance of corporate bonds
- Guidance on purchase of corporate bonds by credit Institutions and foreign bank branches
- Increase in penalties for offences in monetary and banking sectors

Australia

▲Top

Tax update

Legislative changes to the GST ACT

On 18 August 2011, the Australian Government released an Exposure Draft outlining the proposed amendments to the financial supply provisions of the GST Act. These amendments seek to implement changes announced in the 2010-11 Budget by the government and to simplify the treatment of hire purchase arrangements (HPs) by making them fully taxable. It is anticipated that the changes will mean credit (interest and credit-related fees) from HP contracts will be treated as taxable supplies for GST purposes.

These reforms for HP contracts are anticipated to take effect on 1 July 2012. The Treasury has advised that draft legislation will be released in the next few months.

The consultation process has exposed several issues, including uncertainty on the GST treatment of the following:

- transitional issues, including contract variations, financing additions and early termination after 1 July 2012
- restructuring or refinancing HP agreements
- variable administration fees and other fees under an HP arrangement
- early or default termination
- non-taxable receipts, including damages and casualty events, and late fees and default interest
- impact on the luxury car tax.

Taxpayers will have to be aware of the following issues:

- The systems and processes used by taxpayers to account for HP transactions will need to be changed to apply the correct GST treatment to the interest component.
- When the draft rules are in place, the transitional rules will need to be assessed so that the correct treatment is applied to existing contracts being refinanced or extended after the application date; for new rules,the remaining amounts of the taxable income of the trust, including any capital gains and franked distributions to which a beneficiary is not 'specifically entitled', will need to be apportioned based on the beneficiaries' presently entitled share of the income of the trust estate.

Phasing down of interest withholding tax on offshore borrowings deferred

On 23 November 2011, the Assistant Treasurer announced that the Australian Government will defer by one year its proposed phase down of interest withholding tax (IWT) on certain offshore borrowings from financial institutions.

As part of the Federal Budget 2010/11, the Australian Government had originally announced that it would phase down the rate of IWT for financial institutions on certain offshore borrowings from 2013/14 to support competition in the Australian banking sector.

The Assistant Treasurer has indicated that the one-year deferral will mean the following:

- the rate of IWT for foreign bank branches which borrow from their overseas head office will fall from 5 percent to 2.5 percent in 2014/15 and to zero in 2015/16.
- the rate of IWT for other financial institutions which borrow from foreign financial institutions, and financial institutions which borrow from offshore retail deposits, will fall from 10 per cent to 7.5 per cent in 2014/15 and to 5 per cent in 2015/16.

Entitlement to GST credits changed for borrowings made through deposit accounts

On 23 November 2011, The Tax Laws Amendment (2011 Measures No. 9) Bill 2011 was introduced into House of Representatives and will change the GST treatment of deposit accounts with effect on 1 July 2012.

Currently, the GST Act gives an entitlement to GST credits for borrowings that the taxpayer uses for creditable activities. The change will exclude financial supplies consisting of a borrowing made through the provision of a deposit account by an Australian authorised deposit-taking institution from the current concession.

Taxpayers are currently reviewing the current and retrospective position taken with regards to the concession.

Legislative changes proposed for tax consolidation groups

On 25 November 2011, the Australian Government announced proposed changes to rights to future income (RTFI) and residual tax cost setting (RTCS) rules in the tax consolidation regime.

The Australian tax consolidation regime requires (upon entry into or formation of a tax consolidated group) the tax cost of assets to be reset, including certain intangible assets such as RTFI. On 3 June 2010, amendments were made to the tax cost setting process in relation to RTFI and RTCS rules.

The proposed changes announced on 25 November 2011 address the uncertainties presented by the amendments which received Royal Assent on 3 June 2010 and the risk to the government's revenue base of these previous amendments.

The announced changes on 25 November 2011 may have significant retrospective and prospective implications for tax consolidated groups. In particular, the proposed changes have significant retrospective implications for tax consolidated groups that have formed, or have formed and acquired entities, since 1 July 2002 and have assets that are covered by the RTFI rules or the RTCS rules.

These changes could have a significant impact on financial institutions. We encourage any taxpayers that are part of an Australian tax consolidated group to seek advice in relation to how these announced changes (if enacted) may impact their businesses.

Amendments to the taxation of financial arrangements

On 29 November 2011, Tax Laws Amendment (2011 Measures No. 7) Bill 2011 (TLAB 7) received Royal Assent and became Act No. 147.

TLAB 7 was introduced into Parliament on 21 September 2011 and includes the following amendments:

I. TOFA and PAYG instalments

By way of background, the Taxation of Financial Arrangements (TOFA) regime was introduced in 2009 and seeks to broadly align the tax and accounting treatment of gains and losses from financial arrangements (as outlined in detail in prior editions).

An issue that arose due to the introduction of the TOFA regime was the proper interaction with the pay-as-you-go instalment income provisions. In particular, whether net TOFA gains and losses could be used for calculating the instalment income of the taxpayer. This is a critical issue for certain financial institutions due to their internal systems netting off gains and losses on financial arrangements rather than tracking them on a gross basis.

TLAB 7 amends the pay-as-you-go instalment income provisions so that instalment income of a taxpayer required to apply the TOFA regime to their financial arrangements now also includes their net gains from their TOFA financial arrangements (to the extent the gains equal or exceed the losses) as worked out under the TOFA provisions.

The amendments became effective 29 November 2011,, and generally apply from the first instalment quarter of an income year following the lodgment of the first income tax return in which a taxpayer reported an assessable gain or deductible

loss from their TOFA financial arrangements.

II. Commissioner's discretion to extend time for notifying TOFA transitional elections

TLAB 7 amends the TOFA regime to give the Commissioner of Taxation (Commissioner) limited discretion to extend the time needed for a taxpayer to notify the Commissioner of the making of the transitional election to apply TOFA and related consequential and transitional amendments (TOFA provisions) to their existing financial arrangements.

Under the TOFA regime, taxpayers are permitted to make a one-off election under the transitional provisions to apply TOFA to financial arrangements in existence as at the TOFA commencement date. The making of the transitional election and its notification to the Commissioner must be made on or before the first lodgement date that occurs on or after the start of the taxpayer's first applicable TOFA income year.

The Australian Taxation Office (ATO) has identified a number of taxpayers who have inadvertently failed to notify the Commissioner of the election by the due date. As a result, the transitional election is not valid, and precludes a taxpayer from applying TOFA to financial arrangements existing as at the TOFA commencement date.

The proposed amendments provide the Commissioner discretion to extend the time to be notified of the making of a transitional election by a maximum period of three months after the otherwise relevant lodgment date,. The circumstances in which the Commissioner's discretion could be exercised include the following:

- the taxpayer did not notify the Commissioner by the due date because of an honest mistake or an inadvertent omission
- the taxpayer did not notify the Commissioner by the due date because of circumstances beyond the control of the taxpayer and the taxpayer has taken reasonable steps to mitigate the effects of those circumstances.

Taxation rulings

On 31 August 2011, the Australian Tax Office (ATO) released a draft addendum to 2003/8 in response to the decision of the High Court case of *Travelex Ltd v Commissioner of Taxation* [2010] HCA 33.

In this case, the High Court considered the GST treatment of the supply of foreign bank notes by the taxpayer to a customer on the departures side of the Customs barrier at Sydney International Airport. At issue was whether such a supply, made to a customer about to travel overseas, was one made in relation to rights for use outside Australia and therefore qualified to be treated as GST-free under item 4 in the table in section 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999.

In a majority judgement, the High Court held that the supply in this case was a supply made in relation to rights for use outside Australia and therefore GST-free. The judges concluded that currency has value only because of the rights that attach to it and by transferring the foreign bank notes the attached rights were being transferred to the taxpayer.

The practical effect of the High Court's decision is that Travelex was able to claim associated input tax credits for business inputs which it could not previously claim if the supply was characterised solely as input taxed.

The draft addendum to GSTR 2003/8 adopts a broader view of the range of supplies that fit within the expression 'a supply that is made in relation to rights' in item 4 in the table in subsection 38-190(1) of the GST Act. The Commissioner considered that the expression would also cover:

- a supply of a thing (other than goods or real property) such as foreign currency where the thing supplied derives its value solely from the attached rights and those rights are transferred
- a supply of services that are sufficiently connected with rights (for example, brokerage services supplied in relation to shares).

Taxpayers which may be affected by the Travelex decision and draft addendum to GSTR 2003/8 include those engaged in providing the following services or products:

- doreign currency services (on departure side of Customs barrier and in Australia)
- advisory services in relation to shares, life insurance and currency type services (where rights for use outside of Australia are being supplied)
- sales of computer software (involving the sale of a journal (a good), the provision of services and the granting of rights).

These taxpayers are currently reviewing their services and/or products in light of this change in GST treatment and are seeking private rulings from the ATO to clarify their position. If successful, they may be entitled to claim a GST refund amounting to associated input tax credits for business expenses incurred within the last 4 years.

Tax authority decisions on investments by non-resident private equity investors

On 26 October 2011, the Australian Taxation Office (ATO) issued two final Tax Determinations (TD) (TD 2011/24 and TD 2011/25) affecting principally investments in Australia by non-resident private equity (PE) investors.

The key points to note from these Tax Determinations are as follows:

- Gains arising from Australian located PE investments are likely to be sourced in Australia, especially if the PE fund has employed a local manager on the ground in Australia.
- Factors relevant to determine whether an investment is Australian sourced include:
  - the nature of any agreements between relevant entities
  - the location where any purchase or sale contract is executed
  - the form and substance of the purchase payments.

The ATO will look through fiscally transparent limited partnership fund structures and exempt limited partners from Australian tax if they are residents in a country with which Australia has a double tax agreement. This analysis can also apply in situations where an investor has invested into Australia through a chain of fiscally transparent limited partnerships. This has the scope to simplify inward investment structures and may provide a basis for counterfactual arguments where the inward investment has been structured through companies resident in treaty countries.

Other developments

On 26 October 2011, the Assistant Treasurer released for public consultation a discussion paper for its proposed taxation provisions for tax losses that are attributable to designated infrastructure projects, originally announced as part of the Federal Budget 2011/12. The proposal is aimed at promoting private investment in infrastructure projects designated to be of national significance. This is particularly relevant to financial institutions that provide equity or debt funding into significant Australian infrastructure projects.

The proposed rules for tax losses that are attributable to designated infrastructure projects are intended to:

- Uplift the value of carry forward tax losses by the 10 year Government bond rate
- Exempt the tax losses from the continuity of ownership test and the same business test.

A project will be a designated infrastructure project if the project is on Infrastructure Australia's national priority list of projects, is considered 'Ready to Proceed' or 'Threshold' and is approved by a decision maker. Generally, this will include projects that are above a capital expenditure threshold of AUD100 million, or are regional infrastructure projects, flagship projects or projects that demonstrate unique national interest qualities.

Proposed changes to Australia's taxation of trusts regime

On 21 November 2011, the Assistant Treasurer, released a consultation paper exploring the issues impeding the effective operation of Australia's taxation of trusts. The paper outlines a number of options for reform, ranging from minor changes to the current operation of the taxation of trusts regime to the introduction of a new model for the taxation of trust income.

The paper was developed in consultation with the private sector, in particular through the Tax Design Advisory Panel process and the Board of Taxation.

The paper advises that the Government has ruled out taxing trusts as companies.

Specific details in relation to changes to Australia's taxation of trust regimes will be released in 2012, potentially after public consultation on various ideas and comments made in the discussion paper released on 21 November 2011.

The Australian Government has also released a Consultation Strategy which provides a proposed timetable of legislative reform. The indicative timeframes assume a target start date of 1 July 2013; however, actual timeframes will depend on the scope of the review and broader government priorities.

China

▲Top

Tax update

PRC source taxation applies to gains relised on disposal of a foreign-incorporated PRC resident enterprise

Vodafone Group plc recently made a RMB2.196 billion (USD346 million) settlement with the Beijing State Administration of Taxation (BJ SAT), on the sale of shares in China Mobile Ltd, a Hong Kong-incorporated PRC tax resident company. This is regarded as the first published case where PRC tax was imposed on the disposal by a foreign investor of an interest in a foreign incorporated company which is deemed to be as PRC tax resident on the basis of its place of effective management being located in the PRC.

Among foreign investors, there has been much concern and attention towards offshore indirect transfers of PRC equity potentially being subject to PRC corporate income tax (CIT) due to the application of the CIT general anti-avoidance rule (GAAR) and Circular 698 in particular. The Vodafone case represents a different tax risk from Circular 698, which does not require any re-characterisation of the disposal transaction under the GAAR. It confirms as a matter of interpretation that the gain on the sale of an offshore company is likely to be regarded as PRC sourced and subject to PRC withholding tax where the offshore company is effectively managed in the PRC.

Guidance on the term 'place of effective management' is provided under Guoshuifa [2009] No.82 (Circular 82) issued by the State Administration of Taxation (SAT) in 2009 and the Detailed Implementation Rules to the CIT Law. The term 'place of effective management' is defined as the location where the 'substantive and overall management and control over the production and business operations, personnel, finance functions etc.' of an enterprise is undertaken.

To this effect, PRC tax authorities have recently stepped up efforts to require registration of the PRC tax resident status of foreign incorporated enterprises controlled by PRC residents, and are putting a compliance system in place. Foreign investors, including private equity funds, need to take extra care and have robust investment structures in place to mitigate the adverse tax consequences in the PRC. In particular, investments in 'red chip' companies or in unlisted foreign incorporated companies which have been improperly managed from the PRC will likely be prime targets.

For further information, please refer to *Private Equity Tax Express Issue 1*. A link to this publication is provided below:

http://kpmg.com/cn/en/IssuesAndInsights/ArticlesPublications/Newsletters/Private-Equity-Tax-Express/Documents/PE-Tax-Express-1112-01.pdf

Renminbi Qualified Foreign Institutional Investors Pilot Program

The China Securities Regulatory Commission (CSRC), State Administration of Foreign Exchange (SAFE) and People's Bank of China (PBoC) jointly issued the relevant rules and guidelines regarding the launch of the Renminbi Qualified Foreign Institutional Investor (RFQII) Pilot Program on 16 December 2011. This was followed by the issuance of the detailed implementation rules by CSRC and SAFE respectively.

Under the RQFII Pilot Program, qualifying Hong Kong subsidiaries of fund management and securities companies in the PRC can apply for quotas to use RMB raised in Hong Kong to invest in the PRC securities market (including stocks, bonds, warrants, securities investment funds that are listed and traded in securities exchange and other financial instruments permitted by CSRC and PBoC). The reported initial quota for the RQFII Pilot Program is RMB20 billion (USD3.155 billion).

The RQFII rules require that no less than 80 percent of the approved RQFII quota be invested in fixed income products, while the remaining quota can be invested in equities.

The RQFII scheme has created further opportunities for investors to invest in RMB investment products in Hong Kong. It is anticipated that the launching of the RQFII Pilot Program is a step towards expediting the development of offshore RMB

business in Hong Kong, strengthening Hong Kong as an offshore RMB centre and promoting RMB internationalisation in the longer term.

As foreign investors and RQFIIs participate in the PRC capital market through the RQFII programme, the underlying tax implications on such investments will be a relevant consideration as any taxes due would directly impact on the investment returns. Unfortunately, no clear guidance has been provided yet by SAT on the many aspects of PRC taxation of an RQFII. The tax issues and uncertainties should be similar to those currently encountered by QFII participants.

For further information on the two circulars, please refer to Issue 9 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-1111-09.pdf

Extension of effective periods of certain tax preferential policies for financial institutions engaging in agricultural finance extended

The Ministry of Finance (MoF) and SAT jointly issued the circulars, Caishui [2011] No.101 and No. 104 (Circular 101 and Circular 104) to extend the validity periods of certain tax policies (including reduction of applicable business tax rate for specific agricultural finance and insurance services; a more generous bad debt provisions deduction ratio for corporate income tax purposes) granted to financial institutions engaging in agricultural finance which were due to expire.

The extension of the specific tax incentives set out in the two circulars is consistent with the objective of the Chinese government to continue encourage and promote the development of financial services in rural areas.

For further information on the two circulars, please refer to Issue 9 of *China alert: Financial Service Focus*. A link to this publication is provided below:

http://www.kpmg.com.edgekey.net/cn/en/IssuesAndInsights/ArticlesPublications/Newsletters/China-alert-Financial-Service-Focus/Documents/china-alert-FS-1111-09.pdf

VAT reforms become a reality for 2012 pilot program in Shanghai

On 17 November 2011, the PRC government took a significant step forward in its stated objective of applying a value added tax (VAT) across both goods and services.

In joint circulars issued by the MoF and SAT, Caishui [2011] No.110 and No.111, detailed implementation and transitional rules (referred to below as 'the rules') were released to put into effect a pilot program in Shanghai to replace business tax (BT) with a VAT, commencing on 1 January 2012. While the pilot program is limited to Shanghai and particular industries, the implementation and transitional rules are likely to serve as a roadmap to the way the reforms will ultimately be implemented across the whole of China.

Under the pilot program in Shanghai, the following industries in Shanghai will be subject to the VAT at the respective applicable VAT rate set out below:

Leasing of tangible movable property	17 percent
Transportation services	11 percent
Research and development (R&D) and technical services	6 percent
Information technology services	6 percent
Cultural and creative services	6 percent
Logistics and ancillary services	6 percent
Certification and consulting services	6 percent

The rules contain very detailed definitions of the industries and explain the scope of each of these services for the VAT pilot program.

Financial services, real estate and construction services are specifically excluded from the scope of the pilot program. Nevertheless, all taxpayers should continue to monitor the progress of the VAT reform as it may have an impact on their business operations in the future.

For further information on the two circulars, please refer to Issue 9 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-1111-09.pdf

Hong Kong

▲Top

Tax update

New double taxation agreements with Malta

Hong Kong signed a double taxation agreement (DTA) with Malta on 8 November 2011. This is the 22nd comprehensive DTA concluded by Hong Kong.

The new DTA provides the following maximum rates of withholding taxes:

	Non-treaty rate	Treaty rate
Dividends	15 percent	Nil
Interest	15 percent	Nil
Royalties	15 percent	3 percent

Under the DTA, profits tax paid in Hong Kong are allowed as a tax credit against tax payable in Malta.

For further details, please refer to Issue 29 of *Tax Alert* at the link below:

http://www.kpmg.com/cn/en/IssuesAndInsights/ArticlesPublications/Newsletters/Tax-alert/Documents/tax-alert-1111-20.pdf

Treaties coming into effect

The DTA between Hong Kong and New Zealand, signed on 1 December 2010, has completed its formal ratification procedures. The DTA will have effect for any year of assessment beginning on or after 1 April 2012 in Hong Kong.

For further details, please refer to Issue 39 of *General Tax Update* at the link below:

http://www.kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Newsletters/General-Tax-Update/Documents/General-tax-update-1104-39.pdf

India

▲Top

Tax update

Interest received on income tax refunds can be set-off against the interest paid on delayed payments of income tax

Recently, in the case of *DCIT v. Bank of America NT & SA (the taxpayer) [2011-TII-ITAT-MUM-INTL],* the Mumbai Bench of Income-tax Appellate Tribunal (the Tribunal) held that interest received on income tax refunds can be set-off against the interest paid on delayed payments of income tax and only the net amount is subject to tax.

The taxpayer received interest on an income tax refund, and paid interest on delayed payments of income tax; the taxpayer set-off the interest paid against the interest received and offered the net interest received to tax.

The Assessing Officer (AO) passed an order disallowing the total interest paid on income tax payable. The AO also refused to allow the set-off and taxed the gross interest.

The taxpayer approached the Commissioner of Income Tax (Appeals) [CIT(A)], who confirmed the order passed by the AO.

On appeal to the Tribunal, the taxpayer contended that the interest paid to and received from the same party, i.e. the tax department, should be considered together and the interest paid should be offset against the interest received.

The Tribunal relying on the taxpayer's own case in earlier years held that interest received on an income tax refund can be set-off against the interest paid on the delayed payment of income tax and only the net amount should be offered to tax.

A certificate issued by a chartered accountant has no decisive impact on taxability of income in the hands of a non-resident but is only prima-facie evidence

Recently, in the case of *DCIT v. Rediff.com India Limited (the taxpayer) [ITA No. 3061/Mum/2009 dated 5 September 2011],* the Mumbai Bench of Income-tax Appellate Tribunal (the Tribunal) held that a certificate issued by a chartered accountant (CA) has no decisive impact on the taxability of income in the hands of a non-resident recipient but was only prima-facie evidence about the taxability. Its acceptability by the tax department was confined to permitting the remittance on the basis of taxability status certified by the CA. The certificate could not substitute for adjudication on taxability in the hands of a non-resident by the Assessing Officer (AO), nor could it be used as a shield by the taxpayer to prevent any investigation of the matter by the tax authorities.

The taxpayer was engaged in internet related services and claimed deductions for legal and professional fees, photography charges and bandwidth charges payable to the non-resident. However, the taxpayer did not withhold tax under the provisions of the Income-tax Act, 1961 (the Act). Accordingly, the amount paid was not deductible under the provisions of the Act.

The AO, on the basis of the Mumbai Tribunal's decision in the case of *Arthur Anderson & Co [ITA No. 9125/Mum/95 dated 29 July 2003],* held that even if there were any doubts about the taxability of payments made to a non-resident, the tax was required to be deducted as a measure of abundant caution.

The CIT(A) overrode the decision made by the AO.

The Tribunal, relying on the decision of the Supreme Court in the case of *GE India Technology Centre Pvt Ltd v. CIT [[2010] 327 ITR 456 (SC)],* observed that tax withholding obligations under the provisions of the Act arise only if the payment is chargeable to tax in the hands of a non-resident recipient. Therefore, merely because a person has not deducted tax while making remittance abroad, it cannot be said that the person failed to uphold his tax withholding obligations.

The Tribunal held that this vicarious tax withholding liability could not be invoked unless a primary tax liability of the recipient is established. The AO could not proceed to disallow the payments just because the payer did not obtain a specific declaration from the tax department.

The AO cannot proceed to disallow the payments on the basis that the payer had an obligation to deduct tax at source. He still has to demonstrate and establish that the payee has a tax liability in respect of the amount embedded in the impugned payment.

In order to disallow the payments under the provisions of the Act, the AO needs to examine whether the recipient has a tax liability in India and that aspect can be examined only when all the relevant details are duly furnished by the taxpayer. However, a certificate issued by a CA could not be considered as a conclusive document while determining the tax liability of a non-resident. Accordingly, such a certificate is not a substitute for determining the tax liability of a non-resident.

The Tribunal observed that even when the remittance has been made on the basis of the CA certificate, the taxpayer runs a risk of consequences of under deduction or non-deduction of tax at source. Therefore, the CA certificate is not a conclusive document in deciding the tax liability.

The Tribunal did not adjudicate on the taxability of the payments in the hands of the taxpayer and remitted the matter to the lower authorities for examining the taxability of the payments.

Capital gains on transfer of shares in an Indian company by Mauritian subsidiary of a UK entity is not chargeable to tax in India

In the case of *Ardex Investments Mauritius Ltd. (the applicant) [AAR No 866 of 2010],* the Authority for Advance Rulings (AAR) held that capital gains on the proposed sale of shares in an Indian company to a foreign company is not chargeable to tax in India in view of Article 13(4) of the India-Mauritius tax treaty.

The applicant, a tax resident of Mauritius under the India-Mauritius tax treaty, held 50 percent of the equity share capital in Ardex Endura (India) Pvt. Ltd. (Ardex India). The applicant proposed to sell the shares to another non-resident group company, Ardex Beteiligungs– GmbH Germany (Ardex Germany), at fair market value prevailing at the time of the proposed sale.

In connection with the sale, the following questions were raised before the AAR:

- tax and withholding tax implications in India arising on account of the proposed transfer of shares in Ardex India to Ardex Germany
- applicant's obligation to file a return of income in India under the Act.

The AAR observed the following:

- The shares in Ardex India were held by the applicant for a considerable length of time before they were sought to be sold by way of a regular commercial transaction.
- Even if it was a case of treaty shopping, in light of the decision of the Supreme Court in the case of *UOI v. Azadi Bachao Andolan [2003] 263 ITR 706 (SC)*, no further enquiry into the question was warranted or justified.
- Capital gains on the proposed sale of shares by the applicant to Ardex Germany were not chargeable to tax in India in view of Article 13(4) of the India-Mauritius tax treaty.
- Further, relying on the decision in the case of *VNU International BV (AAR No. 871 of 2010)*, the AAR held that since Ardex India's shares were transferred, which would otherwise be taxable under the provisions of the Act, the applicant was bound to file a return of income in India in respect of the income from the proposed transfer of shares.

Japan

▲Top

Tax update

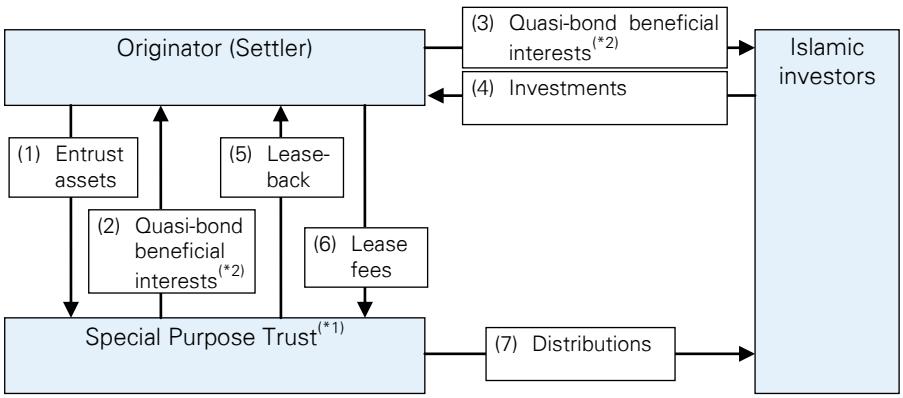
New Tax Measures for Sharia-Compliant Financing Structures

On 16 November 2011, it was announced that the amendments to the Asset Liquidation Act and related Japanese tax laws would begin to be enforced on 24 November, in accordance with 'the Act for Amendment of the Financial Instruments and Exchange Act, etc. for Strengthening the Foundations of Capital Markets and the Financial Industry' promulgated on 25 May 2011.

As a result of the amendments, quasi-bond beneficial interests of special purpose trusts (SPTs) have been structured as Islamic bonds (sukuk) so that Islamic investors, who are prohibited from receiving interest, can make investments into them, and preferential tax measures in relation to quasi-bond beneficial interests have been introduced.

1. Structure using quasi-bond beneficial interests of SPTs

The illustration below is a structure using quasi-bond beneficial interests of SPTs presented by the Financial Services Agency (FSA) in their statements concerning their recommendations for the 2011 tax reform.



(Source: December 2010, FSA 'The 2011 Tax Reform')

*(*1) SPTs*

An SPT is a trust defined under the Asset Liquidation Act as a trust for implementing asset securitisation and having more than one person acquire beneficial interests in a trust held by the settler at the time of conclusion of the trust contract.

*(*2) Quasi-bond beneficial interests*

Quasi-bond beneficial interests are a class of beneficial interests for which a predetermined amount is to be distributed with regard to the distribution of monies during the trust period.

By virtue of the amendment to the Asset Liquidation Act, new requirements for quasi-bond beneficial interests were added in order to make them more similar to corporate bonds, i.e. when providing for quasi-bond beneficial interests in an SPT contract, the contract must include conditions that the principal should be redeemed at a predetermined point in time and beneficiary certificate holders of the quasi-bond beneficial interests have no voting rights for resolutions at a beneficiary

certificate holders' meeting except for important matters (Article 230(1)(ii) of the Asset Liquidation Act). Moreover, a requirement to issue other types of beneficial interests when issuing quasi-bond beneficial interests was abolished.

Note that quasi-bond beneficial interests of an SPT discussed in 2, 3 and 4 below are those provided for in Article 230(1)(ii) of the Asset Liquidation Act.

2. Tax treatment for Islamic investors

Preferential tax measures have been introduced for quasi-bond beneficial interests of an SPT held by Islamic investors not having a permanent establishment in Japan.

(1) Profit distributions and gains on redemption

Interest on and gains on redemption from book-entry corporate bonds (issued on or before 31 March 2013) received by non-resident individuals or foreign companies are tax exempt under certain conditions. This rule has been expanded to cover profit distributions and gains on redemption from book-entry quasi-bond beneficial interests (issued on or before 31 March 2013) of SPTs.

Note that this rule does not apply to profit distributions and gains on redemption from book-entry quasi-bond beneficial interests of an SPT received by related persons of the originator of the SPT.

(2) Capital gains

Although capital gains from the disposal of shares in a Japanese company by a foreign company are subject to Japanese corporate tax in either of the following cases, this rule will not apply to quasi-bond beneficial interests of an SPT:

i. Where the foreign company has held 25 percent or more of the shares in the Japanese company at any time during the fiscal year of sale or the preceding two taxable years, and at least 5 percent of the shares are sold by the foreign company within the fiscal year of sale

ii. Where the Japanese company is a real estate holding company (a company whose Japanese real property interests equal or exceed 50 percent of its total assets on a fair market value basis)

Thus, capital gains arising from the disposal of quasi-bond beneficial interests of an SPT by a foreign company will not be taxed in Japan. Note that capital gains arising from disposal of quasi-bond beneficial interests by a non-resident individual are also non-taxable in Japan.

(*3) Tax treatment for SPTs*

An SPT is treated as a corporate-taxed trust, i.e. a trust company that is the trustee of the SPT is liable for corporate tax on income derived from the SPT. Profit distributions paid by an SPT are deductible in calculating taxable income of the SPT provided the tax qualifying requirements are satisfied. The tax qualifying requirements have been changed to reflect the introduction of quasi-bond beneficial interests. Such requirements were amended as follows:

- Conditions for the SPT

Before amendment	After amendment
All of the following requirements are satisfied: (a) The SPT contract is notified to the government. (b) One of the following conditions is satisfied: (1) The public offering of beneficial interests of the SPT by the issuer has been conducted by way of a solicitation of acquisition, and the total issue price of the beneficial interests is not less than 100 million yen. (2) As a result of the public offering of beneficial interests of the SPT conducted by the issuer, the beneficial interests have been accepted by not less than 50 persons. (3) As a result of the public offering of beneficial interests of the SPT conducted by the issuer, the beneficial interests have been accepted only by a qualified institutional investor(s). (c) The ratio of domestic offered beneficial interests to total offered beneficial interests is greater than	All of the following requirements are satisfied: (a) The SPT contract is notified to the government. (b) One of the following conditions is satisfied: (1) The public offering of quasi-bond beneficial interests of the SPT by the issuer has been conducted by way of a solicitation of acquisition, and the total issue price of the quasi-bond beneficial interests is not less than 100 million yen. (2) As a result of the public offering of beneficial interests (excluding quasi-bond beneficial interests) of the SPT conducted by the issuer, the beneficial interests have been accepted by not less than 50 persons. (3) As a result of the public offering of quasi-bond beneficial interests of the SPT conducted by the issuer, the quasi-bond beneficial interests have been accepted only by a qualified institutional investor(s).

50 percent. (d) Any other requirements specified by a Cabinet Order	(4) As a result of the public offering of beneficial interests (excluding quasi-bond beneficial interests) of the SPT conducted by the issuer, the beneficial interests have been accepted only by a qualified institutional investor(s). (c) The ratio of domestically offered beneficial interests (excluding quasi-bond beneficial interests) to total offered beneficial interests is greater than 50 percent. (d) Any other requirements specified by a Cabinet Order

- Conditions for a fiscal year of the trust company as a trustee of the SPT

The reduced withholding tax rates on dividends from listed shares will be extended as follows:

Before amendment	After amendment
All of the following requirements are satisfied: (a) At the end of the fiscal year, the trust company does not fall under the category of a family company. (b) The amount of the distribution of profit pertaining to the fiscal year exceeds 90 percent of the amount of distributable profits of the SPT for the fiscal year. (c) Any other requirement specified by a Cabinet Order	All of the following requirements are satisfied: (a) At the end of the fiscal year, the trust company does not fall under the category of a family company unless the SPT satisfies condition (b)(1) or (2) above. (b) The amount of the distribution of profit pertaining to the fiscal year exceeds 90 percent of the amount of distributable profits of the SPT for the fiscal year, excluding a certain amount when quasi-bond beneficial interests are issued. (c) Any other requirement specified by a Cabinet Order

The amendments will be applied for fiscal years ending on or after 24 November 2011.

(4) Other related amendments

- Repo transactions

Interest and lending fees paid to foreign financial institutions in respect of certain bond gensaki repo transactions and securities lending transactions are tax exempt under certain conditions.

The above tax exempt regime has been expanded to cover book-entry quasi-bond beneficial interests.

- Profit distributions from quasi-bond beneficial interests received by financial institutions

When certain financial institutions including banks having business offices in Japan, Financial Instruments Business Operators prescribed under the Financial Instruments and Exchange Act or similar business operators receive interest on government or company bonds recorded in the transfer account book prescribed in the Act on Book-Entry Transfer of Company Bonds, such interest is not subject to withholding tax to the extent of the interest arising for the recorded period.

This exemption regime has been expanded to include profit distributions from book-entry quasi-bond beneficial interests.

- Registration tax/real estate acquisition tax

Under the structure indicated in 1 above, if the originator repurchases assets entrusted to the SPT on the termination of the SPT contract, registration taxes and real estate acquisition taxes will be exempt if certain conditions are met.

Surtaxes for reconstruction funding and other items under the 2011 tax reform

On 30 November 2011, the bill for reconstruction funding after the March 11 earthquake and the bill for the remaining items of the 2011 tax reform were approved by the Diet.

An outline of the surtaxes for reconstruction funding in 'I. Surtaxes for Reconstruction Funding after the March 11 Earthquake' and the main amendments under the 2011 tax reform in 'II. Corporation Tax' is provided below.

1. Surtaxes for reconstruction funding after the March 11 earthquake

(1) Special reconstruction corporation tax

Special Reconstruction Corporation Tax will be imposed on companies (both Japanese companies and foreign companies) as follows:

Tax base	Tax rate	Taxable fiscal years
Corporation tax liability (corporation tax liability before taking income/foreign tax credits, etc.) for the taxable fiscal year	10 percent	Fiscal years beginning in the designated period (from 1 April 2012 to 31 March 2015) (3 years)

(2) Special reconstruction income tax

Special Reconstruction Income Tax will be imposed on companies as follows:

Tax base	Tax rate	Taxable fiscal years
- Japanese companies: income tax on interest, dividends, etc. - foreign companies: income tax on Japanese sourced income such as interest, dividends or royalties.	2.1 percent	From 2013 to 2037 (Income tax on income arising from 1 January 2013 to 31 December 2037) (25 years)

'Income tax' above includes not only income tax declared in tax returns but also withholding tax. Therefore, for example, when dividends, interest or royalties, etc. are paid to a foreign company having no permanent establishment in Japan, Japanese tax will be withheld at 20.42 percent as opposed to the 20 percent generally assessed under current domestic tax law.

Note that where a reduced withholding tax rate or exemption is applied to interest, dividends or royalties, etc. under a tax treaty, the Special Reconstruction Income Tax will not be imposed.

Withholding tax agents have to withhold Special Reconstruction Income Tax together with withholding tax and pay it to the competent tax office by the payment due date of the withholding tax.

2. Corporation tax

(1) Corporation tax rates

- Reduction in corporation tax rates

Under the 2011 tax reform, corporation tax rates will be reduced for fiscal years beginning on or after 1 April 2012 as follows:

Classification of ordinary companies		Before amendment	After the 2011 tax reform
Companies other than below		30 percent	25.5 percent
Small and medium-sized companies(*1)	Taxable income up to JPY8 million per year	22 percent (18 percent (*2))	19 percent (15 percent (*2))
	Taxable income in excess of JPY8 million per year	30 percent	25.5 percent

(*1)

(*1) Small and medium-sized companies are defined as follows:

Companies with paid-in capital of JPY100 million or less (at the end of a fiscal year), excluding the following cases:

- 100 percent of the shares are directly or indirectly held by one large-sized company (a company whose paid-in capital is JPY500 million or more)
- 100 percent of the shares are held by two or more large-sized companies in a 100 Percent Group

(*2) The reduced tax rates below are applicable for the following fiscal years:

- Fiscal years ending between 1 April 2009 and 31 March 2012

  18 percent

- Fiscal years beginning before and ending on or after 1 April 2012

  15 percent

- Fiscal years beginning between 1 April 2012 and 31 March 2015

  Changes will be applied to interest on book-entry bonds with interest calculation periods commencing on or after 30 June 2011.

However, as the Special Reconstruction Corporation Tax will be imposed for three years, the corporation tax rates for fiscal years starting from 1 April 2012 to 31 March 2015 will generally be as follows:

• **Classification of ordinary companies**		• **2011 tax reform + Special Reconstruction Corporation Tax**	
Companies other than below		28.05 percent	(25.5 percent x 110 percent)
Small and medium-sized companies(*1)	Taxable income up to JPY8 million per year	16.50 percent	(15 percent x 110 percent)
	Taxable income in excess of JPY8 million per year	28.05 percent	(25.5 percent x 110 percent)

- Effective corporate tax rate

Accordingly, the effective corporate tax rate including local taxes will be reduced as illustrated below:

	Before amendment	**After the 2011 tax reform**	**2011 tax reform + Special Reconstruction Corporation Tax**
Corporation tax	30 percent	25.5 percent	28.05 percent
Special local corporate tax	4.292 percent	4.292 percent	4.292 percent
Business tax	3.26 percent	3.26 percent	3.26 percent
Inhabitant tax	6.21 percent (30 percent x 20.7 percent)	5.28 percent (25.5 percent x 20.7 percent)	5.28 percent (25.5 percent x 20.7 percent)
Total	43.762 percent	38.332 percent	40.882 percent
Effective tax rate	40.69 percent (43.762 percent x 100/107.55)	35.64 percent (38.332 percent x 100/107.55)	38.01 percent (40.882 percent x 100/107.55)

(The above effective tax rates have considered the tax deductibility of special local corporation tax and business tax payments, and are calculated using Tokyo tax rates applied to a company whose paid-in capital is over JPY100 million.)

(2) Tax losses carried forward

- Amendments to tax loss carry-forward rules

The tax loss carry-forward rules have been amended as below.

	Before amendment	**After amendment**	
		(A)	(B)
		Small and medium-sized companies / TMKs (*2)	Companies other than (A)
Deductible amount	Up to the total amount of taxable income for the year	No change	Up to 80 percent of taxable income for the year
Carry-forward period	7 years	9 years	

(*2) 'TMKs' include tax qualifying Tokutei Mokuteki Kaisha (TMKs) and Toushi Houjin (THs).

The amendment to the deductible amount is applicable for fiscal years beginning on or after 1 April 2012.

The amendment to the carry-forward period is applicable for tax losses incurred in fiscal years ending on or after 1 April 2008.

- Related amendments

In connection with the extension of the carry-forward period, the following amendments have been made:

i. Maintenance of book account documents for the fiscal years in which tax losses were incurred are a requirement to apply the tax loss carry-forward rules.

ii. The statute of limitations for corrections by the tax authorities with respect to tax losses is extended to nine years, compared to seven years under the pre-amendment rule.

iii. A company is entitled to file a Request for Correction with respect to tax losses for nine years, as opposed to one year under the pre-amendment rule.

Amendments (i) and (ii) will be applied to tax losses incurred in fiscal years ending on or after 1 April 2008, and amendment (iii) will apply to corporation taxes for which the statutory filing deadline falls on or after the day that the amended tax laws are promulgated.

Korea

▲Top

Tax update

The Ministry of Strategy and Finance (MOSF) proposed amendments to Korean tax law on 30 September 2011. Among the amendments, the major changes which may affect the financial institutions are listed below:

New corporate tax rate

According to the current tax law, the corporate income tax rate is 11 percent, inclusive of resident surtax, for the first KRW200 million of taxable income, and 24.2 percent, inclusive of resident surtax, for taxable income exceeding KRW200 million. For tax years beginning on or after 1 January 2012, the higher corporate income tax rate will be reduced to 22 percent, inclusive of resident surtax.

The amended tax law proposes and inserting the new tax bracket of 22 percent for the taxable income ranging from KRW 200 million to KRW50 billion maintaining the 24.2 percent higher tax rate for taxable income above KRW50 billion. This proposal has not been enacted yet.

Upon approval of this amendment, the new corporate tax rates apply as the following table for the business year starting from 1 January 2012.

CIT rate change	**FY11**	**FY12**
Proposed CIT rate		
KRW200 million or less	11.0 percent	11.0 percent
More than KRW200 million to KRW50 billion	24.2 percent	22.0 percent
More than KRW 50 billion	24.2 percent	24.2 percent

Application form for the reduced withholding tax under the tax treaty

If a foreign company which is a beneficial owner of domestic sourced income pursuant to the provisions of Article 93 intends to apply a reduced withholding tax rate under the relevant tax treaty between Korea and the country of the foreign resident, the beneficial owner needs to submit an application form for applying the reduced withholding tax rate to its withholding tax agent.

When domestic source income is paid to a beneficial owner through an overseas investment vehicle prescribed by Presidential Decree, the overseas investment vehicle needs to receive the application form from the beneficial owner and submit the form to its withholding tax agent.

If withholding tax agent does not receive the application form from the beneficial owner or from the overseas investment agent, or, cannot identify the beneficial owners of the Korean source income based on reasons as prescribed by Presidential Decree, the foreign company is not be entitled to the reduced withholding tax rate under the tax treaty. In such case, the domestic withholding tax rate would apply.

Amendments to tax exemption for interest income on foreign-currency denominated bonds (FCD bonds) derived by a foreign company

In accordance with the current tax law, interest payments on FCD bonds issued by a Korean company to foreign residents, including the branch of a foreign company, are exempt from Korean interest withholding tax, regardless of the tax treaty

status of foreign recipients.

The amended tax law proposes that the interest income on FCD bonds only issued by a Korean company outside Korea derived by a foreign resident will be exempt from Korean interest withholding tax. Also, for the purposes of this provision, the Korean branch of a foreign company is no longer classified as a foreign resident eligible for the withholding tax exemption for interest income on the FCD bond.

Upon approval of this amendment, this amendment will be effective for FCD bonds issued on or after 1 January 2012.

Malaysia ▲Top

Tax update

2012 budget highlights

The Malaysian Prime Minister YAB Dato' Sri Mohd. Najib Tun Abdul Razak, who is also the Minister of Finance, presented the 2012 Budget on 7 October 2011. Some of the major changes are as follows:

Treasury management centres

A treasury management centre (TMC) is a centre that provides financial and fund management services to a group of related companies inside and outside of Malaysia. To develop Malaysia as a competitive financial centre in the region and to promote the establishment of TMCs in Malaysia, it was proposed that TMCs be given the following incentive package:

- 70 percent exemption on statutory income (after deducting tax depreciation) of the TMC arising from the provision of qualifying treasury services to related companies for a period of five years. The income includes fees and management income from providing qualifying services; interest income from lending to related companies; interest income and gains from managing surplus funds within the group; foreign exchange gains from managing risks for the group; and guarantee fees
- Exemption from withholding tax on the interest payments to non-residents on funds raised to conduct qualifying TMC services
- Full exemption from stamp duty on all loan and service agreements executed by a TMC in Malaysia for qualifying TMC activities
- Expatriates working in a TMC are only taxed on the portion of chargeable income attributable to the number of days spent in Malaysia. Based on the release of the Income Tax (Exchange of Information) Rules 2011, a foreign authority may now request information of a person from the Director General of Inland Revenue (DGIR) if its government has entered into a DTA with the Malaysian Government.

Qualifying treasury services include cash management, current accounts management, financial and debt management, investment services, financial risk management, and corporate and financial advisory services.

The proposal if approved would be effective for applications received by the Malaysian Investment Development Authority (MIDA) from 8 October 2011 to 31 December 2016.

So far, no guidelines have been issued by MIDA. It is uncertain whether any other conditions or restrictions will be imposed on the applicants especially for financial institutions.

Kuala Lumpur International Financial District

The Kuala Lumpur International Financial District (KLIFD) is a crucial component of the Greater Kuala Lumpur initiative, which is part of the key entry points of the Government Economic Transformation Programme.

To achieve the KLIFD's aspiration of making Kuala Lumpur a global financial city of choice and to attract leading financial organisations to operate in the KLIFD, the incentive package proposed includes the following:

- 100% income tax exemption for a period of 10 years and stamp duty exemption on loan and service agreements for KLIFD status companies
- industrial building allowance and accelerated capital allowance for KLIFD Marquee status companies.

Currently, details of the application process and incentives have not been released.

Real estate investment trusts

To further promote the development of real estate investment trusts (REITs) and to invigorate the Malaysian capital and property market, foreign institutional investors and non-corporate investors (including resident and non-resident individuals) will continue to be subject to the final withholding tax of 10 percent on the dividends from REITs approved by the Securities Commission (SC) for another five years, from 1 January 2012 to 31 December 2016.

Issuance of Islamic securities

To promote the growth of the Islamic capital market, expenses from the issuance of Islamic securities based on the *Wakalah* principle are allowable as a tax deduction in Malaysia. The deduction is available provided the issuance of such securities is approved by the SC or the Labuan Financial Services Authority (LFSA).

This is effective from year of assessment (YA) 2012 to YA 2015.

Trading of non-ringgit *sukuk*

Tax exemptions enjoyed by qualified institutions on the fees received in undertaking activities related to the arranging, underwriting and distribution of non-ringgit *sukuk* originating from Malaysia and the profits received from trading of non-ringgit *sukuk* originating from Malaysia have been extended for another three years.

The exemption is available provided that such *sukuk* are approved by the SC or LFSA.

The extension is effective from YA 2012 to YA 2014.

Insurance companies - losses

The current year adjusted loss from a life fund of an insurer is disallowed from being deducted against the aggregate statutory income from other sources other than the life fund. In addition, any unabsorbed business losses from sources other than the life fund are not allowed to be deducted against the statutory income of the life fund of that insurer.

The amendments provide some clarity on the tax treatment on the utilisation of business losses of an insurer that carries on life business but do not completely resolve the tax issues as the amendments are only effective from YA 2012.

It is uncertain what the tax position for YAs prior to 2012 is due to the conflicting interpretation of the current tax laws before the proposed amendments on the utilisation of business losses for an insurer that carries on a life business.

Review of real property gains tax

To curb speculative activities in the real property market so as to ensure that the low and middle income groups are able to own houses at affordable prices, the real property gains tax (RPGT) rates on gains arising from the disposal of residential and commercial properties has been amended as follows:

i. 10 percent tax where the property has been held for up to two years

ii. 5 percent tax where the property has been held for more than two years and up to five years

iii. 0 percent tax where the property has been held for more than five years.

Previously, the RPGT rate had been fixed at an effective rate of 5 percent for any disposal of chargeable assets which were held for less than five years.

The amendments are effective for disposals from 1 January 2012 onwards.

Stamp Duty on Loans

To increase ownership of residential properties by the middle income group and to reduce the cost of doing business for micro enterprises and small and medium enterprises (SMEs), a 100 percent stamp duty exemption has been granted on the following instruments:

i. loan agreements for the purchase of residential properties priced up to RM300,000, under the Skim Perumahan Rakyat 1 Malaysia

ii. loan agreements entered into between micro enterprises and SMEs with any banking and financial institution for loans up to RM50,000 under the Micro Financing Scheme

iii. loan agreements entered into between any professionals and Bank Simpanan Nasional for loans up to RM50,000 under the Professional Services Fund

With respect to item (i), the exemption is effective for sale and purchase agreements executed between 1 January 2012 and 31 December 2016.

With respect to items (ii) and (iii), the exemption is effective for agreements executed from 1 January 2012.

Compensation for late refunds

Previously, taxpayers who were late in paying their taxes were subject to penalties. However, no compensation was given to the taxpayer if the Malaysian Inland Revenue Board (MIRB) is late in refunding any tax overpaid.

In order to ensure that taxpayers are accorded equitable treatment and to enhance efficiency in the tax administration, it was proposed and approved that taxpayers be given compensation of 2 percent per year on the amount of tax refunded late by the MIRB.

A refund is considered late if it is made after one of the following:

- 90 days from the due date for e-filing
- 120 days from the due date for manual tax filing.

The above compensation shall not apply if one of the following occurs:

- the taxpayer fails to furnish the tax return by the due date
- the excess payment is due to tax set off under Section 110 of the Income Tax Act, 1967 (the Act)
- the assessment is under appeal.

Where the refund ought not to have been made by reason of an incorrect return or incorrect information as furnished by the taxpayer, a 10 percent penalty is applied on the amount wrongly refunded.

The proposal is effective from YA 2013.

Power of access

To allow the MIRB to have a wider scope of review in carrying out tax audits and investigations, it was proposed that the Director General of Inland Revenue (DGIR) be empowered to have access to computerised data stored in a computer, including being provided with the necessary passwords, encryption codes, decryption codes, software or hardware and any other means required to enable comprehension of the computerised data.

In addition, it was also proposed that the existing provision of the Act covering the power to call for information be extended. The DGIR is to be empowered to request any person to provide any information or document under his control or possession within or outside the territorial jurisdiction of Malaysia. Further, the DGIR would be given the power to wholly or partly disregard any information or particulars produced after the expiry of the time specified in a notice issued by the DGIR. The information or particulars disregarded would not be used to dispute the assessment made under the Act including in any proceeding before the Special Commissioners or court.

Both proposals have been withdrawn.,

Payments to agents, dealers and distributors

It was proposed and approved that every company must prepare and provide to each of its agents, dealers or distributors who receive payment (whether in monetary form or otherwise) arising from sales, transactions or schemes, a prescribed form containing particulars of payment, name and address of the agent, dealer or distributor and other particulars which may be required by the DGIR. The prescribed form must be provided on or before 31 March of the following year. The company must retain the prescribed form in its safe custody and make it readily available to the MIRB upon request.

Failure to comply with the requirement could render the directors of the company, upon conviction, liable to a fine of RM200 to RM2,000, subject to imprisonment for a period not exceeding six months, or both.

The proposal became effective 1 January 2012.

Recent income tax rules gazetted

Income tax (deduction for expenditures on issuance of Islamic securities pursuant to Principles of Murabahah and Bai' Bithaman Ajil) rules 2011

The above rules which allow tax deduction of expenses incurred in the issuance of Islamic securities under the principles of Murabahah and Bai' Bithaman Ajil based on tawarruq, provided the issuance of such securities is approved by the Securities Commission or the Labuan Financial Services Authority, have been gazetted.

The rules are effective from YA 2011 to YA 2015.

Income tax (deduction for payment of premium to Malaysia Deposit Insurance Corporation) rules 2011

Based on the above rules, a member institution is allowed to deduct its first premium or annual premium paid to the Malaysia Deposit Insurance Corporation from the adjusted income of its business for the basis period of the year of assessment.

The Rules are applicable to a member institution that is:

- a financial institution under the Malaysia Deposit Insurance Corporation Act 2005 for YA 2005 to YA 2010

- a financial institution, a *takaful* operator or an insurance company under the Malaysia Deposit Insurance Corporation Act 2011 from YA 2011 and subsequent years of assessment.

Public Rulings

The MIRB has recently issued amongst others, the following Public Rulings:

Public Ruling No. 7/2011: Notification of Change in Accounting Period of a Company / Trust Body / Co-operative Society

The Public Ruling explains the procedure for informing the MIRB on the change in accounting period of a company, trust body or co-operative society.

The Public Ruling is effective from YA 2012.

Public Ruling No. 8/2011: Foreign Nationals Working in Malaysia – Tax Treatment

The Public Ruling explains the tax treatment of employment income derived by foreign nationals exercising employment in Malaysia.

The Public Ruling is effective from YA 2011.

The full Public Rulings are available at *http://www.hasil.gov.my.*

Service tax treatment for free zones, tax-free islands and joint development areas

In an attempt to alleviate the present inconsistencies, the Ministry of Finance has exempted the following services from service tax with effect from 1 January 2012:

All taxable services provided by any taxable person	in the Free Zones	to any person in the Free Zones [Note 1]
		to any person in the Principal Customs Area (PCA) [Note 2]
	in the PCA	to any person in the Free Zones
	in the PCA or Free Zones	in relation to any matters in Langkawi, Labuan, Tioman and the Joint Development Area[Note 3]

Notes:

(1) Any application for service tax refund by any person (in respect of the above) on service tax paid prior to 1 January 2012 will not be approved.

(2) Service tax (in relation to all services as mentioned in the table above) which has not been collected prior to 1 January 2012 will be remitted.

(3) The above exemption is valid until the GST is implemented. The GST treatment on all services shall be subject to the GST laws and regulations when they are enacted.

New Zealand

▲Top

Tax update

New Zealand – Hong Kong double tax agreement in force

The newly negotiated New Zealand – Hong Kong double tax agreement (Hong Kong DTA) came into force on 10 November 2011.

The new DTA will reduce withholding tax rates on dividends, interest and royalties, largely mirroring reductions in rates in DTAs recently renegotiated with Australia, the United States and Singapore.

- The withholding tax rate for dividends will be reduced from a maximum rate of 30 percent to rates between 0 and 15 percent, depending on the level of shareholding in the paying company (and subject to certain restrictions).
- The withholding tax rate for interest will be reduced from 15 percent to 10 percent and a nil withholding rate will be applied when the interest is paid to a financial institution (e.g. a bank, if the borrower and lender are not associated).
- The withholding tax rate on royalties will be reduced from 15 percent to 5 percent.

The new withholding tax rates will come into effect 1 April 2012.

Taxation Review Authority decision on tax residency

The New Zealand Taxation Review Authority (TRA) recently decided the tax residence of an individual who had been employed in Fiji for almost five years.

The TRA decided that the individual was solely resident in New Zealand (under the residence tie-breaker provisions in the New Zealand – Fiji DTA), notwithstanding the length of time spent living and working in Fiji.

A key finding was that the taxpayer was found to have a permanent home in New Zealand through maintenance of a family home but not in Fiji (the employer-provided housing in Fiji was not considered a permanent abode).

The taxpayer was also found to have his centre of vital interests in New Zealand (through family and employment ties), but perhaps most surprisingly, the TRA concluded that living and working in Fiji for almost five years was not habitual as the taxpayer's working life was otherwise predominantly in New Zealand.

While the facts of this case are very specific, this decision is a reminder that taxpayers need to take care that they do not leave themselves in a position where they have no objective evidence to rebut Inland Revenue's assertions.

Supreme Court decision on diversion of personal services income

In August, the New Zealand Supreme Court dismissed unanimously an appeal by two taxpayers (Penny & Hooper) of a Court of Appeal judgement. That judgement, in favour of the New Zealand Inland Revenue, was that the payment of non-market salaries to the two orthopaedic surgeons, by their respective companies, amounted to tax avoidance.

The decision confirms that the adoption of a particular business structure (e.g. a company) is not tax avoidance, in and of itself, and payment of a non-market salary may be justified in some circumstances. However, the result will change if tax is more than an incidental driver of the overall arrangement. The decision also confirms that the 'Parliamentary contemplation' test (i.e. where the specific legislative provisions are used in a manner not contemplated by Parliament when enacting them) remains a crucial part of the tax avoidance landscape.

Following the Supreme Court decision, the New Zealand Inland Revenue released guidance on the circumstances in which it may look to assert diversion of personal services income for tax avoidance purposes. The guidance sets 80 percent as

the level of income which Inland Revenue expects to see taxed in the hands of the controller of a business. If it does not, it expects to see business and commercial justifications for a lower allocation.

2011 New Zealand general election

In November's general election, the National Party of New Zealand was re-elected as Government.

Both the National Party and the opposition Labour Party campaigned on a number of economic and tax policies.

Labour proposed a general capital gains tax, changes to the GST regime and making enrolment in New Zealand's KiwiSaver workplace (superannuation) savings scheme compulsory.

National's key election policies were the partial privatisation of certain state-owned enterprises and automatically enrolling all employees currently not in Kiwisaver (unlike the compulsory option, employees would be able to opt-out of KiwiSaver; however, the Government is counting on some employee inertia to increase membership in the scheme.)

The KiwiSaver auto-enrolment proposal, which would apply from the 2014/15 income year, is contingent on the Government's returning to surplus first. (This is because of government subsidies to KiwiSaver members in the form of a NZD1,000 'kick-start' payment and annual contributions of up to NZD520 per employee.)

Proposals to improve GST cross-border neutrality

In August, the Government released a consultation document proposing changes to the NZ GST treatment of cross-border supplies between businesses.

The changes are aimed at reducing the extent to which GST impacts on the ability of non-resident businesses to consume goods and services in New Zealand.

The options include extending the current zero-rating of goods and services supplied to non-residents; an enhanced GST registration system for non-residents to make it easier for them to claim input tax; or a direct GST refund system.

The Government's preferred option is an enhanced registration system, for compliance and administrative cost reasons.

Omnibus Taxation Bill introduced

In August, the Government introduced the Taxation (annual rates, returns filing and remedial matters) Bill (the Bill).

The Bill contains a range of measures, including changes to simplify tax return filing processes (e.g. by amalgamating current income tax returns), changes to the taxation treatment of Profit Distribution Plans, changes to confirm deductibility for unsuccessful software development expenditure, and various remedial matters.

Due to the November general election, the Bill has lapsed, but we expect that the new Government will reintroduce the Bill when Parliament reconvenes in 2012.

Philippines

▲Top

Tax update

Court decision on withholding tax liability for the agent

The Supreme Court, in *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue (G.R. No. 170257, 7 September 2011),* ruled that under the current withholding tax system, the payer is the taxpayer upon whom the tax is imposed, while the withholding agent simply acts as an agent or a collector for the government to ensure the collection of taxes. The withholding agent's liability is direct and independent from the taxpayer as the income tax is ultimately imposed on and due from the latter. The withholding agent is not liable for the tax as he did not earn the income.

Taxation authority issued new regulations on tax credit certificates

The Bureau of Internal Revenue (BIR) issued Revenue Regulations No. 014-11 dated 29 July 2011, prescribing the regulations governing the manner of issuance of tax credit certificates (TCCs) and the conditions for their use, revalidation and transfer. It provides that all TCCs issued by the BIR are not be allowed to be transferred or assigned to any person.

New regulations for implementation of personal equity and retirement accounts

The BIR also issued Revenue Regulations No. 17-2011 dated 27 October 2011, to serve as the implementing rules and regulations of the Personal Equity and Retirement Account (PERA) Act of 2008.

Significant features of Revenue Regulations No. 17-2011 include:

I. Maximum annual PERA contributions

Contributor	Maximum qualified PERA contribution in Peso (or its equivalent in any convertible foreign currency at the prevailing rate at the time of actual contribution)
Unmarried Filipino citizen	Php100,000
Married Filipino citizen and both spouses qualify as a contributor	Php100,000 for each qualified contributor
Married Filipino citizen and only one spouse qualifies as a contributor	Php100,000
Unmarried overseas Filipino	Php200,000
Married overseas Filipino whose legitimate spouse is neither an overseas Filipino nor a qualified contributor	Php200,000
Married overseas Filipino whose legitimate spouse and children (not otherwise disqualified as contributors) of an overseas Filipino who did not directly open any PERA	Php200,000, cumulative for the spouse and children in representation of the overseas Filipino
Married overseas Filipino whose legitimate spouse is also an overseas Filipino	Php200,000 for each qualified contributor
Married overseas Filipino whose legitimate children are not overseas Filipinos and are not qualified contributors	Php200,000

Contributions to the PERA of more than Php100,000.00 or Php200,000.00, as the case may be, shall not be accepted by the administrator under the PERA account. However, they may be accepted by the administrator as another savings/ investment account after appropriate advice is given to the contributor but shall not be entitled to any benefits under the PERA Act.

II. PERA contributions and tax credit

Contributor's qualified PERA contribution

A tax credit of 5 percent of the aggregate qualified PERA contributions in a calendar year can generally be claimed against the contributor's income tax liability, as follows:

- For an employee or individual who is self-employed, a 5 percent tax credit shall be allowed only against the contributor's income tax liability
- For an overseas Filipino, a 5 percent tax credit against any national internal revenue tax liabilities is allowed to be claimed(except the contributor's withholding tax liabilities as withholding agent).

In no instance can there be any refund of the said tax credit arising from the PERA contributions.

Qualified employer's contribution to the employee's PERA

The qualified employer's contribution shall be in addition to, and not in lieu of, the employer's Social Security System (SSS) contribution and its obligation to pay retirement benefits to its employees under the Labor Code.

The employer shall not be entitled to any 5 percent credit from its contribution to an employee's PERA.

On the part of the employee, the qualified employer's contribution shall not form part of the employee's taxable gross income, and hence is exempted from withholding taxes on compensation or fringe benefits.

On the part of the employer, the actual amount contributed can be claimed as a deduction from its gross income, but only to the extent of the employer's contribution that would complete the maximum allowable PERA contribution of an employee. The same allowable deduction shall also be exempt from withholding tax on compensation

III. PERA tax credit certificates

PERA tax credit certificates (TCCs) may only be issued to a qualified overseas Filipino and self-employed contributor by filing an Application for a PERA-TCC by the administrator.

The tax credit arising from the PERA contributions shall not be refundable or transferable.

IV. Tax treatment of the PERA investment income

Investment income of the contributor, consisting of all income earned from the investments and reinvestments of his PERA assets in the maximum allowed as in the table above, shall be exempt from the following taxes where applicable:

- final withholding tax on interest from any currency bank deposit, yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements, including a depository bank under the expanded foreign currency deposit system
- capital gains tax on the sale, exchange, retirement or maturity of bonds, debentures or other certificates of indebtedness
- 10 percent tax on cash and/or property dividends actually or constructively received from a domestic corporation, including a mutual fund company.
- capital gains tax on the sale, barter, exchange or other disposition of shares of stock in a domestic corporation
- regular income tax.

Each investment product must be approved by the concerned regulatory authority before the tax incentives and privileges noted above can apply to the related income or distribution.

Non-income taxes, if applicable, relating to the above investment income of the PERA account of a contributor, shall continue to be imposed, including the following:

- investment income from investing or re-investing in persons which are exempt from VAT, domestic carriers and keepers of garages, international carriers, franchise holders, overseas dispatch, messages or conversations originating from the Philippines, banks and non-bank financial intermediaries performing quasi-banking functions, other non-bank finance intermediaries, life insurance premiums, agents of foreign insurance companies, amusements, and winnings
- VAT

- stock transaction tax on the sale, barter, or exchange of shares of stock listed and traded through the local stock exchange or through initial public offering; and
- documentary stamp tax (DST).

- imposition of tax/penalty

Early withdrawals not exempted by the Revenue Regulations shall be subject to early withdrawal penalties. Penalties include the 5 percent TCC availed of by the contributor for the entire period of the PERA and the imposition of taxes the taxpayer would have been exempted from if not for the early withdrawal.

RR No. 17-2011 will take effect on 1 January 2012.

Circular issued addressing income tax exemption for mandatory social security contributions

The BIR issued Revenue Memorandum Circular No. 53-2011, dated 4 November 2011, setting the application and revocation of the rulings relative to exemption from income tax of mandatory Social Security System (SSS), Government Service Insurance System (GSIS), Philippine Health Insurance Corporation (PHIC)/(Medicare) and Home Development Mutual Fund (HDMF)/(Pag-ibig) contributions.

The circular provides that voluntary contributions to SSS, GSIS Medicare and Pag-ibig in excess of the amount considered compulsory are not excludible from the gross income of the taxpayer, and hence, not exempt from income tax and withholding tax. Consequently, the exemption from withholding tax on compensation referred to in Section 2.78.1(B)(12) of Revenue Regulations No. 2-98 shall apply only to mandatory/compulsory GSIS, SSS, Medicare and Pag-ibig contributions.

The tax imposed on the employees' voluntary contributions to SSS, GSIS, PHIC and HDMF shall apply to contributions beginning 1 July 2011.

Circular issued regarding redemption period on foreclosed property

The BIR issued Revenue Memorandum Circular No. 55-2011, dated 10 November 2011, to clarify how the redemption period on foreclosed property should be determined. The circular provides that for purposes of determining the one-year redemption period on a foreclosed asset of natural persons and the period within which to pay the capital gains tax or creditable withholding tax and DST on the foreclosure of a real estate mortgage, the redemption period shall commence from the date of registration of the sale in the Office of the Register of Deeds.

With regards to the right of redemption of juridical persons in an extrajudicial foreclosure, Section 47 of Republic Act No. 8791 provides that the right to redeem the foreclosed property shall be until, but not later than, the registration of the certificate of sale with the Register of Deeds or within three months from foreclosure, whichever comes earlier.

In the case of *Commissioner of Internal Revenue (CIR) vs. United Coconut Planters Bank (UCPB), G.R. No. 179063,* dated 23 October 2009, the Supreme Court held that for purposes of determining the one-year redemption period in the case of individual mortgagors or the three-month redemption period for juridical persons/mortgagors, the redemption period shall be reckoned from the date of confirmation of the auction sale, which is the date when the certificate of sale is issued. The certificate of sale shall issue only upon approval of the executive judge of the foreclosure sale.

For purposes of determining the liability for creditable withholding tax and documentary stamp tax due on the foreclosure, the liability for the taxes shall accrue only upon the expiration of the redemption period.

Singapore

▲Top

Tax update

GST remission on expenses for prescribed funds managed by prescribed fund managers in Singapore

The Minister for Finance introduced a GST remission scheme under which funds that meet the qualifying conditions will be able to recover GST incurred on all expenses (except disallowed expenses under the GST Regulations 26 and 27) from 22 January 2009 to 31 March 2014 based on a fixed recovery rate, without requiring the funds to register for GST.

In this regard, the fixed recovery rate for expenses incurred during the period from 1 January 2012 to 31 December 2012 is 90 percent.

Sri Lanka

▲Top

Tax update

2012 budget highlights

The budget for the fiscal year 2012 was presented by the President of the Democratic Socialist Republic of Sri Lanka on 21 November 2011 and is currently pending committee stage debate. A summary of the fiscal proposals as applicable to banks and financial institutions is as follows:

Development activities carried out by specified bank branches

Profits and income of a newly set up branch of a commercial bank dedicated to development banking of small & medium enterprises (SMEs) were proposed to be taxed at a concessionary rate of 24 percent, compared to the current applicable rate of 28 percent.

Exemptions for unit trusts and mutual funds

- Profits and income from the redemption of a unit of unit trust or mutual fund are exempt from income tax.
- A unit trust or mutual fund is not liable to pay financial VAT.

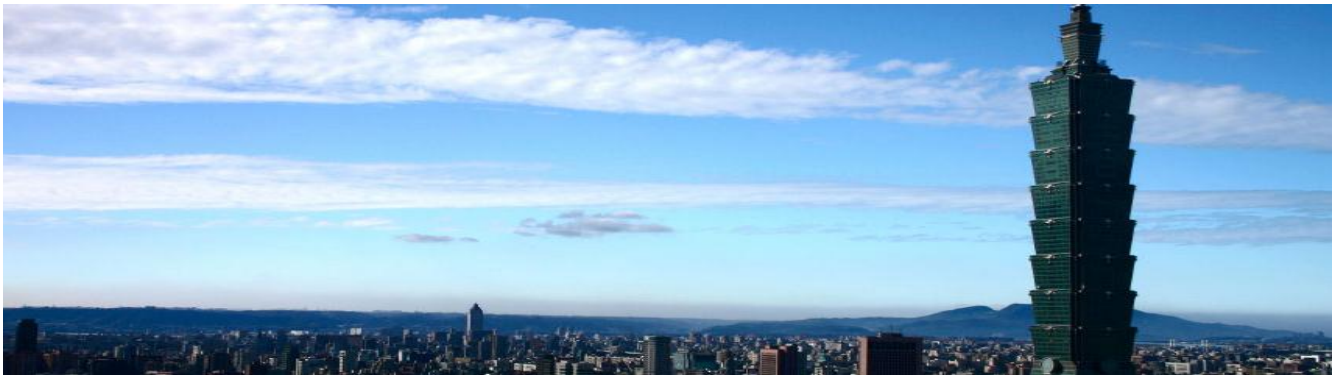
These amendments seek to clarify the ambiguities that existed in relation to the tax status of unit trusts, recognising the conduit character of these trusts, and are conducive to the growth of the industry.

Exemptions for interest paid on foreign loans

Interest accruing to any person or partnership outside Sri Lanka on a loan granted to any person or partnership in Sri Lanka was proposed to be exempt from income tax.

Taiwan

▲Top



Tax update

New tax ruling on warrant transactions

On 16 November 2011, the Ministry of Finance issued a tax ruling superseding the existing securities transaction tax (STT) treatment on warrant transactions that are cash settled.

Previously, when warrants were cash-settled, the transaction was considered as trading the underlying shares. As such, STT was calculated as 0.3 percent of the strike price (imposed on the issuer) and 0.3 percent of the market price (imposed on the holder) of the underlying shares.

According to the new ruling, cash settlements of warrants are now considered as trading the warrant itself rather than the underlying shares. As such, the applicable STT rate is 0.1 percent and the warrant issuers are no longer be subject to STT. The warrant holders are subject to STT at 0.1 percent which is levied on the difference between the warrant's strike price and the share's closing price on the warrant's exercise date.

To illustrate, on 16 November 2011, if a holder decides to exercise warrants held for 2,000 shares of Stock A through cash settlement where the strike price is NTD10 per share and closing stock price is NTD13 per share (assuming 1 warrant issued for each share) on the date which the warrant is exercised, the STT liability is calculated as follows:

- prior of the issuance of the tax ruling, the warrant issuer would have been subject to STT of NTD60 = 2,000*10*0.3%, while the warrant holder would have been subject to STT of NTD78 = 2,000*13*0.3%.
- under the new ruling, the warrant issuer is no longer be subject to STT, while the warrant holder is subject to STT of NTD6 = 2,000 *(13-10)*0.1%.

The newly issued tax ruling greatly reduces the STT burden for both the warrant holder and the issuer.

Thailand

▲Top

Tax update

Reduction of corporate income tax rate

Royal Decree no. 530 issued on 14 December 2011 provides a reduction in corporate income tax rate to promote the competitiveness of Thailand in the global market. The standard corporate income tax rate will drop from 30 percent to 23 percent for the accounting period starting on or after 1 January 2012 and will reduce to 20 percent for accounting periods which start on or after 1 January 2013 for two accounting periods.

Permission for upgrading foreign bank branches into subsidiaries

The central bank announced guidelines permitting foreign banks currently operating a branch in Thailand to become a subsidiary that can have a maximum of 20 branches and 20 off-premise ATMs across the country. This was approved by the Ministry of Finance, with effect from 15 December 2011.

Tax relief for victims of natural disasters

In light of recent floods, several tax measures announced by the Thai Revenue Department (TRD) provide the tax relief for victims of natural disasters. In December, the TRD provided clarification of several tax measures on its website:

- Tax relief for donors: Where a donor is a company and the donation is made through companies registered with the TRD to act as a center for flood relief, the donor is entitled to a deduction of the actual amount donated or 1.5 times of the actual amount donated if the donation is made during the period of 1 September 2011 to 31 December 2011. This applies to donations of both cash or tangible assets, but the deduction shall not exceed 2 percent of net taxable profits.
- Tax relief for donee: If the donee is a company or an individual, an income tax exemption is granted for both the compensation received from the Thai government and donations received from other sources. For donations received from other sources, the amount of donations is exempted, to the extent that it does not exceed the value of damages incurred due to the flood disaster.
- Lost/damaged assets from flooding: Where assets are uninsured, loss of assets or damage to assets can be treated as deductible expenses in the accounting period that such assets were lost or damaged as a result of flooding. If the assets were insured, the compensation received from the insurance company for the amount exceeding the residual value of assets after the deduction of depreciation shall be exempted from the corporate income tax.
- Other tax measures on the assistance provided by an employer to an employee who suffered from flooding:
  - Where a company gives cash to employees who suffer from flooding, the company can claim a tax deduction. Additionally, the amount is not taxable income to the employees provided that the amount is granted from a fund established for this purpose which is governed by a clear policy or rules and regulations.
  - Where a company provides an interest-free loan or a loan at an interest rate lower than market rate, the loan being governed by a clear policy or rules and regulations and coming from a fund set up for this purpose will be considered to be reasonable grounds for not having interest income or having interest income lower than the market rate. In general, if a loan is given without interest or with interest but lower than the market rate, the tax authority can assess deemed interest income at the market rate unless reasonable grounds for not having interest or having below market interest are accepted by the tax authorities (subject to case by case judgement– no guidelines on reasonable grounds exist). This was issued to inform the public that the tax authority considers this as reasonable grounds for granting loans without interest or at lower than the market rate.
  - Where a company provides temporary accommodation for employees due to the employees being affected by the flooding, the company can claim the rental cost as a tax deduction and such cost is not taxable income to the employees.

Temporary reduction of social security contribution for 2012

Ministerial Notification on social security contribution rate B.E. 2555 (2012) issued on 6 January 2012 provides a reduction of the social security rate to be contributed by employer and employee for 2012. Based on the notification, the social security rate for the contributions of both employer and employee will be reduced from standard rate of 5 percent to 3 percent from January 2012 to June 2012 and to 4 percent from July 2012 to December 2012. From 1 January 2013 onwards, a standard rate of 5 percent will be applied.

Vietnam

▲Top

Tax update

New decree on issuance of corporate bonds

Decree 90/2011/ND-CP (Decree 90) was issued on 14 October 2011 and became effective 1 December 2011. Decree 90 provides guidelines on the issuance of corporate bonds by Vietnamese incorporated enterprises and replaces Decree 52/2006 and some selected provisions of Decree 53/2009 on international bonds issuance.

Decree 90 applies to both joint stock companies (JSCs) and limited liability companies (LLCs). Both convertible and non-convertible bonds for domestic or international markets are covered under this Decree. Under the decree, only a JSC is allowed to issue convertible bonds.

The tax relief measures are as follows:

Conditions of issuing bonds	Domestic Market	International Market
JSCs	Yes	Yes
LLCs	Yes	Yes
Minimum operation periods	1 year	3 years
Profitable years preceding the bonds issue	1 year	3 years
Currency of bonds	VND	Foreign currency
State Bank of Vietnam's approval	No	Yes

Decree 90 provides that an enterprise may issue bonds for three purposes only:

- conducting investment projects
- business/capital expansion
- restructuring existing loans

For state-owned enterprises, the bond issuance process will require further approval from the relevant Ministry or People's Committees of the provinces and cities.

Guidance on purchase of corporate bonds by credit institutions and foreign bank branches

The State Bank of Vietnam (SBV) issued Circular 28/2011/TT-NHNN (Circular 28) for guidance on the purchase of corporate bonds by commercial banks, finance companies and branches of foreign banks. This circular covers corporate bonds offered for sale on the primary market in Vietnam and under an underwriting agreement with the issuer.

Circular 28 provides conditions of eligibility to purchase corporate bonds by credit institutions (CI). Funds invested in bonds

will be treated as part of the CI credit limits, which are subject to single client limits and single client plus related persons limits. The current limits are:

Credit Institutions	Single client limit	Group Limit
Commercial bank or foreign bank branch	15 percent	25 percent
Finance company	25 percent	50 percent

Circular 28 came into effect 20 October 2011, and under it, foreign banks branches are not entitled to purchase convertible bonds.

Increase in penalties for offences in monetary and banking sectors

It has been a common practice in Vietnam to quote prices for various transactions in three values. For most foreign companies and local enterprises which do not want to risk accepting the devaluing VND, most prices for services and goods are quoted in USD or other foreign currencies, while most domestic land transactions are quoted in gold value rather than VND.

However, the above practices will change as the new Decree 95/2011/ND-CP (Decree 95) provides for increased penalties for non-compliance with the Vietnam Foreign Exchange Control and Decree 160/2006 on advertising, listing and payment of transactions.

The Decree will result in penalties for violations of the above law. Fines can range from VND50 million to VND100 Million (approximately USD2,500 to USD5,000) and can apply to the following activities:

- lending, financing and repaying domestic debts in foreign currency
- buying, selling or payments of goods or services domestically in foreign currency or gold.

In addition, a fine of VND300 Million to VND500 Million (approximately USD15,000 to USD25,000) will be imposed in the case of offences such as :

- engaging in foreign exchange activities without a valid license
- importing or exporting of foreign currency or gold without a State Bank of Vietnam (SBV) approval
- listing prices or advertising goods or services for domestic consumption in foreign currency or gold.

Decree 95 also provides for additional penalties in cases of severe violation. Such penalties include the confiscation of goods (i.e. gold and foreign currencies) and suspension of the business license. So far, several enterprises and banks have been penalised for non-compliance with the law. It appears that the SBV intends to exert stricter control over the widespread use of foreign currencies and gold pricing on the domestic market.

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