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General tax update for financial institutions in Asia Pacific

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Issue 47, June 2013

Highlights

Australia
- Legislative developments
- Taxation rulings and determinations
- Other developments

Hong Kong
- Budget 2012-2013
- New stamp duty measures proposed
- New Double Taxation Agreement with Italy
- Treaties coming into effect

India
- Taxability in one country is not a *sine qua non* for availing relief under the tax treaty - KPMG v. Jt. Commissioner of Income-tax
- As unlisted shares are not marketable, the transfer is taxable as capital gains, not business income – *CIT v. Renato Finance & Investment Ltd. (Bom)*
- Various issues re *BNP Paribas SA v. DDIT [2012] 150 TTJ 395 (Mum)*
- The tax rate under India-UAE tax treaty is inclusive of surcharge and education cess – *Sunil V. Motiani vs. Income Tax Officer*
- Applicability of a tax treaty to a limited partnership in Germany is governed by the specific provisions of the relevant tax treaty and not by the OECD commentary - DIT v. Chiron Bearing Gmbh & Co. [ITA No. 2273 of 2010]

Japan
- 2013 Tax Reform Proposals

Korea
- Lower Ceilings on Bad Debt Reserve of Financial Institutions
- Details on the Computation of Arm's Length Price for Credit Guarantee Transactions

Malaysia
- Finance Act 2013
- Deferment on the Implementation of the Thin Capitalisation Rules
- Tun Razak Exchange (Formerly Known as Kuala Lumpur International Financial District)
- Recent tax rules / tax exemption orders gazetted
- Inland Revenue Board Guidelines
- New Statement of Monetary and Non-Monetary Incentive Payments to Agents, Dealers or Distributors
- Malaysian Investment Development Authority's Guidelines

Mauritius
- Enactment of the Finance (Miscellaneous Provisions) Act 2012

New Zealand
- Employee taxation issues
- Thin capitalisation changes proposed
- Court of Appeal decision in Alesco v CIR

Philippines
- Transfer Pricing Guidelines
- Amendments to Exclusions from Single Borrower's Loan Limit and Equity Investment Ceilings Amendment to Regulations on Single Borrower's Limit

Singapore
- Budget 2013

Taiwan
- Proposed "Controlled Foreign Corporation" Rule and test of company residency

Vietnam
- Updates on financial regime for credit institutions and foreign bank branches
- Updates on debt classification and debt provisions for credit institutions and foreign bank branches
- Further relaxation of Vietnamese securities market to foreign investors
- Updated circular on regulating activities of lending, borrowing, purchase and sale with term of valuable papers among credit institutions and branches of foreign banks

Australia

▲Top

Tax update

Legislative developments

- On 12 March 2013, the House of Representatives Standing Committee on Economics tabled the report for the inquiry into the provisions in *Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013* which had been introduced into the Parliament on 13 February 2013.

  The Committee recommends in the report that the following proposed tax law amendments under the Bill be passed:

  Amendments to General anti-avoidance rules

  The general anti-avoidance rules apply where a taxpayer has obtained a tax benefit as a result of the entry into or carrying out of a scheme with the dominant purpose of obtaining that tax benefit.

  The amendments modify the rules for determining what constitutes a tax benefit by providing a new framework for determining the "alternative postulate". The "alternative postulate" is a fiction against which one compares what actually happened to determine whether a tax benefit exists. Broadly, the proposed framework requires one to ignore tax liabilities when determining the alternative postulate and assume an end "non-tax" position that the taxpayer actually achieved under the scheme.

  The amendments, if enacted, apply to transactions entered into after 15 November 2012.

  Amendments to transfer pricing rules

  The amendments with respect to transfer pricing represent a significant change in the transfer pricing environment in Australia.

  The amendments apply to both tax treaty and non-tax treaty cases and seek to apply very broad concepts of arm's length conditions to examine dealings between parties, rather than focusing on the specifics of price or transactions. The amendments place greater emphasis on the notion of the principle that the outcomes of dealings should be consistent with the result of real bargaining and applies to both related and unrelated transactions.

  The amendments also contain an effective reconstruction power which is intended to apply in exceptional circumstances and can look to hypothetical dealings. The amendments contain specific rules relating to transfer pricing documentation that link to the ability to form a reasonably arguable position and penalties.

- On 4 April 2013, the Government released an Exposure Draft of legislation that introduces the third element of the investment manager regime to improve the current operation of the regime.

  The purpose of the third element of the regime is to provide tax certainty to widely-held foreign managed funds investing in Australia. The amendments align the tax treatment of certain income or gains made on revenue account with the treatment of comparable returns or gains made on capital account.

  The proposals in the Exposure Draft are intended to only apply to funds domiciled in countries that are recognised by Australia as engaging in effective exchange of information.

- On 25 March 2013, the Government released an Exposure Draft of legislation implementing the proposals previously set out in a consultation paper entitled Monthly Pay As You Go Instalments for large taxpayers released on 28 February 2013.

  The proposals change the timing of tax instalments for large corporate tax entities, so that they will be required to remit their PAYG instalments monthly, rather than quarterly. The proposed changes will apply to companies that meet or exceed the AUD$1 billion base assessment instalment income threshold from 1 January 2013 and will have a staggered application to other corporate tax entities with an assessment instalment income of greater than AUD$20 million.

- On 20 March 2013, the Government introduced the *Tax and Superannuation Laws Amendment (2013 Measures No 2) Bill 2013* into the Parliament. The Bill proposes to clarify and refine the operation of certain aspects of the Taxation of Financial Arrangements (TOFA) regime including clarification of the operation of the elective and default tax timing methods for recognising tax gains and losses in relation to financial arrangements.

- On 13 February 2013, the Government introduced *Tax and Superannuation Laws Amendment (2013 Measures No 1) Bill 2013* into the Parliament. The Bill proposes a number of amendments, including the introduction of a loss carry-back rule which would allow corporate tax entities that have paid tax in the past, but are now in a tax loss position, to carry their loss back to those past years to obtain a refund for some of the tax paid previously paid, subject to certain conditions being met.

- On 13 February 2013, the Government issued a media release announcing that the Government will amend the income tax law to ensure foreign pension funds can access the Managed Investment Trust (MIT) withholding tax regime which was effective from 1 July 2008. The MIT withholding tax regime allows MITs to access concessional withholding tax rates.

Taxation rulings and determinations

- ATO Decision Impact Statement – *Citigroup Pty Ltd v Commissioner of Taxation*

  On 22 February 2013, the Australian Taxation Office (ATO) issued a Decision Impact Statement in response to the decision of the Full Federal Court of Australia (FCAFC) in *Citigroup Pty Limited v Commissioner of Taxation [2010] FCAFC 61*. This case concerned the application of Part IVA (the general anti-avoidance provisions) to foreign tax credits arising from tax paid in Hong Kong on a bond transaction. The FCAFC dismissed the taxpayer's appeal confirming that Part IVA applies to cancel the benefit of the foreign tax credits claimed by the taxpayer.

- ATO ID 2013/2 Income Tax: interest derived by an Australian resident in carrying on business at or through a permanent establishment outside of Australia deals with physical cash sweeping arrangements and withholding tax was released on 8 January 2013.

  The fact pattern in ATO ID 2013/2 involved an Australian resident company which carried on business through a permanent establishment in a non-tax treaty country. The proceeds from the business of the permanent establishment were deposited into the taxpayer's Australian bank account which only held the proceeds from the business of the permanent establishment. By way of a physical cash pooling arrangement, the net balance of the Australian bank account was automatically lent to another Australian company. The other Australian company made interest payments to the taxpayer.

  The ATO ID states that the interest payments received by the taxpayer are subject to interest withholding tax. This is on the basis that the money in the bank account is solely attributable to the activities of the taxpayer's offshore permanent establishment.

Other developments

- On 3 April 2013, the Government released a discussion paper entitled *Improving the Transparency of Australia's Business Tax System.* The discussion paper details three proposals intended to improve the public understanding of the corporate tax system and discourage aggressive tax minimisation practices by large corporations.

  The three proposals detailed in the paper are:
  - requiring large and multinational businesses with a total annual income of AUD$100 million or above, or with a Mining Resource Rent Tax or Petroleum Resource Rent Tax liability, to disclose profit before tax, tax payable and the amount of actual tax paid;
  - publication of aggregate collections for each Commonwealth tax; and
  - enhanced information sharing between government agencies.

- On 25 March 2013, the ATO released the *Large Business Active Compliance Manual – Income Tax* which provides practical tips on how the ATO approaches active compliance activities with large business in relation to post-lodgement risk reviews, audits for income tax, and pre-lodgement compliance reviews.
- On 17 February 2013, the Government released a publication entitled "*A Plan for Australian Jobs"* to support Australian companies' growth and exports, funded by a reduction in the R&D tax concession for companies with a turnover of more than AUD$20 billion.

- On 15 February 2013, the ATO released a publication on *Real-time compliance engagement approach for higher consequence taxpayers in the large market,* which outlines the policy behind the ATO's compliance engagement approach to higher consequence taxpayers. The ATO uses pre-lodgement compliance reviews for higher consequence taxpayers that don't have an annual compliance arrangement. Annual compliance arrangements allow tax risks to be considered in real time.

Hong Kong

▲Top

Tax update

Budget 2012-2013

The Financial Secretary, Mr John Tsang Chun-wah, delivered the first Budget speech of the current-term Government to the Legislative Council on 27 February 2013. Key tax related measures are highlighted below:

Measures to strengthen Hong Kong as a premier international asset management centre

To attract more private equity funds to domicile in Hong Kong, the Financial Secretary proposed to extend the profits tax exemption for offshore funds to include transactions in private companies, which are incorporated or registered outside Hong Kong and do not hold any Hong Kong properties nor carry on any business in Hong Kong.

The Financial Secretary is also considering legislative amendments to introduce the "Open-ended Investment Company", an increasingly popular form of investment vehicle used in the fund' industry, to attract more traditional mutual funds and hedge funds to domicile in Hong Kong.

In addition, the Securities and Futures Commission is liaising with the Mainland authorities regarding an arrangement for mutual recognition of funds. It is expected that this arrangement could attract more funds to establish in Hong Kong and help foster the development of professional sectors performing fund related services.

Captive insurance companies

To attract more enterprises to set up captive insurance companies in Hong Kong, the Financial Secretary proposed to reduce the profits tax rate on the offshore insurance business of captive insurance companies, such that they will enjoy the same tax concession currently available to reinsurance companies.

Proposed one-off reduction in profits tax

The Financial Secretary proposed a reduction of 75% of the final tax for the year of assessment 2012/13 in respect of profits tax, salaries tax and tax under personal assessment, subject to a ceiling of HK$10,000 per case. The proposed tax reduction will only be applicable to the final tax for the year of assessment 2012/13, but not to the provisional tax of the same year. Therefore, taxpayers are still required to pay their provisional tax for the year of assessment 2012/13 on time despite the proposed reduction. The provisional tax paid will be applied to pay the final tax for the year of assessment 2012/13 and provisional tax for the year of assessment 2012/13. Excess balance, if any, will be refunded.

For further details of Budget 2013-14, please refer to the link below:

http://www.kpmg.com/cn/en/IssuesAndInsights/ArticlesPublications/Documents/Hong-Kong-budget-summary-201302-v2.pdf

New stamp duty measures proposed

The HKSAR Government announced the following proposed amendments to Stamp Duty to curb 'exuberant' property transactions on 22 February 2013.

Under the Government's proposal, the Ad Valorem Stamp Duty on both residential and non-residential properties is to be doubled across the board, the maximum rate of which will increase from 4.25% to 8.5%. The Stamp Duty on transactions of HK$2 million or less will rise from a nominal flat fee of HK$100 to 1.5% of the transaction's consideration.

An exemption from the new Stamp Duty rates will be given to Hong Kong permanent residents who are either first-time home buyers, do not own their own homes or who sell their only flat and buy a new one within six months.

The timing of payment of Stamp Duty for non-residential properties has also been brought forward. Stamp Duty will be charged on an agreement for the sale and purchase of a non-residential property, including commercial premises, offices, industrial premises and car parking spaces. This contrasts with the current practice of charging Stamp Duty when the conveyance on sale of the property is executed.

Subject to Legislative Council's approval, the above proposals will have effect from 23 February 2013.

For further details, please refer to Issue 6 of our 2013 Tax Alert at the link below:

http://www.kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Newsletters/Tax-alert/Documents/tax-alert-1302-06-stamp-duty-measures.pdf

New Double Taxation Agreement (DTA) with Italy

Hong Kong signed new DTA with Italy on 14 January 2013. This is the 27th comprehensive DTA concluded by Hong Kong. The new DTA provides the following maximum rates of withholding taxes:

	Non-treaty rate	Treaty rate
Dividends	20%	10%
Interest	20%	0%[(1)] / 12.5%
Royalties	22.5%	15%

(1) Withholding tax on interest reduced to nil where the interest is paid (i) by the Government of a Contracting Party or a local authority thereof; (ii) to the Government of a Contracting Party or any of its political or administrative subdivision or local authority; or (iii) to any agency or instrumentality (including a financial institution) wholly owned or appointed by the Government of a Contracting Party or any of its political or administrative subdivision or local authority and which carries out activities of a governmental nature.

The DTA will be effective once ratification procedures have been completed by both jurisdictions.

For further details, please refer to Issue 4 of *2013 Tax Alert* at the link below:

http://kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Newsletters/Tax-alert/Documents/tax-alert-1301-04-double-tax-agreement.pdf

Treaties coming into effect

The following DTAs have completed their formal ratification procedures:

- The DTA between Hong Kong and Mexico signed on 18 June 2012; and
- The DTA between Hong Kong and Malaysia signed on 25 April 2012.

Both DTAs will have effect for any year of assessment beginning on or after 1 April 2014.

For further details of the DTAs, please refer to Issue 44 of General Tax Update at the link below:

http://www.kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Newsletters/General-Tax-Update/Documents/General-tax-update-1209-44.pdf

India

▲Top

Tax update

Taxability in one country is not a *sine qua non* for availing relief under the tax treaty - KPMG v. Jt. Commissioner of Income-tax [ITA No. 1820/Mum/2009 & ITA No. 2497/Mum/2009]

The taxpayer, an Indian entity, had made payments to an individual in Dubai for professional services provided. The payments were made without deduction of tax at source on the basis that the said payments were not taxable in India as per the India-UAE tax treaty.

The assessing officer (AO) disallowed the payments in the hands of the taxpayer on the basis that tax was required to be deducted from the payments to the individual, as recourse to the India-UAE tax treaty was not possible (due to the fact that the individual was not paying taxes in UAE).

Based on the facts of the case, the Mumbai bench of the Income-tax Appellate Tribunal, *inter alia*, observed and held as follows:

- Relying on the decision of the Supreme Court in the case of *Union of India v. Azadi Bachao Andolan* and the Mumbai Tribunal's decision in the case of *ADIT v. Green Emirate Shipping & Travels*:
  - Taxability in one country is not a *sine qua non* for availing relief under the treaty from taxability in other country; and
  - It is sufficient that a person should be liable to tax in the contracting state by reason of domicile, resident, place of management, place of incorporation or any other similar criterion [As per Article 4(1) of the India-UAE tax treaty].
- As the fiscal domicile of the individual was in the UAE, the individual is to be treated as 'Resident' of the UAE, irrespective of whether or not that person is actually paying taxes in the UAE. Therefore, in view of the beneficial provisions of the tax treaty, the payments were not taxable in India and there was no requirement for the taxpayer to deduct tax at source.

Further, the AO disallowed certain reimbursement expenses made to the individual.

The Income-tax Appellate Tribunal held that no tax was deductible on reimbursement expenses to the individual as:

- The individual was not in India for more than 183 days and hence the income of individual was not chargeable in India;
- The fiscal domicile of the individual was in the UAE, the individual is to be treated as 'Resident' of the UAE, irrespective of whether or not that person is actually paying taxes in the UAE; and
- Obligation to deduct tax arises only if sum paid is taxable in India. There has to be some element of income embedded in the remittances. The Hon'ble Supreme court in *G.E. India Technology Centre Pvt. Ltd. v. CIT* concluded that obligation to deduct tax is limited to the appropriate portion of income which is chargeable under the Act.

As unlisted shares are not marketable, the transfer is taxable as capital gains not business income – *CIT v. Renato Finance & Investment Ltd. (Bom) [ITA No.: 115/Mum/09]*

The taxpayer, Renato Finance & Investments Ltd., is an investment company. The taxpayer sold certain shares of L & T Crossroads Pvt Ltd (LTCPL) to its holding company, Piramal Holdings Pvt Ltd (PHPL) and derived profits. The taxpayer claimed these profits as long term capital gain and also claimed benefit under section 47(v) of the Income-tax Act, 1961 (the Act) according to which transfer of a capital asset by a subsidiary company to the holding company is not regarded as a transfer.

The AO rejected the claim of the taxpayer as:

- The gains on sale of shares in LTCPL were not taxable under the head 'capital gains', but under the head 'profits and gains from business and profession'; and
- Benefit claimed under the provisions of section 47(v) of the Act does not apply as gains on sale of shares in LTCPL were not taxable as capital gain but as business income.

The AO also noted that the purchase of these shares was funded by borrowings from PHPL.

The Income-tax Appellate Tribunal held that the shares of a private limited company are not tradable in the market and consequently, such shares cannot be considered to be stock in trade.

Further, the tribunal held that the borrowing was not in the nature of a commercial borrowing but more in the nature of the capital being infused in the subsidiary company by the holding company.

In these circumstances, the tribunal concluded that the funds borrowed by the taxpayer per se would not lead to the conclusion that the investment in shares were for the purposes of trading.

The tribunal also placed reliance upon the decision of the Supreme Court in *Ramnarain & Sons Pvt. Ltd. V/s. CIT* to conclude that even if the shares were acquired for the purposes of acquiring control of a company, it cannot be treated as stock in trade.

The tribunal, after considering all the facts and particularly the fact that the shares sold by the taxpayer to its holding company, held that the shares were not tradable in the market. Accordingly, the tribunal concluded that the gains arising from the sale of shares have to be taxed under the head capital gains.

The tribunal also held that the denial of exemption under section 47(v) of the Act was consequential to treating gains earned on sale of shares as business income and since now the same are treated as capital gains, the exemption under section 47(v) can be claimed by the taxpayer.

BNP Paribas SA v. DDIT [2012] 150 TTJ 395 (Mum)

The taxpayer, BNP Paribas SA, is a commercial bank headquartered in France. It carries on the normal banking activities including financing of foreign trade and foreign exchange transactions through its branches in India.

Issue 1

The Indian branches of the taxpayer paid interest to its head office and overseas branches and claimed a deduction in determining the profits attributable to Indian branches. The AO treated the said interest as income of the taxpayer's head office/overseas branches chargeable to tax in India and the assessment was upheld by the Commissioner of Income-tax (Appeals) (CIT(A)).

Upon appeal, the Mumbai Bench of the Income-tax Appellate Tribunal removed the additional assessment following the decision of the special bench of the Income-tax Appellate Tribunal in the case of *Sumitomo Mitsui Banking Corpn. v. Dy. DIT [2012]*, in which it was held that interest paid to the head office of the taxpayer bank, as well as its overseas branches by the Indian branch, being payment to itself, does not give rise to taxable income in India under the domestic law or the relevant 'tax treaty'. Hence, the amount cannot be taxed in India.

Issue 2

The Revenue challenged the decision of the CIT(A) in deleting the additional assessment made by the AO on the disallowance of expenditure incurred by the taxpayer in earning 'exempt income'. The CIT(A) deleted the disallowance made by the AO on the finding that the said investment was made by the taxpayer out of its own funds. The tribunal upheld the order of the CIT(A).

Issue 3

The taxpayer followed accrual system of accounting consistently for offering guarantee commission. However, the AO made additional assessment on the guarantee commission based on the receipt basis of accounting.

The CIT(A) accepted the method followed by the taxpayer and removed the additional assessment made by the AO. The Tribunal upheld the order of the CIT(A) placing reliance on the decision of the Hon'ble Calcutta High Court in the case of *CIT v. Bank of Tokyo Ltd. [1993]* wherein it was held that 'income from deferred guarantee commission did not accrue or arise in the year in which guarantee agreements were entered'. It was held that such income should be spread over the period to which the guarantee commission is related and should be assessed proportionately.

The tax rate under India-UAE tax treaty is inclusive of surcharge and education cess - *Sunil V. Motiani vs. Income Tax Officer (IT)-4(1) [ITA No.276/Mum/2012]*

The taxpayer is a non-resident based in the UAE. The taxpayer had received gross interest income from the partnership firms in India in which the taxpayer was a partner. The taxpayer was governed by the provisions of the India-UAE tax treaty which had specific provisions of taxation of interest income. The AO, in addition to taxing the interest income at the rate prescribed, also levied education cess and surcharge.

The taxpayer disputed the decision of AO and submitted before CIT(A) that since there was a cap on the rate of tax under India-UAE tax treaty which included surcharges.

CIT(A) did not accept the contention raised by the taxpayer referring to the judgment of the Hon'ble High Court of Uttarakhand in the case of *Arthusa Offshore Co* and the judgment of Authorities of Advance Ruling in case of *Airports Authority of India* in which it held that in addition to tax, surcharge was also payable.

The Mumbai Bench of the Income-tax Appellate Tribunal pointed out that Article 2(2)(b) of the India-UAE tax treaty clearly provides that income tax included any surcharge thereon and, therefore, tax mentioned in Article 11(2) also includes surcharge. It was further submitted that the nature of education cess was same as surcharge placing reliance on *DIC Asia Pacific Pte Ltd. vs. ADIT* (Intl Txn-1) and therefore both education cess and surcharge were included in the tax leviable.

Based on the above, the tribunal held that tax rate under DTAA is inclusive of surcharge and education cess.

Applicability of a tax treaty to a limited partnership in Germany is governed by the specific provisions of the relevant tax treaty and not by the OECD commentary - *DIT v. Chiron Bearing Gmbh & Co. [ITA No. 2273 of 2010]*

The taxpayer, Chiron Bearing Gmbh & Co., is a limited partnership in Germany. The taxpayer filed its return of income and claimed benefit of lower taxation under Article 12(2) of the India-Germany DTA in respect of royalties and fees for technical services received.

The AO relied on OECD's publication "The application of OECD Model Tax Convention to Partnership"(the OECD Publication) and concluded that the taxpayer, being a limited partnership, is not liable to tax in Germany and accordingly denied the benefit under Article 12(2) of the India-Germany DTA.

The CIT(A) held that since the trade tax paid by the taxpayer is covered under Article 2 of the India-Germany DTA and it was also certified in the Tax Residency Certificate (TRC) by German tax authorities, the taxpayer is eligible to the benefit under the India-Germany DTA. The tribunal upheld the order of the CIT(A).

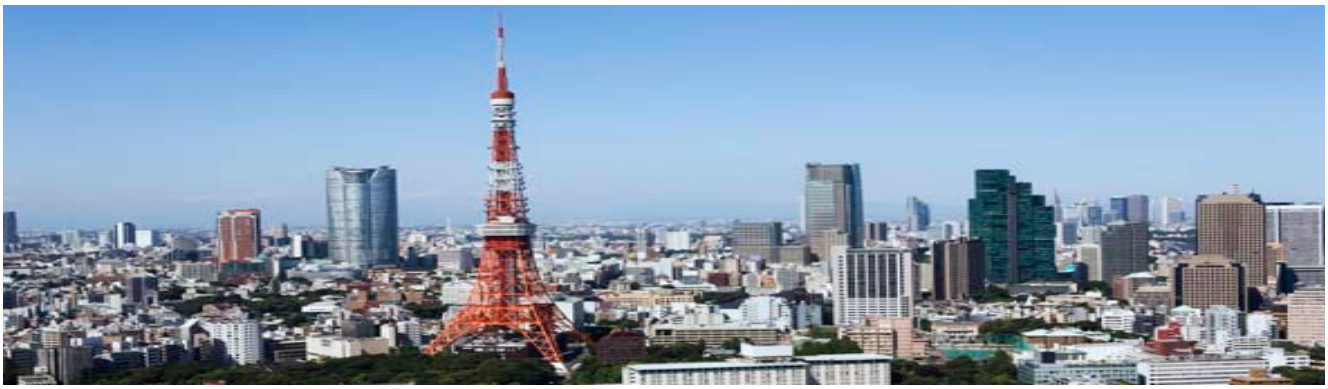
Based on the facts of the case, the High Court, *inter alia*, observed and held as follows:

- The trade tax paid in Germany is one of the taxes paid in Germany covered by Article 2(3) of the India-Germany DTA
- The term 'person' under Article 3(d) of the India and -Germany (DTA includes any entity treated as a taxable unit in Germany
- As per Article 4 of the India-Germany DTA, 'resident' means 'any person who, under the laws of Germany is liable to tax therein by reason of his domicile, residence, place of management or any criterion on similar nature'.
- The trade tax return filed by the taxpayer and the TRC issued by the German authorities provide evidence that the taxpayer is a taxable unit under the German Laws.
- No merit in the submission of the Revenue that the taxpayer cannot be considered as a taxable entity in view of the OECD commentary.

Accordingly, the India-Germany DTA is applicable to the taxpayer and in particular the benefit of Article 12(2) of the DTA cannot be denied.

Japan

▲Top



Tax update

2013 Tax Reform Proposals

The ruling coalition agreed on an outline of the 2013 tax reform proposal (the Proposal) on 24 January 2013.

The Proposal itself is only an indicative outline and is unclear with respect to some of the contemplated changes. Our understanding of the key issues in the Proposal relevant to financial institutions is outlined below:

Anti-Tax Haven Rules (CFC Rules)

Where a Japanese company derives income from a Specified Foreign Subsidiary (SFS) whose head office is located in a country which does not impose tax on income, if such income is taxed in a country other than the country of the head office, the income derived will not be treated as non-taxable foreign source income in calculating the foreign tax credit limit for the Japanese company (i.e. such income will no longer detrimentally affect the calculation).

Earnings Stripping Rules

The following amendments are proposed for the earnings stripping rules which were introduced under the 2012 tax reform and will be applied to fiscal years beginning on or after 1 April 2013.

(1) Corporation tax

Under the current tax law, if both the thin capitalization rules (to restrict the deductibility of interest payments on excessive debt compared to capital) and the earnings stripping rules (to restrict the deductibility of interest payments that are excessive compared to income) are applicable in the same fiscal year, only the larger of the disallowed amounts under either approach is applied to prevent double taxation of the same interest payments. The Proposal indicates this rule will be amended, although it does not provide details.

(2) Business tax (size-based business tax)

The existing rule of including calculation of the current year income/loss which is included in the calculation of tax base of the added value component of size-based business tax will be amended in relation to the earnings stripping rules.

(3) Transfer Pricing

The berry ratio (i.e. ratio of gross profit to operating expenses) which is included as a profit level indicator (PLI) in the OECD Transfer Pricing Guidelines as amended in July 2010 will be provided for as a PLI in calculating arm's length prices for tax purposes.

(4) Overseas Assets Reporting

Pursuant to the 2012 tax reform, a new reporting requirement for overseas assets was introduced, where Japanese permanent residents owning overseas assets valued at over JPY50 million as of the end of a calendar year must submit a 'Statement of Overseas Assets' to report their overseas assets.

Overseas assets generally refer to assets located outside Japan. For example, the deemed location of securities is determined based on the location of the head office of the entity issuing the securities. In the Proposal, the following amendments to the scope of overseas assets for securities have been proposed:

- Domestic securities (shares/bonds issued by a Japanese company, etc) managed in an account established with an overseas office of a financial institution will be treated as overseas assets
- Foreign securities (shares/bonds issued by a foreign company, etc) managed in an account established with a Japanese office of a financial institution will be excluded from the scope of overseas assets

The above amendments will apply to the 'Statement of Overseas Assets' to be submitted on or after 1 January 2014, which should be the first statement submitted (due on 17 March 2014) under these new rules.

Special Measures for Tax Exemption on Interest

(1) Withholding tax exemption on interest received by financial institutions

Under the current tax law, interest on bonds, etc. received by financial institutions, such as banks, having offices in Japan is exempt from withholding tax to the extent of the amount attributable to the holding period. The Proposal indicates that the full amount of such interest will be exempt from withholding tax regardless of the holding period.

(2) Tax exemption for interest on book-entry bonds received by non-resident individuals or foreign companies

Under the current tax law, interest on book-entry bonds received by non-resident individuals or foreign companies is tax exempt, provided certain conditions are satisfied. These special measures will be amended as follows:

(i) The expiration date of the temporary measure to exempt book-entry corporate bonds (31 March 2013) will be eliminated in principle and it will become a permanent measure.

(ii) Interest on book-entry bonds received by non-resident individuals or foreign companies will be fully exempt from tax regardless of their holding periods.

(iii) Withholding tax on redemption proceeds on certain book-entry discount bonds received by non-resident individuals or foreign companies upon redemption will be abolished. Hence, any income derived from the redemption proceeds will be non-taxable for income tax and corporation tax purposes provided the recipients submit application forms for exemption.

(iv) Related amendments In connection with the above amendments will be provided.

Except for (i), the above measures will apply to interest on and redemption proceeds from book-entry bonds received on or after 1 January 2016.

Details of the tax reform will be unveiled in the bills revising the tax laws and the succeeding amended tax laws, cabinet orders and ministerial ordinances. Please note that the final tax reform could differ from the Proposal depending on the outcome of discussions in the Diet.

Korea

▲Top

Tax update

Lower Ceilings on Bad Debt Reserve of Financial Institutions

From the fiscal year started 1 January 2013, the ceiling on the deductible bad debt reserve of financial institutions shall be lowered from 2% to 1% of its balance of accounts receivable, to align the taxation treatment between financial institutions and non-financial companies.

Details on the Computation of Arm's Length Price for Credit Guarantee Transactions

The amended Enforcement Decree introduces new standards to determine the arm's length credit guarantee fees, including the benefit method, the cost-based approach and the cost/benefit-based approach.

Details on the new standards are as follows:

1. The cost-based approach shall be based on expected risks and cost actually borne by the guarantor.
2. The benefit method shall be based on interest cost differential between unguaranteed and guaranteed debt to be borne by the debt holder.
3. The cost/ benefit-based approach shall be based on the scope of prices obtained by applying the methods 1 and 2 above.

Malaysia

▲Top

Tax update

Finance Act 2013

The Finance Act 2013 incorporating certain income tax proposals from the 2013 Budget has been gazetted.

For further information regarding the Budget 2013 proposals, please refer to Issue 46 through the link below:

http://kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Newsletters/General-Tax-Update/Documents/General-tax-update-1303-46.pdf

Deferment on the Implementation of the Thin Capitalisation Rules

The Ministry of Finance announced that the implementation of thin capitalisation rules has been deferred to the end of December 2015. In this regard, it appears that the thin capitalisation rules may take effect from January 2016.

Tun Razak Exchange (Formerly Known as Kuala Lumpur International Financial District)

The 2012 Budget proposed to provide various tax incentives to qualifying and approved financial institutions (TRX Marquee status company) operating in the Tun Razak Exchange (TRX). The Income Tax Exemption Order, Rules and Stamp Duty Orders relating to the proposed tax incentives have been gazetted. Details are as follows:

a. Income Tax (Deduction for Rental Payments) (Tun Razak Exchange Marquee Status Company) Rules 2013

The Rules allow an additional deduction of 50% of the rental payments incurred by TRX Marquee status company in respect of the rented commercial buildings in the TRX used for the purposes of its business for a period of 10 years.

The Rules are effective from the Year of Assessment (YA) 2014 and apply to a TRX Marquee status company which commences to undertake the whole or part of its business in the TRX not later than 31 December 2020.

b. Income Tax (Deduction for Relocation Costs for Tun Razak Exchange Marquee Status Company) Rules 2013

The Rules allow a TRX Marquee status company to claim a tax deduction for qualifying relocation costs incurred (to be certified by an external auditor) to relocate the whole or part of its business to the TRX from outside Malaysia or from other parts of Malaysia. The relocation costs will be deemed to be incurred in the YA in which the TRX Marquee status company commences to undertake the whole or part of its business in the TRX.

The Rules are effective from the YA 2014 provided the relocation takes place not later than 31 December 2020.

c. Income Tax (Accelerated Capital Allowance) (Tun Razak Exchange Marquee Status Company) Rules 2013

The Rules provide that qualifying renovation costs incurred by a TRX Marquee status company on a building or part of a building located in the TRX used for its business qualify for accelerated capital allowance (i.e. initial allowance of 20% and annual allowance of 40%).

The Rules are effective from 1 January 2014 until 31 December 2020.

d. Income Tax (Industrial Building Allowance) (Tun Razak Exchange Marquee Status Company) Rules 2013

The Rules provide that a commercial building constructed or purchased in the TRX by a TRX Marquee status company for the purpose of carrying out the specified business will qualify for industrial building allowance of 10% per year.

The Rules take effect from the YA 2014 and up to 31 December 2020 on the qualifying building expenditure incurred.

e. Stamp Duty (Exemption) Order 2013

The Order provides stamp duty exemption on a service agreement entered into between a service provider and a TRX Marquee status company executed on or after 1 January 2014 but not later than 31 December 2022.

The Order is effective from 1 January 2014.

f. Stamp Duty (Exemption) (No. 2) Order 2013

The Order provides stamp duty exemption on the following:

(i) any instrument of transfer for the purchase of commercial property by a TRX Marquee status company;

(ii) any loan agreement executed between a TRX Marquee status company named in the sale and purchase agreement (S&P) and a bank or financial institution to finance the purchase of a commercial property, provided that the S&P and the loan agreement are both executed between 31 January 2013 and 31 December 2020; and

(iii) any lease or agreement for lease of any commercial property entered into by a TRX Marquee status company, provided that the lease agreement for the commercial property is executed between 31 January 2013 and December 2022.

The stamp duty exemption given under items (i) and (ii) shall be given to the first owner of that commercial property, whilst the exemption under item (iii) shall be granted to the first lessee of the property.

The Order is effective from 31 January 2013.

Recent tax rules / tax exemption orders gazetted

Income Tax (Exemption) (No.9) Order 2013

The gazetted order effected the Budget 2013 proposal to exempt interest income received by banking and financial institutions from loans borrowed by approved rescuing contractors for reviving certified abandoned housing projects, for 3 consecutive YAs from the year the loans are approved.

The Order is effective from the YA 2013 for loan application made on or after 1 January 2013 but not later than 31 December 2015.

Income Tax (Deduction for Expenditure on Issuance of Retail Debenture and Retail Sukuk) Rules 2013

The gazetted rules effected the following special deduction on additional expenses incurred by a resident company in Malaysia, for the issuance of approved retail sukuk and retail debenture to the retail investors:

(i) double deduction on additional expenses for the issuance of retail debenture; and

(ii) a single deduction on additional expenses for the issuance of retail sukuk.

The Rules are effective from the YA 2012 to YA 2015.

Income tax (Deduction for Payment of Premium to Malaysia Deposit Insurance Corporation) Rules 2013

Under the gazetted rules, the following entities are allowed to deduct their first premium or annual premium paid to the Malaysia Deposit Insurance Corporation from the adjusted income of their business for the basis period of the YA:

- a deemed member institution that is a financial institution under the Malaysia Deposit Insurance Corporation Act 2011 (previously a member institution under the Malaysia Deposit Insurance Corporation Act 2005) for the YA 2005 to YA 2010; and
- a member institution that is a financial institution, takaful operator or an insurance company under the Malaysia Deposit Insurance Corporation Act 2011 for the YA 2011 onwards.

The Rules revokes Income Tax (Deduction for Payment of Premium to Malaysia Deposit Insurance Corporation) Rules 2011.

Stamp Duty (Exemption) (No. 4) Order 2013

All instruments relating to the sale and purchase of approved retail debenture and retail sukuk executed by an individual retail investor, on or after 1 October 2012 but not later than 31 December 2015 are exempt from stamp duty.

Stamp Duty (Exemption) (No. 5) Order 2013

All instruments relating to the loan agreements for additional financing and transfer of the residential property executed by an original purchaser or his beneficiary on or after 1 January 2013 and not later than 31 December 2015 in reviving certified abandoned housing projects are exempt from stamp duty.

Stamp Duty (Exemption) (No. 6) Order 2013

All instruments relating to loan agreements for additional financing and transfer of residential property executed by an approved rescuing contractor/developer in reviving certified abandoned housing projects, on or after 1 January 2013 and not later than 31 December 2015, are exempt from stamp duty.

Stamp Duty (Exemption) (No. 7) Order 2013

All instruments executed by a trustee-manager relating to the transfer of any business, asset or real property to an approved business trust for the purpose of initial offering, on or after 1 January 2013 and not later than 31 December 2017, are exempt from stamp duty.

Stamp Duty (Exemption) (No. 8) Order 2013

All instruments relating to the restructuring or rescheduling of loan executed on or after 1 January 2013 but not later than 31 December 2017, between a participant of the debt management programme approved by the Credit Counselling and Debt Management Agency and a specified credit provider, are exempt from stamp duty.

Real Property Gains Tax (Exemption) Order 2013

The Order effected the proposal included in the Budget 2013 to grant real property gains tax exemption for any person disposing real properties or shares in a real property company to an approved business trust for the purpose of initial offering

The Order is effective from the 1 January 2013 and for disposal made on or after 1 January 2013 but not later than 31 December 2017.

Inland Revenue Board Guidelines

The Malaysian Inland Revenue Board (MIRB) issued Guidelines on the Taxation of Electronic Commerce transactions. "E-commerce" has been defined in the Guidelines as any commercial transactions conducted through electronic networks including the provision of information, promotion, marketing, supply, order or delivery of goods or services though payment. Delivery relating to such transactions may be conducted off-line.

The full text of the Guidelines is available at

http://www.hasil.gov.my

New Statement of Monetary and Non-Monetary Incentive Payments to Agents, Dealers or Distributors [Form CP58]

The MIRB has issued a new Form CP58 to report monetary and non-monetary incentive payments by a company to its agents, dealers or distributors. Guidance notes and guidelines on the completion of the Form CP58 have also been issued. Notable changes reflected in the new form and its guidance notes are as follows:

1. The new form does not need to be signed nor has the company stamp affixed on it;
2. Where non monetary incentives are in the form of vehicles or houses, the amount to be disclosed should be based on the actual cost incurred by the payer companies;
3. The Form CP58 may now be in an electronic format; and
4. The MIRB may request for information to be provided by the payer under the Information Collection Programme.

As a concession, the Form CP58 reporting requirements will not be applied from 1 January 2012 to 31 December 2012, if the payer companies have issued to their agents, dealers or distributors an annual statement recording the monetary and non monetary incentive payments.

The new Form CP58, guidance notes and the guideline on submission of Form CP58 are available at

http://www.hasil.gov.my

Malaysian Investment Development Authority's Guidelines

The Malaysian Investment Development Authority has issued Guidelines in respect of applications for the Treasury Management Centre (TMC) status. A TMC is a locally incorporated company which provides centralised treasury management services to its related companies within or outside Malaysia. A company with approved TMC status is given various tax incentives.

The qualifying treasury management services have been categorised into 3 broad categories i.e. cash, financing and debt management, investment services and financial risk management.

The full text of the Guidelines is available at

http://www.mida.gov.my

Mauritius

▲Top

Tax update

Enactment of the Finance (Miscellaneous Provisions) Act 2012 (the Finance Act)

Further to the enactment of the Finance Act 2012 in December 2012, the main changes relevant to financial institutions are as follows:

Income Tax

- The threshold requirement for companies to file quarterly Advance Payment System (APS) Statements and make tax payment, if any, has been increased to MUR4 Million so that companies with gross income not exceeding the threshold do not need to file the quarterly APS Statements. This new threshold is applicable to APS returns to be filed as from 1 January 2013.
- The Finance Act provides that the rates for special levy on banks of 3.4% on book profit and 1% on operating income be extended up to year of assessment 2014. From the year of assessment 2015, the rates will be reduced to 1.7% on book profit and 0.5% on operating income.
- Tax Deduction at Source (TDS) on payment of interest to non-residents is increased from 10% to 15%. This TDS is not applicable to individuals, banks and non-bank deposit taking institutions. The TDS rate is subject to the relevant double taxation agreement which Mauritius may have with the country of residence of the recipient of interest which may reduce it.

  The scope for applying TDS on royalties is being extended from "companies and société" to "any person, other than an individual". Current exemption for banks and companies holding Category 1 Global Business Licence (GBL1) remains unchanged. Current rates remain unchanged, namely 10% in the case of a resident recipient and 15% in the case of a non-resident recipient.

  No TDS is required to be deducted on payments when the amount of tax is MUR500 or lower. However, the payer will still have to provide details of such payments in the Annual TDS statement to be submitted to the MRA in the following year.
- The Finance Act provides for accelerated annual allowance in respect of certain capital expenditure incurred during the income years 2013 and 2014.
- As from 1 January 2013, where in a financial year a company has disbursed less than its Corporate Social Responsibility (CSR) Fund for that year, it can, with the approval of the CSR Committee, carry forward the difference limited to 20% of the Fund to the following year.

  The Finance Act also provides that where a company has disbursed more than its CSR Fund for a financial year, it may carry forward the excess disbursement (max. 20% of its CSR Fund) to be offset in equal instalments against the CSR Funds for the subsequent 5 succeeding years, instead of forfeiting the excess disbursement. The carry forward of excess disbursement is not allowed for more than 2 consecutive years. The carry forward will not be allowed to be offset against income tax and special levies. However, it can be offset against any CSR Fund for the following years.

  GBL1 companies and banks (to the extent of their banking transactions with non-residents and GBL companies) remain excluded from this requirement.
- The Finance Act provides that special purpose funds established under the Financial Services Act shall not be treated as tax resident of Mauritius for the purpose of claiming treaty benefits. Such special purpose funds shall also not be required to file tax returns or pay tax in Mauritius. Payments made by the special purpose funds by way of interest, rents, royalties, compensations and other amounts to a non-resident shall not be subject to any Mauritius tax.
- Effective from year of assessment 2013, a société commerciale and any other resident société deriving income is required to file annual return of income with the Mauritius Revenue Authority (MRA) by 31 March of each year.

Moreover, the société is required to provide to each of its associates a statement of his share of income and also to file electronically with the MRA a statement providing details of the share of income for each of its associates. The time limit to provide these statements is 31 March of each year.

The manager of the société is responsible to obtain from the MRA the relevant Tax Account Number for each of its associates and insert same in the statements.

- On 27 December 2012 the MRA issued a Statement of Practice clarifying taxation of foreign exchange as follows:
  - Foreign exchange difference arising on items of capital nature remains not subject to tax. Generally, foreign exchange difference arising on loans and repayment of loans are treated of capital nature, however, the nature of the business activity of the taxpayer should be taken into consideration.
  - Taxpayer now has the option to elect to tax foreign exchange differences on items other than of capital nature, only when they are realised. Such election is irrevocable and has to be exercised in the taxpayer's annual tax return for the year of assessment 2013.

Temporary schemes

- Similar to last year, temporary schemes are effective from 1 January 2013 to 30 September 2013, with the objective to:
  - Clear outstanding debts prior to 2006 in the MRA books; and
  - Provide incentives to taxpayers to regularize their affairs with respect to VAT, income tax, gaming, betting duties and outstanding taxes.
- Under these schemes, the taxpayer may:
  - Obtain a waiver of up to 100% of penalties and interest payable on tax due;
  - Regularise his VAT position by being granted major concessions in respect of his tax liabilities prior to registration;
  - Apply for a review of an assessment when he was originally unable to dispute a tax claimed in an assessment issued prior to 1st January 2011 under the Income Tax Act, VAT Act or Gaming Regulatory Authority Act;
  - Avail of this provision in case of an assessment having been maintained due to failure to pay 30% of tax assessed on objection, non-production of full records or non-attendance or due to one reason or another did not object to the assessment; and
  - Make a voluntary disclosure of income which he has not declared or under-declared in the past and regularise his situation.

VAT

- The annual turnover threshold for compulsory registration for VAT has increased from MUR2 million to MUR4 million, effective from 1 April 2013.

  Procedures have been put in place for registered persons applying for deregistration by reason of the new registration threshold.

  Where a person ceases to be a registered person on 1 April 2013 on the grounds that his annual turnover does not exceed or is not likely to exceed MUR4 Million, he shall not be entitled to a VAT refund or carry forward the excess amount as a credit to offset against his future VAT liability, if any.

New Zealand

▲Top

Tax update

Employee taxation issues

The latest developments in relation to New Zealand employee taxation issues are set out as follows:

- **Proposals to tax employer-provided car parks will not proceed**

  The proposals, included in a Taxation Bill last year, would have resulted in certain benefits from employer-provided car parks being taxable under New Zealand's Fringe Benefit Tax (FBT) regime. However, in response to concerns about the excessive compliance cost on employers from these proposals, the Government has decided not to proceed with the changes.

- **Proposals to tax employee allowances/reimbursements for communication costs will also not proceed**

  The Government has also indicated that it will not proceed with proposals to tax mobile phone and data plans provided by employers (or payment of allowances to cover such costs). The proposals were in an New Zealand Inland Revenue Department (NIRD) consultation paper released late last year, along with proposals to tax employee accommodation and meal costs in a range of circumstances.

- **NIRD's statement on accommodation**

  In December 2012, the NIRD issued a statement that employer-provided accommodation and accommodation allowances, where an employee is travelling for work, are generally taxable, other than in non-taxable "temporary" circumstances (which at the time was considered to be overnight stays and work trips of no more than a few days). The NIRD has since clarified that relocating for a period of between 6 and 12 months could potentially be "temporary" (and therefore still non-taxable), but anything longer than 12 months will be more than temporary (and taxable) other than in exceptional circumstances. Concerns remain about how this NIRD view will apply in practice.

Thin capitalisation changes proposed

Earlier this year, the NIRD and Treasury released a consultation paper aimed at tightening the rules for claiming New Zealand interest deductions by business owned by non-residents (i.e. New Zealand's thin capitalisation rules). At present, inbound thin capitalisation restrictions apply if there is a single non-resident controller of a New Zealand entity.

The proposals aimed at plugging a number of perceived "gaps" in the thin capitalisation rules, including:

- Extending the thin capitalisation rules to multiple non-residents holding or controlling more than 50% of a New Zealand company or group if these parties are "acting together". "It is proposed that "acting together" would include explicit co-operation, through a written or tacit shareholder agreement, or coordination of decision making by a person or a group of persons (e.g. private equity managers).

- Removing related-party debt from the calculation of the worldwide debt-to-asset ratio, for thin capitalisation purposes.

Excluding capitalised interest (if a tax deduction is taken) and internal revaluations from total assets in the New Zealand debt-to-asset ratio calculation.

Court of Appeal decision in *Alesco v CIR*

The case related to the issue of NZ$78 million of Optional Convertible Notes (OCNs) by Alseco New Zealand to its Australian parent, to fund the acquisition of businesses in New Zealand in 2003.

The OCNs were non-interest bearing, for a fixed term, and on maturity the holder was entitled to exercise an option to convert the notes into shares. Alesco New Zealand claimed deductions for amounts treated as interest expenditure in accordance with relevant accounting standards and under New Zealand's tax rules for financial arrangements (including a Determination issued by NIRD).

The NIRD considered that the OCNs were arrangements entered into for the purpose, or with the effect of, tax avoidance and accordingly disallowed the interest deductions claimed and imposed penalties for taking an "abusive tax position". The total tax, interest and penalties assessed by NIRD was NZ$8.6 million.

The High Court found in favour of Inland Revenue and Alesco appealed the decision. In a unanimous decision in March this year, the New Zealand Court of Appeal (CA) rejected Alesco's appeal.

The CA focussed on whether Alesco New Zealand obtained a tax advantage from the use of the OCNs, without bearing the interest expense which the New Zealand Legislature intended to be suffered in order to receive a tax deduction.

The CA found that:

- While Alesco New Zealand's acquisitions were not made for the purpose or effect of avoiding tax, at issue was the permissibility of the OCN funding.
- The financial arrangement rules are intended to reflect the real economic benefits and costs. The CA considered that Parliament would not have intended the financial arrangement rules could be used to claim deductions for interest for which the taxpayer was not liable or did not pay.
- Alesco did not incur a real economic cost on the OCNs "of the type contemplated by Parliament when providing for interest deductions under the financial arrangements rules". The CA considered that a third party would not advance an amount interest-free unless the borrower was paying a market cost of funds in some other way.
- While the OCN structure complied technically with the relevant financial arrangements rules, this was insufficient and did not transform a notional interest cost into a real interest cost.
- Alesco adopted the OCN structure solely to obtain a tax benefit. The tax benefit was not a natural concomitant or merely incidental, it was the only identifiable purpose and effect.

The CA concluded the funding arrangement was tax avoidance and void for income tax purposes. The CA also found that NIRD does not have to have regard to a hypothetical alternative transaction for reconstructing the impugned transaction and the abusive tax position penalty was justified.

Alesco has sought leave to appeal the CA decision to the New Zealand Supreme Court.

(Note: Alesco is one of a number of taxpayers in dispute with IRD over OCN funding structures. The total tax, interest and penalties at stake in these disputes is over NZ$300 million.)

Philippines

Top

Tax update

Transfer Pricing Guidelines [BIR Revenue Regulation No. 02-2013]

The Secretary of Finance issued Revenue Regulation No. 02-2013 dated 23 January 2013 providing for transfer pricing guidelines. The issuance of the said regulation is in accordance with Sec. 50 of the National Internal Revenue Code (Tax Code) which authorizes the Commissioner of Internal Revenue to distribute, apportion, allocate gross income and/or deductions between two or more organizations owned or controlled directly or indirectly by the same interest, in order to ensure that taxpayers clearly reflect income attributable to controlled transactions and to prevent avoidance of taxes with respect to such transactions.

The arm's length principle

The guidelines are largely based on the arm's length methodologies as set out under the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines.

The arm's length principle requires the transaction with a related party to be made under comparable conditions and circumstances as a transaction with an independent party.

The three – step approach to be observed in applying the arm's length principle:

Step 1: Comparability Analysis

A comparability analysis should examine the comparability of the transactions in 3 aspects:

- Characteristics of good, services or intangible properties
- Analysis of functions, risks and assets
- Commercial and economic circumstances

Step 2: Identify the tested party and the appropriate transfer pricing method (TPM)

Arm's Length Pricing Methodologies:

1. Comparable Uncontrolled Price (CUP) Method - The method evaluates whether the amount charged in a controlled transaction is at arm's length by reference to the amount charged in a comparable uncontrolled transaction in comparable circumstances.
2. Resale Price Method (RPM) - The method evaluates whether the amount charged in a controlled transaction is at arm's length by reference to the gross profit margin realized in comparable uncontrolled transactions.
3. Cost Plus Method (CPM) - The method focuses on the gross mark-up obtained by a supplier who transfers property or provides services to a related purchaser. CPM assesses whether the mark-up on the costs incurred by the supplier meets the arm's length standard.
4. Profit Split Method (PSM) - The method seeks to eliminate the effect on profits of special conditions made or imposed in a controlled transaction (or in controlled transactions that are appropriate to aggregate) by determining the division of profits (or losses) that independent enterprises would have expected to realize from engaging in the transaction.
5. Transactional Net Margin Method (TNMM) - The method evaluates whether the amount charged in a controlled transaction is arm's length by reference to the operating profit earned in comparable uncontrolled transactions.

The Bureau of Internal Revenue (BIR) does not have a specific preference over any one method. Instead, the TPM that produce the most reliable results, taking into account the quality of available data and the degree of accuracy of adjustments, should be utilized. In all cases, taxpayers should be able to explain why a specific TPM is selected or used in recording controlled transactions through proper documentation.

Step 3: Determine arm's length results

If the relevant condition of the controlled transaction (i.e. price or margin) is within the arm's length range, no adjustment should be made; otherwise, the taxpayer should present proof or substantiation that the conditions of the controlled transaction satisfy the arm's length principle, and that the result falls within the arm's length range.

Advance Pricing Arrangements (APA) and Mutual Agreement Procedure (MAP)

APA is an agreement entered into between the taxpayer and the BIR to determine in advance an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto) to ascertain the transfer prices of controlled transactions over a fixed period of time. The purpose of an APA is to reduce the risk of transfer pricing examination and double taxation.

It is not mandatory for taxpayers to avail of an APA for their controlled transactions. If a taxpayer does not choose to enter into an APA and its transactions are subject to transfer pricing adjustments subsequently, it may invoke the MAP Article to resolve double taxation issues.

The Philippines tax treaties article on MAP provides a mechanism for the Philippines authority to mutually arrive at satisfactory solution with the treaty partner's authority to eliminate double taxation issues arising from transfer pricing adjustments.

Documentation

BIR does not require transfer pricing documents to be submitted when the tax returns are filed. However, such documents should be retained by the taxpayers and submitted to BIR when required or requested to do so.

Amendments to Exclusions from Single Borrower's Loan (SBL) Limit and Equity Investment Ceilings [BSP Circular 784 Series of 2013]

The Bangko Sentral ng Pilipinas (BSP) issued Circular 784 Series of 2013 dated 25 January 2013 introducing amendments on provisions of the Manual of Regulations for Banks and Manual for Regulations for Non-Bank Financial Institutions (MORNBFI). The following applies to universal banks (UB), non-bank financial institutions and quasi-banks (QB):

Exclusions from loan limit:

- The total liabilities of a commercial paper issuer, for commercial paper held by a UB/QB acting as a firm underwriter of the commercial paper, shall not be counted in determining compliance with the single borrower's limit (SBL) within a period of 90 days (previously 180 days) from the issuance of the commercial paper; provided that in no case shall such liabilities exceed 5% of the net worth of the UB or QB beyond normal applicable SBL.
- Loans and other credit accommodations as a result of an underwriting or sub-underwriting agreement of debt securities outstanding for a period not exceeding 30 days. Other credit accommodations shall include, among others, inventories of debt securities such as bonds and notes purchased by the UB/QB out of its underwriting commitments.

The exposure of UB arising from firm underwriting of equity securities of enterprises shall not be counted in determining compliance with SBL limit for a period of 90 days (previously 2 years) from the issuance of such equity securities.

The SBL on equity investments of QB shall not apply to inventories of equity securities arising out of firm underwriting commitments of investment houses, provided that such equity holding shall be disposed of within 90 days (previously 2 years) from issuance.

Amendment to Regulations on Single Borrower's Limit [BSP Circular 779 Series of 2013]

The BSP issued Circular 779 Series of 2013 dated 9 January 2013 to amend Section X303 (b.2) of the MORB to the effect that the increase in the SBL by maximum of 25% of the net worth of the bank shall be allowed for a period of 6 years (previously 3 years) from 28 December 2010. All other conditions still apply.

The circular also amends the third paragraph of Section 4303Q of the MORNBFI as follows:

"The total amount of loans, credit accommodations and guarantees prescribed in the first paragraph may be increased by an additional 25% of the net worth of such QB, provided:

- *The additional loads, credit accommodations and guarantees are for the purpose of undertaking infrastructure and/or development projects under the Public-Private Partnership (PPP) Program of the government duly certified by the Secretary of Socio-Economic Planning;*
- *The total exposures of the QB to any borrower pertaining to such infrastructure and/or development projects under the PPP Program shall not exceed 25% of the net worth of such QB;*
- *The additional 25% shall only be allowed for a period of 6 years from 28 December 2010; and*
- *The credit risk concentration arising from total exposures to all borrowers pertaining to such infrastructure and/or development projects under the PPP Program shall be considered by any QB in its internal assessment of capital adequacy relative to its overall risk profile and operating environment. Said loans, credit accommodations and guarantees based on the contracted amount as of the end of the 6-year period shall not be increased but may be reduced and once reduced, said exposures shall not be increased thereafter."*

Singapore ▲*Top*

Tax update

Budget 2013

The *2013 Budget Statement* was tabled in the Parliament on 25 February 2013 by the Deputy Prime Minister and Minister for Finance, Mr Tharman Shanmugaratnam. Several existing incentive schemes for businesses were enhanced.

The following highlights are relevant to the Singapore financial services sector:

Corporate income tax rebate

A 30% corporate income tax rebate, subject to a cap of S$30,000 per year of assessment, will be granted to companies for the YA 2013 to YA 2015.

Extending and enhancement of the Financial Sector Incentive (FSI) scheme

Revisions are proposed to be made to the existing FSI scheme. The key features of the current FSI scheme and the proposed changes are summarised below:

		Current FSI Scheme		Proposed changes to the FSI scheme	
	FSI award	**Concessionary tax rate**	**Expiry date of award**	**Extension of award**	**New treatment**
i.	FSI – Standard Tier (FSI-ST)	12%	31-Dec-13	31-Dec-18	• Range of incentivised activities and financial instruments will be broadened • Qualifying Debt Securities (QDS) incentive will apply to debt securities arranged by recipients of the FSI-ST award with effect from 1 January 2014, subject to conditions
ii.	FSI-Fund Management (FSI-FM)	10%	31-Dec-13	31-Dec-18	-
iii.	FSI-Headquarter Services (FSI-HQ)	10%	31-Dec-13	31-Dec-18	• Withholding tax exemption will be granted automatically to FSI-HQ award recipients on interest payments made during the period of their FSI-HQ award for qualifying loans. This will take effect from 25 February 2013

iv.	FSI-Bond Market (FSI-BM)	5%	31-Dec-13	31-Dec-18	• FSI-BM and FSI-EM will be merged to form a single FSI-Capital Markets ("FSI-CM") award • Range of incentivised activities and financial instruments will be broadened • QDS incentive will apply to debt securities arranged by recipients of the FSI-ST award with effect from 1 January 2014, subject to conditions
v.	FSI-Equity Market award (FSI-EM)	5%	31-Dec-13	31-Dec-18	-
vi.	FSI-Credit Facilities Syndication (FSI-CFS)	5%	31-Dec-13	31-Dec-18	• Range of incentivised activities and financial instruments will be broadened
vii.	FSI-Derivatives Market (FSI-DM) - with 5 separate sub-awards: financial derivatives, over-the-counter (OTC) commodity derivatives, exchange traded commodity derivatives, OTC and exchange-traded commodity, financial, OTC and exchange-traded commodity derivatives	5%	31-Dec-13	31-Dec-18	• The 5 sub-awards will be merged to form a single FSI-DM award
viii.	FSI-Islamic Finance (FSI-IF)	5%	31-Mar-13	Not extended	• FSI-IF allowed to expire on 31 March 2013. Existing qualifying Islamic financing activities will be incentivised under FSI-ST award (12%)

Unless otherwise specified above, the proposed changes will take effect on 1 January 2014. Existing award recipients can continue with their awards till the end of their award tenures provided they continue to fulfil the conditions under the respective awards.

Further details will be released by the Monetary Authority of Singapore (MAS) by June 2013.

Extending and redefining the QDS and Qualifying Debt Securities Plus (QDS+) Incentive Schemes

a. The QDS scheme offers the following tax concessions on qualifying income from QDS:

   i. 10% concessionary tax rate for qualifying companies and bodies of persons in Singapore; and

   ii. Tax exemption for qualifying non-residents and qualifying individuals.

   To qualify as QDS, debt securities must be substantially arranged by financial institutions in Singapore.

b. The QDS+ scheme grants tax exemption for all investors on qualifying income derived from QDS that are:

   i. Debt securities (excluding Singapore Government Securities) with an original maturity of at least 10 years; and

   ii. Islamic debt securities.

Both the QDS and QDS+ schemes will expire on 31 December 2013. To further promote Singapore's debt market, both schemes will be extended for 5 years to 31 December 2018.

For debt securities issued during the period of 1 January 2014 to 31 December 2018, the requirement that the QDS has to be substantially arranged in Singapore will be rationalised to ease compliance for issuers and provide greater certainty.

The QDS+ scheme will be refined to allow debt securities with standard early termination clauses to qualify for the QDS+ scheme, subject to certain conditions.

The other existing conditions of the schemes remain unchanged.

Further details will be released by the MAS by end June 2013.

Extending the tax exemption on income derived by primary dealers from trading in Singapore Government securities

To continue encouraging trading in Singapore Government securities, the current tax exemption on income derived by primary dealers from trading in Singapore Government securities which expires on 31 December 2013 will be extended for another 5 years to 31 December 2018.

Extending the Tax Incentive Scheme for Approved Special Purpose Vehicle (ASPV) engaged in asset securitisation transactions

Currently, the ASPV scheme grants the following tax concessions to an ASPV for asset securitisation transactions:

i. Tax exemption on income derived by an ASPV from approved asset securitisation transactions;

ii. Goods and Services Tax (GST) recovery on its business expenses at a fixed rate of 76%;

iii. Remission of stamp duties on the instrument of transfer of assets to the ASPV for approved asset securitisation transactions; and

iv. Tax exemption on payments to qualifying non-residents on over-the-counter financial derivatives in connection with an asset securitisation transaction.

The original scheme will expire on 31 December 2013. To continue developing the structured debt market, the ASPV scheme will be extended for another 5 years to 31 December 2018. All existing conditions of the scheme remain unchanged.

Taiwan

▲Top

Tax update

Proposed "Controlled Foreign Corporation" Rule and test of company residency

The Legislative Yuan recently proposed amendments to the Income Tax Act in an effort to incorporate the "Controlled Foreign Corporation" rule (CFC Rule) and the test of company's residency concept into Taiwan's current income tax rules.

Under the proposed CFC rule, starting from 2015, Taiwan companies will need to recognize the earnings of its offshore affiliated entities (residing in jurisdiction with low income tax rate) which it directly or indirectly holds as investment income, based on its shareholding percentage. The Taiwan companies will need to include such investment income as part of its taxable income for income tax filing purpose.

When the offshore affiliated entities subsequently distribute dividends to the Taiwan companies, the portion of the dividends distributed that has already been recognized as the Taiwan companies' investment income will be exempt from Taiwan income tax.

In addition to the proposed CFC rule, the Legislative Yuan also introduces an income tax amendment which addresses the determination of country of residency for company. Pursuant to the amendment, starting from 2015, if a foreign entity is set up within a tax haven jurisdiction by a Taiwan company and the place of effective management for such foreign entity is Taiwan, such foreign entity will be deemed as a company that is headquartered in Taiwan for Taiwan income tax purposes.

The proposed amendments are still in the initial stage of the legislative process and are subject to further discussion and changes. We will continue to monitor its progress and provide update as more details become available.

Vietnam

▲Top

Tax update

Updates on financial regime for credit institutions and foreign bank branches

On 9 January 2013, the Ministry of Finance issued Circular 05/2013/TT-BTC on financial regime applicable to credit institutions (CIs) and foreign bank branches (Circular 05). Some notable points of the circular are highlighted as follows:

- During the course of operations, the limit on the investment in construction and purchase of fixed assets directly used for business must be maintained and managed under the following principles:
  - For CIs: the residual value of fixed assets must not exceed 50% of the charter capital and additional reserve fund of charter capital; and
  - For foreign bank branches: the residual value of fixed assets must not exceed 50% of the granted capital and additional reserve fund of capital granted.
- Circular 05 provides the cap for brokerage commission in banking activities. In particular, the brokerage commission for assets leasing must not exceed 5% of all proceeds during the year. The brokerage commission for selling mortgaged assets must not exceed 1% of the actual proceeds.

Circular 05 took effect from 25 February 2013 and applies for FY13 onwards.

Updates on debt classification and debt provisions for credit institutions and foreign bank branches

On 21 January 2013, the State Bank of Vietnam (SBV) issued Circular 02/2013/TT-NHNN (Circular 02), providing guidelines on method of classification, scale and methodology of making debt provisions for CIs and foreign bank branches.

Some notable points of Circular 02 are as follows:

- Subject to approvals by the SBV, foreign bank branches are allowed to apply their group policy on making provisions on credit risks.

  However, if the policy on making provisions of such foreign bank branches is regarded as less progressive than those stipulated in Circular 02, the foreign bank branches will be forced to make provisions in line with Circular 02.
- Detailed guidance on debt classification methods and principles is provided in Circular 02.
- Regarding the maximum credit rate of guarantee assets for the purpose of making provisions, some notable changes compared to the former regulation (Decision 493/2005/Q-NHNN) are summarised as follows:

Type of guarantee assets	Maximum Credit Rate	
	Circular 02	**Decision 493**
Negotiable instruments, valuable papers which are issued by CIs; saving card, deposit certificates, treasury bills issued by CIs	• With the remaining term of less than one year: 95% • With the remaining term of 1 to 5 years: 85% • With the remaining term of more than 5 years: 80%	75%
Securities issued by CIs	• Listed securities: 70% • Securities registered for listing: 50% • Un-listed securities: 30%	70%
Securities issued by enterprises	• Listed securities: 65% • Securities registered for listing: 30% • Un-listed securities: 10%	65%
Gold bar	• With listing price: 95% • Without listing price: 30%	95%

- Transitional period:

  Foreign bank branches, which have been approved by SBV to classify debts, and provide against credit risks according to regulation of foreign banks before the effective day of Circular 02, are allowed to maintain the existing practice subject to written approval of SBV.

  CIs which have been approved by SBV for implementation of policy on risk provision in order to classify debts in line with Decision 493, are allowed to maintain the existing practice for three years after Circular 02 takes effect (i.e. from 1 June 2013).

Further relaxation of Vietnamese securities market to foreign investors

On 6 December 2012, Ministry of Finance issued *Circular 213/2012/TT-BTC* on guiding the operation of foreign investors in the Vietnamese securities market. Under the circular, administrative procedures are simplified to facilitate investments by foreign investors. In particular, the code regarding the registration of securities transactions has been relaxed and notarizing translated documents are no longer strictly compulsory.

In addition, the time limit for security transactions code issuance is reduced from 10 to 5 days for organizational investors and 3 days for individual investors.

Updated circular on regulating activities of lending, borrowing, purchase and sale with term of valuable papers among CIs and branches of foreign banks

SBV issued Circular 01/2013/TT-NHNN dated 7 January 2013 to amend and supplement a number of articles in Circular 21/2012/TT-NHNN regulating activities of lending, borrowing; purchase and sale with term of valuable papers among CIs and branches of foreign banks. Some notable points in the circular are highlighted as follows:

- Credit term between CIs and branches of foreign banks must not exceed 1 year, except for CIs lending to subsidiary financial leasing companies.
- The minimum and maximum time limits of termed purchase and sale with term of valuable papers among CIs and branches of foreign banks are one day and one year respectively, except for CIs purchasing with term of valuable papers for subsidiary financial leasing companies.
- CIs and branches of foreign banks are not allowed to perform deposit operation and receipt of deposit (excluding payment deposits and transactions of deposits and receipt of deposits with the maximum term of three months) at other CIs and branches of foreign banks from the date this Circular takes effect.

This circular takes effect from 7 January 2013.

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