



This publication continues our series of updates on tax issues affecting Financial Institutions in the Asia Pacific region.

With FATCA coming into effect, local enabling legislation is being promulgated across the region. Looking forward, the BEPS initiative and common reporting standard are likely to dominate the agenda over the coming months.



Highlights



- The Capitalisation reform introduced on 17 July 2014
- The Financial System Inquiry ('FSI') handed down its comprehensive interim report into Australia's financial system
- Exposure Draft propose amendments to allow foreign pension funds access to withholding tax regime



- "Agreement in substance" under FATCA



- The IRD issues guidance on the taxation of Specified Alternative Bond Schemes (Islamic Financing)
- New DTA signed between Hong Kong and Korea



- Newly approved Finance (No. 2) Bill 2014
- Declaration on Automatic Exchange of Information



- Revised Draft Banking Bill impact on the financial services sector
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- Local regulations implemented to adhere with FATCA
- New requirement on Real Estate fund acquisition tax exemption



- Implementation of Goods and Services Tax



- Mauritius has ratified its DTA with Kenya and Guernsey
- DTA with Luxembourg has been amended.



- Taxation Act 2014 contains the enabling provisions for FATCA
- NZ Inland Revenue releases draft guidance on standard commercial transactions voidance
- OECD BEPS



- Enactment of R.A No.10641, allowing the full entry of foreign banks into the Philippines



- Basel III additional tier 1 instruments are treated as debt for tax purposes
- Extending and refining tax incentive schemes for qualifying funds
- Refining the designated Unit Trust scheme



- New regulation announced for business revenue further to amendments on the Business Tax Act



- 7% VAT rate remains for one more year



- Guidance on foreign exchange control
- State Bank of Vietnam issued OL1818 recommending Vietnamese FIS to take necessary actions to comply with FATCA

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Legislative developments

Thin Capitalisation Bill

On 17 July 2014, the Tax and Superannuation Laws Amendment (2014 Measures No. 4) Bill 2014 was introduced into Parliament, containing proposed changes to the thin capitalisation regime. The reforms are intended to tighten the thin capitalisation rules to prevent erosion of the Australian tax base, and ensure that multinationals do not allocate a disproportionate amount of debt to their Australian operations.

The proposed amendments include:

- Tightening of safe harbour debt limits;
- Increasing the de minimis threshold from \$250,000 of debt deductions to \$2 million;
- Introducing a worldwide gearing test for inbound investors

The Bill also contains amendments to the exemption for foreign non-portfolio dividends which are aimed to address certain integrity issues (e.g. excluding dividends on debt-like interests such as redeemable preference shares from the exemption).

The above reforms are intended to apply to income years commencing on or after 1 July 2014.

Tax Laws Amendment (FATCA) Bill receives Royal Assent

The Tax Laws Amendment (Implementation of the FATCA Agreement) Bill 2014 passed the Senate without amendment and has received Royal Assent. The legislation gives effect to Australia's obligations under the Inter Governmental Agreement ('IGA') that was signed by the Australian and US Governments on 28 April 2014 to facilitate the implementation of FATCA for Australian financial institutions. It essentially permits Australian financial institutions to collect information about their customers that are US taxpayers and to provide that information to the Australian Commissioner of Taxation who will then provide that information to the US Internal Revenue Service.

Exposure Draft on MIT – foreign pension funds access to withholding tax regime

On 11 July 2014, Treasury released an Exposure Draft of legislation containing amendments to the managed investment trust ('MIT') withholding tax regime. The proposed amendments will allow foreign pension funds access to the MIT withholding tax regime, specifically, the concessional rates of withholding tax on their Australian investments.

Cases

Decision – PTTEP Australasia (Ashmore Cartier) Pty Ltd v Commissioner of Taxation [2014] FCAFC 71

This case considered whether the adjustment mechanism under a long term supply contract to reflect the time value of money could in itself be considered a separate financial arrangement. The Full Federal Court concluded that, as a matter of construction, it was the adjusted amount that was the bargained price stating that "...it was conceptually no different from the parties agreeing to accept an amount if paid in advance for a different amount if paid on the date of

transfer". In reaching this conclusion the Court dismissed the Commissioner's contention that the adjustment mechanism introduced a financing arrangement between buyer and seller. The decision has implications for a number of arrangements which might otherwise previously have been thought to give rise to a "financial arrangement" for tax purposes under the debt/equity rules.

Taxation rulings and determinations

ATO administrative solution to cessation of AUD LIBOR

From 31 May 2013, the AUD LIBOR was no longer quoted. As a consequence, foreign bank branches whose interest deductions on intra branch borrowings are limited to LIBOR, were left without certainty (or more correctly, without a prescribed limit) on those deductions to the extent they had AUD denominated intra-bank borrowings.

The ATO has offered foreign banks an 'Administrative Solution' which sets the limit on the deduction at the AUD Bank Bill Swap rate ('BBSW') + a margin (ranging from 0 to 80bps depending on tenor).

Tax Determination: Dividend washing

On 30 April 2014, the Australian Taxation Office (ATO) issued a final taxation determination TD 2014/10, which clarified the Commissioner's position that the franking credit anti-avoidance provisions will generally apply to a "dividend washing" scheme. That is, where a shareholder claims two sets of franking credits on what is effectively the same parcel of shares (utilising a special market run by the ASX known as the 'cum dividend' market). Following the release of this final determination, the ATO extended the deadline for self-amendment of tax returns (in respect of any excess franking credits) to 28 May 2014. Penalties would not apply where a self-amendment was received before that date.

Tax Determination: TOFA compliant financial reports

On 28 May 2014, the Australian Tax Office ('ATO') issued a taxation determination TD 2014/12, which considers whether certain financial reports meet the minimum standard requirements for certain elective methods to be applied to the taxation of that entity's financial arrangements ("TOFA"). The TD provides that a financial report must be prepared in accordance with those accounting standards and authoritative pronouncements of the Australian Accounting Standards Board ('AASB') which are specifically relevant to financial arrangements. For example, an entity preparing special purpose financial reports can apply a TOFA tax timing elective method, provided they apply all the accounting principles relevant to the disclosure, recognition, measurement and presentation of financial arrangements.

Other developments

Exposure Draft released on revised Australia/Switzerland treaty

On 4 June 2014, Treasury released an Exposure Draft ('ED') of legislation on the revised tax treaty between Australia and Switzerland. The revised treaty aims to align the bilateral tax arrangements more closely with modern Australian and international treaty policy settings. The revised treaty will enter into force after both countries have completed their respective domestic requirements.

Company tax rate and paid parental levy

The Federal Budget 2014-15, which was handed down on 13 May 2014, affirmed that the company tax rate is intended to be reduced to 28.5% from 1 July 2015. However, for companies with taxable income in excess of AUD5million, any expected benefits from the rate cut will be largely offset by the imposition of the paid parental levy ('PPL') at the rate of 1.5%, to be imposed on the taxable income that exceeds AUD5 million.

The legislation to give effect to the above changes in company tax rate and the PPL has not yet

been introduced into Parliament.

Financial System Inquiry: Interim Report

On 15 July 2014, the Financial System Inquiry ('FSI') handed down its comprehensive interim report into Australia's financial system. Of interest, the report identified a number of issues relating to taxes that distort the allocation of funding and risk in the economy. All tax issues raised in the interim report were referred to the Australian Government's Tax Reform 'White Paper' process (unlikely to commence until early 2015).

Some of the key tax issues raised in the interim report that will be fed into the White Paper process include:

- Differential treatment of certain saving vehicles – e.g. interest income from fixed-income securities (taxed at marginal rates) v salary-sacrificed super (taxed concessionally);
- Interest withholding tax – viewed as distorting funding decisions within financial institutions;
- GST – considered to potentially give rise to pricing distortions in financial services, as GST is not levied on financial supplies; and
- OBUs – clarification is required in respect of the existing/proposed tax rules for offshore banking units in Australia.

The final report will be provided to the Treasurer in November 2014.

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Other developments

Scrutiny on Intercompany Charges

The State Administration of Taxation has been instructing the PRC tax authorities to scrutinize intercompany charges. As a result, the PRC tax authorities are being very stringent on inter-bank service charges of banks. For instance, the PRC tax authorities tend to take the view that all IT related changes are in the nature of software licensing fees and subject to PRC WHT at 10%. The PRC tax authorities have been scrutinizing such charges from a transfer pricing perspective and requesting transfer pricing documentation to support the nature of the charges, etc.

Effects of “agreement in substance” under FATCA

According to the U.S. Treasury Department, China reached an “agreement in substance” with the United States for a Model 1 intergovernmental agreement under the U.S. Foreign Account Tax Compliance Act (FATCA), in late June 2014.

As a result, China will be treated as having an agreement “in effect” for FATCA compliance purposes. Thus, Chinese financial institutions will now avoid the potential 30% withholding tax that could have been imposed under FATCA.

China will have until the end of 2014 to finalize and sign the IGA in order to retain Model 1 IGA status.

It is understood that Chinese financial institutions may now register on the FATCA Registration Portal as a "Registered Deemed-Compliant FFI" within a Model 1 IGA jurisdiction. Financial institutions are required to register with the US IRS and obtain a Global Intermediary Identification Number (GIIN) from the US IRS before 1 January 2015.

In order to ensure certainty and compliance, it is hoped that further guidance will be provided shortly by the PRC Government on how financial institutions can fully comply with their FATCA obligations and details of any local exemptions.

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Inland Revenue Department issues guidance on Taxation of Specified Alternative Bond Schemes (Islamic Financing)

On 31 July, the Inland Revenue Department (IRD) issued Departmental Interpretation and Practice Note No. 50 ("the DIPN") on the Taxation of Specified Alternative Bond Schemes. The DIPN gives the IRD's views on the correct interpretation of the legislation introduced last year to allow for greater tax parity between conventional and Islamic bond arrangements. The guidance also sets forth the process for an advance ruling.

Following the consultation process in 2012, the Financial Services and the Treasury Bureau responded to a number of the opinions given by stating their views and saying that these would be reflected in a DIPN (rather than being included in the Ordinance). The DIPN therefore provides the IRD's response to a number of the assurances given in response to the consultation exercise but not reflected in the Ordinance as enacted. These include:

- Inadvertent breaches

A number of concerns were raised in the consultation process about the risk of falling outside the special regime as a result of inadvertent breaches of the rules. Further, it may be necessary to extend the term of the arrangement as a result of legal difficulties with transferring the asset or cash flow problems that the originator may have.

In response to these concerns, the Commissioner of Inland Revenue ("the Commissioner") explained in the DIPN that any delay as a result of legal constraints, cash flow problems or insolvency on the part of the originator causing delayed payments or non-disposal of the specified assets will be disregarded, and that any total loss of the specified asset resulting in early termination of the bond arrangement will not amount to a breach of features and conditions. This flexibility is limited to unforeseen delays – other inadvertent breaches are still likely to lead to disqualification.

- Reasonable commercial return

The DIPN contains a number of comments on how the reasonable commercial return condition will be applied. The IRD acknowledges that, in general, alternative bonds will carry a higher risk than conventional bonds. It also acknowledges that a reasonable commercial return may vary within a range.

The IRD's main concerns are to challenge returns:

- i. That are not subject to an upper limit;
- ii. That are linked to profits; or
- iii. For which the margin is blatantly above what would be reasonable and commercial for a similar debt security.

The IRD has indicated that it will generally accept benchmarking to similar bonds on similar terms.

- Agents and management activities

The DIPN explains that where necessary, the bond issuer is not required to undertake the

management itself and where necessary can employ a wide range of agents to administer the property. The DIPN notes that in lease and profit sharing arrangements, management activities are often documented in the relevant agreements, but it is left vague as to whether the Commissioner considers this to be essential.

- Advance rulings

The DIPN states that the Commissioner will require maximum disclosure and that an extended response period of eight weeks is set out. This may result in increased cost, both financial and in terms of time, compared to conventional arrangements.

For the most part, the DIPN follows the legislation fairly closely and does not offer much additional material. On the other hand, while the DIPN contains some useful clarifications, it perhaps leaves a degree of subjectivity in many of the arrangements that may not be desirable to taxpayers.

Other developments

Double Tax Agreement signed between Hong Kong and Korea

Hong Kong concluded a Double Tax Agreement (DTA) with the Republic of Korea which will enter into force after the completion of ratification procedures on both sides. If the ratification process can be concluded in 2014, the DTA is expected to be effective on 1 April 2015 in Hong Kong and 1 January 2015 in Korea (in respect of Korean withholding taxes at source, it will become effective on 1 April 2015).

The DTA includes an exchange of information article based on the current OECD model treaty standard and also contains a limitation on benefits article that is similar to the "main purpose test" proposed by the OECD in its discussion draft regarding BEPS Action 6. Under the limitation on benefits article, treaty benefits may be denied when one of the main purposes of arrangements or transactions is to secure a benefit under the DTA which would be contrary to the object and purpose of the relevant provisions of the DTA.

In order for the DTA to be ratified by Hong Kong, an order is required by the Chief Executive in Council under the Inland Revenue Ordinance, which is subject to negative vetting by the Legislative Council.

The relevant withholding tax rates are as follows:

	Korea Non-treaty Withholding Rate	Treaty Withholding Rate
Dividends	20%	10% ^[1] /15%
Interest	14% ^[2] /20%	10%
Royalties	20%	10%

[1] Withholding tax on dividends is reduced to 10% if the beneficial owner is a company (other than a partnership) that controls directly at least 25% of the capital of the company paying the dividends.

[2] Domestic withholding tax of 14% applies to interest on bonds issued by the central government, local government or domestic corporation.

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Newly approved Finance (No. 2) Bill, 2014 with amendments

The Finance (No. 2) Bill, 2014 ("the Bill") was approved by the Lok Sabha on 25th July 2014 with some amendments.

After considering the proposed amendments, the Finance Act, 2014 was passed by the Rajya Sabha on 31 July 2014 with presidential assent received on 6 August 2014.

The key amendments/ highlights in the Income-tax Act, 1961 ("the Act") relevant to Financial Institutions are as follows:

- Tax rate

Tax rate, surcharge and education cess remain unchanged.

- Characterization of income earned by Foreign Institutional Investors ('FII')/Foreign Portfolio Investors ('FPI')

Characterization of income (capital gains vs. business income) earned by FIIs/FPIs had been a matter of debate. Therefore, in order to end this uncertainty, any security held by a FII/FPI will be treated as a capital asset and any income arising from the transfer of such security by a FII/FPI would be treated as a capital gain.

- Dividend grossing up

Dividends declared by a domestic company must be grossed up for applying Dividend Distribution Tax ('DDT').

The rate of 'income distribution tax' payable by a mutual fund on a distribution of income to unit holders (other than an equity oriented mutual fund) is now required to be grossed up based on the prescribed rate of DDT for different categories.

This amendment shall take effect from 1 October 2014.

- Capital gains

Income from the sale of unlisted shares and units of a non-equity oriented mutual fund, not held for more than 36 months is taxable as a short term capital gain ('STCG'); the earlier threshold being 12 months. This amendment takes effect from 10 July 2014.

The transfer of government securities, carrying a periodic payment of interest, by a non-resident to another non-resident and made outside India through an intermediary dealing in settlement of securities would not be regarded as a transfer and is accordingly, not liable to capital gains tax.

- Interest

The benefit of the lower concessional tax rate of five percent to non-resident investors on interest income is extended to long-term bonds borrowed in foreign currency from a source outside India (only long-term infrastructure bonds were eligible before) issued by an Indian Company. This will also be applied to borrowings made before 1 July 2017.

- Taxation of real estate investment trusts ('REIT') and infrastructure investment trusts

The Securities Exchange Board of India ('SEBI') has issued regulations relating to two new categories of investment vehicles, namely: REITs and Infrastructure Investment Trusts ("business trust"). It is envisaged that such business trusts will raise capital through the issuance of units (to be listed) or debt and hold income bearing assets in the form of an interest in Indian companies [(Special Purpose Vehicles ("SPV"))] acquired from the project

sponsor.

A specific taxation regime has been introduced for business trusts and relevant investors which also eliminates double taxation.

The key features of the regime are:

- i. Dividends
 - 1) SPV (company) distributing dividends to the business trust is subject to DDT;
 - 2) Dividends are exempt in the hands of the business trust;
 - 3) The dividend component of the income distributed by the business trust is treated as a dividend in the hands of the unit holder and therefore is exempt in their hands; and
 - 4) This amendment shall take effect from 1 October 2014.
 - ii. Interest
 - 1) Interest from SPV is not taxable in the hands of the business trust;
 - 2) The SPV is exempt from withholding tax on interest paid to the business trust;
 - 3) Interest distributed by the business trust is taxable in the hands of unit holders; and
 - 4) The business trust will withhold tax on the interest component of the distributed income payable to the unit holders at the rate of 5 per cent for any non-resident unit holder and 10 per cent for a resident unit holder.
 - iii. Capital gains

The business trust is taxable on any capital gains earned by it on disposal of any assets at the applicable rate (depending upon whether the gains are short or long term).

However, the capital gains component of the distributed income is exempt in the hands of the unit holders.
 - iv. Capital gains on transfer of units of the business trust by investors

Units of the business trust shall be listed on the stock exchange; Long term capital gains ('LTCG') on transfer of units would be exempt and STCG would be taxable at the rate of 15 per cent provided Securities Transaction Tax ('STT') is paid on the transfer of such units.
 - v. Tax implications in the sponsor's hands on exchange of SPVs' shares with business trust units

The exchange of shares of an SPV for units of a business trust is not regarded as a taxable transfer by virtue of a specific exemption. Consequently, the taxability is deferred till the time of ultimate disposal of the units by the sponsor.

At the time of ultimate disposal of the units of the business trust, the sponsor shall not be entitled to avail of the concessional STT-based capital gains tax regime. Further, the acquisition cost of the units to the sponsor shall be deemed to be the acquisition cost of the shares in the SPV. The holding period of the shares would also be included in determining the holding period of the units.
- Unfinished Agenda

Contrary to expectations, some points were not addressed in the Budget, in particular:

 - i. In the run up to the Budget it was widely expected that implementation of General Anti-Avoidance Rules ('GAAR') would be deferred by one to two years. However, the Budget is silent on this expectation. GAAR will therefore be applicable from financial year 2015-16;
 - ii. The benefit of reduced withholding tax under section 194LD of the Act on interest earned by FIIs/FPIs and Qualified Foreign Investors on bonds issued by Indian companies and Government securities was not extended beyond 31 May 2015; and
 - iii. Apprehensions of P-Note holders on the applicability of indirect transfer provisions have not been allayed in the Budget. Further, the absence of any definition of the term 'substantially' has created uncertainty and potential for litigation. It was

expected that an objective criterion may be laid down to evaluate whether or not an overseas asset is deemed to be located in India so as to trigger indirect transfer provisions.

Other developments

India in talks with a number of countries for new tax treaties

Recently, the Government of India said that negotiations are in progress for signing new tax treaties with Hong Kong, Iran, Nigeria, Azerbaijan, Chile and Venezuela.

Negotiations are also taking place on entering into new Tax Information Exchange Agreements (TIEAs) with a host of jurisdictions, including Costa Rica, Panama, Maldives, Saint Kitts and Nevis, Seychelles, Barbados, Cook Islands, Jamaica, Peru and Saint Lucia.

The finance minister also said that government is proactively engaged with foreign governments in relation to the exchange of information under the provisions of tax treaties.

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Newly revised Draft Banking Bill impact on the financial services sector

The Financial Services Authority ('OJK'), the Indonesian government agency that regulates and supervises the financial services sector, released a newly revised DRAFT Banking Bill ('the Bill') for deliberation and consideration by the national House of Representatives, which will reshape the future banking regulatory landscape in Indonesia for existing and potentially new foreign banking investors.

We set out below a brief synopsis of its regulatory impact with further considerations from a tax and policy perspective:

- Foreign branch status to convert to a Limited Liability Company

Under the revised 'Negative investment list' as compiled by the Indonesian Investment Coordinating Board ('BKPM') and issued under authority concerning Indonesian Investment Law No. 26 of 2007, foreign investment in the banking sector is permitted, without restriction on the maximum foreign ownership, subject to Law No. 7 of 1992 on Banking, Law No. 23 of 1999 on Bank Indonesia, and Law No. 21 of 2008 on Sharia Banking, and their amending and ancillary regulations with certain regulatory licenses and business permits to be issued to qualifying foreign investors. It was customary for many large offshore banking corporations to set up branches in Indonesia as a trading platform.

As a point of departure, the newly revised provisions dictate that all foreign banks incorporated as a branch be converted to a Foreign Investment Company commonly referred to under its acronym as a PT PMA ('Perseroan Terbatas Pernanaman Modal Asing'). To this end, the Bill's provisions do not provide for an absolute 'grandfathering provision'. Existing foreign branches operating in Indonesia may potentially be afforded the opportunity to convert to a PT PMA company within a five year grace period from the effective date of the Bill's implementation.

- Foreign ownership restriction imposed in the banking sector

Further to the paragraph above, the Bill provides that the abovementioned PT PMA incorporation will be subject to a 40% foreign ownership restriction. Hence, practically, this implies that a foreign shareholder will not be able to hold a controlling stake in the foreign investment company. However, the particular foreign ownership provision in the Bill provides that existing PT PMA's entities operating in the banking industry will be protected under a 'grandfathering provision' to safeguard its existing foreign ownership investment without being required to divest any portion of its foreign shareholding to a local Indonesian partner.

In addition, under the current Article 30 to the Bill, the above 40% statutory limitation has been qualified via the following sub-clause:

"OJK can adjust the commercial bank share ownership limit for foreign individuals or entities through share purchases through the consideration of [shareholders'] track records, good governance, capital adequacy and economic contribution, after receiving approval from the House of Representatives"

We suggest the regulatory, legal, capital and other commercial considerations relating to the newly revised Negative Investment List and the newly revised Bill are discussed with your Indonesian legal advisory team. Further, no one should act on such information provided above without obtaining appropriate professional legal advice after a thorough examination of their specific situation.

Other developments

Foreign Debt leverage under scrutiny from Indonesian Regulators

The Indonesian government and Bank Indonesia (the central bank of Indonesia) are currently conducting a joint study on the possible implementation of a debt-to-equity ratio ('DER') regulation for both the private and government sector, which would incentivise these organizations to achieve a certain safe level of debt under offshore leveraging.

Proposed policy regulation would be enacted to prescribe stipulated debt threshold levels for different industries based on acceptable DER levels per sector.

From an Indonesian Tax Law perspective, no specific 'thin capitalisation rule' is contained within regulations which define the maximum ratio of debt to equity in determining tax deductible interest. However, the Indonesian Tax Law permits the MoF to issue a decree defining the maximum debt to equity ratio. Such a decree proposing a 3:1 ratio for all industries was issued in 1984 with a subsequent decree postponing its implementation indefinitely. Subsequently, the Director General of Tax, issued a draft proposal for a 5:1 ratio, which was never finalised.

In light of the above and in view of rising economic policy concerns related to, amongst others, liquidity mismatches on excessive offshore debt leverage levels and credit performance ratings whilst policymakers continually encourage the stimulation of domestic economic growth, the Indonesian government is likely to filter these policy concerns from a macroeconomic perspective to the Indonesian taxpayer.

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Local regulations implemented to adhere with FATCA

On June 25, the Financial Services Commission (FSC) announced that regulations to comply with the Foreign Account Tax Compliance Act (FATCA) have been implemented and will be effective as of 1 July 2014.

The FCS announced that guidelines for FATCA compliance will cover Korean financial institutions, including banks, insurance companies, securities companies, and other affected organizations.

Furthermore, all U.S. citizens and green card holders will report their citizenship when opening a bank account. US account holders will be subject to complete a new form, which implies the account holder's status of either U.S citizen or green card holder. Their account balances, income and other financial data will be transmitted to the National Tax Services (NTS), which will then forward the information to the IRS.

Other developments

New requirement on Real Estate Fund ("REF") acquisition tax exemption

REFs are frequently used as one of the most efficient tax vehicles available for mitigating acquisition tax implications in Korea by both foreign and local investors. Recently, there has been a registration timing issue of REFs raised in relation to the exemption on acquisition tax of REFs in Korea.

Under the Capital Market and Financial Investment Business Act ("CMFIBA"), the REF has to be registered with Financial Services Commission ("FSC") for its establishment. Even with such regulation, the Korean tax authorities have not objected to an REF enjoying an exemption from acquisition tax upon acquiring real estate prior to its registration. The Ministry of Security and Public Administration ("MSPA") recently announced that if an REF is not registered, it is not eligible to enjoy an exemption from acquisition tax under the Korean tax code. Accordingly, there have been cases of exemptions being cancelled and the imposition of acquisition tax on REFs without registration with the FSC at the time of acquiring real estate. Some affected REFs have made an appeal to the Tax Tribunal, but these were dismissed.

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Implementation of Goods and Services Tax ("GST")

With the gazette of the GST Act 2014 on 19 June 2014, GST will be implemented with effect from 1 April 2015 at a standard rate of 6% and it will replace the current Sales Tax and Service Tax regime. Generally, the threshold for a taxable person to be registered for GST is annual turnover in excess of RM500,000.

Income Tax (Asset-Backed Securitization) Regulations ("ABS Regulations") 2014

The ABS Regulations apply to an originator and a special purpose vehicle in an asset-backed securitization transaction authorized by the Securities Commission on or after 1 January 2013. It addresses the taxation of income of the originator and special purpose vehicle undertaking the securitization transaction.

The above ABS Regulations are effective from the year of assessment 2013.

Income Tax (Exemption) Order 2014

The income of a qualifying company from the business of providing fund management services to a business trust or real estate investment trust in Malaysia which is managed in accordance with Syariah principals and certified by the Securities Commission, is exempt from Malaysian income tax.

The qualifying company is a company incorporated under the Company Act 1965 and resident in Malaysia which holds a Capital Markets Services licence under the Capital Markets and Services Act 2007.

The above order is effective for the years of assessment 2014 to 2016.

Income Tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment) Rules 2014

The Rules extend the accelerated capital allowance (20% for initial allowance and 80% for annual allowance) for information and communication technology equipment to years of assessment 2014, 2015 and 2016.

Taxation rulings and determinations

Public rulings

The Malaysian Inland Revenue Board ("MIRB") issued the following Public Rulings:

- Public Ruling 3/2014: Taxation of Limited Liability Partnership
This Ruling explains the tax treatment of a Limited Liability Partnership.
- Public Ruling 4/2014: Deferred Annuity
This Ruling explains, amongst others, the exemption of income of a life insurer and takaful operator from an investment made out of a life fund or family fund in respect of a deferred annuity.
- Public Ruling 5/2014: Ownership and Use of Asset for the Purpose of Claiming Capital Allowances
This Ruling explains the ownership and use of asset and the effect on whether a person qualifies to claim capital allowances in respect of that asset in determining the taxable income from a business of the person.

The full text of the Public Rulings is available at <http://www.hasil.gov.my>.

MIRB's Operational Guideline

The MIRB issued an operational guideline, GPHDN 1/2014: Guideline to explain the categories of taxpayers who are eligible for the 2% compensation on the late refund of over-payment of tax and the calculation of the compensation.

The compensation at the rate of 2% is calculated on a daily basis and is payable where the amount refunded is made after:

- 90 days from the statutory filing due date for e-filing; or
- 120 days from the statutory filing due date for manual filing.

The full text of the Guideline is available at <http://www.hasil.gov.my>.

Other developments

Malaysia - Poland Double Taxation Agreement ("DTA")

The new DTA between Malaysia and Poland has been gazetted and provides for the following maximum rates of withholding tax:

Types of Payment	Rate
Interest	10 percent
Royalties	8 percent
Technical Fees	8 percent

Labuan is however excluded from the new DTA unless the Labuan entity has made an irrevocable election to be charged under the Income Tax Act, 1967 ("the Act").

The DTA has yet to be ratified.

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Double Taxation Avoidance Agreement(DTA)

Mauritius - Kenya DTA

The Mauritius-Kenya DTA was ratified by the Kenyan Parliament on 23 May 2014 and will take effect as from 1 January 2015. Some key features are:

- Maximum tax rates applicable in the State of Source:
 - i. Dividend: 5% or 10% (depending on shareholding)
 - ii. Interest: 10%
 - iii. Royalty: 10%
- Duration to constitute a Permanent Establishment:
 - i. Building site, etc: more than 12 months
 - ii. Furnishing of services: more than 6 months within any 12 months period

Capital gains arising from transfer of shares of a company shall be taxable only in the state in which alienator is a resident. Where the alienator is resident in Mauritius, the DTA confers the taxing rights to Mauritius in the case of sale of shares. However, capital gains are not subject to tax in Mauritius.

Mauritius - Guernsey DTA

The Mauritius-Guernsey DTA was ratified on 27th July 2014 by Guernsey. Some key features of the DTA are set out below:

- Maximum tax rates applicable in the State of Source:
 - i. Dividend: Exempt
 - ii. Interest: Exempt
 - iii. Royalty: Exempt
- Duration to constitute a Permanent Establishment:
 - i. Building site, etc: more than 12 months; and
 - ii. Furnishing of services: more than 9 months within any 12 months period.
- Capital gains arising from transfer of shares of a company shall be taxable only in the state in which alienator is a resident. Where the alienator is resident in Mauritius, the DTA confers the taxing rights to Mauritius in the case of sale of shares. However, capital gains are not subject to tax in Mauritius.

Mauritius - Luxembourg DTA

Amendments were made to the existing 1995 Mauritius-Luxembourg DTA. The main changes include:

- Tax on fees of directors of companies have been deleted under Article 2-Taxes Covered;
- New paragraph added under Article 26 Mutual Agreement Procedure; and

- Article 27 Exchange of Information have been deleted and replaced by a new article governing exchange of information.

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Legislative developments

Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014

Legislation amending the taxation treatment of employer provided benefits to employees (mainly relating to accommodation), and extending the New Zealand thin capitalisation rules was passed into law on 30 June. The detail of these changes have been covered in previous issues.

- Foreign Account Tax Compliance Act update

The Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014 also contains the enabling provisions for the Inter-Governmental Agreement signed between New Zealand and the United States in relation to the United States Foreign Account Tax Compliance Act ("FATCA") requirements for New Zealand financial institutions.

FATCA will impose additional customer verification (i.e. "on-boarding") requirements for those domestic financial institutions caught by the new rules, from 1 July 2014.

Cases

Sovereign Assurance Company Limited & Ors v Commissioner of Inland Revenue

In June, New Zealand insurer Sovereign Assurance ("Sovereign") was refused leave by New Zealand's Supreme Court to appeal a 2013 decision by the Court of Appeal (Sovereign Assurance Company Limited & Ors v Commissioner of Inland Revenue). The case related to the taxation treatment of commissions paid to a Sovereign by foreign life reinsurers and commission repayments made by a Sovereign to the same during the 1990s.

In summary, the Sovereign treated the commissions as taxable income when received and the commission repayments as deductible when paid. However, Inland Revenue successfully argued in the Court of Appeal (and the High Court before that) that the New Zealand financial arrangement rules treated the commission repayments as deductible only to the extent that they exceeded the commissions received by the Sovereign and with deductions spread over the term of the commission arrangements.

While this would ordinarily have no practical implications (being a matter of timing of income/deductions) there was a shareholding change meaning the Sovereign was unable to carry forward losses incurred before 2000 to offset income arising from Inland Revenue's rejection of deductibility for commission repayments made after 2000. This resulted in a tax liability of NZ\$47.5m (with around the same in interest charged).

In refusing leave to appeal, the Supreme Court ruled that the lower Courts had appropriately established the relevant legal principles, for the case in question, and the issue was one of their application. In that regard, the Supreme Court found that there was no appearance of a miscarriage of justice to warrant an appeal.

Taxation rulings and determinations

NZ Inland Revenue releases draft guidance on standard commercial transactions voidance

Inland Revenue has released draft guidance which suggests that a number of standard commercial transactions may be void under New Zealand's general anti-avoidance rule.

Two such scenarios are where:

- An insolvent company capitalises shareholder debt, by issuing new shares; and
- A company issues shareholder loans in proportion to equity with convertibility rights on certain events (e.g. triggered on insolvency of the company).

In relation to the first scenario, Inland Revenue's concern is that a debt capitalisation allows the company to avoid (taxable) debt remission income that would otherwise arise if the shareholder loans are forgiven.

In relation to the second scenario, Inland Revenue has indicated that such arrangements could be implemented to circumvent the existing "substituting debenture" rule (that rule deems debt funding issued in proportion to equity to also be equity, thereby denying an interest deduction). This is notwithstanding an exclusion from the substituting debenture rule for convertible notes and the rule itself being repealed from 1 April 2015.

KPMG strongly disagrees with these conclusions:

- Debt capitalisations, particularly within wholly-owned New Zealand groups of companies, are standard commercial practice in order to allow insolvent companies in the group to continue. Removing this commercial option will increase uncertainty and costs for directors.
- Inland Revenue's view that a debenture must either not be issued in proportion to equity, or if issued in proportion must have the perspective of changing effective ownership, for the substituting debenture rule not to apply, seems illogical.

There is accordingly very strong interest in Inland Revenue's response to the submissions that have been made.

Other developments

New Zealand Budget 2014

In May 2014, the New Zealand Government published its annual Budget. The focus of the Budget was on achieving the Government's target of balancing its accounts in the 2014/15 financial year.

As in previous years, tax reform did not feature prominently in this year's Budget. The main tax change announced in the Budget for business was a proposal to refund R&D tax losses for certain companies (the detailed design and its legislative implementation are yet to be completed however).

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Legislative updates

Enactment of R.A. No. 10641, An Act Allowing for the Full Entry of Foreign Banks into the Philippines

An act allowing for the Full Entry of Foreign Banks into the Philippines ("R.A. No. 10641") was enacted in preparation for the ASEAN Banking Integration Framework

- Purpose:
 - To create a more competitive environment and encourage greater foreign participation
- Modes of Entry
 - i. By acquiring, purchasing or owning up to 100% of the voting stock of an existing bank;
 - ii. By investing in up to 100% of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines; and
 - iii. By establishing branches with full banking authority.
- Guidelines for Approval
 - i. Factors to be considered in approving entry applications of foreign banks:
 - 1) Geographic representation and complementation;
 - 2) Strategic trade and investment relationships between the Philippines and the country of incorporation of the foreign bank;
 - 3) Demonstrated capacity, global reputation for financial innovation and stability in a competitive environment of the applicant;
 - 4) Reciprocal rights enjoyed by Philippine banks in the applicant's country; and
 - 5) Willingness to fully share technology.
 - ii. Control of the resources of the banking system:

The Monetary Board shall adopt such measures as may be necessary to ensure that at all times the control of sixty percent (60%) of the resources or assets of the entire banking system is held by domestic banks which are majority-owned by Filipinos.
- Qualification Requirements

Foreign bank must be established, reputable and financially sound.

Foreign bank must be widely owned and publicly listed in its country of origin, unless the foreign bank is owned and controlled by the government of its country of origin. Widely owned means it has at least 50 stockholders without any stockholder owning more than 15% of its capital stock.
- Capital Requirements & Branching Privileges

Locally incorporated subsidiaries of foreign banks – same as that prescribed for domestic banks of the same category shall have the same branching privileges as domestic banks of the same category.

Foreign Bank Branches – shall permanently assign capital of an amount not less than that prescribed for domestic banks of the same category. May open up to five (5) sub-branches.
- Equal Treatment

Foreign banks shall perform the same functions, enjoy the same privileges and be subject to

the same limitations imposed upon a Philippine bank.

Any right, privilege or incentive granted to foreign banks or their subsidiaries or affiliates shall be equally enjoyed and extended to Philippine banks.

- New Provision

Foreign banks shall be allowed to bid and take part in foreclosure sales of real property mortgaged to them, as well as avail themselves of enforcement and other proceedings.

However, in no event shall title to the property be transferred to the foreign bank. In case the bank is the winning bidder, it is mandated to transfer the possession of the mortgaged property to a Philippine national within five (5) years from actual possession. Failure to do so shall be subject to penalty.

- Transitory Provision

Foreign banks which are already authorized to do banking business in the Philippines through any of the modes mentioned may apply to change their original mode of entry.

Foreign banks operating through branches in the Philippines upon the effectivity of RA 10641 shall retain their original privileges upon entry to establish a limited number of sub-branches. However, the previous restriction on the location of the additional branches is lifted.

The law became effective on July 31, 2014 following its publication in the Official Gazette on July 15, 2014.

Taxation rulings and determinations

RMC No. 46-2014 clarifies the taxability of financial lease for purposes of Documentary Stamp Tax (DST) under Sec. 179 of the Tax Code.

The Commissioner (CIR) clarified that a financial lease is akin to a debt rather than a lease. Based on the definition of a Financial Lease under RA No. 5980 as amended by RA 8556 otherwise known as the "Financing Company Act of 1998" it is a mode of extending credit. The CIR concluded that a financial lease is included in the coverage of Sec. 179 which covers all debt instruments. The CIR added that under IAS 17, it is appropriate for a finance lease to be recognized in the lessee's balance sheet both as an asset and as an obligation to pay future lease payments in order to reflect the correct economic resources and obligations of an entity.

Sec. 179 of the Tax Code imposes DST of One peso (P1.00) on each Two hundred pesos (P200.00), or fractional part thereof, of the issue price of the debt instrument.

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Taxation rulings and determinations

Treating Basel III Additional Tier 1 ("AT 1") Instruments as Debt for Tax Purposes

Singapore implemented the Basel III capital standards with effect from 1 January 2013. Under the standard, the minimum requirement is for banks to hold at least 6% of their risk weighted assets in the form of Tier 1 capital, which could be made up of both Common Equity Tier 1 and AT 1 capital. However, from 1 January 2015, the MAS requires Singapore-incorporated banks to meet capital requirements which are 2% points higher than the Basel III minimum requirements.

The tax treatment for AT 1 instruments has been clarified as follows:

- Specified financial institutions are required to comply with the capital adequacy ratio requirements in MAS Notice 637 both at solo and group levels;
- AT 1 instruments (other than shares) issued by the above specified financial institutions for these purposes will be treated as debt for income tax purposes. This will take effect from Year of Assessment ("YA") 2015;
- This tax treatment will also apply to AT 1 instruments that are issued in excess of minimum capital adequacy requirements, provided they are considered as capital for the purposes of satisfying regulatory requirements imposed on the specified financial institution;
- Accordingly, distributions made or liable to be made on AT 1 instruments will be tax deductible for issuers and taxable in the hands of investors. Where AT 1 instruments are issued as Qualifying Debt Securities or Qualifying Debt Securities Plus, investors will be able to enjoy the relevant tax concessions available under these schemes; and
- AT 1 instruments issued to comply with the capital adequacy ratio requirements on a group level refer to such instruments issued by the specified financial institution and its following entities (excluding their foreign branches):
 - i. Any subsidiary (excluding insurance subsidiaries) or any other entity which is treated as part of the group of the specified financial institution according to the Accounting Standards ; or
 - ii. Any special purpose vehicle, if the proceeds from the issuance are immediately available without limitation to an operating entity or holding company in the consolidated group of the specified financial institution in a form which meets or exceeds all of the other criteria for inclusion in AT1 capital.

Extending and refining Tax Incentive Schemes for qualifying funds

Under the tax incentive schemes for qualifying funds, such funds managed by Singapore-based fund managers would be exempted from tax on "specified income" from "designated investments". The qualifying funds can also enjoy withholding tax exemption on interest and other qualifying payments under section 12(6) of the Singapore Income Tax Act ("SITA") made to all non-resident persons (excluding permanent establishments ("PEs") in Singapore) for the purposes of its trade.

- Extension of tax incentive schemes for qualifying funds

The following schemes which were due to expire on 31 March 2014 have been extended for another five years to 31 March 2019:

- i. The Offshore Fund Tax Incentive Scheme (Section 13CA of the SITA);
- ii. The Resident Fund Tax Incentive Scheme (Section 13R of the SITA);
- iii. The Enhanced-Tier Fund Tax Incentive Scheme (Section 13X of the SITA); and

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

All funds that are on the relevant tax incentive schemes on or before 31 March 2019 will continue to enjoy the tax exemption after 31 March 2019, subject to meeting the conditions under the respective schemes.

- Subsuming the Section 13C scheme under Section 13CA scheme

The Section 13C scheme, which provides tax exemption for trust funds administrated by a Singapore-based trustee and managed by a Singapore fund manager, is not included in the extension list of tax incentive schemes mentioned above. This scheme was allowed to lapse on 31 March 2014 and will be subsumed under the Section 13CA scheme from 1 April 2014.

For the existing Section 13C funds whose financial year end is not on 31 March 2014, transitional provisions may be applied to these funds to assist them in moving onto the Section 13CA platform.

- Computation of the value of issued securities based on current value

The Section 13CA and Section 13R scheme carry certain prescribed ownership thresholds for Singapore corporate investors (broadly, no more than 30% of the value of all issued securities of the fund is held by a Singapore corporate investor if there are less than 10 investors or if there are 10 or more investors, not more than 50% of the value of all issued securities of the fund should be held by a Singapore corporate investor).

With effect from 1 April 2014, the "value" of issued securities would be computed based on the net asset value of the issued securities as at the last day of the fund's financial year.

- Expansion of the "designated investment" and "specified income" lists

The list of "designated investments" which qualify for tax exemption under the fund tax incentive schemes has been expanded to include the following investments derived on or after 21 February 2014:

- i. Loans granted to any offshore trust where no interest, commission, fee or other payment in respect of the loan is deductible against any income of that trustee of the offshore trust accruing in or derived from Singapore;
- ii. Interests in limited liability companies that do not carry on any trade, business, profession or vocation in Singapore; and
- iii. Bankers' acceptances issued by financial institutions.

The "specified income" list has also been refined to exclude the income or gain derived or deemed to be derived from Singapore from a limited liability company where tax is paid or payable in Singapore on such income of the limited liability company by deduction, withholding or otherwise.

- Clarification on scope of Financial Sector Incentive – Fund Manager ("FSI-FM") award

The MAS has clarified that the FSI-FM award covers a sub-delegation arrangement where the investment management agreement is between the main fund manager and the incentivized fund being managed, and there is no direct contractual relationship between the incentivized fund and the Singapore-based sub-advisor.

Following the above, investment advisory income derived by a Singapore-based sub-advisor can qualify for the concessionary tax rate of 10% under the FSI-FM incentive, as long as it could show that it is providing services to an incentivized fund in respect of the designated investments under a sub-delegation arrangement.

Refining the Designated Unit Trust ("DUT") Scheme

The DUT Scheme provides tax deferral benefits (whereby specified income derived by a DUT is taxed in the hands of the relevant investors only upon the distribution of such specified income) to qualifying retail and non-retail unit trusts, subject to meeting conditions.

- Exclusion of non-retail unit trust from the DUT scheme

With effect from 21 February 2014, the DUT scheme is only available to retail unit trusts. Existing non-retail unit trusts which have been granted the DUT status and still remain on the DUT scheme on 20 February 2014 are grandfathered (excluding sub-funds established by the grandfathered non-retail unit trust after 20 February 2014) and can enjoy the tax deferral benefits provided that they continue to satisfy all the existing conditions for non-

retail unit trusts under the DUT scheme.

Existing non-retail unit trusts that cannot meet the above conditions will no longer be eligible to claim DUT tax deferral benefit for that basis period and all subsequent basis periods. Notwithstanding this change, these non-retail unit trusts and / or non-retail unit trusts established on or after 21 February 2014 may consider other tax incentive schemes provided under Section 13CA and Section 13X of the SITA.

- Self assessment and submission of annual declaration

With effect from 1 September 2014, the DUT scheme will be administered on a self-assessment basis (with existing requirements continuing to apply).

To avail oneself of the DUT scheme for each relevant YA, the trustee of the unit trust claiming the DUT tax deferral benefit must complete and submit an annual declaration form together with the relevant tax return of the unit trust for the relevant YA. Any late or incomplete submission of the annual declaration form will render the unit trust ineligible for DUT tax benefits.

Should a grandfathered non-retail unit trust fail to submit the annual declaration form for the YA 2015 or any subsequent YA, the non-retail unit trust will be regarded as having exited from the DUT scheme and the DUT scheme will not be available to it for all subsequent YA.

- Deeming provision

With effect from 1 June 2015, where a unit trust ceases its DUT tax status or fails to meet any DUT condition, the undistributed DUT income will be deemed as income taxable in the hands of the relevant investors (based on the distribution policy in the trust deed) on the relevant date, insofar as this would have been identified as income of the relevant investors if it had been distributed before the relevant date.

When the deeming provision is triggered, the trustee of the unit trust is required to:

- i. Notify the CIT within 21 days and submit a statement to the CIT showing the amount of undistributed income and the proportion and number of relevant investors as at the relevant date; and
- ii. Inform the relevant investors within 21 days from the date of cessation of the DUT status or date of breach of any DUT condition, of the prescribed amount of undistributed DUT income that would be deemed as their income liable to tax on the relevant date.

- Refinement of the definition of foreign investor

Under the DUT scheme, distributed income received by a foreign investor is exempt from Singapore income tax. With effect from 30 May 2014, the definition of foreign investor is refined as follows:

- i. Where the foreign investor is set up as a company:
 - 1) at least 80% of the total number of the company's issued shares is beneficially owned, directly or indirectly by non-residents, regardless of the number of shareholders; and
 - 2) it will exclude a non-resident entity carrying on a business through a PE in Singapore.
- ii. Where the foreign investor is set up as a trust, in addition to the existing definition (where at least 80% of the value of the trust is beneficially held, directly or indirectly, by non-residents, where the trust is created outside Singapore; and the trustee of the trust are neither citizens nor resident in Singapore), the trustee must also not be carrying out its duties through a PE in Singapore.

- Sunset clause for the DUT scheme

A sunset clause of 31 March 2019 has been introduced for the DUT scheme.

The MAS has clarified that a grandfathered DUT (one that meets all the DUT conditions in the basis period immediately preceding the basis period beginning on or after 1 April 2019 and has submitted the annual declaration form together with the Form UT) can continue to enjoy the tax deferral benefits under the DUT scheme if the grandfathered DUT continues to meet all the DUT conditions.

On the other hand, a grandfathered DUT that fails to meet any DUT conditions in a basis period beginning on or after 1 April 2019 will be permanently excluded from the DUT

scheme and will no longer be eligible to claim the DUT tax deferral benefits for that basis period and subsequent basis periods.

Introduction of Sunset Clause for Tax Incentive Schemes for Trusts

Currently, the following tax exemption schemes do not have any expiry date:

- Tax exemption of income of foreign trust (Section 13G of the SITA);
- Tax exemption of income of a prescribed locally administered trust (Section 13Q of the SITA); and
- Tax exemption of income of a foreign account of philanthropic purpose trust (Section 13O of the SITA).

A 5-year sunset clause starting from 1 April 2014 will be introduced to the above-mentioned tax incentive schemes for trusts.

Qualifying trusts and their eligible holding companies can continue to enjoy the schemes if they continue to meet all the prescribed conditions under the relevant scheme in the basis periods beginning on or after 1 April 2019.

Notwithstanding the above, where the prescribed conditions are not met in any of the subsequent periods, these trusts and their eligible holding companies will be permanently excluded from the relevant scheme and will not enjoy the benefits of the scheme for the basis period in breach and all subsequent periods.

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Legislative developments

The Ministry of Finance announces new regulation for business revenue further to amendments on the Business Tax Act

The Business Tax Act was recently amended increasing the business tax rate from 2% to 5% for sales revenue derived by banks and insurance companies from operating core businesses, starting from 1 July 2014. Further to the said amendment, the Ministry of Finance has issued "Regulations for core business revenue of banking and insurance sectors" ("the Regulations") to clarify the application of appropriate tax rates.

According to Article 2 of the Regulations, core businesses exclude the following types of revenue:

- The sales revenue from conducting the securities business specified under Article 15 of the Securities and Exchange Act, which includes revenue from underwriting, securities trading, securities commission agency, and brokerage agency
- The sales revenue from conducting futures trading business under Article 3 of the Futures Trading Act
- The sales revenue from conducting business specified under Article 21 of the Act Governing Bills Finance Business specifically including revenue from certifying, underwriting, brokering or trading of Short-Term Bills and financial bonds
- The sales revenue from conducting the business specified under Article 16 of the Trust Enterprise Act, which includes revenue from operating trusts of money, trusts of loans and related security interests, and trusts of securities. Therefore, after the amendment of the Business Tax Act, the sales revenue of banks and insurance companies can be divided into 3 portions: (A) Non-core business revenue, (B) other financial sector's core business revenue, and (C) banks and insurance sector's core business revenue. For revenue from Category (A), the 5% business tax rate will still apply. For Category (C), the business tax rate is increased from 2% to 5% (reinsurance premiums are subject to 1% business tax). For Category (B), as they are the revenue derived from the core business that other financial sectors including securities, futures, bill finance and trust sectors can also engage in, the business tax rate for sales revenue under this category remains at 2%.

- The following table summarizes the aforementioned discussion:

The application of business tax rates for banks and insurance companies			
Item	A. Non-core business revenue	B. Other financial sector's core business revenue	C. Banks and insurance companies' core business revenue
Scope	<p>Article 3 of the Regulations for non-core business revenue:</p> <p>Bank</p> <p>Processing fee income from bill collection and payment making services.</p> <p>Yields from managing non-financial asset properties by entrustment.</p> <p>Profits from buying and selling gold, silver, gold coins, and silver coins.</p> <p>Service charge income from credit card applications and transactions.</p> <p>Income from leasing and trading movables, immovables, and safe boxes.</p> <p>Profits from buying accounts receivable.</p> <p>Professional charge income from financial advice and consulting services</p> <p>Processing fee income from selling revenue stamps and uniform invoices.</p> <p>Revenues from selling publications.</p> <p>Other income from non-banking exclusive operations.</p> <p>Insurance</p> <p>Income from leasing and trading movables and immovables.</p> <p>Revenue from selling publications</p> <p>Other income from non-insurance exclusive operations.</p>	<p>Sales revenue from conducting securities business including underwriting, securities trading, securities commission agency, and brokerage agency revenue</p> <p>Sales revenue from conducting futures trading business</p> <p>Sales revenue from certifying and underwriting Short-Term Bills, certifying and underwriting financial bonds, brokering and trading Short-Term Bills, and brokering and trading financial bonds</p> <p>Sales revenue from operating trust of money, trust of loans and related security interests, and trust of securities.</p>	<p>Other sales revenue not covered in the previous two categories, such as interest from loans, FX gains, insurance premium, etc.</p>
Applicable rate	5%	2%	5% (1% applies to reinsurance premium)

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Legislative developments

Thailand 7% VAT rate remains for one more year

On 13 July 2014, NCPO (National Council for Peace and Order) issued Instruction No. 92 to extend 7% VAT which was to end 30 September 2014 for another year, i.e. until September 30, 2015. After that 10 % VAT will apply.

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Legislative developments

Decree on operation of finance companies and leasing companies

On 7 May 2014, the Government issued Decree 39/2014/NĐ-CP providing guidance on the operation of finance companies and leasing companies. Under Decree 39, the criteria and scope of operations are clearly stipulated for finance companies and leasing companies, notably:

- finance companies are open to execute most banking activities as long as statutory criteria are complied with; and
- the leasing companies' scope of operation is expanded to purchasing and sub-leasing, and selling receivables from financial leasing contracts to organizations and individuals.

This Decree takes effect from 25 June 2014

Detail guidance on foreign exchange control

The Government issued Decree 70/2014/NĐ-CP dated 17 July 2014 ("Decree 70") providing detailed regulations for the implementation of the Ordinance on Foreign Exchange Control in 2005 and the amendments of the Ordinance in 2013. Some notable points are:

- The possibility of cash payments for exports and imports which was previously mentioned in the old Ordinances has been removed. Now, the payment for exports and imports can only be conducted by bank transfers via authorised credit institutions; and
- Foreign Direct Investment ("FDI") companies and foreign investors are allowed to open direct investment capital accounts in Vietnamese Dong ('VND') in cases where the investment is conducted in VND. The VND account and the foreign currency account must be opened at the same authorised credit institutions.

This Decree will replace Decree 160.2006/NĐ-CP and take effective from 5 September 2014.

Introduction of one non-life insurance product

On 9 July 2014, the Government issued Decree 68/2014/NĐ-CP supplementing a number of articles of the Decree No. 45/2007/NĐ-CP dated 27 March 2007 detailing the implementation of a number of articles of Law on Insurance. Under Decree 68, guarantee insurance is defined as a non-life insurance product where the insurer accepts the risks of the guaranteed party ("GP") on the basis that such GP pays an insurance premium in order for such insurer to discharge the obligation on the GP's behalf if such GP fails to discharge its obligation on maturity. The GP must take over the debt and refund the insurer in accordance with the insurance contract. The parties may also agree that the insurer only discharge its obligations when the GP is unable to discharge its own obligations.

This Decree takes effect from 25 August 2014

Guidance on the use of both foreign and domestic currency accounts in Vietnam

On 1 August 2014, the State Bank of Vietnam ("SBV") issued Circular No. 16/2014/TT-NHNN ("Circular 16") providing guidance for using foreign currency accounts and VND accounts of residents and non-residents at authorized banks.

Circular 16 provides the list of scenarios where collection and disbursement can be made out of

onshore accounts in foreign currencies and VND at authorized banks, for each type of account holder respectively (i.e. resident and/or non-resident being an organisation or individual).

This Circular takes effect from 15 September 2014.

Taxation rulings and determinations

SBV issues Official Letter No. 1818 ("OL1818")

On 24 June 2014, SBV issued OL1818 recommending Vietnamese FIs take the necessary action to comply with the U.S. Foreign Account Tax Compliance Act. Under OL1818, key recommended actions for FIs that have already registered and obtained a GIIN are:

- Customer Onboarding: FIs need to amend or develop new "know your client" ("KYC") processes and procedures in order to identify new U.S. individual customers from 1 July 2014 and new U.S. non-individual customers from 1 January 2015, for reporting purposes;
- Due diligence of pre-existing customers: FIs need to conduct due diligence of pre-existing customers in accordance with FATCA requirements by 30 June 2016 in order to identify U.S. persons for reporting purposes;
- Reporting: FIs needs to proactively collect customers' information as required by FATCA for reporting to the IRS in 2015; and
- Withholding: Pending further guidance from the SBV, FIs are required to report to SBV (through the Anti-Money Laundering Bureau, Banking Supervisory Agency) any withholding obligations on U.S. sourced FDAP income (Fixed, Determinable, Annual, Periodical income) of recalcitrant account holders and non-participating FFI(s).

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