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General tax update for financial institutions in Asia Pacific

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

As noted previously, we continue to see a number of reform and specific proposals in response to BEPS. In addition the implementation of FATCA continues with the signing of IGA's and negotiations continuing.

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Highlights

- Release of the Final Report of the Financial System Inquiry
- Tightening of the thin capitalisation provisions passed into law
- A number of transfer pricing rulings issued by ATO

- Temporary capital gains tax exemption for QFIIs and RQFIIs deriving A-share gains announced

- New Private Equity ("PE") fund tax exemption expected to be legislated in 2015
- FATCA Model 2 IGA signed with US
- Hong Kong Government committed to implement the OECD's Common Reporting Standard

- Concessional rate of withholding tax on the interest payments extended to a non-resident on borrowing of long term bonds in foreign currency

- New Bank Indonesia regulation imposes limitations on foreign financing to non-banking Indonesian companies

- 'Outline of the 2015 Tax Reform Proposals' announced

- Capital gain tax on certain derivatives transaction
- Change to the scope of VAT exempt financial services

- The Finance (No. 2) Act 2014 published

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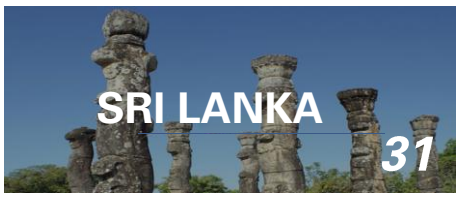
- More stringent rules on deductibility of expenses
- Enhanced substance requirements on companies holding Category 1 Global Business Licence become applicable

- OECD BEPS action plan - New Zealand progress update
- NZ Inland Revenue's 2015 Compliance Focus
- FATCA and automatic exchange of information

- Supreme Court ruled that certain SWIFT messages are not subject to documentary stamp tax
- Department of Finance prescribes mandatory use of e-filing

- FATCA updates
- Goods and Services Tax ("GST") remission for qualifying funds



- Income Tax exemptions announced in Budget 2015

- Amendment to the Capital gains tax regime for local individual investors on securities transaction

- Extension of reduced corporate income tax and personal income tax for another year.

- Key changes on current Tax laws effective from 1 January 2015
- Tax exemption for income from government bonds issued to international market in 2014
- New regulations and guidance on foreign exchange control

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Legislative developments

Allowing foreign pension funds access to concessional withholding tax rates

On 30 October 2014, the Tax and Superannuation Laws Amendment (2014 Measures No. 6) Bill 2014 was introduced to Parliament. Among other things, the Bill enables foreign pension funds to access the existing managed investment trust ("MIT") withholding tax regime, which allows concessional rates of withholding tax on income earned from investments in Australian MITs. It also proposes:

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

Tightening the thin capitalisation rules

On 16 October 2014, the Tax and Superannuation Laws Amendment (2014 Measures No. 4) Bill 2014 received Royal Assent, bringing into effect the proposed changes to the thin capitalisation regime (which apply to income years commencing on or after 1 July 2014) and a reform of the provisions which exempt foreign non-portfolio dividends (which apply from the date of Assent).

The thin capitalisation reforms include:

- Tightening of safe harbour debt limits;
- Increasing the deminimis threshold below which the thin capitalisation rules do not apply (from A$250,000 of debt deductions to A$2m); and
- Introducing a worldwide gearing test for inbound investors.

Taxation rulings and determinations

Guidance on Bitcoins

On 20 August 2014, the Australian Taxation Office ("ATO") released draft guidance on the income tax, goods and services tax ("GST") and fringe benefits tax ("FBT") treatment of Bitcoin transactions.

The ATO's view is that Bitcoin is not money or foreign currency for tax purposes, and rather, should be treated as akin to barter arrangements with similar tax consequences. Australian businesses will therefore need to record any gains/losses made from the creation, acquisition and disposal of Bitcoins as part of their ordinary income. They must also charge GST on a taxable supply of Bitcoins and may be subject to GST when receiving consideration in the form of Bitcoins. A supply of goods or services that is settled by Bitcoin will therefore also require reciprocal tax invoices between GST-registered parties together with the associated record keeping and reporting obligations.

Taxation Ruling TR 2014/7 - Foreign currency hedging transactions

The ruling sets out when foreign currency ("FX") hedging gains are considered foreign-sourced and when FX hedging losses reasonably relate to foreign income.

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For taxpayers that undertake significant FX hedging, these issues can affect their entitlement to foreign income tax offsets ("FITOs"). Where FX losses exceed FX gains in a particular year, a taxpayer will lose their entitlement to FITOs for that year (notwithstanding that these FITOs may relate to foreign taxes paid on other foreign income such as interest or dividends). This issue is of particular significance to the managed funds industry.

In the ATO's view, the source of FX hedging gains is the place where each individual FX contract is formed.

Taxation Ruling TR 2014/6 – Application of transfer pricing reconstruction provisions

The ruling outlines the Commissioner's views on the application of the reconstruction provisions, as contained in the new transfer pricing regime. The ruling covers situations where the Commissioner may re-price, reconstruct or disregard cross-border transactions, should they not be considered arm's-length.

Taxation Ruling TR 2014/8 – Application of transfer pricing record keeping provisions

The ruling outlines the Commissioner's views on the application of the legislated transfer pricing documentation requirements. If an entity does not meet these requirements, the provisions dealing with administrative penalties apply as though a matter was not reasonably arguable (and thus, subject to a higher penalty regime). The ATO incentivises taxpayers to enhance their transfer pricing documentation by offering reduced penalties in the event of a transfer pricing adjustment.

This Ruling is part of a package of ATO guidance dealing with transfer pricing documentation:

- Practice Statement PS LA 2014/2: Administration of transfer pricing penalties for income years commencing on or after 29 June 2013; and
- Practice Statement PS LA 2014/3: Simplifying transfer pricing record keeping

Other developments

Release of Final Report of the Financial System Inquiry

On 7 December 2014, the Treasurer released the Final Report of the Financial System Inquiry (the 'Murray Review'). The report includes 44 recommendations of potential areas of reform of the Australian financial system, including 13 tax settings that potentially distort the allocation of funding and risk in the economy (e.g. dividend imputation, interest withholding tax, GST not currently levied on financial supplies, etc).

The tax issues raised in the final report have been referred to the Federal Government's Tax White Paper process, which is expected to commence in early 2015.

ATO response to OECD/G20 BEPS Project

Following the recent release of the the Organisation for Economic Co-operation and Development ("OECD") recommendations on the 7 Action Items to address Base Erosion and Profit Shifting ("BEPS"), the ATO released a progress report setting out how they intend to address certain Action Items. In summary:

- Hybrid Mismatches: The ATO is currently investigating examples of hybrid mismatches to establish the level of risk before determining any potential action required.
- Harmful tax practices: The ATO has set up an Integrated Tax Design team to improve transparency and exchange of tax rulings related to preferential regimes.
- Treaty abuse: The ATO has expressed a strong interest in developing a 'principal purpose test' because of the difficulties of applying Part IVA (anti avoidance provisions) to complex offshore arrangements.

Mid-Year Economic and Fiscal Outlook

On 15 December 2014, the Treasurer released the Federal Government's Mid-Year Economic and Fiscal Outlook ("MYEFO"). The following tax policy changes relevant to the financial

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services sector were released under the report:

- Managed Investment Trusts ("MIT"): minor changes will be made to better target the arm's length integrity rule and also allow foreign life insurance companies access to the MIT regime. There will also be clarification provided on the tax treatment of tax deferred distributions paid by MITs (effective from 1 July 2011).
- Investment Manager Regime ("IMR"): updated exposure draft legislation on IMR Element 3 is to be released in early 2015, which will provide a tax exemption on the gains of widely held foreign funds that have invested in certain financial arrangements in Australia. The proposed regime is expected to broadly reflect the UK equivalent Investment Manager Exemption. The regime is expected to apply from the 2015-16 income year, but with an option for investors to apply retrospectively from the 2011-12 income year.

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The Ministry of Finance ("MOF"), China Securities Regulatory Commission ("CSRC") and the State Administration of Taxation ("SAT") jointly issued Caishui [2014] No. 79 ("Circular 79") Notice on the Issues of Temporary Corporate Income Tax Exemption for Capital Gains Derived from the transfer of PRC Shares and Equity Interests on 14 November 2014.

- Under Circular 79, Foreign Institutional Investors ("QFIIs") and RMB Qualified Foreign Institutional Investors ("RQFIIs") are temporarily exempt from Corporate Income Tax ("CIT") in respect of China sourced gains derived from the transfer of shares (and other equity investments) on or after 17 November 2014.
- In respect of China sourced gains derived by QFIIs and RQFIIs from the transfer of shares prior to 17 November 2014, Circular 79 prescribes that such gains would be subject to CIT (i.e. 10% withholding tax) in accordance with the CIT Law.

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New Private Equity fund tax exemption expected to be legislated in 2015

The Hong Kong Government recently completed industry consultation in relation to the proposed new private equity ("PE") fund tax exemption, which were initially announced by the Financial Secretary in his 2013/14 budget speech. It is expected that draft legislation will be introduced to the Legislative Council in coming months.

- Existing Offshore Funds tax exemption

  For PE funds, the existing exemption has not been effective because it did not apply to investments in private companies. A further limitation is that investments need to be arranged by a person licensed with the Securities and Futures Commission ("SFC"). In practice, managers of many PE funds are not required to obtain an SFC license.

- Expected changes and our comments

  i. Transactions in private companies

  The current exemption will be expanded to cover a broad range of private companies, including those incorporated outside of Hong Kong, unless at any time in the three years prior to the relevant disposal of securities in a private company, it either:

  1) carried on business in Hong Kong through a permanent establishment;

  2) directly or indirectly held equity interests in one or more private companies carrying on business in Hong Kong through a permanent establishment or the aggregate value of those equity interests was more than 10% of its own total asset value; or

  3) held real estate in Hong Kong, or directly or indirectly held equity interests in one or more private companies' with direct or indirect holdings of real estate in Hong Kong; in addition, the aggregate value of the Hong Kong real estate held by it plus the value of the equity interests held in the other private companies exceeded 10% of the value of its own total asset value.

  To prevent round-tripping, the existing deeming provisions will equally apply to offshore private equity funds i.e. a resident person (alone or jointly with his associates) holding a beneficial interest of 30% or more in a tax-exempt private equity fund will be deemed to have derived assessable profits in respect of profits earned by the fund from specified transactions and incidental transactions in Hong Kong.

  Exempt investments in private companies include investments in shares, stocks, debentures, loan stocks, funds, bonds or notes. As such, this should be broad enough to cover most types of transactions typically entered into by PE funds.

  ii. Bona fide private equity fund

  This definition should capture most genuine PE funds being defined as an offshore PE fund which at all times after its final closing has more than 4 investors (associates being aggregated) having collectively committed more than 90% of the fund's capital. In addition, the funds' originator (and their associates) should not be entitled to more than 30% of the net proceeds arising from fund transactions. Funds which satisfy

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these requirements would not need to have transactions carried out through or arranged by an SFC-licensed person to benefit from the offshore funds exemption.

iii. Special Purpose Vehicles ("SPVs")

Officials have agreed that the offshore funds exemption should also apply to profits derived both by an SPV from an investment in a private company and by an offshore fund from the disposal of an SPV which holds an investment in a private company.

It is proposed that SPV will be defined quite broadly to include corporations, partnerships, trustees or any other entity incorporated, registered or appointed in or outside Hong Kong. The SPV can be wholly or partially owned by a non-resident, be established only for holding and administering one or more eligible portfolio companies and would not be able to carry on any other trade or activity.

Deeming provisions are also proposed to apply to resident person (alone or jointly with his associates) holds a beneficial interest of 30% or more in a tax-exempt private equity fund and the fund has a beneficial interest in an SPV that is exempt.

For a number of years the Hong Kong PE fund industry has been at a competitive disadvantage when compared to other fund centres (in particular Singapore) as there has not been a specific tax exemption clearly applicable to offshore PE funds with Hong Kong-based deal teams.

The key benefit of the expected changes is that it will provide investment professionals based in Hong Kong with greater flexibility in undertaking their daily tasks without the concern about creating a tax exposure in Hong Kong for the fund that they represent.

We recommend that funds operating in Hong Kong start considering changes in anticipation of the pending legislation. This may include:

- Changes to existing operating protocols and the time to implement them;
- Amendments to and simplification of existing fund structures; and
- Preparing or updating transfer pricing support documentation for fees paid to Hong Kong investment advisors to reflect activities intended to be performed in Hong Kong going forward.

Other developments

Hong Kong signs Model 2 IGA under FATCA

The US Foreign Account Tax Compliance Act ("FATCA") is a US law designed to combat tax evasion by US citizens and residents through the use of offshore accounts and investments. Generally, FATCA requires the identification and reporting of US taxpayers by Foreign Financial Institutions ("FFIs") outside of the US to the US Internal Revenue Service ("IRS"). In certain instances, FATCA withholding at the rate of 30% may also apply to certain types of US sourced income.

Within Asia Pacific, only Australia, New Zealand, Hong Kong and Japan have signed Intergovernmental Agreements ("IGAs") with the US Treasury to-date, thereby defining their obligations and exemptions under FATCA and/or local law. In particular, the Hong Kong IGA covers certain exemptions for financial institutions or products, including Mandatory Provident Fund schemes, registered financial institutions with a local client base, certain investment advisers and investment managers established in Hong Kong.

While the Hong Kong IGA largely mitigates the need for FATCA withholding, it could still apply where withholdable payments (US source income or proceeds from the sale of property that generates US source income) are made to overseas Non-Participating FFIs.

Under the IGA, FFIs in Hong Kong may rely on a set of streamlined due diligence procedures to screen and identify US indicia in order to locate US accounts and clients for reporting purposes. For example, in determining whether a new individual account is a US account based on a customized self-certification received from the applicant, rather than more esoteric procedures

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under FATCA regulations, such as the use of US-centric withholding certificates. FFIs are required, however, to confirm the reasonableness of such certification which can be accomplished by reference to other documents obtained during the account opening process.

FFIs are required to report the relevant account information of US taxpayers directly to the IRS under the Model 2 IGA adopted by Hong Kong. This is supplemented by group requests made by the IRS to the Hong Kong Inland Revenue Department for exchange of information on relevant US taxpayers at a government level on a need basis. We expect that local authorities will only be involved by exception.

One of the largest misconceptions about FATCA is that FFIs without US customers will not be impacted. While the reporting aspects of FATCA are reduced when there are no US customers, the primary responsibility conferred upon FFIs is to be able to identify US customers through the new client due diligence process as well as through pre-existing client remediation.

Furthermore, companies that are not normally considered financial institutions may still be considered FFIs under the Hong Kong IGA (i.e. under the headings of custodial institution, depository institution, investment entity or specified insurance company) and may have due diligence and reporting requirements under FATCA.

Hong Kong takes a major step towards the automatic exchange of information

In August 2014, the Organisation for Economic Co-operation and Development ("OECD") published the first edition of the Standard for Automatic Exchange of Financial Account Information in Tax (the Common Reporting Standard), which was presented to the G20 Finance Ministers and Central Bank Governors at their meeting in Cairns, Australia on 20-21 September 2014, and is intended to facilitate the automatic exchange of financial information.

Hong Kong was quick to respond directly and positively to the Global Forum on Transparency and Exchange of Information for Tax Purposes ("Global Forum"), of which it is a member. In an announcement on 15 September 2015, Secretary for Financial Services and the Treasury, Professor KC Chan, committed to implementing the Common Reporting Standard and said:

"It is crucial for Hong Kong to adopt the latest global standard on tax transparency in order to maintain our international reputation and competitiveness as an international financial and business centre."

Current legislation in Hong Kong precludes the exchange of information other than on a request basis. In order to adopt and implement the Common Reporting Standard, appropriate legislation will be required. The secretary further announced that the HKSAR Government would soon engage stakeholders, address policy and legal issues, and ultimately seek the Legislative Council's approval for the legislation.

This approach is similar to that adopted in introducing the legislation enacted in July 2013 to enable Hong Kong to enter into standalone tax information exchange agreements ("TIEA"). The consultation process started in mid- to late 2012 and included extensive consultations with business and industry bodies, as well as legal, financial and accountancy representative groups.

We expect a similar process for the introduction of the Common Reporting Standard, although given the Global Forum's anticipated commencement date of 2018, the necessary agreements to properly implement the Common Reporting Standard and the required administrative measures, the government may need to work to a strict schedule.

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Cases

Gains arising in the hands of a Mauritian company from sale of equity shares and Compulsory Convertible Debentures ("CCDs") of an Indian company are not taxable as interest income in India

Zaheer Mauritius v. DIT International Taxation II [WP (C) 1648/2013 &CM No 3105/2013] (Delhi)

The taxpayer was a company incorporated and tax resident in Mauritius. The taxpayer along with Vatika Limited ("Vatika"), an Indian company, invested in SH Techpark Developers Ltd. ("JV company") to undertake development of a real estate project in India.

The taxpayer entered into a Securities Subscription Agreement ("SSA") and a Shareholder's Agreement ("SHA") with Vatika and the JV company. The SHA recorded the terms of the relationship between the taxpayer, Vatika, and the JV company, their rights and obligations, including matters relating to transfer of equity shares and the management and operation of the JV company.

As per the SSA, the taxpayer agreed to acquire 35 per cent ownership interest in the JV company by making a total investment of INR1 billion in five tranches. The taxpayer agreed to subscribe to 46,307 equity shares with a par value of INR10 each, and 882,585,590 zero per cent CCDs with a par value of INR1 each, in a planned and phased manner. The SHA also provided for a call option to be given to Vatika by the taxpayer to acquire all the securities during the option period and likewise, a put option was given to the taxpayer by Vatika to sell to Vatika all the securities during the determined period.

Vatika partly exercised the call option and purchased 22,924 equity shares and 436,924,490 CCDs from the taxpayer for a total consideration of INR800 million. Subsequently, the taxpayer transferred further equity shares and CCDs to Vatika.

The taxpayer filed an application with the Authority for Advance Ruling ("AAR"). The AAR concluded that the entire transaction which is embodied in the SSA, SHA, and other documents was a sham and the real transaction was only of the taxpayer granting a loan to Vatika. Based on Article 10 of the SHA, the AAR concluded that these agreements indicated that the taxpayer would receive a fixed rate of return. Accordingly, the AAR held that the entire gains on the sale of equity shares and CCDs held by the taxpayer were interest within the meaning of Section 2(28A) of the Act and Article 11 of the India-Mauritius tax treaty, and were taxable in India.

The taxpayer filed a writ petition before the Delhi High Court. The High Court observed that there was sufficient commercial reason for the taxpayer to have routed its investment from Mauritius into the real estate project in India through equity shares and CCDs. Thus, the legal nature of CCDs could not be ignored and the corporate veil between the Indian investee company and the Indian JV company could not be lifted.

Therefore, the High Court held that the gains from sale of equity shares and CCDs are not taxable as interest under the Act and the India-Mauritius tax treaty.

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Share sale transaction between Joint Venture ("JV") partners resulting in loss is not a 'colourable device'

CIT v. Siel Ltd. (ITA No. 1616/2010 and ITA No. 1619/2010)

The taxpayer had entered into a JV agreement, followed by a first amendatory agreement with Plansee Tizit Aktiengesellschaft ("Plansee"), an Austrian company. The agreement was entered into for setting-up and forming the company Siel Tizit Ltd. to carry on business of manufacture, sale, distribution, export, and other dealings in hard metals.

The two JV partners equally acquired the paid-up equity capital of 15 million equity shares of INR10 per share. During the year under consideration, the JV declared a rights issue of six million equity shares. The taxpayer renounced its entitlement to subscribe 3 million equity shares in the rights issue. Thereafter, Plansee's shareholding increased to 58.3 per cent, while the taxpayer's share holding decreased to 41.7 per cent.

Subsequently, the taxpayer and Plansee entered into an agreement, whereby Seil Tezit Ltd. proposed to offer 10 million fresh equity shares for cash at par on a rights basis, but the taxpayer due to financial difficulties, was unable to subscribe for the shares. Therefore, the taxpayer decided to renounce the rights in favour of Plansee.

Further, on taxpayer's request Plansee agreed to buy the taxpayer's 12.7 million shareholding for a consideration of USD600,000 which on conversion, came to INR2.02 per share with face value of INR10 each. This resulted in book loss of INR101.2 million or indexed loss of INR136.2 million on capital account.

The Assessing Officer ("AO") did not accept the said capital loss and challenged the transaction. The Delhi High Court held that the said transaction had commercial or business reasons. The High Court observed that the Ministry of Industry had granted approval for purchase/sale of shares. Further, the Reserve Bank of India ("RBI") had given no objection to the transaction permitting JV partners to acquire shares in the JV from the taxpayer. The reliance of the taxpayer on the valuation report was also accepted by the RBI when they granted express permission.

Taxation rulings and determinations

Central Board of Direct Taxation ("CBDT') extends the concessional rate (5 per cent) of withholding tax on the interest payments to a non-resident on borrowing by way of any long term bonds in foreign currency

Section 194LC of the Income-tax Act, 1961, ("the Act") was introduced by the Finance Act 2012. It provides a lower withholding tax at the rate of 5 per cent on the interest payments by Indian companies on borrowings made in foreign currency from a source outside India.

The benefit is available in respect of borrowings made either under an agreement or by way of issue of long term infrastructure bonds. The section further provides that such borrowing and the rate of interest should be approved by the Central Government.

Subsequently, with a view to lower the compliance burden and reduce the time lag which would have arisen on account of case-by-case approval, the Central Government had decided to grant approval to all borrowings under loan agreements and long term infrastructure bonds provided they satisfy prescribed conditions.

The Finance (No. 2) Act, 2014, further extended the concessional rate of withholding tax on borrowing any long term bonds, not limited to a long term infrastructure bond, if the borrowing is made on or after 1 October 2014. Further, the concluding date of the period of borrowings eligible for concession under Section 194LC of the Act has been extended to borrowings made before the 1 July 2017 and approved by the Central Government.

In order to mitigate the compliance burden, the CBDT has now issued a Circular conveying the approval of the Central Government on long term bonds including long term infrastructure bonds which satisfy the prescribed conditions laid down in the circular.

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Other developments

Agreement for avoidance of double taxation and prevention of fiscal evasion with Fiji

The Government of India has announced its tax treaty with the Government of Fiji on 12 August 2014. The tax treaty was signed on 30 January 2014 and will be effective from 1 April 2015. The tax treaty expands the scope of a Permanent Establishment ("PE") by including insurance PE. The tax treaty taxes royalties and fees for technical services at 10 per cent, dividend at 5 per cent and interest at 10 per cent. The provisions of the tax treaty do not prevent the contracting states from applying provisions of the domestic law and measures of tax avoidance or tax evasion by having clauses on limitation of benefit and exchange of information.

India signs first bilateral APA with Japan

On 19 December 2014, the CBDT signed a bilateral Advance Pricing Agreement ("APA") with a Japanese company. This is India's first bilateral APA which has been signed for a period of five years. CBDT announced that this bilateral APA was finalised in one and half years.

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New Bank Indonesia Regulation Imposes Limitations on Foreign Financing by Indonesian Companies

On October 28, 2014, Bank Indonesia, the Indonesian central bank, issued BI Regulation No. 16/20/PBI/2014 on Prudential Principles in the Management of Offshore Borrowing for Non-Bank Institutions ("BI Regulation 16") which imposes significant restrictions on new offshore financing arrangements entered into by non-banking institutions in Indonesia. The new BI Regulation 16 will force Indonesian non-banking corporations to apply prudent fiscal management regarding foreign debt.

The regulation came into effect on 1 January 2015, and requires Indonesian non-banking borrowers to satisfy certain minimum hedging and liquidity ratios in relation to their external indebtedness. In particular, the regulation requires Indonesian companies who borrow from offshore source to fulfill three prudential criteria:

- Hedging ratio: From 1 January to 31 December 2015, at least 20 percent of the difference between foreign currency external indebtedness which will be due in the following six months and foreign currency assets is required to be hedged. Commencing from 1 January 2016, the ratio will be increased to 25 percent.
- Liquidity ratio: From 1 January to 31 December 2015, the minimum ratio of foreign currency assets to external indebtedness which will be due in the following three months is required to be 50 percent. Commencing from 1 January 2016, the ratio will be increased to 70 percent.
- Credit rating: Commencing from 1 January 2016, any non-banking borrowers must have a minimum BB rating or its equivalent from an authorized ratings agency.

Furthermore, under the new BI Regulation 16, non-banking institutions in Indonesia will be required to submit quarterly report to Bank Indonesia detailing their hedging and liquidity ratios.

It appears that no criminal or monetary sanctions will be imposed on borrowers or lenders who contravene the three prudential criteria. However, Bank Indonesia will begin imposing administrative sanctions in the form of warning letters to "related parties" in the transaction, including the lenders who are providing the non-compliant debt, and disclose to other regulators, such as the Capital Markets Supervisory Authority or OJK which could implement wider-ranging sanctions under the capital markets regulations for non-compliance.

The newly published BI Regulation 16 may force Indonesian corporate borrowers to refinance their external borrowings in order to meet the criteria. However, there are still uncertainties surrounding the detail on how these hedging and liquidity ratios will be calculated. The new BI Regulation 16 is also likely to influence policymakers to review any potential debt leveraging under the current "Thin Capitalisation" concept.

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The ruling coalition (the Liberal Democratic Party and New Komeito) agreed on the 'Outline of the 2015 Tax Reform Proposals' ("Proposal") on 30 December 2014. We have set out below brief summaries of the main points of the Proposal.

The Proposal itself is only an indicative outline and is unclear with respect to some of the contemplated changes. The 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.

Corporate tax rates

- Reduction in Effective Corporate Tax Rates

  Under the Proposal, there will be reductions in the national and local tax rates such that the effective corporate tax rate should reduce as follows for large sized companies:

Current tax law	Proposal	
Fiscal years beginning between 1 April 2014 and 31 March 2015	**Fiscal years beginning between 1 April 2015 and 31 March 2016**	**Fiscal years beginning on or after 1 April 2016**
34.62%	32.11%	31.33%
-	Reduced by 2.51% compared with the current tax rate	Reduced by 3.29% compared with the current tax rate

  The above effective tax rates take into account the tax deductibility of special local corporation tax and business tax payments, and are calculated using the standard tax rates applied to a company whose stated capital is over JPY100 million.

  The effective corporate tax rate using Tokyo tax rates applied to a company whose stated capital is over JPY100 million is currently 35.64 percent and the future tax rates will be available after the business tax rates (income component) for Tokyo are determined in the range between the standard rates and the maximum tax rates.

- Size-based Business Tax

  Size-based business tax to be levied based on corporate business size, not on corporate income/revenue, as consideration for administration services provided by local governments was introduced in 2004. Under the 2015 tax reform, amendments to size-based business tax (including increases in tax rates) are proposed in order to make up for lost tax revenues caused by the reduction of the effective corporate tax rates.

Corporate taxation

- Tax Loss Carry-forwards

  The tax loss carry-forward rules will be amended as below.

  i. Deductible amount of tax losses

     The deductible amount of tax losses brought forward will be reduced as follows for large-sized companies (generally capital over JPY100 million):

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Current tax law	Proposal	
	Fiscal years beginning between 1 April 2015 and 31 March 2017	**Fiscal years beginning on or after 1 April 2017**
Up to 80% of taxable income for the fiscal year	Up to 65% of taxable income for the fiscal year	Up to 50% of taxable income for the fiscal year

ii. Tax loss carry-forward period

The tax loss carry-forward period will be extended from 9 years to 10 years. As a result, the preservation period for accounting documents, the statute of limitations for corrections by the tax authorities with respect to tax losses and requests for correction by taxpayers with respect to tax losses will also be extended from 9 years to 10 years. These amendments will be applied to tax losses incurred in fiscal years beginning on or after 1 April 2017.

- Dividends Received Deduction

The rules concerning the dividends received deduction are proposed to change as follows:

i. Excludable ratios for dividends derived from shares

Current tax law

Category of shares	Excludable ratios
Shares in 100 percent subsidiaries (ownership ratio: 100%)	Dividends received x 100%
Shares in related companies (ownership ratio: 25% or more)	(Dividends received - Interest on debts) x 100%
Shares other than the above	(Dividends received - Interest on debts) x 50%

Proposal

Category of shares	Excludable ratios
Shares in 100 percent subsidiaries (ownership ratio: 100%)	Dividends received x 100%
Shares in related companies (ownership ratio: more than 1/3)	(Dividends received - Interest on debts) x 100%
Other shares (ownership ratio: more than 5% but 1/3 or less)	Dividends received x 50%
Non-controlling shares (ownership ratio: 5% or less)	Dividends received x 20%

1) The special measure for non-life insurance companies with respect to interest on debts will be abolished.
2) A special measure to enable blue-return filing insurance companies to exclude 40 percent of dividends derived from non-controlling shares from their taxable income will be introduced.

ii. Excludable ratios of distribution of profits from investment trusts

	Current tax law	Proposal
Equity investment trusts	(Distribution of profits x 1/2 (or 1/4) - Interest on debts) x 50%	0

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ETFs	(Distribution of profits - Interest on debts) x 50%	Distribution of profits x 20%

International taxation

- Foreign Dividend Exclusion ("FDE")

  The following amendments are proposed for the Foreign Dividend Exclusion ("FDE") system, as a response to the recommendation of 'Action 2 - Neutralising the Effects of Hybrid Mismatch Arrangement' included in the first deliverables released in September 2014 under the OECD/G20 Base Erosion and Profit Shifting ("BEPS") Project:

  Current tax law

  i. Where a Japanese company receives dividends from its foreign subsidiary (a foreign company, 25 percent or more of whose shares are held by the Japanese company for at least 6 months), 95 percent of the dividends are exempt.

  ii. The National Tax Agency has clarified in its Q&A that, even when dividends paid by a foreign subsidiary are deductible in the country where the foreign subsidiary is located (e.g. preference dividends from Redeemable Preference Shares ("RPS") in Australia and interest on capital ("IOC") in Brazil), 95 percent of the dividends are also exempt in Japan.

  iii. Foreign withholding taxes on dividends to which FDE is applied are not deductible. Moreover, foreign withholding taxes on dividends from foreign subsidiaries are not creditable regardless of whether the FDE is applied to the dividends.

  Proposal

  i. When a Japanese company receives dividends from its foreign subsidiary and the whole amount or part of the dividends is deductible in the country where the head office of the foreign subsidiary is located, FDE will not be applied to the dividends.

  ii. When part of dividends paid by a foreign company is deducted in the country of the foreign company, it is allowed to exclude only such part from dividends subject to the FDE. (Attaching details to a final tax return and preserving certain documents are required.)

  iii. Foreign withholding taxes on dividends from foreign subsidiaries to which the FDE is not applied by virtue of the above amendments will be creditable.

  The above amendments will be applied to dividends from foreign subsidiaries in fiscal years of a Japanese company beginning on or after 1 April 2016.

  Note that the current treatment will be retained if dividends are derived from shares held as of 1 April 2016 and are received from foreign subsidiaries in fiscal years of a Japanese company beginning from 1 April 2016 to 31 March 31 2018.

Consumption tax

- Consumption Tax Rate Increase

  In line with the statement made by Prime Minister Shinzo Abe in November 2014 that an increase in the consumption tax rate to 10 percent should be postponed by 18 months from October 2015 (stipulated in the law) to April 2017, the Proposal confirms the following:

  i. The consumption tax rate will be raised to 10 percent on 1 April 2017.

  ii. An 'escape clause' included in the Joint Reform of Social Security and Tax Systems Law that stipulates that the increases in the consumption tax rate should be determined based on the comprehensive consideration of the economic environment will be deleted.

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Legislative developments

Capital gains tax on certain derivatives transactions

After series of discussions and proposals for taxing derivatives transactions in recent years, a bill to impose capital gains tax on derivatives transactions has been passed by the National Assembly and the relevant amendment to the individual income tax law was enacted in December 2014.

In recent years two alternative proposals for taxing derivatives have been discussed in the National Assembly, namely, 1) imposition of the securities transaction tax ("STT") on the transaction value of derivatives transactions and 2) application of capital gains tax ("CGT") to gains from derivatives transactions. The STT proposal was introduced in the National Assembly by the administration in September 2012 but ultimately was not enacted.

Although further developments in the legislation remain to be seen, the derivatives subject to the CGT include KOSPI 200 Forward, KOSPI 200 Options, and the derivatives traded on an exchange market overseas.

CGT will be imposed at 20%, and this amendment will be effective for the derivatives transactions entered into on or after 1 January 2016.

Change to the scope of VAT exempt financial services

Contrary to the previous Enforcement Decree of VAT Law where general financial and insurance services were exempt from being subject to VAT, for service contracts made on or after 1 July 2015, financial and insurance services that are not considered as traditional financial and insurance services will be subject to VAT. The new amendment provides examples of these "non-traditional" financial and insurance services as follows:

- safe deposit of securities certificate pursuant to banking law;
- money trust and investment services that are invested in real estate and real assets;
- investment advisory; and
- insurance actuary and pension actuary.

The current VAT rate is 10%.

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Legislative developments

Finance (No. 2) Act 2014

The Finance (No. 2) Act 2014 was published on 30 December 2014 and some of the key changes are as follows:

- Corporate Income Tax Rate

  The corporate income tax rate is reduced by 1% to 24%.

  For small and medium enterprises resident and incorporated in Malaysia and limited liability partnerships, the tax rate for chargeable income of up to RM500,000 is reduced by 1% to 19%. The remaining chargeable income is subjected to tax at a rate of 24%.

  The above changes are effective from YA 2016.

- Tax Treatment for Insurance Business

  i. Cost of Acquiring and Realizing Investments or Rights

  Effective from YA 2015, the cost of acquiring and realizing any investments or rights which is deductible for the life fund, shareholders' fund or general business shall include expenses incurred in managing those investments or rights (computed using a specified formula).

- Tax Treatment for Takaful Business

  i. Tax Deduction for Commission Payable, Discount Allowed and Management Expenses

  Tax deduction on commission payable, discount allowed and management expenses is given as follows:

  1) For general fund, the above expenses are only tax deductible for the Takaful operator operating under the mudharabah model; and

  2) For shareholders' fund, the above expenses are only tax deductible for the Takaful operator operating under the wakalah model.

  ii. Wakalah Fees

  Wakalah fees received by the shareholders' fund from the family fund are not subject to tax. Commission and management expenses incurred by shareholders' fund in connection with the family fund are not tax deductible.

  iii. Set Off for Tax Charged on Actuarial Surplus

  Actuarial surplus transferred from the family fund of a Takaful operator to the shareholders' fund is subject to tax. To avoid double taxation, any amount of tax charged on that portion of the actuarial surplus (determined based on the prescribed formula) shall be allowed to offset against the tax charged on the chargeable income of the Takaful operator in respect of its shareholders' fund from the family business.

  iv. Cost of Acquiring and Realizing Investments or Rights

  The cost of acquiring and realizing any investments or rights which is deductible for the family fund, general fund or shareholders' fund shall include expenses incurred in managing those investments or rights (computed using a specified formula).

  The above changes are effective from YA 2015.

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- Tax Treatment for Life Insurer or Takaful Operator

  i. Adjusted Loss from the Investment in Respect of Deferred Annuity

  With effect from 30 December 2014, any adjusted losses from the investment in respect of an approved deferred annuity scheme (which the income is tax exempt) cannot be set off against the statutory income of the life insurance fund or family fund.

- Payment of Tax by Instalments

  Effective from 1 January 2015, the due date for monthly tax instalments is revised from the 10th day of each calendar month to the 15th day of each calendar month.

- Time Bar For Raising Income Tax Assessments

  With effect from 30 December 2014, the time limit for the Director General of the Inland Revenue ("DGIR") to raise an income tax assessment or additional assessment has increased to 7 years for transfer pricing adjustments.

- Right of Appeal Against Deemed Assessments Extended to Include DGIR's Practices

  Currently, a taxpayer can only make an official appeal against a deemed assessment for the tax return filed under the self-assessment system where the taxpayer disagrees with the tax treatment indicated in a Public Ruling. With effect from 30 December 2014, the right of appeal is extended to include situations where the taxpayer is aggrieved by any practice of the DGIR generally prevailing at the time the assessment is made.

Income Tax (Deduction for Cost Relating to Training for Employees for the Implementation of GST) Rules 2014

The Rules allow an additional deduction of 100% of the expenditure incurred by a qualifying person in training its employees under an accounting or information and communication technology training programme which is conducted in Malaysia for the purposes of the implementation of the Goods and Services Tax ("GST") Act 2014. The Rules have been verified by the Director General of Customs and Excise.

The Rules are effective for YA 2014 and YA 2015.

Income Tax (Deduction for Expenses in Relation to Secretarial Fee and Tax Filing Fee) Rules 2014

The Rules allow:

(a) a deduction of 100% (up to RM5,000) of the secretarial fee charged in respect of secretarial services provided by a company secretary registered under the Companies Act 1965 to comply with the statutory requirements under the Companies Act 1965.

(b) a deduction of 100% (up to RM10,000) of the tax filing fee charged by a tax agent approved under the Income Tax Act 1967 or the Goods and Services Act 2014 for the preparation and submission of return in the prescribed form.

The Rules are effective from YA 2015 for item (a) and YA 2016 for item (b) above.

GST Regulations and Orders

Following the publication of the GST Act 2014 and GST Tax Regulations 2014 in gazette, the following legislations, among others, have been issued:

- Goods and Services Tax (Exempt Supply) Order 2014
- Goods and Services Tax (Zero-Rated Supply) Order 2014
- Goods and Services Tax (Relief) Order 2014

Taxation rulings and determinations

Public rulings

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

- Public Ruling 6/2014: Taxation of Foreign Fund Management Company

  This Ruling explains the tax treatment of income received by a foreign fund management company that provides fund management services to foreign and local investors.

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- Public Ruling 7/2014: Unit Trust Funds Part II - Taxation of Unit Trusts

  This Ruling explains the taxation of unit trust funds and property trusts other than a real estate investment trust or property trust fund regulated by the Securities Commission.

  This Public Ruling replaces Public Ruling 6/2013: Unit Trust Funds Part II - Taxation of Unit Trusts.

- Public Ruling 8/2014: Basis Period of a Company, Limited Liability Partnership, Trust Body and Co-Operative Society

  This Ruling explains the determination of the basis period for a company, a limited liability partnership, a trust body and a co-operative society.

  This Public Ruling replaces Public Ruling 5/2001: Basis Period for a Business Source (Co-operatives) and 7/2001: Basis Period for Business & Non-Business Sources (Companies).

- Public Ruling 9/2014: Private Retirement Scheme

  This Ruling is to clarify the tax treatment of private retirement scheme (PRS) contributions by an individual and the employer as well as income of the PRS fund.

- Public Ruling 10/2014: Special Allowances for Small Value Assets

  This Ruling explains the special allowances accorded to small value assets.

  This Public Ruling replaces Public Ruling 1/2008: Special Allowances for Small Value Assets.

- Public Ruling 12/2014: Qualifying Plant and Machinery for Claiming Capital Allowances

  This Ruling explains whether an asset is a qualifying plant and machinery for the purpose of claiming capital allowances in determining the statutory income from a business.

  This Public Ruling replaces Public Ruling 2/2001: Computation of Initial and Annual Allowances in Respect of Plant & Machinery.

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

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Legislative developments

The annual Budget is normally delivered in November each year. However, due to the General Elections in Mauritius in December 2014, the Budget was postponed until March 2015.

Cases

- The Supreme Court of Mauritius heard an appeal relating to the taxpayers who have incurred capital expenditure which has generated both taxable and exempt income.

  The appellant taxpayer is a sugar producing company. It claimed capital allowances on capital expenditure incurred in course of its business on the basis that the expenditure was incurred to produce taxable income. In accordance with Section 26(3) of the Income Tax Act, a proportion of expenditure or loss relating to exempt income has to be disallowed.

  The point of issue was whether "expenditure or loss" includes annual allowances.

  Section 24 provides that taxpayer shall be allowed a deduction for capital expenditure incurred by way of annual allowances to the extent that it has generated taxable income.

  In the present case, the taxpayer has incurred both taxable and exempt income. Accordingly when applying Section 26(3) in disallowing part of expenditure incurred in production of exempt income, expenditure or loss should include annual allowances, consequently disallowing part of annual allowances as specified under section 24(3).

- The Assessment Revenue Committee ("ARC") recently dealt with a case involving a Category 1 Global Business Licence ("GBC 1") engaged in the activity of investment holding.

  The taxpayer is a company holding a GBC 1 license in Mauritius. It engaged in the investment holding and its revenue consists of dividend and interest income. In addition, the company realises gains or losses upon disposal of its investment.

  The taxpayer treated profit on disposal of investments as capital gain not subject to tax and claimed as deductions fees paid to custodians and sub-custodians for the holding of investments.

  The Mauritius Revenue Authority ("MRA") considers that the total amount of expenses incurred to produce both taxable and non-taxable income cannot be wholly claimed as deductions and therefore applied a formula to allow only expenditure which relates to the taxable income.

  The ARC found that it should not intervene in the assessment as once the MRA found that part of the expenditure claimed did not exclusively produce taxable income (i.e. it produced exempt income or gains of a capital nature) the Director General was fully entitled to make an assessment and to disallow parts of the expenditure claimed.

Taxation rulings and determinations

Tax Ruling 146 (TR 146)

In compliance with the Second Schedule to the Income Tax Act ("ITA"), it was held that interest paid to a non-resident not carrying on any business in Mauritius by a GBC 1 is exempt from tax in Mauritius.

Tax Ruling 148 (TR 148)

The Ruling clarified that profit realized by a company incorporated in Mauritius as a result of a

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share buy-back and the liquidation of a foreign investee company is not subject to income tax.

The investee companies in this case did not have any retained earnings available. It should be noted that dividends distributed from retained earnings received from outside Mauritius are subject to income tax.

Tax Ruling 151 (TR 151)

A GBC 1 received a grant from a charitable foundation incorporated in Netherlands. The grant was a significant source of the initial capital for the GBC 1 which used the funds for acquisition of shares of a company in Kenya and for providing a loan to the Kenyan company.

It was decided that the grant funding is a capital receipt and would not be included in the gross income of the GBC 1 by virtue of section 51 of the ITA and hence would not be taxable in Mauritius.

TR 151 further clarified that the GBC 1 would be subject to income tax on dividends, interest and royalty income.

Other developments

Mauritius – Congo Double Taxation Avoidance Agreement (DTAA)

DTAA between the Republic of Mauritius and the Republic of Congo was ratified by the President of the Republic of Congo on 1 August 2014 and took effect as from 1 January 2015.

The maximum tax rates applicable in the State of Source are as follows:

- Dividend: 0% and 5%*
- Interest: 5%
- Royalty: Exempt
- Capital gains on sale of shares: Taxing right to Resident State

*0% rate shall apply if beneficial ownership is at least 25% whereas 5% shall apply in all other cases.

Mauritius – Rwanda DTAA

A new DTAA between the Republic of Mauritius and the Republic of Rwanda was signed on 20 April 2013. The new DTAA replaces the previous Mauritius and Rwanda 2001 DTAA and entered into force on 4 August 2014. The provisions of the new DTA shall be deemed to apply as follows:

- in Rwanda, in respect of any income year beginning on or after 1 January 2013; and
- in Mauritius, in respect of any period beginning on or after 1 July 2013.

The key changes brought by the new DTAA are summarized below:

Article	Previous 2001 DTAA	New DTAA
Dividend	Exempt	10%
Interest	Exempt	10%
Royalty	Exempt	10%
Management or professional fees	Not covered	12%
Capital gains on sale of shares	Taxing right to Resident State	Taxing right to Resident State

FATCA

A working group has been set up to assist MRA to finalise guideline notes on FATCA. KPMG have been invited to be part of the working group.

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NEW SUBSTANCE REQUIREMENT FOR GBC 1

From 1 January 2015, for a GBC 1 to be eligible to apply for a tax residency certificate ("TRC"), the Regulator will consider one of the following additional criteria in establishing whether a company has its place of management and control in Mauritius:

- Having office premises in Mauritius;
- Employing full time staff at administrative/technical level who is resident in Mauritius;
- Having a clause in its constitution whereby all disputes shall be resolved by way of arbitration in Mauritius;
- Shares are listed on a securities exchange licensed by the Financial Services Commission ("FSC");
- Having assets (excluding cash held in bank account or shares/interests in another entity holding a GBC licence) worth at least USD100,000 in Mauritius; or
- Having yearly expenditure in Mauritius which can be reasonably expected from any similar entity in Mauritius.

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Legislative developments

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

In December 2014, the Government introduced the Taxation (KiwiSaver Homestart and Remedial Matters) Bill. The Bill, once enacted, will allow first home buyers who are enrolled in a KiwiSaver superannuation savings scheme to access government tax credits (in addition to the employer and employee contributions into the scheme).

OECD BEPS action plan - New Zealand progress update

In November 2014, the New Zealand Government released reports outlining Officials' preliminary views on the Organisation for Economic Co-operation and Development ("OECD") Base Erosion and Profit Shifting Action Plan ("BEPS") work and possible timeframes for consideration of, and consultation on, domestic (NZ) law changes to address some of the BEPS concerns.

The reports provide some interesting insights into the domestic issues which are concerning New Zealand Officials. These include use of Australian limited partnerships, which can give rise to double deduction concerns and 'deficiencies' in New Zealand's foreign trust regime. For financial institutions, the focus on interest related tax issues such as high priced related party debt, thin capitalisation limits and "deficiencies" in New Zealand's non-resident withholding tax rules should be particularly noted.

Consultation on these, and various tax administrative changes (including requiring larger taxpayers to file income tax returns earlier, so that their tax affairs can be analysed, and issues identified, earlier), are expected in mid to late 2015.

This is said to allow alignment with the OECD's final recommendations. KPMG in New Zealand considers that this is an ambitious time frame. While there may be early consensus regarding the need for change, each country delivering on the legislative and changes necessary for implementation is much less certain. New Zealand will risk being ahead of the curve, to its detriment, if it implements change too early, in our view.

Cases

CIR v John Curtis Developments Limited (2014) NZHC 3034

The case involved the sale of a partially completed retail development with an option for the vendor to complete the rest of the development. The vendor received development payments which it treated as capital receipts, which the Commissioner of Inland Revenue ("CIR") challenged. While the taxpayer was successful in the Taxation Review Authority ("TRA") tribunal, the CIR successfully appealed to the High Court. The Court however declined to uphold the CIR's imposition of shortfall penalties for taking an unacceptable tax position. It considered the taxpayer's success in the TRA suggested the taxpayer's position was one a reasonable mind might adopt.

Michael William Diamond v CIR (2014) NZHC 1935

The High Court overturned a TRA decision that a contractor (Mr Diamond) working overseas was New Zealand tax resident. The Court significantly read down the TRA's view that a New Zealand rental property owned by Mr Diamon, but which he had never lived in, gave rise to a Permanent

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Place of Abode in New Zealand, for tax residence purposes.

Vector Limited v CIR (2014) NZHC 2069

Vector Limited (a New Zealand electricity distributor) derived payments for the grant of easements/licences to Transpower (New Zealand's electricity network operator) for access to Vector's Auckland underground transmission corridors. The land rights granted resulted in payments to Vector, which it initially treated as taxable, but then sought to adjust as non-taxable capital payments. The CIR challenged the adjustments in the High Court.

The issues considered by the Court were whether the payments were taxable as 'other revenues' derived from a 'lease, licence or easement affecting the land'. The Court held that while the payments were derived from easements/licences affecting land, the relevant amounts were not taxable as 'other revenues' does not include capital payments. The Court considered that:

- The ordinary meaning of the term 'revenue' is income and, therefore, the term 'other revenues' cannot be interpreted so liberally as to capture receipts of a capital nature.
- If Parliament intended to include capital payments as taxable, a specific reference to the payment would have been made in the tax law (such as in the case of premiums or site goodwill payments).
- The payments were of a 'once and for all nature' (i.e. not a recurrent payment) and they were not derived as part of Vector's income earning process.

Taxation rulings and determinations

QB 14/12: Income tax – foreign tax credits for amounts withheld from UK pension

The Inland Revenue has concluded that a person cannot claim a foreign tax credit in New Zealand for any amounts withheld in the UK on their UK pension payments, as the withholding is not "foreign income tax" due to the operation of the NZ-UK Double Tax Agreement ("DTA"). (That is, the DTA does not allow the UK to tax pension payments to NZ tax residents).

This has wider implications for the ability to claim an offset against New Zealand tax liabilities, where foreign tax is prima facie deducted but the DTA provides for relief. Inland Revenue has indicated that the issue of foreign tax credits, generally, is on its work programme for further public announcements.

QB 14/11: Income tax – scenarios on tax avoidance

This Inland Revenue item considers the application of New Zealand's general anti-avoidance provision to three scenarios. The scenarios concern availability of interest deductions, the utilisation of New Zealand's "look-through company" tax regime and the application of the "substituting debenture" anti-avoidance rule.

A fourth scenario involving shareholder debt capitalisations was consulted on, but omitted from the finalised statement, as this is subject to further consideration. KPMG New Zealand's commentary on QB14/11 is available at *http://www.kpmg.com/NZ/en/IssuesAndInsights/ArticlesPublications/Taxmail/Documents/taxmail-Oct2014-IRD-Final-View-Tax-Avoidance-Scenarios.pdf*.

Other developments

NZ Inland Revenue's 2015 Compliance Focus

The 2015 version was released in late November 2014 and outlines Inland Revenue's key focus areas for enforcement activity. These include the tax affairs of high net worth taxpayers, tax structuring involving trusts, and various issues in the property, charitable and government sectors.

As in previous years, Inland Revenue has emphasised the need for taxpayers to get the basics right – i.e. filing and paying income tax on time, understanding their obligations as an employer (Pay-As-You-Earn and Fringe Benefit Tax obligations) and complying with Goods and services Tax ("GST").

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You can read more about the New Zealand progress update on BEPS and the 2015 Inland Revenue compliance focus document here.

FATCA and automatic exchange of information

New Zealand has signed an inter-governmental agreement ("IGA") with the United States to implement Foreign Account Tax Compliance Act ("FATCA") requirements for New Zealand financial institutions. This came into effect from 1 July 2014. The first FATCA reporting period for NZ financial institutions ends on 31 March 2015.

In October 2014, the Government announced that New Zealand would also adopt the OECD's automatic exchange of information ("AEOI") proposal, which effectively extends FATCA-type information sharing to other countries. New Zealand will begin exchanging information with other tax jurisdictions on a voluntary basis from 2018, with mandatory reporting to commence in 2019.

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Cases

The Hongkong and Shanghai Banking Corporation Limited-Philippine Branches ("HSBC") vs. Commissioner of Internal Revenue (G.R. Nos. 166018 and 167728, 04 June 2014)

The Supreme Court ruled that electronic messages "cannot be considered negotiable instruments as they lack the feature of negotiability, which, is the ability to be transferred" and that the said electronic messages are "mere memoranda" of the transaction consisting of the "actual debiting of the [investor-client] payor's local or foreign currency account in the Philippines" and "entered as such in the books of account of the local bank".

Thus, SWIFT or Society for Worldwide Interbank Financial Telecommunication messages of HSBC's investor-clients containing instructions to debit their respective local or foreign currency accounts in the Philippines and pay a certain named recipient also residing in the Philippines is not the transaction contemplated under Section 181 of the Tax Code which imposes Documentary Stamp Tax ("DST") on the acceptance or payment of bills of exchange or order for the payment of money purporting to be drawn in a foreign country but payable in the Philippines. This is because such electronic instructions are "parallel to an automatic bank transfer of local funds from a savings account to a checking account maintained by a depositor in one bank."

Further, the said instructions given through electronic messages are not negotiable instruments as they do not comply with the requisites of negotiability under the negotiable instruments law. The electronic messages are not signed by the investor-clients as supposed drawers of a bill of exchange; they do not contain an unconditional order to pay a sum certain in money as the payment is supposed to come from a specific fund or account of the investor-clients; and, they are not payable to order or bearer but to a specifically designated third party. Thus, the electronic messages are not the bills of exchange under the Negotiable Instruments Law. As there was no bill of exchange or order for the payment drawn abroad and made payable here in the Philippines, there could have been no acceptance or payment that will trigger the imposition of the DST under Section 181 of the Tax Code.

Taxation rulings and determinations

Revenue Regulations ("RR") No. 6-2014 dated 05 September 2014.

DOF issued RR No. 6- 2014 which prescribes the mandatory use of electronic Bureau of Internal Revenue Forms ("eBIRForms") in the filing of all tax returns by Non-Electronic Filing and Payment System ("non-eFPS") filers.

The eBIRForms refer to the following two types of electronic services ("e-Services") provided by the BIR relative to the preparation and submission of tax returns:

- Offline eBIRForms Package – is a software that allows the taxpayer and Accredited Tax Agents ("ATA") prepare tax forms offline; and
- Online eBIRForms System – is a filing infrastructure that accepts tax returns submitted online and automatically computes penalties for tax returns submitted beyond due date.

The eBIRForms cover thirty-six BIR Forms comprised of Income Tax Returns; Excise Tax Forms; VAT Forms; Withholding Tax Forms; Documentary Stamp Tax Forms; Percentage Tax Forms; One-Time Transaction ("ONETT") Forms and Payment Form. The complete list of BIR Forms is

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provided for in RR No. 6-2014.

The following non-eFPS filers are covered by the RR:

- ATA/Practitioners and all its client-taxpayers;
- Accredited Printers of Principal and Supplementary Receipts/Invoices;
- ONETT taxpayers;
- Those who shall file a "No Payment" Return (i.e., a tax return that is not accompanied by any payment where the same is filed with any authorized BIR receiving office);
- Government-Owned or Controlled Corporations ("GOCCs");
- Local Government Units ("LGUs") except barangays; and
- Cooperatives registered with National Electrification Administration (NEA) and Local Water Utilities Administration ("LWUA").

The eBIRForms should be available to all non-eFPS filers with or without internet access. Taxpayers with internet access can download the eBIRForms Package from the BIR website *www.bir.gov.ph*, while taxpayers without internet can download the eBIRForms Package from the BIR e-lounges.

It is mandatory for Non-eFPS filers specifically ATA/Practitioners, Accredited Printers of Principal and Supplementary Receipts/Invoices and ONETT taxpayers to use the eBIRForms in filing all of their tax returns. They may opt to submit their tax returns manually using the Offline eBIRForms Package at their respective Revenue District Offices or electronically through the use of the Online eBIRForms System.

The ATAs who are preparing and filing tax returns on behalf of their clients are likewise required to use the eBIRForms.

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Taxation rulings and determinations

Foreign Account Tax Compliance Act ("FATCA")

The Ministry of Finance ("MOF"), Monetary Authority of Singapore ("MAS") and the Inland Revenue Authority of Singapore ("IRAS") carried out a public consultation from 22 September 2014 to 17 October 2014 in relation to proposed regulations to help financial institutions in Singapore to comply with the US Foreign Account Tax Compliance Act ("FATCA"). FATCA, which was enacted by the US Congress in 2010 and took effect on 1 July 2014, is intended to ensure that the US Internal Revenue Service ("IRS") obtains information on financial accounts of US persons held by foreign financial institutions ("FFIs"). Failure by an FFI to disclose information on their US clients will result in a requirement to withhold 30 percent tax on payments of US-sourced income.

The public consultation was in relation to:

- the draft Income Tax (International Tax Compliance Agreements) (United States of America) Regulations 2014, which sets out the due diligence and reporting obligations of Singapore-based financial institutions in relation to the FATCA Intergovernmental Agreement ("IGA"); and
- a draft FATCA e-Tax Guide, which provides further explanation of those obligations.

Responses to the public consultation are expected to be published on MOF's website early in 2015.

- FATCA IGA

  Singapore and the US signed a FATCA Model 1 IGA on 9 December 2014 following its initialling in May 2014. The IGA will help ease the FATCA compliance burden of Singapore-based FIs ("SGFIs").

- Registration

  SGFIs can now register at the FATCA Registration Portal as a "Registered Deemed-Compliant Financial Institution (Including a Reporting Financial Institution under a Model 1 IGA)".

Goods and Services Tax ("GST") remission for qualifying funds

The GST remission scheme allows qualifying funds to recover GST incurred on all expenses (except disallowed expenses under the GST Regulations 26 and 27) from 22 January 2009 to 31 March 2019 based on a fixed recovery rate, without requiring the funds to register for GST.

The fixed recovery rate for expenses incurred during the period from 1 January 2015 to 31 December 2015 is 88%.

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Legislative developments

Budget 2015

- Profits and income earned by Unit Trusts from investments made on or after 1 January 2015, in US dollar deposits / US dollar securities listed in any foreign stock exchange will be exempt from Income Tax. Such income is currently taxed at 10%.
- Interest income from investments made after 1January 2015 in corporate debt Securities, issued by Urban Development Authority is to be made exempt from Income Tax

Taxation rulings and determinations

Value Added Tax ("VAT")

The present rate of 12% will be reduced to 11%.

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Legislative developments

Amendment to the Capital gains tax regime for local individual investors on securities transaction

Article 14-2 of the Income Tax Act was recently amended. The article addresses the taxation of capital gains from securities transactions.

Pre-amendment of Article 14-2, starting from 2015 and onward, for capital gains derived by local individual shareholder sale of listed shares, OTC shares and emerging shares of NT$1 billion or more within a given year are taxed using the actual basis. However, only the portion which exceeds the NT$1 billion threshold will be subject to tax.

The amendment delays the implementation of the new regime for local individuals, on capital gains realized from the sale of listed shares, OTC shares and emerging shares which exceeds the NT$1 billion volume limit, from 2015 to 2018.

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Legislative developments

Corporate Income Tax

The Royal Decree No. 577, issued on 10 November 2014, confirmed that the reduced corporate income tax rate of 20% will continue to apply for FY15.

Personal Income Tax

The Royal Decree No. 576, issued on 10 November 2014, confirmed that the personal income tax rates for FY15 remain unchanged.

Tax Refund

Section 63 of the Thai Revenue Code allows a taxpayer to claim a refund where the taxpayer received income that was subject to withholding tax ("WHT") and that tax exceeded the amount that should have been withheld.

Section 63 was amended, with the effect from 10 November 2014, to allow such refund claim to be filed within three years from the due date of the filing of the tax return in which the relevant income was declared. Previously, the timeframe for filing the refund claim was three years from the end of the year in which the income was earned.

Property and Land Tax

The Draft Bill introduced new property tax rates. The property tax rates will be determined by the official committees, subject to the following ceilings:

- 0.5% for the normal rate (e.g. applicable to commercial property)
- 0.1% for residential use
- 0.05% for land and agriculture use

Vacant land that is not being used for any propose will be subject to the 0.5 % tax rate in the first three years. The tax rate will double every three years, but will be capped at the maximum rate of 2%. The tax base used in determining the property tax liability is an appraisal value of the land or building. The property tax applies to owners of land and buildings, and possessors of public land and buildings.

Taxation rulings and determinations

Internet Filing

The Thai Revenue Department extended the deadline for filing of tax returns electronically by 8 calendar days for tax returns due between 1 February 2015 and 31 January 2016.

The tax returns covered under this extension are personal income tax returns, corporate income tax returns, WHT returns, Value Added Tax ("VAT") returns and Specific Business Tax ("SBT") returns. This includes the original and amended returns.

The recently released Draft Bill on Land and Buildings Tax has been approved by the Office of the Council of State, but has not yet been enacted.

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VAT Invoice Requirement

The Director-General of Revenue Department has recently issued Notifications No. 196 and 199 setting out the requirements for a tax invoice, debit note, credit note and output VAT report issued by a VAT registrant. Broadly, the details that must be provided include the tax ID of a customer (if registered for VAT), the place of business of the supplier and the place of business of the customer (as to whether it is a branch or a head office).

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Legislative developments

Key changes on the Law No. 71/2014/QH13 amending and supplementing a number of articles of current Tax laws, which took effect from 1 January 2015

Under the new Law, some notable points are highlighted as follows:

- Removal of the 15% capped on the "Advertisement and Promotion" expenses in which all legitimate A&P are now fully deductible;
- The reinstate of the standard rate for late interest payment to 0.05%/day regardless of the number of late payment days, instead of 0.07%/day from the 91st days onwards under previous regulation; and
- In cases where revenue, expenses and taxable price are in foreign currencies or the taxpayer is obliged to pay tax liabilities in foreign currencies but allowed by authorities to pay in Vietnam Dong ("VND"), the amount in foreign currencies must be converted into VND of the actual exchange rate at the time of occurrence (instead of the interbank exchange rate stipulated by the State Bank of Vietnam as previously).

Tax exemption for income from government bonds issued to international market in 2014

On 1 November 2014, Government issued Resolution No. 78/NQ-CP, which provides that income from government bonds issued to international market in 2014 shall be exempted from Personal Income Tax and Corporate Income Tax in Vietnam. The Ministry of Finance will include this content into the Prospectus and documents to be provided to investors.

Foreign exchange control for foreign direct investment in Vietnam

State Bank of Vietnam ("SBV") issued Circular 19/2014/TT-NHNN on 11 August 2014 providing guidance on foreign exchange control for Foreign Direct Investment ("FDI") in Vietnam, which takes effect from 22 September 2014. Some notable points are as follows:

- Currency for capital contribution

  Vietnamese investors, who would like to invest in foreign invested enterprises ("FIEs") are allowed to make capital contribution in foreign currency from their own legitimate sources.

- Direct Investment Capital Account ("DICA")

  To carry out FDI activities in Vietnam, FIEs and/or foreign investors participating in Business Cooperation Contract ("BCC") must open a DICA in foreign currency and/or in VND at authorised bank.

- Capital remittance during pre-licence period

  Prior to issuance of investment certificate, foreign investors are permitted to remit capital in foreign currency via payment account opened at an authorised bank to fund the project at the preparation phase in accordance with agreement with involved parties.

After obtaining the Investment Certificate, the foreign investors must reconcile and finalise the remitted capital amount during pre-licenced period.

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New penalties on administrative violations of foreign exchange control and banking activities

On 17 October 2014, the Government issued Decree 96/2014/ND-CP stipulating more specifically on sanctioning of administrative penalties in terms of foreign exchange control and banking activities.

Notably, Decree 96 stipulates the sanctions against foreign exchange violations, including:

- Trading foreign currency with promotions, brokerage commissions;
- Trading foreign currency at credit institutions ("CIs") which are not allowed to exchange currency;
- Failure to sell foreign currency gained to CIs; and
- Any transactions, quoting, pricing, contract pricing or listing and advertising the price of goods in foreign currency which violates the regulations, including cases where the payment for goods and services in foreign currencies are improperly implemented.

The Decree came into force from 12 December 2014 and replacing Decree 202/2004/ND-CP dated 10 December 2004 and Decree 95/2011/ND-CP dated 20 December 2011.

New guidance on registration of foreign loans without the Government's guarantee

The SBV issued Circular 25/2014/TT-NHNN ("Circular 25") dated 15 September 2014 providing guidance on registration of foreign loans that are not guaranteed by the Government.

According to Circular 25, the following foreign loans are required to be registered with the SBV:

- Foreign loans with medium or long term; and
- Foreign loans of which the terms are extended with total extension period of more than one year;

Short-term loans without extension agreement which are outstanding after one year from the date of first withdrawal. However, if borrowers repay the loans within ten days as from the date of counting one year, they will not be required to register the loans.

New circular guiding on trust and acceptance of the trusteeship performed by CIs and branches of foreign banks

On 6 November 2014, SBV issued new Circular No. 30/2014/TT-NHNN providing more detailed guidance on the rights and obligations of trustee and trusters, system of recording and reporting entrustment activities. Accordingly, CIs and branches of foreign banks are allowed to be trustee and accept trusteeship in loans making, financial leasing, capital contribution, share purchase; investing in the projects of production, business; buying enterprise bonds provided that the entrustment must be stated in written agreement and ensure ten specific requirements.

This Circular came into effect from 1 January 2015.

New guidance on dossiers and procedure to obtain approval for overseas investors to purchase shares in Vietnamese CIs

SBV issued the Circular 38/2014/TT-NHNN dated 8 December 2014 stipulating the specific procedure for foreign investors to buy shares in CIs in Vietnam in the following cases:

- Purchase of shares, which resulted in the ownership of 5% or more of charter capital in CIs;
- Additionally purchase of shares while already-owning 5% or more of charter capital in CIs;
- Purchase of shares, which resulted in the ownership of 10% or more of charter capital in CIs; and
- Purchase of shares and becoming strategic investors of CIs.

Duration for SBV to assess the dossiers is 40 days from the date of submission. Once the

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approval is obtained, investors must remit full amount of investing money within 30 days.

This Circular takes effect from 1 January 2015 and cancels the previous relevant regulations.

Taxation rulings and determinations

Scanning the List of Non-reporting Financial Institutions ("FIs") that qualify as Deemed-Compliant FFIs ("DCFFI") (i.e. FATCA exemption) in accordance with Annex II, IGA Model 1

Foreign Account Tax Compliance Act ("FATCA") comes into effect from 1 July 2014. For the purpose of speeding up the Intergovernmental Agreement ("IGA") negotiation with the Government of the United States of America, SBV issued Official Letter No. 2746/TTGSNH1 dated 6 September 2014 requesting FIs to perform self-assessment according to Section III, Annex II of IGA Model 1 to determine whether they are entitled to FATCA exemption before 15 September 2014.

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