General tax update for financial institutions in Asia Pacific

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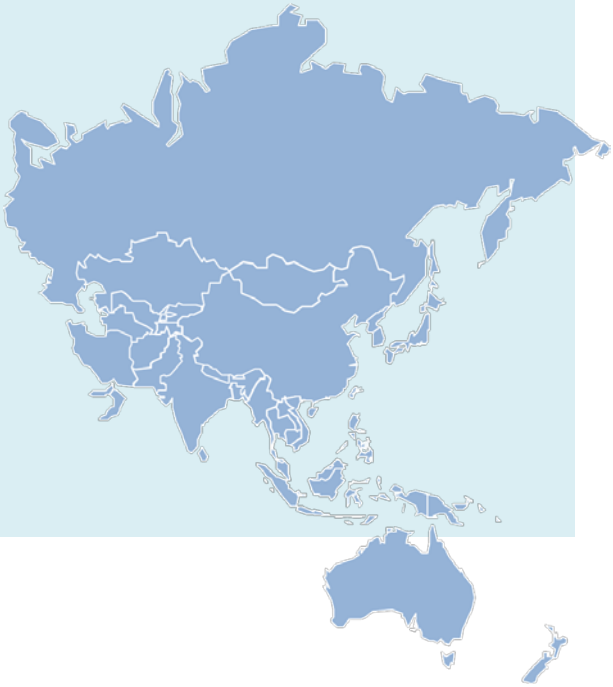
This publication continues our series of updates on tax issues affecting Financial Institutions in the Asia Pacific region.

As anticipated in previous updates, the implementation of BEPS initiatives is starting to gather pace with governments introducing amendments to increase disclosure and transparency. This is likely to continue to be a key theme for 2016. We are also seeing various governments looking to improve their efficiency of the tax collection system through greater use of technology.



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Australia

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Legislative developments

Common Reporting Standard

On 18 September 2015, Treasury released for public consultation Exposure Draft legislation for the implementation in Australia of the Common Reporting Standard ("CRS") developed by the Organisation for Economic Cooperation and Development ("OECD") and the G20.

The CRS calls on the tax authorities of jurisdictions to obtain financial account information from the financial institutions of their jurisdictions on an annual basis and automatically exchange that information with the tax authorities of other jurisdictions.

On 3 December 2015, following a short period of consultation on the Exposure Draft, the Government introduced to Parliament the Bill for the implementation of the CRS (refer *Tax Laws Amendment (Implementation of the Common Reporting Standard) Bill 2015*).

Based on the Bill currently before Parliament, the start date of the CRS on-boarding procedure has been deferred by six months to 1 July 2017, and financial institutions have not been given the option of deferring the start date. The first reporting period is thus expected to be 1 July 2017 to 31 December 2017, for reporting by 31 July 2018. Thereafter, annual reporting is expected by 31 July in respect of the preceding calendar year.

Implementation of the CRS will require reporting financial institutions in Australia to carry out due diligence procedures to identify "reportable accounts" held by non-residents and provide a statement to the Australian Taxation Office ("ATO") about those accounts. The ATO will exchange this information with the foreign tax authorities of the non-residents. In parallel, the ATO will receive financial account information on Australian residents from other countries' tax authorities.

Going forward, financial institutions will need to collect a self-certification for each new account opened on or after 1 July 2017. Failure to collect account holder self-certifications about the jurisdiction of tax residence of the account-holder may lead to administrative penalties for the financial institution.

In addition, financial institutions will need to keep records for at least five years that explain the procedures used for identifying reportable accounts.

Enhanced third Party reporting and data matching

On 30 November 2015, Parliament enacted legislation that proposes to improve taxpayer compliance and ATO data matching and risk analysis, by increasing the information reported to the ATO by a range of "third parties" (refer *the Tax and Superannuation Laws Amendment (2015 Measures No.5) Act 2015*).

The new reporting obligations have significant implications for the financial services sector.

Specifically, the following third parties are required to report under the new regime:

- market participants, listed companies, trustees of trusts with an absolutely entitled beneficiary, and the corporate regulator (Australian Securities and Investments Commission) must report on certain transactions involving securities;

- trustees of unit trusts must report on certain transactions relating to units in unit trusts;
- administrators of electronic payment systems must report on electronic business transactions;
- government-related entities (other than local government bodies) must report on payment of government grants;
- government-related entities must report on financial benefits they provide for services;
- states and territories must report on transfers of real estate in their jurisdiction.

Most of the reporting obligations apply to transactions happening on or after 1 July 2017.

The default reporting period is the financial year (the period from 1 July to 30 June), although the ATO has the discretion to change the reporting period to require more frequent (even real-time) reporting.

The default deadline for reporting is 31 July after the end of the financial year, although the ATO has the discretion to change the reporting deadline.

Financial institutions must ensure that their data collection and reporting systems are appropriately modified to provide the required information to the ATO.

Attribution Management Investment Trust ("AMIT") regime

On 3 December 2015, following a lengthy period of targeted industry consultation, the Government introduced to Parliament the Bill to implement the new tax regime for AMIT's (refer *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Bill 2015*).

The new regime has far-reaching implications for managed funds and their investors.

The key aspect of this regime is that MITs that meet the qualifying criteria will not be subject to the "present entitlement" rules under the current law, but they will instead be subject to a separate attribution-based method of allocating the taxable income of the trust to beneficiaries. This is a welcome reform, providing AMITs with increased certainty of tax outcomes.

The new regime will generally apply to tax years starting on or after 1 July 2016. However, AMITs will be able to make a choice to apply the regime for a tax year starting on or after 1 July 2015.

Country-by-country reporting

On 11 December 2015, Parliament enacted legislation (*the Tax Laws Amendment (Combatting Multinational Tax Avoidance) Act 2015*) to implement the OECD's recommendation that all jurisdictions require multinationals to provide transfer pricing information as 3 standardised reports:

- a country-by-country ("CbC") report, which contains high-level information on the global allocation of the income, taxes paid, location and main business of each group member;
- a Master File, which reports the group's organisation structure, main businesses, location, intangibles, inter-company financial activities, financial position and tax positions; and
- a Local File, which reports the nature and pricing of transactions undertaken by the local entity (either a subsidiary or permanent establishment) with associated enterprises in other countries.

The CbC reporting laws in Australia are effective for tax years starting on or after 1 January 2016.

Each statement is due for submission to the ATO within 12 months after the end of the tax year to which the statement relates.

Tax court case summaries

Chevron Australia Holdings Pty Ltd v Commissioner of Taxation (No 4) [2015] FCA 1092

On 23 October 2015, the Federal Court of Australia handed down its landmark decision in *Chevron Australia Holdings Pty Ltd v Commissioner of Taxation ("Chevron").* This decision provides guidance on how to approach a transfer pricing analysis in respect of related party borrowings.

The case concerned the inter-company loan agreement between Chevron Australia Holdings Pty Ltd ("CAHPL") and its US subsidiary Chevron-Texaco Funding Corporation ("CFC"). The Court found in favour of the Commissioner, and held that the interest paid by CAHPL to CFC at a rate of AUD LIBOR +4.14% over the 2004 to 2008 tax years on an A$-equivalent US$2.5 billion loan exceeded an arm's length price for borrowing. The interest rate payable represented a significant mark-up to the funding costs of the US subsidiary. No parent guarantee was provided, and the lender had no security over the borrower's other assets.

The Court held that the taxpayer had failed to discharge its onus of proof that the consideration in the credit facility agreement was the arm's length consideration or less than the arm's length consideration, and the taxpayer did not prove that the amended assessments issued by the Commissioner were excessive.

In the judge's opinion, the correct approach to determining the borrower's creditworthiness (for the purpose of benchmarking an arm's length interest rate) is from the perspective of a commercial lender, and not by reference to how an external credit ratings agency would rate the borrower.

Another key aspect of the case was the weight that should be given to parental support. The judgement indicates that, if the evidence shows a commercial lender would have taken into account certain financial resources (eg financial or operating covenants or other credit support), then those factors would be relevant. However, the Court acknowledged that while implicit parental support may be relevant in assessing a borrower's credit rating, its existence and value is a matter of fact. The Court accepted the taxpayer's argument that, in the absence of a legally binding parental guarantee, implicit credit support had very little, if any, impact on pricing by a commercial lender in the real world.

Chevron has lodged an appeal from this decision to the Full Federal Court.

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China

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Taxation rulings and determinations

Tax policy for Mainland-Hong Kong Mutual Recognition of Funds Arrangement

On 22 May 2015, the China Securities Regulatory Commission ("CSRC") and the Hong Kong Securities and Futures Commission officially signed the "Memorandum in Respect of Mainland-Hong Kong Mutual Recognition of Funds ("MRF") Arrangement" and released the Provisional Regulations for the Administration of Mutually Recognized Hong Kong Funds, both of which took effect from 1 July 2015. On 18 December 2015, the regulatory institutions on both sides respectively approved the first batch of mutually recognised funds under the MRF arrangement, including three "North-bound" Hong Kong funds and four "South-bound" Mainland funds.

On 14 December 2015, the Ministry of Finance ("MOF"), the State Administration of Taxation ("SAT") and the CSRC jointly released Circular Caishui [2015] No.125 ("Circular 125"). The Circular 125 clarifies the uncertainties in tax treatment for Mainland China investors and Hong Kong investors who invest in the MRFs and also sets forth the withholding obligations of the relevant institutions. It puts forward a higher standard of requirements on the daily operations of both fund managers and their agents.

R&D Super Deduction Regulation Update

On 21 October 2015, Premier Li Keqiang hosted a State Council executive meeting and made a speech regarding refining the super deduction policy for Research and Development ("R&D") expenses, encouraging the undertaking of R&D by enterprises, promoting structural adjustment and driving start-up and innovation.

Afterwards, MOF, SAT and Ministry of Science and Technology jointly issued Caishui [2015] No.119 ("Circular 119") clarifying the detailed implementation measures regarding the super deduction of R&D expenses for Corporate Income Tax purpose. It applies from 1 January 2016.

The key enhancements of Circualr 119 include:

- The scope of R&D activities and R&D expenses eligible for super deduction will be expanded;
- Companies can now use a set of auxiliary or supplementary accounts to capture eligible R&D expenses, rather than capture all eligible R&D expenses in one special account in the company's existing accounting system;
- The examination and verification procedure for R&D super deduction will be simplified and the deduction will be subject to post record-filing administration; and
- Companies will be able to deduct previously unclaimed R&D expenses for the preceding 3 years.

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Hong Kong

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Legislative developments

Inland Revenue (Amendment) (No.4) Bill 2015

The Inland Revenue (Amendment) (No.4) Bill 2015 ("the Bill") was gazetted on 4 December 2015 and the First Reading of the Bill was held on 16 December 2015. The Bill aims to enhance the existing interest deduction rules for the intra-group financing business of corporations and introduce a concessionary profits tax rate for qualifying corporate treasury centres. The Bill also introduces new and complex rules around the profits tax and stamp duty treatment for regulatory capital securities issued by banks in compliance with Basel III capital adequacy requirements. The key features of the Bill include:

- Giving a profits tax concession to qualifying corporate treasury centres ("QCTCs") – qualifying profits will be charged at ½ of the profits tax rate (note: A financial institution is not eligible to be a QCTC).
- Introducing deeming provisions for profits tax purposes regarding interest on money borrowed from or lent to associated corporations.
- Treating certain regulatory capital securities ("RCSs") as debt securities while at the same time introducing complex transfer pricing and thin capitalization rules around such instruments.
- Giving stamp duty relief to RCSs:-
  - a contract note is not required to be executed or stamped for the sale or purchase of a RCS; and
  - any other transfer of RCS is exempt from stamp duty under heads 2(3) and 3(4) of the First Schedule to the Stamp Duty Ordinance.

Other developments

CRS/ AEOI: Hong Kong responds to consultation

In April to June 2015, the Hong Kong government launched a consultation exercise to gauge views on how it should adapt to Hong Kong the new standard on Automatic Exchange of Financial Account Information in Tax Matters ("AEOI") promulgated by the Organisation for Economic Cooperation and Development ("OECD"). Subsequently, the government announced that it will introduce legislative proposals for implementing the new international standard, which is contained in a consolidated response published on 12 October 2015.

In its response, the Hong Kong government reiterated that they will adhere to the OECD AEOI standard, including the broad definitions of Financial Institutions ("FI"), the scope of reporting FIs and reportable accounts, and the due diligence requirements. The Hong Kong government intends making appropriate adaptations to some of the generic terms and requirements for enforcements with specific reference to Hong Kong local legislation where necessary.

The Hong Kong government introduced the draft legislation to the Legislative Council on 8 January 2016. Should the legislation be enacted in 2016, then FIs will need to commence their due diligence procedures in 2017 with the first AEOIs taking place before the end of 2018. (see more detail here)

Orders for 6 TIEAs with Nordic jurisdictions

Six orders for implementing the tax information exchange agreements ("TIEAs") with six Nordic jurisdictions (i.e. Denmark, the Faroes, Greenland, Iceland, Norway and Sweden), were gazetted on 2 October 2015.

The TIEAs with the above-mentioned six Nordic jurisdictions, signed in August 2014, provide for the exchange of information upon request between Hong Kong and the relevant jurisdictions in relation to the assessment or enforcement of tax matters.

The tax treaty between Hong Kong and South Africa in force

The agreement between Hong Kong and South Africa for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income, signed in October 2014, has entered into force on 20 October 2015 after the completion of ratification procedures on both sides. It will be in effect in Hong Kong for any year of assessment beginning on or after 1 April 2016.

Hong Kong and Romania conclude Double Tax Agreement

Hong Kong concluded a Double Tax Agreement with Romania on 18 November 2015. This is the 33rd comprehensive agreement for the avoidance of double taxation that Hong Kong has signed.

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India

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Legislative developments

Government of India decides that Minimum Alternate Tax shall not be applicable to foreign companies having no permanent establishment/ place of business in India

The Indian Government has accepted the recommendation of the A. P. Shah Committee to clarify the inapplicability of Minimum Alternate Tax ("MAT") to Foreign Institutional Investors ("FIIs") / Foreign Portfolio Investors ("FPIs"). In a welcome move, the Indian Government now has announced that with effect from 1 April 2001, the provisions of MAT shall not apply to foreign companies if:

- The foreign company is a resident of a country having a tax treaty with India and such foreign company does not have a permanent establishment within the definition of the term in the relevant tax treaty, or
- The foreign company is a resident of a country which does not have a tax treaty with India and such foreign company is not required to seek registration under Section 592 of the Companies Act 1956 or Section 380 of the Companies Act 2013.

The press release also mentions that an appropriate amendment to the Companies Act will be carried out. Hopefully the press release has clarified the application of MAT provisions to foreign companies and should help in avoiding unnecessary litigation.

Central Board of Direct Tax clarifies on taxation of income from offshore rupee denominated bonds

In another welcome move, the Central Board of Direct Tax ('CBDT") issued a press release dated 29 October 2015 to clarify that withholding tax at the rate of five per cent would be applicable on the interest income from offshore rupee denominated bonds for non-resident investors. It would be applied in the same way as for offshore dollar denominated bonds.

Further, capital gains arising as a result of appreciation of rupee between the date of issue and the date of redemption against the foreign currency in which the investment is made would be exempt from capital gains tax. Legislative amendments in this regard will be proposed through the Finance Bill, 2016.

Tax court cases summaries

Inventurus Knowledge Services Pvt. Ltd. v. ITO (ITA No. 5922/ Mum/2013)

- Background

  The taxpayer is a domestic company registered with the Development Commissioner, Vishakhapatnam Special Economic Zone. The taxpayer is a KPO Unit involved in the business of Revenue Cycle Management for their clients across the U.S.

- Facts of the case

  During the AY 2009-10, it had entered into foreign exchange derivative contracts on the NSE to hedge itself against foreign exchange fluctuations on account of underlying account receivables which are denominated in US Dollars. The taxpayer debited mark to market loss of INR 10.9 million to the Profit and Loss Account. The taxpayer claimed that the loss

on account of derivative transaction is neither a speculative nor contingent loss.

- Held

  The Assessing Officer ("AO") held that such loss arising on account of derivative transaction is in the nature of speculative loss. Therefore, it cannot be allowed to be set-off against the income from business other than speculation business. The Commissioner of Income Tax (Appeals) upheld the order of the AO.

  However, the Tribunal held that taxpayer has entered into derivative transactions in foreign currency through a SEBI registered broker who is a member of the NSE and these derivative transactions are carried out on the NSE which is a recognized stock exchange and these transactions are backed by time stamped contract notes carrying a unique client identity number and PAN allotted under the Income Tax Act, 1961 ("the Act"). It was held that these derivative transactions in foreign currency entered into by the taxpayer duly fulfilled all the conditions as specified under Section 43(5) of the Act. Further, these transactions are covered by the exception provided in Section 43(5) of the Act and hence are not speculative transactions. Accordingly, it was held that loss on derivative transactions in foreign currency is not a speculative loss within the definition in Section 43(5) of the Act. The Tribunal relied on the decision of DCIT v. Bank of Bahrain and Kuwait [2010] 132 TTJ 0505 (Mum) (SB).

  The Accounting Standard-11 prescribed by ICAI also stipulates that in situations like this when the derivative transaction in foreign currency has not been settled/squared during the accounting period, the effect of the exchange rate difference on the un-expired foreign currency contracts as at the end of the accounting period is to be accounted for in the books of accounts prepared for the accounting period. Accordingly, it has been held that the loss of INR 10.9 million incurred by the taxpayer on account of mark to market loss arising on the balance sheet date of 31 March 2009 cannot be considered as a notional or contingent loss rather it is an ascertained loss which has already occurred during the assessment year which can be computed with reasonable certainty and accuracy and is a fait accompli as held in ONGC v. DCIT [2003] 261 ITR 1(Del).

- Conclusion

  Mark-to-market losses arising on account of unexpired derivative transactions in foreign currency entered into on a recognized stock exchange cannot be considered as notional or contingent losses and are therefore allowable as non-speculative loss.

Castleton MAT Case

The Supreme court of India disposed of Castleton Investments Limited's Special Leave Petition ("SLP") against the Authority For Advance Rulings on MAT. The SLP was dismissed after Attorney General stated that Income Tax Department shall abide by CBDT Circular dated 2 September 2015 prescribing that MAT provisions will not be applicable to FIIs/FPIs not having a place of business/permanent establishment in India, for the period ended 1 April 2015.

Taxation rulings and determinations

CBDT ordered to use email based communication for paperless assessment proceedings

CBDT issued an order dated 19 October 2015 wherein it introduced email based communication for paperless assessment proceedings which can enhance the efficiency and create a paperless environment. The tax officer may use email as a mode of communication for sending the questionnaires, notice, etc. at the time of proceedings and getting responses. This could eliminate the necessity of taxpayers visiting the income tax offices, particularly in smaller cases, involving limited issues and where the taxpayer is able to provide details required by the AO without physically going to the income tax office. The CBDT has taken steps to set-up a user friendly platform. It has decided to launch a pilot project in this regard for non-corporate charges at Delhi, Mumbai, Bengaluru, Ahmedabad and Chennai stations. Initially, 100 cases for e-hearing could be identified. Each of these charges and major part of the assessment

processing could be conducted in an electronic mode. Also, the cases covered under the pilot project should be in relation to Annual Information Return/ Central Information Branch information or non-matching with 26AS-data. A consent from the taxpayers should also be obtained in the beginning and only cases of willing taxpayers should be considered under the pilot project.

Validation of tax returns through an Electronic Verification Code ("EVC")

Taxpayers who are not mandated to use a Digital Signature Certificate for uploading their Income Tax Return ("ITR") are eligible to e-verification instead of sending the signed physical copy to the Central Processing Centre at Bangalore to complete the ITR filing process.

E-verification of the ITR could be made in one of the following ways for the AY 2015-16:

- The EVC received on the registered mobile number and email is a 10-digit alphanumeric code which can be generated by placing a request through the e-filing portal which is valid for 72 hours. The ITR can be e-verified at the e-filing portal (https://incometaxindiaefiling.gov.in/) by entering the EVC so received.
- Aadhar One Time Password ("OTP"): Under this option, e-filing portal generates an OTP which is sent to the mobile number registered under Aadhar. This OTP needs to be entered in the e-filing portal to verify the ITR.
- Net banking: The ITR could also be e-verified by logging into the net banking facility (from the list of prescribed banks).

The CBDT has also permitted the e-verification for the ITRs filed for the AYs 2013-14 and 2014-15 in the CBDT Order under section 119(1) of the Act vide F. No. 225/141/2015/ITA.II- dated 20 July 2015. This order is also applicable to ITRs which ITR-V submission deadline was extended up to 31 October 2015.

The CBDT has now issued an order under section 119(1) of the Act vide F. No. 225/141/2015/ITA. II- dated 6 October 2015 permitting an e-Verification through EVC for the following categories of ITR:

- Filed electronically on or after 1 April 2015 pertaining to AY 2014-15;
- Filed in response to notices issued; or
- Filed as a consequence to condonation of delay.

This Order extends the facility of an EVC mode of verification from being available only to ITRs of AYs 2013-14, 2014-15 and 2015-16 to a host of categories as specified.

The income tax department has in recent times been using technology as an enabler for various of its functions. One such similar move was email-based communication for paperless assessment proceedings. The extension of an EVC to ITR for the earlier AYs is a welcome initiative in this regard in promoting easy compliance by the taxpayers and paves the way for a thorough electronic filing process.

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Indonesia

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Legislative developments

New Thin Capitalization Rules

The Minister of Finance ("MoF") issued its regulation No. 169/PMK.010/2015 on 9 September 2015 regarding "thin capitalization" rules on finance expenses that can be deducted when calculating corporate income tax payable.

In this regulation, the MoF has set a Debt to Equity Ratio ("DER") of maximum 4:1, effective from fiscal year 2016 onward.

Exemptions applies to the following corporate taxpayers:

- Financial institutions e.g. banks, insurance and leasing companies;
- Oil & gas, mining companies under Contract of Work, Production Sharing Contract and other agreements with the government that have specific provision of DER (Note: if such provision do not exist, the tax payer is not exempt from the 4:1 requirement);
- Companies subject to a final tax regime, and
- Companies engaged in infrastructure business.

Finance expenses, subject to the DER calculation, include:

- Interest on loans;
- Discount and premium on loans;
- Additional expenses to acquire the loans (borrowing arrangements),
- Finance charges in a financial lease transaction,
- Cost related to obtaining loan repayment guarantees, and
- Foreign exchange differences resulting from translating foreign currency loans, provided that such differences result in adjustments to interest expense and/or the other financial expense above.

On 28 December 2015, the Government of Indonesian issued Government Regulation No. 123/2015 ("GR 123") regarding the amendment of withholding tax rate ("Final WHT") on interest on deposit and saving accounts.

Under previous regulation, the Final WHT rate was flat 20 percent on interest on deposit and saving accounts. Based on GR 123, for companies that keep their export earnings in dollar deposits at local banks for one month, the Final WHT rate on the deposit interest is reduced from the current 20 percent to 10 percent, 7.5 percent on deposits for the period of 3 months, 2.5 percent on deposits for the period of 6 months and 0% on deposits for the period of over than 6 months.

Similarly to dollar deposits, companies that keep their export earnings in Rupiah (local currency) deposits at local banks for one month will see the Final WHT rate on the deposit interest reduced from the current 20 percent to 7.5 percent, 5 percent on deposit for the period of 3 months, and 0% on deposit for the period of over than 6 months.

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Japan

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Legislative developments

2016 Tax reform proposals

- Tax rates

In December 2015, the Japanese government announced the proposed tax reform changes for 2016. Under the proposals, the standard effective corporate tax rate for companies with stated capital of over JPY100 million will be reduced as follows:

	Fiscal years beginning between 1 April 2016 and 31 March 2017	Fiscal years beginning between 1 April 2017 and 31 March 2018	Fiscal years beginning on or after 1 April 2018
Corporation tax	23.4%	23.4%	23.2%
Business tax	0.7%	3.6%	3.6%
Special local corporation tax	2.899% (0.7% x 414.2%)	-	-
Prefectural and municipal tax	3.019% (23.4% x 12.9%)	1.638% (23.4% x 7.0%)	1.624% (23.2% x 7.0%)
Local corporation tax	1.030% (23.4% x 4.4%)	2.410% (23.4% x 10.3%)	2.390% (23.2% x 10.3%)
Total	31. 048%		30.814%
Effective tax rate	29.97% (31.048% x 100/103.6)		29.74% (30.814% x 100/103.6)

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 33.06 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.

The proposals also include the following increases to size-based business tax:

	Current tax law		Proposal
	Fiscal years beginning between 1 April 2015 and 31 March 2016	Fiscal years beginning on or after 1 April 2016	Fiscal years beginning on or after 1 April 2016
Added value component	0.72%	0.96%	1.2%
Capital component	0.3%	0.4%	0.5%

The above tax rates are the standard tax rates. The maximum tax rates will be 2 times (currently 1.2 times) of the standard rates.

- Tax losses

The tax loss carry-forward rules will be amended to reduce the amount of brought forward losses that can be set against current year income for companies with stated capital of over JPY100 million.

	Fiscal years beginning between 1 April 2015 and 31 March 2016	Fiscal years beginning between 1 April 2016 and 31 March 2017	Fiscal years beginning between 1 April 2017 and 31 March 2018	Fiscal years beginning on or after 1 April 2018
Current tax law	Up to 65% of taxable income for the fiscal year		Up to 50% of taxable income for the fiscal year	
Proposal	-	Up to 60% of taxable income for the fiscal year	Up to 55% of taxable income for the fiscal year	Up to 50% of taxable income for the fiscal year

There will also be a change to the carry forward period of tax losses.

	Tax losses incurred in fiscal years ending on or after 1 April 2008	Tax losses incurred in fiscal years beginning on or after 1 April 2017	Tax losses incurred in fiscal years beginning on or after 1 April 2018
Current tax law	9 years	10 years	
Proposal	9 years		10 years

- Transfer pricing documentation

Following the BEPS project undertaken by the OECD, the 2016 tax reform proposals have introduced documentation requirements for transfer pricing as well as rules for country-by-country reporting. The requirements for submission of the master file and local documentation are as follows:

1) Master file

Outline	A reporting entity of an MNE Group shall file a master file to the competent tax office by the deadline through an online system (e-Tax).
Reporting entity	Either of the following Constituent Entities of an MNE Group • A Japanese company • A foreign company having a PE in Japan
Excluded MNE Group	Where total consolidated group revenue for the fiscal year immediately preceding the reporting fiscal year for an MNE Group is less than JPY100 billion, the MNE Group will be exempt from filing a master file.
Items to be reported	Same as items presented in Annex I to Chapter 5 of the OECD Transfer Pricing Guidelines, the amendment to which is proposed in the BEPS Action 13 final report (e.g. organizational structure, description of businesses, intangibles, intercompany financial activities, financial positions of the MNE Group)
Time for filing	No later than 1 year after the last day of the reporting fiscal year of the Ultimate Parent Entity
Language	Japanese or English
Penalties	If a reporting entity fails to file a master file to the competent tax office by the deadline, penalties will be imposed.
Timing of application	The above rules will be applied for fiscal years of the Ultimate Parent Entity beginning on or after 1 April 2016.

2) Local file (Contemporaneous documentation)

Outline	A company conducting transactions with foreign affiliates shall prepare documents that are considered to be necessary for calculating the arm's length price for the transactions (local file) by the filing due date of a final tax return.
Company which must prepare a local file	A company that conducts transactions with foreign affiliates
Transactions not subject to contemporaneous documentation	A company does not have to prepare a local file with respect to transactions with a foreign affiliate for the current fiscal year by the filing due date of a final return provided that both of the following conditions are met: • Total transaction amount with that foreign affiliate for the previous fiscal year (the current fiscal year if the previous fiscal year does not exist) is less than JPY5 billion. • Total transaction amount for intangibles with that foreign affiliate for the previous fiscal year (the current fiscal year if the previous fiscal year does not exist) is less than JPY300 million.
Items to be reported	Under the current documentation rules (Article 22-10 (1) in the Ordinance for Enforcement of the Act on Special Measures Concerning Taxation), the following are required to be presented or submitted: • Document containing details of transactions with foreign affiliates • Documents used to determine the arm's length price Certain amendments will be made to the current documentation rules, including clarification of items to be stated in such documents. Furthermore, items presented in Annex II to Chapter 5 of the OECD Transfer Pricing Guidelines, the amendment to which is proposed in the BEPS Action 13 final report will be included in the current documentation rules.
Term and place of retention	As a general rule, a company that conducts transactions with foreign affiliates must retain local files in their offices located in Japan for 7 years from the filing due date of a final tax return. (Original documents should be preserved if they are available in Japan. The preservation of copies of documents is allowed if the originals of them are located outside of Japan.)
Presumptive assessment/ Secret comparables	The rules to give the tax authorities the power to make an assessment presumptively and the authority to inquiry and inspect third parties conducting similar trade or business (so-called secret comparables) will be reviewed.
Timing of application	The above amendments will be applied for fiscal years beginning on or after 1 April 2017.

Other developments

New double tax treaty between Japan and Germany

In December 2015, the Japanese and German governments issued the text of the new double tax treaty between them. Of particular interest to financial institutions is that Japanese source dividends (depending on the ownership percentage and holding period) and interest will no longer be subject to Japanese withholding tax for German tax residents meeting the conditions in the treaty. Under the existing agreement, there is 10% or 15% withholding tax. The new agreement does however allow Japan to assess withholding tax on the following income:

- dividends paid by a company which is entitled to a deduction for dividends paid to its beneficiaries in computing its taxable income for Japanese tax purposes

- interest that is determined by reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor or a related person, or any other interest similar to such interest
- income or gains derived by a silent partner in respect of a silent partnership (Tokumei Kumiai) contract or other similar contract

The new treaty will come into force after both countries have completed the necessary domestic approval procedures.

New double tax treaty between Japan and Taiwan

In November 2015, details of the first tax treaty between Japan and Taiwan were announced (see Taiwan section).

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Korea

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Legislative developments

The taxation subcommittee has passed a proposed amendment at the National Assembly allowing education tax payment period changes from quarterly payments to annual payment

The Strategy and Finance Committee of the National Assembly passed a bill on 11 November 2015 changes the payment frequency for education tax from a quarterly payment to an annual payment.

The education taxation scheme is applicable to financial and insurance companies in Korea and is levied at 0.5% on their revenue derived from financial transactions involving bonds, stock, foreign exchange, FX derivatives, etc. The quarterly collection has resulted in a considerable administrative burden on the taxpayers. In addition, education tax on foreign currency transactions and derivative transactions is calculated based on the net gain/loss. Since the education tax is reported and paid each quarter, the losses derived from the aforementioned transactions can only be offset against gains if they occur in the same quarter and the chance of utilizing some of the losses can be permanently lost. This means that the taxpayers who earn the same amount of net income or revenue for the same fiscal year can end up with substantially different amounts of education tax depending on which quarter the gain or loss occurs and tax inequity may be created.

With the new amendment, the financial and insurance companies are required to file and pay the education tax on an annual basis and the related taxable period shall be the same as business year for corporate income tax purposes.

This amendment is effective from 1 January 2016.

Capital Gains Tax on Derivatives Transactions

A long-debated proposed rule of imposing capital gains tax on the transfer of derivatives products has passed the national assembly. The capital gains tax rate is 20% although the government has the flexibility of applying reduced rate as low as 5% if necessary for capital market growth.

This new rule is also expected to be applied to individual taxpayers because corporations are reporting capital gains in their corporate income tax returns. The derivatives which are subject to the capital gain tax are limited to certain exchange traded derivatives including KOSPI200 futures, KOSPI200 options, etc. This new law is effective on transfers made from 1 January 2016.

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Malaysia

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Legislative developments

Finance Act 2015

The Finance Act 2015 was gazetted on 30 December 2015 and some of the key changes are as follows:

Withholding tax rate on income distribution from Real Estate Investment Trusts ("REITs")

To promote further the development of REITs, the 10% final withholding tax applicable to income distribution to the following investors is extended for another three years up to 31 December 2019:

- Foreign institutional investors, such as pension funds and collective investment scheme; and
- Non-corporate investors.

Tax Deduction on Interest

Since Year of Assessment ("YA") 2014, interest expense has only been allowed a tax deduction when it is paid. However, now the tax deduction can be given in the year the interest is payable.

Effective YA 2016, in order to claim the tax deduction, a taxpayer would need to notify the Director General Inland Revenue ("DGIR") in writing about the interest payable. To qualify, the interest must be paid in any following YA not later than twelve months from the end of the taxable period which the interest is due to be paid.

Non-Deductibility of Goods and Services Tax ("GST")

Effective YA 2015, no tax deductions shall be allowed for:-

- any amount of GST input tax paid or to be paid by a person if he should be registered for GST but has failed to do so, or by a person who is entitled to input tax credits under the GST Act 2014 ("GSTA"); or
- any amount of GST output tax paid or to be paid which is borne by a person who is registered or should be registered for GST.

Submission of Tax Estimates

Effective YA 2018, a company must report its estimate or revised estimate of tax payable via electronic medium or electronic transmission.

Filing of Employer's Return (Form E)

With effect from year ending 31 December 2016, an employer which is a company must furnish the Form E to the IRB via an electronic medium or by way of electronic transmission.

Penalty for Failure to Furnish Correct Particulars

With effect from 31 December 2015, any person who fails to furnish the correct particulars in the income tax return without reasonable excuse, shall be guilty of an offence and shall, on conviction, be liable to a fine between RM200 to RM20,000 or imprisonment for a term

not more than 6 months, or both.

Tax Assessment for GST Adjustments

Effective from YA 2015, DGIR can make assessment or reduced assessment at any time for adjustments made in respect of input tax paid or to be paid under the GSTA. The assessment is to be made in the YA which the adjustment relates to or, if the YA cannot be ascertained, the YA which the adjustment is discovered by the DGIR.

2016 Budget Proposals (to be gazetted by way of statutory order)

Tax incentives for the issuance of retail bonds and retail sukuk

To further encourage individual investor's involvement in the capital market, it is proposed that the following tax deductions be extended for another 3 years:-

- double deduction on additional issuance costs of retail bonds and retail sukuk under the principles of Mudharabah, Musyarakah, Istisna', Murabahah and Bai' Bithaman Ajil based on tawarruq; and
- further deduction on additional issuance costs of retail sukuk under the principles of Ijarah and Wakalah.

The proposal is effective between YA 2016 and YA 2018.

Tax Incentive for Issuance of Sustainable and Responsible Investment Sukuk

To promote the issuance of sukuk that comply with the requirements of Sustainable and Responsible Investment (SRI) and to establish Malaysia as a regional issuance hub for SRI Sukuk, it is proposed that tax deduction be given for 5 years on issuance costs of SRI Sukuk approved by, or authorized by or lodged with the Securities Commission ("SC").

The proposal is effective from YA 2016 to YA 2020.

Tax Exemption on Income from Managing Shariah-Compliant Funds

Currently, a company certified by the SC to provide Shariah-compliant fund management services enjoys income tax exemption on the statutory income derived from the business of providing fund management services to the following:

- foreign investors in Malaysia;
- local investors in Malaysia; and
- business trusts or real estate investment trusts in Malaysia.

To further promote the business management activities of Shariah-compliant funds, it is proposed that the above income tax exemption be extended for 4 years.

The proposal is effective from YA 2017 to YA 2020.

Income Tax (Deduction for Expenditure On Issuance of Sukuk) Rules 2015

The Rules provide a deduction to the expenses incurred by a resident company on the issuance of sukuk under the principles of Ijarah and Wakalah. To qualify for the deduction, the issuance of sukuk must be:

- approved or authorized by, or lodged with, the SC under the Capital Markets and Services Act 2007; or
- approved by the Labuan Financial Services Authority established under the Labuan Financial Services Authority Act 1996.

The Rules are effective from YA 2016 to YA 2018.

Stamp Duty (Exemption) (Amendment) Order 2015
Stamp Duty (Exemption) (Amendment) (No. 2) Order 2015

The Orders extend stamp duty exemptions to instruments executed between 1 January 2016 to 31 December 2017 in relation to abandoned residential property projects as below:

	Eligible Person	Instrument
1	Original purchaser or his beneficiary	Loan instrument/agreement for financing and instrument of transfer for the revived residential property in relation to the qualifying abandoned project.
2	An approved rescuing contractor or developer who carry on rehabilitation works for a qualifying abandoned project	Loan instrument/agreement for financing of the qualifying abandoned project and instrument of transfer for the revived residential property in relation to the qualifying abandoned project.

Real Property Gains Tax (Exemption) Order 2015
Stamp Duty (Exemption) Order 2015

The Orders provide exemptions to the following disposals made and instruments executed pursuant to a prescribed restructuring scheme of a qualifying financial institution or its corporate group:

- Real property gains tax on the disposal of chargeable assets between 1 November 2014 and 30 June 2018; and
- Stamp duty on all instruments executed between 1 November 2014 and 30 June 2018.

The prescribed restructuring scheme must be approved by Bank Negara Malaysia and an application for the tax exemption has to be made to the Malaysian Inland Revenue Board.

Stamp Duty (Remission) Order 2015

The above Order gives 20% stamp duty remission on Shariah housing financing instruments executed between 1 January 2016 and 31 December 2017. The remission would apply if the instrument is:

- made in accordance with the principles of Shariah as approved by the Shariah Advisory Council on Islamic Finance established under the Central Bank of Malaysia Act 2009; and
- for the purpose of financing the purchase of a house, a condominium unit, an apartment or a flat solely to be used as a dwelling house.

Goods and Services Tax Amendment Regulations and Amendment Orders

The following amendment regulations and amendment orders have been issued:

- Goods and Services Tax (Zero-Rated Supply) (Amendment) (No.2) Order 2015
- Goods and Services Tax (Relief) (Amendment) (No.2) Order 2015
- Goods and Services Tax (Exempt Supply) (Amendment) (No.2) Order 2015
- Goods and Services Tax (Amendment) (No.2) Regulations 2015

Taxation rulings and determinations

Deferment of Thin Capitalisation Rules

The Ministry of Finance deferred the implementation of the Thin Capitalisation Rules to 31 December 2017.

Tax Collection Framework 2015

The Malaysian Inland Revenue Board ("MIRB") has, in order to ensure efficient and effective tax collection, issued a tax collection framework 2015 to provide guidance to taxpayers and tax agents on the collection procedures, payment methods in arrears as well as tax refunds.

Public Rulings

The MIRB has issued the following Public Rulings:

7/2015: Appeal Against an Assessment and Application for Relief

This Ruling explains procedures with regard to appeal and application for relief in respect of error or mistake.

It replaces Public Ruling 3/2012: Appeal against an Assessment.

8/2015: Loan or Advances to Director by a Company

This Ruling explains the tax treatment of a company that provides loans or advances, which are financed by internal funds, to a director of the company without interest or with interest rate lower than the arm's length rate.

9/2015: Deduction of Interest Expense and Recognition of Interest Income for Loan Transactions between Related Persons

This Ruling explains the following treatments in relation to a loan transaction between related persons:

- the allowable interest expense is only deductible when the said interest is due to be paid; and
- the interest income is deemed to be received by the lender on the date interest is due to be paid by the borrower whether or not the interest has been received.

10/2015: Investment Holding Company ("IHC")

This Ruling explains the tax treatment in respect of an IHC (listed or not listed on the Bursa Malaysia) resident in Malaysia and replaces Public Ruling 3/2011: Investment Holding Company.

MIRB's Guidelines on Advance Rulings

The MIRB has issued new guidelines on advance rulings to replace the old guidelines issued in 2008. The issuance of an advance ruling aims to ensure clarity and certainty of tax treatment and consistency in the application of the income tax laws. An advance ruling is a written statement issued by the DGIR in response to an application made by any person, setting out his interpretation of how any existing provision of the Income Tax Law applies or would apply to a "seriously contemplated arrangement".

Other developments

Double Taxation Agreement ("DTA")

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

Types of Payment	Rate
Interest	10 percent
Royalties	10 percent
Technical Fees	5 percent

The DTA has yet to be ratified.

Director General ("DG")'s Decision 8/2015

The Royal Malaysian Customs Department (RMCD") has uploaded DG's Decision 8 and updated a number of the DG's decisions issued earlier on the frequently asked Goods and Services Tax issues on its portal (http://gst.customs.gov.my).

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Mauritius

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Legislative developments

Agreement on Exchange of Information between Mauritius and Austria

Government Gazette dated 28 December 2015 confirms that the agreement between the Government of Mauritius and Government of Austria on Exchange of Information on Tax Matters will be effective from 1 January 2016.

Implementation of Common Reporting Standard ("CRS") Postponed

The Mauritius Revenue Authority ("MRA") issued a communique on 22 December 2015 informing that the initial date, 1 January 2016, set for implementation of CRS has been deferred.

The Ministry of Finance and Economic Development has informed the Organisation for Economic Co-operation and Development ("OECD") accordingly.

Taxation rulings and determinations

Tax Ruling 162-Taxability of income for foreign branch

A German company sets up a foreign branch in Mauritius. The branch constitutes a permanent establishment ("PE") under the Mauritius-Germany Double Taxation Agreement.

The point of issue is: in view of the new Authorised OECD Approach (AOA) on attribution of profits to permanent establishments (i.e. the new Article 7 of the OECD Model Tax Convention on Income and Capital as it reads on 22 July 2010), whether all income generated will be taxable in Mauritius.

The Mauritius Revenue Authority clarified that all the income generated by the German company in Mauritius through its branch will be taxable fully in Mauritius according to the Double Taxation Agreement between Germany and Mauritius.

Tax Ruling 163 – Taxability Limited Partner and General Partner

Two foreign promoters wish to set up a Fund as a limited partnership which will hold a GBL 1 license. It will hold investment and derive income from foreign sources.

The General Partner ("GP") will be a domestic company incorporated in Mauritius and shall not hold any interest in the fund. The fund will elect to have a legal personality in Mauritius and opt not to be subject to income tax at 15%.

The MRA clarified the following with respect to the queries raised:

- The fund will be considered as a tax resident societe. However, since it will elect not to be taxed in Mauritius it will not be required to submit a return of income and thus no tax residence certificate will be issued to the fund.
- On the basis that the fund will elect not to be taxed in Mauritius, the partners are the persons who will be liable to income tax and will thus be the appropriate persons to claim benefits of any Mauritius tax treaties rather than the fund.
- The non-Mauritian resident limited partners in the fund will be taxed on their share of income from the fund. However they would not be liable to income tax in Mauritius in

respect of their share of income in the fund given that the latter is derived from outside Mauritius.

- The GP will be taxable on the management fees charged to the fund at the prevailing income tax rate. No foreign tax suffered by the fund can be taken as a foreign tax credit against the management fee received by the GP.

VAT Ruling 71: Input tax suffered by a Societe available as a credit against output tax in the course of business

A company (Y Ltd) and an individual (Mr X) propose to set up a Société Civile Immobilière d'Attribution called the "Société" for the development of a multi-storey building comprising of commercial spaces. Upon completion of the building, the Société would be dissolved.

The points of issue were:

- Whether input tax suffered by the Société will be available as a credit against output tax
- Whether any excess input tax will be available for refund
- Whether a VAT registered person who buys part of the building will be able to claim input tax.

The MRA clarified that:

- The registration for VAT of the Société will depend on VAT registration liability of its potential buyers;
- The Société will be considered as making taxable supplies to buyers who are VAT registered;
- However, any excess input tax of the Société will not be available for refund on the basis that the Société does not meet the conditions for refund of VAT (i.e. it does not make exclusively zero-rated supplies and the excess input VAT is not in relation to capital goods);
- Where the sale is made to a VAT registered person, that person will be able to claim credit for input tax to the extent that he uses the commercial space to make taxable supplies.

Other developments

Protocol to the tax treaty between Luxembourg and Mauritius

On 11 December 2015, the protocol to the treaty between Luxembourg and Mauritius entered into force. The protocol provides an extension of Article 26 on mutual agreement procedure with an arbitration clause which will be applicable from 1 January 2016.

Moreover, the protocol provides for a new article, namely Article 27 which concerns the exchange of information.

Mauritius-Morroco Double Taxation Avoidance Agreement (DTAA)

The DTA between the Republic of Mauritius and the Kingdom of Morocco was signed on 25 November 2015. Upon completion of the necessary internal procedures by both parties, the DTA will enter into force.

Mauritius- United Arab Emirates : Investment Protection Agreement

On 21 September 2015, Mauritius and the United Arab Emirates signed an investment protection agreement ("IPA").

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New Zealand

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Legislative developments

The Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill ("November Tax Bill")

Residential land withholding tax

A Tax Bill was introduced to Parliament on 16 November 2015 that proposes to implement a withholding tax on the sale of New Zealand residential land by foreign sellers.

The proposal will apply to land acquired after 1 October 2015 and sold within two years of acquisition, if the transaction is completed (i.e. the transfer is "settled") on or after 1 July 2016.

The withholding tax will be the lower of 33% (or 28% for a company) of any gain or 10% of the sale price. It will primarily be collected by the seller's conveyancing agent.

This amendment follows legislation passed in 2015 to implement a two year "bright line" test to tax sales of residential property other than the main home and new tax information requirements for buyers and sellers of New Zealand land (see below). These changes apply from 1 October 2015.

GST on services by non-resident suppliers

The Tax Bill also includes a proposal to apply GST of 15% to "remote services" supplied by non-residents. Remote services include the online supply of software and digital content, as well as other services, such as insurance and gambling, where the recipient is a New Zealand consumer.

A non-resident supplier will have to charge GST if their sales to New Zealand resident consumers are NZ$60,000 or more in a year. These rules will not apply to supplies made to GST registered New Zealand businesses (i.e. business-to-business supplies will be excluded).

The proposals may require non-resident insurers to register for New Zealand GST and charge GST on general insurance services provided to New Zealand resident customers. This could see an increase in the cost of insurance for New Zealand customers who are insured by offshore insurers.

Tax court case summaries

Commissioner of Inland Revenue v Diamond (December 2015)

The case involved the tax residence of an individual and whether they had a "permanent place of abode" in New Zealand. The New Zealand Commissioner appealed a decision by the High Court that, to have a permanent place of abode means to essentially to have a home, and on the facts the individual had no home in New Zealand (while the individual owned New Zealand property, he had never lived in that property).

The Commissioner appealed that there there need only be a place in which a person can abide (following which an assessment of the surrounding factual circumstances will determine whether that place is a permanent place of abode). There is no requirement for this place to constitute the person's home, nor that he or she has actually lived there before.

The Court of Appeal rejected the Commissioner's approach confirming the view of the High

Court that the mere availability of a dwelling is not sufficient by itself to create a permanent place of abode. Instead, there must be a factual assessment to determine the nature and quality of the use a person habitually makes of a particular place of abode.

Taxation rulings and determinations

Debt capitalisation tax change confirmed

The New Zealand Government confirmed in September 2015 that it would proceed with a proposal to ensure there are no adverse tax consequences where shareholder debt is forgiven or converted to equity. (This was first signalled in February 2015.)

The new rule will apply if debt is capitalised or remitted within the same wholly-owned group or where there is a pro-rata remission or debt capitalisation. The proposal will also apply where the lender is non-resident.

The Government expects to introduce legislation in early 2016, with retrospective effect to the 2006-07 income year to safeguard taxpayers' historic positions.

Proposal to reduce tax cost to shareholders

Also in September 2015, Officials consulted on a change to make it easier for New Zealand companies to ensure their shareholders, particularly minority shareholders, are not tax disadvantaged when tax losses are offset between group companies and dividends paid.

A New Zealand company that uses tax losses of another company in the same group has fewer imputation credits because it pays less tax. This means that where the New Zealand group is not wholly owned, shareholders pay more tax as their dividends cannot be fully imputed. (In contrast, dividends paid within a wholly owned group are tax exempt, so this issue does not arise.)

The Government and Officials' concern is that this makes it more attractive to acquire 100% of a company to avoid this tax issue. The wider concern is tax being a barrier to companies listing on the New Zealand Stock Exchange and getting a more diverse shareholder base.

The proposal is to allow the loss company in the New Zealand group to also transfer imputation credits, up to the tax value of the loss offset amount, to the profit company. This will allow the profit company to fully impute its dividends to the extent any shortfall in imputation credits relates to use of loss offsets.

Tax administration simplification proposals announced

In November 2015, the Government released the first two of a series of detailed consultation documents on simplifying New Zealand's tax administration system. This is part of the "Business Transformation" of Inland Revenue.

The consultation documents cover the New Zealand tax administration framework and the future operation of the PAYE and GST collection systems.

The key framework proposals are:

- Giving Inland Revenue greater administrative flexibility to get the "right" result.
- Narrowing Inland Revenue's secrecy obligations and clarifying its information collection and disclosure powers.
- Putting positive obligations on taxpayers to confirm new pre-populated tax returns.

The PAYE proposals aim to integrate tax processes with an employer's business processes (i.e. their payroll systems). Employee information would be submitted electronically and validated when the relevant process is run (e.g. an employee is hired, leaves or is paid).

A similar business process (i.e. accounting system) based reporting approach is proposed for business's GST information.

Other developments

Land transfer tax statement

From 1 October 2015, all buyers and sellers of New Zealand land must complete a land transfer tax statement in order to transact. The statement requires disclosure of, among other things, sellers and buyers' New Zealand tax identification numbers (other than where the property being transacted was, or will be, their main home).

A consequential requirement is that all "offshore persons" (including non-resident entities and New Zealand entities controlled by non-residents) must have a fully functioning New Zealand bank account in order to apply for a New Zealand tax identification number. This is regardless of whether the actual purpose for registering for a tax identification number is to transact land. This makes offshore persons subject to New Zealand's anti-money laundering identity checks and associated costs. Offshore persons must also provide their foreign tax identification details to Inland Revenue.

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Philippines

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Taxation rulings and determinations

Bureau of Internal Revenue ("BIR") – FATCA ADVISORY

The Inter-Governmental Agreement ("IGA") on the Foreign Account Tax Compliance Act ("FATCA") between the Philippines and the United States of America was signed on 13 July 2015.

On 30 September 2015, the BIR advised Philippine financial institutions ("PFIs") that reporting under the IGA will not take place. However, PFIs must take the necessary steps to prepare for the full implementation of its terms and the submission of information on reportable accounts beginning from the second quarter of 2016.

PFIs are reminded that the first batch of reports to be submitted shall include information relating to their 2014 and 2015 reportable accounts as detailed in the IGA.

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Singapore

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Taxation rulings and determinations

GST remission

In the 2014 Budget Statement, the Deputy Prime Minister and Minister for Finance announced that the GST remission for prescribed funds managed by prescribed fund managers in Singapore will be extended to 31 March 2019.

Under the GST remission, funds that meet all the qualifying conditions will be able to recover GST incurred on expenses based on a fixed recovery rate, without having to register for GST.

The fixed recovery rate is determined annually based on the proportion of taxable supplies made by the industry. For 1 January 2016 to 31 December 2016, the fixed recovery rate will be 87%.

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Taiwan

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Legislative developments

Revocation of the Capital Gains Tax Regime

The previously introduced capital gains tax regime for individuals on capital gains derived from sale of securities was recently abolished. Starting from 1 January 2016, for individuals, capital gains from securities trading will no longer be subject to income tax. Likewise, losses from securities gain cannot be deducted from taxable income. However, for corporate investors, the alternative minimum tax regime on capital gain will remain effective. Furthermore the tax rate for securities transaction tax on the sale of Taiwan securities will remain at 0.3%.

Other developments

Double taxation with Japan

The Taiwan-Japan double taxation treaty ("DTA") was signed on 26 November 2015, and is expected to become effective on or after 1 January 2017.

Like other double taxation treaties which Taiwan has entered into, the tax resident of each country will only pay tax on the income generated by their permanent establishments in either country. Further, the DTA also provides for reduced withholding taxes on dividends, interest and royalties. The reduced rates are as follows:

- Dividend: 10%
- Interest income: 10%, or exempt for certain categories of interest
- Royalty: 10%

Unlike the income tax exemption treatment, no pre-approval from the tax authority will be required for adoption of reduced withholding rate pursuant to the double taxation treaty.

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Thailand

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Legislative developments

VAT rate

The Royal Decree issued in late September 2015 legislated the extend the reduced VAT rate of 7% for another year until 30 September 2016.

Corporate income tax rate

The cabinet approved the temporary reduction in the corporate income tax rate of 20% for Thai companies (which was previously 30%) is here to stay. It was initially reduced to 23% in 2012 and further reduced to 20% in 2013. This is now permanent with the aim of ensuring that Thailand remains competitive in the ASEAN region.

Taxation rulings and determinations

Tax audit strategy

The Thai Revenue Department ("TRD") signalled that it will increase the volume of tax audits through the formal tax audit process . Therefore, taxpayers can expect to receive a summons for a tax audit instead of an invitation letter if the TRD desires additional clarification. For the past several years, the TRD tended not to issue a tax summons to do a formal tax audit of taxpayers' accounting and tax records but would instead perform an operational review after an invitation letter wherein the taxpayer is requested to submit the documents and answer specific questions.

The penalty assessment up to 100% of the additional corporate income tax payable is normally not imposed if additional corporate income tax is settled under voluntary filing of an amended tax return through the operational review under the invitation letter. This is a key difference between an audit under a summons and a tax review under an invitation letter.

Other developments

Double Taxation Agreement between India and Thailand

On 1 December 2015, it was announced that the existing double taxation treaty ("DTA") between India and Thailand was successfully renegotiated and agreed by both contracting states. It is anticipated that the new DTA should come into force in Thailand in January 2017, although this has not been officially communicated.

The key highlights with respect to withholding tax include:

- Interest withholding tax has been reduced to 10% from 25% except where the interest is beneficially owned by the government, a political subdivision, local authority, the Reserve Bank of India, the Export Import Bank of India, the Bank of Thailand, the Export Import Bank of Thailand and any other institution as may be agreed, in which case the rate is 0%. Since the domestic withholding tax rate is 15% in case of Indian non-financial institution, this reduction is more favorable.
- Royalties withholding tax has been reduced to 10% from 15%.
- Article 13 has been updated to allow capital gains on the disposal of shares in a property rich company to be taxed in the state in which the property is located. Currently, under Thai

domestic law, the capital gains tax implications arise where the capital gain is remitted from Thailand.

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Vietnam

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Legislative developments

State Bank of Vietnam to tighten management of foreign currency transactions

On 2 October 2015, the State Bank of Vietnam ("SBV") issued Circular No. 15/2015/TT-NHNN on foreign currency transactions at credit institutions ("Circular 15") which took effect from 5 October 2015. Circular 15 is to limit speculation in and hoarding U.S. dollars and other foreign currencies.

Circular 15 specifies that banks can only sell foreign currencies to businesses that need to use those currencies to make payments within two days; these transactions are considered "spot sales". Forward currency sales, also known as currency futures contracts, can be sold for a maximum term of 365 days. During the transaction term, the exchange rate between Vietnam's dong and the U.S. dollar will be set by agreement between the parties, but cannot be more than the spot exchange rate on the day the transaction is established. Companies will not be able to purchase foreign currency and store it for future use.

Credit institutions may conduct various forms of currency transactions with each other. But for transactions for individual clients, the credit institutions must examine and store documents establishing the purpose of the transaction. The institutions are not permitted to charge fees for foreign currency transactions.

Circular enlarging the scope of permission to use foreign currencies in Vietnam

On 19 October 2015, the SBV issued Circular No. 16/2015/TT-NHNN ("Circular 16") amending some articles of Circular No. 32/2013/TT-NHNN ("Circular 32") dated 26 December 2013 in relation to guidelines of restrictions on use of foreign currencies in Vietnam.

This Circular is to amend Clause 17, Article 4 of Circular 32 and add Article 4a to Circular 32 on required documents with the aim to broaden the use of foreign currencies in Vietnam for cases that involve national defense and security, petroleum, and other necessary cases.

However, these cases must be granted the permission in writing by the State bank of Vietnam before using foreign currencies in Vietnam.

Circular 16 is effective from 3 December 2015.

New regulation on providing foreign currency loans from 2016

On 8 December 2015, the SBV has issued Circular No. 24/2015/TT-NHNN ("Circular 24") on provision of foreign currency loans by credit institutions and foreign banks' branches to resident clients.

Under Article 3 of Circular 24, entities eligible for borrowing foreign currency loans from commercial banks in 2016 are similar to those specified before 2016.

Accordingly, the following cases of borrowing foreign loans do not need to be licensed by the State Bank of Vietnam (Clause 1 Article 3):

- Loans in order to pay overseas for imported goods and services;
- Short-term loans in order to import petrol and oil according to the assigned norm;
- Short - term loans in order to carry out production plans, goods trading by exporting them

through Vietnam's border gates;

- Loans in order to perform overseas investment provided for national important projects, works.

However, the provision of foreign currency loans for carrying out production plans, goods trading by exporting them through Vietnam's border gates shall be only carried out by the end of 31 March 2016.

Apart from the above-mentioned cases, production and business projects of sectors prioritized or encouraged development are also entitled to borrow foreign currency loans provided that such projects are approved by the State Bank of Vietnam (Clause 2 Article 3).

This Circular is effective from 1 January 2016 and replaces Circular No. 43/2014/TT-NHNN dated 25 December 2014.

New regulations on issuance of establishment and operation licenses to finance and finance leasing companies

The SBV issued Circular No. 30/2015/TT-NHNN dated 25 December 2015 ("Circular 30") providing guidance on issuance of licenses, organization and operation of non-bank credit institutions.

Circular 30 regulates the issuance of establishment and operation licenses to non-bank credit institutions which include finance companies and finance leasing companies. Accordingly, with regard to finance companies and finance leasing companies, Vietnamese enterprises are established in the form of joint-stock or limited liability companies. Foreign-capitalized enterprises are only established in the form of limited liability companies (Article 4).

With regard to founding shareholders and founding members, Vietnamese enterprises must have at least VND 500 billion in equity capital (founding shareholders) or at least VND 1,000 billion (founding members). Foreign enterprises must have at least USD 10 billion in total assets (Articles 11 and 12).

Circular 30 will take effective from 8 February 2016.

Statistical reporting regime applicable to credit institutions and foreign bank branches

The State Bank of Vietnam (SBV) has conducted a modernization of the information management system project for financial sector. It aims to formulate a centralized and unified management data base by using modern technology and international standards of statistical reports. It hopes to meet the requirements of managing and supervising the operations of credit institutions and banking development in the modern time.

In order to obtain the above mentioned objectives, the SBV Governor issued Circular No. 35/2015/TT-NHNN dated 31 December 2015 on statistical reporting regime applicable to credit institutions and foreign bank branches. Circular 35 replaces Circular No.31/2013/TT-NHNN and is effective from 1 January 2017.

New Circular on providing services of foreign currency receiving and payment

The Governor of the State Bank of Vietnam issued Circular No. 34/2015/TT-NHNN on 31 December 2015 on providing services of foreign currency receiving and payment.

The Circular covers operations of direct receiving and payment of foreign currencies, agent for receiving and paying foreign currencies of credit institutions, foreign bank branches and economic institutions.

Circular will be effective from 1 March 2016.

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