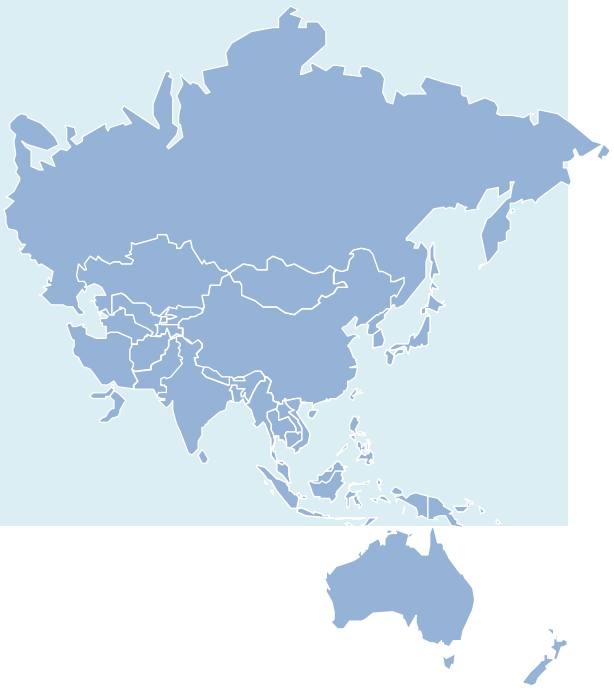
# General tax update for financial institutions in Asia Pacific

Regional co-ordinator and editor – John Timpany, KPMG China

Issue 60. October 2017

The MLI was signed in June by many of the ASPAC jurisdictions. The MLI will complicate the application of tax treaties for many taxpayers, so progress needs to be followed closely. The implementation of other BEPS actions is also well underway across the region. Looking forward, we can expect the minimum standards will be only the beginning of the BEPS-related changes.



# Highlights


- Implementation of the new Major Bank Levy
- Announcement of proposed anti-hybrid rules for regulatory capital
- Release of Practical Compliance Guideline 2017/8 by the Australian Taxation Office regarding the use of internal derivatives by multinational banks


- MOF and SAT issued notice concerning VAT policies on asset management products
- MOF and SAT jointly issued notice on tax incentives for small loan companies
- MOF and SAT issued notice on the pilot taxation policies of venture capital enterprises and individual 'angel' investors
- Promulgation of the administrative measures on due diligence checks on tax-related information of non-residents' financial accounts released


- The Hong Kong government plans to expand the list of reportable jurisdictions for 2017 under the Common Reporting Standard
- Hong Kong governments passed the aircraft leasing tax incentive
- Profits Tax exemption for privately offered open-ended fund companies


- Central Board of Direct Taxes issued draft notification for exemption from long-term capital gain tax
- India signs the Multilateral Convention


- Financial information access for tax purposes
- Amendment to the use of tax book value on the transfer of assets for business mergers, consolidation, expansion or acquisition


- Inter-government agreement for country-by-country reporting exchange between Korea and the United States
- Tax case ruling the determination of VAT payer when managing or disposing trust assets


- Income Tax (Exemption) (No. 2) Order 2017 issued
- Tax Audit Framework 2017 (Amendment 1/2017) released
- Practice Notes for withholding tax


- VAT reverse charge became applicable on non-VAT registered persons


- Budget 2017
- New Zealand (NZ) Government signs Multilateral Instrument to effect Base Erosion and Profit Shifting (BEPS) measures in NZ's tax treaties.
- NZ-Hong Kong Tax Treaty updated to allow for automatic exchange of information.


- Circularization of the additional Personal Equity Retirement Account (PERA) Unit Investment Trust Funds (UITFs)/ investment products approved
- Submission by Microfinance NGOs of Certificate of No Derogatory Information to the Revenue District Office
- Clarification on the imposition of the capital gains tax on sale, exchange, or other disposition of real properties

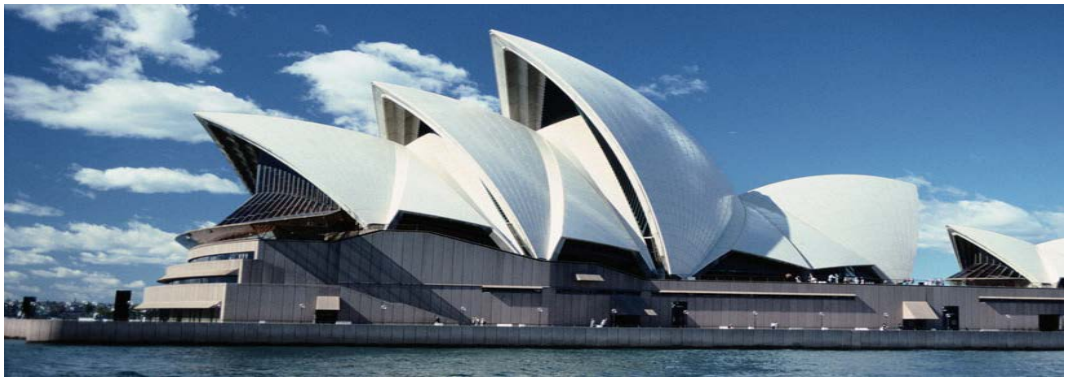

- Revisions to the Financial Sector Incentive Schemes
- Asian Bond Grant Scheme


- Securities Transaction Tax Amendment


- Amended penalties provision of the Revenue Code
- Mandatory filing of audited accounts for an E-filing corporate taxpayer
- Revised draft transfer pricing law released


- New regulations on factoring of credit institutions and foreign bank branches

# Australia



CHINA
HONG KONG
INDIA
INDONESIA
KOREA
MALAYSIA
MAURITIUS
NEW ZEALAND
PHILIPPINES
SINGAPORE
TAIWAN
THAILAND
VIETNAM

Back to top ▲

## Legislative developments

### The Federal Government's Major Bank Levy

One of the most significant announcements in the Federal Government's Budget ("**the Budget**") (released on 9 May 2017) for the 2017-2018 fiscal year was the "major bank levy" ("**MBL**"), which has been designed to apply to Australia's five largest domestic banks.

The aim of the MBL is to create "a more accountable and competitive banking system", and it is estimated to raise at least A$1.6 billion of revenue per year for the Federal Government. Legislation to implement the MBL came into force on 23 June 2017.

The levy applies from 1 July 2017 to Authorised Deposit-Taking Institutions ("**ADIs**") with total liabilities of more than A$100 billion. The tax deductible levy is imposed on a quarterly basis at a rate of 0.015% of an ADI's "applicable liabilities amount", which is based on the total liabilities less certain adjustments (such as the exclusion of exchange settlement account balances and netting of derivative positions).

Anti-avoidance rules have been introduced to prevent an ADI from entering into schemes which (objectively speaking) have the sole or dominant purpose of reducing or deferring the MBL.

### The South Australian State Government's proposed Major Bank Levy

South Australia has followed the Federal Government's lead on this and is proposing to impose a "Major Bank Levy". The South Australian levy will, if enacted, apply to those banks required to pay the Federal levy and will be payable on a bank's South Australian share of the applicable liabilities amount. This will be calculated by dividing the value of South Australia's gross state product ("**GSP**") by the value of Australia's gross domestic product ("**GDP**"). The levy will apply at a rate of 0.015% per quarter.

### Application of anti-hybrid rules to regulatory capital

In December 2016, the Board of Taxation had delivered its report to the Federal Treasurer regarding "Application of Hybrid Mismatch Rules to Regulatory Capital", which looks at whether Australia should apply the OECD's Base Erosion and Profit Shifting Action Plan 2 to hybrid regulatory capital.

Subsequently, on 9 May 2017, the Federal Government announced (as part of the Budget) that it will introduce legislation to eliminate hybrid tax mismatches that occur in cross-border transactions relating to regulatory capital of Australian financial institutions known as Additional Tier 1 ("**AT1**") capital (e.g. perpetual notes and certain convertible notes). This objective will be achieved by:-

- preventing capital returns on AT1 capital from carrying franking credits where such returns are tax deductible in a foreign jurisdiction; and
- requiring the franking account of the issuer to be debited as if the returns were to be franked where the AT1 capital is not wholly used in the offshore operations of the issuer.

Under current law, the tax mismatch arises because AT1 capital is usually treated as equity for Australian tax purposes (and therefore, returns on these instruments are frankable, such that

Australian investors obtain tax relief in the form of franking credits), yet they are treated as debt for tax purposes in many overseas jurisdictions such as New Zealand and the UK (and returns on the instruments are therefore deductible in those jurisdictions to the issuer).

The new measures are proposed to apply to returns on AT1 instruments paid from the later of 1 January 2018 or six months after Royal Assent of the amending legislation. However, as transitional relief, where an AT1 instrument has been issued before 10 May 2017, the new measures will not apply to returns paid before the instrument's next 'call date' occurring after 9 May 2017.

Legislation is currently being developed for the implementation of this measure as part of the Government's broader anti-hybrid mismatch package.

Whilst the Australian Government adopted the Board's first recommendation to apply the hybrid mismatch rules to deductible/ frankable regulatory capital, it did not announce a response to the Board's second recommendation to treat all AT1 instruments as debt for tax purposes (to align Australia's tax treatment of AT1 with many other jurisdictions around the world).

**Extending tax relief for merging superannuation funds**

The Federal Government announced on 9 May 2017 (as part of the Budget) that it will extend the current tax relief for merging superannuation funds until 1 July 2020 (it was due to expire on 1 July 2017).

The tax relief enables superannuation funds to transfer their capital and revenue tax losses to a new merged fund, and to obtain roll-over for the transfer of revenue and capital assets. Pooled superannuation trusts and life insurance companies supporting the closing fund can also access relief.

The tax relief is intended to remove tax as a barrier to superannuation fund mergers and to facilitate industry consolidation. In turn, this is expected to lead to economies of scale and reduced fund administration costs.

### Taxation rulings and determinations

**Practical Compliance Guideline 2017/8 regarding the use of internal derivatives by multinational banks**

On 26 May 2017, the Australian Tax Office ("**ATO**") released Practical Compliance Guideline 2017/8 ("**PCG 2017/8**"). PCG 2017/8 outlines the circumstances in which internal derivatives, that represent arm's length dealings, can be used as a proxy for attributing income, expenses or profit to a permanent establishment of a multinational bank under Australia's transfer pricing regime.

The content of the PCG is largely similar to the 2014 guidelines which had been issued by the ATO to Australia's domestic banks, but it has been modified to also apply to foreign banks that have elected out of the foreign bank branch inter-entity rules in Part IIIB of the Income Tax Assessment Act 1936.

For foreign banks, the extension of the principles in the previous guidance to cover their intra-branch derivatives is welcome to ensure consistency in treatment between inbound and outbound banks. This provides greater clarity for the increasing number of foreign banks who have opted out of Part IIIB. The ATO has indicated that similar principles could be used for other related party derivative transactions.

The approach in PCG 2017/8 is to apply a separate enterprise principle and also to apply Australia's transfer pricing rules, having regard to all dealings within the bank and the outcomes of those dealings. It sets out the indicators of high, medium and low complexity transactions:

- Highly structured transactions entered into outside the ordinary course of a bank's trading business, and internal derivatives that cannot be justified based on the functional profile of the bank, are considered out of scope.

- Low complexity transactions require a direct or back-to-back relationship to an unrelated third party transaction. There are likely to be many intra-branch transactions falling outside this category.
- Medium complexity transactions still require some linkage to third party transactions, albeit less direct.
- Other scenarios are considered high complexity scenarios and may require commercial justification and a higher level of analysis or review. For these transactions in particular, it will be important to have strong transfer pricing documentation to support positions taken.

It is important to note that the level of complexity does not necessarily correspond with the level of tax risk associated with an internal derivative transaction. Complexity is an indication of the level of analysis and documentation the ATO expects a bank to have undertaken in order to support the attribution outcome. Nevertheless, multinational banks should expect that higher complexity transactions will be subject to a greater level of scrutiny by the ATO in any review of the bank's activities.

**Practical Compliance Guideline 2017/10 regarding the application of Section 215-10**

On 5 June 2017, the ATO released Practical Compliance Guideline 2017/10 ("**PCG 2017/10**"), in which the ATO has adopted a more practical and commercial approach to applying section 215-10 of the Income Tax Assessment Act 1997 than its previous interpretation.

By way of background, section 215-10 allows Australian banks to issue unfrankable non-share distributions on non-share equity interests (typically perpetual notes and certain convertible notes that constitute "AT1 capital") where the followings are satisfied.

- they must be issued "at or through a permanent establishment in a listed country" (the "issuance test"); and
- the funds from the issuance must be raised and applied solely for permitted purposes, e.g. not expatriated to the Australian head office (the "permitted purpose test").

This provision effectively provides a concession for Australia's domestic banks, removing the competitive disadvantage that they would otherwise suffer if the returns on such instruments (paid in all likelihood to non-residents) were required to be franked.

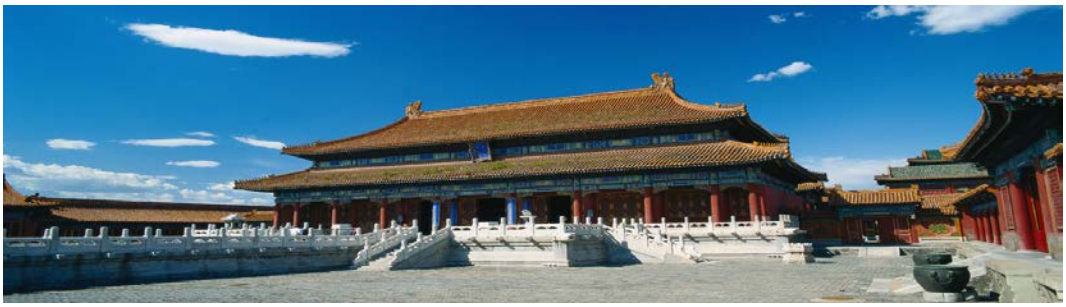
The issuance of PCG 2017/10 follows a long period of lobbying and consultation by Australia's domestic banks, following the ATO changing its previous interpretations of this section in 2008, when it began to adopt a more restrictive interpretation of the section.

The banks opposed the ATO's interpretation on technical grounds and also on the basis that it rendered section 215-10 unworkable (as evidenced by the fact that the domestic banks effectively stopped raising AT1 capital through their foreign branches after the ATO released TD 2012/19). In response to industry concerns, the ATO withdrew TD 2012/19 on 8 October 2014.

In PCG 2017/10, the ATO applies a risk-based approach to activities considered low, medium and high risk for the issuance test, as well as the permitted purpose test. The new approach provides additional flexibility for banks seeking to use this concession, but remains challenging to apply in practice.

Back to top ▲

# China



AUSTRALIA
HONG KONG
INDIA
INDONESIA
KOREA
MALAYSIA
MAURITIUS
NEW ZEALAND
PHILIPPINES
SINGAPORE
TAIWAN
THAILAND
VIETNAM

Back to top ▲

## Legislative developments

**Ministry of Finance ("MOF") and State Administration of Taxation ("SAT") jointly issued notice concerning VAT policies on asset management products**

On 30 June 2017, MOF and SAT jointly issued the 'Notice of Issues on VAT on Asset Management Products' (Caishui [2017] No. 56) to further clarify the Value Added Tax ("**VAT**") rules for asset management products. The scope of the notice includes comments on the range of asset management products which are affected, methods for collection, filing and calculation of VAT. The circular also postpones the commencement date to 1 January 2018.

**MOF and SAT jointly issued notice on tax incentives for small loan companies**

From 1 January 2017 to 31 December 2019, a VAT exemption is provided for interest income arising from small loans made to small farmer households, and only 90% of the gross interest income is taxable for CIT purposes (Caishui [2017] No. 48).

**MOF and SAT issued notice on the pilot taxation policies of venture capital enterprises and individual angel investors**

MOF and SAT issued notices on the pilot tax policies of venture capital enterprises and individual angel investors (Caishui [2017] No. 38). SAT released this Circular 38 to clarify various pre-requisite requirements including "the investment is held for at least two years", "costs and expenses spent on R&D activities", "total assets and annual revenue thresholds", "minimum number of employees" and so on. Besides, the detailed administration requirements and implementation pilot cities are also included in the notice.

## Other developments

**SAT, MOF, The People's Bank of China ("PBOC"), China Banking Regulatory Commission ("CBRC"), China Securities Regulatory Commission ("CSRC") and China Insurance Regulatory Commission ("CIRC") jointly announced on promulgation of the administrative measures on due diligence checks on tax-related information of non-residents' financial accounts**

SAT along with MOF, PBOC, CBRC, CIRC and CSRC jointly released the "Measures on the Due Diligence of Non-resident Financial Account Information in Tax Matters" ("**Announcement 14**"). It stipulates the principles and procedures for financial institutions established in China to follow, and to identify any reportable non-residents of China that hold financial accounts with the institutions and to collect the required financial account information for the Chinese authorities.

Announcement 14 took effect from 1 July 2017 with the first online registration deadline being 31 December 2017, followed by an annual reporting deadline of 31 May of the following year.

Back to top ▲

# Hong Kong

AUSTRALIA
CHINA
INDIA
INDONESIA
KOREA
MALAYSIA
MAURITIUS
NEW ZEALAND
PHILIPPINES
SINGAPORE
TAIWAN
THAILAND
VIETNAM

Back to top ▲

## Legislative developments

**Common Reporting Standard ("CRS"): Bill passed for the expansion of the list of reportable jurisdictions**

The Legislative Council passed the bill on 7 June 2017 for the expansion of the list of reportable jurisdictions under the CRS from two to 75 to meet international expectations. The bill came into effect on 1 July 2017.

Initially, information was to be provided only to Japan and the UK for the first CRS reporting period (due in May 2018). The newly added CRS reportable jurisdictions include all EU member states, all of Hong Kong's tax treaty partners which have committed to CRS, and other jurisdictions which have expressed an interest to the OECD in exchanging CRS information with Hong Kong (with Turkey added to the originally-proposed list).

Financial institutions in Hong Kong are required to start collating information about relevant account holders from these jurisdictions as from 1 July 2017.

For these new reportable jurisdictions (except Korea), account information will need to be provided to the Inland Revenue Department ("**IRD**") as at 1 July 2017 (compared with 1 January 2017 for Japan and the UK and 1 January 2018 for Korea). The first CRS reporting to the IRD will be due in May 2018. The IRD will provide this information to the relevant jurisdiction only after it has signed a Competent Authority Agreement with that jurisdiction or there is an extension of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

For more information, please find the link below:

https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/06/tax-alert-12-crs-bill-expansion-jurisdictions.pdf

**Hong Kong governments passed the aircraft leasing tax incentive**

The concessionary tax regime for certain aircraft leasing activities was enacted on 28 June 2017. The new rules will apply from the year of assessment 2017/18.

The main benefits of the proposed regime are two-fold:-

- Aircraft leasing income earned by "qualifying aircraft lessors" will be taxed at no more than 1.65% of gross rental receipts. (achieved by applying a tax rate of 8.25% - i.e. one half of the normal Hong Kong Profits Tax rate - to 20% of the gross rental receipts less deductible expenses such as funding costs, but excluding tax depreciation.)
- The same 8.25% tax rate will apply to "qualifying aircraft leasing management activities". This is widely defined to include, in addition to the standard lease management activities of procuring and leasing aircraft, a range of financing activities such as providing loans to associated companies to acquire the aircraft, providing loans to airlines to acquire the aircraft from qualifying lessors and providing residual value guarantees.

For more information, please find the link below:

https://home.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/07/tax-alert-13-hk-aircraft-leasing-tax-incentive.pdf

**Profits Tax exemption for privately offered open-ended fund companies**

The Financial Secretary announced in the 2017-18 Budget a proposal to extend the Profits Tax exemption to Hong Kong privately offered open-ended fund companies ("**OFCs**"). On 23 June 2017, the Hong Kong Government published a Bill to implement this exemption.

Under the Bill, a privately offered OFC will be exempt from Profits Tax in respect of profits from qualifying transactions where the following conditions are satisfied:

- the OFC is a Hong Kong resident (determined by the OFC's place of central management and control);
- the OFC is not closely held;
- the OFC carries out transactions in permissible asset classes (there is a de minimis exception - the OFC may invest in non-permissible asset classes up to a maximum of 10% of the total gross asset value of the fund); and
- the transactions are carried out through or arranged by a "specified person" (a company licensed by the SFC or an authorised financial institution).

The Bill proposes strict qualifying conditions pertaining to investors in the OFC which differ depending on whether or not the OFC has a "qualifying investor". A "qualifying investor" means any of the following (subject to meeting certain requirements):

- an institutional investor;
- a collective investment scheme under the Securities and Futures Ordinance;
- a registered scheme (or its constituent fund) under the Mandatory Provident Fund Schemes Ordinance;
- an entity established to provide retirement, disability or death benefits to beneficiaries which are current or former employees;
- a government entity; or
- a fund established by a governmental entity, international organisation, central bank or the Hong Kong Monetary Authority to provide disability or death benefits.

If the OFC has at least one qualifying investor, the OFC will not be closely held where:

- the OFC has at least 1 qualifying investor, and at least 5 investors in total;
- the qualifying investor has a participation interest of at least HK$200 million, and at least 4 other investors each have a participation of at least HK$20 million;
- the participation interest of each investor (not being a qualifying investor) should not exceed 50% of the OFC's issued share capital; and
- the participation interest of the OFC's originators and associates do not exceed 30% of the OFC's issued capital.

If the OFC does not have a qualifying investor, the OFC will be considered not closely held where:

- the OFC has at least 10 investors;
- at least 10 of the investors each have a participation of at least HK$20 million;
- the participation interest of each investor (not being a qualifying investor) does not exceed 50% of the OFC's issued share capital; and
- the participation interest of the OFC's originators and associates do not exceed 30% of the OFC's issued capital.

The permissible investment classes include securities, futures contracts, foreign exchange contracts, deposits made with a bank, foreign currencies, certificates of deposits, cash and OTC

derivatives products. Trading receipts from "incidental" transactions are limited to 5% of the total trading receipts of the OFC.

The Bill also contains the following anti-avoidance measures to prevent potential abuse.

- The OFC must continue to meet the not closely held test for 24 months after the first 24 month period. If not, the OFC will be taxable retrospectively from its start-up date.
- Where the OFC invests in non-permissible asset classes and the 10% de minimis threshold is not exceeded, only the profits derived from transactions in non-permissible asset classes will be subject to tax. If the 10% de minimis threshold is exceeded, the exemption will be lost entirely and all of the OFC's profits could be subject to tax.
- A resident person who, alone or jointly with his associates, holds a direct or indirect beneficial interest of 30% or more in a tax-exempt OFC, will be taxable on his or her share of the OFC's profits.
- The managers and investment advisors will be taxed on dividends they receive from an OFC that is not tax exempt where the income is considered to be consideration or remuneration for their services in Hong Kong.

The Bill also includes a provision that deems dividends from a non-exempt OFC to be taxable to the extent they are regarded as consideration or remuneration for services rendered in Hong Kong. The proposed treatment in the Bill does not take into account the circumstances giving rise to a carry distribution in connection with an investment in the OFC. Whether or not a carried interest is a genuine investment return or remuneration for services rendered is a fact specific question to be considered on a case-by-case basis.

For more information, please find the link below:

https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/07/tax-alert-14-hk-profits-tax-exemption.pdf

Back to top ▲

# India

AUSTRALIA
CHINA
HONG KONG
INDONESIA
KOREA
MALAYSIA
MAURITIUS
NEW ZEALAND
PHILIPPINES
SINGPAORE
TAIWAN
THAILAND
VIETNAM

Back to top ▲

## Legislative developments

**Central Board of Direct Taxes ("CBDT") issued press release and draft notification for exemption of acquisitions of equity shares from long-term capital gain tax**

*Background*

Section 10(38) of the Income Tax Act, 1961 ("**the Act**"), prior to its amendment by the Finance Act, 2017, provided that the income arising from a transfer of long-term capital asset, being equity shares in a company, shall be exempt from tax if such transfer is undertaken after 1 October 2004 and chargeable to Securities Transaction Tax ("**STT**").

In order to curb the practice of declaring unaccounted income as exempt long term capital gain by entering into sham transactions, the Finance Act, 2017 was amended. Section 10(38) of the Act was amended to provide an exemption under this section for income arising on transfer of equity shares acquired on or after 1 October 2004. This shall be available only if the acquisition is chargeable to STT.

To protect the exemption for cases where STT cannot be charged (i.e. acquisition of shares in IPOs, FPOs, bonus or rights issue by a listed company, acquisition by non-resident in accordance with Foreign Direct Investment ("**FDI**") policy of the government and etc.), the central government will notify the acquisitions for which the condition of chargeability to STT does not apply.

*CBDT Draft Notification*

As per CBDT's draft notification, for the purposes of Section 10(38) of the Act, the government will notify all the transactions on acquisition of equity shares entered into on or after 1 October 2004, which are not chargeable to STT, other than the following transactions:

- Where the acquisition of listed equity shares in a company, (i) equity shares of which are not frequently traded in a recognised stock exchange of India, (ii) the acquisition is made by means of a preferential issue other than those preferential issues to which the provisions of Chapter VII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirement) ("**SEBI (ICDR)**") Regulations, 2009 does not apply.
- Where the transaction for the purchase of a listed equity share in a company is not entered through a recognised stock exchange.
- Acquisition of equity shares in a company during the period beginning from the date in which the company is delisted from a recognised stock exchange and ending on the date in which the company is re-listed on a recognised stock exchange in accordance with the related regulations.

**CBDT issues press release and draft notification for exemption of acquisitions of equity shares from long-term capital gain tax.**

*Background*

The CBDT has notified final rules for exemption of acquisitions of equity shares from long term capital gain tax under Section 10(38) of the Act. The draft notification (as discussed above) proposed a negative list. It stated that all transactions will be eligible for benefit under Section 10(38) of the Act except for the specified transactions. The final notification has provided relief to

certain additional transactions. The key difference between the draft notification and final notification are as follows:

- An exemption from STT is not available where the acquisition of listed equity shares (in a company where the shares are not frequently traded in a recognised stock exchange of India) is made through a preferential issue. The draft notification provided exemption to preferential issues to which the provisions of chapter VII of the SEBI (ICDR) Regulations, 2009 does not apply. The final notification has extended this relief to acquisition of listed equity shares in a company:
  - Which has been approved by the Supreme Court, High Court, National Company Low Tribunal ("NCLT"), SEBI or Reserve Bank of India ("**RBI**");
  - By any non-resident in accordance with FDI guidelines issued by the government of India; and
  - By an investment fund or a Venture Capital Fund ("**VCF**") referred to in Section 10(23FB) of the Act or a qualified institutional buyer ("**QIB**").
- The draft notification provided that exemption from STT would not be available where a transaction for the acquisition of existing listed equity shares in a company is not entered through a recognised stock exchange of India. The final notification provided exception to the following transactions:
  - Acquisition through an issue of shares by a company other than issues referred above.
  - Acquisition by scheduled banks, reconstruction or securitisation companies or public financial institutions during their ordinary course of business.
  - Acquisition which has been approved by the Supreme Court, High Courts, NCLT, SEBI or RBI.
  - Acquisition under Employee Stock Option Schemes ("**ESOPs**") or Employee Stock Purchase Scheme ("**ESPS**") framed under the SEBI (ESOP and ESPS) Guidelines,1999
  - Acquisition by any non-resident in accordance with FDI guidelines of the government of India.
  - Where acquisition of shares of company is made under SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011.
  - Acquisition from the government.
  - Acquisition by an investment fund or a VCF or a QIB.
  - Acquisition by mode of specified transfer which are exempt under Section 47) and transfer by way of slump sale under Section 50B of the Act, if the previous owner of such shares has not acquired them by any specified mode.
- The final notification has amended the definition of the term 'frequently traded shares'. Further, certain new terms like preferential issue, QIB, public financial institution and scheduled bank, reconstruction company, securitisation company, etc. have also been defined.

The final notification shall come into effect from 1 April 2018 and will accordingly apply from assessment year 2018-19 onwards.

**India signs the Multilateral Convention**

India, amongst 67 countries, has signed the Multilateral Convention (**the Convention/ MLI**) in Paris on 7 June 2017 to implement tax treaty related measures to prevent Base Erosion and Profits Shifting ("**BEPS**"). More countries are expected to sign the Convention.

The MLI was developed by a group of over 100 countries and jurisdictions. Various developing countries have also shown great interest in signing the MLI and have started their technical preparations to sign.

The Convention enables all signatories, inter alia, to meet treaty related minimum standards that were agreed as part of the Final BEPS package. The Convention will operate to modify tax treaties between two or more parties to the Convention. It will not function in the same way as an amending protocol to a single existing treaty, which would directly amend the text of the Covered Tax Agreement. Instead, it will be applied alongside existing tax treaties, modifying their application in order to implement the BEPS measures.

The provisional MLI position of each signatory indicates the tax treaties it intends to cover, the options it has chosen and the reservations it has made. Signatories can amend their MLI positions until ratification. Even after ratification, parties can choose to opt in with respect to optional provisions or to withdraw reservations. For example, while 25 Signatories have chosen to apply the MLI arbitration provisions, additional signatories can choose to apply those provisions later.

For detailed analysis, please refer to our Flash News dated 9 June 2017 and dated 20 June 2017.

http://www.in.kpmg.com/TaxFlashNews-INT/KPMG-Flash-News-India-signs-the-Multilateral-Convention-1.pdf

http://www.in.kpmg.com/TaxFlashNews-INT/KPMG-Flash-News-Multilateral-Convention-impact-on-India-vis-a-vis-other-treaty-partners-1.pdf

Back to top ▲

# Indonesia

AUSTRALIA
CHINA
HONG KONG
INDIA
KOREA
MALAYSIA
MAURITIUS
NEW ZEALAND
PHILIPPINES
SINGAPORE
TAIWAN
THAILAND
VIETNAM

Back to top ▲

## Legislative developments

### Financial information access for tax purposes

The Indonesian Government has recently issued Government Regulation In Lieu of Law No. 1/2017 to allow information access by the Directorate General of Taxation ("**DGT**") from the financial institutions as well as to fulfil Indonesia's commitment to the Automatic Exchange of Financial Account Information ("**AEOI**"). This requires Indonesia to have in place a legal basis to provide financial information access for tax purposes by 30 June 2017.

Based on the regulation, the DGT now has direct access to financial information and is able to obtain such information from financial institutions in banking, capital market, insurance, other financial service sectors and/ or other entities which are categorised as financial institutions based on international tax agreements. In other words, the regulation eliminates financial institutions' secrecy obligation in the event the DGT requests for financial information for the purpose of tax audits, collection and tax crime investigation of another party.

From 1 July 2017 onwards, financial institutions must perform an identification process to verify the tax domicile of the account holder and to verify that the account holder, the financial account, and the controlling person are reportable under the international tax agreement standard. Such identification procedure must be documented and may be required to be translated into Bahasa if requested by the DGT. Financial institutions must not perform new account opening (for new account holders) or new transactions for pre-existing account holders who refuses to comply with the identification process.

The management and employees of financial institutions who (i) fail to submit the relevant reports, (ii) do not properly conduct the identification procedures; and (iii) fail to provide information/ evidence requested by DGT could be subject to criminal sanction of imprisonment for a maximum period of one year or be subject to a maximum fine of IDR1 billion. In addition to this, the financial institution itself will also be subject to a criminal fine up to a maximum of IDR1 billion. Any person who provides false information or withhold information required under the reporting obligation will also be subject to criminal sanction of one year criminal sanction or a fine up to a maximum of IDR1 billion.

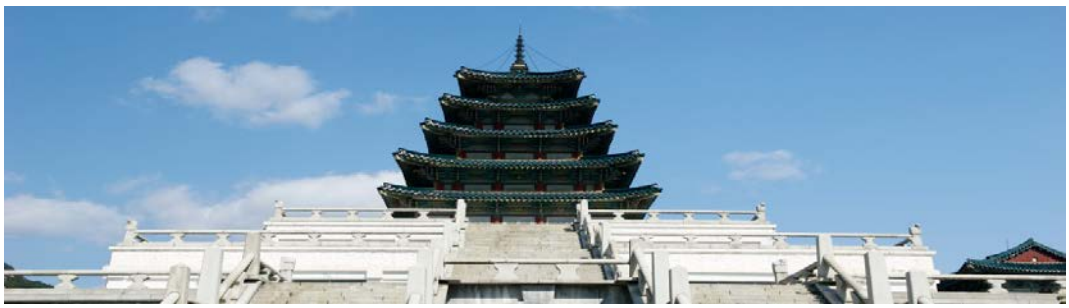
### Amendment to the use of tax book value on the transfer of assets for business mergers, consolidation, expansion or acquisition

The Minister of Finance issued regulation No. 52/PMK.010/2017 to include 'business acquisition' as one of the qualifying conditions for the use of tax book value on the transfer of assets. The previous regulation only allows the use of tax book value on the transfer of assets for business mergers, consolidation, expansion or acquisition.

The 'business acquisition' mentioned above is specifically by way of transferring all assets and liabilities of a permanent establishment ("**PE**") of a bank to the domestic taxpayer whose capital is divided in the form of shares. The PE of the bank must subsequently be dissolved within two years after the effective date of business acquisition by obtaining a Financial Services Authority decree on the business license revocation of the PE.

Back to top ▲

# Korea



AUSTRALIA
CHINA
HONG KONG
INDIA
INDONESIA
MALAYSIA
MAURITIUS
NEW ZEALAND
PHILIPPINES
SINGPAORE
TAIWAN
THAILAND
VIETNAM

Back to top ▲

## Legislative developments

**Inter-government agreement for country-by-country reporting exchange between Korea and the United States**

The Ministry of Strategy and Finance signed the "Inter-government Agreement for the Country-by-Country Reporting Exchange between Korea and the United States" in the Netherlands on 22 June 2017, which became effective from 22 June 2017.

Korea has already signed a multilateral agreement to exchange country-by-country reports between OECD countries in June 2016, but the United States did not participate in the multilateral agreement, so Korea signed a bilateral agreements to exchange country-by-country reports with the United States.

Through this agreement, Korea will exchange country-by-country reports with US every year starting from 2018.

## Tax court case summaries

If a trustee supplies goods while managing or disposing of trust assets transferred from a trustor, the trustee is liable for VAT.

The Supreme Court ruled on May 18, 2017 that if a trustee supplies goods while managing or disposing of trust assets transferred from a trustor, the person liable for VAT payment is the trustee who transferred the right to consume and use the goods to the counterparty.

This rule is a change from the precedent that the person liable of VAT payment under the supply of trust assets shall be the trustor or beneficiary of the trust contract, to which the profits and expenses from the disposition are ultimately attributable.

The Supreme Court states in its ruling that it should be based on transaction of supply of goods or services in determining the taxpayer for VAT, not based on who the profit or expense from the supply of goods or services are attributable to. The ruling thus states that a trustee should be VAT taxpayer as it, having the right and responsibility of trust assets, transfers the right to use or consume the goods to the counterparty by the transaction of supply of goods.

Back to top ▲

# Malaysia

AUSTRALIA
CHINA
HONG KONG
INDIA
INDONESIA
KOREA
MAURITIUS
NEW ZEALAND
PHILIPPINES
SINGAPORE
TAIWAN
THAILAND
VIETNAM

Back to top ▲

## Legislative developments

**Income Tax (Exemption) (No. 2) Order 2017 ("Order")**

The Order, effecting the 2017 Budget proposal to reduce the corporate income tax rate for Year of Assessment ("**YA**") 2017 and YA 2018 based on the increase in chargeable income has been gazetted. Based on the Order, a tax exemption equivalent to the reduction in the corporate income tax rate from 1% to 4% will be effective for YA 2017 and YA 2018 in respect of the incremental chargeable income derived from carrying on business, subject to the stipulated conditions.

## Taxation rulings and determinations

**Media Release**

In launching the operation to increase tax collection and compliance in April 2017, the Malaysian Inland Revenue Board ("**MIRB**") has indicated that it will increase the tax penalty to 100% of the tax payable on the undeclared or under-declared income of tax defaulters, with effect from 1 January 2018. The MIRB has clarified in its media release that the proposed increase in tax penalty to 100% is to deter serious tax offences.

**Tax Audit Framework 2017 (Amendment 1/2017)**

The MIRB has issued the Tax Audit Framework 2017 (Amendment 1/2017) ("**Framework**") on 19 May 2017. The Framework will take effect from 1 May 2017 and replace the previous Tax Audit Framework. The amended areas of the Framework include the YA covered, audit venue, commencement of audit, audit visit, examination of records, Monitoring Deliberate Tax Defaulters Programme and offences and penalties.

It is noted that greater access and powers are being granted to the MIRB in conducting their audits and hence tax audits could be intensified even further.

**Public Rulings**

The MIRB has issued the following Public Rulings:-

- 1/2017: Income Tax Treatment Of Goods And Services Tax Part I – Expenses
- 2/2017: Income Tax Treatment Of Goods And Services Tax Part II – Qualifying Expenditure For Purposes Of Claiming Allowances

The above Public Rulings set out the basic concepts of goods and services tax ("**GST**") and GST mechanism as well as the applicable tax treatments on the following:

- input tax on the purchase or acquisition of goods and services/ capital assets by a person if he is registered or liable to be registered under the Goods and Services Tax Act 2014 ("**GSTA**");
- output tax on the sale of goods and services which is borne by a person if he is registered or liable to be registered under the GSTA; and
- income tax adjustment on input tax in relation to capital goods adjustment.

**Practice Notes**

With effect from 17 January 2017, any income falling under paragraphs 4A(i) and 4A(ii) of the Income Tax Act, 1967 ("**ITA**") and is derived from Malaysia, are subject to 10% withholding tax ("**WHT**") under section 109B of the ITA irrespective of whether the services are performed in or outside Malaysia.

These cover the following payments to non-residents:-

- Service fees in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, a non-resident; and
- Service fees for technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme.

In implementing the above amendment, the MIRB has issued Practice Notes to provide guidance and clarification on the following matters:

- Practice Note No. 1/2017 - Issues on Effective Date

  This Practice Note provides various examples to demonstrate circumstances when WHT under Section 109B of the ITA is applicable relating to contracts signed or services performed outside Malaysia prior to 17 January 2017.

- Practice Note No. 2/2017 - Issues on Existing Double Taxation Avoidance Agreement ("**DTAA**")

The Practice Note provides clarification on the WHT implications under Section 109B of the ITA in respect of the DTAAs with the Contracting States.

Malaysia takes the stand that it has the right under Section 109B to impose WHT on payment for services to the resident of other Contracting State. However, Malaysia's right to tax is restricted under certain DTAAs namely with Singapore, Spain, Australia and Turkmenistan.

**Transfer Pricing Guidelines**

MIRB has updated the Transfer Pricing Guidelines 2012 ("**TPG 2012**") on the following chapters:

- Chapter II – The Arm's Length Principle (updated)
- Chapter VIII – Intangibles (updated)
- Chapter X – Commodity Transactions (new)
- Chapter XI – Documentation (updated)

The updated TPG 2012 essentially realigned the existing transfer pricing standards to that of Actions 8 – 10 Aligning Transfer Pricing Outcomes with Value Creation and Action 13 Transfer Pricing Documentation and Country-by-Country Reporting measures introduced by the Organisation for Economic Co-operation and Development to counter "Base Erosion and Profit Shifting" issues.

For more details, please find the link below:

http://www.hasil.gov.my

Back to top ▲

# Mauritius

AUSTRALIA
CHINA
HONG KONG
INDIA
INDONESIA
KOREA
MALAYSIA
NEW ZEALAND
PHILIPPINES
SINGAPORE
TAIWAN
THAILAND
VIETNAM

Back to top ▲

## Legislative developments

### Other taxes

In line with the international move towards Automatic Exchange of Information and in an attempt to prevent tax evasion or fraud on public revenue, the Mauritius Income Tax Act will be amended to empower Mauritius Revenue Authority ("**MRA**"). The MRA can request from banks, insurance companies and non-bank deposit taking institutions an Annual Statement of Financial Transactions in cases where a transaction made by any person exceeds MUR500,000 or if the aggregate amount of deposit in an income year exceeds MUR4 Million. Foreign exchange dealers will also be under the obligation to report a Statement of Financial to the MRA.

In addition, companies which paid dividends to individuals exceeding MUR100,000 should submit a list of such payments to the MRA.

## Tax court case summaries

### JPMorgan Sicav Investment Company (Mauritius) Limited v The Assessment Review Committee & Anor

The landmark case of JPMorgan upheld the view that the MRA is entitled to apportion and proportionally disallow expenses relating to the production of capital gains in a similar way as those expenses attributable to the production of exempt income are apportioned and proportionally disallowed.

The case concerned an investment holding company that primarily incurred custodian fees for holding investments and generating revenue in the form of both dividends received and capital gains from disposal of investments. Under Mauritian tax law, the dividends are taxable and the expenses attributable to receiving them are deductible. The capital gains, however, are non-taxable but expenses directly related to them are non-deductible.

Since the custodian fees were incurred for both the production of dividend income and capital gains, the issue arose as to whether the MRA was correct in applying a proportional approach to expenses attributable to capital gains using a similar formula to the one used for expenses attributable to exempt income despite there being no explicit provision in the law for doing so.

The appeal made by the company failed, and the Supreme Court of Mauritius ultimately upheld the view that the MRA had correctly exercised its discretion, enabling it to use this proportional approach along with its respective formula despite no explicit provision being made for the same in law.

## Taxation rulings and determinations

### Amendments to the Companies Act

The following changes will be brought to the Companies Act to:

- Allow Islamic Financial Institutions and Islamic banks to adopt accounting standards issued by the Accounting and Auditing Organisation for Islamic Financial Institution.
- The Stock Exchange of Mauritius will engage with Euroclear to transform the local debt market and set up an international capital market which would attract Governments and Corporates from Africa and other regions to issue multi-currency bonds in Mauritius.

**Automatic claims by the MRA**

As from April 2017, the MRA can make Automatic Tax Claims in the event that a company fails to file its corporate tax return within the required deadline (six months after their financial year end).

Such a claim will specify the tax payable by the company but will lapse if, within 28 days of the claim being issued, the company provides written notice of disagreement regarding the tax amount claimed and submits the relevant income tax return along with the payment of the income tax as per the submitted income tax return, along with applicable penalties.

If the company fails to take any action within 28 days of the claim, the MRA may institute further legal proceedings to enforce payment of the tax and penalties due.

**Alternative Tax Dispute Resolution Panel**

An Alternative Tax Dispute Resolution ("**ATDR**") Panel has been set-up to act as a first means of appeal for taxpayers who wish to dispute a tax assessment. ATDR Panel aims to expedite the resolution of tax disputes at a lower cost.

However, applications to the ATDR Panel will only be accepted if certain conditions are met, such as the amount of tax under dispute would need to exceed MUR10 Million. Should they be dissatisfied with the outcome of their appeal, the taxpayers could proceed with his objection under the normal procedures (such as the Assessment Review Committee and Supreme Court).

Back to top ▲

# New Zealand

AUSTRALIA
CHINA
HONG KONG
INDIA
INDONESIA
KOREA
MALAYSIA
MAURITIUS
PHILIPPINES
SINGAPORE
TAIWAN
THAILAND
VIETNAM

Back to top ▲

## Legislative developments

### New Zealand Government's 2017 Budget

On 25 May 2017, the New Zealand Government released its budget for 2017/18.

The centrepiece of the Budget is the Government's NZ$2 billion per annum "Family Incomes Package" containing:-

- Tax thresholds changes from 1 April 2018, which increase the maximum income level to which the lowest personal tax rate (10.5%) applies from NZ$14,000 to NZ$22,000 and the middle rate (17.5%) from NZ$48,000 to NZ$52,000.
- Increases to tax credits for families with children under the age of 16 and accommodation supplement payments

## Taxation rulings and determinations

### Officials consult on start-up share scheme tax rules

A May 2017 consultation document asks for feedback on proposals to allow start-up companies and their employees to defer taxation of employee share benefits until there is a "liquidity event" (such as listing of the company or its sale) to pay the tax. However, this would mean that the taxable value of the share benefit will be determined at that time.

This follows the inclusion of new employee share scheme taxing rules in a Taxation Bill introduced earlier this year (please refer to issue 59 for more detail).

## Other developments

### New Zealand signs BEPS Multilateral Instrument

On 8 June 2017, The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the "**MLI**") was signed by New Zealand's Minister of Revenue Judith Collins in Paris.

The OECD has published the full MLI positions of all signatories, including New Zealand, on its website. In summary:-

- NZ has chosen 36 of its 40 Double Taxation Agreements (**DTAs**) to be Covered Tax Agreements (**CTAs**) under the MLI, compared with NZ being chosen by 27 of its DTA-partner countries, resulting in 27 "matched" CTAs.
- NZ has chosen broad adoption of the MLI provisions, including in relation to the options to prevent tax treaty abuse (e.g. a Principal Purpose Test), permanent establishment (PE) avoidance (e.g. adoption of dependent PE, anti-fragmentation and contract splitting rules) and other rules (e.g. for determining residence of dual resident entities).

For more details, please refer to the link below:

https://assets.kpmg.com/content/dam/kpmg/au/pdf/2017/aspac-multilateral-instrument-treaty-related-beps-provisions.pdf

**NZ-Hong Kong tax treaty updated for automatic exchange of information**

The tax treaty was updated to allow full exchange of information between New Zealand and Hong Kong, to allow NZ to meet its international obligations to complete the first automatic exchange of financial account information under the Common Reporting Standard (**CRS**) by 30 September 2018.

New Zealand has implemented the CRS in its domestic law, with application to New Zealand financial institutions from 1 July 2017 (please refer to issue 59 for more detail).

**Government consults on further tax administration changes**

As part of the New Zealand Government's ongoing focus on transforming the tax administration (commonly referred to as NZ Inland Revenue's "Business Transformation"), it is consulting on proposals to:

- Make tax simpler for individuals, by removing the requirement for individuals who receive only salary and wage income or NZ interest and dividends (where tax is withheld at source) from having to provide information at year end or file tax returns. Instead, the NZ Inland Revenue would automatically calculate if there is a refund or further tax to pay and action this accordingly.
- Better administer social policy measures delivered through the tax system. The proposals include making individuals' entitlements to assistance based on their current year actual income instead of estimates and requiring payment of certain obligations be deducted alongside tax on salary and wage income.

**Government proposal for deducting feasibility expenses**

As part of its 2017 Budget, the Government also unveiled a proposal to legislatively clarify the tax treatment of expenses incurred in determining the feasibility of a project or asset. This area has been the subject of uncertainty following a recent Supreme Court decision.

The proposal is to base deductibility for feasibility expenses on legislative definition (the expense must be incurred in determining the practicability of the asset/ project prior to a commitment to proceed) and the accounting treatment (it must be expensed for accounting purposes). An additional proposal would allow certain capital expenditure to be claimed when the asset/ project to which it relates is written-off.

Back to top ▲

# Philippines

AUSTRALIA
CHINA
HONG KONG
INDIA
INDONESIA
KOREA
MALAYSIA
MAURITIUS
NEW ZEALAND
SINGAPORE
TAIWAN
THAILAND
VIETNAM

Back to top ▲

## Taxation rulings and determinations

The Bureau of Internal Revenue ("**BIR**") issued the following Revenue Memorandum Circulars ("**RMC**"):

**RMC No. 30-2017**

On 12 April 2017, the BIR issued RMC No. 30-2017 informing all revenue officers and others concerned of the additional Personal Equity Retirement Account (PERA) Unit Investment Trust Funds (UITFs)/ investment products which were duly approved/ accredited by the Bangko Sentral ng Pilipinas. It emphasizes that only income earned from the investments and re-investments of PERA assets in the PERA investment products shall be exempt from income taxes under Rule 11 of the Rules and Regulations Implementing the PERA Act of 2008 and Section 9 of Revenue Regulation ("**RR**") No. 17-2011. Moreover, income from investments and re-investments of PERA assets in government securities are exempt from income taxes under the said provisions.

**RMC No. 31-2017**

RMC No. 31-2017 was issued on 12 April 2017 regarding the Advisory issued by the Microfinance NGO Regulatory Council in relation to the implementation of RR No. 3-2017 implementing the tax provisions of Republic Act (RA) No. 10693, otherwise known as the "MICROFINANCE NGOs ACT"

The Advisory provides that all Microfinance NGOs which were able to secure a Certificate of No Derogatory Information are advised to immediately coordinate with the Revenue Direct Offices ("**RDO**") where they are registered to update their registration using BIR form 1905 and submit the Certificates of No Derogatory Information issued from 2016 to the present.

**RMC No. 35-2017**

On 27 April 2017, the BIR issued RMC No. 35-2017 to clarify the imposition of the 6% capital gains tax on sale, exchange or other disposition of real properties classified as capital assets pursuant to Sections 24(D)(1) and 27(D)(5) of the National Internal Revenue Code of 1997.

Back to top ▲

# Singapore

AUSTRALIA
CHINA
HONG KONG
INDIA
INDONESIA
KOREA
MALAYSIA
MAURITIUS
NEW ZEALAND
PHILIPPINES
TAIWAN
THAILAND
VIETNAM

Back to top ▲

## Legislative developments

### Revisions to the Financial Sector Incentive ("FSI") Schemes

The Monetary Authority of Singapore ("**MAS**") has issued new circulars to release details on the revisions to the FSI schemes, which grants award holders concessionary tax rate of 5%, 10% or 12% (depending on the awards granted) on income from qualifying FSI activities.

The scope of the FSI schemes has been streamlined to remove certain restrictions which will alleviate the administrative and compliance burden of award holders. These changes will apply to new or renewal awards approved on or after 1 June 2017.

The key refinements are broadly summarised below:

- Corporate income tax ("**CIT**") rebate

  CIT rebate is given to all companies to support these companies with rising business costs. It was announced that the CIT rebate cap for Year of Assessment ("**YA**") 2017 will be raised from S$20,000 to S$25,000 (rebate rate unchanged at 50%). In addition, the CIT rebate will be extended to YA2018 at a reduced rate of 20% of tax payable, capped at S$10,000.

- Extending the withholding tax exemption on payments for structured products

  Currently, withholding tax exemption is allowed on payments made to non-resident non-individuals for structured products offered by financial institutions for contracts which are renewed or extended during the qualifying period from 1 January 2007 to 31 March 2017, subject to conditions.

  To continue promoting Singapore as a financial hub, the qualifying period for the withholding tax exemption has been extended till 31 March 2021. All other conditions of the scheme remain the same.

- Refining the Finance and Treasury Centre ("**FTC**") scheme

  Currently, the FTC scheme grants concessionary tax rate of 8% on qualifying income derived by approved FTCs from qualifying services provided to approved network companies and qualifying activities carried out on its own account with funds obtained from qualifying sources.

  It was announced in Budget 2017 that the qualifying counterparties for certain transactions would be streamlined to ease the compliance burden of approved FTCs. The change will apply to new or renewal incentive awards approved from 21 February 2017.

- Extending the tax incentive schemes for Project and Infrastructure Finance

  Currently, the tax incentive schemes for Project and Infrastructure Finance include:-

  - exemption of interest and other qualifying income from Qualifying Project Debt Securities issued for prescribed infrastructure projects;
  - exemption of qualifying income from qualifying offshore infrastructure projects/ assets received by approved entities listed on Singapore Exchange ("**SGX**");
  - concessionary tax rate of 10% on qualifying income derived by an approved infrastructure trustee-manager/ fund management company from managing qualifying

SGX-listed business trusts/ infrastructure funds in relation to qualifying infrastructure projects; and

- remission of stamp duty payable on instrument of transfer relating to qualifying infrastructure projects/ assets to qualifying entities listed or to be listed on the SGX.

The scheme expired on 31 March 2017.

It was announced in Budget 2017 that the first three tax incentives have been extended till 31 December 2022, with the exception of the stamp duty remission has been phased out with effect from 1 April 2017. All other conditions of the schemes remain the same.

Further details of the extension are expected to be released.

**Asian Bond Grant Scheme**

In order to further develop Singapore's bond market and strengthen Singapore's value proposition as Asia's leading bond centre, the MAS has introduced the Asian Bond Grant Scheme ("**the Scheme**"). The Scheme aims to co-fund 50% of eligible expenses paid to Singapore-based service providers (e.g. arranger fees, legal fees, auditors' fees, credit rating fees and listing fees) attributable to the issuance of certain qualifying Asian bonds in Singapore, up to a grant amount of SGD400,000 (where the qualifying issuance is rated) or SGD200,000 (where the qualifying issuance is unrated).

Funding is available for valid applications relating to issuances that take place during the funding period from 1 January 2017 to 31 December 2019 (both dates inclusive), subject to conditions. Funding is available once for each qualifying issuer and only in relation to eligible expenses.

Back to top ▲

# Taiwan

AUSTRALIA
CHINA
HONG KONG
INDIA
INDONESIA
KOREA
MALAYSIA
MAURITIUS
NEW ZEALAND
PHILIPPINES
SINGAPORE
THAILAND
VIETNAM

Back to top ▲

## Other developments

**Securities Transaction Tax ("STT") Amendment**

The Securities Transaction Act was recently amended and Article 2-2 was introduced which provides that day trading of listed or over-the-counter shares will only be subject to 0.15% STT rate. In accordance with the new Article, if traders buy and sell same type of listed/ over-the-counter stock for the same volume, under the same account, the STT impose on each sale will be reduced from the standard STT rate of 0.3% to 0.15% instead.

The aforementioned STT reduced treatment will only be valid for 1 year starting from 26 April 2017.

Back to top ▲

# Thailand

AUSTRALIA
CHINA
HONG KONG
INDIA
INDONESIA
KOREA
MALAYSIA
MAURITIUS
NEW ZEALAND
PHILIPPINES
SINGAPORE
TAIWAN
VIETNAM

Back to top ▲

## Legislative developments

### Amended penalties provision of the Revenue Code

On 1 April 2017, Royal Decree No 45 was issued to add Section 37 ter in Penalties Chapter of the Revenue Code. Under this Section where the amount of tax missing by evasion or fraudulent exceeds 10 million Baht per year or the amount of tax refund with faulty facts or fraudulent or other similar nature exceeds two million Baht per year, the related taxpayer may be prosecuted under the Anti-Money Laundering Act.

The detail of Section 37 ter of the Revenue Code is summarised below:-

For the following offences under Section 37, Section 37 bis or Section 90/4, committed by the offender, it shall be regarded that the offences are predicate offences under the law governing anti-money laundering:

- the person has the liability to pay tax and duty or to remit tax and duty, and they are offences concerning the amount of tax and duty evaded or cheated exceeds Baht 2 million per taxable year; or
- the amount of tax and duty applied for refund by filing false statements, fraud, deceitful means or any other method of the same nature, exceeds Baht 2 million per taxable year; and
- the said person did so in a description of an organized association or a network, by creating false transactions or concealing the assessable income or revenue, for the purpose of tax evasion or fraud; and
- it is of a description of concealment or hiding of assets concerning the commissions of offences so that the said assets may not be traced.

Upon the Director-General, with approval of the Committee Considering and Screening Offences Related to Taxes and Duties Falling under Predicate Offences, after sending the relevant information to the Anti-Money Laundering Office, proceedings shall then be taken under the law governing anti-money laundering.

## Taxation rulings and determinations

### Filing of audited accounts is now mandatory for an E-filing corporate taxpayer

Under Section 69 of the Revenue Code, a company or juristic partnership is required to file its corporate income tax return together with a balance sheet, income statement, income account, expenditure or gross income account (as the case may be) which has been certified by its auditors (collectively referred to as the "audited accounts") within 150 days from the last day of an accounting period. However no electronic or physical filing of the audited accounts is required when a corporate taxpayer files its tax return through E-filing. On 17 May 2017, the Thai Revenue Department ('**TRD**") issued NDG No. 296 to repeal Clause 7 of the NDG No. 127. According to NDG No. 296, an E-filing corporate taxpayer with an accounting period ending on or after 28 September 2015 must file its audited accounts physically at the Revenue office. However, since 25 February 2016 already passed, the TRD has issued a further notification to extend the filing and submission of audited accounts required during the period 25 February 2016 to 30 October 2017, to 31 October 2017 without imposing a penalty.

Failing to submit the audited accounts or late submission thereof will be subject to a non-compliance fine of up to THB2,000 under Section 35 of the Revenue Code.

The TRD further stated that the submission of the audited accounts can be done electronically from 1 November 2017. The TRD noted that for audited accounts required to be filed during the period 25 February 2016 to 6 June 2018, the TRD will extend the time period for electronic submission of the audited accounts to the period 1 November 2017 to 7 June 2018 without imposing a penalty. The TRD also stated that if the audited accounts required to be filed during such period were already physically filed to the Revenue Office, the E-filing corporate taxpayer is not required to re-submit the audited accounts electronically.

## Other developments

### Revised draft transfer pricing law was released

The draft transfer pricing regulations were approved by the Thai cabinet in May 2015 and then passed to the National Council of State in late 2016. In June 2017, the Revenue Department has released the revised draft for public consultation pursuant to the new constitution laws. As the final step, the draft will be passed to National Legislative Assembly for enactment.

The key points in the transfer pricing regulation, as it is currently drafted, are as follows:

- Transfer pricing sections will be inserted as Section 71 bis and ter in the Revenue Code.
- The definition of a related party is consistent with Paw 113/2545, except that it has been expanded to include at least 50% direct and indirect capital shareholdings.
- An entity conducting related party transactions who has income exceeding the threshold (the details have not yet been released) will be required to submit a report outlining the nature/ relationship and quantum of related party transactions within the annual tax return filing deadline and submit the transfer pricing documentation within 60 days (or the extended period of 120 days upon the receipt of notification from tax authority).
- An entity may request a tax refund within three years from the tax return submission date or within 60 days after the receipt of an adjustment notification from a tax officer.
- An entity that fails to comply with Section 71 ter or submits incomplete or incorrect documentation without reasonable explanation will be subject to a fine of up to 200,000 Baht.

### Draft legislation on taxation of e-commerce business was released

The TRD is considering ways to improve and increase revenue collection from businesses operating in the form of e-commerce. In the context of domestic e-commerce transactions, there is no concern since the TRD can effectively detect these transactions and impose the appropriate Thai taxes under the current law. However, in the context of international e-commerce transactions, the current Thai tax regulations do not provide the TRD with an adequate basis to impose Thai taxes since the foreign operators may not have a presence in Thailand under domestic rules.

In June, draft legislation was released with the focus on the foreign e-commerce operators. The key highlights are to expand the domestic definition of a "permanent establishment" in Thailand and VAT registration requirement. Unfortunately, the draft legislation raises several unanswered questions, which will hopefully be addressed before enactment, in order to provide industry operators with more certainty on its application.

Back to top ▲

# Vietnam

AUSTRALIA
CHINA
HONG KONG
INDIA
INDONESIA
KOREA
MALAYSIA
MAURITIUS
NEW ZEALAND
PHILIPPINES
SINGAPORE
TAIWAN
THAILAND

Back to top ▲

## Legislative developments

**New regulations on factoring of credit institutions and foreign bank branches.**

The Governor of the State Bank of Vietnam ("**SBV**") issued Circular No. 02/2017/TT-NHNN (**Circular 02/2017**) on 18 May 2017 on factoring of credit institutions and foreign bank branches. The Circular includes 24 Articles with the main points summarised below:

- "Receivables factoring", "payable factoring", "reserve the right of recourse" and other relevant terms have been defined.
- In cases of factoring in foreign currencies and VND, it is required that factoring providers are only allowed to factor in VND for non-resident customers in Vietnam.
- Identify cases which are ineligible for factoring. It sets the requirements and conditions of factoring to ensure the safe and effective development of the sector.
- Set out factoring duration, payment term on the basis of remaining payment duration and term of receivables and payables in line with contracts of goods purchasing and selling, and service provision as well as recourse with duration. Recourse duration which is decided by factoring providers and their customers in the factoring contract cannot exceed 60 days for domestic factoring and 120 days for international factoring.
- Prescribe factoring termination, debt resolution, factoring fee and interest rate exemption to create legal basis for the implementation of credit institutions and foreign bank branches.
- Consider electronic factoring to create legal basis for the implementation of credit institutions and foreign bank branches in accordance with development trend of current factoring.

The Circular will take effect from 30 September 2017.

**New regulation on settlement of bad debt of credit institutions**

The National Assembly of Vietnam has passed Resolution No. 42/2017/QH14 on piloting bad debts of credit institutions.

Accordingly, legal entities and individuals, including those carrying on businesses without the registered debt trading business, are allowed to acquire bad debts from trading organizations and dealing with bad debts.

In addition, the Resolution also stipulates the rights of bad debt purchasers of credit institutions and foreign bank branches where security assets are land use rights, assets attached to land or assets attached to land formed in the future.

Resolution 42/2017 / QH14 is implemented for 5 years from 15 August 2017.

**New guidelines on insurance brokerage activities**

On 15 May 2017, the Ministry of Finance issued Circular No.50/2017/TT-BTC guiding Decree No.73/2016/ND-CP detailing the law on Insurance Business and the law on Insurance Business. Insurance brokerage business shall pay insurance premiums to insurance enterprises and foreign branches within the agreed time limit, which must not exceed 30 days after the receipt of insurance premiums.

Specifically, the Circular discussed the following:

- The rate of the original insurance broker's commission and payment shall be determined based on the written agreement between the insurance enterprise, the foreign branch and the insurance brokerage enterprise; and
- When the insurance buyer has paid the insurance premium, the insurance enterprise shall have to pay the commission to the broker within the agreed time limit, but this must not exceed 30 days from the date of receipt of the insurance premium.

Circular 50/2017 / TT-BTC was effective from 1 July 2017.

**New regulations on derivative securities and derivatives exchanges**

The Ministry of Finance has issued Circular 23/2017/TT-BTC (**Circular 23/2017**) on 16 March 2017 to provide guidance on the amendment of some regulations on derivative securities. Specifically, the Circular 23/27 supplementing regulations on general transaction accounts and payment for gain/loss positions.

- General transaction account

  Circular 23/2017 specifies that the general transaction account is the trading account of the investor.

  According to Circular 23/2017, cases where investors are allowed to open general trading accounts are as follows:-

  - Fund Management Companies can open a general trading accounts for domestic investors and foreign investors;
  - Overseas securities companies may open a general trading account to conduct derivative brokerage activities for foreign investors.

- Payment on gain/ loss positions
  - From the trading day preceding the last trading day, the value of the gain/ loss position payment is determined on a daily basis based on positions of the trading account of the investor and:
    - The difference between the closing price and the opening price of position (for opening and closing positions on the same trading day). The difference between the payment price at the end of the day and the payment price of the last day of the preceding day; or
    - The difference between the payment price and the payment price at the end of the last trading day (for cases closed before the maturity date); or
    - The difference between the payment price at the end of the day and the payment price (for the position opened in the day).
  - On the last trading day, the value of the payment is determined on the basis of opening positions on the trading account of the investor and:
    - The difference between the final payment price and the payment price (for the position opened during the day); or
    - The difference between the final payment price and the payment price at the end of the last trading day; or
    - The difference between the payment price and the payment price at the end of the last trading day (for cases closed before the maturity date); or
    - The difference between the closing price and open position (for opening and closing positions on the same trading day).
- Circular 23/2017 stipulates that if the offsetting member does not have enough money to settle the transactions, the Vietnam Securities Depository Center will be able to make payment for future government bonds in the form of cash payment. The compensating

member who does not have sufficient funds shall be liable to compensate the member with the compensation level not lower than 5% of the contract value.

This Circular shall take effect from 1 May 2017 and abrogates Point b, Clause 1, Article 28 of Circular No. 11/2016 / TT-BTC.

Back to top ▲

# Contact us


**Australia**
Alia Lum
+61 2 9335 8332
alum@kpmg.com.au

**China**
Henry Wong
+86 21 2212 3380
henry.wong@kpmg.com

**Hong Kong**
John Timpany
+852 2143 8790
John.Timpany@kpmg.com

**India**
Naresh Makhijani
+91 22 3090 2120
nareshmakhijani@kpmg.com

**Indonesia**
Sutedjo
+62 21 570 4888 ext. 5156
sutedjo@kpmg.co.id

**Japan**
James Dodds
+81 3 6229 8230 ext. 975230
james.dodds@jp.kpmg.com

**Korea**
Kim Kyeong Mi
+82 2 2112 0919
kyeongmikim@kr.kpmg.com

**Malaysia**
Guanheng Ong
+ 60 3 7721 3388
guanhengong@kpmg.com.my

**Mauritius**
Wasoudeo Balloo
+230 406 9891
wballoo@kpmg.com

**New Zealand**
John Cantin
+64 4816 4518
jfcantin@kpmg.co.nz

**Philippines**
Herminigildo Murakami
+63 2 885 7000 ext. 418
hmurakami@kpmg.com

**Singapore**
Hong Beng Tay
+65 6213 2565
hongbengtay@kpmg.com.sg

**Sri Lanka**
Suresh Perera
+94 11 5426 502
sperera@kpmg.com

**Taiwan**
Stephen Hsu
+886 2 8101 6666 ext. 01815
stephenhsu@kpmg.com.tw

**Thailand**
Kullakattimas Benjamas
+66 2 677 2426
benjamas@kpmg.co.th

**Vietnam**
Thi Kieu Nga Le
+84 2 4394 61600
nkle@kpmg.com.vn


**kpmg.com/cn**