Asset and Wealth Management Tax Highlights – Asia Pacific

July to September 2016

In this edition's asset and wealth management tax highlights for the Asia Pacific region, we highlight industry and tax developments from Australia, China, Hong Kong, India, Malaysia, Singapore and Thailand, which may impact your asset and wealth management business. We hope you find these updates of interest, and will be pleased to discuss these developments and issues with you further.

Australia

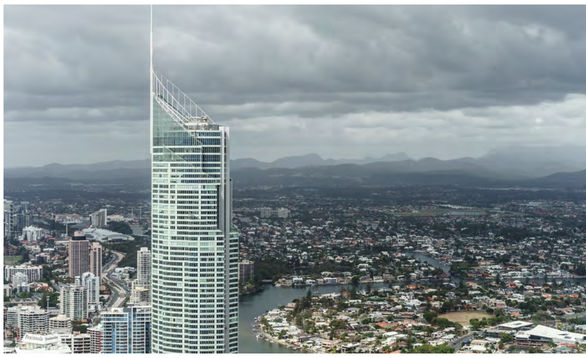
Multinational integrity measures

Last year the Australian Parliament passed a number of integrity measures affecting multinationals operating in Australia (Please refer to the October – December 2015[1] edition for a summary of these measures).

One of the measures requires "significant global entities" (i.e. entities that are part of a group with global income of more than AUD 1 billion) to prepare general purpose financial statements for their Australian operations (if not currently prepared and lodged with the Australian Securities and Investments Commission). The financial statements are to be lodged with the Australian Taxation Office (ATO).

The ATO has commenced consultation on the new financial reporting requirements. The ATO consultation paper, raises a number of issues, including:

- The interpretation of key concepts, such as general purpose financial statements and the applicable accounting standards required for their preparation



- What constitutes "commercially accepted principles relating to accounting" for the purposes of preparing general purpose financial statements and the evidence required to demonstrate this fact
- How an affected entity can give their general purpose financial statements to the ATO
- Practical guidance to assist affected entities to comply

Voluntary Tax Transparency Code

The Tax Transparency Code, developed by the Board of Taxation, is a set of principles and minimum standards to guide medium and large corporate businesses on public disclosure of tax information. The ATO is responsible for administering the Code and compiling a list of published Tax Transparency reports provided by businesses that have adopted the Code. The ATO has released details as to how to notify them once public disclosures have been made.

[1] http://www.pwchk.com/home/eng/am_tax_highlights_q42015.html

China

New "Super" Tax Incentives for Qualified Equity Incentive Plans and Investments

In the efforts to support the "Mass Entrepreneurship and Innovation" strategy and to promote structural transformation of the Chinese economies, the Chinese Ministry of Finance (MOF) and State Administration of Taxation (SAT) jointly released the "Notice on Enhancement of the Income Tax Policies for Equity Incentives and Equity Investment with Technology ("Technology Investments")" (Caishui [2016] No.101, hereinafter referred to as "Circular 101") on 22 September 2016.

The "super" tax incentives apply to qualified equity incentive plans of eligible domestic private companies. They not only defer the taxing point to the time of disposal of the shares acquired, but also effectively reduce the maximum tax rate from 45% to 20%.

Circular 101 further enhances the current favourable tax treatment for qualified equity incentive plans of eligible listed companies by extending the tax payments over a period of up to 12 months (from previously six months) for domestic listed companies. Circular 101 also offers tax deferral treatments for technology investments for domestic companies.

Circular 101 received a warm welcome among entrepreneurs, venture capital and private equity markets. It is hailed as the most favourable income tax policy on equity incentive plans ever. Circular 101 has already taken effect from 1 September 2016.

For participants of qualified equity incentive plans of domestic private companies, the super tax incentives provided by Circular 101 resolve the typical cash flow problems suffered by participants of equity incentive plans and offer vast opportunity for domestic private companies to optimise the remuneration package of technical talents and senior executives. Thus, domestic private companies should leverage these benefits to attract, retain and motivate their talents and senior executives, and help them optimise their tax position via formulating, adjusting or improving the companies' equity incentive plans.

For domestic listed companies with participants in qualified equity incentive plans opting to extend tax payments by instalments over a period of up to 12 months, when these companies perform the record-filing, they should clarify with the in-charge tax bureaus about the respective duties and obligations of employer and employee, and formulate an appropriate plan for tax payment by instalments by the participants in order to avoid any unnecessary dispute with the participants on tax withholding and payment in the future.

For investors of technology investments who opt for the tax deferral treatment, we recommend that the companies being invested should complete the record-filing with the in-charge tax bureaus before concluding the investment agreement. It should also be noted that this tax deferral treatment only applies to investments with the ownership of technological achievements, such as patented technology, computer software copyright and exclusive right to integrated circuit layout design. Besides, since multiple types of corporate income tax preferential treatments may be applicable to technology investments, companies should evaluate the impact of different scenarios and opt for the fittest one.

For further details, please refer to the following URL:

https://www.pwc.com/gx/en/services/people-organisation/publications/assets/pwc-china-new-tax-incentives-for-equity-incentive-plans-investments.pdf

Hong Kong

Hong Kong will join the inclusive framework for implementation of the BEPS package

The HKSAR Government issued a press release on 20 June 2016 to announce that Hong Kong has accepted the OECD's invitation to join, in the name of "Hong Kong, China", as an Associate in the inclusive framework for implementation of the package of measures against BEPS.

In becoming an Associate to the BEPS project, Hong Kong has committed to the comprehensive BEPS package and its consistent implementation, including the following four minimum standards:

i. BEPS Action 5 - Harmful tax practices

ii. BEPS Action 6 - Preventing tax treaty abuse

iii. BEPS Action 13 - Country-by-country reporting requirements

iv. BEPS Action 14 - Improvements in cross-border tax dispute resolution

The HKSAR Government indicated that Hong Kong's commitment to implement the BEPS package is subject to timely passage of the necessary legislative amendments. In coming up with the implementation timelines, relevant factors (e.g. the characteristics of the domestic tax regime, the envisaged magnitude of legislative changes involved and the practical need to prioritise amongst the BEPS measures) will be taken into account. The HKSAR Government will also consult the industry on the strategy for implementing the relevant proposals.

Hong Kong's new law to implement automatic exchange of information

The Inland Revenue (Amendment) (No. 3) Ordinance 2016 was gazetted and came into operations on 30 June 2016. The Ordinance puts in place a legal framework for Hong Kong to implement automatic exchange of information (AEOI) (or the Common Reporting Standard) and fulfil its commitment on commencing the first information exchanges by the end of 2018.

The Ordinance covers the following five key areas:

i. Scope of financial institutions (FIs), non-reporting FIs and excluded accounts;

ii. Due diligence and reporting requirements for reporting FIs;

iii. Scope of information to be furnished by reporting FIs;

iv. Scope of reportable jurisdictions; and

v. Enforcement provisions - anti-avoidance provision, powers of the IRD, sanctions imposed on reporting FIs, their employees and service providers, and account holders, etc.

The contents of the Ordinance are the same as the bill (i.e. there is no change made to the bill that was passed on 22 June 2016).

Reference materials on AEOI on the IRD's website

The IRD published additional reference materials on the automatic exchange of financial account information (AEOI) or the Common Reporting Standard (CRS). The materials provide guidance for financial institutions (FIs) and other relevant parties (including tax, compliance and legal professionals) to implement AEOI in Hong Kong and include:

- **Guidance for FIs** - This is a detailed operational guidance for reporting FIs to comply with the obligations under the AEOI regime. It includes the IRD's views on the due diligence procedures required and issues related to the treatment of collective investment vehicles and trusts
- **Sample self-certification forms** - Sample self-certification forms for an individual, an entity and a controlling person of an entity account holder are available for reference or adoption by reporting FIs

- **Financial Account Information Return XML Schema and User Guide,** which is developed by the IRD based on the CRS XML Schema issued by the OECD to specify the data structure and format for reporting the required financial account information to the IRD
- **AEOI Pamphlets** - These are information pamphlets to highlight the salient features of the CRS for the information of FIs, account holders and service providers

The HK/Russia CDTA entered into force on 29 July 2016

On 5 August 2016, the IRD announced that the arrangement between Hong Kong and Russia for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income has entered into force. The agreement was signed on 18 January 2016 and came into force on 29 July 2016, after the completion of ratification procedures on both sides. It will be in effect from 1 April 2017.

The IRD clarifies the operation of the tax regime on qualifying corporate treasury centres

The IRD issued DIPN 52 - Taxation of corporate treasury activity on 9 September 2016. The DIPN sets out the IRD's views on the interpretation and application of the tax regime for qualifying corporate treasury centres (QCTCs), the new deeming provisions on interest income arising through or from an intra-group financing business and the new deduction rules for interest expenses incurred in the course of an intra-group financing business.

For further details, please refer to the following URL:

http://www.pwchk.com.hk/home eng/hktax_news_sep2016_9.html

India

Regulatory updates

- Securities and Exchange Board of India (SEBI) released FAQs on the E-book mechanism for private placement of debt securities on 22 July 2016.
- **Cabinet increases the limit for foreign investment in Stock Exchanges from 5% to 15%** – On 27 July 2016, the Ministry of Finance provided:

i. Approval for raising foreign shareholding limit from 5% to 15% in Indian Stock Exchanges for a stock exchange, a depository, a banking company, an insurance company, a commodity derivative exchange

ii. Approval for allowing FPIs to acquire shares through initial allotment, besides secondary market, in the stock exchanges.

- **Issue of rupee denominated bonds to overseas companies - relaxation from applicability of Companies Act 2013** – On 3 August 2016, the Ministry of Corporate Affairs (MCA) issued General Circular No. 09/2016 clarifying that unless otherwise provided in the circular / directions / regulations issued by RBI, provisions of Chapter III of the Companies Act 2013 (section 23 to section 42) of the Companies Act 2013 in connection with the prospectus and allotment of securities and Rule 18 of the Companies (Share Capital and Debentures) Rules 2014 dealing with issue of debentures would not apply to issue of rupee denominated bonds made exclusively to persons resident outside India.
- **Amendment in regulations for foreign investment in non-banking finance companies (NBFCs)** – On 11 August 2016, the Ministry of Finance issued a press release reporting that the Union Cabinet has given its approval to amend the regulations for foreign investment in NBFCs on the following key aspects:
  - Foreign Direct Investment (FDI) shall be allowed under the automatic route for all "Other Financial Services" provided such services are regulated by any regulators / Government Agencies. Foreign investment in "Other Financial Services" that are not regulated by any regulators/ Government Agency, can be made under the approval route.
  - Minimum capitalisation norms as mandated under the FDI policy have been eliminated.
- **Measures for development of fixed income and currency markets** – On 25 August 2016, the RBI introduced measures for development of fixed income and currency markets:

i. To further encourage the overseas Rupee bond market, banks are being permitted to issue Rupee bonds overseas (Masala Bonds) for their capital requirements and for financing infrastructure and affordable housing.

ii. FPIs will be given direct access to NDS-OM to ease the process of investment in debt securities. It has also been agreed with SEBI to provide FPIs facility to trade directly in corporate bonds.

Tax updates

- **Renegotiated India and Cyprus Tax Treaty provides, inter alia, for source-based taxation of capital gains**

On 1 July 2016, the Government of India (GoI) announced that negotiation on the Double Taxation Avoidance Agreement (DTAA) between India and Cyprus had been completed to provide for source-based taxation of capital gains and grandfathering of investments made prior to 1 April 2017.

Further, it has been agreed between both countries that India will consider removal of Cyprus from the list of notified jurisdictional areas under the Income-tax Act, 1961, and initiate necessary procedures.

- **Central Board of Direct Taxes (CBDT) extends applicability of Section 197A (1D) and 10(15)(vii) to International Financial Service Centre (IFSC) Banking Units**

On 4 July 2016, the CBDT issued a Circular extending the applicability of Section 197A(1D) and Section 10(15)(vii) of the Act in respect of interest received from IFSC Banking Units (IBUs) on deposits made on or after 1 April 2005 by non-residents and persons not ordinarily resident in India or on borrowings from such persons. Pursuant to the above mentioned Circular tax should not be withheld by IBUs on interest paid in respect of the above.

- **Deferral of Income Computation and Disclosure Standards (ICDS) by one year**

On 6 July 2016, the CBDT has issued a Press Release dated 6 July 2016, deferring implementation of ICDS by one year to Assessment Year 2017-18 (Financial Year 2016-17). The notification to this effect is yet to be issued.

- **Protocol to India Mauritius tax treaty notified in the Official Gazette on 10 August 2016**

- **Cabinet approves signing of revised DTAA with Cyprus**

On 24 August 2016, the Union Cabinet chaired by the Prime Minister Shri Narendra Modi has given its approval for signing of an Agreement and the Protocol between the India and Cyprus for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.

This step follows the recent amendment of the Double Taxation Avoidance Agreement with Mauritius. As in the case of Mauritius, the treaty with Cyprus had provided for residence-based taxation of capital gains. With the revision of the treaty now approved by the Cabinet, capital gains will be taxed in India for entities resident in Cyprus, subject to double tax relief. In other words, India will have the right to tax capital gains arising in India. The provisions in the earlier treaty for residence-based taxation were leading to distortion of financial and real investment flows by artificial diversion of various investments from their true countries of origin, for the sake of avoiding tax. As in the case of Mauritius, this amendment will deter such activities.

- **Constitution Amendment Bill for Goods and Service Tax (GST Bill)**

On 8 September 2016, the President of India has given his assent to the GST Bill, paving the way for the formation of the GST Council. Thereafter on 12 September 2016, the Union Cabinet, under the chairmanship of the Prime Minister, approved the setting up of the GST Council and its secretariat.

Malaysia

Revised Guidelines for Unit Trusts

On 19 July 2016, the Securities Commission Malaysia (SC), the sole regulatory body for the authorisation of the establishment of unit trust funds, made amendments to the following guidelines, which took effect on 15 August 2016:

i. Guidelines on Unit Trust Funds

ii. Prospectus Guidelines for Collective Investment Schemes

iii. Guidelines on Sales Practices of Unlisted Capital Market Products

The amendments are aimed at enhancing the competitiveness and efficiency of the Malaysian unit trusts industry.

The key changes to the guidelines are outlined below.

Expedited authorisation process for non-complex unit trusts

Presently, the standard authorisation process for unit trust funds takes up to 15 business days from the date of submission of the application. In practice however, this could take up to 3 months as the authorisation process only begins upon the submission of complete information to the SC.

Under the new expedited framework, non-complex retail fund applications will receive authorisation from the SC within 10 business days after submission. Applicants are responsible for ensuring that applications are complete and accurate at the time of submission and the SC will authorise their funds based on such representations.

Complex funds continue to be subject to the standard authorisation process.

A complex fund is defined as any of the following:

a. A feeder fund;

b. A fund-of-funds;

c. A fund that can invest in

  i. derivatives other than for hedging purposes;

  ii. warrants and convertibles other than those which are capable of being converted into new shares;

  iii. structured products; or

d. a cross-border fund, which is a fund that can be offered in a foreign jurisdiction under an arrangement between the SC and the securities regulator in that foreign jurisdiction.

A non-complex fund, on the other hand, is defined in the unit trust guidelines as a fund other than a complex fund.

Upon the granting of an authorisation from the SC, a non-complex fund must be launched within 2 months. A complex fund, on the other hand, must be launched within 6 months from the date of authorisation.

Prospectuses no longer need to be renewed annually

In addition to enhancements in the approval process, the 12-month validity period for prospectuses will also be removed. Issuers no longer need to reissue and reprint the prospectuses annually.

Instead, issuers are now required to provide updates on changes in the prospectuses via notifications, supplementary prospectuses or where appropriate, replacement prospectuses. This will also help ensure that changes are made known and highlighted to investors expeditiously.

Certain information previously disclosed in prospectuses such as information on fund performance (e.g. average total returns, annual total return for the last ten financial years or since establishment if less than ten years, portfolio turnover ratio, and gross and net of tax distribution per unit for the past 3 financial years) are now required to be reflected in the Product Highlights Sheet (PHS).

No requirement to publish unit price

Previously, the prices of units (i.e. right or interest in a unit trust scheme private retirement scheme or prescribed investment scheme) that are available for sale in Malaysia are required to be published in at least one national Malay language and at least one national English language newspaper. This requirement, however, is no longer required based on the amended guidelines.

Singapore

Common Reporting Standards (CRS) in Singapore

Singapore will introduce the CRS from 1 January 2017 with the first reporting to the Inland Revenue Authority Singapore (IRAS) by Singapore financial institutions expected to occur in May 2018. Extensive consultation with financial institutions and advisers has already taken place leading up to the issuance of the draft CRS regulations in July 2016, with the final regulations expected to be issued before 31 December 2016.

The introduction of the CRS represents a "game changer" in the way that information is shared between tax administrators across the globe. The objective of the CRS is ultimately to have the financial institutions of each country in the world providing, on an annual basis, details of their non-resident account holders to their relevant tax authorities.

Singapore has made it abundantly clear that compliance with the CRS is essential and significant steps have been taken to update Singapore's banking secrecy laws to enable the CRS to be brought into effect. Singapore has adopted a bi-lateral treaty approach for the exchange of information which means that in order for the IRAS to exchange the account information with a foreign tax administrator, Singapore must have signed a CRS specific information exchange treaty with that country. Such treaties will only be signed by Singapore where, amongst other things, the foreign country can establish to Singapore's satisfaction that the information exchanged will be treated confidentially. As at 3 November 2016, Singapore has signed a bi-lateral treaty with Australia, the United Kingdom, Japan, Republic of Korea, South Africa, Norway and Italy with further treaties expected to be concluded.

Thailand

Extension of 7% VAT rate for one more year

The annoucement of the National Council of Peace and Order No. 65/2559, which was published in the Royal Gazette on 1 November 2016, was issued to extend the 7% VAT rate for one more year from 1 October 2016 to 30 September 2017. The 10% VAT rate will commence on 1 October 2017.

Disclosure of the ultimate beneficial owner of a debt instrument

On 28 July 2016, the Bank of Thailand (BOT) issued a notification (no. SorRorKhor 8/2559) which will require the beneficial owner, the foreign custodian, the custodian agent of beneficial owner and the local custodian of the beneficial owner of an investment in a Thai debt instrument to disclose the name of the beneficial owner through its custodian in Thailand. With effect from 1 January 2017, the local custodian will be required to file a report on a monthly basis, within 10 days from the end of each month, which will disclose the information concerning the beneficial owner of a Thai debt instrument.

In the case where the beneficial owner, the foreign custodian or the custodian agent of the beneficial owner fails to disclose the information or file the report of the ultimate beneficial owner with a reasonable excuse, it will be required to submit a request for postponement through the local custodian which holds the debt instrument. The request for postponement will be subject to the discretion of the BOT.

Based on the above notification, the purpose of requesting disclosure of the beneficial owner is to enable the BOT to prepare statistics on the balance of payments and the international investment position. This disclosure requirement will not be for tax purposes. Foreign investors in Thai instruments will need to monitor developments on this matter from the Thai tax perspective.

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