International Tax News

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Welcome

Keeping up with the constant flow of international tax developments worldwide can be a real challenge for multinational companies. International Tax News is a monthly publication that offers updates and analysis on developments taking place around the world, authored by specialists in PwC's global international tax network.

We hope that you will find this publication helpful, and look forward to your comments.

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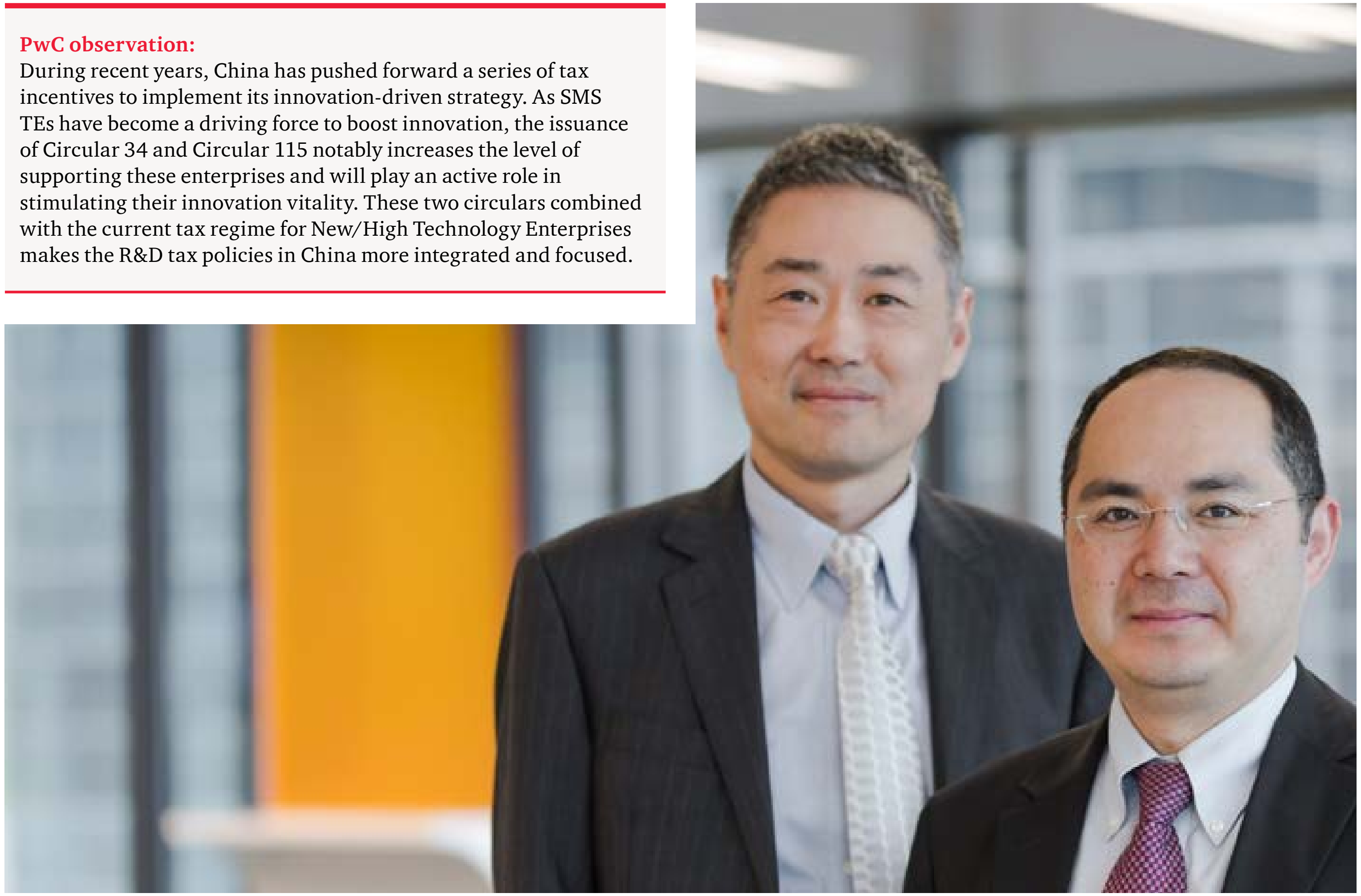
Tax Legislation
China

China offers deduction of Research and Development expenses to small and medium-sized technological enterprises

In order to further enhance the undertaking of research and development (R&D) by enterprises and promote innovation, China's Ministry of Finance (MoF), State Administration of Taxation (SAT), and Ministry of Science and Technology (MoST) jointly issued Caishui [2017] No.34 (Circular 34), increasing the percentage of R&D expenses super deduction from 50% to 75% for the small and medium-sized technological enterprises (SMS TEs) in China. The eligible period is from January 1, 2017 to December 31, 2019.

Soon after the issuance of Circular 34, the MOF, SAT, and MOST jointly released Guokefazheng [2017] No.115 (Circular 115) to set forth the assessment criteria of SMS TEs (e.g. Chinese tax resident enterprises with no more than 500 employees and annual sales income and total assets are no more than 200 million Renminbi [RMB] respectively), the self-assessment mechanism, and post-administration. Circular 115 took effect beginning on May 3, 2017.

PwC observation:
During recent years, China has pushed forward a series of tax incentives to implement its innovation-driven strategy. As SMS TEs have become a driving force to boost innovation, the issuance of Circular 34 and Circular 115 notably increases the level of supporting these enterprises and will play an active role in stimulating their innovation vitality. These two circulars combined with the current tax regime for New/High Technology Enterprises makes the R&D tax policies in China more integrated and focused.



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Singapore

Singapore stamp duties

The Stamp Duties (Amendment) Act 2017 was gazetted on March 21, 2017 and was deemed to have come into effect on March 11, 2017. The Stamp Duties Act has been amended such that from March 11, 2017, the execution of a sale and purchase agreement for shares in a Singapore company will now be subjected to stamp duty. A new stamp duty known as the additional conveyance duty (ACD) was also introduced. ACD will apply to certain qualifying acquisitions and dispositions of equity interests in residential property holding entities on or after March 11, 2017. An entity could be a company, partnership (including limited partnership), or property trust.

PwC observation:
Companies should consider the respective amendments made to the Stamp Duties Act for planned transactions.

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United Kingdom

Impact of UK General Election on Finance Bill 2017

The UK Prime Minister, Theresa May, announced that a General Election will be held on June 8, 2017.

The calling of a General Election meant there was limited time to complete outstanding Parliamentary business before Parliament was dissolved on May 3, 2017. This had a major impact on the passage of the Finance Bill 2017 through Parliament. As there was insufficient time for proper scrutiny of the Finance Bill, a significant number of its clauses were removed including those on relief for corporate tax losses, restrictions on the deductibility of interest for corporation tax purposes, and the substantial shareholdings exemption, all of which were to take effect from April 1, 2017. The proposed amendments to the hybrid rules which were to have effect from January 1, 2017, were also removed from the Bill.

A truncated Finance Bill received Royal Assent as Finance Act 2017 on April 27, 2017.

PwC observation:
The removal of key Finance Bill measures has created uncertainty for corporate taxpayers, particularly because the proposed commencement date for these measures, has already passed.

Previous experience suggests that many of the measures that are omitted from a Finance Bill prior to an Election are often re-introduced in a new Finance Bill in the new Parliament - with the same commencement dates and in substantially the same form. However this is not certain and a change in government could result in different measures being included in the new Bill.

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Proposed Tax Legislative Changes
United States

Trump Administration officials announce tax reform principles

The Trump Administration on April 26, 2017, unveiled Trump Administration principles for tax reform that call for lowering business tax rates to 15 percent. The principles also call for moving to a territorial tax system from the current worldwide US tax system, and for enacting a one-time repatriation tax on the foreign earnings of US companies. Treasury Secretary Mnuchin stated that the specific rate for a repatriation tax is subject to Congressional negotiations.

The principles differ in key aspects from the House Republican A Better Way tax reform blueprint released in June 2016. The blueprint proposed a corporate tax rate of 20 percent, a border adjustment tax, full expensing for business costs under a border-adjustable destination-based cash-flow business tax system, and the elimination of many business tax credits. In addition to proposing different tax rates, the principles do not address the issues of a border adjustment tax, full expensing, or elimination of the net business interest expense deduction.

PwC observation:
The Trump Administration's release of tax reform principles reaffirms that pro-growth tax reform remains a top priority for President Trump and Congressional Republicans. Despite this commitment to tax reform, there are many difficult policy issues to resolve if Congress is to enact a sustainable reform of the US tax laws and provide a more competitive tax system for business taxpayers.

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Tax Administration and Case Law
Brazil

The Brazilian Tax Authorities issue guidance on the treatment of software as a service (SaaS)

The Brazilian tax authorities (RFB) published Solução de Consulta 191/2017 (SC 191/2017) (dated March 23, 2017) on march 29, 2017, confirming that withholding tax (WHT) and Contribuição sobre Intervenção no Domínio Econômico (CIDE) should apply to payments made in relation to importations of software as a service (SaaS) from abroad.

The tax treatment of payments in relation to software has been a controversial issue over the years. Common issues include whether the software should be considered off-the-shelf product, a customised technical service, or a royalty type license to use. Depending on the nature of the payments, the tax consequences can differ substantially, reinforcing the need for careful analysis and definition of what is being imported.

In the particular situation included in SC 191/2017, the company importing SaaS was involved in the commercialisation of access/usage authorisations acquired from abroad for resale to users/clients in Brazil. The SaaS could be accessed by users from any computer/mobile device using a password. Authorisation for access occurred remotely via the internet where the users could access a databank in the 'cloud' rather than a determined location. The access authorisations included two elements:

- network protection against viruses, spam, and other threats, and
- access to online conferences, meetings, trainings, and internet projects, and information for real time sharing.

It was highlighted that while offered to clients on a broad basis, the SaaS was neither a product made 'to order' nor a multiple-copy software that should be considered an 'off-the-shelf' product. The RFB also clarified that in this case the imported SaaS was a 'license to use' for resale as opposed to a 'license to commercialise/distribute'.

The RFB examined the elements of what was being imported, concluding that the monthly payment for SaaS was being considered for diverse services similar to a 'package of utilities'. When determining whether the SaaS should be considered a technical service, the RFB relied on the concept of technical service set out in Normative Instruction 1,455/2014, which included activities rendered through automated structures with clear technological content within the relevant definition.

Pursuant to SC 191/2017, the RFB concluded that WHT and CIDE should be levied at the source on amounts paid, credited, delivered, employed, or remitted abroad as compensation for SaaS, which they considered as technical services depending on specialised knowledge in computer science and coming from automated structures with clear technological content.

By way of background, a Solução de Consulta is a formal response by the RFB to consultation made by a taxpayer and although this document does not represent legal precedent, it does provide support and guidance for Brazilian entities in relation to how the RFB are treating such arrangements from a transactional tax.

PwC observation:
Brazilian entities that import software should consider how their arrangements may be viewed in light of SC 191/2017 and whether the appropriate taxes are being collected.

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Singapore

Singapore tax administration and case law updates

Singapore Budget 2017

The Singapore 2017 Budget Speech was announced on February 20, 2017. Changes proposed include the following:

- The corporate tax rebate for Year of Assessment (YA) 2017 of 50% of tax payable remains unchanged, but the cap is increased from 20,000 Singapore Dollars (SGD) to 25,000 SGD. The rebate is also extended to YA 2018, at a reduced rate of 20% of tax payable, subject to a cap of 10,000 SGD.
- A new Intellectual Property (IP) Development Incentive scheme under which income from the commercialisation of certain IP will be taxed at a concessionary rate. This incentive scheme is expected to be modelled after the modified nexus approach set out in the Action 5 report of the organisation for economic co-operation and development (OECD) base erosion and profit shifting (BEPS) project.
- The Global Trader Programme will be enhanced to include income from trading activities in Singapore by, among other things, removing the offshore counterparty requirements. This will help to make the incentive BEPS-compliant and simplify the identification of qualifying transactions and income. The substantive requirements to qualify for the Programme will however be increased.
- The tax deduction for payments made under research and development (R&D) cost sharing agreements has been liberalised to allow taxpayers the option of claiming 75% of such payments without the need to provide details. This is in lieu of subjecting the individual items that make up the cost-sharing payment to the deductibility test (which could result in disallowance of certain expense items included).
- The Aircraft Leasing Scheme has been extended until December 31, 2022 and enhanced. The scope of qualifying incentive income has been expanded and the concessionary tax rates have been streamlined from 5% and 10% to a single rate of 8% for incentive awards renewed or awarded from April 1, 2017. The withholding tax (WHT) exemption on payments made on qualifying loans has also been extended.
- The Project and Infrastructure Finance incentive package (which includes tax exemption on qualifying foreign income of approved entities listed on the Singapore Exchange from their infrastructure investments) has been extended until December 31, 2022. However, the remission of stamp duty payable on instruments affecting the transfer of infrastructure assets to these approved entities, was allowed to lapse on March 31, 2017.
- The WHT exemption on payments for international telecommunications submarine cable capacity under an Indefeasible Rights of Use agreement was extended.
- The Budget also proposes a new carbon tax and phased increases in water prices and the restructuring of the tax and fees on water and diesel use.

Inward Re-Domiciliation Regime

The Companies Act was amended to introduce an inward re-domiciliation regime which enables a foreign corporate entity to transfer its registration from its home jurisdiction to Singapore by registering as a company limited by shares in Singapore. A corporation may choose to re-domicile for regulatory, strategic, or organisational reasons, while retaining its identity and history in the various regulatory jurisdictions it holds presence, and minimising operational disruptions. An inbound corporation that is re-domiciled to Singapore will become a Singapore company and will accordingly be required to comply with the requirements of the Companies Act like any other Singapore company. The government is currently reviewing the tax framework for companies registered by transfer and will provide clarity on the tax treatment in due course.

Proposed Framework for Singapore Variable Capital Company

The Monetary Authority of Singapore (MAS) issued a consultation paper and draft legislation for a proposed Singapore Variable Capital Company (S-VACC) framework on March 23, 2017. The S-VACC is a new legal entity/structure for investment funds which can be used for traditional and alternative fund strategies (both open-ended and close-ended). The following are key features of an S-VACC:

- It allows both entry into and exit from the fund at its net asset value.
- It has no obligation to make its shareholder lists publicly available.
- It has no obligation to make its financial statements publicly available.
- It is not subject to the Declaration of Solvency prior to the repayment/redemption of capital, and can distribute and repay out of its net assets/capital.
- The classification of its shares as a liability would not have consequences following the relief from solvency test.

Case law updates

In an Income Tax Board of Review case of GBG v The Comptroller of Income Tax [2016] SGITBR 2, the Board dealt with the deductibility of standby credit facility fees incurred by a taxpayer in the business of ship and rig repair, building and conversion. The main issue arising in this case was whether the facility fees incurred by the taxpayer were revenue expenditure incurred in the production of the taxpayer's income, and not prohibited from deduction as capital expenditure. The Board held that the fees were not deductible on the basis that they were capital in nature.

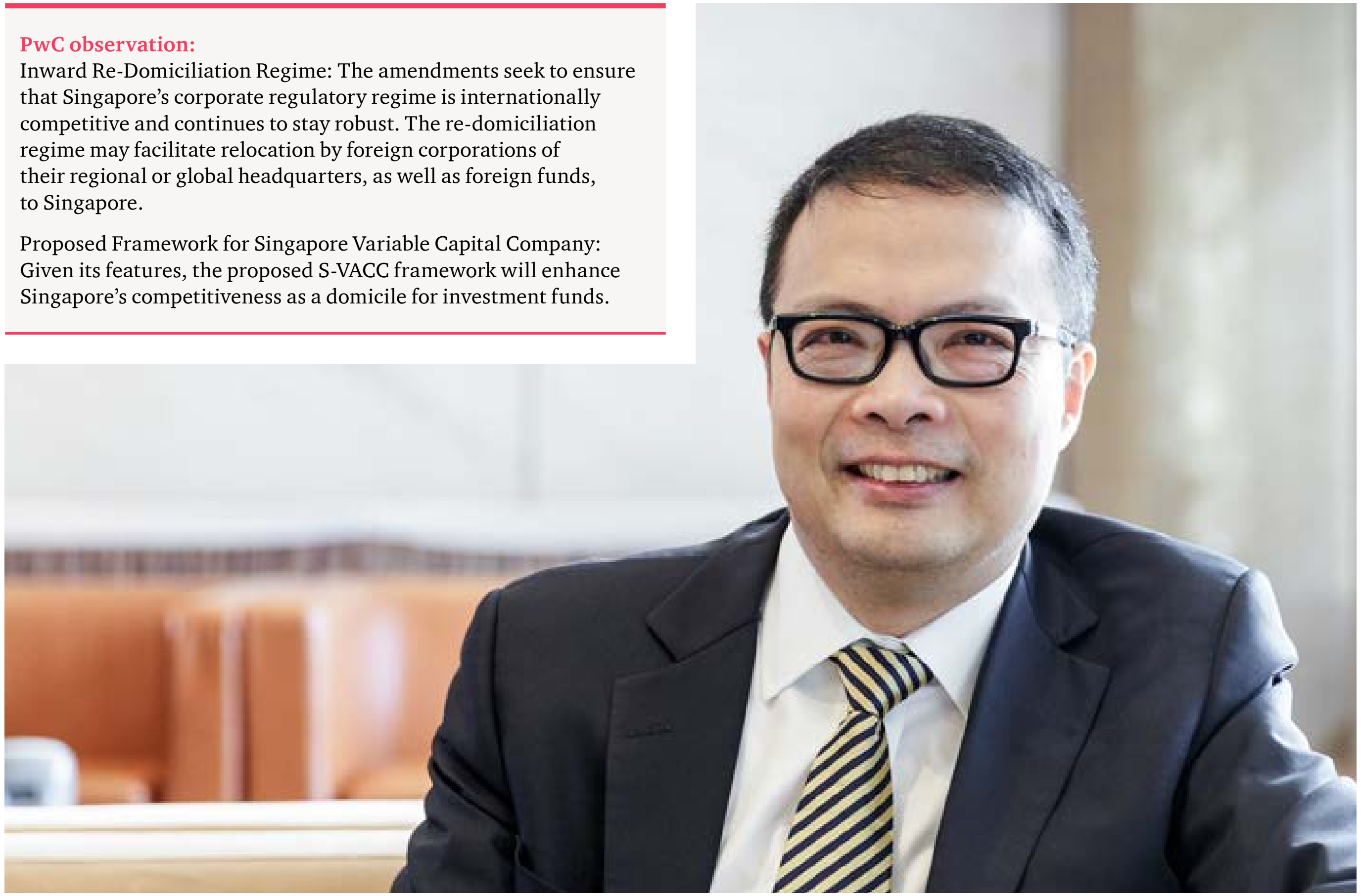
The Board's reasoning highlights the primacy of the purpose test in ascertaining the capital or revenue characterisation of a transaction, and hence the importance of taxpayers' being able to demonstrate the purpose of borrowings.

In another Board of Review case, GBK v The Comptroller of Income Tax [2016] SGITBR 3, the Board dismissed the taxpayer's appeal for deduction of interest expenses under section 14(1)(a) of the Income Tax Act. The taxpayer is in the business of owning and operating a mall. The issue in dispute was whether interest payments on shareholder bonds had a direct link to the rental income of the taxpayer such that they are deductible under section 14(1)(a) of the Act. The Board held that the interest was not deductible as such a link was not established.

The High Court case of AXY and Others v Comptroller of Income Tax [2017] SGHC 42 concerned the nature and extent of the obligations of the Comptroller of Income Tax in dealing with requests by foreign tax authorities for information under Singapore's exchange of information regime. The applicants sought leave for judicial review of the Comptroller's decision to issue requests for information to various banks in Singapore in fulfilment of requests made by the tax authorities of the Republic of Korea under a bilateral convention. The application was dismissed.

PwC observation:
Inward Re-Domiciliation Regime: The amendments seek to ensure that Singapore's corporate regulatory regime is internationally competitive and continues to stay robust. The re-domiciliation regime may facilitate relocation by foreign corporations of their regional or global headquarters, as well as foreign funds, to Singapore.

Proposed Framework for Singapore Variable Capital Company: Given its features, the proposed S-VACC framework will enhance Singapore's competitiveness as a domicile for investment funds.



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Treaties
Ireland

New Kazakhstan – Ireland double tax treaty signed

The Kazakhstan and Ireland governments signed the new Kazakhstan - Ireland tax double tax treaty (DTT) on April 26, 2017. This is the first DTT between the two countries and it will enter into force after the exchange of the ratification instruments. The text of the treaty is expected to be published shortly.

In Ireland, negotiations have concluded on new DTTs with Azerbaijan, Ghana, Oman, and Turkmenistan and for a Protocol to the existing DTT with Mexico; these are expected to be signed shortly.

PwC observation:
This recent signing signals Ireland's commitment to expanding and strengthening its DTT network. Ireland has signed comprehensive DTTs with 72 countries, all of which are now in effect and negotiations are ongoing with other territories at this time.

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Singapore

Singapore Treaty and other agreement updates

Common Reporting Standard

The Income Tax Regulations 2016 (International Tax Compliance Agreements), which incorporates the requirements of the Common Reporting Standard (CRS) into Singapore's domestic legislative framework, entered into force on January 1, 2017.

The Competent Authority Agreements (CAAs) for CRS with United Kingdom, Japan, South Africa, Norway, Finland, Netherlands, Iceland, Malta, and Ireland entered into force on January 31, 2017, and agreements with Australia, Korea, Italy, Canada, and Latvia entered into force on February 27, 2017.

These jurisdictions will be regarded as 'reportable jurisdictions'. Singapore-based financial institutions (SGFIs) will have to transmit financial account information of accounts held by persons that are tax residents of reportable jurisdictions to the Singapore tax authorities (IRAS), with the first submission due by May 31, 2018. The first exchange is expected to commence by September 2018.

The IRAS has also entered into CAAs for CRS with Belgium, Denmark, Estonia, France, Guernsey, Lithuania, Luxembourg, and New Zealand. These agreements have not yet been ratified and do not have the force of law.

Mutual Agreement Procedure

On January 12, 2017, the IRAS updated its website to provide guidance on the Mutual Agreement Procedure (MAP) under Singapore's double tax treaties (DTT) on matters other than transfer pricing.

India

The Third Protocol amending the existing DTTs between Singapore and India entered into force on February 27, 2017.

Very broadly, the key changes introduced that affect Singapore resident investors are:

- Grandfather of the capital gains tax exemption in India for disposal of shares in Indian resident companies acquired before April 1, 2017.
- Introduction of a two year transition period for shares acquired on or after April 1, 2017, where any gains on disposal of shares in an Indian resident company derived between April 1, 2017 and March 31, 2019 may be taxed in India but at no more than half of the applicable rate.
- Inclusion of Article 9 (2), which provides for the basis of making a corresponding adjustment in one state when a transfer pricing adjustment is made by another state to reflect adherence to the arm's-length principle in related party transactions.
- The treaty will not prevent each state from applying its domestic law and measures to curb tax avoidance or evasion.

Other treaty updates

Singapore's new DTT with the Oriental Republic of Uruguay and Lao People's Democratic Republic entered into force on March 14, 2017 and November 11, 2016 respectively. A protocol amending the existing treaty with the Russian Federation entered into force on November 25, 2016. Amongst other changes, the protocol lengthens the threshold period for determining the presence of a permanent establishment (PE) and lowers the withholding tax (WHT) rates for dividends, interest, and royalties.

Singapore's revised DTT with the Republic of South Africa entered into force on December 16, 2016; it updates the provisions for determining PEs, lowers the WHT rate for dividends, and provides a mutually favourable tax treatment for capital gains.

Singapore also signed a DTT with the Republic of Ghana on March 31, 2017. This treaty has not yet been ratified and does not have the force of law.

PwC observation:

Common Reporting Standard: The Regulations require Singapore-based financial institutions (SGFIs) to put in place necessary processes and systems to collect financial account information beginning on January 1, 2017. For reporting purposes, SGFIs will need to submit financial account information relating to tax residents of Singapore's CAA partners to IRAS beginning in 2018. IRAS will subsequently exchange the reported information with Singapore's CAA partners. The latest development reflects Singapore's commitment to implement the international standard for automatic exchange of financial account information that has been endorsed by the organisation for economic co-operation and development (OECD) and the Global Forum for Transparency and Exchange of Information (EoI) for Tax Purposes.

Mutual Agreement Procedure (MAP): Although the MAP avenue for resolving cross border disputes is not new, this is the first time the IRAS has published guidance on the MAP process for matters other than those relating to transfer pricing. This guidance is timely given the expected increase in cross border tax disputes.

Other treaty updates: These DTTs provide clarity on tax matters and eliminate double taxation relating to cross-border transactions. They are expected to enhance trade and investment flows between Singapore and the relevant treaty partners.

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