

# Asia Financial Services Tax Quarterly Developments Report

July to September 2007



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# Introduction

For many years the PricewaterhouseCoopers Financial Services tax network in Asia has been sharing within the network a quarterly report on tax developments. We now share this knowledge with our valued clients.

This PricewaterhouseCoopers Asia Financial Services Tax Quarterly Developments Report covers the period ended 30 September 2007. It very briefly lists tax developments in the Asia region that are relevant to financial services operations.

The report is sorted by Asian territory. Please contact your local PricewaterhouseCoopers tax adviser if you wish to obtain further information on any development listed in this report.

We hope you find the report useful. I would be delighted to receive comments on the report.

**John Masters**

**Asia Financial Services Tax Leader  
Sydney**

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# Australia

**Sector:** Banking & Capital Markets

**Date:** September 2007

**Contact:** Jason Heng - Sydney

## Taxation of Financial Arrangements legislation introduced into Parliament

On 20 September 2007 the Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2007 was introduced into Parliament. This legislation contains the proposed third and fourth stages of the Taxation of Financial Arrangements (TOFA) reforms. The main features of the proposed legislation are as follows:

- The rules will apply to 'financial arrangements', which broadly, are defined as cash settleable rights/obligations to receive/provide a financial benefit.
- Gains and losses from financial arrangements will, subject to various exclusions, be treated as assessable or deductible.
- There is a general exclusion from the rules for individuals, finance entities with a turnover less than \$20 million and other entities with a turnover less than \$100 million, but with an option to elect in.
- There is a menu of optional and default methods of bringing gains and losses to account, supported by a balancing adjustment methodology to true up the final result. The optional methods can be elected by taxpayers, subject to various eligibility criteria.
- The proposed rules will apply to all financial arrangements acquired on or after the first day of the first income year commencing on or after 1 July 2009. However, taxpayers can elect to 'go early' and have the measures apply to financial arrangements acquired on or after the first day of the first income year commencing on or after 1 July 2008. There is also an option of applying the rules to pre-existing arrangements, in which case a balancing adjustment may be required. Such an adjustment would be spread over four years.

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**Sector:** Banking & Capital Markets

**Date:** September 2007

**Contact:** Jason Heng - Sydney

## Tax preferred entities asset financing rules now law

Tax Laws Amendment (2007 Measures No. 5) Act 2007, which received Royal Assent on 25 September 2007, introduces new Division 250 in the Income Tax Assessment Act 1997, to replace the rules in section 51AD and Division 16D of the Income Tax Assessment Act 1936.

Subject to transitional rules, the new Division 250 applies to arrangements entered into on or after 1 July 2007 where:

1. A tax preferred end user (being a tax exempt entity or a non-resident) directly or indirectly uses, or controls the use of an asset by way of lease or other use
2. financial benefits are provided to the taxpayer by the tax preferred user
3. the taxpayer is entitled to capital allowances in relation to the asset
4. the taxpayer does not have a predominant economic interest in the asset.

Where Division 250 applies, deductions for capital allowances will be denied and the arrangement will be treated as a deemed loan that is taxed as a financial arrangement on a compounding accruals basis.

There are exclusions from the rules for short-term arrangements and relatively lower value arrangements.

**Sector:** Banking & Capital Markets      **Date:** September 2007      **Contact:** Jason Heng - Sydney

### Proposed thin capitalisation changes due to adoption of IFRS

The Minister for Revenue and Assistant Treasurer announced on 12 September 2007 that changes will be made to the thin capitalisation rules to address some of the adverse impacts of the adoption of Australian equivalents to International Financial Reporting Standards. Specifically, it is proposed that accounting standards in relation to intangibles, income taxes and employee benefits may be disregarded in certain aspects. These measures are subject to further consultation and likely not apply until the end of the current thin capitalisation transitional period which does not begin to expire until 31 December 2008.

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**Sector:** Banking & Capital Markets      **Date:** September 2007      **Contact:** Jason Heng - Sydney

### Thin capitalisation and Approved Deposit Taking Institutions

Tax Laws Amendment (2007 Measures No. 5) Act 2007 provides amendments to the thin capitalisation provisions to allow the head company of a consolidated or Multiple Entry Consolidated (MEC) group containing one or more ADIs to apply the thin capitalisation rules as if the group did not contain an ADI, where all the ADIs in the group are specialist credit card institutions, as defined under the Banking Act 1959. Each specialist credit card institution will instead be treated as if it was a financial entity.

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**Sector:** Banking & Capital Markets      **Date:** September 2007      **Contact:** Jason Heng - Sydney

### Company tax losses – removal of same business test cap

The limitation on access to the same business test (SBT) for losses incurred in income years commencing on or after 1 July 2005 by companies which have total income of more than \$100 million in the year of recoupment has been removed with retrospective effect from 1 July 2005.

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**Sector:** Banking & Capital Markets      **Date:** September 2007      **Contact:** Jason Heng - Sydney

### New foreign income tax offset rules

Tax Laws Amendment (2007 Measures No. 4) Act 2007, which received Royal Assent on 24 September 2007, contains measures which:

- repeal the existing foreign tax credit (and associated) provisions and introduce new rules for the relief allowed for foreign tax paid on amounts included in the assessable income of both Australian and non-resident taxpayers
- repeal the foreign loss quarantining rules such that a deduction will be available against both domestic and foreign income for foreign losses incurred.

These measures affect taxpayers who:

- derive, or expect to derive, income and capital gains in respect of which foreign tax is paid (or will be payable)
- have carried forward excess foreign tax credits
- have carried forward foreign losses, or expect to incur, losses which relate to the derivation of foreign income.

The rules apply to income years commencing on or after 1 July 2008.

Sector: Property

Date: March 2007

Contact: Neil Allmark - Sydney

### Division 6C - Trading Trust Rules - Eased for Foreign Subsidiaries of Property Trusts

The Australian Government introduced a bill into parliament on 16 August which will simplify the application of Division 6C to interests held in foreign entities that hold foreign real estate (eg a US REIT). Under the proposals, a trust will now be permitted to invest in a foreign entity that undertakes some ineligible activities without triggering Division 6C for the trust, provided the trust can show that the business of the foreign entity (and its controlled subsidiaries), when considered in aggregate, consists primarily of investing in land primarily for the purpose of deriving rent.

Sector: Property

Date: August 2007

Contact: Neil Allmark - Sydney

### New Division 250 -Property leased to tax exempt entities, property leased to non-residents and sale and leasebacks

Division 250 is proposed to effectively replace the old anti-avoidance rules of section 51AD and Division 16D. These rules are very important to property trusts that finance asset acquisitions with a limited recourse debt component.

Division 250 is much less punitive than section 51AD. If Division 250 applies, the trust is required to treat a lease as a loan to the lessee. Consequently, the trust is required to re-characterise rent received into a notional principle and interest component. The trust will not include rent received in its assessable income and will not be able to claim building allowance and depreciation deductions.

Division 250 also applies in more limited circumstances than section 51AD and Division 16D. The following exclusions are relevant to property trusts:

- Division 250 does not apply where there is a sale and lease back to an Australian resident taxpayer (ie not a tax preferred entity).
- In the case of a lease to tax preferred entities, a property trust can now fund the acquisition of Australian assets with up to 80% limited recourse debt.
- In the case of overseas property, a trust can only fund the acquisition up to 55% limited recourse debt before Division 250 applies (although other exceptions may apply).
- Where space within a property is occupied less than 50% by tax preferred entities, there is no limitation on debt levels.

In the case of overseas property, a trust can only fund the acquisition up to 55% limited recourse debt before Division 250 applies (although other exceptions may apply). This has the prospect to create a significant compliance burden associated with recalculating the taxable income of the trust under the proposed principal and interest re-characterisation provisions.

Sector: Property

Date: September 2007

Contact: Neil Allmark - Sydney

### Interposed Trust Provisions for Staples - Creating a Single Head Trust

The Australian government has proposed changes to the treatment of stapled trust restructures which include an interposed single head trust between the stapled group and its security holders. Under the proposals, there would be a CGT rollover available that would allow for the restructure without triggering a capital gains tax liability for securityholders. Also the new head trust will be able to hold securities in the "active" side of the staple without any adverse Division 6C implications. The proposals also make it clear that Division 6B (another anti-avoidance type rule) will not apply to the new trust as a consequence of the restructure.

Issues that will still need to be considered are:

- impact of being associates, as having a single head trust will make all the stapled entities associates for tax purposes (eg under the thin capitalisation rules, debt/equity rules, etc). This could potentially be troublesome
- stamp duty implications
- treatment of head trust under Australian tax treaties
- Division 6B for transfers of assets from the active side to the passive side post the restructure
- Accounting implications of any restructure.

Sector: Property Date: September 2007 Contact: Neil Allmark - Sydney

### Australian Labour Party's Policy Announcement on REITs

The Australian Labour Party's proposed tax reforms for the investment and financial industry have been announced, including:

- A flat and final 15% withholding tax rate for distributions from Australian managed funds to non-resident investors (currently as high as 45%)
- Effectively replacing Division 6C with a managed investments tax regime, including the potential for a specific REIT regime. As an interim measure, Division 6C would be simplified. This would potentially include allowing a trust to receive up to 25% of its income from non-eligible sources, overhauling the definition of eligible investment income and abolishing or substantially curtailing the application of the "control" test in Division 6C.

The pending federal election where the Labour Party could become the government makes this announcement of particular importance.

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Sector: Insurance Date: September 2007 Contact: Peter Kennedy - Sydney

### Withholding tax on premiums paid to a non-resident in respect of surety bonds

The Tax Office in its Interpretative Decision ATOID 2007/181 states premiums paid by a resident insurer to a non-resident insurer in respect of surety bonds are insurance contracts under section 141 of the *Income Tax Assessment Act 1936*. As a consequence, resident insurers may be required to withhold 3% tax on such premiums paid.

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Sector: Insurance Date: September 2007 Contact: Peter Kennedy - Sydney

### Direct Offshore Foreign Insurers (DOFIs)

Discussion Papers dated 31 July 2007 and 20 September 2007 were issued by the regulatory authority, APRA, regarding the prudential requirements of DOFIs to give effect to the Government's announcement of subjecting these types of entities to regulation. DOFIs may be required to hold assets in Australia and carry on business in Australia under the *Insurance Act 1973*. As a result, there is a risk that DOFIs may have a permanent establishment in Australia and be taxed accordingly.



# China

Sector: All

Date: 31 August 2007

Contact: Matthew Mui - Beijing

## Enterprises which have been approved to be established before the promulgation of the Corporate Income Tax Law ("CIT Law")

On 31 August 2007, the Ministry of Finance ("MoF") and the State Administration of Taxation ("SAT") jointly issued a circular to clarify the term "enterprises which have been approved to be established before the promulgation of the Corporate Income Tax Law ("CIT Law") (16 March 2007) " – or so-called "Old Enterprises". The "Old Enterprises" is one of the key parameters for grandfathering previous preferential tax treatments for foreign-invested enterprises after the implementation of CIT Law. *(Please refer to the Asia Financial Services Tax Quarterly Developments Report for January to March 2007 for highlights of the CIT Law)*

According to the circular, Old Enterprises refer to those companies which have performed business registration with the [Administration for Industry and Commerce] on or before 16 March 2007 and these companies would be eligible for the grandfathering treatments as stipulated in the CIT Law. The circular clarifies that the grandfathering treatments provided under the CIT Law will not be available to those enterprises which have performed business registrations with the Administration for Industry and Commerce between 17 March and 31 December 2007.

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Sector: All

Date: 23 July 2007

Contact: Matthew Mui - Beijing

## New Singapore – China Double Taxation Agreement

The new Singapore-China Agreement for the Avoidance of Double Taxation ("Revised DTA") has been officially signed on 11 July 2007 and ratified by both countries on 18 September 2007. With the ratification, the provisions of the new DTA shall have effect on income derived on or after 1 January 2008 on both sides.

The Revised DTA provides improvements in several of the existing DTA terms. Under the Revised DTA, withholding tax rate on dividends will be reduced from 7% (for corporate shareholders holding at least 25% of the share capital) and 12% (for other shareholders), to 5% and 10% respectively. The withholding tax rate on lease payments for industrial, commercial or scientific equipment will be reduced from 10% to 6%. In addition, gains from the sales of shares in Chinese companies will be subject to tax in China only if the party making the sale has held at least 25% of the share capital of the company in the past 12 months.

There are also new anti-treaty abuse provisions under the Revised DTA.

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Sector: Insurance

Date: 1 August 2007  
and 15 August  
2007

Contact: Matthew Wong - Shanghai

## Foreign Enterprise Income Tax ("FEIT")

In August, the SAT issued two notices, with immediate effect, regarding the foreign enterprise income tax ("FEIT") deduction for the insurance industry:

- the relevant commission actually paid by the insurance company before the cancellation of insurance policies shall be deductible for corporate income tax purposes, however the relevant commission paid after the cancellation shall not be deductible;
- The portion of the provision for unearned premium reserve on non-life insurance, where the current period exceeds that of the prior period shall be deductible for corporate income tax purposes, however the portion in shortfall shall not be deductible.

|                |     |              |   |                 |                       |
|----------------|-----|--------------|---|-----------------|-----------------------|
| <i>Sector:</i> | All | <i>Date:</i> | 25 July 2007<br>3 August 2007<br>28 August 2007 | <i>Contact:</i> | Matthew Mui - Beijing |
|----------------|-----|--------------|---|-----------------|-----------------------|

Below are other major developments of Chinese tax treaties during the third quarter of 2007:

- China and Korea have concluded a Memorandum of Understanding on their Double Tax Treaty on 13 July 2007. The Memorandum clarifies the definition of “central bank and financial institution performing functions of a governmental nature”. It also provides a list of those qualified organisations.
- On 3 August 2007, the SAT confirmed that the Double Tax Treaty between China and Greece took effect on 11 November 2005 and entered into force on 1 January 2006 retrospectively.
- On 28 August 2007, the SAT confirmed that the Double Tax Treaty between China and Algeria took effect on 27 July 2007 and will enter into force on 1 January 2008.

# Hong Kong

Sector: Financial Services

Date: July 2007

Contact: Peter Yu  
Florence Yip - Hong Kong

## Hong Kong Official discusses the Introduction of Dividend Tax

During Legislative Council on 11 July 2007, Hong Kong's new secretary for Financial Services and the Treasury, Professor KC Chan, responded to a recent proposal to introduce a dividend tax due to Hong Kong's narrow tax base. Professor Chan advised that even though a consensus exists that Hong Kong's tax base is too narrow, the public have not provided any clear inclination on which options Hong Kong should adopt to broaden its tax base.

In terms of introducing dividend tax to broaden Hong Kong's tax base, there were divergent views on whether such tax should be introduced. Those in favour of the introduction of dividend tax believe that given dividend income is taxed in many overseas economies, Hong Kong should follow this practice. However, those who oppose dividend tax consider that such introduction would either lead to double taxation or create complexity (from the introduction of a tax credit mechanism) in Hong Kong's currently simple tax system.

Professor Chan concluded that the Government will continue to study options for broadening the tax base and consult the public further on practical options.

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Sector: Financial Services

Date: July 2007

Contact: Peter Yu  
Florence Yip - Hong Kong

## Hong Kong's Court of Appeal Considers Anti-avoidance Legislation

Recently, the Hong Kong Court of Appeal considered the application of the general anti-avoidance provisions in the Inland Revenue Ordinance. These cases are [HIT Finance Ltd. And Another v Commissioner of Inland Revenue (HCIA 14 and 15/2005)] and [Tai Hing Cotton Mill Development Ltd v Commissioner of Inland Revenue (CACV 343/2005)]. Whilst both cases can be seen as victories for the taxpayer, they are now subject to appeal by the Commissioner to the Court of Final Appeal. Hong Kong's premier court (since 1997), the Court of Final Appeal, has the opportunity to consider for the first time the general anti-avoidance provision in the Inland Revenue Ordinance.

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Sector: Financial Services

Date: Sept 2007

Contact: Peter Yu  
Florence Yip - Hong Kong

## Speculation on Hong Kong profits tax and salaries tax cut

There are recent speculations that the rates of tax on both profits and salaries in Hong Kong will likely be reduced to 16.5% for profits tax and 15 % for salaries tax. At present, the profits tax rate for corporations is 17.5% and the standard rate of salaries tax is 16%. It was reported that Hong Kong Chief Executive Donald Tsang may announce such tax cuts soon in order to fulfil a promise he made during his re-election campaign.

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Sector: Financial Services

Date: Oct 2007

Contact: Peter Yu  
Florence Yip - Hong Kong

## Hong Kong Aims to become an Islamic Finance Hub

Hong Kong's Chief Executive, Donald Tsang, recently announced his intention to actively develop an Islamic financial platform in Hong Kong. He commented that apart from stepping up efforts to promote Hong Kong's financial services to major Islamic countries and regions, Hong Kong shall focus on developing an Islamic bond market. The Monetary Authority in Hong Kong has commenced working with the financial sector to develop products that would comply with strict Islamic financial rules, where interest payments and profits earned from certain industries are banned.

### **Court of Final Appeal Judgment on ING Baring Securities (Hong Kong) Ltd v CIR**

The Court of Final Appeal has handed down the long-awaited decision on the ING Baring case. The taxpayer's appeal was unanimously allowed by the Court, which concluded that the source of three types of income derived by the taxpayer (namely, commission income, placement income and marketing income) are all offshore in nature and therefore not taxable. The Court's judgment in this case should be good news to those taxpayers who engage in similar security transactions at overseas stock exchanges.

Taxpayers should examine their operations to see whether their mode of operations follow the ING Baring case or the Kim Eng case because for the latter the commission income was held to be on-shore and taxable.

# India

**Sector:** Capital Markets

**Date:** July 2007

**Contact:** Sunil Gidwani  
Radhakishan Rawal - Mumbai

## Morgan Stanley (292 ITR 416) (SC)

The Supreme Court ("SC") of India has pronounced a landmark judgment in the case of Morgan Stanley and Co. ("MS Co"). MS Co, a company incorporated in the USA, and also an investment bank, is in the business of providing financial advisory, corporate lending and securities underwriting services. MS Co established a subsidiary, MSAS in India.

Subsequently, MS Co. outsourced some of its activities to MSAS. MSAS was to support the main office functions of MS Co. and provide IT enabled services to MS Co. MS Co. sent certain staff to India for stewardship activities to ensure that the high standards of quality were met. MS Co.'s staff were also sent on deputation on the request of MSAS, as and when required. From an employment contract perspective, the staff continued to be employed or engaged by MS Co., and their salaries and fees were paid directly by MS Co.

The issues before the Court were whether MS Co. had a Permanent Establishment (PE) in India and profits attributable to such PE, if the PE existed.

The SC held that MS Co. did not have a fixed place PE or an Agency PE in India as a consequence of the back-office operations it had outsourced in India to MSAS. However, the SC held that the deputation of employees by MS Co. to its associated entity in India resulted in a Service PE in India. The Supreme Court also dealt with the important issue of profit attribution in a scenario of existence of PE. It held that where the transactions between the two entities are at arms length, no further profit attribution is required, provided that the associated enterprise was remunerated on an arms length basis taking into account all the risk-taking functions of the enterprise.

# Indonesia

*Sector:* General Insurance      *Date:* 29 June 2007      *Contact:* Christian Pellone  
Margie Margaret  
Tomy Harsono - Jakarta

## **Regulation No 74/PMK.010/2007 – Implementation of insurance for motor vehicle line of business**

The Ministry of Finance (MoF) has issued a regulation No. 74/PMK.010/2007 regarding the implementation of insurance coverage for motor vehicle line of business.

In essence, the regulation stipulates the followings:

- insurance premium rate
- commission and acquisition costs
- unearned premium reserves ("UPR").

The stipulation on premium rate includes the followings:

- All general insurance which sells motor vehicle insurance must have a set premium rate, which is based on the risk and loss profile data for the minimum period of 5 years with a proper profit margin.
- If such data is not available, the company must compile the data and submit to the MoF by 30 November 2007.
- During the absence of such data, the company must use the premium rate stipulated by this regulation.
- In the future, all companies must submit the risk and loss profile annually.

As for the commission and acquisition costs, the regulation stipulates the followings:

- Commission can only be paid to or quoted by insurance agent or broker.
- Other than commission, general insurance companies can charge acquisition costs in the form of discount, bonus, gifts, or other benefits to insurance agents, broker, policy holders, or other third party in relation to the acquisition of the business.
- In any case, the cumulative commission and acquisition costs must not exceed 25% of gross premium.

UPR for motor vehicle is set at the minimum rate of 40% of the net premium.

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*Sector:* Banking      *Date:* 3 July 2007      *Contact:* Christian Pellone  
Margie Margaret  
Tomy Harsono - Jakarta

## **New Negative List of Investments**

The President issued a Presidential Decree No. 77/2007 regarding the new negative list of investments (NLI).

Financial sectors are included in the "premium" sectors that are offered to foreign investors with a maximum limit of capital participation, with the following limit:

- insurance - 80%
- venture capital – 85%
- banking – 99%

Sector: All

Date: 16 August 2007

Contact: Christian Pellone  
Margie Margaret  
Tomy Harsono - Jakarta**New Law No 40/2007**

The House of Representative passed into law the new law No. 40/2007 on Limited Liability Company on 16 August 2007 replacing the Law No. 1/1995.

Significant provisions in the new law includes:

- minimum capital
- prohibition of cross-holding
- stricter time frame for reporting or getting approval
- share buyback/treasury shares
- reduction of capital by share redemption or reduction of nominal value
- obligation of Board of Directors to prepare work plan and budget
- requirement for mandatory audits
- the use of profits by way of legal reserve, dividend and interim dividend
- corporate social responsibility
- mergers.

All existing PT must adjust its article of association to comply with new company law within one year (ie by 16 August 2008). Failure to adhere to this may result in rejection for processing all corporate actions which require notification to or approval from the relevant Ministry.

[PT = Perseroan Terbatas]

Sector: Capital markets  
Financial institution

Date: 31 August 2007

Contact: Christian Pellone  
Margie Margaret  
Tomy Harsono - Jakarta**Regulation No. KEP-314/BL/2007 – Criteria and issuance of syariah securities lists**

The Capital Markets and Financial Institutions Supervisory Board issued a regulation No. KEP-314/BL/2007 regarding the criteria and issuance of syariah securities lists.

This regulation stipulates the criteria of securities that can be included in the list of syariah securities. Any parties that have issued syariah securities, which are addressed as syariah investment, before the issuance of this regulation must apply for an approval from the Head of Capital Markets and Financial Institutions Supervisory Board. The application requirements are also stipulated in this regulation.

This regulation will be enacted on 1 January 2008.

Sector: Capital markets  
Financial institutionDate: 12 September  
2007Contact: Christian Pellone  
Margie Margaret  
Tomy Harsono - Jakarta**Regulation No. KEP-325/BL/2007**

As a follow up on the above KEP-314/BL/2007, the Capital Markets and Financial Institutions Supervisory Board issued a regulation No. KEP-325/BL/2007 regarding the list of syariah securities.

This regulation lists the syariah shares and bonds (“Sukuk”) which have met the criteria on KEP-314/BL/2007. This list is valid until the issuance of the new syariah securities list by the Head of Capital Markets and Financial Institutions Supervisory Board and will be reviewed periodically based on the listed companies’ annual and semi-annual financial statements.

**Sector:** Banking      **Date:** 21 September 2007      **Contact:** Christian Pellone  
Margie Margaret  
Tomy Harsono - Jakarta

### Incentives to banking consolidation

Bank Indonesia issued Regulation No. 9/12/PBI/2007 to amend Regulation No. 8/17/PBI/2006 regarding incentives to banking consolidation.

The amendment updated several articles including the following:

- special treatment in granting the licence for foreign exchange bank;
- temporary tolerance on the obligation to fulfil the Rupiah statutory reserves;
- time extension to settle the breach of maximum credit lending limits, raised as a consequence of a merger or consolidation;
- special treatment in granting the licence to open a branch;
- partial reimbursement on consulting fees in relation to the related due diligence; and/or
- temporary tolerance on the implementation of the Bank Indonesia Regulation regarding Good Corporate Governance for commercial banks.

This Regulation is effective on 21 September 2007.

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**Sector:** Banking      **Date:** 24 September 2007      **Contact:** Christian Pellone  
Margie Margaret  
Tomy Harsono - Jakarta

### Circular No. 9/20/DPNP

Bank Indonesia issued a Circular No. 9/20/DPNP regarding incentives to banking consolidation.

This regulation is the implementing regulation of the above stated Bank Indonesia Regulation No. 9/12/PBI/2007, which outlines the details of the incentives and also the application requirements for the above incentives.

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**Sector:** Banking      **Date:** Recent issues      **Contact:** Christian Pellone  
Margie Margaret  
Tomy Harsono - Jakarta

### Tax book value merger

With regard to Bank Indonesia's Single Presence Policy, several Indonesian banks are required to merge. In order to qualify as a tax neutral merger, the banks are required to apply for approval to use tax book value for the merger.

However, The Director General of Taxes (DGT) has recently rejected a number of tax book value mergers for non-bank taxpayers. The reason for the rejection is that no liquidation process exist for the dissolving entities.

The above reason is based on the definition of a merger based on MoF Decree No. 422/KMK.04/1998:

*"A business merger is a merger of two business bodies or more by way of maintaining the establishment of one of the business bodies and liquidating the other business body which has merged."*

For tax purposes where the tax book value merger is not granted for bank mergers, the transfer of assets on a merger must be conducted based on market value, and some additional income taxes and duty will have to be paid.



# Japan

*Sector:* Banking and Capital  
Markets  
Insurance  
Investment Management  
Real Estate

*Date:* September  
2007

*Contact:* Sachihiko Fujimoto  
Katsuyo Oishi  
Yuka Matsuda  
Tetsuo Iimura  
Akemi Kitou  
Hiroshi Takagi - Tokyo

## The Financial Instruments and Exchange Law

The Financial Instruments and Exchange Law ("FIEL") became effective on 30 September 2007.

This law was fully amended and renamed based on the Securities and Exchange Law. Four financial laws were abolished and eighty-nine laws were amended in total which some parts were consolidated into FIEL.

The following amendments have been made:

- establishing a cross-sectional legislative framework for user protection including covering a wide range of financial products
- enhancing disclosure requirements
- ensuring appropriate management of self-regulatory operations by exchanges
- strict counter measures against unfair trading.

The definition of qualified institutional investors ("QIIs") was expanded under FIEL and the definition of QIIs under the Act of Special Taxation Measures Law was reformed to correspond with FIEL due to the amendment.

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*Sector:* Banking and Capital  
Markets  
Insurance  
Investment Management  
Real Estate

*Date:* September  
2007

*Contact:* Sachihiko Fujimoto  
Katsuyo Oishi  
Yuka Matsuda  
Tetsuo Iimura  
Akemi Kitou  
Hiroshi Takagi - Tokyo

## New Trust Law

The New Trust Law came into force on 30 September 2007. The new taxation treatment of trust come into effect from the enforcement of the new trust law.

## Japan

|                |   |              |             |                 |  |
|----------------|---|--------------|-------------|-----------------|--|
| <b>Sector:</b> | Banking and Capital<br>Markets<br>Insurance<br>Investment Management<br>Real Estate | <b>Date:</b> | August 2007 | <b>Contact:</b> | Sachihiko Fujimoto<br>Katsuyo Oishi<br>Yuka Matsuda<br>Tetsuo Imura<br>Akemi Kitou<br>Hiroshi Takagi - Tokyo |
|----------------|---|--------------|-------------|-----------------|--|

### Proposed new tax treaty between Japan and Australia

On 3 August 2007, the Ministry of Finance (Zaimusho) announced negotiations between the Japanese and Australian governments regarding amendments to the Convention between Japan and Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income.

The proposed treaty, whilst based on the OECD model, comprehensively revised the existing convention and aims to promote investments between the two countries as well as to prevent tax avoidance.

Although the details of the new treaty have not been published at this stage, it is expected that the new treaty will reduce withholding taxes on dividends, interest and royalties paid between Australia and Japan. It also introduces detailed measures designed to prevent treaty abuse.

# Korea

**Sector:** Banking & Capital  
Markets  
Investment Management  
Insurance

**Date:** September 2007

**Contact:** J. Y. Lee - Seoul

## Debt to equity ratio for financial institutions

For the purpose of the thin capitalization provision, a debt to equity ratio for a financial institution is to be reduced from 6:1 to 3:1, under the proposed amendment to the Law for Co-ordination of International Tax Affairs, effective 1 January 2008.

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**Sector:** Banking & Capital  
Markets  
Investment Management  
Insurance  
Real Estate

**Date:** September 2007

**Contact:** J.Y. Lee - Seoul

## Permanent establishment in Korea

Under the proposed amendment to the Corporate Income Tax Act, where a foreign company without a permanent establishment ("PE") in Korea transfers shares to another foreign company without a PE in Korea, the transferor is required to withhold tax on any capital gain unless the transferee has withheld the tax.

Under the current rule, the transferee has the sole obligation to withhold tax on any capital gain arising to a non-resident from a share transfer.

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**Sector:** Banking & Capital  
Markets  
Investment Management  
Insurance

**Date:** September 2007

**Contact:** J.Y. Lee - Seoul

## Deferral of capital gain by transfer of shares

Under the proposed amendment to the Special Tax Treatment Control Act, a deferral of capital gain arising from a transfer of shares in a financial institution in exchange for shares in a financial holding company, is extended to transfers made until 31 December 2010.

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**Sector:** Banking & Capital  
Markets  
Investment Management  
Insurance  
Real Estate

**Date:** September 2007

**Contact:** J. Y. Lee - Seoul

## Indirect Transactions

Under the proposed amendment to the Basic National Tax Act, an indirect transaction or step transaction which unfairly results in a reduction of tax liability may be deemed to be a direct transaction or a single transaction under the substance over form principle.

Korea

*Sector:* Banking & Capital Markets  
Investment Management  
Insurance  
Real Estate

*Date:* September 2007

*Contact:* J. Y. Lee - Seoul

### **Partnership taxation regime**

Under the proposed amendment to the Special Tax Treatment Control Act, a partnership taxation regime is to be introduced for certain entities.

# Malaysia

**Sector:** Banking and Capital Markets

**Date:** August 2007

**Contact:** Khoo Chuan Keat  
Frances Po  
Jennifer Chang  
Lim Phaik Hoon - Kuala Lumpur

## Exemption from income tax for a branch or investee company carrying on banking or Islamic banking business

Conventional and Islamic resident banks in Malaysia are exempt from the payment of income tax in respect of statutory income in relation to sources of income derived from its branch or investee company for 5 years which they:

1. carry out banking, Islamic banking or any part of the foregoing business; and
2. is located outside Malaysia.

Banks are required to submit an application for this exemption to the Central Bank of Malaysia. The relevant branch or investee company would have to commence its banking business within 2 years from the date of approval.

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**Sector:** Banking and Capital Markets  
Insurance  
Investment Management  
Real Estate

**Date:** September 2007

**Contact:** Khoo Chuan Keat  
Frances Po  
Jennifer Chang  
Lim Phaik Hoon - Kuala Lumpur

## Introduction of single tier tax system

Malaysia currently adopts full imputation system under which tax paid by a company is imputed to its shareholders.

To simplify and enhance efficiency of the tax administrative system, it is proposed that a single tier tax system be introduced to replace the imputation system. Under this system, tax on a company's profits is a final tax and dividends distributed to shareholders will be exempt from tax.

There is a 6 year transitional period for companies to move on to the single tier system and specific conditions are set out for shareholders claiming tax credit.

The proposal is effective in the Year of Assessment ("YA") 2008.

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**Sector:** Banking and Capital Markets  
Insurance  
Investment Management  
Real Estate

**Date:** September 2007

**Contact:** Khoo Chuan Keat  
Frances Po  
Jennifer Chang  
Lim Phaik Hoon - Kuala Lumpur

## Reduction of corporate tax rate

Corporate tax rate is reduced to 25% from YA 2009 onwards.

Sector: Real Estate

Date: September 2007

Contact: Khoo Chuan Keat  
Frances Po  
Jennifer Chang  
Lim Phaik Hoon - Kuala Lumpur

### Transfer of buildings to Real Estate Investment Trusts (“REITs”)

Currently, a company which disposes buildings to a REIT is subject to balancing charge when the disposal value exceeds the tax written down value unless the disposal is regarded as a “controlled sale” between companies in the same group.

To enhance the growth of REITs in Malaysia, it is proposed that the disposal of buildings from companies to REITs will not be subject to a balancing charge. As such, REITs are eligible to claim the balance tax written down value of the disposer.

The proposal is effective from YA 2008.

Sector: Banking and Capital  
Markets  
Investment Management

Date: September 2007

Contact: Khoo Chuan Keat  
Frances Po  
Jennifer Chang  
Lim Phaik Hoon - Kuala Lumpur

### Exemption from income tax on fees received from managing Islamic funds

Currently, local and foreign companies managing approved Islamic funds of foreign investors have been granted income tax exemption on management fees from YA 2007 until YA 2016.

To further promote Islamic fund management activities, it is proposed that local and foreign companies managing Islamic funds for local and foreign investors be given an income tax exemption on all fees received from managing the funds. The Islamic fund must be approved by the Securities Commission.

The proposal is effective from YA 2008 until YA 2016.

Sector: Banking and Capital  
Markets  
Investment Management

Date: September 2007

Contact: Khoo Chuan Keat  
Frances Po  
Jennifer Chang  
Lim Phaik Hoon - Kuala Lumpur

### Exemption of income from debentures (non-resident companies)

Currently a tax exemption is provided on interest paid or credited to a non-resident company other than such accruing to a place of business in Malaysia of such company –

1. in respect of securities issued by Government or
2. in respect of Islamic securities or debentures issued in Ringgit Malaysia, other than convertible loan stock, approved by the Securities Commission.

In respect of 2 above, it is proposed that interest paid or credited to any company not resident in Malaysia in respect of Islamic securities issued in *any currency* other than convertible loan stock approved by the Securities Commission is exempted from tax.

The proposal is effective YA 2008.

Sector: Insurance

Date: September 2007

Contact: Khoo Chuan Keat  
Frances Po  
Jennifer Chang  
Lim Phaik Hoon - Kuala Lumpur**Review of tax treatment for life insurance business**

For a life insurance business, investment income and profit from realisation of investments in the life fund are taxed at 8%, whereas income of the shareholders' fund is taxed at the prevailing corporate income tax rate of 27% for YA 2007.

Notwithstanding that investment income is assessed at the concessionary rate of 8% when the actuarial surplus is transferred to the shareholders' fund, the same is subject to tax at 27%. Such surplus has already been subject to tax at 8% in the life fund.

To improve the tax treatment for life insurance businesses, it is proposed that a tax set-off from the total tax charged on the shareholders' fund will be given to overcome the incidence of double taxation. The set-off amount is computed based on a specific formula.

The proposal is effective YA 2008.

Sector: Insurance

Date: September 2007

Contact: Khoo Chuan Keat  
Frances Po  
Jennifer Chang  
Lim Phaik Hoon - Kuala Lumpur**Tax treatment for takaful businesses**

Currently, the tax treatment for takaful business is not specifically provided, apart from Section 60AA which provides that the legislation governing the taxation of conventional insurance businesses would similarly apply to takaful businesses.

To further promote the takaful industry, the Government proposes several enhancements to the tax treatment as follows:

1. tax to be imposed on the *wakalah* fee received by the shareholders' fund from the family takaful and general takaful fund
2. management expenses borne from the shareholders' fund be allowed as a tax deduction from the gross income of the shareholders' fund
3. share of profits distributed from the family takaful fund and general takaful fund be allowed as a tax deduction
4. share of profits distributed to the participants in relation to investment income be taxed on the participants through a final withholding tax mechanism
5. deduction be allowed for *qard* from the shareholders fund and to impose tax on the repayment of *qard*.

The proposal is effective from YA 2008.

Sector: Banking and Capital  
Markets  
Insurance  
Investment Management  
Real Estate

Date: September 2007

Contact: Khoo Chuan Keat  
Frances Po  
Jennifer Chang  
Lim Phaik Hoon - Kuala Lumpur**Tax Treatment for Labuan offshore companies**

It is proposed that Labuan offshore companies be provided with an irrevocable election for their income from offshore business activities to be taxed under the Income Tax Act, 1967 instead of the Labuan Offshore Business Activity Tax Act, 1990.

The proposal is effective YA 2008.

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| <b>Sector:</b> | Banking and Capital<br>Markets<br>Insurance<br>Investment Management | <b>Date:</b> | September 2007 | <b>Contact:</b> | Khoo Chuan Keat<br>Frances Po<br>Jennifer Chang<br>Lim Phaik Hoon - Kuala Lumpur |
|----------------|--|--------------|----------------|-----------------|--|

### **Taxation of discount or premium from subscription or issuance of bonds**

Currently, Section 27 of the Income Tax Act, 1967 provides for the taxation of a discount which first becomes receivable in the relevant period to be taxable when it has been received.

It is proposed that a discount or premium from the subscription or issuance of bond be taxed on an accrual basis.

The above proposal is to accord equal tax treatment between non-financial institutions and financial institutions in relation to the tax treatment of discount / premium.

The proposal is effective from YA 2006.

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| <b>Sector:</b> | Banking and Capital<br>Markets | <b>Date:</b> | September 2007 | <b>Contact:</b> | Khoo Chuan Keat<br>Frances Po<br>Jennifer Chang<br>Lim Phaik Hoon - Kuala Lumpur |
|----------------|--------------------------------|--------------|----------------|-----------------|--|

### **Tax treatment on Special Purpose Vehicles ("SPV") for Islamic financing**

Currently, SPV established for the issuance of Islamic securities is exempt from the payment of income tax in respect of statutory income derived from the issuance of Islamic securities from YA 2007.

It is proposed that income of the SPV established solely by a Company for the purpose of issuing Islamic securities are treated as income of the Company that establishes the SPV.

The SPV is also exempt from complying with all the provisions of the Income Tax Act, 1967. This does not include those SPVs established to issue asset-backed securities.

The proposal is effective YA 2007.

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| <b>Sector:</b> | Banking and Capital<br>Markets | <b>Date:</b> | September 2007 | <b>Contact:</b> | Khoo Chuan Keat<br>Frances Po<br>Jennifer Chang<br>Lim Phaik Hoon - Kuala Lumpur |
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### **Malaysia's International Islamic Financial Centre – Additional incentives**

To attract leading global experts in Islamic finance to participate in MIFC, it is proposed that an income tax exemption be given on income received by non resident experts in Islamic finance.

The proposal is effective 8 September 2007 until 31 December 2016.

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| <b>Sector:</b> | Banking and Capital<br>Markets<br>Insurance<br>Investment Management<br>Real Estate | <b>Date:</b> | September 2007 | <b>Contact:</b> | Khoo Chuan Keat<br>Frances Po<br>Jennifer Chang<br>Lim Phaik Hoon - Kuala Lumpur |
|----------------|---|--------------|----------------|-----------------|--|

### **Exemption of stamp duty for mergers and acquisitions for listed companies**

Currently, stamp duty and real property exemptions are given to Companies listed on Bursa Malaysia that undertake mergers and acquisitions approved by the Securities Commission from 1 October 2005 until 31 December 2007.

It is proposed that the stamp duty exemption above be extended for another 3 years.

The proposal is effective for mergers and acquisitions approved by the Securities Commission until 31 December 2010 and the mergers and acquisitions must be completed not later than 31 December 2011.



# New Zealand

*Sector:* Real Estate

*Date:* August 2007

*Contact:* Eugen Trombitas - Auckland

## **GST on the sale and purchase of property**

The IRD has recently published an Interpretation Statement in relation to invoices issued for the sale and purchase of property. The Statement concludes that the following types of agreements entered into in relation to the sale and purchase of property will not be regarded as “invoices” for GST purposes:

- conditional agreements
- conditional agreements that become unconditional; and
- unconditional agreements.

The IRD now considers that unconditional agreements for the sale and purchase of property do not constitute the issue of an invoice because they do not demand or request payment. The issuing of an invoice requires a positive act. A sale and purchase agreement creates an obligation to make payment but does not notify an obligation.

The Statement applies to sale and purchase agreements entered into on or after 1 July 2007.

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*Sector:* All

*Date:* September 2007

*Contact:* Paul Mersi  
Ian Fay - Wellington

## **Portfolio Investment Entities**

The PIE rules came into force on 1 October 2007. The intention of the PIE rules is to allow income from passive savings vehicles to pass through to investors as if they were direct investments and to be taxed at investors' marginal tax rates.

The Government has recently announced that it intends to shut down 'gaps' identified within the PIE regime. The first gap would have benefited land-owning active businesses. The legislation would have allowed active land-owning companies (with assets such as airports, hotels and rest homes) to structure the land part of their business to obtain the benefit of the final tax of 33% (30% from 1 April 2008) or lower if the investors marginal tax rate is lower. This has been held to be against the policy intent of the PIE rules.

The second gap is the requirement that income earned by PIE's be passive in nature. This requirement did not apply to PIE subsidiaries. The Government has indicated that this is an error.

The Government has stated that legislation to correct these errors will be introduced at the earliest opportunity and the changes will be effective from 1 October 2007.

*Sector:* All

*Date:* September 2007

*Contact:* Paul Mersi  
Ian Rowe - Wellington

### **KiwiSaver Amendments**

The Government has included in legislation the following proposed changes to the Government's incentivised KiwiSaver superannuation regime.

- Every investment statement relating to a KiwiSaver or KiwiSaver complying scheme will now be required to include an additional statement that discloses that the investment policies and procedures take into account responsible investment criteria – including environmental, social and governance considerations.
- Complying funds will be required to pay lump sums, in the same way as KiwiSaver providers are required to do so. This change will give members of complying superannuation funds the choice of taking a lump sum or buying an annuity when they are eligible to access their savings – a provision which already applies to Kiwisaver schemes.

These changes are by way of supplementary order papers to the Taxation (Annual Rates, Business Taxation, KiwiSaver and Remedial Matters) Bill currently before parliament.

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*Sector:* All

*Date:* August 2007

*Contact:* Emma Richards - Wellington

### **Limited and general partnerships**

The Limited Partnerships Bill was introduced into parliament in August 2007. Limited partnerships are a form of partnership involving general partners, who are liable for all debts and liabilities of the partnerships and limited partners, whose liability is limited by their contribution to the partnership. These changes align New Zealand's treatment with international best practice.

The main feature of the Bill is the introduction of a new limited partnership vehicle to replace the current special partnership regime. The Bill introduces new tax rules for both limited and general partnerships.

Submissions on the bill closed on 5 October 2007.

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*Sector:* Investment management

*Date:* August 2007

*Contact:* Paul Mersi  
Hadleigh Brock - Wellington

### **Foreign Investment Fund rate of return**

The deemed rate of return for taxing FIF interest under the deemed rate of return method has increased. The new rate of 10.27% will apply from the 2006/2007 income year.

# Pakistan

**Sector:** Banking and Capital Markets

**Date:** July

**Contact:** Syed Shabbar Zaidi - Karachi

## Saudi Pak Commercial Bank Limited takeover

Saudi Pak Commercial Bank Limited is in the process of takeover by a consortium of foreign investors.

**Sector:** Investment management

**Date:** July

**Contact:** Soli R. Parakh - Karachi

## Appointment of financial advisors for National Bank of Pakistan

The Privatization Commission has decided to appoint a consortium of Deutsche Bank, Morgan Stanley and AKD Securities as financial advisors for National Bank of Pakistan's GDR issue.

**Sector:** Banking and Capital Markets

**Date:** September

**Contact:** Syed Shabbar Zaidi - Karachi

## The Atlas Bank Limited agreement

The Atlas Bank Limited has signed an agreement to sell 24.9 percent shares to a large European banking group – Deutsche Investitons.

**Sector:** Banking and Capital Markets

**Date:** September

**Contact:** Soli R. Parakh - Karachi

## ABN AMRO merger

ABN AMRO Bank's branches were merged into Prime Commercial Bank Limited, and the SBP officially allowed the merged bank to be known as ABN AMRO Bank (Pakistan) Limited.

**Sector:** Investment management

**Date:** September

**Contact:** Soli R. Parakh - Karachi

## ABN AMRO micro-finance loan

ABN AMRO Bank to lend Rs.500 million to micro-finance institutions to support the micro-finance market in Pakistan.

**Sector:** Banking and Capital Markets

**Date:** September

**Contact:** Syed Shabbar Zaidi  
Soli R. Parakh - Karachi

## Anti-Money Laundering Ordinance 2007

Anti-Money Laundering Ordinance 2007 promulgated to plug the informal market in compliance to UN Security Council's Counter-Terrorism Committee.

**Sector:** BCM

**Date:** September

**Contact:** Syed Shabbar Zaidi  
Soli R. Parakh - Karachi

## Non-Performing Loans proposal

The State Bank of Pakistan (SBP) has floated a proposal for 100% provisioning for Non-Performing Loans.

**Sector:** Investment management    **Date:** September    **Contact:** Syed Shabbar Zaidi - Karachi

#### Pakistan International Airlines bond sale

Pakistan International Airlines plans to sell more than Rs25 billion eight year Sukuk bonds in the later part of the year to generate funds for infrastructure development and cut borrowing costs.

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**Sector:** Banking and Capital Markets    **Date:** September    **Contact:** - Karachi

#### Monitoring of outstanding legal disputes

The Government is likely to create "credit bureaus" to monitor and keep details of all outstanding legal disputes about bank loans.

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**Sector:** Banking and Capital Markets    **Date:** September    **Contact:** Soli R. Parakh  
Syed Shabbar Zaidi - Karachi

#### SBP guidelines for the development of Islamic microfinance business

The SBP issued guidelines for the development of Islamic microfinance business amid growing popularity of Islamic banking in Pakistan.

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**Sector:** Banking and Capital Markets    **Date:** September    **Contact:** Soli R. Parakh  
Syed Shabbar Zaidi - Karachi

#### Advance payments against letters of credit

The SBP has allowed advance payments against letters of credit and firm registered contracts up to 100 percent of the FOB or CFR value of the imported goods to further liberalise foreign exchange regime and to facilitate the importers.

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**Sector:** Banking and Capital Markets    **Date:** September    **Contact:** Syed Shabbar Zaidi - Karachi

#### Industrial Development Bank of Pakistan reorganisation

Through a Presidential Ordinance the Government reorganised and converted the Industrial Development Bank of Pakistan into a public limited company.

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**Sector:** Banking and Capital Markets  
Investment management    **Date:** September    **Contact:** Soli R. Parakh - Karachi

#### Pakistan and Switzerland tax treaty

The new tax treaty between Pakistan and Switzerland is likely to come into effect very shortly, although it was published much earlier.

# Philippines

**Sector:** Banking and Capital Markets  
Insurance  
Investment Management  
Real Estate

**Date:** 9 July 2007

**Contact:** Malou Lim - Manila

## Additional Procedural and/or Documentary Requirements in the Preparation and Submission of Financial Statements (FS) Accompanying the Returns

The FS with accompanying Auditor's Certificate attached to the annual ITR/annual information return for tax-exempt persons shall use specific account titles and not control accounts. These accounts must conform to the basic framework of the financial reporting standards promulgated by the Financial Reporting Standards Council of the Philippines, which are Generally Accepted Accounting Principles in the Philippines, as well as to the rules and requirements of the regulatory agencies that have supervision over them such as the Securities and Exchange Commission (SEC), Bangko Sentral ng Pilipinas (BSP), Insurance Commission, etc.

(Revenue Regulation No. 7-2007)

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**Sector:** Banking and Capital Markets  
Insurance  
Investment Management  
Real Estate

**Date:** 3 July 2007

**Contact:** Malou Lim - Manila

## Additional Compliance Requirements in light of Mandatory Adoption of the Philippine Financial Reporting Standards(PFRS)

In view of the adoption of the PFRS in recording business transactions and preparing financial statements, there is a need to reconcile the disparity in a systematic and clear manner of the reports for financial accounting vis-à-vis tax accounting. Accordingly, taxpayers are mandated to maintain books and records that would reflect the reconciling items between financial statements figures and/or data with those reflected/presented in the filed Income Tax Return.

(Revenue Regulations No. 8-2007)

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**Sector:** Banking and Capital Markets  
Insurance  
Investment Management  
Real Estate

**Date:** 18 July 2007

**Contact:** Malou Lim - Manila

## Expanding the Coverage of Taxpayers Required to File Returns and Pay Taxes through the Electronic Filing and Payment System (EFPS) of the BIR

The expanded coverage of taxpayers now include (1) corporation with paid-up capital stock of P10,000,000.00 and above; (2) corporations with complete computerised system; (3) all government bidders pursuant to Executive Order No. 398 as implemented by RR 3-2005. Non-stock, non-profit corporations are excluded from the coverage.

(Revenue Regulation 10-2007)

**Sector:** Banking and Capital  
Markets  
Insurance  
Investment Management  
Real Estate

**Date:** 21 August 2007

**Contact:** Malou Lim - Manila

### **Implementing Rules and Regulations of Republic Act No. 9480 otherwise known as “Tax Amnesty Act of 2007”**

Republic Act No. 9480 (RA 9480) grants tax amnesty on all unpaid internal revenue taxes for taxable year 2005 and prior years to any person, whether natural or juridical, except in the following cases:

1. withholding agents with respect to their withholding tax liabilities
2. those with pending cases:
  - a. under the jurisdiction of the Presidential Commission on Good Government (PCGG)
  - b. involving unexplained or unlawfully acquired wealth under the Anti-Graft and Corrupt Practices Act; and
  - c. involving violation of the Anti-Money Laundering Law
3. those with pending criminal cases for tax evasion and other criminal offences under the National Internal Revenue Code (NIRC) and felonies of fraud, illegal exactions and transactions, and malversation of public funds and property; and

Tax cases subject of final and executory judgement by the courts.

#### *Forms and documents to be filed, as prescribed by the BIR*

1. Notice of availment
2. Statements of Assets, Liabilities and Networth (SALN) as of 31 Dec. 2005;
3. Tax Amnesty Return.

#### *Time and Place of Filing of Tax Amnesty Return*

Filing of Tax Amnesty Returns, together with SALN and payment of amnesty tax shall be made within 6 months from the effectivity of these Rules.

Residents shall file with Revenue District Office (RDO)/Large Taxpayer District Office of the Bureau of Internal Revenue (BIR) which has jurisdiction over the legal residence/principal place of business of the taxpayer. Non-residents shall file with office of the Commissioner of the BIR, or with RDO.

At the option of taxpayer, RDO may assist the taxpayer in accomplishing the forms and computing the taxable base and the amnesty tax payable, but may not look into, question or examine the veracity of entries contained therein.

Upon filing, the taxpayer shall pay the amnesty tax to the authorized agent bank or in the absence thereof, the Collection Agent or duly authorized Treasurer of the city or municipality in which such person has their legal residence or principal place of business. RDO shall issue sufficient Acceptance Payment Forms showing acceptance of payment.

The Acceptance of Payment Form, the Notice of Availment, Statement of Assets, Liabilities and Net Worth (SALN) and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. The completion of these requirements shall be deemed full compliance with RA 9480.

#### *Tax Amnesty Rates*

Any qualified person may avail of the benefits of the amnesty upon payment of the amnesty tax of five percent (5%) based on his net worth as of 31 December 2005 as declared in the SALN to be filed with the BIR. Taxpayers who have filed balance sheets/SALN together with their Income Tax Return (ITR) for 2005 shall amend the said statements to include undeclared assets and/or liabilities and apply the 5% amnesty tax rate on the resulting increase in net worth. In either case, the amnesty tax payment must be higher than the applicable minimum amnesty tax payment according to the following schedule:

| Taxpayer  | Minimum Amnesty Tax Payment |
|---|-----------------------------|
| Individuals, Trusts and Estates   | Php 50,000                  |
| Corporations with subscribed capital of:  |                             |
| • more than Php 50 Million  | Php 500,000                 |
| • more than Php 20 Million but not more than Php 50 Million   | Php 250,000                 |
| • Php 5 Million to Php 20 Million   | Php 100,000                 |
| • less than Php 5 Million   | Php 25,000                  |
| Other juridical entities, including but not limited to, cooperatives and foundations, that have become taxable as of 31 December 2005 | Php 50,000                  |

A qualified taxpayer who avails of the tax amnesty and has fully complied with all its conditions shall be entitled to the following immunities and privileges:

1. Immunity from the payment of taxes, including increments, arising from the failure to pay any and all internal revenue taxes for the taxable year 2005 and prior years;
2. Inadmissibility of the Tax Amnesty Return and the SALN as evidence in all tax proceedings (whether before administrative or judicial bodies) that pertain to the taxable year 2005 and prior years, where the taxpayer is the defendant/respondent, except where the same is used by the taxpayer as a defense in cases brought against him;
3. Immunity against examination or inquiry of the Tax Amnesty Return and the SALN by any person or government office, except for the purpose of ascertaining the net worth of the taxpayer beginning 1 January 2006; and
4. Immunity against examination of the taxpayer's books of accounts and other records for the years covered by the tax amnesty availed of, unless in cases of tax refunds/credits and availment of incentives and exemptions.

(Revenue Memorandum Circular No. 55-2007)

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| <b>Sector:</b> | Banking and Capital Markets<br>Insurance<br>Investment Management<br>Real Estate | <b>Date:</b> | 3 July 2007 | <b>Contact:</b> | Malou Lim - Manila |
|----------------|--|--------------|-------------|-----------------|--------------------|

### 2007 Audit Program for Revenue District Officers (RDO)

The BIR issued the audit program to cover the audit/investigation of 2006 internal revenue tax returns. Generally, this prescribes the uniform policies, guidelines and procedures in the conduct of audit and investigation of tax returns by the RDOs.

The 2007 audit program provides for the selection criteria in the audit/investigation of taxpayers, detailing mandatory audits, top priority, other priority and discretionary audits. Further, the procedures and reporting requirements are detailed in the program.

(Revenue Memorandum Order No. 12-2007)

**Sector:** Banking and Capital Markets  
Insurance  
Investment Management  
Real Estate

**Date:** 6 July 2007

**Contact:** Malou Lim - Manila

#### **BIR Officers to Focus Its Enforcement Efforts on Certain Areas of Tax Administration**

Revenue Officers of the Bureau are called to focus their enforcement efforts on the following weak areas with an end view of improving the current tax efforts of the Agency:

- VAT Administration
- Excise Tax Administration
- Percentage Tax and Documentary Stamp Tax (DST) on Insurance
- Capital Gains Tax and DST on Real Property Transactions and Shares of Stock Transactions
- Income Tax of Individuals Engaged in Business

(Revenue Memorandum Order No. 13-2007)

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**Sector:** Banking and Capital Markets

**Date:** September 2007

**Contact:** Malou Lim - Manila

#### **Implementing Rules and Regulations of the Lending Company Regulation Act**

Pursuant to Securities and Exchange Commission (SEC) Memorandum Circular No. 3, the following reports filed with the Market Regulation Department (MRD) shall be discontinued and accordingly be filed with the Company Registration and Monitoring Department (CMRD).

1. Broker Dealers
  - a. General Information Sheet
2. Transfer Agents
  - a. Notice of Change of Address
  - b. General Information Sheet
3. Investment Houses/Underwriters
  - a. General Information Sheet
  - b. Annual Financial Statements
4. Government Securities Eligible Dealers (GSED)
  - a. General Information Sheet
  - b. Annual Financial Statements

The reports of Transfer Agents on (a) Monthly Reconciliation of Philippine Central Depository (PCD) and Transfer Agent, (b) Monthly Certificate as to the number of shares registered under PCD Nominee, (c) Exception Report on "Loss of securities," and (d) the Monthly Stock Reconciliation by the Philippine Depository and Trust Corporation shall be discontinued. The collation of the data subject of the said reports shall be made by the Philippine Stock Exchange (PSE) and which reports shall, upon the request of the MRD, be submitted to the latter by e-mail.

(Securities and Exchange Commission Memorandum Circular No. 3, dated 5 September 2007)



# Singapore

**Sector:** Banking and Capital Markets

**Date:** July 2007

**Contact:** Lennon Lee - Singapore

## Income derived by non-resident non-individuals

To promote the growth in the financial sector, the Minister of Finance has granted a tax remission for income derived by non-resident non-individuals from structured products entered into with approved financial institutions in Singapore between 7 October 2004 and 31 December 2006 (both dates inclusive) and a tax exemption between 1 January 2007 and 31 December 2011 (both dates inclusive).

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**Sector:** All

**Date:** 11 July 2007

**Contact:** Lennon Lee - Singapore

## New Double Taxation Agreement - Singapore and China

Singapore and China have signed a new Avoidance of Double Taxation Agreement (DTA) on 11 July 2007 which will take effect from 1 January 2008. The highlights of the new DTA are:

- reduction in rates of withholding tax on dividends (from the existing 7% and 12% to the new rates of 5% and 10% respectively) and royalties (from 10% to 6% for lease payment for industrial, commercial or scientific equipment)
- gains from disposal of shares of Chinese companies will be taxed in China only if the alienator of such shares has held at least 25% of the share capital of the company at any time during the 12 month period before the date of the alienation.

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**Sector:** All

**Date:** 14 August 2007

**Contact:** Lennon Lee - Singapore

## Double Taxation Agreement – Singapore and the Republic of Kazakhstan

The DTA between Singapore and the Republic of Kazakhstan was ratified on 14 August 2007 and will apply to income derived on or after 1 January 2008. The DTA provides for:

- withholding tax rate on dividends at 5% or 10%
- withholding tax rate on interest and royalties at 10%.

In addition, under the DTA, Singapore will allow a tax credit for the Kazakhstan tax on dividends received from a Kazakhstan resident company, provided that the Singapore company owns at least 10% of the share capital of the Kazakhstan company.

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**Sector:** Investment management

**Date:** 31 August 2007

**Contact:** Shefali Deshmukh - Singapore

## New framework replacing 80:20 rule

The MAS issued a circular on 31 August 2007 setting out a new framework to replace the 80:20 rule. The new framework will apply to funds existing before 1 September 2007, as well as those set up thereafter. For the former, there is an option of applying the framework with effect from 1 September 2007 or from the next financial year. Key points covered by new framework are as follows:

A qualifying fund under the tax exemption scheme for foreign investors will be granted tax exemption at the fund level, regardless of the residency status of its investors (provided it is not 100% owned by Singapore investors).

- The new framework separates investors of a qualifying fund into two categories – qualifying and non-qualifying. If the fund has an non-qualifying investors, such investors will be required to account for a “quasi” tax (known as the “financial amount”) on their share of the fund’s profits, without affecting the tax exempt status of the fund or the qualifying investors.
- The new framework will apply to both offshore Funds and approved Singapore-resident fund.

The Financial sector incentive scheme – will grant the 10% concessionary tax rate imposed on fund management or investment advisory fees derived in respect of a qualifying fund that does not have any non-qualifying investors. If a qualifying fund has any non-qualifying investors in any year, the entire fee paid to the fund manager will not qualify for the 10% tax rate.

*Sector:* All                      *Date:* 26 July 2007                      *Contact:* Koh Soo How  
Yeak Hwee Meng  
Seow Seok Hong - Singapore

The IRAS has launched a new audit program known as the GST Compliance Assurance Program (“CAP”) which is aimed at large businesses. Unlike the normal substantive GST audits which focus on specific business transactions and the GST treatment, the IRAS will be taking an internal control systems approach to verify the company’s accounting and internal control processes and procedures for GST reporting. The IRAS has indicated that the company audited which has achieved a certain level of GST compliance may be awarded a “CAP status”, which could mean fewer audits by the IRAS for up to a period of 5 years.

# Thailand

*Sector:* Banking

*Date:* Jul – Sep 2007

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Bangkok

## **Income from interest rate swap payments being treated as income under section 40(8) of the Revenue Code although the swap counterparty was the lender of the hedged loan**

Supreme Court decision No. 736/2550

A Thai company entered into loan agreement with overseas financial institutions with floating rates and entered into interest rate swap contracts ("swap contracts") with an overseas financial institutions, some of which were lenders of the loan. The Revenue Department challenged the Thai company for failure to withhold tax when payments under the swap contracts were made to the swap counterparties which were the syndicated lenders, as the payments were considered as interest income.

The Supreme Court however ruled that the income from the swap payments was income under Section 40(8) of the Revenue Code, not interest or income of a similar nature to interest under section 40(4) (a), even if the swap counterparty was the lender of the hedged loan.

# Notes

