

# Foreword

In the two years since our last edition of this publication, we have seen unprecedented fluctuations in the market economies on a global scale. Whilst we touched on the potential impact the credit crunch would have on the M&A market in our last edition, it would have been difficult at the time to foresee the impact the financial crises would have on the global economies, and correspondingly on the volume and size of the M&A deals made, or more aptly, the lack thereof.

Whilst a level of uncertainty remains, it appears the concerted massive government interventions have averted a global financial meltdown. Confidence is starting to return, credit taps are unlocked and the stock market is in recovery mode. The road to recovery is likely to be long and bumpy, however the cautious optimism of the current markets is presenting opportunities for M&A, particularly in the Asia Pacific region which is still the fastest growing and most economically attractive region in the world. In addition, Asian banks, with relatively unimpaired balance sheets, are taking this opportunity to intermediate the massive capital needs of a growing Asia.

M&A activity in the Asia Pacific region is holding up well compared to that in Europe and the United States. While both the volume and deal size in the region fell steeply in 2008 and early 2009 in step with those in the West, markets across the Asia Pacific region have been lifted in the second half of the year by the remarkable resilience of the Chinese economy, which has been buoyed by a series of fiscal and monetary stimulus measures.

Our research indicates that despite a sharp fall-off in the number of M&A activities, Asian financial institutions are actively exploring opportunities to expand. In this new environment however, firms are tending to adopt a more cautious approach, focusing on strengthening existing capabilities with attention to value drivers and operational details of the business being critical to success. Thus, whilst expansion is on the cards, restructuring will continue. There also remains the difficulty in valuing assets as a major obstacle to effecting deals.

The great public debt that was required to curtail the global financial crises will need to be reduced over time and given governments' limited ability to raise taxes during the long and slow economic recovery, there will be greater focus on plugging tax loopholes and increasing tax revenue under existing legislation. For example, China is currently undergoing a complete overhaul of its tax regime and constantly introducing legislation to plug any loopholes and implement policy.

China, Indonesia, Australia, Korea and India have all recently taken a particularly aggressive stance towards tackling perceived tax avoidance arrangements with holding company structures seeking to take advantage of double tax treaties where there is no or little substance in the holding company. Indonesia and China have issued regulations to effectively prevent persons other than "beneficial owners" of the income from claiming treaty protection under their respective treaty arrangements. It is becoming increasingly difficult

to structure arrangements to take advantage of favourable treaty rates, unless there is genuine substance in the relevant treaty countries. Korea and India have also had notable recent court cases that have addressed this substance issue and the Australian Tax Office has also recently taken a very hard line on the perceived use of holding companies.

Revenue authorities of various countries have also taken great interest in transfer pricing arrangements and activities of foreign corporations operating in their countries. The upshot of these developments is that tax structuring, due diligence and securing water-tight tax indemnities are more critical than ever in M&A, especially for cross-border transactions or those involving targets with multinational operations.

M&A transactions provide unique tax planning opportunities and it is also a time when potential tax risks need to be properly managed. In this “Mergers & Acquisitions Asian Taxation Guide 2010”, our network of M&A tax professionals across Asia offer you valuable insights throughout the entire life cycle of the M&A process, from pre-deal negotiation, due diligence and tax structuring to post deal integration.

We have prepared a summary of 15 jurisdictions across Asia, highlighting key tax issues relevant to both purchasers and sellers in an M&A deal.

We trust that this publication provides you with some basic tools for understanding the typical tax implications for M&A deals, however we would strongly recommend you seek comprehensive tax advice from our applicable local PricewaterhouseCoopers (PwC) contact on your specific deals. We hope that you find it an essential read when contemplating M&A transactions in Asia.

This guide has been written using the extensive technical knowledge and practical deal experience gathered by the PwC M&A Tax Services practice in Asia.

I would like to express my sincere gratitude to the PwC M&A Tax Services country leaders and their teams from Australia, China, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, New Zealand, Philippines, Singapore, Sri Lanka, Taiwan, Thailand and Vietnam and Greg James, Christy Wong and Danny Law of PwC Hong Kong.



A handwritten signature in black ink that reads "Nick Dignan". The signature is fluid and cursive, written over a white background.

**Nick Dignan**

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