Competing forces for tax reform – Challenges for today's tax professionals

Asia Pacific Tax Notes

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Territory News
- *Australia*
- *Cambodia*
- *China*
- *Hong Kong*
- *India*
- *Indonesia*
- *Japan*
- *Korea*
- *Laos*
- *Macau*
- *Malaysia*
- *New Zealand*
- *Papua New Guinea*
- *Philippines*
- *Singapore*
- *Sri Lanka*
- *Taiwan*
- *Thailand*
- *Vietnam*

Contents

Foreword

The lead article in this issue was prepared with inputs from the PwC Asia Pacific tax network. It provides an overview of the Organisation for Economic Cooperation and Development (OECD)'s work on the Base Erosion and Profit Shifting (BEPS) project as of today and highlights the impact of the BEPS's project on domestic tax policy settings and global collaboration between tax authorities.

One increasing concern for multinational enterprises (MNEs) is that some countries are taking unilateral actions to deal with BEPS related issues (e.g. the diverted profits tax recently introduced by the UK) in advance of the completion of the BEPS project, which may lead to double taxation.

Another remarkable change brought about by the OECD's BEPS project is the increased international collaboration between tax authorities in information sharing and fighting against cross-border tax avoidance. Obviously, the work on combating BEPS would never be truly over. MNEs operating in this new and dynamic international tax environment should stay tuned of the development in this area and be prepared to adapt to the new normal of international taxation.

Following the lead article is the usual round-up of fiscal policies introduced by the governments in the region since the last issue of *Asia Pacific Tax Notes*. This round-up provides readers with an overview of the key tax developments (including budgetary proposals) in the region. I would like to recommend that readers check with their local PwC contacts on the progress of giving statutory effect to the budgetary proposals mentioned in the round-up.

Finally I would like to thank all the contributors from the PwC firms in the region and the editor, Fergus Wong and his team for their efforts in turning this edition of *Asia Pacific Tax Notes* into reality.

Tom Seymour
Regional Tax Leader

The *May 2015 issue of Asia Pacific Tax Notes* is now available for download in both e-pub and pdf formats at www.pwchk.com/home/eng/aptn_2015.html. If you have any questions about the publication, please contact our editor Fergus Wong at *fergus.wt.wong@hk.pwc.com* or assistant editor Anita Tsang at *anita.wn.tsang@hk.pwc.com*.

Lead article

The OECD BEPS Action Plan – is the end really near?

In PwC's 18th annual Global CEO survey, concerns about over-regulation and the increasing tax burden loomed large as a threat to an organisation's growth prospect for many CEOs. Two-thirds of the CEOs interviewed thought their government's top priority should be an internationally competitive and efficient tax system, with just 20% believing that their government has been effective in achieving this.

It is no surprise that this is a key area of concern for CEOs. The international tax landscape has shifted considerably in the past two years, with the spotlight now firmly focused on matters associated with what has become widely known as BEPS, or base erosion and profit shifting. Since 2012, G20 countries and the Organisation for Economic Cooperation and Development (OECD) have pursued an initiative to reform international tax regimes by addressing opportunities for BEPS through the development of a 15-point BEPS 'Action Plan'. The recommendations from this project are likely to impose a new layer of regulation on multinational enterprises (MNEs), and the prospect of double taxation may emerge.

The OECD is on track to issue the final deliverables of the Action Plan in October this year. But as we near the end of the almost three-year long project, we ask the question – will the work on BEPS ever be truly over?

In our search for an answer to this question, in this article we provide an overview of the OECD's work on BEPS, as well as highlighting the impacts this is having on domestic tax policy settings and increased global collaboration between tax authorities.

The OECD BEPS project

The OECD's BEPS project formally kicked off in with the release of the *Action Plan on Base Erosion and Profit Shifting* (the BEPS Action Plan) in July 2013 in response to a request from the G20 countries to address the growing problem of BEPS. The 15 actions in the BEPS Action Plan identify a series of domestic and international actions to address the problem and sets out timelines for implementation.

The first set of reports and recommendations, which address seven of the actions in the BEPS Action Plan were released in September 2014, with work well underway on the remaining deliverables, due to be released in October 2015 (see Table 1).

A major theme of the OECD BEPS initiative is that international tax rules have not kept pace with an increasingly globalised economy. Policymakers have expressed concern about a perceived lack of clarity over the line between acceptable tax planning and aggressive tax avoidance. The OECD has proposed greater transparency regarding companies' tax affairs in response, with the goal of increasing the pressure on MNEs to pay a 'fair share' of tax in the countries where they operate. For example, under proposed 'country-by-country' reporting requirements, MNEs would have to disclose to tax authorities detailed information for their business globally and in each country where they have a presence. There may be an increasing need to explain clearly to tax authorities the operational purpose of business arrangements that include tax advantages. In this environment, companies no longer can focus solely on technical compliance with tax rules, but instead need to be prepared to provide explanations in situations where profit allocations diverge from the location of employees, tangible assets, and sales.

Historically, the goal of the OECD has been to promote global economic growth and development through the unfettered exchange of goods and services, and the movement of capital, technology, and persons across borders. To that end, the OECD's focus has been on eliminating impediments to cross-border flows, such as double taxation, by expanding income tax treaty networks, by establishing clear rules for governments to tax companies with a limited presence in their jurisdictions, and by reducing gross basis withholding taxes.

The OECD BEPS project, by contrast, has been focused on eliminating so-called 'double non-taxation.' In its quest to address double non-taxation, the OECD also has sought to coordinate action among participating governments in order to avoid increasing the risk of unrelieved double taxation. It is unclear, however, whether the OECD will succeed in its coordination efforts. As a consequence, there are serious concerns that one outcome of the BEPS project could be a dramatic surge in instances of double taxation and tax disputes worldwide.

The rapid pace of the BEPS project, with discussion drafts being released and finalised quickly (sometimes with less than 30 days allowed for public comments) conflicts with the traditional approach of OECD consensus building. True consensus around a single solution chosen from an array of options can be difficult to achieve under such short deadlines. The difficulty of harmonising the divergent views of source and residence countries, and of the developed OECD economies and the developing non-OECD G20 economies, is proving challenging.

In the Asia Pacific region, 12 countries participate directly in the BEPS project as OECD Members (Australia, Japan, Korea, and New Zealand), G20 members (China, India, and Indonesia), participants to the Committee on Fiscal Affairs (Malaysia and Singapore) and invitees to the BEPS Project (Bangladesh, the Philippines, and Vietnam).

At the Asia Pacific Regional Network meeting on BEPS held in Korea in February this year, 54 participants from 21 countries in the Asia Pacific region, as well as representatives from regional and international organisations, met to discuss BEPS issues of particular relevance for the region and to support the development of toolkits to assist with the implementation of solutions to counter BEPS.

Some of the key themes discussed at the Regional Network meeting included:

- an acknowledgement by participants that BEPS has become a key political issue in the region highlighted by extensive media coverage
- broad support for the OECD/ G20 strategy to strengthen the involvement of developing countries in the BEPS project, making the entire process more inclusive and providing an unique opportunity to enhance cooperation in the region
- the need to balance investment opportunities with domestic resource mobilisation in the region, and to engage all stakeholders, including business and civil society, in looking for solutions to counter BEPS

Items from the BEPS Action Plan discussed as being particularly relevant to the region included interest deductibility (Action 4), artificial avoidance of permanent establishment status (Action 7) particularly as it relates to the digital economy, and transfer pricing issues (Actions 8 to 10) and documentation (Action 13).[1]

Table 1

2014 Deliverables (released in September 2014)	
Action 1:	Address the Tax Challenges of the Digital Economy
Action 2:	Neutralise the Effects of Hybrid Mismatch Arrangements
Action 5:	Counter Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance
Action 6:	Prevent Treaty Abuse
Action 8:	Assure that Transfer Pricing Outcomes are in Line with Value Creation/ Intangibles
Action 13:	Re-examine Transfer Pricing Documentation
Action 15:	Develop a Multilateral Instrument
2015 Deliverables	
Action 3:	Strengthen CFC Rules
Action 4:	Limit Base Erosion via Interest Deductions and Other Financial Payments
Action 7:	Prevent the Artificial Avoidance of PE Status
Action 9:	Assure that Transfer Pricing Outcomes are in Line with Value Creation/ Risks and Capital
Action 10:	Assure that Transfer Pricing Outcomes are in Line with Value Creation/ Other High-Risk Transactions
Action 11:	Establish Methodologies to Collect and Analyse Data on BEPS and the Actions to Address It
Action 12:	Require Taxpayers to Disclosure their Aggressive Tax Planning Arrangements
Action 14:	Make Dispute Resolution Mechanisms More Effective

Shaping domestic tax policy

The international tax system is, in essence, a collection of domestic tax systems with a series of overarching principles enshrined in international tax treaties. The OECD is looking to reform these principles and modernise them for a more digital, borderless world. The heightened attention in this area is having an effect on domestic tax policy settings in most jurisdictions well before the completion of the OECD's project.

Questions have been raised as to whether the BEPS project is encouraging some countries to take unilateral actions in advance of the project's completion. Rather than waiting for the BEPS process to play out and consensus rules to emerge, some governments are using the BEPS project to advance their domestic tax agendas and to claim their 'fair share' of corporate tax revenues.

1 http://www.oecd.org/ctp/beps-regional-network-asia-co-chairs-summary-of-discussions.pdf

The risk inherent in this trend is that as soon as one country moves ahead of the OECD consensus process, others are spurred to action, not wanting to be left behind. For example, the recent action by the United Kingdom to introduce a 'diverted profits tax' may encourage other countries to propose similar policies affecting companies operating in their jurisdictions. As a result, the danger of 'global tax chaos marked by the massive re-emergence of double taxation,' of which the OECD Action Plan itself warned, may have markedly increased.

Similar moves towards unilateral actions are emerging within the Asia Pacific Region. Australia, which has seen itself as a leader in the region addressing BEPS as a result of chairing the G20 in 2014, has made a number of policy adjustments ahead of the finalisation of the BEPS project. The past two years have seen a raft of new legislative changes aimed at combating BEPS, including increased transparency of tax paid by large companies, strengthening of the general anti-avoidance rule (GAAR) and tightening of thin capitalisation thresholds.

Increasing political and media pressure on the government in Australia is a contributing factor. The Australian Parliament has recently undertaken an inquiry into perceived 'corporate tax avoidance', which brought the tax arrangements of a number of high profile multinational companies to the attention of the public. Measures announced by the Australian Government in the recent 2015-16 Federal Budget are most likely a direct response to the increased scrutiny of these issues. At the same time, the Australian Government is attempting to encourage community support for comprehensive reform of Australia's tax system, which is likely to also touch on issues associated with BEPS.

Whilst other countries in the region have been involved in the BEPS project to varying degrees, it is likely that all will be keenly watching the developments and looking to their own domestic tax policy as the end of the project looms. For example, in its announcement following the release of the first seven deliverables of the BEPS Action Plan in September 2014, China's State Administration for Taxation (SAT) showed strong support for the OECD's BEPS project, indicating that it was a good opportunity to rebuild a fair international tax environment, and highlighting China's active participation in the BEPS project. A BEPS taskforce has been established within the SAT to systematically study, develop and implement the BEPS initiatives in China where appropriate. The SAT also emphasised that it would take this opportunity to improve China's domestic tax rules and international tax administration capabilities, with a particular focus on the following:

- revising administrative guidelines on anti-avoidance rules
- devoting more efforts to prevent tax treaty abuse
- strengthening tax administration on cross-border transactions
- improving international tax administration systems, and
- reinforcing international cooperation.

Indeed, China has already taken a number of unilateral actions to deal with BEPS related issues including the introduction of the Administrative Measures of GAAR, the new guidance for the corporate income tax treatment on overseas indirect transfer of China taxable properties and the clarification on the deductibility of outbound payments to overseas related companies.

Increased international collaboration

The OECD BEPS project is not only impacting domestic tax policy, it is also fostering a new level of international collaboration between tax authorities with an exponential increase in tax information being shared between tax authorities. The nature of the information shared and the number of participating jurisdictions are both being broadened, and taxpayers in all jurisdictions should assume that authorities will become increasingly effective at using such information.

Joint International Tax Shelter Information and Collaboration

In early March 2015 the newly formed Joint International Tax Shelter Information and Collaboration (JITSIC) Network met in Paris for the first time signalling the commencement of the most significant multinational tax office information sharing project ever undertaken. This ambitious initiative provides the mechanism for tax authorities to share taxpayer information relevant to international tax affairs across an unprecedented number of jurisdictions. The new commitment will likely play a significant role in the international fight against BEPS.

The original JITSIC, formerly known as the Joint International Tax Shelter Information Centre, commenced as a joint revenue authority initiative of Australia, Canada, the United Kingdom and the United States to counter abusive tax schemes and tax avoidance structures. It was created in 2004 with the original office based in Washington D.C. It shared information between countries under the authority of Exchange of Information articles in double tax agreements (DTAs). JITSIC later established another office in

London and added countries to its growing network. Japan, Germany, South Korea, France and China all accepted invitations to join and assist the centre achieve its overarching purpose to share expertise relating to the identification and understanding of what are considered to be abusive tax arrangements.

JITSIC has been proactive in developing techniques for early identification and strategies for deterrence and sought to increase public awareness broadly of civil and criminal risks associated with promoting and investing in abusive tax schemes.

Under the JITSIC framework, Competent Authorities were able to exchange information under the relevant DTAs and put the various international pieces together to examine complex cross-border transactions, such as non-commercial capital and finance arrangements, aggressive transfer pricing strategies and foreign tax credit generation schemes. Similarly, structures involving tax havens and trust structures in connection with high net wealth individuals also came under JITSIC scrutiny.

In recent times tax administrators felt that the information exchange should not be limited to the original JITSIC member countries. Accordingly, following the 9th meeting of the OECD Forum on Tax Administration (FTA) in Dublin in 2014, the 45 OECD and non-OECD countries that make up the FTA determined that the composition of JITSIC would be expanded and remodelled with a greater focus on collaboration. Reflecting this change, the taskforce was renamed to the Joint International Tax Shelter Information and Collaboration (still called JITSIC) with an emphasis on collaboration of information exchange and a de-emphasis on the need for exchange to occur through central hubs. The focus of the new JITSIC Network is to create a broader international platform representing more FTA countries in their fight against perceived cross-border tax avoidance.

Study Group on Asian Tax Administration and Research

At a more regional level, the Study Group on Asian Tax Administration and Research (SGATAR) is making similar moves to increase the level of regional cooperation on tax issues and create closer ties between member countries. SGATAR was initiated by the Philippines in 1970, and now comprises Australia, Cambodia, People's Republic of China, Hong Kong SAR, Indonesia, Japan, Republic of Korea, Macao SAR, Malaysia, Mongolia, New Zealand, Papua New Guinea, the Philippines, Singapore, Chinese Taipei, Thailand and Vietnam. The objective of SGATAR is to provide an opportunity for members to get together annually and exchange information, ideas and experience in the field of taxation.

The 44th meeting of Heads of Delegation, representing the tax administrations of the members, was held in Sydney, Australia in November 2014, and agreed on new steps to foster greater regional cooperation. Most significantly, the members agreed on the establishment of a new, ongoing taskforce to:

- enable the region to engage in effective discussions and keep abreast of international developments and issues including base erosion, profit shifting and tax transparency, and
- enable cooperation and support for the development of robust, cohesive tax systems in each jurisdiction.[2]

Where to next?

In the introduction to this article we posed a question as to whether the work on BEPS would ever be truly over. The answer to this question is clearly no, as the international tax landscape will continue to evolve following the delivery of final pieces of the OECD's BEPS Action Plan later this year. Ongoing work will be required to achieve international consensus, and to implement many of the recommendations that will emerge. And as the global economy continues to change in the future, there will be a need to ensure that the international tax system keeps pace with those changes.

At the domestic level, the issue of MNEs paying a 'fair share' of tax has become a highly public and political one. And there will be ongoing pressure on all governments to continue to reform their domestic tax systems as they each also compete with each other for global capital from business and attempt to set their individual tax regimes based on what is considered good for their country. International tax competition is alive and well and will no doubt continue to play out in resolving the question of what is a 'fair share' of tax.

Against this backdrop, tax authorities will have access to more information than ever before regarding the global operations of MNEs through enhanced international collaboration and information sharing.

MNEs operating in this new and changing international tax environment should continue to monitor the progress of the OECD's work, and the actions of domestic governments, to assess the impact on their businesses.

2 https://www.sgatar2014.org/media-releases

Australia

New rules affecting returns from outbound foreign investment by Australian corporate tax entities

New Subdivision 768-A was introduced to replace the former foreign dividend exemption in section 23AJ. New Subdivision 768-A seeks to align the treatment of foreign dividends with the tax concepts of debt and equity under the domestic law. The Australian debt and equity tax rules take a substance-over-form approach in determining the characterisation of interests for tax purposes.

The effect of the new rule is that only returns on interests that are characterised as 'equity' under the Australian debt and equity tax rules will be treated as non-assessable non-exempt income and therefore not subject to Australian income tax.

In summary, the key changes result from the enactment of subdivision 768-A include:

- the new Subdivision 768-A is not restricted to distributions received by Australian companies, but applies to distribution received by all Australian resident corporate tax entities (i.e. companies, trusts and limited partnerships)
- the former 10% voting interest requirement has been replaced by a broader 10% participation interest requirement
- the exemption for foreign dividends no longer applies to distributions where the instrument on which the distribution is made is otherwise treated as debt for Australian tax purposes (for example, hybrid instruments such as certain redeemable preference shares that is, in substance, debt for tax purposes is no longer exempt from Australian income tax)

A corresponding update has also been made to the Australian controlled foreign company (CFC) rules.

The new Subdivision 768-A and corresponding CFC amendment apply to distributions and non-share dividends made from 17 October 2014.

Changes to the Australian transfer pricing rules

Since the last update, there have been a number of significant changes to the Australian transfer pricing landscape. As mentioned in the previous edition, Australia has recently modernised its transfer pricing rules to more closely align them with the Organisation for Economic Co-operation and Development (OECD) transfer pricing guidance. The new rules are operative from 29 June 2013. The Australian Taxation Office (ATO) has also finalised administrative guidance on transfer pricing documentation and penalties under the new transfer pricing regime.

The new rules include the introduction of the somewhat controversial reconstruction provision which gives the Commissioner of Taxation (Commissioner) the ability to reconstruct a transaction (i.e. to replace all or part of the actual arrangement with an alleged arm's length arrangement). These provisions require taxpayers to document the substance of related party transactions demonstrating their consistency with those entered into by third parties. The reconstruction provisions can be difficult for taxpayers to address, particularly where complex fact patterns are involved.

A key change under the new law was to introduce a requirement for transfer pricing documentation to be prepared by the time of lodging the relevant tax return to enable the establishment of a reasonably arguable position (RAP) in relation to a transfer pricing matter.

Whether or not a RAP exists will impact the penalty rate that may apply if the Commissioner issues an amended assessment.

Recognising that the new transfer pricing rules could create an undue burden on low-risk taxpayers and transactions, the ATO has released guidance on the circumstance in which it will not undertake transfer pricing compliance action. This effectively provides an administrative safe harbour for taxpayers. The Commissioner does not claim to limit or waive the operation of the law for specified low-risk taxpayers or transactions. Rather, he considers the application of a safe harbour to be an appropriate level of self-assessment and commits not to take compliance action beyond confirming a taxpayer's eligibility for the safe harbour.

Certain taxpayers must also complete an international dealings schedule which forms an attachment to the annual income tax return. The schedule represents a significant increase in disclosure requirements in respect of cross-border transactions (e.g. volume, nature and type of transactions, transfer pricing method adopted, documentation etc.) compared with previous disclosure requirements.

Tighter thin capitalisation regime in force

The previous Australian Government's announced changes to the thin capitalisation rules were enacted and received Royal Assent on 16 October 2014.

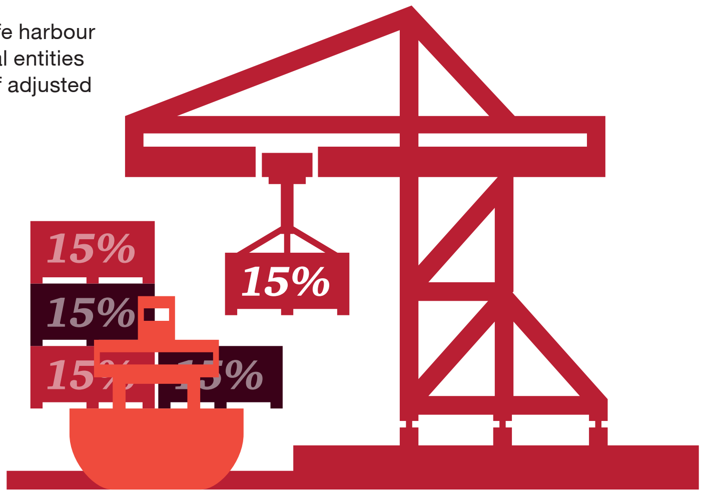
As a result, the following changes apply for income years commencing on or after 1 July 2014:

- reduction in the safe harbour debt limit for general entities from 75% to 60% of adjusted Australian assets (from 3:1 to 1.5:1 on a debt to equity basis)
- reduction in the safe harbour debt limit for non-bank financial entities from 20:1 to 15:1 on a debt to equity basis
- increase in the safe harbour minimum capital for banks from 4% to 6% of the risk weighted assets of their Australian operations
- reduction in the worldwide gearing ratio from 120% to 100% and make it available to inbound investors; and
- increase in the de minimis threshold from AUD250,000 to AUD2 million of debt deductions per year.

Taxpayers will need to review their funding arrangements to take account of these changes.

It is also noted that the Board of Taxation completed a review of the arm's length debt test (ALDT), an alternative test available to taxpayers in calculating their thin capitalisation position for an income year. The review was focused on whether changes could be made to reduce the complexity and compliance costs associated with applying the ALDT from a taxpayer and administrative perspective. A report was provided to the Australian Government in December 2014. No announcements have been made in connection with this review.

Reduction in the safe harbour debt limit for general entities from 75% to 60% of adjusted Australian assets



Changes to non-resident capital gains tax provisions

Non-residents that hold shares on capital account are ordinarily taxable in Australia on gains from the sale of those shares if the interests are considered Taxable Australian Property. Shares will generally be considered Taxable Australian Property where the non-resident (together with associates) holds at least 10% interests in a company, the assets of which are more than 50% comprised of Australian land or mineral rights, or interests in Australian land.

The government enacted a new integrity measure on 16 October 2014. The new measure is designed to ensure that the non-resident participation exemption operates as intended by disregarding the market value of an asset where it is double counted under the principal asset test.

The amendments to the principal asset test are broader in scope than those announced by the previous government in the 2013-14 Federal Budget as they are not restricted to entities that are members of the same income tax consolidated and multiple entry consolidated group.

The amendments have retrospective effect and apply to capital gains tax (CGT) events that occur after 7.30pm on 14 May 2013, when the entities involved are members of the same income tax consolidated and multiple entry consolidated group, and on or after 13 May 2014 for all other entities.

High Court refused special leave application in capital gains tax dispute

The High Court refused the special leave application by the taxpayer in a case involving the liability to CGT of a 'limited partnership' formed in the Cayman Islands. The application for special leave followed the Commissioner's success (on appeal) in Commissioner of Taxation v Resource Capital Fund III LP [2014] FCAFC 37 (RCF decision).

RCF applied for, and was refused, special leave in respect of the Full Court's determination that the double tax agreement between Australia and the United States (Australia/ US DTA) did not prevent the ATO from assessing the limited partnership on the capital gain derived on the sale of its shareholding in St Barbara Mines Ltd (SBM).

Briefly, the issue in this case was whether RCF, a non-resident limited partnership, was taxable in Australia on a capital gain derived on the sale of shares that it held in an Australian mining company or whether the Australia/ US DTA precluded taxation of RCF.

It was held in the first instance that RFC was not taxable because the Australia/ US DTA treated the gain as derived not by the taxpayer but by the limited partners of the partnership. Because of this, an inconsistency existed between the Australian tax law and the Australia/ US DTA which was resolved in favour of the Australia/ US DTA.

The Full Court upheld the ATO's appeal from the original decision, holding that there was no inconsistency between the Australian tax law and the Australia/ US DTA because the Australia/ US DTA did not apply on the basis RCF was not a 'US resident' for the purposes of the US DTA. Accordingly, the Australia/ US DTA did not prevent RCF's liability to Australian income tax.

Australia and the US signed FATCA inter-governmental agreement

In April 2014 the Australian Government announced that Australia and the US had signed an inter-governmental agreement (IGA) to reduce the burden on Australian financial institutions (Australian FI) in complying with the US Foreign Account Tax Compliance Act (FATCA).

Subsequent to this announcement, legislation was enacted to give effect to Australia's obligations under the IGA with the US in relation to the implementation of the FATCA. Obligations under FATCA commence from 1 July 2014 for certain taxpayers.

The implementation of an IGA is intended to reduce compliance obligations for Australian FIs by requiring them to report information to the ATO, which is then passed on to the US Internal Revenue Service. While this may be true, most taxpayers (even those that otherwise fall outside of the FATCA scope) will be required to identify their FATCA status to financial institutions.

If a taxpayer has US investments, its FATCA status will also need to be disclosed on US tax forms (for example, Forms W-8 and W-9) to ensure the correct withholding is deducted from certain US sourced income. It is important to assess whether a taxpayer is in scope and holds financial accounts or out of scope.

ATO to publish tax information on large taxpayers

As noted in the last update, Australia has new legislative measures intended to improve the transparency of Australia's corporate tax system. Under the new measures, the Commissioner is required to publish, in the public domain, certain tax information of large corporate taxpayers and those liable for minerals resource rent tax (MRRT) and/ or petroleum resource rent tax (PRRT).

These measures apply broadly from the 2013–2014 income tax year, and are stated to have the objectives of discouraging large corporate entities from engaging in aggressive tax avoidance practices and providing more information to inform public debate about tax policy.

These measures affect three groups of taxpayers:

- companies and entities that are taxed like companies – whether public or private, domestic or multinational – that have total income equal to or exceeding AUD100 million for an income year, as reported in the entity's tax return
- entities with an amount of MRRT payable for an MRRT year, as reported in the entity's MRRT return; and
- entities with an amount of PRRT payable for a year of tax, as reported in the entity's PRRT return.

If a corporate tax entity reports an amount of total income that is equal to or in excess of AUD100 million in its income tax return for the income year, the Commissioner will publish the following information about the entity:

- name and Australian Business Number (ABN)
- total income for the income year as reported in its income tax return
- taxable income for the income year as reported in its income tax return (for an entity with a tax loss, the quantum of the loss will not be published); and
- income tax payable (i.e. tax payable after applying available tax offsets) for the income year as reported in its income tax return.

It is envisaged that the Commissioner will publish one annual report encompassing all relevant reportable taxpayer information. This would likely be released several months after year end and after all relevant tax returns for the year have been lodged. It is expected that the first publication is likely to be late-2015 and should cover company income tax returns lodged for the 2013-14 income tax year.

While the format for the publication has yet to be determined, it is likely that the information will be published on the ATO's website. The ATO is currently engaging in community consultation on this issue.

Senate inquiry into corporate tax avoidance

With the current global focus on tax transparency, the Australian Senate initiated an inquiry on 2 October 2014 into corporate tax avoidance by the Senate Economics Reference Committee (the Inquiry). The report is due by the first sitting day in June 2015.

The Inquiry follows significant pressure from public interest groups around whether multinational companies that generate profits in Australia pay their 'fair share' of corporate income tax, coupled with the growing international efforts to combat tax avoidance.

The Inquiry, per the terms of reference, is intended to address:

- the adequacy of current Australian tax laws
- any need for greater transparency to deter tax avoidance and provide assurance that all companies are complying fully with Australia's tax laws
- the opportunities to collaborate internationally to address the problem
- the performance and capability of the ATO to investigate and launch litigation, in the wake of drastic budget cuts to staffing numbers
- the role and performance of the Australian Securities and Investments Commission in working with corporations and supporting the ATO to protect public revenue
- any relevant recommendations or issues arising from the government's White Paper process on the Reform of Australia's Tax System; and
- any other related matters.

The Inquiry is being conducted in the broader international context of the OECD's review into base erosion and profit shifting (BEPS) across-borders, which has been supported by the G20.

The Inquiry invited submissions from Australian and multinational corporations operating in Australia in respect of their tax arrangements, including their effective tax rates and strategies used to minimise tax. In addition, tax advisers, special interest groups, individuals and the ATO were also invited to make submissions. Stakeholders were asked to include in their submissions responses to the items outlined in the terms of reference (refer to above).

What stage is the Inquiry at?

The date for submissions closed in early February 2015. The Inquiry conducted a hearing in early April 2015 to question selected parties on issues raised in their submissions.

What might the result of the Inquiry be?

We expect the Inquiry to attract a large amount of media and public attention (as we have seen to be the case in similar inquiries conducted by other countries). Whether there will be any recommendations that would alter Australian domestic (or treaty) law in any meaningful way remains to be seen. While the issue of tax morality may be debated, we would not expect any large scale incidence of tax avoidance to be found.

An update on Australian tax reform – release of the discussion paper Re:think, Better tax system, better Australia

On 30 March 2015, the Australian Government released a tax discussion paper, *Re:think, Better tax system, better Australia* (the Discussion Paper), which formally starts the process for developing the White Paper for Reform of Australia's Tax System. The aim of the Discussion Paper is to foster an 'open and constructive conversation with the community on how Australia can create a better tax system that delivers taxes that are lower, simpler, fairer'. It emphasises that 'tax reform offers one of the biggest opportunities to improve productivity and foster jobs, growth and opportunities'.

This is just the start of a long process on the road to reform which will involve:

- consultation on the issues and questions raised in the Discussion Paper
- an Options (Green) Paper is due in the second half of 2015 (which will take into account the submissions received on the Discussion Paper and will outline a range of tax reform options which will also be subject to further consultation); and
- the Tax Reform White Paper will be released outlining the government's tax reform proposals which it will take to the Federal Election due in late 2016.

PwC remains committed to joining the conversation on tax reform and strongly supports the development of a better tax system for Australia.

Corporate tax rate reduction and paid parental leave scheme

At the time of the last update, the government had proposed cutting the company tax rate from its current rate of 30% to 28.5% with effect from income years beginning on or after 1 July 2015 and applying the reduced rate to all companies.

The reduction in the company tax rate was expected to be offset by the proposed 1.5% paid parental leave (PPL) levy which would be imposed on all companies earning more than AUD5 million in taxable income. The PPL was to provide new mothers with six months paid leave with reference to their salary.

We understand that the government has abandoned its plans to introduce the PPL levy in its current form.

Repeal of the carbon tax and the MRRT

The carbon tax that was introduced by the previous government has been repealed with effect from 17 July 2014. The 2013-2014 income tax year is the last financial year in which the carbon tax applied.

The MRRT has also been repealed with effect from 1 October 2014. The period ending 30 September 2014 is the last period in which the MRRT applied.

Cambodia

Prakas on value added tax on supporting industries/ contractors supplying products or services for export of certain goods

The Ministry of Economy and Finance (MEF) issued Prakas No. 311 MEF.Prk dated 19 March 2014 on the implementation of value added tax (VAT) for supporting industries or contractors supplying products or services for the purpose of exporting garments, textiles, footwear, bags and handbags and headwear. The supporting industries and contractors are separately defined in the Prakas. The above Prakas replaces Prakas No. 298 MEF.Prk dated 17 June 2005, which covered the garment, textile and footwear industries only.

Supporting industries or contractors that supply products or services to the main industries for the purpose of exporting the above products are subject to VAT implications as follows:

Input VAT

For supporting industries, VAT on the import of production inputs and equipment for producing supplies for the main industries above is borne by the government. If an entity intends to sell such production inputs and equipment, it must notify the General Department of Customs and Excise (GDCE) of its intention in advance. Any sale of such production inputs and equipment locally will be subject to VAT at 10%.

However, the incentives above do not apply to contractors. Any import or local purchase of production inputs and equipment for producing supplies for the above main industries by contractors are subject to 10% VAT.

Output VAT

For supporting industries and contractors, 0% VAT will apply to the supply of products or services to the above main industries for exporting purpose. 10% VAT will apply if the products or services are supplied to local market.

For contractors, 10% VAT will apply to any shortfall in quantity/quality of finished products (comparing to the quantity/quality as agreed in the sale agreement) supplied by the contractors if the contractors receive the production inputs from the main industries. In this event, the main industries are also liable for the customs duties and other taxes applied to the imported production inputs.

To be entitled to the above incentives, the supporting industries and contractors are required to meet certain requirements (e.g. to obtain approval from the MEF and submit the sales contracts to the General Department of Taxation (GDT) as outlined in the new Prakas.

The new Prakas became effective from 19 March 2014.

Prakas on VAT on the import and supply of certain products

The MEF issued Prakas No. 312 MEF.Prk dated 19 March 2014, which replaces Prakas No. 303 MEF.Prk dated 23 May 2001. The new Prakas stipulates that VAT on the import and supply of certain agricultural products shall be borne by the government.

Such products include all types of fertilisers, plant seeds, animal medicines, animal foods, animal species, and agricultural machinery and tools.

Prakas on VAT on contractors supplying rice for export

The MEF issued Prakas No. 313 MEF.Prk dated 19 March 2014 which grants VAT incentives to contractors who supply milled rice and supporting services to the rice exporters for exporting purposes.

Input VAT credit

VAT on import of production inputs and equipment for producing milled rice for export is borne by the government. But local purchases of production inputs, except for paddy rice, are subject to 10% VAT.

Output VAT

The direct supply of milled rice or milled rice production services to the rice exporters for exporting purposes is subject to 0% VAT. 10% VAT will apply to supplies of milled rice and milled rice production services for local market.

If contractors import production materials for production of milled rice but do not supply such milled rice to the exporters based on the specified quantity and production, the contractors will need to pay 10% VAT on the shortfall (between the imported quantity and the sale agreement with the exporters). The contractors will also need to pay customs duty and other applicable taxes on the production materials.

To be entitled to the above incentives, entities in supporting industries and contractors are required to fulfil certain requirements (e.g. to obtain approval from the MEF and to submit the sale contracts to the GDT) as outlined in the new Prakas.

The new Prakas is effective from 19 March 2014.

Prakas and notification on collection of tax on means of transportation and vehicles for 2014

The MEF and the GDT issued Prakas No. 548 Prk and Notification No. 1179 GDT respectively to collect tax on means of transportation and vehicles for 2014 from 19 May 2014 to 31 December 2014.

The Prakas, its appendixes and the notification specify detailed procedures and required documents for return filing and tax payments, obligations of the vehicle owners, identification of tax-payment logo and determination of tax amounts based on various types and groups of vehicles.

The taxes can be paid to the GDT either via ACLEDA Bank Plc or Canadia Bank Plc.

Prakas on the amended Specific Tax rates on certain goods

The MEF issued Prakas No. 521 MEF PrK. to implement the new Specific Tax (SPT) rates (i.e. 15% and 20%) for certain types of cigarettes and wine and spirit in accordance with Sub-Decree No. 150 Sub-Decree PK.

The Prakas is effective from 22 April 2014.

Sub-decree on the amended Specific Tax rates on certain goods

To protect the environment and support the government's budget, the Royal Government of Cambodia issued Sub-Decree No. 239 dated 28 August 2014 to increase the SPT rate from 0% to 10% for certain types of semi-finished and finished plastic and electronic products classified under the harmonised tariff headings.

The relevant authorities, including the MEF, must implement the sub-decree from 1 January 2015.

Prakas and notification on the increased Specific Tax base on certain locally produced goods

Further to Prakas No. 521 effective from 22 April 2014, the MEF issued a Prakas and notification No. 015 dated 9 July 2014 to increase the SPT base for certain locally produced goods (as mentioned in Article 2 of Prakas 521), except cigarettes, wine and spirits, from 65% to 90% of the invoice price (formally ex-factory sale price).

According to the above Prakas and Notification, a number of locally produced products (e.g. beer and non-alcoholic beverages) will be subject to Specific Tax at a higher tax base from 1 March 2015.

This Prakas replaces Prakas No. 344 MEF.Pr dated 27 April 2007.

For the actual regime taxpayers, the tax base is calculated exclusive of VAT and SPT. For the estimated regime taxpayers, the tax base is calculated exclusive of turnover tax and SPT.

The new SPT base will be implemented from 1 July 2014 to 31 December 2015 only.

Prakas on the guidelines and procedures for determining uncollectible tax debts

The MEF issued a new Prakas setting out new guidelines and procedures for determining uncollectible tax debts due from taxpayers. This Prakas replaces Prakas 193 MEF.GDT.PrK of 19 February 2009. The definition of 'uncollectible debts' can be found in the detailed Prakas.

Under the new Prakas, only penalties and interest on tax debts can be waived if the debts meet the conditions for uncollectible tax debts. The tax debts will still be collected when the taxpayers are capable of paying the debts based on the assessment of the Working Committee on Uncollectible Tax Debts. It appears that it is unlikely that solvent taxpayers will be able to waive penalties and interest based on this Prakas.

Sub-Decree on the local and overseas mission allowances for national and sub-national level civil servants

The Royal Government of Cambodia issued a Sub-Decree no. 216 dated 22 July 2014 to determine the amounts of pocket, meal, and accommodation allowances for civil servants assigned to local and overseas missions. Allowance amounts will differ depending on the civil servant's job grade. Also, the Sub-Decree defines the term 'allowance'.

This Sub-Decree replaces Sub-Decree 7 of 24 February 2000 and Sub-Decree 10 of 12 April 2004.

Prakas on export tax on certain aquaculture products borne by the government

The export tax on the export of certain aquaculture products listed in Chapter 3 of the 2012 Customs Tariff Book and recognised by the officers of the Ministry of Agriculture, Forestry, and Fisheries shall be borne by the government.

Prakas on export tax on certain products borne by the government

The export tax on the export of wood in chips or particles, sawdust, and other chip wood, under customs tariff codes 4401.21.00, 4401.22.00, 4401.31.00, and 4404.20.10 of the 2012 Customs Tariff Book shall be borne by the government.

Prakas on settling tax liabilities by instalments

To improve tax debt collection and to ease taxpayers' financial difficulties, the MEF will allow taxpayers to settle their tax liabilities in instalments. The Prakas sets out what constitutes 'tax liabilities' and the procedures for settling tax liabilities.

To pay by instalments, the taxpayer is required to submit an application to the GDT. The GDT will assess whether the taxpayer is eligible to pay by instalments based on set criteria. The instalment period cannot exceed three years and the applicable interest rate can be up to 2% per month.

The GDT has the authority to approve instalment payment for tax liabilities under KHR4,000,000,000 (approximately USD1 million). For tax liabilities over KHR4,000,000,000, approval from the MEF is required.

Prakas on fiscal stamp tax to prove Specific Tax payment for cigarettes

The MEF issued Prakas No. 539 of 30 April 2014 to replace Prakas Nos. 515, 539, and 843 of 2001. According to the Prakas, local producers or importers of cigarettes sold in Cambodia must pay fiscal stamp tax (FST) and attach the FST sticker to cigarette packets before dispatching the cigarettes from the factory or removing the cigarettes from the GDCE's custody. The FST costs KHR50 per sheet.

An FST exemption is also granted in the Prakas.

The instructions for sticking FST sticker to the cigarettes are detailed in the Prakas. The Prakas also sets out various obligations, including registering and submitting certain documents, which cigarette producers and importers must comply with.

All units under the supervision of the MEF have been instructed to implement this Prakas from 1 January 2015 onwards.

Prakas on the tax basis for stamp tax on the title transfer of immovable property

The MEF issued a Prakas to determine the tax basis for stamp tax on the soft and hard title transfer of immovable property (i.e. land and building).

Based on the Prakas, the tax base is the higher of:

- the property value set by the appendix of this Prakas; and
- the property value stated in the sale contract or other related legal documents.

New procedures for the tax registration

Registration deadline: within 15 working days after starting economic activities or after completing registration with the relevant authorities

Notification deadline: within 15 days of any changes

Physical registration takes 7-10 working days to be completed while E-registration takes 1-7 working days

Owners/ shareholders, directors or the legal representatives are required to present themselves at the GDT

Prakas on tax registration

The MEF has outlined new procedures for the tax registration of non-government organisations (NGOs), enterprises, businesses and individuals with the GDT. This Prakas replaces Prakas No. 1004 of 30 November 2011.

The important information in the Prakas is summarised below:

1. Registration deadline: within 15 working days after starting economic activities or after completing registration with the Ministry of Commerce or other relevant authorities. The registration fees are KHR400,000 (around USD100) for an actual regime taxpayer and KHR200,000 (around USD50) for an estimated regime taxpayer.
2. Notification deadline: within 15 days of any changes (e.g. registered address, business objective, director and person in charge of tax affairs etc.).
3. Process: the registration application can be submitted to the GDT in person or electronically (known as E-registration) via the GDT's website. Physical registration takes 7-10 working days to be completed while E-registration takes 1-7 working days. The GDT will acknowledge receipt of the application and documents from applicants.
4. Required procedure/ documents: the owners/ shareholders, directors or the legal representatives are required to present themselves at the GDT to have their photographs taken and fingerprints scanned. Some documents are also required under this Prakas, including Immovable Property Tax payment receipt.

The GDT has the right to reject the registration application if the owners/shareholders, directors or legal representatives of the applicants are managing other taxpayers that have outstanding tax debts.

Renewal for registration certificates

Further to the above, taxpayers who registered with the GDT before 1 November 2014 will be informed by the GDT to update their registration information. New registration certificates will be issued by the GDT after the update is completed. Renewal fees are KHR200,000 (around USD50) for an actual regime taxpayer and KHR100,000 (around USD25) for an estimated regime taxpayer.

Increase of non-taxable salary threshold

Based on the Financial Law 2015 and Notification No. 048, the non-taxable salary threshold for resident employees has increased from KHR500,000 (around USD125) to KHR800,000 (around USD200).

The new tax thresholds are shown in the table below:

Monthly salary (KHR)	Tax rate
0 – 800,000	0%
800,001 – 1,250,000	5%
1,250,001 – 8,500,000	10%
8,500,001 – 12,500,000	15%
Over 12,500,000	20%

Circular on exemptions of tax on salary and tax on fringe benefits

The MEF has granted an exemption from tax on salary and tax on fringe benefits for certain allowances and benefits provided to factory employees and workers. These allowances include:

- travel allowance for transport from the employees' residence to the factory and vice versa as provided in the Labour Law
- housing allowance or the provision of housing facilities inside the factory area as provided in the Labour Law
- meal allowance provided to all employees and workers regardless of their duties and positions, including overtime meal allowances
- contributions to the National Social Security Fund
- health or life insurance provided to all employees and workers regardless of their duties and positions
- baby allowance or expenses related to baby care as provided in the Labour Law
- severance pay or indemnity for lay off paid in accordance with the Labour Law

Amendment to tax on unused land

Article 12 of the Financial Law 2015 amends Article 29 of the Financial Law 1995 and redefines the scope of the tax on unused land as follows:

'Tax on unused land shall be paid by the owner of land that does not fall under the scope of tax on immovable property'.

Additional power given to tax authority

Based on the Financial Law 2015, the tax officers are authorised to act as justice police or their agent to investigate violations of the tax law and regulations in accordance with the criminal code. This authorisation will be granted under a joint Prakas from the Ministry of Justice and the MEF.

Notification on the submission of 2015 patent tax return and payment

The GDT has issued a notification advising the following 2015 patent tax requirements:

- Deadline for submission of patent tax return is 31 March 2015.
- Enterprises with multiple business objectives must pay patent tax and file a separate return for each business objective.
- Enterprises that have multiple branches located in the same province/ city with the same business objective do not need to file separate patent tax returns. If the branches are in different provinces/ cities, a separate patent tax return must be filed in each province/ city.

It is important to note that enterprises that registered with the GDT before 1 November 2014 must file an updated tax registration in accordance with Prakas No. 1139 MEF.PrK, dated 9 October 2014, on patent tax registration with the GDT. The GDT will not issue a patent tax card until the updated tax registration is filed.

Sub-decree on tax incentives for the securities sector

The Royal Government of Cambodia revised the tax incentives available to companies to be listed on the Cambodian Stock Exchange and public investors (residents or non-residents) who hold or trade government, equity or debt securities in the securities market.

Based on the above sub-decree, the tax incentives include:

1. 50% reduction of the annual Tax on Profit (ToP) liability: Please refer to the sub-decree for the start and end dates.
2. ToP liability waiver: Please refer to the sub-decree for the years covered and conditions.
3. Withholding tax (WHT) incentive: Public investors are entitled to 50% reduction on the WHT payable on interest or dividends received from the above securities. This exemption is effective for three years starting from the effective date of this sub-decree.
4. Qualified Investment Project (QIP): the annual tax liability reduction or waiver in points 1 and 2 above are not applicable to QIPs during the tax holiday period.

There are various situations in which the GDT can request the MEF to forfeit the tax incentives granted to listed companies.

This sub-decree is effective from 8 January 2015 and replaces Sub-Decree No. 70 Sub-Dec. BK dated 22 April 2011.

Market interest rate on loans for 2014 Tax on Profit

For 2014 ToP returns, the GDT set the annual market interest rates on loans at 10.15% based on the average rate of eight major commercial banks in Cambodia.

China

New circular in attacking and imposing China tax on offshore indirect transfer

In 2009, the State Administration Taxation (SAT) issued the circular Guoshuihan [2009] No. 698 (Circular 698). According to which, offshore indirect equity transfer of China Tax Resident Enterprises (TREs) may be subject to China Corporate Income Tax (CIT), if the arrangement is considered as an abusive use of company structure without reasonable commercial purpose. Such provision had a wide-spread impact as many foreign investors invest in China via a foreign intermediate holding company. The SAT had been working in the last couple of years to improve the tax rules in relation to such offshore indirect equity transfer.

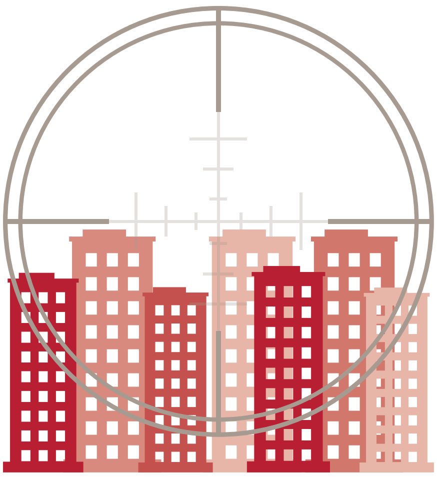
In early February 2015, the SAT released a Public Notice [2015] No. 7 (Public Notice 7) to supersede the current Chinese tax rules in relation to the offshore indirect equity transfer. The provisions introduced in Public Notice 7 are significantly more and different from those under Circular 698.

Wider scope: While Circular 698 only targets offshore indirect equity transfer of Chinese TREs, Public Notice 7 extends the scope to capture all 'China Taxable Properties'. This new concept of 'China Taxable Properties' is defined to include not only equity investment in Chinese TREs, but also immovable properties located in China and assets of an establishment or place of foreign company in China.

In addition, the 'transfer of the equity interest in a foreign intermediate holding company' is defined very widely in Public Notice 7 to cover any changes in the shareholder of that foreign company being transferred in the course of the group's overseas restructurings. It is also necessary to note that the scope of 'equity' is extended to include 'other similar rights'. Obviously Public Notice 7 is trying to capture as many scenarios as possible into its applicable scope.

New approach: Foreign transferors are facing a totally different approach by the SAT in Public Notice 7 to tackle offshore indirect transfers of China Taxable Properties:

- Firstly, Public Notice 7 provides seven general criteria (plus 'other relevant criteria') for assessing whether there are reasonable commercial purposes for an offshore indirect transfer. The foreign transferor should carry out self-assessment for its offshore indirect transfer.



Public Notice 7 extends the scope to capture all 'China Taxable Properties'.

- Among these criteria, four are classified as 'Red Zone' with some quantifiable benchmarks, i.e. the transfer meeting such 'Red Zone' criteria is seen as without reasonable commercial purposes. In such case, the transfer should be re-characterised as a 'direct transfer' and thus subject to CIT. The foreign transferor is required to report and pay the relevant CIT to the Chinese tax authorities within a prescribed timeline.
- In the contrary, there are also 'safe harbour' scenarios to be regarded as 'Green Zone', i.e. the transfer falling in such scenarios has reasonable commercial purposes.
- In case the foreign transferor cannot come to any position after its self-assessment, it is provided with an avenue to present its case to the Chinese tax authority for a determination.
- Last but not least, even if the foreign transferor does not undertake any tax reporting or payment as per Public Notice 7, the Chinese tax authority could still launch a GAAR investigation on suspicious transactions and, where necessary, make adjustments according to the Chinese General Anti-Avoidance Rules (GAAR).

Apart from stipulating the obligations for the foreign transferor, Public Notice 7 also imposes onerous reporting and tax withholding responsibilities on the transferee no matter it is a foreign or domestic party. Failure to report and settle the CIT liability for a taxable transaction would cause Interest Levy for the foreign transferor and penalty for the transferee.

General criteria for assessing reasonable commercial purposes: Public Notice 7 reiterates the importance of the 'reasonable commercial purpose' which is the key principle laid down in the CIT Law. It provides seven general criteria (plus 'other relevant criteria') which should be examined holistically for the assessment, including:

1. the China proportion in the equity value of the shares of the foreign company being transferred
2. the China proportion in the asset value or income of the foreign company being transferred
3. the functions performed and risks undertaken by the foreign company being transferred and its subsidiaries
4. the duration of existence of the shareholders, business model of the foreign company and related organisational structure
5. the situation regarding foreign income tax payment for the offshore indirect equity transfer
6. whether the indirect investment and indirect transfer can be substituted by direct investment and direct transfer
7. the applicability of any treaty protection
8. other factors, etc.

'Green Zone': Public Notice 7 provides safe harbour scenarios (Green Zone) where an offshore indirect transfer of China Taxable Properties would be excluded from being subject to China tax.

Firstly, either one of the following two scenarios would not be subject to re-characterisation:

1. The foreign transferor buys and sells the shares of the same listed overseas company through public stock exchanges; or
2. Where the foreign transferor would otherwise directly hold and transfer the China Taxable Property, the income from such direct transfer would be exempted from CIT under the applicable tax treaty or tax arrangement.

In addition, qualified internal group restructurings which fulfil ALL of the following criteria would be considered as having reasonable commercial purposes:

- The shareholding relationship of the foreign transferor and transferee should be 80% or more (100% for overseas companies that are property-rich);
- The internal group restructuring would not result in the reduction in the CIT burden on the gain arising on the subsequent potential indirect transfer; and
- The deal consideration of the transfer is totally settled in the form of equity (not including the equity of listed enterprises) of the transferee or its subsidiaries.

'Red Zone': Contrary to the Green Zone, Public Notice 7 provides the following four unfavourable conditions which are based on criteria 1, 2, 3 and 6 of the seven general criteria above. If an offshore indirect equity transfer meets ALL these conditions, it would be considered as a transaction lacking reasonable commercial purpose straight away (Red Zone) and thus taxable to CIT:

1. 75% or more of the value of the overseas company being transferred is derived directly or indirectly from China Taxable Properties;
2. 90% or more of the total assets of the foreign company (not including cash) is directly or indirectly derived from China Taxable Properties, or 90% or more of its income is directly or indirectly derived from China;
3. The foreign company and its subsidiaries which directly or indirectly hold the China Taxable Properties perform limited functions and undertake limited risks which are not commensurate to their economics substance;
4. The foreign income tax payable for the indirect transfer of China Taxable Properties is less than the possible tax burden in China on the direct transfer of such China Taxable Properties.

Consequences for failure in withholding and/ or paying tax: In the event that the transferee does not withhold CIT (and the foreign transferor fails to pay the CIT in due course either), the foreign transferor would be subject to a daily Interest Levy calculated based on the Renminbi loan base rate published by the People's Bank of China plus 5 percentage points in accordance with the Interest Levy clauses under the CIT Law. If the transferor has reported the transaction to the Chinese tax authorities within 30 days of signing the equity transfer contract, the additional 5 percentage points would be waived.

Public Notice 7 has clearly stated that the payer of the sales consideration (which is usually the transferee) should withhold CIT for the offshore indirect equity transfer if the transaction is subject to CIT. Failure to fulfil the withholding obligation may trigger a penalty of 50% to three times of the amount of the CIT liability based on the relevant provisions in Tax Collection and Administration Law (TCAL). This penalty may be reduced or waived if the withholding agent has reported the transaction to the Chinese tax authorities within 30 days of signing the equity transfer contract. This is the first time the SAT explicitly states that the transferee, including a foreign one, would have such heavy monetary consequence.

Over all, Public Notice 7 brings a new landscape for tax treatments on offshore indirect transfer transactions. It imposes more responsibilities on the transaction parties to assess and make their decision. Both foreign transferor and transferee should examine carefully the facts and merits of each transaction and may take different strategies accordingly.

Withholding tax policies for QFIIs/ RQFIIs capital gains

In November 2014, the Ministry of Finance (MOF), SAT and China Securities Regulatory Commission (CSRC) jointly released a circular Caishui [2014] No.79 (Public Notice 79) to provide long-awaited clarification on withholding tax (WHT) policy for capital gains in relation to QFIIs/ RQFIIs schemes.

Public Notice 79 stipulated that QFIIs/ RQFIIs without an establishment or place (E&P) in China, or QFIIs/ RQFIIs with E&P in China but the income so derived in China is not effectively connected with their E&P, are temporarily exempt from WHT on gains derived from the trading of equity investment assets (including shares) effective from 17 November 2014. This blanket tax exemption for QFIIs/ RQFIIs (and effectively for their investors) is consistent with international practices and has sent a reinforcing signal on the promotion of China's A-share market and internationalisation of the Renminbi. However, it is imperative to note that the exemption is made as a temporary measure. Hence it is unclear how long the exemption will be in place and what should be the grandfathering protection if the exemption is eventually removed.

On the other hand, Public Notice 79 now clearly stipulates that QFIIs/ RQFIIs shall be subject to WHT in respect of the capital gains derived prior to 17 November 2014. It answered a very important question that many QFIIs/ RQFIIs (and their investors) had been asking over the years.

QFII/ RQFII are suggested to take immediate actions to assess their own situations and determine if they are sufficiently prepared for historical tax obligation (pre-17 November 2014) as provided by Public Notice 79.

Tightening administration on multinational company intra-group outbound charges

In March 2015, the SAT released the Public Notice Regarding Certain Corporate Income Tax Matters on Outbound Payments to Overseas Related Parties (SAT Public Notice [2015] No.16 or Public Notice 16) as well as its official Interpretation. Public Notice 16, together with the SAT's Interpretation, sets out SAT's position from a transfer pricing perspective in relation to all types of outbound payments to overseas related parties.

Arm's length principle and authenticity test: Public Notice 16 states that taxpayers must comply with the arm's length principle when making payments to its overseas related parties. Taxpayers shall provide relevant documentation upon request, such as intercompany agreements, documentation that verifies the authenticity as well as the arm's length nature of the transactions. The SAT's Interpretation further states that outbound payments by an enterprise to its overseas related parties should be regarded as the enterprise's normal business operation and could be paid without the tax authority's approval. However, for the purpose of examining the arm's length principle of the outbound payments, the in-charge tax authority may require an enterprise to provide relevant documentation which can verify the authenticity of the transaction. If outbound payments are not in compliance with the arm's length principle, the tax authorities are empowered to make special tax adjustments.

Four types of payments which are not deductible for CIT purpose:

Type 1 – unqualified overseas related parties: According to Public Notice 16, payments to an overseas related party which does not undertake functions, bear risks or has no substantial operation or activities shall not be deductible for CIT purpose.

Type 2 – unqualified service fee: taxpayers should receive services that enable them to obtain direct or indirect economic benefits in return for service fees paid to overseas related parties. Public Notice 16 outlines the situations where service fee payments to overseas related parties in compensation for the following services would not be deductible for CIT purpose:

- services that are unrelated to the functions and risks borne by the enterprise or operation of the enterprise
- intra-group services relating to the protection of the investment interests of the direct or indirect investor of the enterprise, including control, management, supervising activities for the enterprise
- intra-group services that have already been purchased from a third party or have been undertaken by the Enterprise itself
- services where the enterprise obtains additional benefits solely for being part of a corporate group, and the enterprise has not received any specific services from related party within the group
- services that have been remunerated through payments for other related party transactions
- other services that have not provided the enterprise with any direct or indirect economic benefits

Type 3 – Royalties paid to an overseas related party which only owns the legal rights of the intangible asset but having no contribution to its value creation, not in compliance with the arm's length principle are not deductible.

Type 4 – Royalties paid to an overseas related party in compensation for incidental benefits arising from the financing or listing activities are not deductible.

In light of Public Notice 16, a comprehensive tax health check may be necessary to identify the status and risks for a subsidiary and the group based on its current intra-group outbound charges. Immediate actions should be taken to rectify any issues identified and build up a sustainable intra-group charges structure and system which may involve both the overseas parent company/ related parties and Chinese local subsidiaries. Taxpayers should be ready for a potential transfer pricing investigation by the tax authorities, focusing on thorough and proper tax and transfer pricing documentation and adequate justification of intra-group outbound service charges. It is imperative to have sound ongoing internal tax risk control and update/ improve the intra-group outbound service charges mechanism to ensure timely and effective tax compliance.

Fifteen unacceptable tax practices identified by the SAT

In September 2014, the SAT hosted a conference in Beijing on the 2014 deliverables of the Base Erosion and Profit Shifting (BEPS) project which the Organisation for Economic Co-operation and Development (OECD) had. The SAT concluded at the conference that the BEPS project was a 'worldwide campaign on tax-substance alignment' and set forth their general positions and action plans to address BEPS issues in China.

15 unacceptable tax practices: With reference to the 15 BEPS Action Plans, an SAT official identified 15 unacceptable tax practices in the conference, which reflect SAT's determination to tackle BEPS issues in China:

- base erosion and profit shifting
- double/ multiple non-taxation
- aggressive tax planning
- tax regimes that are not transparent
- holding structures or transactional arrangements without economic substance
- deduction of inappropriate costs
- loss incurred by Chinese subsidiaries with single/ simple functions
- treaty abuse
- unreasonable over-pricing of intangibles
- remuneration inconsistent with function and contribution to value creation
- high-tech company with low profit margins
- China's location specific advantages not observed
- losses transferred from foreign entities to the Chinese subsidiaries
- refusal to provide data/ information/ documentation to Chinese tax bureaux upon request, and
- hybrid mismatch arrangements for the purpose of tax avoidance

The positions stated by the SAT at the conference indicate upcoming changes in China's tax landscape in relation to recommendations from the BEPS project. Although these positions are not endorsed by formal written documents, it is clear that the SAT is accelerating the process to catch up with global standards to combat tax avoidance. Multinational enterprises with Chinese operations should carefully monitor these proposed tax changes and their possible implications, including their effects on existing structures and planned business development.

Hong Kong

Tax measures were introduced to help develop Hong Kong as an intellectual property hub and corporate treasury centre.

The 2015/16 budget

The Financial Secretary delivered the 2015/16 budget on 25 February 2015. The measures proposed in the budget, including those one-off relief measures, are summarised below.

Profits tax

The profits tax rates for companies and unincorporated businesses for year of assessment 2015/16 remain unchanged at 16.5% and 15% respectively.

The 2015/16 budget proposed the following two tax measures to help develop Hong Kong as an intellectual property hub and corporate treasury centre respectively:

- Consider extending the scope of tax deduction for capital expenditure incurred on the purchase of intellectual property rights to cover more types of intellectual property rights as appropriate.
- Amending the existing tax law to allow, under specified conditions, interest deductions under profits tax for corporate treasury centres and reduce profits tax for specified treasury activities by 50% (i.e. a concessionary tax rate of 8.25%)[1].

Salaries tax

There is no change in the marginal tax rates, marginal tax bands and standard tax rate of 15%. However, the basic child allowance and additional child allowance (which is available in the year of birth) will each be increased from HKD70,000 to HKD100,000 (for each child).

The Financial Secretary also announced in the budget that tax concession will be provided to subscribers to regulated health/medical insurance products but the details have yet to be announced.

In addition, as a result of the increase in the maximum level of relevant income (i.e. from HKD25,000 to HKD30,000 per month) for Mandatory Provident Fund (MPF) contribution which took effect from 1 June 2014, the maximum annual tax deduction for employee's contributions to recognised retirement schemes (including MPF schemes) has been increased from HKD17,500 (for year of assessment 2014/15) to HKD18,000 (for year of assessment 2015/16).

One-off relief measures

Major one-off relief measures that benefit the public at large include:

- Waiving 75% of profits tax for 2014/15 (subject to a HKD20,000 ceiling) to be deducted from the taxpayer's final tax payable for the year.
- Waiving 75% of salaries tax and tax under personal assessment for 2014/15 (subject to a ceiling of HKD20,000) to be deducted from the taxpayer's final tax payable for the year.
- Waiving rates for two quarters of 2015/16, subject to a ceiling of HKD2,500 per quarter for each rateable property.
- Paying one month's rent for the lower income tenants of public housing, excluding certain wealthier tenants and non-elderly tenants.
- Providing two additional months of Comprehensive Social Security Assistance Payment, Old Age Allowance, Old Age Living Allowance and Disability Allowance.

1 This measure was proposed further to the announcement made by the Financial Secretary in the 2014/15 budget that the HKSAR Government would review the conditions for interest expense deduction under the existing tax law for corporate treasury activities.

New tax legislation proposed/ enacted

New pieces of tax legislation enacted since the last issue of *Asia Pacific Tax Notes* are summarised below.

Increase in ad valorem stamp duty for transfer of immovable property

The Stamp Duty (Amendment) (No.2) Ordinance 2014 was gazetted on 25 July 2014 with retrospective effect from 23 February 2013.

The ordinance gave effect to the following two measures previously proposed by the HKSAR Government to further address the overheated property market in Hong Kong:

- Introducing a set of special (higher) ad valorem stamp duty (AVD) rates on transfer of immovable property (both residential and non-residential) in Hong Kong.
- Advancing the charging of AVD on non-residential property transactions from conveyance on sale to the agreement for sale (i.e. to make agreements for sale of non-residential property chargeable with stamp duty).

The above two measures are applied retrospectively to immovable property transactions executed on or after 23 February 2013.

Stamp duty exemption for exchange traded fund transactions

The Stamp Duty (Amendment) Ordinance 2015 was gazetted and became effective on 13 February 2015.

The ordinance amended the Stamp Duty Ordinance to waive stamp duty payable on the transfer of shares or units of all exchange trade funds listed in Hong Kong. The stamp duty exemption put Hong Kong on par with other major financial markets and will help strengthen Hong Kong's role as an international financial and asset management centre.

Proposed profits tax exemption for offshore private equity funds

In addition to the above newly enacted tax legislation, the Inland Revenue (Amendment) Bill 2015 was gazetted on 20 March 2015. The bill seeks to extend the current profits tax exemption for offshore funds to private equity (PE) funds as proposed in the 2013/14 budget. Some of the key features of the tax exemption framework for offshore PE funds proposed in the bill are:

- Amending the definition of 'securities' such that transactions in shares of non-Hong Kong incorporated private companies which neither carry on a business nor hold any immovable property in Hong Kong will be included as tax exempt 'specified transactions'.
- Extending the profits tax exemption to non-resident PE funds engaged in specified transactions even though they are not managed by specified persons (i.e. fund managers with a licence issued by the Securities and Futures Commission of Hong Kong), provided the funds satisfy certain conditions and qualify as a 'qualifying fund' as defined in the bill.
- Providing profits tax exemption to Hong Kong or non-Hong Kong incorporated special purpose vehicles that are set up solely for the purpose of holding (directly or indirectly) or administering one or more underlying portfolio investment of a qualified non-resident PE fund.

The bill has to be scrutinised and approved by the Legislative Council before it can be enacted into law. Upon enactment, the legislative changes are to be applicable from 1 April 2015.

Developments of Hong Kong's tax treaty network

Treaties and protocols signed/ ratified in the past 12 months

Since the last issue of *Asia Pacific Tax Notes*, three new tax treaties that Hong Kong has signed are with Korea, South Africa and United Arab Emirates. Pending the completion of the ratification procedures, the three newly signed tax treaties have yet to come into force.

In addition to the three new tax treaties, Hong Kong and China signed the Fourth Protocol to the comprehensive double tax arrangement between Hong Kong and Mainland China (the China-HK CDTA) on 1 April 2015 to amend the existing CDTA in the following four key aspects:

- Reducing the withholding tax rate for rentals from aircraft leasing and ship chartering from 7% to 5%.
- Providing tax exemption in China for gains derived by Hong Kong tax residents (including 'Hong Kong resident investment funds' as defined in the protocol) from disposal of shares of Chinese tax resident enterprises listed on recognised Chinese stock exchanges, provided certain conditions are met.
- Introducing the 'main purpose' test to the Dividends, Interest, Royalties and Capital Gains articles as an additional anti-treaty abuse measure.
- Expanding the scope of information exchange under the CDTA to cover information related to business tax, value added tax, consumption tax, land value added tax and property tax in China.

The Fourth Protocol will enter into force after the completion of the ratification procedures and exchange of notification by both contracting parties.

Hong Kong also exchanged notes with Japan on 10 December 2014 to expand the scope of taxes covered for information exchange purpose under the Hong Kong-Japan tax treaty. The notes have yet to come into force pending the completion of ratification procedures by both contracting parties.

In addition, the Second Protocol to the Hong Kong-Vietnam tax treaty signed on 13 January 2014, which updated the Exchange of Information (EoI) article in the treaty to the more liberal 2004 version of the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention, will become effective on 1 April 2016 in Hong Kong and 1 January 2016 in Vietnam.

Implementation status of the treaty network

As of March 2015, Hong Kong has signed 32 tax treaties with various Asian, European and North American countries. The following table summarises the implementation status of the 32 treaties signed by Hong Kong and the tax years from which these treaties became effective in Hong Kong and the corresponding contracting jurisdictions.

	Jurisdiction	Date of signing	Date of entry into force	Effective from year of assessment (Hong Kong)	Effective from (the other contracting state)
	Treaties signed before 2010				
1	Belgium[2]	December 2003	October 2004	2004/05	1 January 2004
2	Thailand[2]	September 2005	December 2005	2006/07	1 January 2006
3	The Mainland	August 2006	December 2006	2007/08	1 January 2007
4	Luxembourg	November 2007	January 2009	2008/09	1 January 2008
5	Vietnam	December 2008	August 2009	2010/11	1 January 2010
	Treaties signed in 2010				
6	Brunei	March 2010	December 2010	2011/12	1 January 2011
7	The Netherlands	March 2010	October 2011	2012/13	1 January 2012
8	Indonesia	March 2010	March 2012	2013/14	1 January 2013
9	Hungary	May 2010	February 2011	2012/13	1 January 2012
10	Kuwait	May 2010	July 2013	2014/15	1 April 2014
11	Austria	May 2010	January 2011	2012/13	1 January 2012
12	UK	June 2010	December 2010	2011/12	1 or 6 April 2011
13	Ireland	June 2010	February 2011	2012/13	1 January 2012
14	Liechtenstein	August 2010	July 2011	2012/13	1 January 2012
15	France	October 2010	December 2011	2012/13	1 January 2012
16	Japan	November 2010	August 2011	2012/13	1 January 2012
17	New Zealand	December 2010	November 2011	2012/13	1 April 2012
	Treaties signed in 2011				
18	Portugal	March 2011	June 2012	2013/14	1 January 2013
19	Spain	April 2011	April 2012	2013/14	1 April 2013
20	The Czech Republic	June 2011	January 2012	2013/14	1 January 2013
21	Switzerland	October 2011	October 2012	2013/14	1 January 2013
22	Malta	November 2011	July 2012	2013/14	1 January 2013
	Treaties signed in 2012				
23	Jersey	February 2012	July 2013	2014/15	1 January 2014
24	Malaysia	April 2012	December 2012	2013/14	1 January 2013
25	Mexico	June 2012	March 2013	2014/15	1 January 2014
26	Canada	November 2012	October 2013	2014/15	1 January 2014
	Treaties signed in 2013				
27	Italy	January 2013	Pending	Pending	Pending
28	Guernsey	April 2013	December 2013	2014/15	1 January 2014
29	Qatar	May 2013	December 2013	2014/15	1 January 2014
	Treaties signed in 2014				
30	Korea	July 2014	Pending	Pending	Pending
31	South Africa	October 2014	Pending	Pending	Pending
32	United Arab Emirates	December 2014	Pending	Pending	Pending

2 The EoI article in these two treaties is of the 1995 version which is less liberal than the 2004 version. It is understood that the HKSAR Government is seeking to revise the EoI article of these two treaties to the 2004 version.

Latest status of tax treaty negotiations

The table below shows the latest status of treaty negotiations between Hong Kong and a list of countries with which negotiations have taken place in the past few years.

Countries with which negotiations have taken place in recent years	
India[3]	2nd round completed on 21 April 2011
Saudi Arabia	2nd round completed on 25 May 2011
Finland	2nd round completed on 21 September 2011
Mauritius	1st round completed on 16 January 2013
Latvia	1st round completed on 21 November 2013
Bahrain	2nd round completed on 12 December 2013
Russian Federation	1st round completed on 19 December 2013
Pakistan	2nd round completed on 17 January 2014
Israel	1st round completed on 23 January 2014
Bangladesh	2nd round completed on 1 August 2014
Romania	1st round completed on 29 October 2014
Germany	2nd round completed on 6 March 2015

Assessment of Hong Kong tax residency for treaty purposes

Effective from 1 February 2015, a set of new forms have to be used by corporations for applying a Hong Kong tax resident certificate (HKTRC) under a tax treaty. The key change is that the same form which is revised based on the previous one used for non-Hong Kong incorporated companies will now be used by both Hong Kong incorporated and non-Hong Kong incorporated companies. Those who are affected by this change are mainly Hong Kong incorporated companies. Before the change, a Hong Kong incorporated company was not required to provide detailed information about its business operations and location of management and control in the HKTRC application form though the Inland Revenue Department (IRD) may subsequently request such information when reviewing the application.

The change reflects that the IRD has tightened up its Hong Kong tax residency assessment in response to the concerns raised by the Hong Kong tax treaty partners and the increased international pressure on tax administrations to prevent treaty abuse (which is one of the action points in the OECD's Base Erosion and Profit Shifting project).

Going forward, it is expected that the IRD will look beyond the definition of a Hong Kong tax resident in the relevant tax treaty and consider factors such as whether the applicant has sufficient substance in Hong Kong and whether it is the beneficial owner of the income concerned to assess whether there is any indication of treaty abuse/ treaty shopping before issuing a HKTRC to the applicant.

Changes in Hong Kong's exchange of information landscape

Tax information exchange agreements (TIEAs)

Subsequent to the first TIEA signed with the US on 25 March 2014, Hong Kong signed six new TIEAs with Sweden, Norway, Iceland, Greenland, Faroes and Denmark respectively in August 2014.

The TIEA with the US became effective from 20 June 2014. The other six TIEAs have yet to come into force, pending the completion of the necessary ratification procedures. Please refer to the *May 2014 issue of Asia Pacific Tax Notes* for a more detailed discussion of the TIEA signed with the US.

The HK-US Intergovernmental Agreement (IGA)

Hong Kong formally signed a Model 2 IGA with the US on 13 November 2014. The HK-US IGA facilitates compliance with the US Foreign Account Tax Compliance Act by financial institutions (FIs) in Hong Kong by providing guidelines on the implementation as well as exemptions for certain FIs and products that present low risks of tax evasion by US taxpayers. Under the Model 2 IGA, FIs in Hong Kong will need to collect the relevant account information of their customers who are US taxpayers and report such information to the US Internal Revenue Service directly.

3 It is understood that the treaty negotiation with India was completed on 21 April 2011.

The HKSAR Government has issued a consultation paper for implementing AEoI in Hong Kong in April 2015. The consultation paper set out the proposed legal and operational framework for AEoI for comments.

Moving towards automatic exchange of information (AEoI) on Financial Information

In a press release dated 15 September 2014, the HKSAR Government pledged to support the Common Reporting Standard (CRS) for implementing AEoI on financial information released by the OECD in July 2014. Subsequently, during the annual meeting of the OECD Global Forum held in October 2014, Hong Kong has committed to implement the CRS and commence the first AEoI by September of 2018 regarding financial information for 2017.

The HKSAR Government has issued a consultation paper for implementing AEoI in Hong Kong in April 2015. The consultation paper set out the proposed legal and operational framework for AEoI for comments. The HKSAR Government has planned to introduce a bill on the necessary legislative changes for implementing the CRS in Hong Kong to the Legislative Council in 2016 for its approval.

Bilateral advance pricing arrangements

Hong Kong has concluded two bilateral advance pricing arrangements (BAPAs) with its tax treaty partners since the launch of its APA programme in April 2012. The first BAPA was concluded with the Netherlands in June 2014, followed by the second BAPA concluded with Japan in January 2015.

Given the IRD's commitment to Hong Kong's APA programme, combined with the expanding tax treaty network of Hong Kong and developments in the international transfer pricing landscape, multinational corporations should consider APA as an effective option to achieve certainty on their tax positions on transfer pricing and avoid hassles of potential tax controversies and disputes.

India

The 2014 general elections in India witnessed a change in guard as a new government was formed in May 2014. The new government has presented a broad road map of its economic policy and outlined its plan for reviving the growth of the Indian economy. The 2015 economic survey tabled by the Union Finance Minister (FM) in Parliament has called for improving business environment by making regulations and taxes less onerous. The survey has projected a gross domestic product (GDP) growth rate between 8% and 8.5% for financial year (FY) 2015-16 and effectively held out that double-digit growth rates were within striking distance.

Direct tax

Key proposals in the Union Budget 2015

The FM presented the 2015 Union Budget in the Parliament on 28 February 2015. The following are the key proposals on direct tax in the budget.

Tax rates

The FM has proposed to reduce the corporate tax rate from 30% to 25% over a period of four years in a phased manner. Further, with the avowed objectives of simplification and better tax administration, the FM has also proposed to do away with most of the existing tax exemptions.

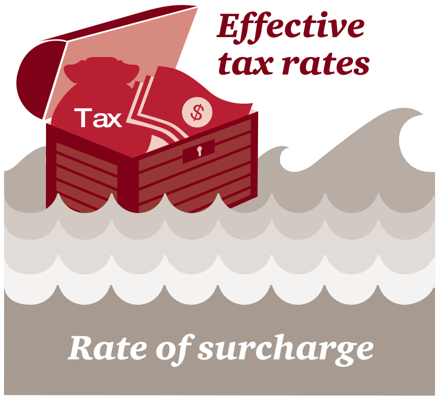
For domestic companies, the tax rate remains unchanged at 30% (plus applicable surcharge and education cess) for the tax year ending 31 March 2016. However, the rate of surcharge has been increased by 2%, resulting in an increase in the effective tax rates. The following would be the effective corporate income tax rates due to this increase.

- Taxable income up to INR10 million: 30.9%
- Taxable income > INR10 million but ≤ INR100 million: 33.06%
- Taxable income > INR100 million: 34.61%

For foreign companies, the tax rate remains unchanged at 40% (plus applicable surcharge and education cess).

General anti-avoidance rules (GAAR) and Direct Taxes Code (DTC)

The government had deferred the implementation of GAAR to April 2015 since it created a stir amongst the investor community and resulted in numerous representations to the government. The FM has now proposed to defer GAAR by two more years so as to implement it as part of a comprehensive regime to deal with the Organisation for Economic Co-operation and Development (OECD)'s Base Erosion and Profit Shifting project of which India is an active participant. Further, the FM has clarified that GAAR would apply prospectively to investments made on or after 1 April 2017. The proposals have brought more clarity and certainty regarding applicability of GAAR.



Rate of surcharge has been increased by 2%, resulting in an increase in the effective tax rates

Concept of place of effective management introduced

Presently, a foreign company is considered resident in India if the control and management of its affairs is situated wholly in India. To curb the creation of shell companies which are incorporated outside India but controlled from India, the concept of place of effective management (PoEM) was introduced in the Union Budget.

It is proposed that a foreign company will be resident in India, if its PoEM is in India at any time during the year. The term 'PoEM' has been defined to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made. It is also proposed that a set of guiding principles for determining PoEM would be issued in due course. The proposal is likely to impact foreign companies whose management and commercial decisions are made in India.

Reduction in tax rates on royalty and fees for technical services

In order to reduce hardship faced by small entities and to facilitate technology inflows, the FM has proposed to reduce the tax rate on royalty and fees for technical services earned by non-residents, from 25% to 10%. This was a much awaited move and will largely boost the industry sentiments.

Clarifications on indirect transfer provisions

In the Finance Act of 2012, the government had enacted provisions to tax the transfer of shares/ interest in foreign companies if that share or interest derives its value substantially from the assets located in India. This was a retrospective insertion and the enactment resulted in several ambiguities on the applicability of these provisions, thereby impacting investor sentiments. In order to address these concerns, the following key amendments have been proposed.

- The provision would be applicable only if
  - i. value of Indian assets is INR100 million or more; and
  - ii. Indian assets are at least 50% of overall value of assets.
- Assets would be valued at fair market value (without liabilities) as per the rules to be prescribed.
- Income from the transfer would be proportionately computed as reasonably attributable to Indian assets.
- The provision would not apply if the transferor does not have minimum of 5% voting power and does not hold right of management or control in the overseas entity.
- If certain conditions are met, then merger/ demerger of overseas entities would not trigger this provision.

The proposals have brought more clarity on the taxation of indirect transfers.

Other budget proposals

- In order to further scrutinise the payments to non-residents, it is proposed that the payer shall be under obligation to report specific information of the payment in the prescribed form, whether or not such payment is chargeable to tax in India. This would substantially increase the compliance burden on the part of the payers.
- The DTC enactment has been put to rest as most of its provisions have already been legislated as part of the current income tax law.

Other developments during the year

Seconded employees providing services in India constitute permanent establishment (PE) in India

In a recent judgment[1], Delhi High Court (HC) has held that in the case of inbound secondment structures, there existed a service PE in India so long as the employees continued to have lien on their jobs with the overseas entities, even though the Indian entity had operational control over these seconded employees. The Delhi HC concluded that the employees had lien on their jobs with the overseas entities based on the fact that –

- the seconded employees are entitled to participate in the overseas retirement and social security plans and other benefits
- the seconded employees could not sue the Indian entity for any defaults in payments of their salaries
- the Indian entity does not have the power to terminate the contract between the seconded employees and the overseas entities

1 Centrica India Offshore Private Limited vs. CIT (2014) 364 ITR 336 (Del)

Though the above ruling of the Delhi HC was in favour of the Revenue, there are several divergent rulings which also favoured the assessee. Actual roles and responsibilities of the secondees coupled with the underlying documentation assume significant importance in determining the tax implications.

Dividends

Dividends received by an Indian company from any specified foreign company (equity shareholding of 26% or more) would continue to be taxed at a beneficial rate of 15%.

Effective 1 October 2014, the dividends declared by a domestic company are required to be grossed up for computing dividend distribution tax (DDT). As a result, the effective DDT rate went up from 17.30% to 20.36% (including surcharge and cess).

Dispute resolution panel (DRP) – keeping pace with the change

The government, based on the feedback from taxpayers and various other considerations, has restructured the DRP mechanism by assigning full time members to the panel who are independent and would not have taken a view or participated in taking any view while framing the draft assessment order. This initiative is likely to provide more transparency in the dispute resolution process.

Social security agreements (SSAs)

India signed SSAs with the Republic of Finland and the Kingdom of Sweden on 12 June 2012 and 26 November 2012 respectively. The Indian Provident Fund authorities notified these SSAs and they became effective from 1 August 2014. Similarly, the SSA with Czech Republic, which was signed on 9 June 2010, became effective from 1 September 2014.

This is a welcome step as it will help in cost savings and protection of international assignees in respect of deputation agreement for employees, which in turn could lead to increase in economic activity between the countries.

Tax treaty network

India and Mauritius have agreed to push forward their negotiations for a long pending revision of double taxation avoidance agreement (DTAA), asserting that their objective is to prevent the ‘abuse’ of the convention.

The DTAAs entered into by India with the following countries have come into force in the last 12 months – Albania, Bhutan, Colombia, Fiji, Latvia, Romania and Sri Lanka.

Further, Tax Information Exchange Agreements are currently in negotiation with Barbados, Cook Islands, Costa Rica, Dominica, Jamaica, Maldives, Panama, Peru, Seychelles, St. Lucia, Saint Kitts and Nevis, San Marino, St. Maarten, etc.

Transfer pricing

Introduction of rollback mechanism in advance pricing agreements (APA)

The APA programme was introduced in 2012 to help bring down transfer pricing (TP) litigation for future years and provide tax certainty. Aligned with global best practices, the programme has met with a tremendous response with more than 400 unilateral and bilateral applications filed in the first two years of the programme.

India’s commitment to the programme was also evident from that five unilateral APAs were signed within the first 12 months of the programme and one bilateral APA was signed in the second year while a few more APAs have reached advanced stages of negotiations. The original APA administrative set up was also reinforced with additional officials to expedite disposals.

On 14 March 2015, the Central Board of Direct Taxes (CBDT) notified that the APA Rollback Rules came into force. The salient features of the rules are provided below.

Salient features

- Rollback option is available in respect of the same international transactions as covered in the main agreement, adopting the same methodology.
- Rollback option should be requested by the applicant for previous year(s), not exceeding four previous years from the period of agreement.
- APA Rollback Rules provide for procedures to give effect to the rollback agreement – revising tax return, withdrawing relevant issues from appeal etc.
- Any APAs filed after the CBDT notification should be filed in the modified Form 3CED.
- Rollback option shall be available if the return of income for the relevant rollback year has been or is furnished by the applicant before the due date.
- The international transactions proposed to be covered under the rollback should be the same as covered under the main APA application. Rollback is available only if the international transaction has been furnished in the accountants report for the relevant rollback years.
- Modified returns for the rollback years will have to be filed similar to the covered period of the APA.

Exceptions

- The rollback route would not be available if the issue was subject of appeal before Income Tax Appellate Tribunal (ITAT) and the ITAT has passed an order disposing such appeal at any time before signing an APA.
- The option of rollback would not be available if it has effect of reducing income or increasing loss of the said previous year(s).

Marketing intangibles – advertising, marketing and promotion

Delhi HC brought clarity on application of TP rules on marketing intangibles in a significant judgement which will reduce disputes over advertisement, marketing and sales promotion (AMP) expenses spent by Indian units of multinational enterprises. While the Delhi HC has answered the legal question that incurrence of AMP expenses is an international transaction, the Delhi HC has held that the Special Bench ruling in LG Electronics is erroneous and unacceptable on comparability principles.

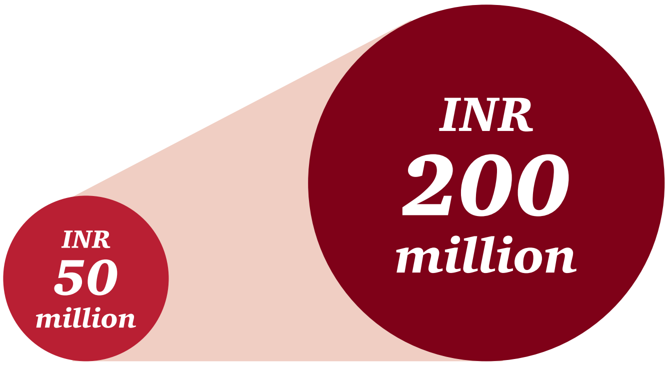
In another case, the Delhi HC rejected the application of the Bright Line Test and held that distribution activities and AMP expenses spent for the distribution business are closely connected transactions, and transaction net margin method (TNMM) could be used to justify the aggregate arm's length price (ALP) of the transactions. It also held that selling and distribution expenses cannot be considered as being incurred to enable brand creation.

Domestic TP regulations in India

The provisions of the TP regulations introduced in year 2001, were applicable only to cross-border transactions between group companies and were aimed to ensure that such transactions adhere to the globally accepted arm's length standard.

In a move to cover both multinational and domestic taxpayers, the Finance Bill 2012 introduced the applicability of TP regulations to certain 'specified domestic transactions' (SDT). With effect from 1 April 2012, taxpayers with SDT in excess of INR50 million would need to comply with the provisions relating to maintenance of annual documentation and compliance to corroborate the arm's length pricing of its domestic intra-group transactions.

Threshold limit for the applicability of SDT has been amended vide proposals in Budget 2015 and is effective from FY 2015-16. The limit has been raised from INR50 million to INR200 million.



Threshold limit for the applicability of SDT has been raised from INR50 million to INR200 million.

Aligning Indian regulations with global best practices

Multiple year data: It was proposed vide Budget 2014 that multiple year data would be allowed to be used for comparability analysis. Legislative amendments are expected in this regard.

Introduction of range concept: The FM proposed in the Budget 2014 to introduce the concept of price/ margin range for determination of ALP, in the income tax rules 1962 (the Rules), so as to align the Indian TP regulations with leading international practices. The existing concept of arithmetic mean though would continue to apply where the number of available comparables is inadequate. Relevant rules in this regard are awaited.

Deeming TP provisions: With effect from 1 April 2015, deeming TP provisions contained in section 92B (2) of the Income-tax Act, 1961 (the Act) apply to transactions between an enterprise in India and independent person where there is a prior arrangement between such independent person and associated enterprises of the enterprise in India, irrespective of whether such independent person is a non-resident or resident.

Issue of shares – out of TP rigours

Vodafone India Services Private Limited (VISPL or the taxpayer) filed Writ Petition with the Bombay HC challenging the following TP adjustments made by the Revenue:

- alleged undervaluation of shares issued by VISPL in favour of its associated enterprise (AE); and
- imputing of notional interest on such alleged undervaluation of shares, by treating the shortfall as loan advanced by VISPL to its AE.

The taxpayer in the first Writ Petition challenged these adjustments as being patently illegal and without jurisdiction. This was on the ground that the purported undervaluation could never been brought under the ambit of taxation by taking course to TP, the same as on capital account. The Bombay HC directed the Dispute Resolution Panel (DRP) to decide the taxpayer's preliminary issue of jurisdiction. However, the DRP held the alleged undervaluation of shares as 'income' chargeable to tax. Further, it imputed notional interest on such alleged undervaluation by treating it as deemed loan.

Against the said order of the DRP, the taxpayer filed a Second Writ Petition before the Bombay HC. In this Second Writ proceeding, the Bombay HC categorically held that issue of shares at a premium by VISPL in favour of its AE did not give rise to any 'income' from an international transaction and therefore there was no need to invoke TP provisions. The HC held that the amount received on issue of shares was admittedly a capital account transaction not separately brought within the definition of income. Therefore, absent express legislation, no amount received, accrued, or arising on capital account transaction could be subjected to tax as income. The HC further held that neither the capital receipts received by the taxpayer on issue of equity shares to its AE (a non-resident entity) nor the alleged shortfall between the fair market price and the issue price of the equity shares could be considered as income within the meaning of the expression as defined under the Act.

A transaction on capital account or on account of restructuring would become taxable to the extent it impacts income, i.e. under reporting of interest received or over-reporting of interest paid or claim of depreciation, etc. It was only that income which had to be adjusted to ALP. The issue of shares at a premium was a capital account transaction and does not result in any income, and therefore there was no need to invoke TP provisions.

Indirect tax

Goods and service tax

The goods and services tax (GST) has been the most awaited tax reform in India. With the recent introduction of the Constitution Amendment Bill in the Indian Parliament and various other developments around the introduction of GST, India appears set to transit into a GST regime around April 2016.

The present taxation system in India allows for a heterogeneous tax structure whereby different states in India have different tax laws and local levies. The introduction of GST seeks to overhaul the present taxation system by taxing both goods and services and is likely to have significant advantages to the trade and industry which among others would include free flow of credits in the supply chain, reduction in cost of production/ prices and encouraging exports. It is thus expected that GST would be a comprehensive consumption tax in the true sense.

In December 2014, the Constitutional amendment bill was tabled in the Parliament. Some of the key points in the amendment bill are set out here under:

- Central and state governments are given the power to levy GST and make laws. On the related point, the bill also provides for the various taxes/ duties that would be subsumed into the GST.
- The key stumbling block in the introduction of GST was potential losses in revenue that the states may incur on account of implementation of GST. In this regard, the bill provides that the Parliament may, by law, provide for compensation to the states for such loss of revenue for a period of upto five years.
- GST is defined to mean 'any tax on supply of goods or services or both except taxes on the supply of the alcoholic liquor for human consumption'. Thus, as against the conventional method of levying tax on manufacture of goods, sale of goods, provision of services, etc. the taxable event, under GST, appears to be 'supply of goods or services or both'.
- Service has been defined in a very broad manner to mean 'anything other than goods'. However, the draft GST legislations could restrict the scope of the term 'service'.
- Formation of GST Council which includes state finance/ taxation ministers, for making recommendations to the Union and states on various aspects relating to GST. The GST Council shall be guided by the need for a harmonised structure of GST and for development of a harmonised national market for goods and services.
- Surprisingly, the bill also provides for a levy of an additional tax of up to 1% on inter-state supply of goods for a period of two years or such period as the GST Council recommends.

During his budget speech, the FM re-iterated the date of implementation of GST to be 1 April 2016.

Other key indirect tax amendments in the Union Budget 2015

The amendments from an indirect tax perspective as proposed in the Union Budget were, on a high level, focused towards the convergence of the current indirect tax regime to the proposed GST regime, facilitating the various initiatives of the government such as 'Make in India', 'Swachh Bharat Abhiyan' (Clean India Mission) and facilitating the ease of doing business in India. Some of the key amendments are highlighted hereunder.

i. Customs duty

- Maximum rate of customs duty increased from 28.85% to 29.44% from 1 March 2015, on account of increase in excise duty to 12.50%.
- Basic customs duty on certain inputs, raw materials, intermediates and components on 22 items has been reduced.
- Inverted duty structure for IT products resolved by granting an exemption of special additional duty on all goods for use in manufacture of Information Technology Agreement (ITA) bound items except populated printed circuit boards.
- Duties rationalised for manufacture of tablet computers and import of their components.

ii. Central excise

- Effective 1 March 2015, the excise duty increased from 12.36% to 12.50%. Education cess and secondary higher education cess is subsumed within the excise duty.
- Excise duty on mobile handsets including cellular phone changed from 1% (without CENVAT credit) or 6% (with CENVAT credit) to 1% (without CENVAT credit) or 12.5% (with CENVAT credit).
- Time limit for taking CENVAT credit on inputs and input services increased from six months to one year.

iii. Service tax

- Service tax rate will increase from 12.36% to 14%, to be effective from a date to be notified. Education cess and secondary higher education cess is subsumed within service tax.
- Proposal to levy Swachh Bharat cess on all taxable services at the rate of 2% on the value of such services for the purpose of financing and promoting Swachh Bharat initiatives and if the need arises.
- Pruning of the negative list and withdrawal of certain exemptions.
  - service tax is now leviable on amusement parks, gaming devices, bowling alleys, water parks, etc.
  - exemption of services of construction, erection, commissioning or installation of original works pertaining to an airport/ port withdrawn, etc.
- A standard percentage (i.e. 30%) of the value of services relating to transport of goods by rail, road and vessel is liable to service tax.
- Service tax payment under reverse charge mechanism is made applicable for ‘aggregator’ of services provided by certain e-commerce companies. The term ‘aggregator’ is introduced in the service tax rules to mean a person who has a web-based model where he brings together service providers and customers under his brand.
- Value of service expanded to specifically include reimbursable expenditure or cost incurred and charged by the service provider to the service provider. The Delhi HC ruling in the case of Inter-continental Consultants has been invalidated.
- In an effort towards facilitating the ease of doing business, service tax registration will be granted within two days of filing of an online application for single premises. Further, the requirement of filing physical documents has been done away with effect from 1 March 2015.
- Option provided to authenticate any invoice, bill or consignment note by means of digital signature. Further, an option has been provided to preserve the records in an electronic form with every page of the record so preserved being authenticated by digital signature. The Board shall notify the procedure to be followed by a person issuing digitally signed invoices and preserving digitally signed records.
- Amendments in penal provisions under central excise, customs and service tax laws to provide for reduction in penalties if duty/ tax is paid along with interest within 30 days of the receipt of show cause notice/ order.

Recent case laws

i. Value added tax (VAT) rate on mobile chargers sold along with mobile phones

The Supreme Court in State of Punjab and Ors vs. Nokia India Pvt Ltd (TS-590-SC-2014-VAT) examined into the issue of VAT rate on mobile chargers sold along with mobile phones.

The brief facts of the case were that Nokia India sold mobile phones along with the chargers (as part of one single package) in the State of Punjab. Mobile phones were subject to VAT at a concessional rate of 4% during the relevant period (i.e. FY 2005-2006). The VAT authorities contended that battery chargers are accessories to the mobile phone and hence not subject to the concessional VAT rate of 4%, which covers only ‘cellular telephones’. (The said entry has no reference to any accessories thereof.)

The Supreme Court held that the mobile charger is only an 'accessory' to the mobile phone which is capable of being sold separately thereby is taxable at the general higher rate of 12.5%.

ii. No VAT payable on profit margin earned by a contractor

The Kerala HC, in Surya Constructions vs. State of Kerala (TS-552-HC-2014(KER)-VAT), held that no VAT was payable on the profit margin earned by a contractor where the entire contract had been sub-contracted to a third party sub-contractor. The HC observed that in the absence of sale of material by contractor to the contractee no tax can be fastened on the contractor.

iii. Indian subsidiaries of foreign companies are eligible for benefits under the 'Served from India Scheme' (SFIS)

Under the SFIS, service providers are entitled to duty credit scrip equivalent to 10% of free foreign exchange earned during the preceding financial year. In the case of Yum Restaurants (I) Private Limited vs. Union of India (TS-13-HC – 2015), the Delhi HC held that Indian subsidiaries of foreign companies are eligible for benefits under the SFIS.

Other key developments

- VAT increased from 14% to 14.5% in the State of Rajasthan (effective 9 March 2015). VAT rate was proposed to be increased from 13% to 14% in Madhya Pradesh (from a date to be notified).
- Local body tax in the State of Maharashtra was proposed to be abolished from 1 August 2015. Loss of revenue will be compensated by increasing the rate of VAT.

Policy and regulatory measures

Companies Act, 2013

The recently enacted Companies Act, 2013 is a landmark legislation with far-reaching consequences on all companies incorporated in India. Part of it was effective with the notification of 98 Sections in September 2013. On 26 March 2014, the Ministry of Corporate Affairs notified most of the sections and rules with effect from 1 April 2014.

Foreign investment

The Union Budget has proposed measures towards bolstering the regulatory framework. The appointment of an expert committee to evaluate the proposition of replacing multiple prior permissions with a pre-existing regulatory mechanism and the legislation of comprehensive bankruptcy code of global standards for increasing ease of doing business are some of the key steps towards it. Further, the budget has also proposed to do away with the differentiation between types of foreign investment (FDIs, FIIs, etc.) and instead provide composite caps for foreign investment. Some of the other key proposals are as below.

- Proposal to allow foreign investment in alternative investment funds (AIFs).
- Proposal to give powers to the Central Government to regulate equity capital flows; Reserve Bank of India (RBI) to solely manage debt instruments. All existing capital account regulations to continue until modified or rescinded by the government.
- Proposal to seize and confiscate Indian assets in case of any foreign exchange, foreign security or immovable property situated outside India (exceeding the value of prescribed thresholds) held in contravention of provisions of Foreign Exchange Management Act.

Anti-money laundering measures

With the intent of ushering in a transparent economic climate, the FM has proposed amendments to the Prevention of Money Laundering Act to penalise and prosecute persons making false declaration/ documents in the transaction of any business relating to customs and to grant powers to seize and confiscate equivalent asset in India where assets located abroad cannot be forfeited. Further, the intent to consider concealment of income or evasion of tax in relation to a foreign asset has also been covered within the ambit of a prosecutable offence.

External commercial borrowing (ECB)

With a view to providing greater flexibility for structuring arrangements, the existing guidelines have been modified by the RBI to allow recognised non-resident ECB lenders to extend loans in Indian rupees, subject to conditions. These conditions include requiring lenders to mobilise Indian rupees through swaps undertaken with an authorised dealer bank in India, for which it can set up a representative office in India. Also, the all-in-cost of such ECBs should be commensurate with the prevailing market rates.

Indonesia

The Indonesian government is continuously envisaging new incentives for foreign and domestic investors to expedite economic development and to become internationally competitive. Additional tax facilities can be expected to further enhance the investment climate. The latest negative list of investment issued in 2014 provides more flexibility on investment in certain businesses, such as power plants and port business operated under a public private partnership scheme, which are offered a higher foreign ownership level. In line with the spirit of enhancing the investment climate, recently there have been talks by the government to amend the current regulations to ease the application for inbound investment tax facilities.

Indonesia also continues the reform of the tax system by proposing a bill of amendment of the tax system to be included in its national regulatory programmes, to be discussed in the Parliament for the next five years. The government is also considering putting a tax amnesty facility in the amendment of the General Tax Provisions and Procedures (Ketentuan Umum dan Tata Cara Perpajakan/ KUP) Law.

Over the past 12 months, the government has issued several regulations that include, among others, the extension of tax holiday application, as well as improvements in the mutual agreement procedure (MAP) and advance pricing agreement (APA) regulations.

By the end of 2014, Indonesia had also expanded its international tax agreements through the enforcement of a double taxation agreement (DTA/ tax treaty) with Papua New Guinea and a tax information exchange agreement (TIEA) with the Isle of Man, as well as ratifying its commitment to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

The government is seriously developing its electronic system to make it more practical and reliable for tax and customs purposes, by implementing the new electronic value added tax (VAT) invoices, and introducing the new Directorate General of Tax (DGT) and Directorate General of Customs and Excise online systems.

In the enforcement space, the DGT continues its efforts in compliance checking by targeting tax audits on transfer pricing (TP), certain industries (particularly those in the oil and gas and coal mining industries) and individuals with certain level of income. In addition to tax audits, the DGT has also made some efforts to collect more information from various sources and is issuing monitoring guidelines in several areas in order to boost tax revenue in a quest to achieve the tax revenue targets.

Tax concessions

Income tax concessions

Extension of tax holiday application

The government has extended the application period for the Ministry of Industry (MoI) or Head of the Investment Coordinating Board (Badan Koordinasi Penanaman Modal/ BKPM) to submit the tax holiday proposals to the Ministry of Finance (MoF) until 15 August 2015 (previously expired on 14 August 2014). The proposal submissions made by the MoI or the Head of BKPM are based on the applications submitted by eligible taxpayers.

Tax holiday facility is provided to certain companies which are in pioneer industries and incorporated in Indonesia no earlier than 14 August 2010, have a legalised new capital investment plan of a minimum IDR1 trillion (approximately USD77 million), deposit a minimum of 10% of their planned investment value in banks located in Indonesia, and do not withdraw the deposit prior to the realisation of the investment plan. The facility covers a corporate income tax (CIT) exemption or reduction for a period of five to ten years from the start of commercial production. After the end of the CIT exemption, the companies will receive a 50% CIT reduction for two years.

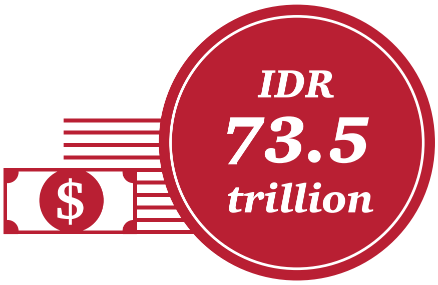
General tax provisions

Tax audit strategy for 2015

In line with the increase of this year's tax revenue target, the DGT has tripled the 2015 tax audit revenue target from last year, to IDR73.5 trillion (approximately USD5.9 billion).

With regard to tax audits on preliminary evidence of a tax crime, the MoF has issued a new procedure that essentially opens more possibility towards tax investigation.

2015 tax audit revenue target



New incentive for payment of tax arrears

The MoF has provided a new incentive for payment of tax arrears in the form of elimination of the interest penalty that is usually imposed if a tax payable arising from a tax assessment, objection/ appeal/ judicial review decision is not paid within the stipulated deadline. This facility can be obtained by submitting an application letter to the DGT through the tax office where the taxpayer is registered, subject to fulfilment of certain requirements.

Enhancing digital use for tax purposes

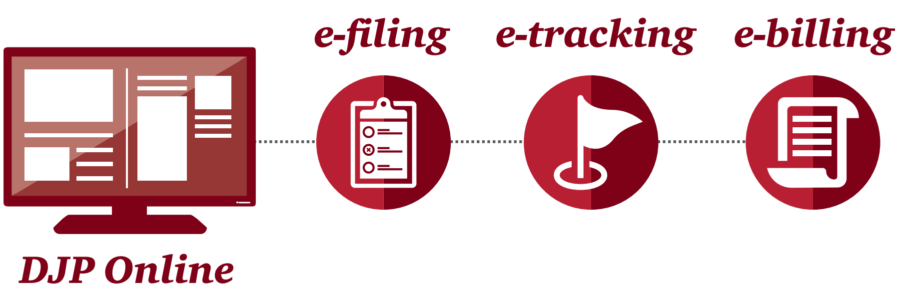
e-VAT invoices went live

The use of electronic format of VAT invoice (e-Faktur Pajak/ e-FP) is currently mandatory for appointed VAT-able entrepreneurs (Pengusaha Kena Pajak/ PKP). It will gradually become mandatory nationwide by 1 July 2016.

The use of e-FPs is applicable for local deliveries of taxable goods and services, as well as for the delivery of assets that are not intended for sale. General provisions regarding e-FPs are the same as for conventional paper-based FPs.

New DJP online system

The DGT has launched a one-stop tax portal named 'DJP Online' that migrates the existing e-filing and e-billing features administered by the DGT and offers a new feature for monitoring the progress of application processes (e-tracking). The DGT has also set out the safety measures with the use of a token to validate transactions submitted through the DJP Online.



Income tax

New international tax agreements

Double taxation agreements

The tax treaty between Indonesia and Papua New Guinea came into force on 5 March 2014 and is effective for income paid or credited on or after 1 January 2015. The tax treaty stipulates, among other things, that dividends are taxable at a maximum rate of 15%, while interest and royalties are taxable at a maximum rate of 10%, subject to satisfying beneficial ownership requirements. The branch profit tax (BPT) rate is 15%, except for production sharing contracts in the oil and gas industry, their supporting bodies or state-owned oil and gas enterprises. Interestingly, this treaty contains an article on technical fees which stipulates that service fees arising in Indonesia, including for technical, management and consulting services, are subject to 10% withholding tax.

Tax information exchange agreements

The sending of Diplomatic Notes from Indonesia on 22 September 2014 has completed the exchange of ratification documents and marked the entry into force of Indonesia's TIEA with the Isle of Man. Other TIEAs with Bermuda, Guernsey, Jersey and San Marino are still in the ratification process and not yet effective.

Convention on Mutual Administrative Assistance in Tax Matters

Indonesia signed the Convention on Mutual Administrative Assistance in Tax Matters (the Convention) on 3 November 2011 and ratified it on 17 October 2014. The Convention is expected to be effective starting 1 January 2016 which by then Indonesia agrees to provide administrative co-operation with other member states in the form of exchange of information (EOI), assistance in recovery of foreign tax claims and service of documents. Along with other members of the G20, Indonesia commits to participating in the Convention to show its effort in resolving issues surrounding the base erosion and profit shifting project initiated in 2013.

The Convention shall apply to all taxes imposed under Indonesian tax laws with some reservations that set Indonesia's rights not to provide some of the above assistance in relation to specific taxes or administrative fines.

Domestic EOI regulation

At a national level, a MoF regulation on EOI implementation procedure has been in place since 1 April 2014. EOI can be carried out in several forms, i.e. EOI by request, spontaneous EOI, or automatic EOI, which may be initiated by a relevant unit of the DGT or by a country/ jurisdiction partner. The regulation also sets out the procedures of tax examination abroad and simultaneous tax examinations relevant to EOI. This domestic EOI regulation is applicable for the following international tax agreements: (a) DTA, (b) TIEA and (c) the Convention.

New regulations related to transfer pricing

Mutual agreement procedure

The MoF has issued a new regulation on MAP that is applicable to all outstanding and future MAP applications. This new regulation provides more detailed guidelines, such as the MAP processing team's scope of work, and more transparency on the MAP process by requiring the authorised tax officer to send several written notifications to inform the Indonesian taxpayer of the MAP case's progress and status. A quality assurance team will also be formed to assist in reviewing the draft position papers.

A MAP application can also be initiated by the DGT or the competent authority of the treaty partner as a follow-up to a bilateral APA request.

Given that a MAP can be initiated concurrently with domestic dispute resolution processes, taxpayers should actively assess the benefits of applying for a MAP to resolve disputes. However, a restriction applies that a MAP application cannot be lodged when the Tax Court has declared an end to the court hearing process and an existing MAP will cease when the Tax Court announces its decision.

Advance pricing agreement

Similar to MAP, the MoF has issued new regulation on APA that is applicable to all outstanding and future APA applications. This new regulation sets out the stages and their timeframe during the APA process that are relevant to both unilateral and bilateral APAs. Some additional details and clarity to the APA process are available in the regulation.

An APA can only be entered into for future tax years and therefore taxpayers should not expect an APA to be 'rolled-back' to address any TP matters in previous open years in relation to the same or similar transactions.

The regulation provides a clear process for taxpayers and the DGT to follow, and the requirements should be familiar to most multinationals. The potential of a new APA application for subsequent years should also add comfort to taxpayers. This can serve as an additional avenue for taxpayers to manage their TP position in Indonesia, including taxpayers that have traditionally been subject to tax audits in the past and are seeking certainty in the future.

New development on establishing a public works/ construction representative office

Public Works Representative Offices (PWROs) are now able to obtain an Accreditation Certificate from the National Construction Services Development Board (Lembaga Pengembangan Jasa Konstruksi/LPJK). Previously, a PWRO was treated as a construction company without qualification (subject to a higher WHT rate) because the LPJK was not able to issue qualification certificates for PWROs. If the Accreditation Certificate can be used as a qualification certificate for tax purposes, it is expected that PWROs may be subject to a lower WHT rate on construction services.

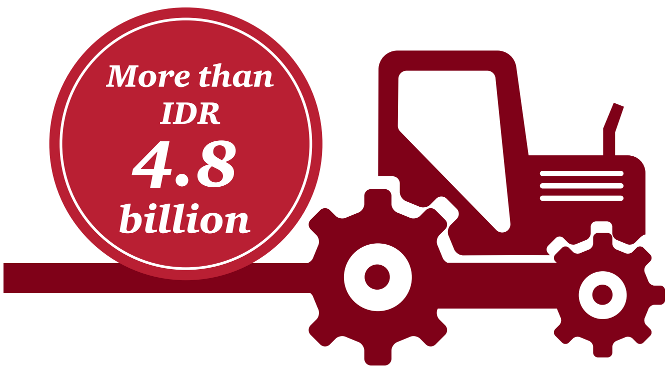
VAT

Increase in luxury-goods sales tax on very luxurious motor vehicles

Starting from 18 April 2014, the luxury-goods sales tax (LST) rate on very luxurious motor vehicles under the 75% rate category has been increased to 125%. Very luxurious 'green cars' are still eligible for the existing incentive in the form of a reduced LST base that will effectively lower the LST.

New VAT treatment of agricultural products

The Supreme Court has issued a decision that grants a judicial review request to revoke several articles in a government regulation concerning VAT exemption facility for agricultural products (including plantation and forestry products). This decision has become effective since 22 July 2014 followed by the issue of the DGT circular letter explaining the tax implications resulting from this decision, which is essentially that plantation products, ornamental plants, herbal plants, food-crop and forestry products which are listed in the regulation are now VAT-able (previously VAT-exempted). Entrepreneurs must collect VAT on deliveries of these products and be registered as a PKP if the turnover has reached more than IDR4.8 billion per annum.



Entrepreneurs must collect VAT on deliveries of agricultural products if the turnover has reached more than IDR4.8 billion per annum.

Customs and excise

The use of carnet for greater benefits

Indonesia started to apply carnet in 1995 on temporary import and re-export of certain motor vehicles. By 3 September 2014, Indonesia ratified its commitment to the Multilateral Convention on Temporary Admission and issued a MoF regulation to expand the use of carnet for a broader purpose, such as for exhibition goods, goods for educational, scientific or cultural purposes, and goods for humanitarian purposes.

Update on authorised economic operator guidelines

The MoF has updated the regulation on authorised economic operators (AEOs) to expand the list of customs facilities available for AEOs in order to attract economic operators to participate as AEOs. The facilities include the ability to use corporate guarantee for all customs-related activities and allow settlement of customs obligations in instalments.

New import duty policies

Preferential import duty rates agreed with Pakistan

The MoF released new preferential import duty rates agreed with Pakistan that are applicable since 16 June 2014. The agreement is intended to increase trade by reducing import duty rates on most goods to 0%.

Safeguard import duty

With the aim of protecting the national steel industry that produces specific steel beams, the MoF has restricted the import of these goods by imposing safeguard import duty (Bea Masuk Tindakan Pengamanan/BMTP). This BMTP is applicable for goods originating from all countries other than those specified in the regulation and must be supported with a certificate of origin.

BMTP is an addition to the general import duty rates (most favoured nation) or the preferential import duty rates for countries that have trade agreements with Indonesia.

Anti-dumping import duty

The MoF set out anti-dumping import duty (Bea Masuk Anti Dumping/BM AD) on yarn products originating from Malaysia and Thailand. Similar to BMTP, BM AD is an addition to the general import duty rates (most favoured nation) or the preferential import duty rates for countries that have trade agreements with Indonesia.

Social security system

Early implementation for health insurance under BPJS Kesehatan

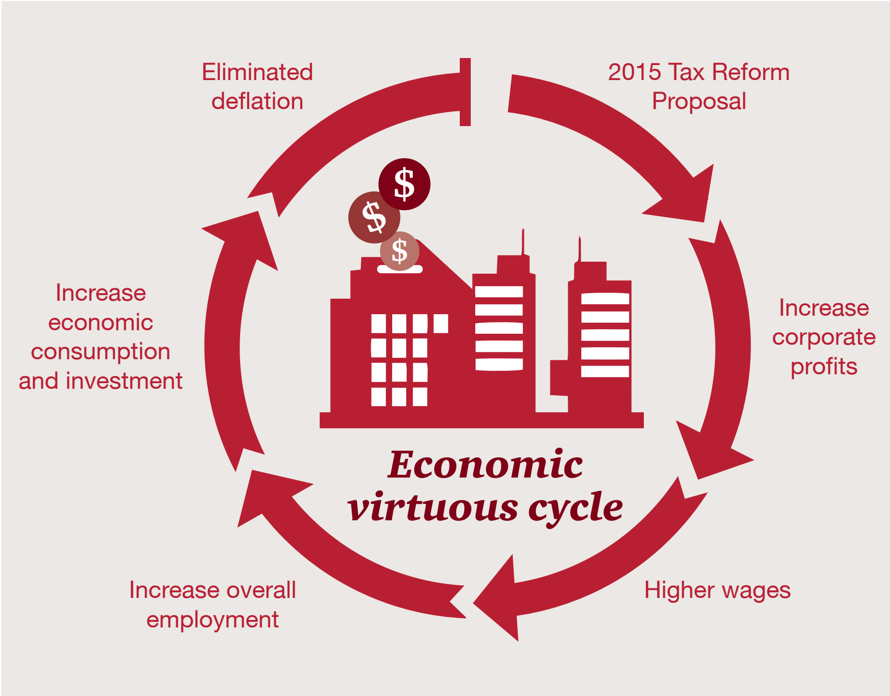
Starting from 1 January 2014, a new comprehensive social security programme covering all Indonesian citizens has been effective with a transition from the previous system being done gradually. The new social security system is administered by:

- The Social Security Agency for health insurance (BPJS Kesehatan) – covering health insurance
- The Social Security Agency for worker's social security (BJPS Ketenagakerjaan) – covering accidents, insurance, old age savings, death insurance and pensions

Particularly for health insurance, the registration deadline for those other than existing participants was previously set as 1 January 2019. However, the government has expedited the implementation to be at the latest by:

- 1 January 2015: for state-owned enterprises, large, medium and small enterprises
- 1 January 2016: for micro enterprises
- 1 January 2019: for independent workers and non-workers

Japan



Realise an economic virtuous cycle

The main purpose of the 2015 Tax Reform Proposal is to help increase corporate profits which should allow corporations to pay higher wages to employees and increase overall employment, thereby increasing economic consumption and investment. The increase in consumption and investment should in turn help eliminate deflation and create an 'economic virtuous cycle'. The 2015 Tax Reform Proposal looked at revising the corporate tax system and lessening the corporate tax burden on profitable corporations while expanding the corporate tax base to include large (but unprofitable) corporations. These measures are the first steps in a two-step process to reduce corporate tax rates and expand the corporate tax base. In the coming years, the effective tax rate is expected to be further reduced to below 30%. While the measures contained in the 2015 Tax Reform Proposal mainly relate to large corporations as defined, the upcoming measures are expected to primarily affect small to medium size corporations (SMEs).

To implement the internationally harmonised taxation rules against potentially 'abusive' cross-border transactions, new legislations were proposed in the 2015 Tax Reform Proposal based on the Organisation for Economic Co-operation and Development (OECD)'s recommendations in the Base Erosion and Profit Shifting (BEPS) project. These include (a) eliminating dividend income exclusion for 'hybrid' financial instruments, (b) introducing an 'exit tax' for individuals, and (c) requiring banks to collect and submit information regarding bank accounts owned by non-residents.

Corporate tax measures related to the tax rate reduction

Reduced corporate tax rates

For tax years beginning on or after 1 April 2015, the national corporate tax rate is reduced from 25.5% to 23.9%. As the inhabitants tax rate is based on the national tax rate, the inhabitants tax rate for the Tokyo metropolitan area is reduced from 5.28% to 4.95% (other areas can be lower). For large corporations, the tax rate related to the income portion of the enterprise tax is reduced from 7.2% to 6.0% for tax years beginning on or after 1 April 2015 but before 31 March 2016. An additional enterprise tax rate reduction from 6.0% to 4.8% will apply for tax years beginning on or after 1 April 2016. Since the enterprise tax is deductible for tax purposes, the effective rate for large corporations solely operating in the Tokyo metropolitan area should be reduced from the current 35.64% to 33.10% and then to 32.34% for tax years beginning on or after 1 April 2016. The special lower rates for SMEs will be extended to 31 March 2017.

The 2015 Tax Reform Proposal provides that the effective tax rate should be reduced to less than 30% in the coming years, but the exact rate and timing of the change are not mentioned.

	Corporate tax rates before amendments			Amended corporate tax rates		
	Statutory tax rate		Effective tax rate	Statutory tax rate		Effective tax rate
		Special tax rate (2)	**Tokyo/other metro areas**		Special tax rate (3)	**Tokyo/other metro areas**
Large corporation	25.5%	–	35.64%	23.9%	–	33.10% (fiscal year 2015) 32.34% (fiscal year 2016)
SME (1)	25.5%	15%, 19%, 22%	**Other** 34.62%	23.9%	15%, 19%, 22%	**Other** 32.11% (fiscal year 2015) 31.33% (fiscal year 2016)

(1) SMEs are ordinary corporations with capital not exceeding JPY100 million and not wholly owned by a corporation with capital of JPY500 million or more.
(2) Tax rates applicable to tax years beginning on or after 1 April 2012 but prior to 1 April 2015.
(3) Tax rates applicable to tax years beginning on or after 1 April 2015 but prior to 1 April 2017.

Increased taxable base

The changes to the taxable base will be implemented in two phases. The 2015 Tax Reform Proposal (i.e. the first phase) incorporates some of the recommendations in the Governmental Tax Commission proposal report issued in June 2014 (Tax Commission Report) including those shown in the table below. Other recommendations are expected to be included in future tax reforms.

Limitation on net operating loss deduction

The changes to the limitation on the net operating loss deduction will also be implemented in two phases. For the first two years, the current limitation of 80% will be reduced to 65%. Thereafter, the limitation will be reduced to 50%. The limitation carryover period will be extended from the current nine years to 10 years for losses incurred on or after tax years beginning on or after 1 April 2017.

	Limitation before amendments	Amended limitation	
		Fiscal year 2015-2016	Fiscal year 2017-
Limitation ratio for large corporations	80%	65% (4)	50% (5)
Carryover period for loss utilisation as well as assessment by tax authorities and request for downward adjustment by taxpayer (assuming loss period financial documentation is maintained)	9 years	9 years	10 years (6)

(4) For fiscal years beginning on or after 1 April 2015 and before 1 April 2017 in which the taxpayer claims a net operating loss deduction.
(5) For fiscal years beginning on or after 1 April 2017 in which the taxpayer claims a net operating loss deduction.
(6) Applicable to tax losses incurred in fiscal years beginning on or after 1 April 2017.

Certain newly established corporations and companies coming out of a rehabilitation process will not be subject to the loss limitation rules for a certain period.

Reduction of dividend income exclusion

In the 2015 Tax Reform Proposal, the threshold ownership percentage for corporate dividend exclusion is increased as illustrated in the table below.

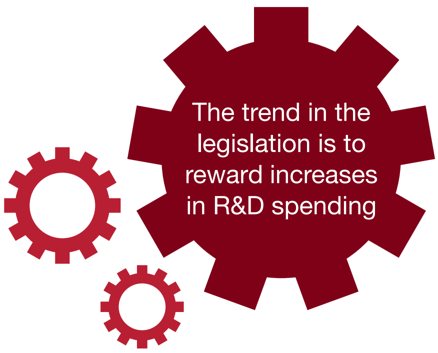
Threshold before amendments			Amended threshold		
Type of investment	Ownership %	Exclusion %	Type of investment	Ownership %	Exclusion %
Wholly owned domestic subsidiary	100%	100%	Wholly owned subsidiary	100%	100%
Affiliated domestic corporation	25% or more	100% less allocable interest	Affiliated corporation	More than 1/3	100% less allocable interest (7)
Other domestic corporation	Less than 25%	50% less allocable interest	Other domestic corporation	More than 5% but less than 1/3	50%
Investment trusts (9) (including exchange trust fund (ETF), foreign currency denominated trusts and other investment trusts)	A maximum of 50% of net income less interest expense of a domestic investment trust can be treated as a dividend from an 'other domestic corporation' (i.e. 50% less allocable interest is excludible).		Portfolio investment	Less than 5%	20% (8)
	The percentage of income from an investment trust which can be treated as a dividend depends upon the type of investment trust:		ETF		20% (treated as a portfolio investment)
	• ETF – 100% • Foreign currency denominated investment trusts – 25% • Other investment trusts – 50%		Other investment trusts		0%

(7) Under certain simplified calculations to determine allocable interest, the 'base period' may need to be adjusted.
(8) For dividends from portfolio investments received by insurance companies, the exclusion percentage will be 40%.
(9) These do not include investment trusts investing in national bonds, domestic corporate bonds, foreign investment trusts and specific type of foreign currency denominated trusts.

Changes to tax incentives

The Tax Commission Report called for a fundamental review of tax incentives in response to changes in the economic and social environment. It suggested an investigation of the necessity and effect of each existing incentive and focusing on the most important incentives in the future.

In particular, the R&D tax incentive is the largest incentive in terms of tax benefits in the Japanese corporate tax system. The Tax Commission Report wanted to limit the tax revenue cost of the incentive on the one hand, and on the other, maintain the benefit from a 'competitiveness' perspective. Thus, the trend in the legislation is to reward increases in R&D spending rather than supporting existing spending. It was the case in the 2014 Tax Reform and continued in the 2015 Tax Reform Proposal. A renewed focus on 'Special R&D' has emerged to support the development of innovative basic research. A summary of the R&D related proposed measures are illustrated below.



Category		Incentives before amendments	Amendments
Permanent incentive (gross R&D cost base)		A credit against national corporate tax is allowed. ◀ Credit amount ▶ 8-10% of the gross R&D cost (rate depends on the amount of the R&D costs including special R&D costs). ◀ Limitation of credit ▶ 30% of corporate tax payable before credit for a tax year commencing from 1 April 2013 to 31 March 2015. ◀ Carry over ▶ Excess R&D cost may be carried over for one year.	◀ Limitation of credit ▶ Reduced to 25% of corporate tax payable before credit for a tax year commencing from 1 April 2015. ◀ Carry over ▶ Carry over is no longer available.
	Special R&D cost based credit	◀ Scope of special R&D cost ▶ Joint R&D with or contracted R&D by university or public research institution or contractor. ◀ Credit amount ▶ 12% of the gross special R&D cost.	◀ Scope of special R&D cost ▶ Royalty payments to SMEs shall be included to special R&D cost. ◀ Credit amount ▶ Increased to 30% of the gross special R&D cost for the joint R&D with university or public research institution (20% for the joint R&D with other non-public corporations). A credit against local inhabitants tax is also allowed. ◀ Limitation of credit ▶ 5% of corporate tax payable before credit (separately from other gross R&D cost credit) for a tax year commencing from 1 April 2015.
	Gross R&D cost based credit for an SME	A credit against national corporate tax and local inhabitants tax is allowed. ◀ Credit amount ▶ 12% of the gross R&D cost ◀ Limitation of credit ▶ 30% of corporate tax payable before credit for a tax year. ◀ Carry over ▶ Excess R&D cost may be carried over for one year.	◀ Limitation of credit ▶ Reduced to 25% of corporate tax payable before credit for a tax year commencing from 1 April 2015. ◀ Carry over ▶ Carry over is no longer available.
Temporary incentive (incremental R&D cost base)		A credit against national corporate tax is allowed for a tax year commencing from 1 April 2013 to 31 March 2017. ◀ Credit amount ▶ A credit against national corporate tax is allowed for the higher of (a) and (b) but subject to the limitation of 10% of corporate tax payable before the credit. (a) 5-30% of incremental R&D cost or (b) R&D costs in excess of 10% of the average sales, times the 'tax credit ratio' (ratio is a mechanical calculation which increases the credit depending upon the relationship between the amount of R&D costs and average annual sales) ◀ Limitation of credit ▶ 10% of corporate tax payable before credit.	

In the 2014 Tax Reform, the applicable requirements were relaxed and the period was extended for two years regarding the tax incentive for increased salary payment. Under the 2015 Tax Reform Proposal, the salary increase requirement is further relaxed in the extended period as shown in the table below.

	Fiscal year 2013	Fiscal year 2014	Fiscal year 2015	Fiscal year 2016	Fiscal year 2017
Salary increase requirement before amendments	2%	2%	3%	5%	5%
Amendments (SMEs)	2%	2%	3%	3%	3%
Amendments (large corporations)	2%	2%	3%	4%	5%

Enhanced size based enterprise tax

Under the 2015 Tax Reform Proposal, the tax rates for the value added base and the capital base taxation will be doubled while the tax rate for the income base taxation will be lowered to two thirds of the old rate. These changes will be carried out in two phases. In the corporate effective tax rates shown above, only the tax rate for the income base of the size based enterprise tax is reflected. Thus, depending upon the circumstances of each company, the lowered income base tax rate related to the enterprise tax may not result in a lower overall tax burden since the size based taxes will be increasing. More details are shown below.

The 2015 Tax Reform Proposal does not include any other amendments to the size based enterprise tax related to SMEs since review of the SME tax regime will be postponed to future years.

The applicable tax rates will change as illustrated in the table below (the table shows only the standard rates – rates for Tokyo and other metro areas which are likely to be higher are not yet available).

		Tax rates before amendments	Amended tax rates	
			Fiscal year 2015	Fiscal year 2016
Value added base		0.48%	0.72%	0.96%
Capital base		0.2%	0.3%	0.4%
Income base (10)	≦ JPY4 million	3.8% (2.2%)	3.1% (1.6%)	2.5% (0.9%)
	> JPY4 million ≦ JPY8 million	5.5% (3.2%)	4.6% (2.3%)	3.76% (1.43%)
	> JPY8 million	7.2% (4.3%)	6.0% (3.1%)	4.8% (1.91%)
Local corporate special tax (the rate is multiplied by the income base of size based enterprise tax) which is collected as national tax by filing corporate tax returns		67.4%	93.5%	152.6%

(10) The rates shown for income base is the total income based tax including (a) the portion collected as part of the national tax and (b) the portion included as part of the enterprise tax. The portions in parentheses for income base show the amounts collected as an enterprise local tax (the difference is collected as a national tax). The above rate changes for income base may not affect taxpayers who have elected consolidated taxation, which is not applicable to local tax.

Introduction of new incentives for the revitalisation of local hubs

A taxpayer will be eligible for certain tax incentives if it relates to or expands certain kinds of operations in local areas (generally other than Tokyo, Osaka or Nagoya). Details as to the kinds of operations eligible will be included in a future 'Revised Regional Revitalisation Law'.

International tax measures

One of the major events in international taxation was the OECD/G20 BEPS project in June 2012. Following that, a number of changes to the international tax law have been proposed by OECD with the intention to curb 'unfair' shifting of profits among countries by taxpayers.

The 2015 Tax Reform Proposal introduced several changes related to the taxation of international transactions based on some of the OECD BEPS guidelines recently issued. These include (a) the taxation of hybrid instruments, (b) the requirement for banks to collect and submit taxpayer information and (c) an 'exit tax' for individuals (discussed in the individual section below).

Eliminating dividend income exclusion for hybrid financial instruments

Action 2 of the BEPS Action Plan proposed that measures be taken to neutralise the tax effects of the 'hybrid mismatch' arrangements where, because of differences in the treatment of certain payments between jurisdictions, an item of income is not taxed in either the payer or the payee country because the payment is deductible in the payer country but not taxable in the recipient country. One of the OECD's recommendations is to modify local tax law in order for the recipient country to tax the receipt.

Under the current Japanese tax law, any dividends received by a Japanese corporation from a foreign affiliate is 95% exempt from taxation in Japan regardless of the tax treatment in the payer country. This position is clear in the guidance issued by the National Tax Agency (NTA) (http://www.nta.go.jp/shiraberu/zeiho-kaishaku/shitsugi/hojin/25/02.htm). Based upon the recommendations in the OECD's report on Action 2 of the BEPS Action Plan, the 2015 Tax Reform Proposal proposed to exclude dividends that are tax deductible in the payer country (deductible dividends) from the dividend exclusion regime. As a result, any dividends paid to Japanese corporate taxpayers from, for example, mandatory redeemable preference shares issued by Australian or Brazilian affiliates where the dividends are paid in a manner similar to interest and deductible for Australian or Brazilian tax purposes will no longer be excluded from taxation in Japan.

To the extent any portion of the dividend is deductible for foreign tax purposes, the general principle is that all of the dividend should be taxable in Japan. However, if a portion of the dividend is not tax deductible in the foreign jurisdiction, dividend exclusion will be allowed only if the taxpayer discloses all of the appropriate information regarding the portion of the dividend which is not deductible in the foreign jurisdiction and details for the calculation in a timely filed tax return and maintains the relevant documents for inspection by the tax authorities.

Any foreign tax imposed on the taxable dividend in Japan will be eligible for foreign tax credit relief.

The new rules will in principle apply to any dividends received by a Japanese corporate taxpayer whose fiscal year begins on or after 1 April 2016. However, if the Japanese corporate taxpayer owns the stock of the foreign affiliate as of 1 April 2016, dividends received for tax years beginning between 1 April 2016 and 31 March 2018 will be subject to the old rules (i.e. still eligible for exclusion).

Requirement for banks to collect and submit information regarding bank accounts owned by non-residents

In July 2014, the OECD guidelines for automatic information exchange by financial institutions were issued. The OECD fiscal committee recommend that G20 countries start such measure by the end of 2018 the latest. To meet this recommendation, the 2015 Tax Reform Proposal introduced a tax reporting system. Under the system, it is anticipated that individuals will be required to report information to the relevant branch of the financial institution which will in turn submit such information to the tax authorities in Japan.

The person who contracts with the financial institution for a deposit to a bank account in Japan on or after 1 January 2017 will be required to report the relevant information to the bank including (a) name, (b) address, (c) date of birth and (d) resident country. If the resident country is outside Japan, the individual will be required to report the taxpayer identification number in the taxpayer's resident country. The financial institution will be required to report the individual information collected as well as details regarding the account (balances, transactions, etc.) by the following 30 April.

Changes to the controlled foreign corporation (CFC) tax regime

To reduce the tax risks and costs and enhance the international competitiveness of Japanese corporations operating in foreign countries as well as to promote more business development, the Japanese business community has requested for a review of (a) the triggering tax rate for CFC status (this relates to the change in the UK tax rate to 20% effective 1 April 2015) and (b) the exceptions to the CFC regime in the case that the tax rate threshold is not met because of low tax rates in the foreign jurisdictions. Thus, changes in the CFC rules have been proposed regarding (a) the treatment of holding companies, (b) relaxation of tax return filing requirements and (c) the amounts subject to tax for deductible dividends from foreign corporations discussed above.

Under the 2015 Tax Reform Proposal, the proposed changes in the triggering tax rate, the treatment of holding companies, and the relaxation in the filing requirements will apply to foreign affiliates whose tax years begin on or after 1 April 2015. Generally, changes related to the definition of taxable income will have an effective date of 1 April 2016. However, with respect to deductible dividends in particular, the effective date of the definition will be consistent with the effective dates of changes in the treatment of deductible dividends discussed above.

Consumption tax measures

Delay in the consumption tax rate hike to 10% until 1 April 2017

On 10 August 2012, the Diet passed a law to implement an increase in the consumption tax in two phases. By an amendment to this law, the 2015 Tax Reform Proposal delayed the second phase to increase the tax to 10% from 1 October 2015 until 1 April 2017. With this amendment, other related amendments are also necessary as shown below.

Consumption tax rate increase to 10% is postponed to 1 April 2017

Introducing multiple consumption tax rates from 1 April 2017

The government is targeting to complete the implementation of a multiple rate system by 1 April 2017 including rates which will apply to different products.

Imposing consumption tax on the cross-border provision of digital services to Japanese customers from 1 October 2015

In the 2014 Tax Reform, the government indicated that they would examine the application of consumption tax to the provision of cross-border digital services in the 2015 Tax Reform Proposal. As a result, the following amendments have been proposed and will be applied to the purchase of digital services from foreign service providers on or after 1 October 2015.

Definition of digital services and criteria for taxation

In the 2015 Tax Reform Proposal, the definition of where digital services (e.g. e-books, music and advertising) are performed for consumption tax purposes was changed from the place where the service is performed taking into account the location of the office and other criteria of the service provider to the place where the service is received by the customer. The definition of digital services does not include services where the main transaction is the transfer of a physical asset. However, it includes the licensing of products subject to copyright by a foreign person to a Japanese customer (under current rules, such transaction would be deemed to occur at the location of the foreign licensor).

Reverse charge mechanism

The 2015 Tax Reform Proposal introduced a reverse charge system for consumption tax related to digital services. For foreign providers of digital services without a permanent establishment in Japan, if it is obvious that the recipient of the digital services operates a business in Japan based on the terms and conditions or the nature of the services, the business receiving the services will be deemed to be the consumption tax taxpayer. If this is not the case, the consumption tax taxpayer is the foreign digital service provider.

By introducing the reverse charge mechanism, the provision of the digital services to businesses in Japan is not treated as a taxable transfer by the foreign service provider. Instead, the purchase of the digital services is treated as a specific taxable input for the Japanese business customer which becomes liable for tax payment.

Foreign digital service business providers will be required to specifically notify Japanese business customers prior to the transaction that the Japanese business customer is subject to the consumption tax on a reverse charge basis.

Taking into consideration the burden on businesses and that the input and output credits would be almost the same, if the taxable sales ratio for the Japanese business customer is 95% or more, the Japanese business customer will not be required to report either the input or output credit in relation to the services purchased from foreign digital service providers (for the time being).

Limitation of tax credit for business to customer (B to C) digital services received by business customers

While there is a filing requirement for foreign digital service providers, to encourage the foreign digital providers to prepare and file tax returns and to avoid the local businesses to obtain a credit when no filing is made, it was decided that business customers will not, in principle, be allowed to claim an input credit for the purchase from foreign digital service providers of what is normally considered to be B to C digital services (based upon the type of service) for the time being. However, if the foreign service provider is properly registered in Japan and the invoices from the foreign service provider specify the registered number, the Japanese business customer should be allowed an input credit assuming the proper invoices are retained.

Exit tax on individuals from July 2015

In response to the recommendations made in the OECD's report on Article 6 of the BEPS Action Plan, the 2015 Tax Reform Proposal introduced a new 'exit tax' for individuals leaving Japan.

For this purpose, an 'exit' occurs when an individual no longer has a residence or an address in Japan. At the time of the exit, the individual will be subject to tax on gains from securities and derivative transactions as if the securities were sold or the derivative transactions were settled at fair market value. The new rule will be applicable to exits and donations and inheritances of property made by a Japanese resident on or after 1 July 2015.

Korea

Korean tax law changes for 2015

Proposed amendments to the corporation tax law and other major tax laws were approved by Korea's National Assembly on 23 December 2014. Most of the amendments became effective on 1 January 2015 or for the fiscal years that begin on or after 1 January 2015 unless otherwise specified. The latest amendments to tax laws represent the government's efforts to stimulate the Korean economy by encouraging corporations to make investment. Also, significant changes are made in the Value Added Tax (VAT) law that would affect domestic as well as foreign companies in Korea, including the VAT-applicable scope of non-traditional financial services and supplies of electronic services purchased through offshore open markets app stores.

Corporate Income Tax Law

Additional surtax to encourage the use of corporate retained earnings in facility investment and increases in payroll and dividend payments

One of the main corporate income tax law changes to spur corporate investment is the introduction of a temporary 10% additional levy on larger corporations if the use of corporate earnings on qualifying investments, wage increases and dividend payments falls below 80% of adjusted taxable income for the concerned year. In order to motivate corporations to utilise corporate retained earnings to fund facility investment, wage increases and dividend payments, the amended Corporate Income Tax Law introduces a 10% additional levy on corporate income if the use of such earnings falls short of a certain portion of corporate net income for the concerned year. Major points of the additional levy under the amended CITL include:

- The additional levy shall apply to companies with net equity in excess of KRW50 billion (excluding small and medium-sized enterprises (SMEs)) and companies belonging to business groups subject to restrictions on cross-shareholdings under the Act on Monopoly Regulation and Fair Trade.
- Regarding the method of charging the additional levy, companies may elect one of the following methods and cannot revoke its election for three consecutive years:
  - (taxable income[1] for the year x 80% – the total amount of investment[2], payroll increases and dividend payments) x 10%; or
  - (taxable income for the year x 30% – the total amount of payroll increases and dividend payments) x 10%

1 The taxable income shall be adjusted for certain items. Examples of add-backs to taxable income include dividends received from subsidiaries, interest income received on refunds of overpaid national taxes and the amount of depreciation expenses incurred in facility investments made in the current year. Examples of deductions from taxable income include corporate taxes (excluding this surtax), tax loss carried forwards, statutory reserve transfers, disallowed donations, etc. Contributions to employee stock ownership associations shall be included in the payroll increases in connection with this.

2 The scope of investment shall include tangible and intangible fixed assets for business use. Investments made to build new or additional business buildings and purchase the relevant building site, machinery and equipment, vehicles, tools, patents, trademarks, mining rights, and developments costs will be included in the scope of investment. The scope of buildings and annexed land for business use regarded as facility investment for the purposes of calculating the additional levy ranges from factories, sales shops, offices, warehouses and head offices to laboratories. Where a certain part of a building is rented, only the proportion of the gross area directly used for its own business to the total area of the rented building shall be deemed as facility investment. If this proportion is 90% or more, 100% of the rented building will be deemed as facility investment. Land annexed to such building up to three times as large as the floor space of the building will also be included in the fixed asset investment amount. However, overseas investment and investments made to acquire equity will be excluded from the scope of investment for these purposes.

Reduction in penalty for the extension of corporate tax return filing

If a corporation is forced to apply for a one-month extension of the deadline (i.e. within 3 months from the fiscal year-end) to file a corporate income tax return because the external audit is not completed, the penalty rate will be reduced from 10.95% to 2.9% per annum of the lately paid tax amount.

Special Tax Treatment Control Law

Employees covered by the new tax credit for increase in corporate payroll

The amended Special Tax Treatment Control Law (STTCL) introduces a temporary 10% tax credit (5% for large corporations) for the incremental amount in average corporate payroll over a certain base level calculated in a prescribed manner by taking into account the average corporate payroll over the previous three years. This is conditional on there being no decline in the number of full-time employees from the previous year. The full-time employees for the purposes of the tax credit shall have employment contracts in accordance with the Labour Standard Act. However, the following categories of employees shall not be taken into account: (a) a company's representatives or directors including unregistered directors, (b) those in high income brackets of KRW120 million or more in annual compensation; and (c) employees who are related parties or relatives of the largest shareholder of the company.

Tax credit for income from the transfer or leasing of technology (Korean patent box regime)

Two significant changes are made to the existing tax incentives to support technology transfer which are currently only applicable to SMEs. One of the changes is to grant a 50% tax credit for income arising from the transfer of technology (including patents) for medium-scale companies as well as SMEs. Requirements for a medium-scale company to qualify for the tax credit include the annual average sales of KRW300 billion or less for the previous three years. Another change is to grant a 25% tax credit for income derived by SMEs and medium-scale companies from the leasing of patents or utility model rights where the companies have first filed a registration of such rights.

Criteria for graduation from SME status

Under the amended law, the three-year annual average turnover (i.e. KRW40, 60, 80, 100 or 150 billion depending on the type of industry) serves as the single criterion to determine SME qualification. Of the four previous thresholds for the graduation from SME status (i.e. the number of full-time employees (1,000), net equity (KRW100 billion), total assets (KRW500 billion) and annual turnover (KRW100 billion), only the total assets threshold shall continue to apply to test the graduation from SME status, while the three other thresholds shall no longer apply. The new criterion requires that a qualifying medium-scale enterprise must not be a company where: (a) a large corporation having KRW5 trillion or more in total assets has direct or an indirect ownership of 30% or more of the company; and (b) a large corporation is also the largest shareholder of the company.

Income tax exemption for qualifying foreign engineers

Under the existing sunset clause, 50% of the wages received by foreign technicians and engineers as specified in the tax law are exempt from income tax for two years from the date when they start to render services in Korea. This sunset clause is extended until the end of December 2018 under the amended STTCL. Also, this income tax exemption will be extended to research staff working in qualifying research and development (R&D) centres of foreign-invested companies. The requirements for these R&D centres to be regarded as qualifying for these purposes include: (a) they must run their own R&D facilities; and (b) they must have at least five research staff who have a master degree in natural science or who have a bachelor in natural science and have three years of experience in R&D.

Tax credit rate for job-creating investment

The key changes relating to tax credit rates for job-creating investment under the recently amended law include:

- For large corporations, the basic credit is abolished (i.e. from 2%-3% to 0%), but the additional credit (which is available in proportion to an increase in job creation) is retained at 3%.
- For medium-scale companies and SMEs, the basic credit rate is lowered by 1% point to 1%-3%, while the additional credit rate is raised by 1% point to 4%-5%.
- The additional credit rate is raised by 1% point for investment in local provinces and service industries as specified in the tax law. The service industries eligible for the 1% increase in the additional credit include 37 out of 43 categories of service industries to which the job-creation tax credit currently applies, excluding agriculture, fishing, mining, manufacturing, gas and construction.

This sunset provision is extended by three additional years until the end of December 2017.

Value Added Tax Law

Scope of non-traditional financial services subject to VAT

Financial and insurance services are in general exempt from the scope of supplies subject to VAT. The VAT law has been amended to include the supply of 'non-traditional' financial services in the scope of taxable supplies. The five categories of affected non-traditional financial services include: (a) safe deposit of securities certificate; (b) investment advisory; (c) insurance actuary and pension actuary; (d) money trust and discretionary investment business investing in real estate and non-financial assets; and (e) real estate trust business limited to management, disposition and parcel-out administration. This change will apply to supplies made on or after 1 July 2015.

Supplies of electronic services purchased through offshore open markets app stores are subject to VAT.

VAT on digital service sales on offshore open markets

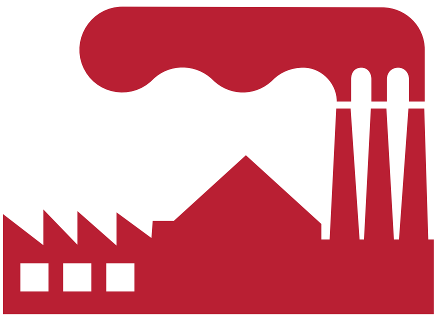
The amended regulations of the VAT law impose VAT to supplies of electronic services (applications, MP3, music, films, etc.) purchased through offshore open markets app stores. If an app developer is a foreigner, the amended law requires offshore open marketers to undertake procedures online including a simplified VAT registration and a VAT return filing and payment through the homepage of the National Tax Service (NTS). The affected digital services include streaming service, programme update, remote service provision (news, traffic information, etc.), software, electronic documents, etc. Examples of the required information for the online registration include the name of the company and representative, contact information, the jurisdiction where the marketer's business is registered, service type and the launch date of the domestic service. VAT payment will be made through a foreign exchange bank account either in a foreign currency or Korean Won. These service providers, however, will be exempt from the requirements for issuing VAT invoices. This change will apply to the supply of services on or after 1 July 2015.

Zero-rating VAT for supply of clinical trial services to foreign pharmaceutical companies

When a domestic hospital or medical institution supplies clinical trial services to a foreign pharmaceutical company outside Korea and receives consideration for the services in a foreign currency, zero-rating VAT will apply to the these services.

VAT treatment of tradable greenhouse gas emission permits

As the greenhouse gas emission trading system has been implemented in Korea since January 2015, the STTCL was amended to address the tax treatment of tradable emission permits. The amended law exempts the supply of tradable emission permits from VAT. The VAT exemption for emission permits is intended to create a stable growth of the carbon emissions trade market and achieve a reduction in emissions.



The supply of tradable emission permits are exempt from VAT.

Transfer pricing and customs regulations

Thin capitalisation rules

Under the amended Korean thin capitalisation rules, if a foreign company borrows from its controlling shareholders overseas an amount greater than two times its equity (lowered from three times), interest payable on the excess portion of the borrowing shall be characterised as dividends and treated as non-deductible in computing taxable income. However, the threshold for financial institutions will remain unchanged as six times of the equity.

Harmonisation of transfer pricing and customs

Currently, taxpayers subject to transfer pricing adjustments for corporation tax purposes or adjustments to transaction values for customs duties purposes may request a review to obtain 'advanced corresponding adjustments'. The amended regulations of the Law for Coordination of International Tax Affairs (LCITA) and the Customs Act set forth details related to the advanced corresponding adjustments:

- The review will be available when the methods employed for transfer pricing purposes and customs valuation purposes are similar. In other words, it will be available when one of the following methods is adopted to determine the arm's length price or customs value: the comparable uncontrolled price method, the resale-price method and the cost plus method as prescribed in Article 5, Paragraph 1 of the LCITA and the transaction price of goods of the same kind and quality method, the transaction price of similar goods method, the domestic sale price back calculation method and the calculated price method as prescribed in Articles 31-34 of the Customs Act.
- The relevant authorities must notify a taxpayer filing a request for an advance corresponding adjustment of their review results within 90 days from the date the application is accepted. If the application is rejected, the taxpayer must inform the relevant authorities of whether the taxpayer intends to separately seek an advance pricing agreement (APA) for corporation tax or an advance customs valuation agreement (ACVA) for customs within 30 days from the date the notification is received.
- The methods and procedures for reviewing and recognising the advance corresponding adjustment will be similar to those adopted for APA and ACVA purposes.

Simplified APA introduced in 2015

Beginning from 2015, the NTS has introduced a simplified APA programme for small and medium-sized foreign companies. The programme is intended to help alleviate the burden faced by smaller-sized foreign companies during tax audits by making it easier for them to obtain certainty on the acceptability of transfer prices for intercompany transactions.

Under the simplified APA programme, qualifying taxpayers will only be required to submit a minimal amount of information at the time of applying for an APA. In addition, the APA review process will be accelerated to enable completion within one year. An APA typically covers up to three to five prospective fiscal years with the possibility of rollback to previous open years. If a taxpayer is able to meet the agreed terms and conditions of the APA, the taxpayer may avoid a review of transfer prices during a tax audit.

The simplified APA programme is limited to unilateral APA requests only. The simplified APA programme will initially be made available to companies engaged in wholesale/retail, services or manufacturing activities. This covers approximately 76% (7,023 companies) of the 9,212 small and medium-sized foreign companies currently operating in Korea. The programme will then be gradually expanded to other industries.

Changes in customs duty-related penalties

When taxpayers correct an inaccurate customs duty return and file an amended return voluntarily within six months after the due date, currently there is no penalty for the under-reported amount. The amended law reduces penalties when the amended return is filed after six months, i.e. a 20% reduction in the penalty if the amended return is filed after six months, but within one year from the original due date and a 10% reduction for the amended filing within the period ranging from one year to two years from the original due date. In addition, the interest rate applicable to the unpaid amount of customs duties shall be 0.03% per day (10.95% per annum), an increase from the current 0.013% per day. This is to apply consistent penalty rates on unpaid national taxes and customs duties.

Other tax laws

Tax appeal procedures

In a tax appeal case, the amended law allows the tax authority making a tax assessment in dispute to make its opinion statement with the Tax Tribunal where there is a request by an appellant as well as where the relevant ruling authority determines it necessary. This is to implement the principle of equal opportunity and give not only tax payers but also tax authorities an opportunity to make an opinion statement.

Tightened statutory residency rule

The threshold to test the statutory residency is lowered from one year to 183 days, which is consistent with the criteria adopted by a majority of OECD member countries. Under the 183-day rule, an individual will be considered a Korean resident for tax purposes if the individual is present in Korea for at least 183 days during the current year or during two consecutive tax years. Details of counting the 183-day threshold are prescribed in the Enforcement Decree of the Individual Income Tax Law. For example, days of presence in a foreign country for the purposes of vacation or receiving medical treatment for a disease will be counted as days of presence in Korea, but days of presence in Korea for such purposes will not be counted in the 183-day threshold.

Recent developments in business laws

Amendments to the law regarding accounting and audit of stock companies, etc.

The amended regulations of the Act on External Audit of Stock Companies are aimed at enhancing the accounting transparency by expanding the scope of companies subject to mandatory audit, improving the procedures for appointing statutory auditors, and strengthening the auditor independence requirement. Key changes include:

- The law is renamed as the 'Act on Accounting and External Audit of Stock Companies, etc.' to expand the scope of companies subject to mandatory audit and other regulatory requirements under the law.
- Gross sales are added to the criteria for determination of the scope of entities subject to statutory audit. The existing criteria include total assets, liabilities, and the number of employees.
- A statutory audit will be required for limited liability companies (LLCs, *Yuhan Hoesa*) which have been established under the Korean Commercial Code. Under the statutory audit requirement, LLCs will be governed by the rules on accounting treatment and internal financial control which currently apply to unlisted company subject to the statutory audit. However, an exception to the rule will be granted in cases where there are no significant benefits from the statutory audit, as prescribed in the Presidential Decree of the Act. Also, exception to the rule for the mandatory public disclosure of financial statements will be granted by assessing the benefits and protection of the stakeholders, as prescribed in the Decree of the law.
- Large non-public corporations having total assets in excess of a prescribed threshold will be treated in the same manner as publicly listed companies in terms of the rules on the qualifications and the appointment of auditors.
- The right to appoint an auditor will be shifted from the board of management to the audit committee or the internal auditor of a company to strengthen the auditor independence.

The amended law is applicable one year after it was proclaimed (31 December 2014), with an exception of a provision regarding LLCs, which will be implemented after two years from proclamation.

Latest amendments to foreign investment promotion law

Under the latest amendments to the Foreign Investment Promotion Act which took into effect on 15 October 2014, cash grants available for qualifying foreign investors shall be extended to regional headquarters of multinationals having the following attributes: (a) provides support services in relation to core enterprise functions, such as production, sales, logistics and human resources management, for at least two overseas affiliates of a multinational; and (b) meets the requirements in terms of full-time employment and parent company profile as set forth by the Ministry of Trade, Industry and Energy.

Currently, qualifying foreign investors are exempt from customs duties on imported capital goods. Foreign investors must request the relevant ministries to examine and confirm those imported goods to be qualified for the exemption from customs duties. The requests must be filed before the import declarations are cleared. The amended rules extend the timing of filing from five days to 15 days in certain cases to allow foreign investors more flexibility. In case import duties are paid as prescribed in the Customs Act, the requests may be filed within five days from the date a foreign investor receives a notice of customs duty payment. Requests may also be filed within 15 days from the date an imported declaration is accepted unless the concerned imported goods are delivered out of a bonded area.

Horizontal compliance programme expanded to SMEs

The horizontal compliance programme was previously available for companies having annual turnover of KRW100 billion to 500 billion. The bottom threshold of annual turnover has been lowered to KRW50 billion, allowing SMEs to access this programme. However, there is no change in the upper threshold. Subject to certain requirements (meeting the annual turnover threshold and having an internal tax control system), participation in the programme is not mandatory, but voluntary on an application basis.

The horizontal compliance programme is based on a memorandum of understanding (MOU) between a taxpayer and the NTS. Once the MOU is concluded, the tax authorities will monitor the taxpayer's tax control processes and work together on present and possible tax issues with the taxpayer through regular meetings so as to support the taxpayer's compliance. The MOU shall be valid for three years and may be renewed if the required procedures are cleared.

This programme is designed for taxpayers to reduce uncertainties about the interpretation of tax issues and possible compliance and appeal costs, enhance the transparency and trust and support the reasoning of a tax issue. It also enables the tax authorities to promptly respond to taxpayers' requests and difficulties and achieve a high level of compliance across taxes. The latest survey conducted by the NTS among foreign companies doing business in Korea indicates that the horizontal compliance programme initiated in 2007 is one of the most helpful tax administration programmes in Korea.

Laos

Newly-licensed mining companies may be subject to higher PT rates up to 35%

Introduction

There was no significant development on taxation law and regulations during the past twelve months. Key changes include the higher profit tax rate imposed on newly-licensed mining companies and confirmation that value-added tax (VAT) withheld by VAT-registered Lao taxpayers from their payments to foreign contractors can be treated as input VAT of the Lao taxpayers.

Higher profits tax rate on mining companies

Under the existing Tax Law [20011], the standard profits tax (PT) rate is 24% (and 26% for companies investing in tobacco business). However, newly-licensed mining companies may be subject to higher PT rates up to 35%. In some recent cases, a 35% PT rate was imposed on the newly-licensed mining companies. The rate was provided in the relevant concession agreement signed by the relevant investor with the Government of the Lao People's Democratic Republic (GOL). A check with the Ministry of Energy and Mines indicated that there is no specific law or regulation governing the imposition of such rate. The rate is a special arrangement agreed between the investor and the GOL and is a condition of the concession agreement. However, mining companies which have already been licensed to do the business in Laos with the PT rate specified in the concession agreement will not be affected.

Declaring withholding VAT as input VAT

Withholding tax on payments to foreign contractors applies when a Lao business operator contracts with an overseas party that is not registered and does not maintain a presence in the Laos. This withholding tax, which is called the foreign contractor withholding tax (FCWT), comprises both PT and VAT elements if the business activity is undertaken onshore, or only VAT if the business activity is undertaken offshore. The FCWT is the final tax on the overseas party.

PT is calculated based on a deemed percentage of turnover. The deemed rates are determined according to the nature of the contract or activity. The rates for different types of business activity are as follows:

Zone	Deemed profit margin (% of business revenue)[1]	Deemed PT rate
Commerce	5%	1.4%
Production	8%	2.24%
Transportation and construction	10%	2.8%
Services	20%	5.6%

VAT is computed based on the value of the contract. The Lao business operator has the obligation to withhold the PT and VAT when it is making payment of the fee to the overseas party. According to the Lao Tax Department, the VAT withheld can be declared as input VAT of the Lao business operator if the Lao entity is registered with the VAT system.

1 The above rates are under Article 21 of Instruction No. 2137/MOF on Implementation of the Tax Law 2005. According to the Tax Department, these rates are applicable until the relevant supporting regulations of the new Tax Law 2011 are issued.

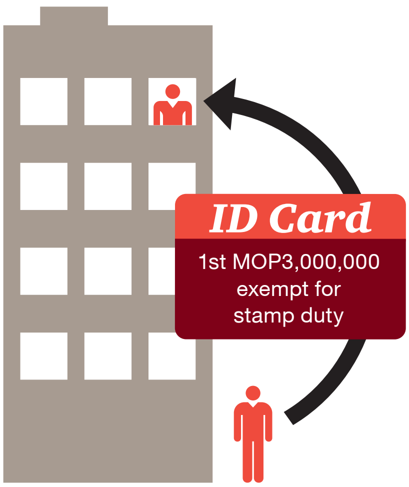
Macau

Recent major tax developments in Macau

Tax incentives for financial year 2015

The Legislative Assembly approved certain tax incentives proposed by the Chief Executive of the Macau SAR in his budget for the financial year 2015 on 17 December 2014. The key measures include the following:

1. The tax free income threshold for Macau complementary (corporate) tax will continue to be increased from MOP32,000 to MOP300,000 for income derived in tax year 2014. Taxable profits over MOP300,000 are taxed at 12%.
2. The tax free income threshold for Macau professional tax will continue to be increased from MOP95,000 to MOP144,000 for income derived in tax year 2015. Taxable income between MOP144,000 and MOP424,000 is taxed at progressive rates scale ranging from 7% to 11%. Taxable income above MOP424,000 is taxed at 12%.
3. There is a 30% reduction in the Macau professional tax liabilities for income derived in tax year 2015. Together with the standard 25% deduction on the taxable income granted under the Macau Professional Tax Law, the effective tax rate for Macau professional tax is below 6.3%.
4. There is a refund of 60% of the Macau professional tax paid by Macau resident identity card holders for tax year 2013, subject to a cap of MOP12,000.
5. The standard MOP3,500 reduction in the Macau property tax liabilities will continue to be available for assessments in tax year 2015 for both self-use and rental properties.
6. Macau tourism tax will continue to be exempt for restaurants in tax year 2015.
7. Macau stamp duty for insurance policies written or renewed in tax year 2015 and for banking transactions in tax year 2015 will continue to be exempt.
8. Macau stamp duty on admission tickets for performances, exhibitions, and entertainment programmes will continue to be exempt in tax year 2015.
9. Macau industrial tax for tax year 2015 will continue to be fully exempt.



A Macau permanent resident identity card holder who does not own any properties is exempt from stamp duty on the purchase of a residential property for self-use for the first MOP3,000,000 of the transfer consideration.

10. An adult, who holds a Macau permanent resident identity card and who does not own any properties other than one car-parking space, is eligible to enjoy an exemption on Macau stamp duty levied on the purchase of a residential property for self-use purposes for the first MOP3,000,000 of the transfer consideration. The transfer consideration in excess of MOP3,000,000 will be subject to Macau stamp duty.

    For husband and wife acquiring a residential property in joint names, if either one of them does not own any properties other than one car-parking space, even if one of them does not hold a Macau permanent resident identity card, the acquisition will still be eligible for exemption on Macau stamp duty for the first MOP3,000,000 of the transfer consideration.

    For other joint name acquisition with acquirers not being husband and wife, only the acquirer(s) who meet the criteria of being an adult, holder of Macau permanent resident identity card and not owner of any properties other than one car-parking space will be eligible to enjoy the exemption on Macau stamp duty on the first MOP3,000,000 of the transfer consideration.

The exemption for each individual qualified acquirer will be granted on a pro-rata basis. The Macau stamp duty exemption has a three-year 'lock-in' period, such that unless the residential property so purchased is transferred as part of a deceased estate, the purchaser will have to pay the Macau stamp duty that was originally exempt on the purchased property if such residential property is sold within three years after the grant date of the Macau stamp duty exemption.

11. Licence fee for advertisements posted or placed in public areas, and the stamp duty thereon, will continue to be exempt in tax year 2015.
12. Land rentals with amount below MOP100 shall not be collected by the Macau Finance Bureau (MFB) in tax year 2015. However, any such amount already collected shall not be refunded.

The overall aim of the tax incentives is to lessen the burden of small and medium sized enterprises, and to improve the livelihood of the general public in Macau. In the policy address for fiscal year 2015 delivered by the Chief Executive on 24 March 2015, it was further proposed that the tax free income threshold for complementary tax be increased from MOP300,000 to MOP600,000, which is subject to approval by the Legislative Assembly. The proposed furtherance of the tax incentive for complementary tax aims at intensifying the assistance extended to small and medium sized enterprises for adapting to the ever-changing economic environment.

Proposed changes to the Macau Commercial Code

1. Abolishment of bearer shares

The second phase review by the Organisation for Economic Co-operation and Development (OECD) Forum on Transparency and Exchange of Information for Tax Purposes in year 2013 showed that Macau 'mostly complied with the standard but still needs to be improved'. To prepare for the third phase review in year 2016, it has been proposed for bearer shares to be abolished in Macau such that owners of shares could be identified. This proposal also aims at promoting anti-money laundering and counter-terrorism financing.

According to government statistics, currently 125 Macau companies have issued bearer shares. It is proposed for the owners of these bearer shares to be given a period of six months to convert their bearer shares into registered shares. According to the proposal, failure to convert the bearer shares within the six months transition period would result in suspension of the owners' rights as shareholders.

2. Definition of 'long-term' operation in Macau

According to the Macau Commercial Code, foreign companies with long-term operation in Macau should be subject to registry laws and regulations, however 'long-term' has not been defined. Currently, foreign companies without a fixed place of establishment in Macau could opt to carry out business in Macau by just performing registration for tax purposes (without registration with the Macau Commercial Registry).

The concept of long-term operation is closely connected to the concept of permanent establishment in international taxation. Referencing to Article 5 of the OECD Model Tax Convention on Income and on Capital, it is proposed for 'long-term operation' be defined as operation that continues for more than one year, or discontinuous operation that exceeds three months each year in five consecutive years. That is to say, once this proposed change comes into effect, foreign companies intending to carry on business in Macau for period crossing the defined threshold would be required to perform registration both with the Macau Commercial Registry and the Macau Finance Bureau.

The two proposed changes are expected to be enacted soon in order to meet the timeline for the third phase review in year 2016. Foreign companies intending to carry on business in Macau will be subject to more stringent registration requirement and higher transparency for tax purposes in the near future.

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Macau offshore companies and offshore financial institutions

In addition to having very low corporate and individual tax rate, profits derived by approved offshore financial and non-financial institutions from prescribed offshore activities are exempt from all forms of taxes, such as complementary tax, annual industrial tax (currently exempt for all taxpayers), and stamp duties. The executives and/ or staff at supervisory level of the qualified institutions are exempt from professional tax for three years by application.

Offshore financial institutions include banks, insurance companies, re-insurance companies, trust management companies, and more importantly, fund management companies.

For offshore non-financial institutions, there are eight permissible offshore activities:

1. hardware consultant
2. software consultant
3. data processing
4. database related activities
5. back office activities
6. research and development activities
7. tests and technical analysis activities
8. management and administration of ships and aircraft

It might be worth exploring the possibility of setting up a Macau offshore institution (MOI) for companies in the relevant industries or, where it is commercially viable, for some of the above-listed back office and support functions to be relocated to Macau.

Although trading is no longer available as a permissible offshore activity for newly set up MOI, it may be possible to acquire existing MOI with trading business scope (trading MOI), such that the new investor can inherit the tax exempt status of the trading MOI, subject to approval from the regulatory authority.

Alternatively, consideration can be given as to whether a MOI (which has been approved to provide back office activities) can provide all the requisite services, such as procurement, quality control, marketing, and liaison services pertaining to trading transactions, to support another trading entity within the group, such that an arm's length service fee can be charged to the trading entity. The permanent establishment risk in other tax jurisdictions may be mitigated through the use of such a MOI, if appropriately structured.

Consideration can also be given as to whether a MOI can be set up for hosting and maintenance of servers for internet businesses such that the taxable presence exposure created by the physical presence of servers in other tax jurisdictions, if any, can be better managed.

Aside from benefiting from the tax exempt status of a MOI, individual investors meeting certain minimum investment threshold may also apply for Macau residency status under the Macau Investment Migration Scheme. Under the scheme, the applicant may apply for a Macau permanent residency card after maintaining the business in Macau for seven years.

Nevertheless, as MOIs are focus of investigations for many tax jurisdictions, it is important to ensure that such companies have adequate commercial substance in Macau and the companies' transfer pricing policies are supported by appropriate transfer pricing documentation and transfer pricing studies.

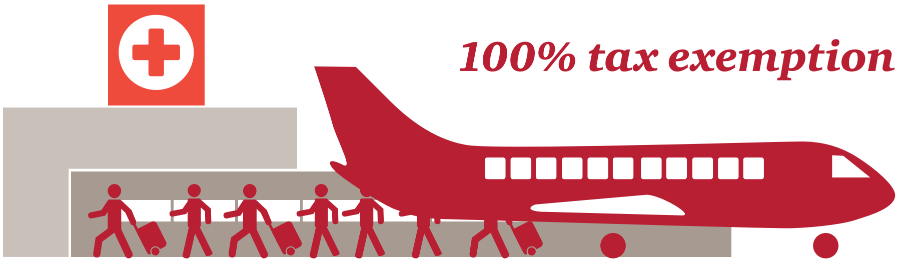
Malaysia

Budget 2015

The 2015 Budget proposals were announced on 10 October 2014, themed People Economy, with the aim to accelerate growth, ensure fiscal sustainability and bring prosperity to the people of Malaysia.

Medical tourism

To further stimulate the growth for medical tourism, it is proposed that tax exemption equivalent to 100% of qualifying capital expenditure for a period of five years be given to new and existing companies undertaking expansion, modernisation and/ or refurbishment of their facilities, where there are at least 5% healthcare tourists in their total number of patients. The Malaysian Investment Development Authority started accepting applications from 1 January 2015 and will continue until 31 December 2017.



Tax incentives

Investment account platform

To boost the development of small and medium enterprises (SMEs), the government will be introducing the Investment Account Platform (IAP), a new shariah-compliant investment product to provide opportunities to individual and institutional investors in financing entrepreneurial activities. Profits earned from investments made through the IAP by individual investors will be given tax exemption for three consecutive years commencing from the first year the profits are earned, subject to the following conditions:

- the investment is made for a period of three years starting from the IAP's operation date
- the investment activities must be in Malaysia, in Malaysian owned venture companies or locally incorporated companies; and
- tax exemption shall only be accorded for investments made in SME (as defined by SME Corporation Malaysia) and venture companies in any sector

The operational date of IAP is scheduled to be effective from 1 September 2015 to 31 August 2018.

Industrial estate management

A full income tax exemption for five years is given to companies engaged in managing, maintaining and upgrading industrial estates in less developed areas. A 70% income tax exemption for five years is given to companies engaged in the same activities for industrial estates in other areas.

Automation capital allowance

To encourage automation in the manufacturing sector, enhanced capital allowance of 200% is given:

- on the first MYR4 million expenditure incurred between 2015 to 2017 on automation plant and machinery for high labour intensive industries, and
- on the first MYR2 million expenditure incurred between 2015 to 2020 on automation plant and machinery for other industries.

Technology and innovation

A specialised incentive package is offered for investment projects based on technology, innovation and knowledge, involving highly qualified and knowledgeable employees.

Principal hub

Customised incentives for principal hubs were introduced in early 2015 to encourage multinational companies to set up their global operational centres in Malaysia.

Other developments

Tax incentives

Mines Wellness City

Guidelines were recently issued by the Malaysian Investment Development Authority, covering incentives for operators, developers and development managers in Mines Wellness City (MWC). A summary of the incentives are set out below.

	Operator	Development manager	Developer
Incentive	• 70% income tax exemption for 5 years for income from qualifying activities in MWC, capped at 60% of the qualifying capital expenditure incurred within the 5 years.	Income tax exemption for income from management, consultancy, supervisory or marketing services to a MWC developer in MWC from the first year of assessment (YA) the income is derived until YA 2023.	1. Income tax exemption for income from disposal of rights over land/ building from the first YA the income is derived until YA 2023, or 2. income tax exemption on rental income from land/ building from the first YA the income is derived until YA 2026, and 3. 50% stamp duty exemption on instrument of transfer/ lease of land/ building.
Application period	Applications received on or after 1 January 2013 to 31 December 2026.	Applications received on or after 1 January 2013.	1 & 2 – Applications received on or after 1 January 2013. 3 – Instruments executed from 1 January 2013 to 31 December 2023.

Tax administration

Monitoring deliberate tax defaulters

The Malaysian Inland Revenue Board (MIRB) has implemented the Monitoring Deliberate Tax Defaulters (MDTD) programme from 1 January 2014 to increase voluntary tax compliance and enhance the effectiveness of tax audits.

Under the MDTD programme, non-compliant taxpayers are identified through tax audits for the YA 2012 onwards which are completed on or after 1 January 2014. Those taxpayers will be informed by the MIRB in writing upon their listing in the MDTD list.

The identified taxpayers will be monitored by MIRB on a yearly basis until no repeated or new offences are committed.

Large Taxpayer Branch

The MIRB has realigned its operations with the formation of the Large Taxpayer Branch with effect from 1 January 2015. This branch will now manage the income tax files of large and high profile taxpayers. Companies with sales turnover of more than MYR30 million and individuals with aggregate income of more than MYR1 million will be under the jurisdiction of this branch. It will also manage the income tax files of taxpayers within the special sectors of construction, real property, finance and insurance, as well as the collection of income tax and real property gains taxes.

The Multinational Tax Branch will manage taxpayers with cross-border transactions of a certain threshold amount, which has yet to be specified by the MIRB. The upstream and downstream taxpayers in the oil and gas sector will be managed by the Petroleum Branch. All other taxpayers not falling within these specialised branches will be managed by their local income tax branches.

Large Taxpayer Branch will manage

Companies earning
more than MYR
30
million

Individuals with aggregate income of
more than MYR
1
million

Tax audit framework

The MIRB issued a revised tax audit framework on 1 February 2015. The notable changes in the revised framework include disallowing the deduction of expenses if information requested is not furnished within a specified timeframe, extending the timeframe for settlement of audit cases from three months to four months (120 calendar days) and the inclusion of the MDTD programme into the framework.

Mutual agreement procedure

The mutual agreement procedure (MAP) guideline was issued on 5 December 2014, providing guidance on situations in which a MAP may be requested, situations dealing with transfer pricing, withholding tax, residence status, permanent establishment, and classification of income. It also covers, among others, the timeframe, procedures and process of requesting a MAP.

Goods and services tax (GST)

Implementation of GST

The GST was implemented on 1 April 2015 and the sales and services tax was abolished on the same date. The GST was implemented at the standard rate of 6% for most goods and services, with the exception of items which are gazetted as zero-rated or exempt supplies.

Price Control and Anti-Profiteering Act 2011

Amendments were introduced to the Price Control and Anti-Profiteering Act 2011 in preparation for the implementation of the GST on 1 April 2015. These amendments seek to penalise businesses that make unreasonably high profits arising from implementation of GST.

New Zealand

Introduction

Over the last 12 months the New Zealand Government has continued to introduce tax reforms focused on increasing the efficiency and fairness of New Zealand's tax system, simplifying tax law to make it easier to understand and protecting New Zealand's tax base. Recent proposals and enacted amendments in line with these objectives relate to areas such as:

- the thin capitalisation rules
- the tax treatment of employee allowances, and
- the debt recapitalisation rules.

New Zealand's revenue authority also continues to focus on tax avoidance in both domestic and international contexts, with senior Inland Revenue officials working closely with the Organisation for Economic Co-operation and Development (OECD) on its Base Erosion and Profit Shifting (BEPS) project.

In November 2014, the Minister of Revenue released two officials' reports outlining Inland Revenue's action plan for addressing BEPS-related matters. The reports highlight areas where, in Inland Revenue's view, New Zealand's domestic law can be improved to counter BEPS-related concerns. For example:

- the use of hybrid entities and instruments
- related party interest deductions and transfer pricing, and
- various corporate tax compliance measures to improve tax transparency between Inland Revenue and large corporates.

Officials are also seeking to address other areas not directly related to BEPS such as:

- the taxation of foreign trusts
- goods and services tax (GST) and online shopping, and
- non-resident withholding tax rules.

We expect to see various public consultation documents issued during 2015, which will set out proposed changes to these areas of New Zealand's tax laws.

Thin capitalisation reforms

The Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014 introduced a number of changes intended to strengthen New Zealand's thin capitalisation rules. The changes were first signalled in an Issues Paper released in January 2013. The new rules apply to the 2015-16 and subsequent income years.

The inbound thin capitalisation rules previously only applied to New Zealand taxpayers that were controlled by a single non-resident (or group of associated non-residents). The changes will extend the inbound thin capitalisation rules to apply to situations where an entity is controlled by a group of non-resident investors who are acting together in relation to the New Zealand entity. Broadly, a group of non-residents will be acting together if the non-residents

- directly or indirectly hold debt in a company in proportion to their equity in the entity; or
- have entered into an arrangement setting out how to fund the company if the company is not widely held; or
- act on the instructions of another person.

Other changes to the thin capitalisation rules include the exclusion of shareholder debt from the calculation of the 110% worldwide group debt percentage and the exclusion of increases in asset values arising from the transfer of assets between group entities when calculating the value of assets for thin capitalisation purposes.

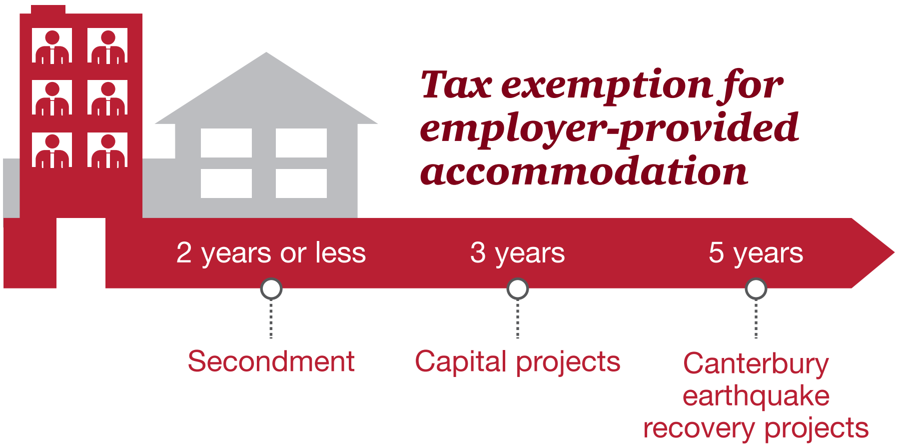
There has been no change to the existing safe harbour debt to asset thresholds (60% for inbound investors or 75% for outbound investors).

Taxation of employee allowances

The Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014 also introduced changes to the taxation of employee allowances. These changes are intended to clarify the tax treatment of employee allowances, reimbursements, and employer-provided accommodation. The changes apply equally to offshore employers who send employees to work in New Zealand, New Zealand employers who send employees to work elsewhere in New Zealand, and New Zealand employers who send employees to work abroad.

Under the new rules, when an employee is expected to work away from their normal workplace for up to two years, employer-provided accommodation will be tax exempt. To be eligible for this exemption, there needs to be a reasonable expectation that the employee's secondment will be for a period of two years or less. This exemption will extend up to three years for employees working on capital projects and up to five years for Canterbury earthquake recovery projects.

The new rules also include meal payments and a specific exemption for payments for distinctive work clothing. Meal payments linked to work-related travel will be exempt for up to three months.



New GST registration rules for non-residents

From 1 April 2014, non-residents that do not make taxable supplies in New Zealand may register for GST and recover GST incurred on costs in New Zealand. This change provides cross-border business-to-business GST neutrality and brings New Zealand in line with international best practice. Previously, only those non-residents who make taxable supplies in New Zealand could register for GST and claim GST on their costs.

The new rules allow non-residents to register even if they don't conduct a taxable activity in New Zealand. To register under the new regime, the non-resident must

- not be carrying on or intending to carry on a taxable activity in New Zealand, and not become or intend to become a member of a group of companies carrying on a taxable activity in New Zealand
- be registered for consumption tax in the country they are resident, or if there is no applicable consumption tax have a level of taxable activity (NZD60,000 per annum) that would render them liable to be registered if they were carrying out that activity in New Zealand
- be likely to incur at least NZD500 of input tax for the first taxable period after registration; and
- not perform services that will likely be received by a person in New Zealand who is not GST registered.

The non-resident needs to complete a special GST registration application form (IR 564) and special GST return. Additional documentation must be provided to support the GST registration application (e.g. copies of passports of directors, executive office holders etc.) and to substantiate the GST recovery of costs included in the GST return (e.g. copies of tax invoices/ receipts).

Inland Revenue is obliged to refund the GST within 90 days of the return being filed.

If the non-resident subsequently begins making taxable supplies in New Zealand, they will be deemed to have registered under the existing general GST registration rules.

Inland Revenue's 2015 compliance management programme

For multinational corporations, Inland Revenue continues to focus on tax avoidance, transfer pricing, controlled foreign companies (CFCs), and international financing arrangements as key risk areas, in tune with the OECD's current dialogue on the BEPS project. In particular, Inland Revenue is focusing on the following:

- Transfer pricing: lack of transfer pricing documentation, major downwards shifts in profitability, widely differing profits between local entities and their global group members, unsustainable levels of royalties or management fees, transactions with low or no tax jurisdictions, and chronically recurring losses.
- CFCs: technical compliance, possible New Zealand tax residency of CFCs through local management control or director decision making.
- BEPS concerns: taxation of digital goods and services provided over the internet, hybrid mismatches occurring as a result of variances in tax treatment between countries and misuse of tax treaties.
- GST: associated party transactions, non-routine transactions, and zero rating of goods or services.
- Non-residents: transactions with non-residents and non-resident contractors.

For small to medium enterprises, Inland Revenue is focusing on GST errors, employer deductions, non-resident contractors' tax, and other minor filing errors.

Debt recapitalisation

An Issues Paper released in February 2015 proposes legislative changes to make the debt remission rules more certain for taxpayers. The Issues Paper has been issued in response to a document outlining Inland Revenue's interpretation released in 2014, which suggested that debt recapitalisations may be considered tax avoidance, and if so, would result in taxable debt remission income. That document is attached as an appendix to the Issues Paper.

The Issues Paper discusses proposed changes to the tax consequences of related parties debt remission in the following scenarios:

- debt capitalisation within a wholly owned group
- debt remittance (or capitalisation) where the shareholders are a New Zealand resident
- remittance (or capitalisation) of debt held by a CFC of a New Zealand resident, and
- remittance (or capitalisation) of debt by a New Zealand company with a non-resident corporate shareholder.

The Issues Paper proposes that there should be no debt remission income for the debtor when (i) the debtor and creditor are both within the New Zealand tax base (including CFC debtors) and (ii) either the debtor and creditor are members of the same wholly owned group, or the debtor is a company or partnership and certain other features are met. The changes are proposed to apply retrospectively from the commencement of the 2006-07 income year.

The Issues Paper considers the analysis of inbound cross-border loans to be complex as the creditor is not within the New Zealand tax base. Inland Revenue officials are currently undertaking further analysis on this situation (particularly in relation to the interaction with thin capitalisation and transfer pricing rules). The Issues Paper notes that the use of related party inbound debt is seen as a key BEPS concern. We expect to see further discussions and commentary in relation to inbound debt capitalisations.

Double tax agreements (DTAs)

Papua New Guinea – New Zealand DTA

New Zealand's DTA with Papua New Guinea entered into force on 21 January 2014.

In New Zealand, the DTA is effective for withholding taxes from 1 March 2014. For other provisions, the agreement is effective generally for income years beginning on or after 1 April 2014. In Papua New Guinea, the DTA is effective for withholding taxes from 1 March 2014. For other provisions, the agreement is effective generally for income years beginning on or after 1 January 2015.

Vietnam – New Zealand DTA

New Zealand's DTA with Vietnam entered into force on 5 May 2014.

In New Zealand the DTA is effective for withholding taxes from 1 January 2015. For other provisions, the agreement is effective for income years beginning on or after 1 April 2015. In Vietnam, the DTA is effective for withholding taxes from 1 January 2015. For other provisions, the DTA is effective for income years beginning on or after 1 January 2015.

DTAs under negotiation

New Zealand is currently negotiating new DTAs with mainland China, Korea, Luxembourg, Norway, Portugal, Samoa, the Slovak Republic, and the United Kingdom.

New Zealand is also negotiating new protocols to amend existing treaties with Australia, Austria, Belgium, India and the Netherlands.

Papua New Guinea

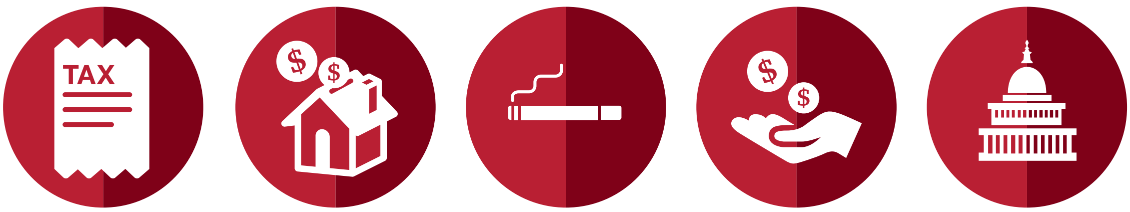
The Minister for Treasury and Finance, the Honourable Patrick Pruaitch, MP handed down the 2015 National Budget on 18 November 2014. This article summarises the taxation changes announced in the budget.

Taxation reform

The 2015 Budget included five major taxation policy measures, as well as a number of minor taxation policy measures including technical amendments, as part of the government's ongoing effort to enhance compliance and strengthen the revenue base. These include

- liabilities on directors in relation to goods and services tax (GST)
- a major compliance measure in relation to rental income
- changes to the excise on tobacco
- an update on non-tax fees and charges, and
- measures to enhance compliance for legally issued court orders.

In September 2013, the government established a Tax Review Committee (TRC) to undertake a national tax review. The TRC is made up primarily of former commissioner generals and it is expected the TRC will hand down its report in 2015 in time for changes to be implemented in the 2016 National Budget.



Corporate and personal tax rates

There was no change to the general corporate income tax rates of 30% for residents and 48% for non-residents. There was also no change to the personal income tax rates which have been applied since 1 July 2012.

From 1 January 2015, the personal income tax rates for resident individuals will continue to be as follows:

Taxable income (PGK)	Tax thereon (PGK)	Rates on tax on excess (%)
10,000	Nil	22
18,000	1,760	30
33,000	6,260	35
70,000	19,210	40
250,000	91,210	42

From 1 January 2015, the personal income tax rates for non-resident individuals will continue to be as follows:

Taxable income (PGK)	Tax thereon (PGK)	Rates on tax on excess (%)
Nil	Nil	22
18,000	3,960	30
33,000	8,460	35
70,000	21,410	40
250,000	93,410	42

Other tax developmemts

Thin capitalisation

In the 2013 Budget, the government introduced thin capitalisation rules into the income tax law which are only applicable to non-resource companies. These rules introduced the definitions of ‘debt’, ‘equity’ and ‘interest’ to remove uncertainty to the definition of these terms for the purpose of calculating a debt to equity ratio for the thin capitalisation rules.

As the definitions were inserted into the general definition section, they apply to all purposes of the Income Tax Act (the Act). One of the consequences of the new definitions was that a transaction could be characterised as both interest and dividend for income tax purposes.

To limit the unintended consequences of the definition of debt, the 2015 Budget repealed the definition of interest and the definitions of ‘debt’ and ‘equity’ were included for the purposes of the thin capitalisation rules. The amendment is consistent with the original intent of the introduction of these definitions in the 2013 Budget.

Research and development

A significant tax change in the 2014 Budget was the phasing out of the additional 50% deduction for expenditure incurred on approved research and development projects from 1 January 2014. The government acknowledges there remains a need to address research and development claims made prior to the repeal of this concession. Treasury and Internal Revenue Commission (IRC) have progressed the establishment of a working group to evaluate the legislation governing this incentive and to form the R&D Committee to evaluate outstanding claims. Part of this ongoing work is in conjunction with the national tax review.

Goods and services tax – director’s liability

Before 1 January 2015, the GST Act did not contain provisions which held company directors liable for failing to ensure their company complied with the GST obligations. The GST Act has been amended to extend the director penalty regime for salaries and wages tax obligations of a company to the GST obligations of the company.

The director penalty regime makes directors of companies, which fail to comply with GST obligations, personally liable for a penalty equal to the amount that the companies ought to have remitted to the IRC.

Salary or wages tax – director’s liability

The provisions of the income tax law which held company directors personally liable for failing to ensure their company complied with its obligations under the salary or wages tax (SWT) provisions have been amended to enhance the implementation of the current director penalty regime. Under the amendment, company directors are required to be proactive in ensuring that amounts due by their company are reported by the due date. Directors who fail to ensure their company complies with its SWT reporting obligations are, after three months, unable to obtain a remission of their director penalty by winding up the company except by causing the company to pay the amount due to the IRC.

Royalty withholding tax

Before 1 January 2015, individual recipients of prescribed royalty payments were required to lodge tax returns declaring income in the nature of the royalty and any other income they would derive in a tax year. The individual taxpayer would be assessed on that income and the royalty withholding tax (RWT) withheld would be allowed as a credit against the tax liability established.

The budget papers reckoned it was not easy to identify all the recipients of royalty payments and to break down the RWT to allow a credit to the individual recipients. The IRC did not have the capacity to require royalty recipients to lodge tax returns, and be assessed on that income to be eligible for a credit or refund on the RWT withheld. Administration cost was another consideration, as it outweighed the benefits. Most individual recipients of prescribed royalty payments required assistance to lodge their tax returns, adding extra cost of administration.

From 1 January 2015, the RWT has become the final tax and recipients of prescribed royalty income no longer need to lodge income tax returns. This has reduced the administrative burden on the IRC and freed up resources for other critical revenue raising activities.

Stamp duty – increased compliance for reporting rental income

The Stamp Duties Act was amended to implement a rental income compliance system. The amendment effectively makes it compulsory for landlords to provide their taxation identification number (TIN) on lease documents which will not be stamped otherwise.

This amendment is intended to capture landlords who are currently leasing out their commercial and residential properties but are not declaring rental income derived to the IRC.

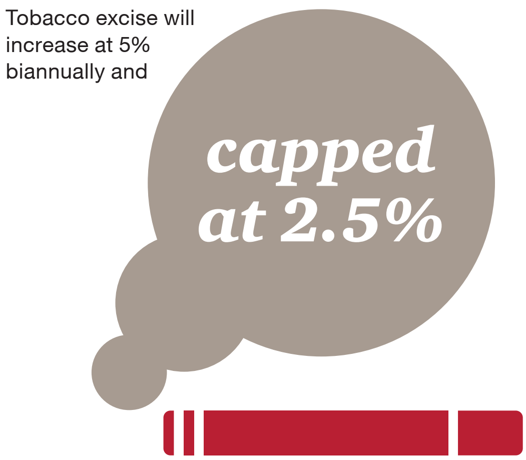
Excise duties

The government has increased excise indexation by a fixed rate of 5% biannually (10% annually) since 1 December 2014.

Under the previous excise regime on tobacco, the excise was adjusted in line with the consumer price index (CPI) every six months, capped at 2.5% at the maximum. This meant that that if the CPI was above 2.5%, the excise would be increased by a maximum of 2.5%. However, if the CPI was less than 2.5%, the excise would be adjusted to the CPI inflation rate.

The government believes the increase in tobacco excise by 10% annually is necessary given the high health risks tobacco poses on people and the high cost of treating tobacco related diseases amounting to around PGK9 million per year.

By increasing the excise duty at a fixed rate of 5% biannually, the government will be able to recover part of the health cost. It is expected to raise about PGK6.8 million in 2015 and PGK145 million over the next five years after accounting for the behavioural effects related to a reduction in the smoking population and substitution to illicit tobacco usage driven by this tax increase.



New tariff items

Effective from 1 January 2015, new tariff items for other meats and edible offal that do not fall in the mechanically deboned meat (MDM) description were introduced. This amendment is to avoid potential confusion in the identification of appropriate items and rates. The import duty rate of this tariff item is now consistent with other tariff items under heading 0207 except for MDM.

The government also introduced a new tariff item for misclassified cigarettes effective from 1 January 2015. Previously, there were no descriptions in the Papua New Guinea (PNG) customs harmonised system to cater for cigarettes with a filter containing tobacco other than dark fired tobacco, cigarettes without filter containing tobacco, or other tobacco substitutes containing dark fired tobacco.

Under the previous legislation, these cigarettes were classified under tariff item 2402.20.10, attracting an excise duty of PGK249.06 per 1,000 sticks (excise rate as at 1 June 2014). The item code 2402.20.10 catered for cigarettes of dark fired tobacco without filter such as 'spear or mutrus'.

The amendment ensured that cigarettes are correctly classified under the new tariff item 2402.20.40 and 2402.20.50 reflecting their descriptions. The excise rate of these tariff items is now consistent with the current practice. From 1 January 2015, the excise rate of cigarettes is PGK249.06 per 1,000 sticks indexed to change in CPI over the previous six months between March 2014 and September 2014, and further indexed to the newly introduced 5% nominal biannual increase for tobacco.

Enhancement of compliance measures for convicted taxpayers

The government introduced tougher measures effective from 1 January 2015 to deal with convicted tax offenders who fail to comply with legally issued court orders. Under the previous regime, the penalty for non-compliance with a court order ranged from PGK500 to PGK5,000, which was the same as the penalty applied to the tax offence committed at the time of offence.

The government was of the view that the previous regime did not provide the IRC with a strong enough enforcement action if taxpayers refuse to comply with the court orders served on them and pay the court fines levied.

The amendment introduced a jail term penalty to convicted tax offenders who fail to comply with court order and increased the monetary fines to provide different levels of fines for individual and corporate taxpayers.

The increase in the amount of court order fines and the different levels of fines for natural and corporate persons range from PGK1,000-PGK10,000 for a natural person and PGK5,000-PGK50,000 for a company.

Global Forum on Transparency and Exchange of Information on Tax Matters

The government has announced its support for PNG's membership to the Global Forum on Transparency and Exchange of Information on Tax Matters.

The Global Forum on Transparency and Exchange of Information on Tax Matters is the largest of such organisation with over 121 member countries, including a number of developing countries. This global forum provides support to countries with limited administrative capacity, particularly in building their capacity to engage in exchange of information with other jurisdictions.

Membership to the forum could be a precursor to signing up to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which would provide the legal basis for PNG to exchange tax information with much broader range of jurisdictions and allow PNG to ask other jurisdictions to collect taxation debts on its behalf.

There will be no significant revenue implications as membership to the global forum only requires a nominal annual fee. Also, no legislative amendments would be required for the membership for the forum.

Revenue compliance measures

In the 2014 Budget, the government announced that the Treasury and IRC had developed a strategy to improve compliance and collections based on the existing tax system. The main focus areas of additional revenue from improvements in compliance and IRC efficiencies in 2015 and 2016 are listed below. To a large extent the themes remain similar to those of 2014.

Taxpayer registration compliance

This involves the IRC new registrations with the concurrent IRC and Investment Promotion Authority registrations and extra contemporary registrations. Part of this also involves Anti-Money Laundering (AML) Prudential Standard impacts and follow up for current non-compliant taxpayers.

Taxpayer lodgement compliance

This measure sees firmer action on late lodgement with assigned penalties plus identification and enforcement of currently registered taxpayers who fail to submit lodgements.

Taxpayer reporting compliance

The IRC will undertake substantially more verification and audit activities, particularly for GST debit, large and SME business income tax, foreign contractor withholding tax and employee/ contractor issues, data matching (including, provisional tax underestimation), TIN and rental contracts and GST credit verification.

Taxpayer payment compliance

Work to be undertaken within this measure will see IRC introducing approaches to deal with additional early collection and firmer action on debt and late payment penalties, GST Director Penalty Notices (new legislation to be enforced) and finalising objections and requests for amendment.

Efficiencies

This involves other revenue improvement measures, including thorough improvements in case selection, improved data quality allowing earlier enforcement action, improved taxpayer awareness and knowledge/ clarification of obligations etc.

The IRC strategy remains fairly constant and consistent with its 2013-2017 corporate plan strategy and involves:

- the need to get its basic tax administration operations running smoothly and sustainably. An important part of this is to have sufficient staff in place to manage all core aspects of standard taxation administration;
- attraction and retention of the right calibre of staff required for the more classified professional and knowledge work roles and have the ability to deploy them to areas of the greatest risk to revenue; and
- the need to modernise its obsolete core processing capability. IRC has taken the first steps towards this with the ongoing phased implementation of its new revenue accounting system (RASII) and other revenue raising initiative capital expenditures.

Future development of taxation policy

The TRC was formally established in September 2013 and the government is pleased with the progress of the work undertaken. Some of the major work undertaken since the tax review was launched includes:

Blue sky consultation

Over 45 submissions were received in response to the committee's general call for submissions in December 2013. This provided stakeholders with an opportunity to raise any issue of interest to be considered as part of the review.

Diagnostic reviews

The tax review has commissioned a number of diagnostic reviews. This has included a diagnostic review of PNG's direct taxation system, as well diagnostic reviews of PNG's two revenue collection agencies. These two tax administration reviews are expected to be concluded shortly.

Regional consultations

The TRC has to date held open forums in Lae, Kokopo and Madang. These forums were well attended by over 100 people in each event. Further regional consultations will follow.

Tax symposium

In collaboration with the National Research Institute (NRI), a tax symposium was staged in Port Moresby in May 2014. The symposium provided an opportunity for local and international academics to present and seek feedback on draft papers on various tax issues. The NRI's engagement in the tax review process has been ongoing.

Release of issues papers

To date five issues papers have been released by the TRC for public consultation – these are on mining and petroleum taxation, corporate and international taxation, broad directions issues paper, capital gains tax and tax incentives.

The tax review continues to consult and engage widely with stakeholders. It is anticipated that the review will continue to release issues papers on various areas of taxation until the second quarter of 2015.

This will be followed by further consultation upon release of a single final draft report, which will put forward the committee's proposed recommendations.

In recognition of the level of interest in the tax review and the value of the consultation processes to date, the government has agreed to extend the timeline for the review by three months, until 31 July 2015.

Philippines

Good governance, transparency and integrity in government service remain to be the underlying themes of most of the policies adopted by the current administration in the last few months of its six-year term. With the coming national elections in 2016, the leadership of the Aquino presidency hopes to leave a legacy of economic reform, honest and accountable public administration, and firm policies which strive to alleviate poverty.

There is still much to be done. The country's improving fiscal conditions have yet to fully trickle down to the lower strata of the society because poverty alleviation remains to be a huge challenge. Foreign investments, although highly encouraged by the provision of both fiscal and non-fiscal incentives, were beset by the lack of adequate infrastructure, port congestion, and the occurrence of natural calamities. Still, government efforts are tangible in addressing these concerns.

The Bureau of Internal Revenue (BIR), which is responsible for collecting the government's premier source of revenue, has again increased its revenue target to PHP1.456 trillion which is roughly equivalent to USD32.9 billion. The BIR's collection efforts have remained strong and focused but not without a string of controversies largely in the manner of implementing and interpreting tax laws.

No major tax laws were enacted in 2014 up to the early part of 2015 although there are numerous tax bills pending in the congress.

We provide below the relevant laws passed as well as government rules and regulations issued during the covered period.

Legislation

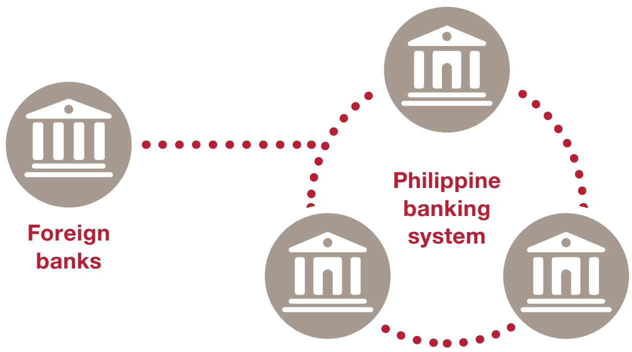
In line with the government policy, **Republic Act (RA) No. 10641** was signed into law in 2014 and took effect on 30 July 2014 entitled 'An Act Allowing the Full Entry of Foreign Banks in the Philippines, Amending for the Purposes of Republic Act No. 7721'. This law liberalised the entry of foreign banks into the Philippine banking system by allowing three modes of entry: by (a) acquiring, purchasing, or owning up to 100% of the voting stock of an existing bank, (b) setting up a subsidiary (a domestic stock corporation) owning up to 100% of its voting stock and (c) establishing branches with full banking authority. Under the former law, foreign banks may either purchase the voting stock of an existing bank or establish a new subsidiary with only up to 60% ownership. RA 10641 also amended the capital requirement for a Philippine branch of a foreign bank. A Philippine branch of a foreign bank is also allowed to open up to five sub-branches.

To date, several foreign banks have expressed interests in setting up their local subsidiaries or branches and a few have already been granted a license to operate in the Philippines.

RA No. 10653 entitled 'An Act Adjusting the 13th Month Pay and Other Benefits Ceiling Excluded from the Computation of Gross Income for the Purposes of Income Taxation, Amending for the Purpose of Section 32(B), Chapter VI of the National Internal Revenue Code of 1997 as Amended'. Under this new law, gross benefits received by employees working in private firms or the government are exempt from income tax provided that such bonuses do not exceed PHP82,000. Prior to the passage of this law, the maximum amount of bonuses exempt from income tax is PHP30,000. The same law also provides that every three years, the President of the Philippines shall adjust the ceiling amount using the consumer price index as published by the National Statistics Office.

RA No. 10645 or 'An Act Providing the Mandatory Philhealth Coverage for All Senior Citizens' took effect on 20 November 2014. This law amended the original Senior Citizens Law and removed the condition that only senior citizens (those 60 years old or above) who are considered indigent or poor are to be covered by the Philippine Health and Insurance Corporation (Philhealth). Under this new law, all senior citizens, regardless of economic status, may avail of the benefits of Philhealth. Philhealth is a government agency which affords health and hospital benefits as well as discounts to all of its members.

The entry for foreign banks into the Philippine banking system is now liberalised



RA No. 10644 or 'An Act Promoting Job Generation and Inclusive Growth through the Development of Micro, Small and Medium Enterprises (MSMEs),' which took effect on 30 July 2014, seeks to support MSMEs to create more job opportunities especially to those who do not have the financial capacity to invest in large or multinational companies. This law aims to encourage and assist those belonging to the 'lower half of the economic stratosphere' to start their own businesses with minimum capitalisation. This law also creates the 'Go Negosyo' centres in all provinces and municipalities which provide assistance to these MSMEs by providing them with production and management training programmes and marketing assistance.

RA No. 10659 or 'An Act Promoting and Supporting the Competitiveness of the Sugarcane Industry' aims to boost the production of sugar and increase the incomes of sugarcane farmers/ planters and farm workers.

Other government issuances

Tax issuances

In response to the benefits provided under RA No. 10653 which increased the income ceiling of the 13th month pay/ bonuses of employees from PHP30,000 to PHP82,000, the BIR issued **Revenue Regulations (RR) No. 3-2015** dated 9 March 2015 which clarifies that the exclusion of PHP82,000 applies only to the 13th month pay and other benefits of salaried employees. It does not cover other types of compensation under an employer-employee relationship such as basic salary and other allowances. The exclusion also does not apply to gross income of self-employed individuals and income generated from business. This regulation also specified that the exclusions shall apply only to the 13th month pay and other benefits accruing on or after 1 January 2015.

The coverage of 'de minimis benefits' was broadened in **RR No. 1-2015** to include those received by an employee by virtue of a collective bargaining agreement and productivity incentive schemes on the condition that the total annual monetary value received from both does not exceed PHP10,000 per employee per taxable year. The term 'de minimis benefits' refer to those received by employees which are exempt from income and withholding tax as well as from the fringe benefits tax. This RR took effect on 6 January 2015.

RR No. 7-2014, which took effect on 27 September 2014, requires the affixture of internal revenue stamps on imported and locally-manufactured cigarettes, whether for domestic sale or for export, and the use of the Internal Revenue Stamp Integrated System (IRSIS) for ordering, distributing and monitoring of the said stamps. Cigarette importers and manufacturers are thus required to enroll with IRSIS. After the enrollment, they can order internal revenue stamps through the stamp ordering module of IRSIS. Each order shall be approved by the BIR provided that the excise tax due on all internal revenue stamps ordered has been paid through the Electronic Filing and Payment System (eFPS).

Under a new scheme introduced by the BIR, importers and customs brokers, unless expressly exempted, should first secure accreditation from the BIR and the Bureau of Customs (BOC) before they can import goods. The BIR accreditation should come before the BOC's. The BIR shall issue the BIR Importer Clearance Certificates (BIRICCs) and BIR Customs Broker Clearance Certificates (BIR-BCCs) which shall be presented to the BOC for the second phase of the accreditation. Under **Revenue Memorandum Order (RMO) No. 1-2015** issued on 19 December 2014, the BIR no longer requires the submission of the certified copies of registration documents issued by the Securities and Exchange Commission (SEC) and the BIR but requires the applicants to secure the appropriate certifications from different offices of the BIR. These certifications should conform to the prescribed format provided in this RMO.

RR No. 6-2014 dated 5 September 2014 prescribes the mandatory use of Electronic Bureau of Internal Revenue Forms (eBIRForms) in the preparation and filing of all tax returns by non-Electronic Filing and Payment System (non-eFPS) filers starting on 1 September 2014. The non-EFPS filers may opt to submit their tax returns manually using the eBIRForms Offline Package at their respective Revenue District Office or electronically through the use of the Online eBIRForms System. The accredited tax agents who are tasked to prepare and file the tax returns on behalf of their clients are likewise mandated to use the eBIRForms. Taxpayers with internet access shall download the eBIRForms Package from the BIR website (www.bir.gov.ph) while taxpayers without internet access shall download the eBIRForms Package from the BIR e-Lounges.

An amendment to RR No. 6-2014 was subsequently issued on 17 March 2015. **RR No. 5- 2015** which amended RR No. 6-2014 imposes penalties on taxpayers who are mandatorily required to file their returns using eFPS or eBIRForms and fail to do so. The use of the eBIRForms facility is mandatory for those covered under RR No. 6-2014. Section 3, Paragraph 2 of RR No. 6-2014 was amended mandating covered non-eFPS filers to use the eBIR Forms facility in electronically submitting and filing all their returns. Upon successful validation of the filed tax return, taxpayers shall receive a system-generated notification e-mail which acknowledges that the tax return has been successfully filed. Taxpayers should print the filing reference page generated by the system and submit the same to the authorised agent banks for the payment of the taxes due thereon. Failing to do so, a penalty of PHP1,000 per return will be imposed pursuant to Section 250 of the National Internal Revenue Code of 1997, as amended.

RMO No. 34-2014 was issued by the BIR on 14 September 2014 to clarify the issuance of tax exempt rulings (TERs) for qualified non-stock, non-profit corporations and associations which are deemed to be exempt from income tax. A TER is required to be secured by these non-profit corporations and associations to be able to avail of the income tax exemption granted by the Tax Code. RMO 34-2014 clarified that these TERs do not confer tax exemptions that are not provided for by law nor abrogate those exemptions that are granted by the law. In evaluating an application for a TER, the BIR will also determine whether an applicant is earning income from other activities conducted for profit which should be subjected to tax. It also clarified that non-stock, non-profit entities which fail to secure a TER for a given taxable year or period are duty bound to prove compliance with the conditions laid down by the law and other pertinent administrative issuances in the event of a tax investigation.

In **RMO No. 27-2014** issued on 21 July 2014, the BIR reiterated its right to inspect any cash register machine/ system at any time during store hours to verify compliance with specifications of a valid machine/ system, the data requirements of the machine generated invoice, the conditions for use of the machines as well as other regulations that may be subsequently issued governing use of machines.

RMO No. 89-2014 issued on 19 December 2014 prescribes that beginning 1 January 2015, increased tax rates shall be applied to locally manufactured cigarettes. Excise tax is paid through internal revenue stamps (affixed to the cigarette products). Manufacturers who previously bought such stamps under the old excise tax rates are required to compute and pay the differential increase in the tax amount before the cigarette products are removed from the place of production.

RMC No. 4-2015 issued on 5 January 2015 exempts locators registered with the Philippine Economic Zone Authority (PEZA) from the requirements of Department Order No. 12-2014 and Department Order No. 18-2014. Such registered locators shall be eligible for accreditation as importers with the BOC without having to secure the BIRICC or BIR-BCC. The BOC may, however, still require the submission of other documents about these PEZA locators prior to granting accreditation.

Circulars and opinions issued by the SEC

The SEC also issued several circulars which may be of importance to investors in the year 2014, foremost among is **SEC Memorandum Circular (SEC Memo Circular) No. 16** which was issued on 13 August 2014 but took effect starting 1 January 2015. This circular aims to ease the burden of corporations and partnerships in amending their articles of incorporation to reflect their specific principal office address in compliance with SEC Memorandum Circular No. 6 Series of 2014, where all affected corporations and partnerships were originally given until 31 December 2014 to effect the said change. The deadline for effecting such change was extended until 30 June 2015.

SEC Memo Circular No 19 Series of 2014 issued on 16 September 2014 requires all financing and lending companies to provide the due date of submission of the Anti-Money Laundering Operating Manual and Anti-Money Laundering Compliance Form and specifies the penalties for non-compliance thereof.

SEC Memo Circular No. 21, Series of 2014 provides the guidelines for computing the corporate term. Under the Corporation Code, a corporation may fix its term limit to a maximum of 50 years and may extend its term provided that each extension may not be longer than 50 years. This SEC Circular specifies the method of computing the start of the corporate existence up to the time of its expiration using the method adopted by the Supreme Court in its decision in the case of Commissioner of Internal Revenue, et al. versus Primetown Property Group, Inc., G.R. No. 162155.

SEC Memo Circular No. 22, Series of 2014 issued on 4 December 2014 requires licensed foreign corporations to submit a Notification Update Form that contains updated information of the entities such as, but not limited to, changes in the principal address, accounting period, composition of directors or officers and affiliates or subsidiaries which occur before their submission of their General Information Sheet. This is a new reportorial requirement applicable only to licensed foreign corporations such as its branch, representative office or regional operating headquarters.

SEC Memo Circular No. 23, Series of 2014 issued on 14 December 2014 provides the schedules and deadlines for the filing of the audited financial statements of all registered business entities with the SEC. The filing schedules depend on the last digit of the company's registration or license number and are specified as follows:

Date of filing	Last digit
13, 14, 15, 16, 17 April	1, 2
20, 21, 22, 23, 24 April	3, 4
27, 28, 29, 30 April	5, 6
4, 5, 6, 7, 8 May	7, 8

SEC Memo Circular No. 3 Series of 2015 issued on 15 January requires all newly listed companies to submit their annual Corporate Governance Report (ACGR) on 30 May following the one year anniversary of their listing in the Philippine Stock Exchange. For companies listed from 1 January to 30 May, their ACGR should be submitted on 30 May of the following year. For companies listed from 31 May to 31 December, their ACGR will be submitted on 30 May two years thereafter.

SEC Memo Circular No. 8, Series of 2014 issued on 3 April 2014 recognises the impact and consequence of non-compliance with the Foreign Account Tax Compliance Act (FATCA) which is a law passed in the United States (US). SEC Memo Circular No. 8 reminds all non-bank financial institution (NBFIs) to determine if they are covered by the FATCA so that they know the potential effects of this Act to its business to avoid unfavourable consequences of non-compliance with this Act, e.g. imposition of a 30% withholding tax on payments of US-sourced income to foreign financial institutions.

Marketing and sale of digital publication through the internet and mobile is exclusive for Philippine citizens or corporations wholly own by Philippine

There were also several important opinions issued by the SEC. In particular, in **SEC-OGC Opinion No, 14-06**, the SEC ruled that the marketing and sale of digital publication through the internet and mobile technology is classified as engaging in the business of 'advertising' which is a business reserved exclusively for Philippine citizens or corporations wholly owned by Philippine. The SEC further opined that a corporation whose voting capital is wholly-owned and held by foreigners cannot engage in the following activities.

To conduct and carry on the following business, both locally and abroad, as principal or agent, using the internet or mobile technology as its primary medium:

a. wholesale marketing and sale of digital publications

b. providing a digital platform to clients/ merchants/ marketers to reach out to their end/ target audiences and advising them the online outlets that would best meet their promotional campaigns

c. providing a digital platform to a third-party website to sell and monetise its online inventory; and

d. acquiring and undertaking the whole or part of the business, property and liabilities of any person or company carrying on the above businesses as a contractor or an agent or in any other manner.

Circulars issued by the PEZA

PEZA Memo Circular No. 2014-027 issued on 13 October 2014 exempts enterprises registered with PEZA which are industrial users of fertilizers, pesticides and agrochemicals from securing permits from the Fertilizers and Pesticides Authority (FPA). PEZA will readily approve the import permit of the industrial users of the abovementioned chemicals but will require agricultural users to secure the FPA clearance prior to importation.

PEZA Memo Circular No. 2014-017 issued on 14 July 2014 provides that commercial or industrial establishments which only produce small quantities of busted fluorescent lamps, used oil, grease wastes, used lead-acid batteries, contaminated chemical containers are required to register with the Department of Environment and Natural Resources as hazardous waste generators. A pollution control officer is also required to be designated by the commercial or industrial establishment generating small quantities of hazardous wastes.

Guidelines issued by the BOC

On 5 August 2014, the BOC released guidelines and procedures for the customs clearance of relief goods availing of duty and tax exemptions, particularly for relief goods and other international aid donations given during times of calamities in the Philippines. The guidelines state circumstances or conditions that need to be met for donated imported goods to qualify for duty-free or tax-free importation. The guidelines clearly state that only duties and taxes may be waived and that all other charges such as storage, demurrage, arrastre, wharfage, trucking, warehousing and stripping must be settled by the consignee for goods to be released. Regulated imports such as medicine, food items, and telecommunication equipment require an import permit to be obtained by the consignee from the relevant Philippine government agency which regulates these goods.

Singapore

Highlights of the Tax Changes in the Singapore Budget 2015[1]

Singapore celebrates 50 years of independence in 2015. Not one to rest on its laurels, the government, through the Budget Statement delivered on 23 February 2015, seeks to address the challenges of a maturing economy and the changing social demographics following five decades of phenomenal success in nation-building.

This year's budget contains measures that continue to support economic restructuring through promoting productivity and innovation, as well as those that encourage Singapore enterprises to internationalise. A new tax incentive was introduced, and existing schemes enhanced to give added incentives to venture into new markets overseas. A number of other tax concessions were renewed, rationalised and enhanced to maintain Singapore's competitiveness in selected fields. Notably absent from the budget, though, was anything specific for attracting inbound foreign direct investments.

The key tax changes introduced in the budget are outlined below.

1 This article was first published in *Asia Pacific Tax Focus* in March 2015.

I. Internationalisation initiatives

A. International Growth Scheme

A new International Growth Scheme (IGS) is introduced to encourage larger Singapore companies to expand overseas while maintaining their headquarters and anchoring key functions in Singapore. The scheme offers a concessionary tax rate of 10% on incremental income from qualifying activities for up to five years. Qualifying companies are expected to engage in internationalisation activities and provide opportunities for Singaporeans to gain international exposure. The approval window for the scheme is from 1 April 2015 to 31 March 2020. Details of the scheme are to be released by International Enterprise Singapore (IE Singapore).

B. Mergers and acquisitions

In a continued effort to encourage local small and medium sized enterprises (SMEs) to grow through mergers and acquisitions (M&A), the M&A scheme, which was due to expire on 31 March 2015, has been extended to 31 March 2020. In addition, the following enhancements have taken effect from 1 April 2015:

(i) M&A tax allowance

Currently, a qualifying Singaporean company is given a tax allowance of 5% of the cost of acquisition for all qualifying share acquisitions, subject to a cap of SGD100 million of qualifying acquisitions for every year of assessment (YA). The M&A allowance rate will now be increased to 25%; however, the overall annual cap on qualifying acquisitions has been reduced to SGD20 million. This means that the maximum tax allowance available remains at SGD5 million.

(ii) Stamp duty relief

Stamp duty relief is available on the transfer of unlisted shares in Singapore companies, capped at SGD100 million of qualifying acquisitions for every financial year. The cap is now reduced to SGD20 million of acquisition value. Effectively, the stamp duty relief available has been reduced from SGD200,000 to SGD40,000 (i.e. ad valorem duty at 0.2% on acquisition value of SGD20 million).

(iii) Shareholding eligibility tiers

A qualifying condition for the M&A scheme is that the acquisition must result in the acquirer owning a stake of more than 50% or at least 75% (if it has already owned more than 50% before the date of the share acquisition) of the ordinary shares of the target company. This shareholding threshold has now been reduced to at least 20%, or more than 50% (if it originally held 50% or less) of the ordinary shares in the target company. With this change, any acquisition where the existing ownership level is already above 50% no longer qualifies for the scheme. The 12-month look-back period for step-acquisitions straddling more than one financial year has been removed.

M&A scheme enhancements

	Before 1 Apr 2015	From 1 Apr 2015
M&A tax allowance (cap)	5% x SGD100m = SGD5m	25% x SGD20m = SGD5m
Stamp duty relief (cap)	0.2% x SGD100m = SGD200,000	0.2% x SGD20m = SGD40,000
Shareholding eligibility	Shareholding threshold = 50%+	Shareholding threshold = 20%+

Additionally, if the acquirer is claiming M&A tax allowance based on the 20% shareholding threshold, it must have at least one director on the board of the target who should also be considered an associate under the applicable financial reporting standards.

These revisions are clearly targeted at SMEs considering expansion through M&A. The reduced shareholding eligibility tiers would benefit these entities, which, given their financial constraints, make acquisitions in smaller stakes. Further details, including details of transitional arrangements, are to be released by The Inland Revenue Authority of Singapore (IRAS).

C. Double tax deduction for internationalisation

Companies can claim a 200% tax deduction on qualifying expenses incurred for qualifying market expansion and investment development activities. Qualifying expenses currently include airfare, hotel accommodation and meals, costs associated with promotional roadshows, freight and insurance of exhibits and third party consultancy fees.

To support companies venturing overseas and creating opportunities for Singaporeans to work overseas, this double tax deduction scheme will be enhanced to cover qualifying manpower expenses incurred from 1 July 2015 to 31 March 2020 for Singaporeans posted to new overseas entities. Businesses wishing to enjoy this concession will need to be approved by IE Singapore. The amount of qualifying manpower expenses will be capped at SGD1 million for each approved entity per year. Further details are to be released by IE Singapore.

II. Renewals and enhancements of tax concessions

A. Maritime Sector Incentive

The Maritime Sector Incentive (MSI) is an umbrella incentive for the maritime industry. The following enhancements to the MSI have taken effect from 24 February 2015.

(i) Ship operators

The MSI-Shipping Enterprise (Singapore Registry of Ships) (MSI-SRS) and MSI-Approved International Shipping Enterprise (MSI-AIS) schemes provide for tax exemption of qualifying income derived from the operation of Singapore-flagged and foreign-flagged ships.

The Budget Statement contains welcomed tweaks to these schemes to provide clarity on tax treatment on what constitutes qualifying income or activities. For example, certainty was needed on the scope of qualifying tax-exempt income to cover mobilisation fees, demobilisation fees and holding fees. The inclusion of incidental container rentals as exempt income will address the concerns of traditional liner operators who may face excess capacity during the troughs of global trade cycles and opportunities arise to keep assets productive. In addition, MSI-AIS entities can now enjoy tax exemption on remitted qualifying profits of approved foreign branches.

(ii) Maritime lessors

The MSI-Maritime Leasing (MSI-ML) award allows lessors to enjoy tax exemption or reduced tax rates on qualifying income from leasing ships or containers. This award has been enhanced to cover income derived from finance leases treated as sale for tax purposes.

(iii) Shipping-related support services

MSI-Shipping-Related Support Services (MSI-SSS) provides for a 10% concessionary tax rate on qualifying income from the provision of approved shipping-related support services. It was announced that existing award recipients would be allowed to renew their award tenure for another five years, subject to qualifying conditions and higher economic commitments.

(iv) Other changes

The definition of qualifying ship management activities under the MSI scheme will be updated to keep pace with industry changes. However, details have yet to be released.

Qualifying MSI recipients also enjoy an automatic withholding tax exemption on certain payments made to non-residents in respect of qualifying loans entered into before 31 May 2016 to finance the construction or purchase of qualifying assets. This exemption has been extended to cover finance leases, hire-purchase arrangements, and loans used to finance equity injection into or intercompany loans to wholly-owned special purpose vehicles (SPVs) for the purchase or construction of vessels, containers and intermodal equipment by the SPVs. The exemption is also extended to qualifying payments made on qualifying loans taken on or before 31 May 2021.

The approval window to award MSI-AIS, MSI-ML and MSI-SSS is likewise extended to 31 May 2021. Further details are to be released by The Maritime and Port Authority of Singapore.

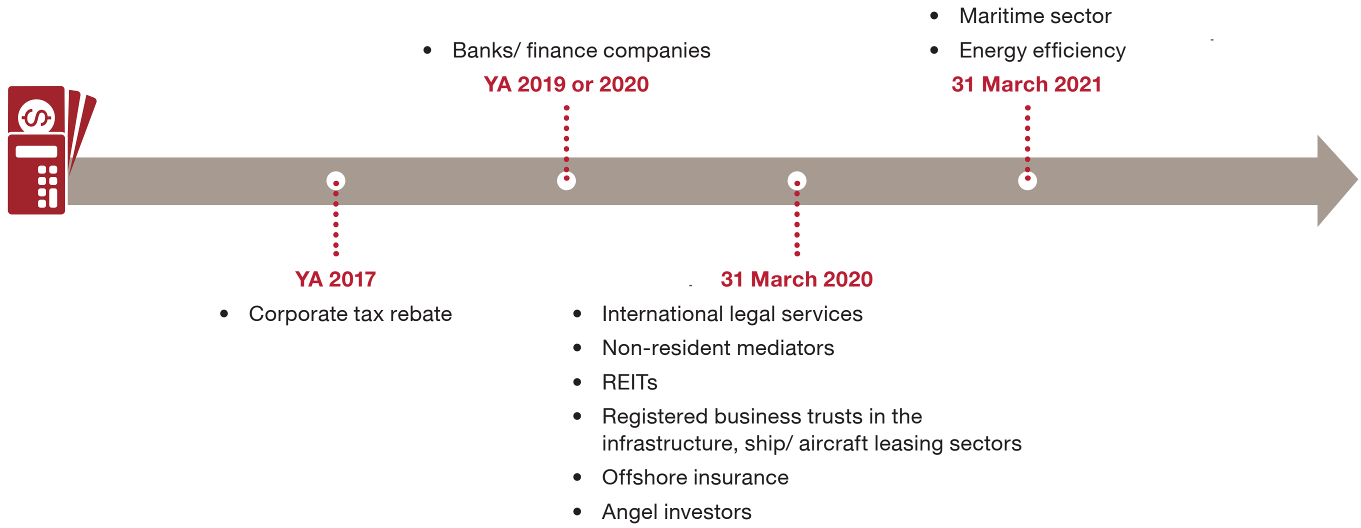
B. Development and expansion incentive for international legal services

This incentive allows an approved law practice to enjoy a 10% concessionary tax rate for a period not exceeding five years on its qualifying income from the provision of international legal services in Singapore, provided it commits to certain offshore revenue and manpower milestones as agreed with the Economic Development Board (EDB). It was due to lapse after 31 March 2015 but was extended for five years until 31 March 2020.

C. Tax exemption for non-resident mediators

Currently, non-resident mediators deriving income from mediation work carried out in Singapore are subject to withholding tax at 15% of the gross income payable, or (upon election) 20% of their net income.

Different tax incentives were extended until



It was announced that non-resident mediators would be exempt from tax on income derived from mediation work carried out in Singapore from 1 April 2015 to 31 March 2020. This treatment is aligned with the tax exemption currently enjoyed by non-resident arbitrators.

More details are to be provided by the Ministry of Law.

D. Real estate investment trusts

Currently, real estate investment trusts (REITs) listed on the Singapore Exchange may enjoy the following concessions:

- tax transparency if the trustee distributes at least 90% of its taxable income to unit holders in the same year in which the income is derived by the trustee
- 10% concessionary tax rate for non-resident unit holders which are not individuals
- tax exemption on qualifying foreign-sourced income
- stamp duty remission on the transfer of (a) Singapore properties, and (b) 100% of the issued share capital of a Singapore company (holding immovable property situated outside Singapore) to the REIT
- Goods and services tax (GST) remission allowing REITs to claim GST on business expenses regardless whether they are eligible for GST registration

These concessions were due to lapse on 31 March 2015. With the exception of the stamp duty remission, they have been extended until 31 March 2020. In addition, there was an enhancement to the GST concession to allow a REIT setting up an SPV for fund raising purposes to claim GST incurred on its business expenses. This is effective for GST incurred from 1 April 2015 to 31 March 2020.

E. Registered business trusts

The GST remission for REITs is similarly available for registered business trusts in the infrastructure, ship leasing and aircraft leasing sectors. This remission has likewise been extended to 31 March 2020 and enhanced to allow the registered business trusts to claim GST on the business expenses of SPVs used solely to raise funds for the trusts from 1 April 2015 to 31 March 2020.

F. Tax deduction for collective impairment provisions made by banks, merchant banks and finance companies

Banks, merchant banks and finance companies in Singapore are required by the Monetary Authority of Singapore (MAS) to book adequate levels of impairment provisions in their accounts, which may include collective impairment provisions. As a concession, section 14I of the Income Tax Act (the Act) provides for tax deduction for these provisions.

This was scheduled to lapse after YA 2016 or YA 2017 (depending on the financial year end of the bank or finance company). It has now been extended by a further three years to YA 2019 (or YA 2020, as the case may be).

G. Fund management

The Enhanced-Tier Fund (ETF) incentive provides a tax exemption for specified income derived from designated investments by approved fund vehicles, subject to their meeting certain qualifying conditions. Currently, master-feeder fund structures may apply to meet the qualifying conditions on a collective basis.

With effect from 1 April 2015, SPVs within a master-feeder fund structure may also be included in the fund's application and meet the qualifying conditions on a collective basis. Further details are to be released by the MAS.

H. Venture capital fund management companies

The pioneer service incentive provides a tax holiday to approved fund management companies for qualifying income from managing venture capital funds approved under section 13H of the Act (13H Funds). This incentive was withdrawn from 1 April 2015, although existing incentive recipients will continue to enjoy the exemption under the terms of their awards.

To replace this, a 5% concessionary tax rate for fund management companies managing 13H Funds has been introduced. The approval period for this new incentive is from 1 April 2015 to 31 March 2020.

I. Angel investors tax deduction

The Angel Investors Tax Deduction (AITD) scheme allows an approved angel investor to deduct 50% of the cost of qualifying investments (capped at SGD500,000 of investments a year) against his taxable income, subject to certain conditions.

The scheme was due to expire on 31 March 2015, but has been extended to 31 March 2020. It has also been enhanced to include investments made from 24 February 2015 that are co-funded under the SPRING Start-up Enterprise Development Scheme or Business Angel Scheme.

J. Insurance

The offshore insurance business tax incentive schemes which provide for a 10% concessionary tax rate on qualifying income derived by approved offshore general insurers, approved offshore life insurers and approved offshore composite insurers were due to expire on 31 March 2015.

They have been extended until 31 March 2020, and will be termed the Insurance Business Development Incentive. A renewal framework was introduced from 1 April 2015 to encourage existing insurers to continue expanding their operations in Singapore. Further details are to be released by the MAS.

K. Corporate tax rebate

For YAs 2013 to 2015, companies received a 30% corporate tax rebate, subject to a cap of SGD30,000 per year. This rebate has been extended for two years, YAs 2016 and 2017, but is now subject to an annual cap of SGD20,000.

L. Investment allowance scheme for energy efficiency

The investment allowance schemes for energy efficiency and energy efficiency for green data centres were scheduled to lapse after 31 March 2015.

With effect from 1 March 2015, they will be consolidated into a single investment allowance – energy efficiency (IA-EE) scheme and continue to be available until 31 March 2021.

The scheme will be administered by the EDB. Further details are to be announced by the EDB.

III. Rationalising the tax system

Review dates will be legislated for certain tax concessions to ensure their continued relevance. In addition, the following tax concessions will be withdrawn.

- The 10% concessionary tax rate for income derived from offshore leasing of plant and machinery, with effect from 1 January 2016. This will mainly affect sectors such as oilfield services and consumer products, for which targeted incentives are not available.
- The 10% concessionary tax rate for approved headquarters provided for under section 43E of the Act, with effect from 1 October 2015.
- The tax concession which, among other things, gives an inventor, author, proprietor, designer or creator of an approved intellectual property or innovation the option to be taxed on 10% of gross payments from the intellectual property or innovation, with effect from YA 2017.

IV. Personal tax

A. Increase in income tax rates for high income earners

With effect from YA 2017, the top marginal income tax rate for individuals will be increased from 20% to 22%, and two new income bands will be introduced. The revised personal tax rates are shown in the table below.

Chargeable income (SGD)		Tax rates (%)	
		YAs 2015 and 2016	YA 2017
On the first	20,000	0	0
On the next	10,000	2.00	2.00
	30,000		
On the next	10,000	3.50	3.50
	40,000		
On the next	40,000	7.00	7.00
	80,000		
On the next	40,000	11.50	11.50
	120,000		
On the next	40,000	15.00	15.00
	160,000		
On the next	40,000	17.00	18.00
	200,000		
On the next	40,000	18.00	19.00
	240,000		
On the next	40,000	18.00	19.50
	280,000		
On the next	40,000	18.00	20.00
	320,000		
On income above	320,000	20.00	22.00

B. Income tax rebate

For YA 2015, Singapore tax residents will enjoy a one-time tax rebate of 50% of their final income tax liability, subject to a cap of SGD1,000.

C. Expenses for producing rental income

In order to simplify tax compliance from YA 2016, landlords will be able to choose whether to deduct their actual expenses against their passive rental income, or a proxy for their expenses calculated as 15% of gross rental income. Either of these alternatives would be in addition to deductible interest (i.e. mortgage) expenses, which can be separately considered. This simplification will avoid the need for landlords to collect and retain records of actual expenses. Further details are to be released by the IRAS.

V. GST pre-registration input tax claim

Generally, newly GST-registered businesses which have incurred GST prior to registration (pre-registration GST) can only claim input GST on the portion of goods and services used or to be used to make taxable supplies after registration.

In order to simplify the administrative process, businesses which are GST-registered from 1 July 2015 will be allowed to claim pre-registration GST in full on the following items provided they were acquired within six months of the GST registration date and used for making taxable supplies after GST registration:

- goods held by the business at the point of GST registration
- property rental, utilities and services, which are not directly attributable to any supply made by the business before GST registration

More details are to be released by the IRAS.

VI. Conclusion

In a Jubilee Budget that lays the foundation of the next 50 years of growth, the government has also sought to enhance social safety nets and to promote inclusiveness. Such measures include refinements to the Central Provident Fund scheme to provide for post-retirement living and triple deductions for donations made in 2015 to encourage philanthropy. Perhaps most significantly, it launches a 'SkillsFuture' programme which aims to provide funding for the lifelong pursuit of learning through various initiatives, so as to enable Singaporeans to upgrade their skills and knowledge in an increasingly challenging globalised economy. With the mix of grants and tax measures, along with enhanced social safety nets, the 2015 Budget builds on Singapore's past economic success and paves the way for the next generation of growth.

Sri Lanka

Sri Lanka Budget for the year 2015 was presented in Parliament on 24 October 2014. Thereafter, the presidential election was held in January 2015, leading to a regime change. The new government also presented an Interim Budget on 29 January 2015. A synopsis of the main measures introduced in the two Budgets is set out below.

Income tax

Exemptions

- Profits and income arising or accruing to any unit trust from investments
  - made on or after 1 January 2015, and
  - in US Dollar deposits or US Dollar denominated securities listed in any foreign Stock Exchange
- Profits and income arising or accruing to any company, partnership or body of persons outside Sri Lanka from any payment made by way of royalty as a specific requirement of any information technology (IT)/ business process outsourcing (BPO) company in Sri Lanka for a period of two years from the commencement of the IT/ BPO company
- Interest or discount accruing or arising to any person from any investment
  - made on or after 1 January 2015, and
  - in any corporate debt security issued by the Urban Development Authority
- Dividend or deemed dividend tax exemption for a period of five years from the commencement of commercial operations of any new undertaking with an investment of not less than USD2 million, where such undertaking is engaged in manufacture of products for export
- Profits arising from construction activities carried out overseas by local construction companies
- Interest on national development bonds carrying a fixed interest rate of 4.5%

Concessionary tax rates

	Rate
• Profits and income of any local manufacturer who – commenced the business of manufacturing during 1970's, and – sustained competitiveness with imports from the sale of such manufactured products in the local market	10% reduction of income tax payable
• Employment income under pay-as-you-earn (PAYE) tax scheme	16% (maximum)
• Profits and income of the local sugar industry	12%
• Profits and income from the production of films or dramas of any individual who produces an award winning film or a drama at an international film/ drama festival	50% reduction of income tax payable for 5 years
• Profits and income of an existing enterprise which – is liable for income tax at the rate of 28% – carrying on a business of manufacture of products (other than liquor or tobacco), and – expands in any province other than the Western Province by investing not less than LKR300 million on or after 1 April 2015 but prior to 1 April 2017 by the acquisition of any fixed asset on which depreciation allowance is claimable within the provisions of Section 25 of the Inland Revenue Act	½ of the applicable tax up to LKR500 million for 5 years
• Any company which registers with the Inland Revenue Department for tax purposes on or before 31 December 2015 with a committed investment in excess of LKR500 million to be made in any manufacturing business (other than liquor or tobacco) within a specified period as approved by the Commissioner General of Inland Revenue	½ of the applicable tax rate for 7 years
• Profits from intercropping activities in the agriculture sector	50% reduction of applicable rates
• Profits of newly commenced businesses in vegetable and food processing	50% reduction of applicable rates
• Profits earned in new projects set up in lagging regions to be identified by Commissioner General of Inland Revenue	50% reduction of applicable rates

The annual turnover limit of specified undertakings qualifying for the concessionary rate of 12% has been increased from LKR500 million to LKR750 million.

Withholding tax on interest

Senior citizens

Interest income accruing for or arising to any senior citizen are exempt from income tax effective from 1 April 2015. Therefore, no withholding tax is applicable (Previously, an exemption up to LKR500,000 was available only for deposits maintained in the state banks.).

Single withholding tax rate

The withholding tax rates of 2.5% and 8% applicable to individuals (other than senior citizens) and charitable institutions have been revised to a single rate of 2.5%, irrespective of the amount of interest.

PAYE tax threshold

Threshold for charge of PAYE tax on employment income has been increased from LKR600,000 to LKR750,000.

Triple deduction of expenses in computing profits

A triple deduction has been granted in computing profits for tax purposes on expenditure incurred on standard skills development training provided to trainees by any person who has registered with the Tertiary Vocational Education Commission.

Value added tax (VAT)

Reduction of tax rate

The VAT rate has been reduced from 12% to 11%. Accordingly, effective from 1 January 2015, VAT consists of only two rate bands – 0% and 11%.

Category	Rate	Items
Zero rate	0%	Applies to exports, specified international services, services provided to overseas buyers by garment buying houses registered under the Simplified Value Added Tax (S VAT) Scheme by the Commissioner General of Inland Revenue
Standard rate	11% from 1 January 2015	Items other than exempt or excluded supplies

VAT on wholesale and retail trade

The present threshold of the value of supplies for a consecutive period of three months of any calendar year of any person or partnership carrying on a business of wholesale or retail trade for the chargeability to VAT have been reduced from LKR250 million to LKR100 million. Accordingly, the value of supply of goods from a wholesale or retail trade activity is subject to VAT, where the value of goods supplied, including exempt or excluded supplies, in any consecutive three months period is LKR100 million or more.

Registration threshold

Threshold of liable supplies for the registration for VAT purpose has been increased from LKR12 million per annum to LKR15 million per annum.

Accordingly, every person (individual, company, partnership, joint venture, club association, government institution, local government institution, provincial council etc.) must register for VAT if the value of total taxable supplies from his/its taxable activities –

- exceeds LKR3.75 million for any taxable period (one month or quarter),
- exceeds LKR15 million for any twelve-month period, or
- is likely to exceed LKR3.75 million in the succeeding one-month or three-month taxable period or LKR15 million in the succeeding twelve-month taxable period.

Nation building tax (NBT)

Registration threshold for NBT has been increased from the liable turnover of LKR3 million per quarter to LKR3.75 million per quarter.

Interim Budget for 2015 – tax measures

Super gain tax

A tax at 25%, a one-off charge has been imposed on any individual or company, who or which has earned profits over LKR2,000 million in the tax year 2013/2014.

Mansion tax

A tax of LKR1 million has been levied annually on the owner of every house valued at LKR150 million or more, or of which the floor area is 10,000 square feet or more.

Migration tax

A Sri Lankan migrating to a foreign country is liable to a tax of 20% on all foreign exchange released and to be taken out of the country.

Special levy on casino industry

A special levy of LRK1,000 million has been imposed on casino operators.

Levy on licensed mobile telephone operators

A one-off levy of LKR250 million has been imposed on all licensed mobile telephone operators.

Levy on liquor sales outlets

A one-off levy of LKR250,000 is to be paid by each tavern or liquor sales outlet.

Taiwan

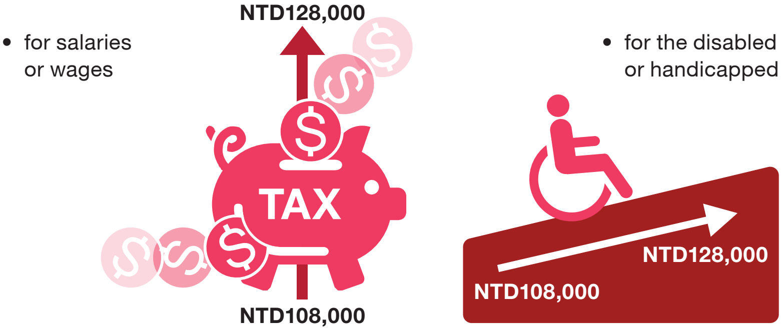
‘Tax Reform Package’ partially passed by Legislative Yuan

On 4 June 2014, the Presidential Office promulgated a portion of the ‘Tax Reform Package’, which covers amendments to the Business Tax Act (BTA) and Income Tax Act (ITA).

Amendments to the BTA and ITA are summarised below.

Type of tax	Amendments/ effective date
Business tax	The gross business receipts tax (GBRT) rate on revenues derived from the core business operations of banks and insurance companies will increase from the current rate of 2% to 5%. The effective date of the amended GBRT rate will be further announced by the Executive Yuan.
Income tax	**1. Imputation tax credit, effective from 1 January 2015 onwards** i. Resident individual shareholders When a domestic enterprise distributes dividends to resident individual shareholders, income tax paid at the corporate level can be fully offset against the resident individual shareholder’s income tax liability. This is the imputation tax credit. Pursuant to the amended ITA, the imputation tax credit which can be offset against the resident individual shareholder’s income tax liability is reduced by one-half. ii. Resident corporate shareholders There are no changes to the tax implications on dividends distributed to resident corporate shareholders (dividends are currently exempt from corporate income tax). iii. Non-resident corporate and individual shareholders The ceiling of 10% surtax creditable against dividend withholding tax for non-resident corporate and individual shareholders is reduced to one-half[1] of the original amount. **2. Individual income tax, effective from tax year 2015 onwards** i. Standard deductions for single taxpayers and married taxpayers filing jointly are increased from NTD79,000 to NTD90,000 (per person) and from NTD158,000 to NTD180,000 (per tax filing unit) respectively. ii. Special deduction for salaries or wages is increased from NTD108,000 per person to NTD128,000 per person. Taxpayers with annual salaries less than this amount are only able to deduct actual salaries earned. iii. Special deduction for the disabled or handicapped is increased from NTD108,000 per person to NTD128,000 per person. iv. Prior to the ITA amendments, an individual whose annual net taxable income exceeded NTD4.4 million was subject to a progressive tax rate of 40%. Pursuant to the amended ITA, where an individual’s annual net taxable income exceeds NTD10 million, the applicable progressive tax rate is increased from 40% to 45%.

Individual income tax special deductions increased (per person)



1 Amended ceiling of 10% surtax creditable against dividend withholding tax = [Dividends distributed from retained earnings where 10% surtax has already been levied] x 10% x 50%.

Amendments to regulations governing R&D tax credit available to profit-seeking enterprises

On 6 May 2014, the Ministry of Economic Affairs (MOEA) and Ministry of Finance (MOF) jointly promulgated amendments to the regulations governing R&D tax credit available to profit-seeking enterprises (Regulations).

The table below summarises the salient points of the amendments.

	Amendments
1.	To accommodate the nature of 'cultural and creative industry', the amended Regulations expanded the definition of 'R&D' to cover 'creation' and 'technical solutions'[2] (Articles 2, 3 and 8).
2.	Where an enterprise is incorporated as a 'company' and equipped with R&D expertise, it shall be eligible for applying for R&D tax credit in accordance with the existing Regulations. However, the amendments do not allow companies which have repeatedly violated regulations in relation to environmental protection, labour safety/welfare, food safety, etc. and where such violations are deemed significant in nature by the competent authorities, to apply for R&D tax credit (Article 2-1).
3.	For companies that do not have a R&D department, but (a) have full-time employees exclusively performing R&D activities and (b) that incur expenditures for R&D activities that can be clearly segregated from non-R&D activities, R&D tax credit should still be approved by the tax authority based on relevant documents (Article 4).

Creditability of imputation tax for dividends with ex-dividend date falling in 2014

The imputation tax credit is booked in the Imputation Credit Account (ICA). Moreover, in accordance with Article 66-4 of the ITA, the imputation tax credit is to be deducted from the ICA on the dividend distribution date, which is defined by Article 48-8 of the Enforcement Rules of the ITA as the ex-dividend date, rather than the dividend payment date. In light of the above, the 10% surtax can still be fully credited against dividend withholding tax if the ex-dividend date fell in 2014, even if dividends are actually paid to shareholders on or after 1 January 2015.

Amendments to the Statute for Industrial Innovation

On 18 June 2014, the Presidential Office promulgated amendments to the Statute for Industrial Innovation (Statute), which came into effect since 20 June 2014. The salient points of the amendments are summarised below.

	Amendments	Notes
1.	R&D tax credit applies to companies that have not significantly violated regulations in relation to environmental protection, labour safety, food safety, etc. should other prescribed criteria be met as well (Article 10).	As indicated by the Industrial Development Bureau, the amendments do not take effect retroactively. Therefore, companies can still apply for R&D tax credit if the violation occurred prior to 20 June 2014. On the other hand, if the violation took place on or after 20 June 2014, the company can only apply for R&D tax credit after three years.
2.	From 20 June 2014 onwards, where companies have significantly violated regulations in relation to environmental protection, labour safety, food safety, etc. within the last three years, they are prohibited from applying for relevant incentives and subsidies. Moreover, incentives and subsidies previously granted during the violation period shall be reclaimed by the competent authorities *(Article 70)*.	The aforementioned incentives and subsidies under Article 70 of the Statute do not include tax incentives. Tax incentives shall be reclaimed according to Article 48 of the Tax Collection Act (discussed below).

2 Pursuant to the amended Regulations, 'R&D' is defined as innovative activities, in connection with products, technical know-how, service, service processes, or creation, performed by enterprises by means of scientific methods or technical solutions.

Amendments to the Tax Collection Act

On 18 June 2014, the Presidential Office announced amendments to the Tax Collection Act (TCA). The table below summarises the amendments, effective from 20 June 2014 onwards.

Amendments (Article 48 of the TCA)	Notes
1. Where a taxpayer significantly evades taxes, the MOF shall cease granting tax incentives to the taxpayer. Moreover, tax incentives previously granted during the violation period (i.e. years when taxes were evaded) shall be reclaimed by the MOF.	As confirmed by the MOF, the amendments do not take effect retroactively. Therefore, the MOF will only cancel/ reclaim tax incentives where the violation took place from 20 June 2014 onwards.
2. Where a taxpayer significantly violates regulations in relation to environmental protection, labour safety, food safety, etc., the competent authorities shall inform the MOF to cease granting tax incentives to the taxpayer, and to reclaim tax incentives previously granted during the violation period.	

Amendments to the Statute for Development of Small and Medium Enterprises

On 4 June 2014, the Presidential Office announced amendments to the Statute for Development of Small and Medium Enterprises (SME Statute). The amendments expand the scope of tax incentives for small and medium enterprises (SME) for a 10-year period following 20 May 2014. The amendments are summarised in the table below.

Items	Key points
R&D tax credit *(Article 35)*	SMEs may elect one of the following methods to calculate R&D tax credit, capped at 30% of the annual corporate income tax payable. 1. 15% of qualified R&D expenses for the current year, with credit limited to the same year 2. 10% of qualified R&D expenses for the current year, which can be carried forward for two ensuing years if the 30% cap mentioned above is exceeded The calculation method cannot be changed after election by SMEs.
Tax deferral of contribution of intellectual property in exchange for newly issued shares *(Article 35-1)*	Where SMEs or individuals contribute their own intellectual property in exchange for newly issued shares of companies that are not listed on the Taiwan Stock Exchange nor traded on the over-the-counter (OTC)/ emerging market, income tax shall not be imposed at the time when shares are obtained by the SMEs or individuals in exchange for their intellectual property. Instead, income tax will be deferred until the shares are ultimately transferred, with income tax levied on the transfer price minus relevant costs/ expenses.
Increased deduction of salary costs for newly-hired employees *(Article 36-2)*	If the following criteria are fulfilled, the tax relief on qualified salary costs for newly-hired employees is 130% of the original amount. That is, for each NTD100 of salary cost from new hires, the taxable income for SMEs will be reduced by an additional NTD30. 1. economic-related indices reach prescribed levels 2. the invested capital for establishing a new entity or expanding an existing entity attains prescribed thresholds; and 3. a prescribed number of additional employees are hired, which also increases the overall amount of salaries paid by the SMEs

Taxes paid overseas are eligible as foreign tax credits against provisional income tax payable in Taiwan

The MOF promulgated Tax Ruling No. 10300588330 on 27 August 2014, which states that beginning from 2014, profit-seeking enterprises in Taiwan that elect to pay provisional income tax based on actual income during the first six months of the taxable year can deduct income taxes paid overseas (including taxes paid in mainland China) against its provisional income tax payable. The foreign tax credits need to originate from income tax paid overseas due to overseas income earned during the first six months of the taxable year, and should be evidenced by relevant tax payment receipts authenticated by the consulate or overseas representative offices of Taiwan.

Amendments to the exemption threshold for analysing individual controlled transaction in transfer pricing report

On 2 February 2015, the MOF issued Tax Ruling No. 10304578300 to amend Tax Ruling No. 09704555160 issued on 6 November 2008, which adjusted the exemption threshold for analysing individual controlled transaction in the transfer pricing report. The comparison table below summarises the transfer pricing analysis exemption threshold before and after the amendment.

Before amendment (effective prior to and including FY2013 corporate tax return filed)	After amendment (effective as of FY2014 corporate tax return filed)
1. Controlled transactions pertaining to operating income or operating cost items, with annual aggregate transaction amount no more than NTD10 million. 2. Controlled transactions pertaining to non-operating income or non-operating cost items, with annual aggregate transaction amount no more than NTD5 million.	1. For both operating income or operating cost items, and non-operating income or non-operating cost items, the revised exemption threshold of the annual aggregate transaction amount is NTD10 million for the same type of controlled transaction. 2. Where the annual aggregate transaction amount of the same type of controlled transaction exceeds NTD10 million, but the transaction amount with the same related party does not exceed NTD5 million, no individual controlled transaction analysis is required.

Amendments to Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing

On 6 March 2015, the MOF announced the amendments to the Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing (TP Assessment Regulations). The table below summarises the amendments made.

Amendments	Reference
Add disclosure and transfer pricing analysis requirements for profit-seeking enterprises involved in corporate restructuring[3] activities in the current year.	Article 9-1 of TP Assessment Regulations
Include cases where 'each participant is deemed to have valuable and unique contribution to the controlled transaction' as cases where the Profit Split Method is applicable.	Article 19 of TP Assessment Regulations
Include dissolution income tax return into the scope of the TP Assessment Regulations where a company undergoes dissolution and liquidation, discontinuance, merger or transfer of ownership.	Articles 21 and 22 of TP Assessment Regulations
Amend Advance Pricing Agreement application procedure and threshold.	Article 23 of TP Assessment Regulations
Where profit-seeking enterprises fail to provide required transfer pricing documentation, and the competent tax authorities have not found relevant costs or expenses data for the purpose of calculating taxable income, the taxable income may be computed based on the profit standard of the same trade.	Article 33 of TP Assessment Regulations

Deemed dividends realised by the parent company in a merger with its subsidiary are excluded from the calculation of non-deductible input VAT ratio and corresponding VAT adjustment

On 21 January 2015, the MOF issued Tax Ruling No. 10304608280, which states that in a parent-subsidiary merger, the dissolved subsidiary's net asset value acquired by the surviving parent company in excess of the parent company's contributed capital in the dissolved subsidiary should be treated as deemed dividends. Such deemed dividends are excluded from the year-end calculation of tax exempt revenues, non-deductible input VAT ratio and corresponding VAT adjustment.

As such, in a merger where the net assets of the dissolved subsidiary are acquired by the surviving parent, any deemed dividends realised therefrom are exempt from VAT filing, irrespective of the parent company's shareholding percentage in the subsidiary.

3 Refers to reallocation of functions, assets and risks, and adjustments to contract terms and arrangements between related parties, instead of corporate re-organisation.

Thailand

Development in tax laws and regulations from March 2014 to February 2015

Significant tax measures over the past year included continuation of the reduced rates for personal income tax (PIT), corporate income tax (CIT) and value added tax (VAT). There was also an amendment to the tax status of natural persons who are partners in ordinary partnerships or members of non-juristic bodies of persons. These changes are summarised below.

Reduction of tax rates

Personal income tax rates

The reduced PIT rates are effective for one more tax year until 31 December 2015.

Net income (THB)	PIT rates (%)
0 – 150,000	Exempt
150,001 – 300,000	5
300,001 – 500,000	10
500,001 – 750,000	15
750,001 – 1,000,000	20
1,000,001 – 2,000,000	25
2,000,001 – 4,000,000	30
Over 4,000,000	35

Corporate income tax rate

The reduced CIT rate of 20% is effective for accounting periods beginning between 1 January 2013 and 31 December 2015.

Value added tax rate

The standard rate of VAT is 10%. It is reduced to 7% for a temporary period until 30 September 2015. Unless further extended, the rate will revert to 10% on 1 October 2015.

VAT is reduced to 7% until 30 September 2015.

Tax amendment for partners of ordinary partnerships and members of non-juristic bodies of persons

With effect from 1 January 2015, the share of profit received by natural persons from an ordinary partnership or a non-juristic body of persons is no longer exempt from income tax. The previous exemption under Section 42 (14) of the Revenue Code has been repealed.

This means that natural persons who are partners of an ordinary partnership or members of a non-juristic body of persons will be subject to personal income tax on the share of profit they receive from such partnership or non-juristic body of persons.

In addition, an ordinary partnership or a non-juristic body of persons will be required to prepare a summary of its income and expenses in accordance with the prescribed format for each tax year for filing together with the annual personal income tax returns of the partners or members. This requirement takes effect for the annual personal income tax filing that is due on or after 1 January 2015.

The below definition of 'non-juristic body of persons' was added under Section 39 of the Revenue Code:

'A non-juristic body of persons means two or more natural persons who agree to act together and which is not an ordinary partnership.'

Vietnam

CIT incentives for new investment projects at a preferential tax rate of 10% for

15 years

with

4 years

of tax exemption

and

9 years

of tax reduction

Against the backdrop of falling tax revenues and moderate GDP forecasts, the Vietnamese authorities introduced a number of new tax and legal regulations in 2014, aiming at stimulating growth in the economy and creating a more conducive environment for doing business.

The continued reduction in corporate income tax (CIT) rates (expected to fall from 22% to 20% in 2016), further tax incentive giveaways and a general push by the government to make doing business easier, all contribute to a positive trend in Vietnam's tax environment and make Vietnam an attractive place to do business.

Whilst the majority of changes are positive for business, the need to increase tax receipts has led to the introduction of some regulations which may not be as welcome.

Abolition of deduction cap for advertising and promotion expenses

Readers may be aware that one of the main causes of non-deductible expenditure in Vietnam was the limit imposed on the tax deductibility of advertising and promotion (A&P) expenditure. For the period up to the end of 2014, the tax deductibility of A&P expenses (brokerage commission, conference related costs, marketing support expenses and payment discounts etc.) was subject to a cap of 15% of the company's total deductible expenses. For trading companies, the cost base used to calculate the 15% cap was the amount exclusive of the cost of goods, so was often relatively low compared with total A&P expenses.

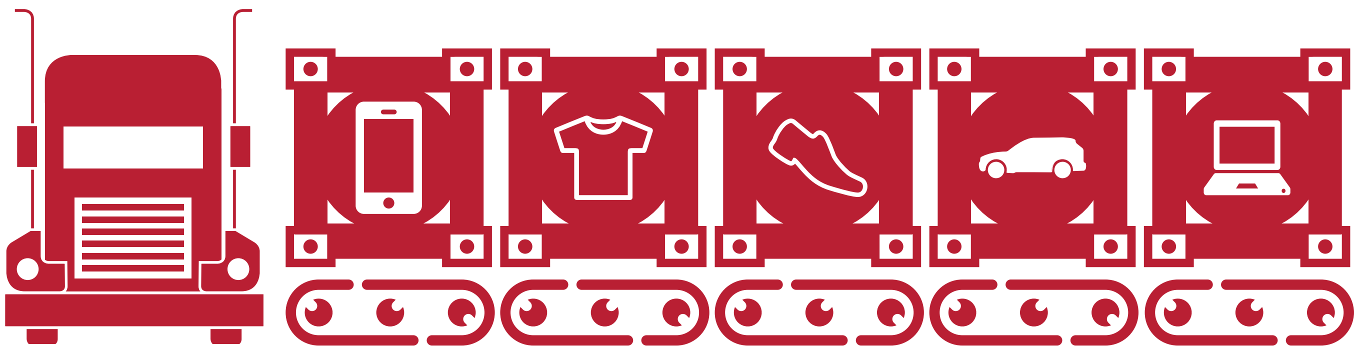
In applying these rules, many companies, especially those in the fast-moving consumer goods (FMCG) sector, have historically incurred significant non-deductible A&P expenses and recognised effective tax rates far in excess of the standard rate of CIT.

With effect from 1 January 2015, the government abolished the A&P deduction cap such that there is now no restriction on the amount of deductible A&P expenditure. This will have a major impact on the effective tax rate of many companies.

Introduction of further CIT incentives

From 2015, new investment projects which are included in the government list of prioritised industrial products are entitled to CIT incentives, including a preferential tax rate of 10% for 15 years, with four years of tax exemption and nine years of tax reduction. In order to qualify for these incentives, one of the following conditions must be met:

- the products must support the high technology sector; or
- the products support the garment, textile and footwear, IT, automobile assembly or mechanical sector and are not produced domestically as at 1 January 2015, or if produced domestically, they meet the quality standards of the EU or equivalent.



Prior to 2015, it was unclear whether the CIT incentives under the new regulations could apply to an existing investment project which was not entitled to CIT incentives under historic regulations but had met the new criteria. From 2015, the regulations on tax incentives have been amended to clarify that investment projects are allowed to access more favourable tax incentives under an amended or new law on CIT for the remaining project period.

Expanded scope of foreign contractor tax (FCT)

FCT is the principal mechanism by which Vietnam taxes foreign companies carrying out activities in Vietnam, or otherwise deriving income from Vietnam. It is withheld from payments made overseas by Vietnamese customers and contracting parties. As such, FCT is a very important tax for foreign companies doing business here, their Vietnamese counterparts and the government alike.

In 2014, the Vietnamese authorities introduced a new circular on FCT (Circular 103/2014) which took effect from 1 October 2014. The new circular included an extension of the application of the FCT rules and, in particular, included a move by the government to tax certain distribution arrangements where foreign entities sell goods into Vietnam. Foreign entities involved in the distribution of goods or provision of services in Vietnam, where the foreign entities retain ownership of the goods, bear distribution, advertising or marketing costs, are responsible for the quality of goods or services, make pricing decisions or authorise/ hire other Vietnamese entities to carry out part of the distribution of goods or provision of services in Vietnam, will now fall within the scope of the FCT rules.

These changes represent a substantial extension of the scope of FCT and are likely to apply not only to agency arrangements (i.e. where a foreign entity retains ownership of the goods), but also distribution arrangements where a foreign entity retains some control over the supply chain. Such arrangements are common in Vietnam so the impact of these new rules is expected to be widespread.

Increase in special sales tax (SST) rates

The new circular on SST (a type of duty) introduced an increase in the SST rates which apply to certain products such as cigars, cigarettes, spirits, wine and beer.

Transfer pricing moves to self-assessment

In Vietnam, companies are required to file an annual transfer pricing return and also maintain contemporaneous transfer pricing documentation which supports the arm's length nature of their related party prices. The definition of a related party in Vietnam for these purposes is broad and can include material trading or financial relationships even if they take place between otherwise independent parties.

The Ministry of Finance announced the introduction of a new transfer pricing declaration form in 2014 which now includes a requirement for companies to re-determine the price of related party transactions based on the market price and calculate additional tax on the difference between the amounts charged and the re-determined amounts.

Historically, all that was required to be declared were the actual transaction amounts and the pricing methodology. However, the new form effectively requires companies to self-assess the arm's length pricing of their related party transactions. In order to accurately complete the form, taxpayers will need to conduct certain analyses to either:

- substantiate/ provide evidence on the re-determined prices; or
- declare that their pricing with related parties is consistent with the arm's length principle.

Transfer pricing has been a key focus of Vietnamese tax authorities in recent tax audits and this trend is expected to continue.

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