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Dear Reader,

We are pleased to present to you the first edition of our firm's Asia Tax Bulletin. This is a quarterly publication in which we report on tax developments in Southeast Asia, China, Japan, Korea and India. The style and concept of this publication aim to provide the reader with a per country brief summary of recent tax developments.

We hope you will enjoy this new publication.

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CHINA

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China Releases GAAR Administrative Measures

- Courtesy of Mr Glen Wei, an attorney at law, certified tax adviser, and CPA based in China.China's State Administration of Taxation (SAT) on December 12 issued Decree 32 (dated December 2) introducing administrative measures for applying the domestic general anti-avoidance rule to special tax adjustments made to enterprises' tax avoidance arrangements.
- The draft guidance said one of the features of a tax avoidance arrangement is that its sole or main purpose, or one of its main purposes, is to obtain tax benefits. The term "one of its main purposes," which caused much public concern, does not appear in the administrative measures.
- The administrative measures also omit the requirement that corporate taxpayers submit their advice from tax advisers. Consistent with the draft, however, Decree 32 gives the competent tax authority the power to demand relevant information and supporting documents from entities or individuals that provided the investigated taxpayers with tax planning services regarding the arrangement.
- Decree 32 sets a nine-month period —beginning with the approval date of a GAAR investigation from the SAT— for the competent tax authority to reach a conclusion in the investigation.
- The measures will take effect on February 1, 2015, and will also apply to cases that have not been closed as of that date.

Dividends

- In September and October 2014, a number of local-level tax authorities in China launched investigations into dividend payments made to non-Tax Resident Enterprises (non-TREs), hereinafter referred to as (Investigation). This Investigation relates to an internal notice issued by SAT requesting local-level tax authorities to identify potential risk areas in relation to the Corporate Income Tax (CIT) collection on dividends. It is the first time the SAT has launched such a widespread investigation into this area since 2008. The authorities are looking at (1) the timeliness of the withholding tax deduction, (2) whether there have been any constructive dividends that have not been disclosed by the Chinese company, (3) whether the withholding tax has been paid where the foreign shareholder reinvested the dividend back in the Chinese company and (4) whether the foreign company receiving the dividend is the beneficial owner of the dividend, so that it can enjoy the reduced withholding tax rate under a favourable tax treaty.

Relaxed Outbound Investment Rules

- On 6 September 2014, the Ministry of Commerce (MOFCOM) promulgated the Administrative Measures for Outbound Investment (2014 MOFCOM Measures), replacing the original Administrative Measures for Outbound Investment which were in effect since March 2009 (2009 MOFCOM Measures). These measures are a meaningful step in facilitating outbound investment by Chinese companies consistent with China's "Go Out Policy" and its goal of adopting international standards for investment procedures.

- Under the new rules, only outbound investment projects involving sensitive countries/regions or sensitive industries are required to be approved by the MOFCOM or its provincial offices. All other projects need only be filed with the MOFCOM or its provincial offices, regardless of the investment size.

Foreign Investors Exempt from Capital Gains Tax on Sale of Shares

- Courtesy of PWC. It was reported on 14 November 2014 that the Ministry of Finance and the State Administration of Taxation have jointly released Caishui [2014] No.81 (Notice 81), on the China taxation rules in relation to the Shanghai-HK Stock Connect (Stock Connect). Under Notice 81, corporate income tax, business tax, and individual income tax will be temporarily exempted on gains derived by foreign investors on the trading of A shares through the Stock Connect. In addition, dividends will be subject to 10percent withholding tax and the company distributing the dividend has the withholding obligation. If the recipient of the dividend is entitled to a lower treaty rate, it can apply to the in-charge tax bureau of the payer for a refund. The effective date of the Notice is 17 November 2014.
- At the same time, the Ministry of Finance and the State Administration of Taxation also jointly released Caishui [2014] No.79 (Notice 79) to address the outstanding tax issues in relation to QFII's and RQFII's. Under Notice 79, QFII's and RQFII's without an establishment or place in China will also be temporarily exempted from paying corporate income tax on gains derived from the trading of shares effective from 17 November 2014. However, it is clearly stipulated in Notice 79 that QFII's and RQFII's would be subject to corporate income tax on gains realized before 17 November 2014.

China Disregards US Intermediary to Tax Gain from Indirect Share Transfer

- Courtesy of Mr Glen Wei. It was reported that China's State Administration of Taxation has approved the Zhejiang National Tax Bureau's request to tax a U.S. company's transfer of its shares in a U.S. intermediate holding company in accordance with Guoshuihan [2009] 698 (Circular 698). When the transaction took place, the intermediary owned a Chinese resident enterprise in Zhejiang province. Previously, foreign corporate transferors were assessed Chinese tax on capital gains from indirect share transfers involving Chinese companies under Circular 698 because the transferred foreign intermediate holding companies were located in zero or low-tax jurisdictions. In this case, however, the transferred holding company was not located in a zero or low-tax jurisdiction, but rather, in the United States.

Foreign Investment Partnership in China Taxed on Profit Distributions

- Chinese law does not clarify how to tax a foreign partner's income from a foreign investment partnership (FIP) in China. Courtesy of Mr Glen Wei, it was reported that a Chinese tax bureau recently took a position on the issue, determining that an unidentified Hong Kong company is subject to a 25 percent enterprise income tax on profits distributed by an FIP in China. It is rare to see publicly available cases involving foreign partners' taxation on partnership income in China. This most recent tax determination provides general guidance on such matters.

New Visa Requirements for Short Term Workers

- On 6 November 2014, the Ministry of Human Resources and Social Security (MHRSS), Ministry of Foreign Affairs, Ministry of Public Security and Ministry of Culture jointly published a notice (the Notice) to further regulate and clarify the visa requirements for certain short-term workers (including employees and contractors) coming to China. The Notice distinguishes between Z and F visas and takes effect on 1 January 2015. Multinational companies (MNCs) sending their short-term workers to work in China should be aware of the new visa requirements and the possible impact on their short-term workers and business partners.

Tax Arrangement Between China and Taiwan

- It was announced that on 13 November 2014, the Chinese and Taiwanese authorities had completed talks on a tax arrangement (similar to that of a tax treaty) between China and Taiwan. The arrangement still has to be signed and ratified by both sides.

New Double Taxation Agreement Signed with Russia

- On 13 October 2014, China and Russia concluded a new double taxation agreement (DTA) and protocol (together referred to as 'the new DTA'). The new DTA embodies the new trends in the development of international tax treaty. Main changes in the new DTA include: time threshold for service permanent establishment (PE) decreased to 183 days; withholding tax (WHT) rate on dividends, interest, and royalties reduced to five percent, five percent and six percent respectively; and a standalone limitation of benefits (LOB) article enforced to tackle treaty shopping. When it comes to effect, the new DTA will replace the currently applicable treaty signed in 1994 (1994 DTA) and is expected to further enhance economic cooperation between both countries.

HONG KONG

The Launch of Shanghai-Hong Kong Stock Connect

- It was announced on 12 November that the much-anticipated Shanghai-Hong Kong Stock Connect, a pilot programme for establishing mutual stock market access between Mainland China and Hong Kong, will commence on 17 November 2014.
- The programme will allow non-PRC investors to trade in A-shares listed on the Shanghai Stock Exchange (SSE) via the Hong Kong Stock Exchange (HKSE), and PRC investors to trade in HKSE listed shares via the SSE. Prior to the launch of Stock Connect, non-PRC investors could only access A-shares via institutional investor programmes administered by the China Securities Regulatory Commission.
- Tax is a risk that is advisable to cover in disclosures. The market remains concerned about the PRC tax treatment - specifically whether PRC capital gains tax will be levied on A-share trades made through Hong Kong. Based on Circular 81, Chinese capital gains tax derived by foreign sellers on the sale of A shares after 17 November 2014 are exempt from Chinese capital gains tax.
- In addition to documentation for authorised funds, asset managers are advised to consider appropriate investor documentation treatment across all products and services which may seek to take advantage of Stock Connect, such as supplemental Investment Management Agreements for segregated accounts to cover additional broker terms and to secure the client's acknowledgement of the related risk disclosures.

Qualified Financial Institutions

- Based on Circular 79 issued on 17 November 2014, capital gains realised by QFIIs or RQFII's on the sale of Chinese shares are exempt from Chinese capital gains tax in respect of sales occurring after 17 November 2014.

Exemption of Stamp Duty on Exchange Traded Funds

- On 5 December 2014, the Hong Kong Government formally released its draft legislation to waive stamp duty for the transfer of shares or units of all exchange traded funds (ETFs). The Stamp Duty (Amendment) Bill 2014 was introduced to the Legislative Council on 17 December 2014 (the Bill). It is expected to have wide support. The proposed ETF stamp duty waiver will take effect on the day when the Stamp Duty (Amendment) Ordinance is published in the Gazette after its enactment by the Legislative Council.
- Under current law, for ETFs with their registers of holders maintained in Hong Kong that track indices comprising more than 40 percent in Hong Kong stocks, the buyer and the seller each needs to pay a stamp duty at 0.1percent of the value of the transaction (0.2 percent in total).
- The Government has since 2010 extended a stamp duty remission for ETFs with their registers of holders maintained in Hong Kong that track indices comprising not more than 40percent in Hong Kong stocks as an initiative to encourage the Hong Kong listing of ETFs tracking regional indices. As of 30 September 2014,

there were a total of 121 ETFs listed in Hong Kong; and of these, 26 ETFs fell outside the remission measure such that stamp duty applies to sale and purchase of their shares or units.

- The Bill announced in the 2014-15 Budget waives the stamp duty for the transfer of all ETF shares or units, so that the transaction costs of ETFs with their registers of holders maintained in Hong Kong and with more than 40 per cent of Hong Kong stocks in their portfolios will be reduced as well.
- According to the Government, the measures will remove the competitive disadvantage faced by ETFs tracking Hong Kong stocks on the Stock Exchange of Hong Kong (SEHK) and which have their registers of holders maintained in Hong Kong. This appears to verify the effectiveness of past stamp duty planning measures implemented in relation to ETFs tracking Hong Kong stocks listed on stock exchanges outside Hong Kong and which maintain their registers of holders outside Hong Kong. ETFs are currently not defined under any Hong Kong statutes. With regards to the nature and operation of ETFs in Hong Kong and other markets, the draft legislation defines an ETF as "an open-ended collective investment scheme the shares or units of which are listed or traded on a recognized stock market". This wide definition suggests that, with planning, the exemption can apply to a broader-class of listed collective investment schemes beyond traditional ETFs. Overall, this is a welcome step to promote the development, management and trading of ETFs in Hong Kong, and is in line with the approach of other financial centres like London and Singapore.

The Latest IRD's Views on Important Profits Tax Issues

- In the 2014 annual meeting between the Inland Revenue Department (IRD) and the Hong Kong Institute of Certified Public Accountants (HKICPA), the IRD expressed its views on a number of tax issues in the domestic and treaty context that are of interests to taxpayers. The following profit tax issues were discussed in the meeting: (1) source rule for dividends/ distributions; (2) deduction of share-based payment and recharge; (3) application of the anti-avoidance provision on transfer of a tax loss company; and (4) taxation of Hong Kong investment managers/advisors.
- While the meeting minutes are not law and taxpayers can hold a different view from those expressed by the IRD in the meeting, the minutes serve as a good reference on the IRD's stance on various tax issues. Companies with business operations in Hong Kong or doing business with Hong Kong should take into account the views expressed by the IRD in the meeting minutes in both of their tax planning and tax filing processes for an effective management of their tax matters.
- Noteworthy points are that the IRD considers dividends paid by a fund management company which carries out its work in Hong Kong to be onshore sourced income (and thus taxable for the recipient) because the dividends stem from activities done in Hong Kong. Furthermore, the IRD takes the view that an indirect change in the shareholding of a Hong Kong company which utilises its tax losses not to be exposed to the anti-abuse section 61B of the IRO, as it looks at direct shareholding changes. Yet, these cases may be subject to other anti abuse sections in the IRO, e.g. s.61 and 61A. Another interesting point to note is that the IRD has been investigating fund management fees charged by fund managers operating in Hong Kong and have found many cases (where the fees were based on a cost plus method) to be too low in comparison to what they should be if one takes into consideration functions, assets and business risk.

INDIA

No Taxable Profit as a Result of Issuing Shares

- In two separate rulings (concerning Vodafone and Shell) issued in the span of one month, the Bombay High Court (BHC) has ruled that if a foreign company subscribes to shares of its Indian subsidiary at a price below their market value, it does not itself create taxable income in the hands of the Indian subsidiary. The High Court also ruled that the difference between the subscription price and the market value of the shares cannot be construed as a loan provided by the Indian subsidiary to its foreign shareholder, so no (taxable) interest income can be imputed for tax purposes in India.
- With this decision, it is likely that the ongoing controversy around share issuance transactions will get resolved, and this will have a positive impact on the overall tax environment in India. Moreover, it will encourage foreign investors and give rise to additional equity infusion in Indian subsidiaries for business expansion purposes.

Goods and Services Tax (GST)

- A draft bill to introduce a GST in India was submitted to the Lower House of parliament on 19 December 2014. The goal is for the law to pass through parliament in time to take effect on 1 April 2015. The GST would apply to both goods and services and would mark a fundamental reform of indirect tax law charges in India, as it would replace a host of different indirect tax charges currently in force (Service Tax, sales tax, CENVAT, etc). A tax rate has not yet been specified but it is understood that there will be a federal GST and a GST levied at state level. The rate would be similar for all states in India. The combined GST rate may amount to some 26 percent, but it would generally – unlike most of the current indirect tax charges- entitle GST registered entrepreneurs in India to recover the Indian GST charged by their suppliers.

Advance Ruling Authority

- It has been reported that Justice V.S. Sirpurkar has been appointed as the Chairman of the Advance Ruling Authority (AAR). Based on the information available in the public domain, we understand that Justice Sirpurkar has been involved with giving judgments on tax matters when he was the Judge in the Supreme Court and the Madras High Court. He will be the Chairman of the AAR until 21 August 2016 (on attaining the age of 70 years). It is hoped that this development will help to expedite the handling of the current queue of advance ruling requests pending before the AAR. Advance rulings are of vital importance for foreign investors in order to responsibly manage their tax exposures in India. Cases are known to us where the applicant has been waiting for a hearing for two years. It is presently uncertain when he will assume his new position.

Recent Court Decisions

- Courtesy of Khaitan & Co in Mumbai, the following is a brief summary of some other significant tax rulings by the High Court and the Tribunal.
  - » The New Delhi High Court re-characterized non-compete fees as consideration received for sale of shares; held that share sale consideration was artificially bifurcated as non-compete fees;
  - » A UK partnership firm was treated as 'person' eligible to benefit from India-UK Tax Treaty;
  - » The New Delhi High Court imposes a penalty for furnishing inaccurate particulars while claiming a loss on the sale of fixed-asset as 'business loss'.
  - » The New Delhi Bench of the Income Tax Appellate Tribunal clarifies immediate shareholding relevant for set-off and carry forward of losses under Section 79 of IT Act;
  - » The Indian branch of a foreign company is held to have a permanent establishment (PE) in India and 50percent of the global profit rate attributable to the PE; and
  - » Payments for 'installation and commissioning' of equipment are not fees for technical services; it falls in the exclusion for 'assembly'.

Revamp of the Dispute Resolution Panel (DRP)

- Courtesy of Khaitan & Co, we were informed about the following developments concerning the DRP. The DRP is a relatively new forum (established in 2009) to facilitate expeditious resolution of income tax disputes in India. DRP consists of a collegium of three Commissioners of Income Tax who adjudicate matters concerning adjustments proposed by the tax authorities in tax

assessments of foreign companies and cases involving Transfer Pricing adjustments.

- Recently, acknowledging that the existing DRP framework had "not worked" to the expectations, the Revenue Secretary, Ministry of Finance, stated that the Government is looking to revamp the administrative system for efficient dispute resolution. To this end, the Central Board of Direct Taxes (CBDT) has recently announced the setting up of new DRPs across the country viz. 2 panels in Delhi, 2 panels in Mumbai and 1 in Bangalore. Each DRP would have jurisdiction over multiple states and will be staffed by a collegium of 3 Commissioners of Income Tax.
- The Commissioners being members of the DRPs at Delhi will report to the Principal Chief Commissioner of Income-tax (International Taxation), the Commissioners being members of the DRPs at Mumbai will report to the Chief Commissioner of Income-tax (International Taxation, West Zone), Mumbai and the Commissioners being members of the DRP at Bangalore will report to the Chief Commissioner of Income-tax (International Taxation, South Zone), Bangalore.
- The Income-tax (Dispute Resolution Panel) Rules, 2009 have also been amended to provide for the mechanism of transfer of cases from one DRP to another, as and when required. The new DRPs have been staffed with dedicated personnel as opposed to the erstwhile DRPs where existing CITs doubled up as adjudicating members.

INDONESIA

Stringent New Policy on Corporates with Foreign Debt

- Bank of Indonesia announced on 30 October 2014 three key measures that will require a minimum hedge for non-bank corporates on their exposures to foreign loans. From 1 January 2015, corporates have to hedge a minimum of 20 percent of their external debt, increasing to 25 percent in 2016, pledge foreign currency assets totaling a minimum of 50 percent of the value of foreign currency liabilities, increasing to 70percent in 2016, and have a credit rating of no less than BB. These measures will impact tax efficient foreign bond issuances through Singapore or Dutch companies as a means of fund raising by Indonesian borrowers.

Electronic VAT Invoicing System Introduced

- The Indonesian Tax Office has introduced the use of electronic VAT invoices (e-VAT invoice) under DGT Regulation No. 16/PJ/2014 dated 20 June 2014. The DGT Decision Letter No. 136/PJ/2014 provides that it will be implemented in 3 stages The following key points should be noted:
  - » The e-VAT invoice must be issued through the electronic application system determined or provided by the Director General of Taxation (DGT). The e-VAT invoice must use an electronic signature and use the Indonesia rupiah (IDR) as currency. If the transaction is denominated in a foreign currency, it has to be converted into IDR.
  - » The hard copy of the VAT invoice can be accepted only in a force majeure situation.
- The use of the e-VAT invoice is subject to prior approval by the DGT and must be reported to the DGT.
- Starting from 1 July 2014, it has become mandatory for the selected 45 corporate taxpayers to issue the e-VAT invoice. As from 1 July 2015 it will be mandatory for all corporate taxpayers registered in the 17 regional tax offices in the islands of Java and Bali. From 1 July 2016, it will be mandatory for all corporate taxpayers to implement the e-VAT invoice.

JAPAN

Reduced Corporate Income Tax Rate

- Japan's government on 30 December 2014 decided to reduce the corporate income tax rate from the current 34.6percent to 32.1 percent from April 2015 and further down to 31.3 percent the following year. The rate reduction will be partially offset by an increase in the taxable income base for resident individuals (see further) and by a corporate tax reduction in the possibility to carry forward tax losses. By April 2017, only 50percent instead of the current 80 percent of taxable profits can be used to offset prior year tax losses, although the period during which tax losses can be carried forward will be extended to 10 years from 9 currently.

Exit Tax

- A proposal for a new exit tax will introduce measures to tax wealthy individuals on their unrealized gains, on certain financial assets, at the time of their departure from Japan. While there were concerns about the potential impact on residents, it has become apparent that certain expatriates will not fall within the scope of this new tax. Foreign taxpayers impacted by this tax seem to be primarily limited to those with permanent resident or spouse/child of Japanese national visa status.
- Taxable persons holding taxable assets departing Japan on or after 1 July 2015 will be deemed to have sold these assets immediately prior to the departure and thus be taxable on any gain from such deemed sale. Taxable persons are residents of Japan who meet both of the following criteria: (a) a person whose total value of taxable financial assets is JPY 100 million or more and (b) who has had a Jusho in Japan for more than five years over the ten years prior to exit (for the purpose of determining the five year period, the duration of stay in Japan under certain visa categories are not counted – typically Intra Company Transferee, Investor/Business Manager, Specialist in Humanities/International Relations and all visa categories contained in Table 1 of Immigration Control and Refugee Recognition Act are not counted). Taxable assets inter alia comprise shares, government and private bonds and all securities under the Income Tax Law, contributions under a silent partnership (TK) agreement and any unsettled derivative transactions.

Tax Information Exchange

- The Tax Information Exchange Agreement (TIEA) between Japan and the British Virgin Islands came into effect on October 11 2014. The BVI-Japan TIEA is consistent with the OECD standard model template for TIEAs. It provides assistance, through exchange of information relevant to the administration or enforcement of the laws to both countries concerning taxes.

Consumption Tax Rate Increase Postponed

- The Japanese Prime Minister announced on 19 November that Japan is postponing the increase of the Consumption Tax rate from eight percent to 10 percent by 18 months, due to economic reasons. The increase was scheduled to become effective on 1 October 2015 but is now postponed to 1 April 2017.

KOREA

Tax Changes

- Korea will introduce new debt to equity restrictions for non-financial companies with effect from 1 January 2015. The current debt to equity ratio of 3:1 will be tightened by a 2:1 rule.
- Korea will introduce a VAT charge on inbound digital supplies.
- Korea will introduce an increased tax rate on excessive cash balances.

Beneficial Ownership

- Courtesy of Kim & Chang, the following was brought to our attention. It is by now well known that the Korean tax authority may deny application of Korean tax treaties to intermediate holding companies on beneficial ownership grounds, looking to factors such as physical substance and control over the Korean source income. Where such denial is upheld, the intermediate company is "looked through" and beneficial ownership is tested at the level of its shareholders.
- In the case of Korean source dividend income received by an intermediate holding company, if the holding company's shareholder is considered the beneficial owner and is a corporation resident in a treaty jurisdiction, the question arises of which dividend tax rate applies under the treaty. This is because the treaty will typically provide that if the dividend recipient is a corporation which owns a specified threshold percentage interest in the paying corporation, then a lower rate (e.g., five percent or 10percent) will apply, and if that threshold is not satisfied, a higher rate (e.g., 15percent) will apply. Where the dividend article requires ownership of the threshold interest for the lower rate without specifying that the ownership be direct, or where direct ownership is specifically required, can the lower rate apply to an indirect shareholder treated as the beneficial owner of the dividend?
- Because of the tax authority's active assertions of insufficient substance against holding companies (special purpose or otherwise), multinational companies are more frequently facing the above question and asking the Korean courts to resolve the issue.
- The Korean Supreme Court on 24 May 2013 weighed in for the taxpayer in a case involving the Korea-Japan treaty (with an intermediary Labuan/Malaysian holding company which was ignored), the dividend article of which does not require that the recipient corporation "directly" own shares satisfying the ownership threshold for the lower rate. It would seem that other tax treaties of the same mold in that regard, most notably the Korea-U.S. treaty, should also be on safe ground. However, the question is currently being litigated where the applicable treaty article does specify that the requisite percentage of shares be "directly" owned. The Tax Tribunal reached a similar decision on 29 May 2014 involving a US company using an intermediary holding company in another jurisdiction which in turn held the shares of the Korean company.
- Based on the above Supreme Court and Tax Tribunal decisions, the issue now seems fairly settled under the limited number of Korean treaties that do not specify direct ownership of shares for the lower dividend rate. The question remains, however, how the courts will address the issue when the treaty applicable to the indirect shareholder/beneficial income owner requires that shares be "directly held" – for example, under Korea's treaties with France and Germany. The language under those treaties may contrast with yet other treaties such as the Korea-U.K. treaty, for example, which provides that the lower dividend tax rate applies if the requisite percentage of shares is owned "directly or indirectly."
- There is currently a case involving the Korea-France treaty pending at the High Court (which is the appeals court below the Supreme Court in Korea), and it is likely that the issue will reach the Supreme Court. There is also a case involving the Korea-Germany treaty pending at the Administrative Court (a first-level court). In these cases, the "incomplete deeming" approach of the tax authority as regards to application of tax treaties will be tested. When the issue reaches the Supreme Court, it is hoped that the Court will clearly rule in favor of applying the lower rate.

MALAYSIA

Capital Allowances

- On 27 June 2014, the Inland Revenue Board of Malaysia (IRBM) issued Public Ruling No. 5/2014 on Ownership and Use of Asset for the Purpose of Claiming Capital Allowances (PR No. 5/2014). PR No. 5/2014 to PR No. 1/2001 which was issued on 18 January 2001. The full PR is available on the IRBM's website. The original PR (PR No. 1/2001) provided guidance on the qualifying conditions that must be met when claiming capital allowances (CAs) and who would be entitled to claim CAs where:
  - » The legal and beneficial owner are the same;
  - » The legal and beneficial owner are not the same;
  - » There is more than one beneficial owner; and
  - » The asset is owned and used by the same owner but the qualifying expenditure is borne by a different person.
- The updated PR (PR No. 5/2014) generally restates the same principles as PR No. 1/2001 but now also includes specific situations such as where there is joint ownership and where the asset belongs to a partnership.
- PR No. 5/2014 also introduces new guidance in respect of the following:
  - » Limited liability partnership assets;
  - » Hire purchase assets;
  - » Leased assets;
  - » Business trust assets;
  - » Assets wholly or partially used in the business;
  - » Assets used for more than one business;
  - » Assets not used for the purpose of the business;
  - » Assets used by a third party to manufacture products for the business of the beneficial owner; and
  - » Assets classified as held for sale

Budget for 2015

The Malaysian government presented its budget for the year 2015 on 10 October 2014. Notable tax changes are the following:

- The corporate tax rate for companies will be reduced from 25percent to 24percent in 2016 (the rate for qualifying small companies will be reduced from 20percent to 19 percent).
- Penalties for non- or late tax compliance will be increased by 10 times their current amounts, to a maximum of RM 20,000 per offense).
- Two hundred percent of qualifying training expenses can be claimed as a tax deductible expense by the employer.
- Qualifying automation expenses can be eligible for capital allowances of up to 200percent if they are made for investments in labour intensive industries.
- The statute of limitation for transfer pricing related adjustments will be increased to 7 years instead of the current 5.
- The tax rate for resident individuals will be reduced in virtually all bands by one percent point. The top marginal income tax rate will be reduced from 26percent to 25percent for the year 2015. Accordingly, the non-resident individual tax rate will be reduced from 26percent to 25percent.
- The list of items which will not be subject to the upcoming GST with effect from 1 April 2015 has been expanded to include fruits, bread and certain other items.
- The Real Property Gains Tax (RPGT) will be levied as a self-assessment system in 2015 and the retention sum to be withheld by the acquirer of real property will be increased from the current two percent to three percent in 2015.

Goods and Services Tax (GST) to be Introduced

- With effect from 1 April 2015, the new GST will take effect and replace the current Sales Tax and Service Tax. The standard GST rate is six percent and will have to be charged on taxable supplies of services and goods if the supplier has a taxable turnover of RM 500K per annum. Such suppliers must register for GST, submit monthly or quarterly GST returns and issue invoices which satisfy the GST requirements. Qualifying exports of goods or services are zero-rated for GST purposes.

PHILIPPINES

Claiming Tax Treaty Benefits

- In the Egis case, reported in October 2014, a Philippines tax court has ruled that the foreign recipient of tax treaty protected income from the Philippines must submit its application for tax treaty relief prior to the payment of the income, failing which the tax treaty can not be applied. The foreign recipient has appealed against the decision. The case illustrates the need to ensure that the tax treaty application process is observed carefully.

SINGAPORE

Hybrid Loans

- On 19 May 2014, following international attention on the subject matter (especially the developments in the EU), the IRAS issued its first tax circular on Hybrid Instruments, providing guidance as to whether certain debt instruments should be treated for income tax purposes as debt or as equity instruments.
- According to the circular, the first step is to determine the legal form of the instrument. What are the legal rights and obligations of the instrument? An ownership interest in the issuer suggests equity. If it is not clear what the legal rights and obligations are, then one should examine the facts and circumstances surrounding the instrument and a combination of factors, as follows:
  - » Nature of the interest acquired (shareholding, residual interest suggests equity)
  - » Investor's right to participate in the issuer's business
  - » Does it give voting power?
  - » Is there an obligation to repay in the foreseeable future, is it unconditional or conditional on the financial well-being, is there no step-up feature or fixed repayment date?
  - » What is the payout? Is there a non-contingent obligation to make periodic distributions of predetermined amounts regardless of performance and are they cumulative, then that suggests debt
  - » The classification by other regulatory authorities in Singapore matters
  - » What is the ranking of repayment upon liquidation or dissolution?
- If the issuer is a foreign party, one should examine the above mentioned factors and facts and circumstances (hence not the legal form).
- An advance tax ruling may be applied for. The circular notes that the general anti-abuse provision in the income tax law may apply if the hybrid is issued in connection with anti-avoidance arrangements.

Tax Law Changes Announced in Budget 2014 Have Been Enacted

The tax proposals contained in the Government Budget announcements made in February 2014 have been approved by parliament and have become law on 3 November 2014, they are as follows:

- Extend and enhance PIC scheme: The Productivity and Innovation Credit (PIC) scheme has been extended for three years till year of assessment2018 (YA). Capital expenditure incurred on the provision of a website for the purpose of a trade, business or profession will be considered as qualifying capital expenditure incurred on the provision of PIC automation equipment under the PIC scheme.
  The PIC automation equipment must be in use before expenditure on the provision of the equipment may be treated as a qualifying expenditure under the PIC scheme. For the YA 2016 onwards, the period for satisfying the requirement of employment of three local employees has been extended from one month to three months.
- Extend section 14A tax deductions for costs for protecting IP: To encourage businesses to protect their intellectual property, the 100percent tax deduction for

qualifying intellectual property (IP) registration costs has been extended for another five years till YA 2020. At the same time, the period in which an enhanced deduction for such costs may be allowed has been extended till YA 2018.

- Extend section 14DA enhanced deduction for qualifying R&D expenditure: The period in which an enhanced deduction of 50percent of qualifying R&D expenditure granted under section 14DA may be allowed has been extended till YA 2025. Furthermore, the period in which an enhanced deduction of 250 percent and 300 percent of qualifying R&D may be allowed has been extended till YA 2018.
- Extend section 19B writing down allowances for acquisition of qualifying IP rights: To build Singapore as an IP hub, the Act has been amended:

    1. To extend till the last day of the basis period for YA 2020, the period in which IP rights must be acquired for its capital expenditure to be given a writing-down allowance;
    2. To extend till the last day of the basis period for YA 2018, the period in which IP rights pertaining to media and digital entertainment (MDE) contents must be acquired for its capital expenditure to be given a writing down allowance; and
    3. To extend till YA 2018, the period in which an enhanced writing down allowance may be made for capital expenditure incurred in acquiring IP rights.

- Extend and enhance LIA scheme: The period during which a person may apply for a land intensification allowance (LIA) has been extended to 30 June 2020. Changes have also been made to enable the allowance to be given for construction and renovation carried out on land that is zoned for airport or port use.
- Remove requirement to withhold tax for payments made to branches in Singapore: To reduce compliance costs for businesses, the Act has been amended to remove the requirement to withhold tax on interest payments liable to be paid on or after 21 February 2014 to Singapore branches of non-resident companies.
- Treatment of Basel Additional Tier 1 instruments: Distributions from Basel III Additional Tier 1 capital instruments (other than shares) issued by Singapore-incorporated banks and other specified entities will be treated as interest derived from debt securities. Such distribution will (subject to conditions) then be deductible as interest against the income of the issuer of the instruments, and taxable as interest income in the hands of the holders of the instruments, unless exempt from tax. As it is treated as interest derived from debt securities, it may be taxed at the concessionary tax rate that applies to income derived from qualifying debt securities, where applicable.

Non-Budget Changes

- Additional measures to curb PIC abuse: Amendments to the Act have been enacted to address abusive arrangements where one of the main purposes is to receive PIC benefits. An abusive arrangement is one which involves an artificial contrived or fraudulent step intended to obtain PIC benefits, which results in the payment for goods or services for an amount that exceeds their open market value for no bona fide commercial reason apart from getting a PIC benefit. The promoter of such abusive schemes will be guilty of an offence.
- Enable ratification of the Convention on Mutual Administrative Assistance in Tax Matters: The Act has been amended to enable a multilateral treaty which provides for exchange of tax information between countries to be prescribed as an exchange of information arrangement for the purposes of the Act. This allows Singapore to ratify the Convention on Mutual Administrative Assistance in Tax Matters done at Strasbourg on 25 January 1988.

Tax Treaty Developments

- UAE. On 31 Oct 2014, Singapore and United Arab Emirates (UAE) signed a Protocol to amend the Singapore-UAE Avoidance of Double Taxation Agreement (DTA). The Protocol improves the tax treaty between the two countries. Revised terms include longer threshold periods to ascertain the presence of a permanent establishment and lower withholding tax rates for dividends and interest income.

VIETNAM

Deduction of Advertising and Promotion Expenses Restrictions Lifted

- On 27 November 2014, the National Assembly of Vietnam has ruled to abolish the current restriction in the deductibility of advertising and promotion expenses. Presently, only 15 percent of those expenses may be deducted for tax purposes in Vietnam. With effect from 1 January 2015 this restriction will no longer exist.

Foreign Contractor Withholding Tax

- On 6 August 2014 the Ministry of Finance issued Circular No. 103/2014/TT-BTC (Circular 103) providing guidance on tax levied on foreign organizations and individuals operating businesses in Vietnam (Foreign Contractor Withholding Tax or FCWT). Circular 103 is effective as of 1 October 2014 and replaces Circular No. 60/2012/TT-BTC.
- There are a number of key changes in Circular 103 in comparison with Circular No. 60/2012/TTBTC, which are listed below.

  The following are entities for which FCWT now applies:

  » Foreign organizations and individuals (Foreign Contractors) carrying out distribution of goods in Vietnam or supply of goods on international commercial terms – Incoterms – the seller will bear the risks relating to goods entering into the territory of Vietnam.

  » Foreign Contractors wholly or partially carrying out business activities of distributing goods or rendering services in Vietnam where they (i) retain the ownership / title of the goods delivered to Vietnamese organizations, (ii) are responsible for costs of distribution, advertising, marketing, quality of services and quality of goods delivered to Vietnamese organizations or (iii) fix the selling price of the goods or services; including cases of authorizing or hiring certain Vietnamese organizations to carry out a part of distribution service or other services related to activity of selling goods in Vietnam. (iii) Foreign Contractors entering into negotiation and signing of contracts in their name via a Vietnamese organization or individual. (iv) Foreign Contractors exercising the export right, the import right or distribution right in the Vietnamese market, purchasing goods for exporting or selling to Vietnamese merchants in accordance with the Commercial law.

  The following activities are excluded from FCWT:

  » Foreign Contractors supplying goods to Vietnamese organizations or individuals at a foreign border or at a Vietnamese border for which the provision of a warranty is the only service provided in Vietnam.

  » Foreign Contractors using customs bond warehouses or inland clearance depots (ICD) as warehouses for goods to support international transportation, transit, transshipment, storing activities or for processing by other enterprises.

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