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Dear Reader,

We are pleased to present to you the Spring issue 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 publication.

CHINA

Tax free reorganisations........1
Indirect transfers of Chinese companies........1
Business tax on sale of residential property........3
Tax incentives for western regions........4
Creation of taxes can only be done based on law........4
Land appreciation tax in business restructuring clarified........4
Foreign Investment Catalogue........4
Amendment to administrative measures on tax registration........5
VAT refund for foreign visitors – extended country-wide........5

Draft Foreign Investment Law released for public comment.....5
QFIIs and RQFII's are exempt from non resident capital gains tax.....6
Strict Transfer Pricing Rules for service fees and royalties.....6
International Tax Developments.....6

HONG KONG

Budget 2015.....6
Termination of contract payment not taxable.....7
Increased minimum wage.....7
PE funds tax exemption.....7
Forms for resident status certificates revised.....7
Unrealised gains on marketable securities.....8
International Tax Developments.....8

INDIA

Budget.....8
Transfer pricing.....9
Royalties.....10
Relationship with the USA.....10

INDONESIA

Tax Cooperation between Singapore and Indonesia.....10
New APA regulation.....10
Mutual Agreement Procedure (MAP).....11
VAT on inbound supplies of digital goods.....11
Amendment of the tax payable when appealing.....11
Tax audit focus for 2015.....11
Removal of administrative penalties on tax debts.....11
International Tax Developments.....12

JAPAN

Tax reform plan 2015.....12

KOREA

Anti avoidance/Lone Star.....13
Arm's length interest rates on intercompany loans.....14

Customs transfer pricing adjustments 14
Tax residence for individuals 15
Foreign technicians or engineers 15
Use of patents registered outside of Korea is not subject to tax 15
International Developments 15

MALAYSIA

Goods and Services Tax (GST) 15
Mutual agreement procedure guidelines issued 15
FATCA draft guidance notes 16

PHILIPPINES

BIR priority programmes for 2015 17
Tax exemption threshold for employees' bonuses increased 17

SINGAPORE

Budget 2015 17
FATCA agreement with USA 20
Transfer Pricing 20
International Tax Developments 20

TAIWAN

Suspension of additional capital gains tax on sale of shares 21

THAILAND

Tax incentives for headquarter companies and trading companies 22

VIETNAM

New Investment Law 22
Decree No. 12 – Corporate income tax 23
Decree No. 12 – Personal income tax 23
Decree No. 12 – Value added tax 24
Decree No. 12 – Tax administration 24

CHINA

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Tax Free Reorganisations

- With circulars 109 and 116 jointly issued in December 2014 by the Ministry of Finance and the State Administration of Taxation, the Chinese authorities have relaxed the conditions for internal reorganisations.
- Circular 109 deals with internal reorganisations. Provided the pertinent requirements are met, the transfer of shares of a Chinese company within the group will not be subject to Chinese income tax. There must be a reasonable commercial reason for the transfer, the equity acquired must be at least 50 percent (previously: 75 percent) of the total equity of the target company (in an asset transaction, the assets acquired should be at least 50 percent (previously 75 percent) of the total assets of the transferor), there must be no change in the original operating activities for a prescribed period of time, shareholder equity must comprise at least 85 percent of the total consideration (thus: the debt may be up to 15 percent of the total consideration) and the equity consideration received should not be sold or transferred within a prescribed period of time. This facility is applicable for both domestic and foreign shareholders.
- Interestingly, a new item, which was included in circular 109, is a deferral treatment, which is applicable only to domestic intra-group transfers (from Chinese to Chinese company). There will be no income tax on the transfer of the assets if (a) transferor and transferee are 100 percent owned by the same direct or indirect shareholder or own each other for 100 percent, (b) the transfer takes place at book value, (c) no loss or profit can be recognised in the financial accounts, the transaction is done for reasonable commercial reasons other than tax and there is no change in the operating activities for 12 months after the transfer. This facility is especially interesting, because it does not require a certain threshold interest to be acquired and neither does it require the consideration to be paid for with equity.
- Circular 116 provides for any enterprise income tax liability arising from a transfer of assets to a Chinese company in order to pay up shares issued by the latter to be payable over five years.

Indirect Transfers of Chinese Companies

- As anticipated, on 6 February 2015, China's State Administration of Taxation (SAT) issued Public Notice [2015] No. 7 (Public Notice 7) dealing with indirect transfers of Chinese taxable assets. It substantially replaces Circular 698 and Bulletin 24 and introduces a new reporting regime which is significantly different from the previous rules. Public Notice 7 has retroactive effect to indirect transfers which have occurred since 1 January 2008 but have not yet been decided upon by the Chinese tax authorities.

WHAT IS THIS ABOUT?

- If a foreign investor sells or reorganises shares (and equity-like interests) in another foreign company (Foreign Company) which directly or indirectly holds Chinese taxable assets, and if this effectively has a similar effect to directly transferring these Chinese assets, then any gain attributable to the Chinese assets will be subject to Chinese income tax if manner in which the sale or reorganisation is conducted does not have reasonable bona fide commercial

purpose. There will be no income tax liability if the manner in which the transfer is conducted has reasonable bona fide commercial purpose.

- Chinese taxable assets now include (1) assets attributable to an establishment in China, (2) immovable property in China and (3) shares in Chinese resident companies.

WHAT HAPPENS IF THE INDIRECT TRANSFER LACKS REASONABLE BONA FIDE COMMERCIAL PURPOSE?

- The gain from an indirect transfer of the property of an "establishment or place" situated in China will be treated as income that is effectively connected with that "establishment or place" and subject to 25 percent Chinese income tax.
- The gain from an indirect transfer of real property situated in China and the gain from an indirect transfer of equity interests in Chinese resident companies will be treated as China-sourced income and subject to 10 percent withholding tax.

THE GOOD NEWS

- Unlike Circular 698, Public Notice 7 no longer imposes an obligation on the transferor to report the transfer to the Chinese tax authorities. However, if the transferor does not report the transfer and it turns out to be subject to income tax because it lacks sufficient bona fide commercial purpose, then the transferor or the transferee will be subject to severe penalties.
- Public Notice 7 exempts from income tax (1) a sale of shares of the Foreign Company if it occurs through normal trading on a stock exchange and (2) a sale of shares of the Foreign Company which would have been exempt from Chinese income tax under an applicable tax treaty if the transferor would have sold the Chinese assets directly.
- Public Notice provides more guidance as to what constitutes bona fide commercial purpose[1].
- Public Notice 7 gives clarity when an indirect transfer will be deemed to lack sufficient bona fide commercial purpose.[2]
- Public Notice 7 contains a safe harbour for qualifying internal reorganisations.[3]
- Better protection for taxpayers and clarity on procedure if the Chinese tax authority wants to tax an indirect transfer: they must first obtain prior approval from the SAT on all major steps of an investigation and they must give the taxpayer an opportunity to appeal against an adjustment decision before this decision can be finalised.

THE BAD NEWS

- The scope of situations affected by Public Notice 7 now includes Foreign Companies directly or indirectly owning Chinese immovable assets and assets attributable to an establishment in China, whereas previously it only included the transfer of equity in a Foreign Company which directly or indirectly owns equity in a Chinese company.

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1 While it says that one should consider all the facts of the case, it singles out the following criteria as being of special importance: (1) whether the equity value of the Foreign Company is mainly derived directly or indirectly from Chinese taxable assets, (2) whether the assets or income of the Foreign Company are mainly derived directly or indirectly from Chinese taxable assets, (3) whether the functions performed and risks assumed by the Foreign Company and its direct and indirect subsidiaries that hold Chinese taxable assets can justify the economic substance of the organisational structure, (4) whether foreign income tax is paid on the indirect transfer, (5) whether and how a tax treaty applies to the indirect transfer, (6) the length of time that the shareholders, business model and the organisational structure of the Foreign Company have been in existence, (7) whether it would have been possible for the transferor to directly invest in and directly transfer the Chinese taxable assets, instead of doing so indirectly.

2 If all the following criteria are satisfied: (1) 75 percent or more of the equity value of the Foreign Company is derived directly or indirectly from Chinese taxable assets, (2) 90 percent or more of the asset value (excluding cash) or the income of the Foreign Company is derived from investments in China during any moment within one year prior to the indirect transfer, (3) the functions performed and risks assumed by the Foreign Company and any of its direct or indirect subsidiaries are limited and insufficient to justify the economic substance of the organisational structure, (4) the income tax paid on the indirect transfer in both the country of the transferor and the country where the Foreign Company is established is lower than the Chinese income tax if a direct transfer of the Chinese taxable assets would have taken place.

3 The following three conditions must be satisfied: (1) the transferor and transferee are related companies, either because one owns at least 80 percent of the equity of the other or a third party owns at least 80 percent of both transferor or transferee (if it concerns immovable assets in China, the test is not 80 percent but 100 percent), (2) the new holding structure created after the reorganisation should not result in a lower Chinese income tax liability if the Foreign Company would be transferred, (3) the transferee acquires the equity of the Foreign Company by either issuing its own equity or equity of a company controlled by the transferee (this excludes publicly traded stock).

- If the indirect transfer lacks reasonable bona fide commercial purpose, both the transferor, the transferee and the Chinese company whose equity is indirectly being transferred have a reporting obligation[4] within thirty days of the date of the transfer, failing which penalties will be due. Under the previous rules only the transferor had a reporting obligation. This raises a serious practical challenge for the purchaser, who is often unable to assess whether the transfer is subject to Chinese income tax and what the amount of the tax liability is.
- The party acquiring the equity in the Foreign Company or its paying agent is primarily responsible for paying the Chinese tax in the event the transaction lacks reasonable bona fide commercial purpose, failing which the transferor will be liable to pay the Chinese income tax. If the transferor fails to pay the income tax, the party acquiring the equity in the Foreign Company will be liable for the income tax due plus a penalty. The penalty could range between 50 percent and 300 percent of the income tax liability, subject to a waiver or reduction of the penalty if the acquirer reports the transaction within thirty days after the date of the transfer. The transferor will be liable for a penalty if neither the transferee or the transferor have paid the income tax on the transfer. The offshore seller has an obligation to file a tax return and pay tax within seven days from the date when the tax liability arises if the purchaser (or its withholding agent) fails to withhold the tax. If the offshore seller fails to pay the income tax in full within the prescribed time limit, the offshore seller is subject to a daily interest rate equal to the benchmark RMB lending rate published by the People's Bank of China plus 5 percentage points. For the indirect transfer of the property of an "establishment or place" situated in China, the "establishment or place" must include the capital gains in its taxable income of the tax year.
- The SAT has no obligation to make a determination on taxability. In most cases the offshore seller and the "establishment or place" are not able to determine whether the indirect transfer is taxable in China within the prescribed time limit.
- As Public Notice 7 does not address this point, there is uncertainty whether the tax authorities will recognize the tax paid in prior indirect transfers when determining the tax basis in subsequent direct or indirect transfers.

KEY TAKE AWAYS

- If an indirect transfer of Chinese assets lacks sufficient bona fide commercial purpose, the seller is still liable for the income tax liability on the sale, including reporting the same to the SAT, but the purchaser now has a withholding and reporting obligation and can be liable if the seller does not pay the tax. This is problematic as there will now need to be an overt discussion on the amount of the tax that is to be paid and therefore the amount that is withheld (or held in escrow), previously something that sellers in practice were generally very reluctant to discuss with purchasers.
- Purchasing parties will need to amend their Sale and Purchase Agreements (SPAs) to reflect the new withholding and reporting obligations in order to protect themselves when they acquire assets which are subject to Public Notice 7.
- Investors should keep sufficient evidence on record to substantiate the reasonable commercial purpose criteria, including minutes of board of directors meetings, shareholders meetings and correspondence with the SAT, if any.

Business Tax on Sale of Residential Property

- On 30 March 2015, the Ministry of Finance (MoF) and the State Administration of Taxation (SAT) jointly issued a notice (Cai Shui [2015] No. 39) concerning business tax on the sale of houses owned by individuals. The notice applies as from 31 March 2015.
- According to the notice, the full amount of sale proceeds is subject to business tax if the house has been in the possession of an individual for less than two years.
- If the house sold is non-ordinary (large and luxurious with a surface area greater than 140 m^2 and the price more than 120 percent of the average housing price) and has been in the possession of an individual for two or more years, only the capital gain is subject to business tax, which means that the acquisition price can be deducted from the taxable amount, and the balance between the acquisition price and sale proceeds is taxed.

4 The documents required to voluntarily report the indirect transfer include: (i) equity transfer agreement, (ii) corporate ownership structure charts before and after the equity transfer, (iii) prior two years of financial and accounting statements for all intermediate holding companies, and (iv) a statement that the indirect transfer is not taxable.

- An individual is exempt from business tax on the sale of the house if it is an ordinary house, and the individual has been in possession of it for two or more years.
- Previously, the exemption from business tax applied if the holding period of the house was more than five years in the period from 28 January 2011 to 30 March 2015 (Cai Shui [2011] No. 12). With this new notice, Cai Shui [2011] No. 12 ceases to apply.
- Further, the relevant tax administrative rules regarding the definition of a non-ordinary house, application of the exemption and requirements for documents provided in the notices Guo Fa Ban [2005] No. 26, Guo Shui Fa [2005] No. 89 and Guo Shui Fa [2005] No. 172 remain applicable.

Tax Incentives for Western Regions

- The State Administration of Taxation (SAT) issued an announcement on 10 March 2015 (SAT Gong Gao [2015] No. 14) concerning clarification of enterprise income tax issues arising from the implementation of the "Catalogue of Encouraged Industries in Western Regions" (the "Catalogue"), which has been in force since 1 October 2014. The announcement retroactively applies from 1 October 2014.
- According to the announcement, an enterprise established in the designated western regions is subject to enterprise income tax at a reduced rate of 15 percent if its main business is one that is newly added as an encouraged business in the Catalogue and the revenue from the main business accounts for more than 70 percent of the total revenue.
- The reduced enterprise income tax rate of 15 percent ceases to apply to enterprises that enjoyed a 15 percent tax rate on the basis of article 3 of SAT Gong Gao [2012] No. 12 but are no longer considered to be encouraged under the Catalogue.

Creation of Taxes Can Only Be Done Based on Law

- The National People's Congress, China's highest legislative authority, on 15 March 2015 passed with immediate effect an amendment to the 2000 Legislation Law, which provides that the fundamental taxation system including the creation of a tax, the determination of a tax rate, and the collection and administration of a tax can be made only by law.
- Of China's 18 taxes, only the enterprise income tax, individual income tax, and vehicle and vessel tax are currently made by law. All other taxes (such as the VAT, business tax, and consumption tax) are regulated by the State Council (executive branch).
- From a tax perspective, the amendment is a milestone in China's construction of a democratic and legal society because the Legislation Law is a law that controls all other laws. The establishment of the statutory tax principle means the collection of all taxes and the legislation of tax procedures must comply with the provisions of the Constitution Law and the Legislation Law. That will significantly promote the development of the country's tax laws.

Land Appreciation Tax in Business Restructuring Clarified

- The Ministry of Finance (MoF) and the State Administration of Taxation (SAT) issued a notice on 2 February 2015 (Cai Shui [2015] No. 5) concerning the granting of land appreciation tax (LAT) incentives in a business restructuring. The notice applies from 1 January 2015 to 31 December 2017. The transfer of state-owned land and residential property is exempt from LAT if an unincorporated business as a whole is converted into a limited liability company or a company limited by shares (joint-stock company) or where a limited liability company as a whole is converted into a company limited by shares (joint-stock company).
- The notice provides that the exemption of LAT applies in the case of a merger and spin-off if the main investor of the original entity remains the main investor after the merger or spin-off. The exemption does not apply to real estate development companies.

Foreign Investment Catalogue

- On 13 March 2015, the National Development and Reform Commission (NDRC) and Ministry of Commerce (MOFCOM) jointly released the 2015 version of the *Foreign Investment Industrial Guidance Catalogue* (2015 Catalogue) to replace the current catalogue adopted in 2011 (2011 Catalogue). The 2015 Catalogue will enter into effect as from 10 April 2015.
- The Catalogue is one of the most fundamental legal documents in the regulatory regime of foreign investment in China. It classifies industry sectors into

encouraged, restricted and prohibited, and any sector not included in the Catalogue is permitted. The classification of sectors will decide the level of approval required for, and the type of incentive available to, foreign investment projects. It is viewed as a guidance from the PRC government to direct foreign investment. The 2015 Catalogue is the sixth version of the Catalogue since it was first promulgated in 1995.

Amendment to Administrative Measures on Tax Registration

- Courtesy IBFD, it was reported that the State Administration of Taxation (SAT) issued an order on 27 December 2014 concerning the amendment to the Administrative Measures on Tax Registration (SAT Order No. 36). The amendment applies from 1 March 2015 and is summarised below.
  - » New taxpayer identification number (TIN) system has been introduced and is used by both state tax bureaus and local tax bureaus. The entities that have acquired an organisation code will receive a TIN consisting of nine digits of the organisation code and six additional digits indicating the administrative region where the taxpayer is situated. The TIN of the entities without an organisation code is composed of the identity card number followed by two additional digits.
  - » The branches of enterprises operating in other regions do not need to register with the tax authorities in the places where their business operations are carried out if the business activities last for less than half a year.
  - » The tax authority will no longer need to conduct a field investigation on the taxpayer, even if dubious documentation is provided by the taxpayer.
  - » A withholding agent exempt from tax registration in accordance with relevant laws and regulations is required to register as a withholding agent with the tax authority within 30 days after the withholding obligation arises.
  - » The tax authority is required to examine and approve the registration on the same day as the submission of the form of tax registration alteration if the relevant documents are complete and authentic.
  - » The penalty on the taxpayer failing to make a tax registration or to file the alteration or cancellation within the time limit is repealed.
  - » The penalty on the taxpayer using the tax registration certificate inappropriately is repealed.
  - » The penalty fee on the withholding agent failing to make the tax withholding registration within the time limit is reduced from CNY 2,000 to CNY 1,000.

VAT Refund for Foreign Visitors – Extended Country-Wide

- The Ministry of Finance issued an announcement on 6 January 2015 (Gong Gao [2015] No. 3) extending to the whole country the pilot programme of value added tax (VAT) refund for foreign visitors on consumer goods purchased in China. The pilot programme was launched in Hainan in 2011. According to the announcement, all regions that meet the requirements of the state may set up a system of VAT refund on consumer goods with a value of more than CNY 500 for foreign visitors (including citizens from Taiwan, Hong Kong and Macau) who stay in China less than 183 days and claim the refund within 90 days of purchasing the goods. The refund rate is 11 percent of the amount stated on the invoice, including VAT. If the refund exceeds CNY 10,000, the refund can only be remitted to the bank account of the visitor and cannot be paid in cash. The implementation of this policy is intended to boost tourism to the country and to adopt the common practice of other countries that are significant tourist destinations.

Draft Foreign Investment Law Released for Public Comment

- On 19 January 2015, the Ministry of Commerce released a draft of the Foreign Investment Law of the People's Republic of China for public comment. The new Law contains 11 chapters and will, once in force, replace the current regulations on foreign investment, i.e., Regulations on Chinese-Foreign Equity Joint Ventures of 1979, Regulations on Chinese-Foreign Cooperative Joint Ventures of 1988 and Regulations on Wholly Foreign-Owned Enterprises of 1986. We note the following two new elements.
- Investments in the form of "variable interest entities" (control over an enterprise by using contracts or agencies rather than by shareholding or other forms of ownership) will be subject to the foreign investment law

and therefore to the restrictions or prohibitions imposed by that law. The same applies to situations where a foreign party has control over an enterprise in China using contracts or trusts.

- Although the draft of the new Law emphasises that foreign investment will receive national treatment, there are restrictions and prohibitions on foreign investment in certain areas. For this purpose, the State Council is authorised to issue the Catalogue of Special Measures of Administration, i.e., the catalogue specifying the restricted and prohibited industries for foreign investment. For the restricted industries in the catalogue, foreign investors need to apply for investment permission (a license). Otherwise no license is required for foreign investment. The relevant department of the State Council will issue Guidelines on Permission Examination of Foreign Investment to provide the details.

QFIIs and RQFII's are Exempt From Non Resident Capital Gains Tax

- The exemption applies to sales made by QFIIs and RQFII's after 17 November 2014. Any sales before that date can still be taxed at 10 percent.

Strict Transfer Pricing Rules for Service Fees and Royalties

- In a move to implement the OECD's action plan on base erosion and profit shifting to tackle international tax avoidance, China's State Administration of Taxation (SAT) on March 20 issued Public Notice [2015] 16, providing tougher transfer pricing rules for the administration of services fees and royalties paid by Chinese companies to foreign related parties. It takes effect from the issuance date, 18 March 2015.
- Enterprises must comply with the arm's-length principle for expenses paid to foreign related parties. If those expenses are not at arm's length, they can be subject to a special tax adjustment up to 10 years after the tax year in which the transaction occurred.
- Payments to an overseas related party which has no substantial operation or activities, does not undertake functions or bear risks should not be deductible for CIT purpose.
- Where an enterprise makes service fee payments to its overseas related party, the service received by the enterprise should enable it to obtain direct or indirect economic benefits. It also lists out five specific scenarios as well as a catch-all general condition of service payments that should not be deductible for CIT purpose by the Chinese payer.
- It also denies deductibility of royalties if the recipient of the royalties has not contributed to the value of the IP.

International Tax Developments

- Japan. China's State Administration of Taxation (SAT) issued an announcement on 26 February 2015 with regard to Japan's local corporation tax which was introduced by Japan on 1 October 2014. The announcement declares that the China/Japan tax treaty applies to this new tax. As a result, the Japanese local corporation tax paid by a Chinese resident can be credited against the Chinese income tax.

HONG KONG

Budget 2015

- The Budget for 2015-16 was presented to the Legislative Council by the Financial Secretary on 25 February 2015. The tax-related proposals will, once they are enacted, apply from 1 April 2015. The main points are summarised below.

CORPORATE TAXATION

- Subject to a maximum of HKD 20,000 per case, a one-off reduction of 75 percent of the current profits tax for the year of assessment 2014-15 is proposed.
- Under specified conditions, interest for corporate treasury centres is proposed to be deductible under profits tax, and a reduction of 50 percent of the current

profits tax for specified corporate treasury activities is proposed.

- An extension of the profits tax exemption to private equity funds is proposed (this is also discussed under the separate heading in this bulletin).

PERSONAL TAXATION

- A one-off reduction of 75 percent of the current salaries tax and tax under personal assessment for the year of assessment 2014-15 is proposed, subject to a maximum of HKD 20,000 per case.
- The child allowance and the additional one-off child allowance in the year of birth are proposed to be increased from HKD 70,000 to HKD 100,000 from the year of assessment 2015-16.

Termination of Contract Payment NotTaxable

- In the Aviation Fuel Supply case, the Hong Kong court of final appeal has ruled that a lump sum received by a taxpayer on termination of a contract was on capital account and not on revenue account. Consequently the income was not taxable for the taxpayer.

Increased Minimum Wage

- On 16 January 2015, notice was gazetted to adjust the Statutory Minimum Wage (SMW) rate to HKD 32.5 per hour (up from the current HKD 30 per hour). It is anticipated that the new rate will come into effect on 1 May 2015. To reflect the change to the SMW rate, the current HKD 12,300 monthly cap (above which is not necessary to keep a written record of hours worked) will be increased to HKD 13,300 per month. The change has consequences for MPF contributions for employers and employees. Employers should take steps to update their payroll procedures to reflect this change.

PE Funds Tax Exemption

- Hong Kong's Legislative Council (LegCo) announced on 5 January 2015 that it will issue new tax legislation in the first half of 2015 to expand the scope of the current tax exemption of offshore funds managed by Hong Kong fund managers. It will include in the scope of tax exempt income, qualifying income earned from private companies (the present law excludes investments in private companies from the tax exemption). Furthermore it is proposed to include qualifying income earned by Hong Kong special-purpose vehicles (SPVs) owned by the offshore Private Equity (PE) Fund in the scope of the tax exemption.
- This is a significant development and it would offer excellent scope for tax planning for Hong Kong based investment managers of offshore PE Funds, who manage investments in private companies. They could then consider to establish Hong Kong SPVs for these investments. Given Hong Kong's increasing network of tax treaties (presently 32) and the good quality of some of these treaties (especially its treaties with mainland China, Japan and Indonesia), using a Hong Kong SPV may be tax efficient. Currently, many of such investments are increasingly structured through Singapore tax resident companies, as Singapore offers a similar tax exemption in its current income tax law provided the pertinent conditions are satisfied.
- The new tax legislation was gazetted by the government on 20 March 2015. The Bill was introduced into the Legislative Council on 25 March 2015.

Forms for Resident Status Certificates Revised

- On 29 January 2015, the Inland Revenue Department (IRD) released the revised forms for application for certificate of resident status by a company, partnership, trust or other body of persons.
- In Hong Kong, a certificate of resident is a document issued by the IRD to a Hong Kong resident who requires proof of Hong Kong residence status for the purpose of claiming tax benefits under Hong Kong's tax treaties.
- In general, the following persons can apply for a certificate of residence:
  - » An individual who ordinarily resides in Hong Kong;
  - » An individual who stays in Hong Kong for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment;
  - » A company, partnership, trust or other body of persons incorporated or constituted in Hong Kong; and
  - » A company, partnership, trust or other body of persons incorporated or constituted outside Hong Kong but centrally managed and controlled in Hong Kong.

- Previously, the application for a certificate of residence under tax treaties with mainland China by a company, partnership, trust or other body of persons was subject to two different forms in accordance with the place of incorporation in or outside Hong Kong. With effect from 1 February 2015, the same revised form applies to such application irrespective of whether the applicant is incorporated in or outside Hong Kong.

Unrealised Gains on Marketable Securities

- A case in 2013 where the Court of Final Appeal allowed a Hong Kong taxpayer company to defer Profits Tax on unrealised gains on the sale of marketable securities despite that it applied fair value accounting (mark to market at year end). The IRD has now stated that while they are still studying the case for future action, they allow taxpayers in similar cases to defer tax.

International Tax Developments

- Vietnam. On 8 January 2015, the amending protocol, signed on 13 January 2014, to the Hong Kong - Vietnam Income Tax Agreement (2008), entered into force. The protocol generally applies from 1 January 2016 for Vietnam and from 1 April 2016 for Hong Kong. Details of the protocol will be reported subsequently.

INDIA

Budget

The Budget for fiscal year 2015-16 was presented to Parliament by the Finance Minister on 28 February 2015.

CORPORATE TAX PROPOSALS (UNLESS OTHERWISE STATED, THEY SHOULD TAKE EFFECT FROM 1 APRIL 2015)

- The corporate tax rate is to be reduced from 30 percent to 25 percent over the next four years accompanied with rationalization and removal of various corporate tax exemptions and incentives. These changes will take effect from 1 April 2016 – for the fiscal year 2015/2016 however, the surcharge will be increased by 2 percent resulting in a slightly higher corporate income tax rate during this fiscal year (from 30.90-33.99 percent to 30.90-34.608 percent); the dividend distribution tax for foreign dividends will increase from 16.995 percent to 17.304 percent;
- Tax "pass through" will be allowed to both category I and category II alternative investment funds, so that the tax is levied on the investors and not on the funds;
- The capital gains regime for the sponsors exiting at the time of listing of the units of real estate investment trusts (REITs) and infrastructure investments trusts (INVITs), subject to the payment of securities transaction tax, will be rationalised;
- The permanent establishment (PE)/business connection rules will be changed so that the mere presence of a fund manager in India would not constitute a PE/business connection of the offshore fund in India;
- The general anti-avoidance rules (GAAR) will take effect two years later, hence as from 1 April 2017. From that date on GAAR will apply prospectively to investments made on or after 1 April 2017 (hence not on investments made prior to 1 April 2017);
- The rate of withholding tax on royalty and fees for technical services earned by a non-resident is to be reduced from 25 percent to 10 percent;
- The benefit of deduction for employment of new regular workmen under section 80JJAA of the Income tax Act 1961 (ITA) is to be extended to all business entities. Further, the eligibility threshold of minimum 100 workmen is to be reduced to 50;
- The wealth tax will be abolished and will be replaced by an additional surcharge of 2 percent on tax residents with a taxable income of at least INR 10 million;
- Section 911 Income Tax Act: no repeal of the retroactivity of the indirect transfer provisions in the ITA. It will apply if the aggregate value of the Indian assets is IDR 100 million (USD 1.6 million) and 50 percent of all the assets directly or indirectly owned by the foreign company. Furthermore, the foreign company must have at least

5 percent control over the intermediary company. If it applies, then the Indian tax will be computed in proportion to the Indian assets of the total assets.

- The threshold limit for the application of domestic transfer pricing rules will be increased from INR 50 million to INR 200 million;
- The minimum alternate tax (MAT) will be rationalized for foreign institutional investors (FIIs) and members of an association of persons (AOP);
- The benefit of a reduced rate of tax (i.e., 5 percent) under section 194LD (i.e., interest on rupee denominated bond or government security) of the ITA will be extended from 31 May 2015 to 30 June 2017;
- The rules of tax residency will be tightened: the place of effective management will be introduced and will apply if at any time a foreign company can be seen as having its place of effective management in India;
- The direct tax code (DTC) will not be implemented (because of the case law under the ITA) and
- The recommendations of the tax administration reform commission (TARC) will be implemented in the financial year 2015-16.

INDIRECT TAX PROPOSALS (UNLESS OTHERWISE STATED, TAKE EFFECT IMMEDIATELY)

- Goods and Services Tax (GST) Act is to be implemented from 1 April 2016;
- The standard *ad valorem* rate of basic excise duty is to be increased from 12 percent to 12.5 percent;
- The excise duty on footwear with leather uppers and having a retail price of more than INR 1,000 per pair is to be reduced from 12 percent to 6 percent;
- The online central excise and service tax registrations must be completed in two working days;
- The excise duty on sacks and bags of polymers of ethylene other than for industrial use will be increased from 12 percent to 15 percent and the excise duty on aerated drinks including mineral water will be increased from 12 percent to 18 percent.
- The service tax rate will be increased from 12.36 percent (including cess) to 14 percent;
- A *swachh bharat* cess at a rate of 2 percent will be levied on all or any of the taxable services (the applicable date yet to be announced); and
- The scope of the service tax has been broadened by including additional services.

UNDISCLOSED INCOME IN RELATION TO FOREIGN ASSETS

- An offence of concealing income and assets and evasion of tax in relation to foreign assets will be:
  - » Liable for prosecution with punishment of up to 10 years imprisonment;
  - » Non-compoundable;
  - » Not eligible for an application before the settlement commission;
  - » Liable for a penalty at 300 percent of the tax liability;
  - » Liable for the confiscation of unaccounted assets held abroad; and
  - » Liable for confiscation of an equivalent asset in India where the asset located abroad cannot be forfeited.
- Non-filing of a return or filing of a return with inadequate disclosure of foreign assets will be liable for up to seven years imprisonment.
- Income from undisclosed foreign assets or undisclosed income from any foreign asset would be taxable at the maximum marginal rate; and no deduction or exemption will be available.
- The beneficial owner or beneficiaries of foreign assets will be required to file an income tax return even if there is no taxable income.
- Abettors will also be liable for prosecution and penalties.
- The ITA is to be amended to prohibit acceptance or payment of an advance of INR 20,000 or more in cash for the purchase of immovable property.
- Quoting the Permanent Account Number (PAN) will be made mandatory for any purchase or sale exceeding INR 100,000.

Transfer Pricing

- The Mumbai Income Tax Appellate Tribunal has ruled in favour of the taxpayer in the Watson Pharma case that no location savings profits have to be included in the transfer pricing arrangement between associated companies if the parties have adhered to a transfer pricing analysis using Indian comparables.

Royalties

- The Delhi High Court has recently ruled that payments made to enable a broadcasting company in India to show live broadcasts are not royalties for Indian royalty withholding tax purposes. The decision is consistent with earlier decisions in this area, e.g., in the ESPN case.

Relationship with the USA

- India and the United States are presently working to clear a backlog of 200 mutual agreement cases before the United States and India can give the go ahead to taxpayers to pursue a bilateral Advance Pricing Agreement between the two countries. The refusal by India to effectively handle the pending mutual agreement cases has been a sticky point in the relationship between the two countries. The IRS is preparing for discussion pre-filing cases which began in the week of 23 March 2015.

INDONESIA

Tax Cooperation Between Singapore and Indonesia

- Singapore's IRAS is actively granting assistance to Indonesia's Directorate General of Taxation in support of Indonesian tax audits. The assistance includes formal information requests to Singapore resident service providers regarding the use of offshore entities managed through Singapore agents.
- IRAS is using its powers under Section 105F and 65B of the Income Tax Act to compel disclosure of information on offshore entities managed through Singapore corporate agents – we believe with a view to establishing either that (i) the offshore company is a related party of an Indonesian company (with the effect that the Indonesian tax authorities may determine the transfer pricing of any trades); (ii) the offshore company is managed through Indonesia (with the effect that the offshore company may be deemed to have a permanent establishment in Indonesia and subject to Indonesian income tax); and/or (iii) that the offshore company is a controlled foreign corporation of an Indonesian tax resident individual (with the effect that the Indonesian individual would be subject to personal tax on the profits of the controlled foreign corporation). The corporate agent is required by law to provide this information and is not able to refuse or provide misleading information.
- This directly affects any Indonesian business trading with Singapore entities or offshore entities managed through Singapore in circumstances where these could be linked to related parties of the Indonesian business. It may also affect Indonesian individuals who are legal or beneficial owners of property located or managed in Singapore to the extent not fully disclosed on their Indonesian tax forms.
- Active enquiries need to be handled sensitively based on a thorough review of the relevant circumstances. In many cases it may be too late to change the past, and the focus will need to be on minimising exposure. Where there are no active enquiries, Indonesian businesses which are trading through Singapore managed companies may wish to take a comprehensive look at their trading arrangements for compliance with domestic and international tax rules in advance of any potential enquiries.

New APA Regulation

- On 12 January 2015, the Ministry of Finance released regulation No. 7/PMK.03/2015 (PMK-07) on the implementation of advanced pricing agreements (APAs) in Indonesia. PMK-07 provides guidance on the processes that the Directorate General of Taxation (DGT) should use to implement APAs, as well as changes to prior APA-related criteria released by the DGT. The DGT will release a more detailed implementation regulation on the contents of PMK-07 at a later date.
- PMK-07 states that the steps involved in the processing of APAs by the DGT are:
  - Once the formal APA application is submitted, the DGT will form an APA discussion team comprising personnel from the DGT;

- » The discussion team will then submit its APA recommendations to the DGT;
- » A quality assurance team will then be formed by the DGT, which will review these recommendations to determine the negotiating position of the DGT; and
- » The outcome of the APA negotiations with the taxpayer (for unilateral APAs) or the other taxing authority (for bilateral APAs) will be either an agreement on the APA or a disagreement and cancellation of the APA.

- PMK-07 also introduces refinements to APA-related criteria released previously by the DGT. These refinements include:
  - » A requirement that taxpayer's can only submit an APA application when they have been operating or conducting business in Indonesia for at least three years;
  - » A requirement that an APA can cover only three fiscal years for a unilateral APA or four fiscal years for a bilateral APA;
  - » Increased information to be included in pre-filing requirements;
  - » A requirement that the pre-filing application must be submitted at least six months before the start of the fiscal year that is to be covered by the APA, and the formal APA application must be submitted no later than one month before the fiscal year that is to be covered by the APA;
  - » Guidance on the processes for APA renewal; and
  - » Guidance on what the annual compliance requirements are for an agreed APA.

Mutual Agreement Procedure (MAP)

- Through Ministry of Finance regulation No. 240/PMK.03/2014, the authorities have refined the previous MAP regulation, with effect from 22 December 2014.

VAT on Inbound Supplies of Digital Goods

- Following the example of Japan and Korea, Indonesia has announced through its finance minister that it will introduce a VAT on the payment for digital supplies of inbound goods.

Amendment of the Tax Payable when Appealing

- Presently, a taxpayer can appeal without paying the disputed tax. If the taxpayer ultimately loses the appeal, the disputed tax must be paid plus a significant penalty. In practice, taxpayers are generally successful in the appeal stage (not in the objection phase). It is now being proposed that the disputed tax must be paid upfront in order to file the objection. The tax will be refunded if and when the taxpayer ultimately wins in court. In theory, the authorities must pay an interest to the taxpayer if the latter wins in court, but in practice this appears difficult to enforce. Consequently, this will be a significant cash flow disadvantage to taxpayers.

Tax Audit Focus for 2015

- The Director General of Taxation issued circular SE-09/PJ/2015 on 13 February 2015 in which he tripled the budgeted revenues of tax audits and outlined the following targets for tax audits for 2015:

Corporate taxpayers

- » Those who are suspected of abusing tax treaties;
- » Those who have transfer pricing transactions with overseas companies and
- » Companies in oil and gas or coal mining activities

Individuals

- » Those of the middle or high income groups;
- » Those who are influential; and
- » Professionals

Removal of Administrative Penalties onTax Debts

- The Ministry of Finance issued Regulation No. 29/PMK.03/2015 on 13 February 2015 to remove administrative penalties (which is 2 percent per month of the tax due, with a maximum of 24 months) against taxpayers that settle their tax debts before 1 January 2016. This rule is applicable for existing tax debts that arose before 1 January 2015.
- To request for this relief, the taxpayer must submit a written request to the Director-General of Taxation (DGT). The taxpayer must meet the following requirements, amongst others:
  - » The request must be submitted in the Indonesian language;

» Proof of payment of the tax debt must be attached;
» The request must be submitted at the tax office where the taxpayer is registered; and
» Requests for removal of administrative penalties can be made at most only twice by each taxpayer. The second request must be made within three months from the date of the DGT's decision for the first request.

International Tax Developments

- Mauritius. According to a press release of 12 March 2015, published by the Indian government, India and Mauritius have agreed to continue discussions to revise the India - Mauritius Income Tax Treaty (1982), following a two day visit between officials in Mauritius from 11 to 12 March 2015. Further details will be reported subsequently.

JAPAN

Tax Reform Plan 2015

CORPORATE TAXATION

- The proposed changes to the tax law as announced on 30 December 2014, were presented to the Diet on 17 February 2015. The main details of the measures regarding corporate taxation, which apply from fiscal year 2015 onwards unless otherwise indicated, are summarised below.
- The corporate tax rate is reduced for fiscal years (FYs) starting on or after 1 April 2015.
  - » The national corporate income tax rate is reduced from 25.5 percent to 23.9 percent (FY 2015). The national corporate income tax rate for small and medium-sized companies, public interest corporations and cooperative unions is reduced from 19 percent to 15 percent for income not exceeding JPY 8 million and will be extended for two years.
  - » The local corporate business tax rate is reduced from 7.2 percent to 6.0 percent and 4.8 percent (for FYs 2015 and 2016 respectively).
  - » The effective corporate tax rate (national and local) is reduced from 34.62 percent to 32.11 percent and 31.33 percent (for FYs 2015 and 2016 respectively). The government aims to reduce the rate to 31.33 percent or below for FY 2016, and below 30 percent for subsequent years.
- The cap on losses that may be carried forward to offset against subsequent taxable income will be reduced from 80 percent to 65 percent for FYs beginning on or after 1 April 2015 to 31 March 2017, and further to 50 percent for the FY beginning on or after 1 April 2017.
- The exemption on dividends received is reduced. Currently, a 100 percent exemption applies to dividends received if the receiving corporation holds 25 percent or more of the shares of the paying corporation. A 50 percent exemption applies in all other cases. From 1 April 2015, the 100 percent exemption on dividend income received will only apply if the recipient holds more than 33.3 percent of the shares of the payer. If the recipient holds 5 percent or less of the shares of the payer, then only 20 percent of the received dividends will be exempted. In all other cases a 50 percent exemption applies. Special conditions apply for securities investment trusts (other than bond investment trusts) and receiving insurance companies.
- In local corporate business tax, size-based tax (i.e., value-added-based tax plus capital-based tax) is enlarged from 1/4 to 1/2 and income-based tax shrinks from 3/4 to 1/2.
  - » The value-added-based tax rate is increased from 0.48 percent to 0.72 percent for FYs from April 2015 to March 2016, and to 0.96 percent for FY April 2015.
  - » The capital-based tax rate is increased from 0.2 percent to 0.3 percent for FYs from April 2015 to March 2016, and to 0.4 percent for FY April 2015.
  - » The income-based tax rate is decreased from 7.2 percent for income exceeding JPY 8 million to 6.0 percent for FYs from April 2015 to March 2016, and to 4.8 percent for FY April 2015.

INDIVIDUAL TAXATION

- Exit tax will be introduced from July 2015. When a resident individual with stocks, securities or derivatives of JPY 100 million and above moves out of Japan (i.e., has no domicile in Japan), the financial assets are deemed to be sold at fair market value and will be taxed on the gains or losses at that moment. However, payment of the exit tax can be postponed for five or ten years if the departing individual appoints a tax agent and provides proof of collateral. The tax will be annulled should the individual subsequently return to Japan within five years and he continues to hold the same investments on which the deemed tax was paid.
- Proper documentation has to be filed in order to claim dependent exemptions in an individual income tax return if the dependants are living abroad.
- Exemption from gift tax for gifts to lineal descendants in order to acquire energy-saving and earthquake-absorbing houses will be increased from JPY 10 million in 2014 to JPY 15 million in 2015 (JPY 30 million from October 2016 to September 2017, JPY 15 million from October 2017 to September 2018, and JPY 12 million from October 2018 to June 2019). Exemption for gifts to acquire ordinary houses will also be increased.
- Exemption from gift tax for gifts up to JPY 10 million per donee (from age 20 to 50) on contributions to a qualified trust from their parent or grandparents for the costs of marriage, childbearing and childcare. This is effective from 1 April 2015 to 31 March 2019.

INTERNATIONAL TAXATION

- To prevent double non-taxation, from 1 April 2016, dividends received from a foreign subsidiary will not be exempt from taxable income if the paying subsidiary has received a deduction for the payment in its country of residence.
- The implementation of automatic exchange of information on financial accounts of non-residents will take effect from 1 January 2017.
- The trigger tax rate in controlled foreign company (CFC) legislation will be revised from “20 percent or less” to “less than 20 percent”.
- The scope of exemption for “controlled company” under the CFC legislation has been revised with regard to qualifying as a regional headquarters or as an operating holding company.

CONSUMPTION TAX

- The planned tax rate increase from 8 percent (national rate of 6.3 percent and local rate of 1.7 percent) to 10 percent (national rate of 7.8 percent and local rate of 2.2 percent) will be postponed from 1 October 2015 to 1 April 2017. Also, the clause in the bills that relates to the implementation of the tax increase will be deleted.
- The coverage of consumption tax is extended to cross-border supplies of electronic commerce, which will be subject to consumption tax from 1 October 2015 onwards. The reverse charge method is introduced for B2B transactions of domestic business customers receiving B2B digital supplies from foreign suppliers. Registration of foreign businesses is introduced and upon satisfying the conditions, registration can be submitted from 1 July 2015.

KOREA

Anti Avoidance / Lone Star

- Korean law firm Kim & Chang reported that as a sequel to its decision in June 2014 concerning the sale of 13.6 percent interest in Korea Exchange Bank (KEB) by Lone Star in 2007 (June 2014 Decision), the Seoul Administrative Court, on November 21, 2014, handed down a decision annulling approximately 46 percent of the withholding taxes imposed on capital gains realized by Lone Star from the sale of remaining 51 percent interest in KEB in 2012 (November 2014 Decision).
- The structure of Lone Star’s investment in KEB involves various entities including one US limited partnership, one Bermudan corporation, and six Bermudan limited partnerships (collectively identified as the “Upper-Tier

Investors" by the Court), which indirectly held 100 percent ownership interest in a Belgian holding company via intermediary investment vehicles in Bermuda and Luxembourg. The Belgian holding company had held 64.6 percent interest in KEB and later sold it in two separate transactions: (i) 13.6 percent interest in 2007 in the stock exchange via a securities brokerage company ("2007 KEB Sale," to which the June 2014 Decision relates); and (ii) 51 percent interest in 2012 in a private sale ("2012 KEB Sale," to which the November 2014 Decision relates).

- In the November 2014 Decision, the Court held, *inter alia*, that: (i) the Belgium holding company and other intermediary investment vehicles are conduits and not the beneficial owners (BOs) of the capital gains realised from the 2012 KEB sale and hence the relevant tax treaties are inapplicable; (ii) instead, the Upper-Tier Investors are the BOs; and (iii) because all Upper-Tier Investors, except for the US limited partnership, are tax residents of Bermuda, which does not have a tax treaty with Korea, they are subject to withholdings under Korean domestic tax law on the capital gains; (iv) under the Korea-US tax treaty, the US limited partnership (one of the Upper-Tier Investors, 99 percent of whose interest was owned by US resident partners) should be treated as a resident of the US to the extent its partners are subject to US tax as residents of the US and thus capital gains attributable to the 99 percent interest in US limited partnership should be exempt under Korea-US tax treaty. As a result, approximately 46 percent of the original withholding tax assessment by the Korean tax authority in accordance with domestic tax law has been cancelled.
- The November 2014 Decision deals with a transaction completed prior to the enactment of the Offshore Investment Vehicle (OIV) regime, whereby the ultimate investors may be treated as BOs for the withholding tax purposes, and does not fully embrace the logic underlying the OIV regime. Instead, adopting the logic of recent Supreme Court decisions, the Administrative Court held that the Upper-Tier Investors (i.e., the fund entities) are the BOs of the capital gains at issue. The November 2014 Decision differs from the June 2014 Decision in that, with respect to the application of Korea-US tax treaty to the US limited partnership, the November 2014 Decision follows the Korean Supreme Court decision in June 2014, which treated a US limited liability company, a pass-through entity in the United States, as US resident to the extent that its members are US residents whereas the June 2014 Decision was based on the presumption the US limited partnership is fully entitled to the Korea-US tax treaty.
- The industry wishes to see as soon as possible an official resolution of the uncertainty relating to the interplay between the OIV regime and the recent case laws involving beneficial ownership issues in private equity fund context.

Arm's Length Interest Rates on Intercompany Loans

- Following an internal audit conducted by the Board of Audit and Inspection (BAI) on the National Tax Service (NTS) in 2014, the BAI concluded that tax audits concerning interest rates applied in intercompany funding transactions are undertaken in an arbitrary and inconsistent manner, despite the existence of a provision stating that an arm's length interest rate of an intercompany funding transaction "shall be the one that is expected to be applied in a usual funding transaction between unrelated third parties and shall be determined considering: (i) the magnitude of the loan extended; (ii) its maturity; (iii) the existence of any guarantee; and (iv) the credit rating of the borrower".
- In the wake of such comments made by the BAI, the NTS assigned regional tax offices to send out notices to approximately 100 companies (selected based on the size of intercompany loans) from the end of 2014 onwards. These taxpayers were asked to reasonably explain and support the arm's length nature of the interest rate applied in the intercompany loan. Failure to do so would result in the relevant regional tax office urging the taxpayer to file an amended tax return. In the case of non-compliance to such a request, it is anticipated that the regional tax office will attempt to impose an assessment according to NTS's own calculation method for an arm's length interest amount.

Customs Transfer Pricing Adjustments

- As a sign of increased attention to transfer pricing, the Korean customs authorities are reported to have settled a very significant customs duty adjustment case for a beverage company which had underreported the value of their product when imported into the country.

Tax Residence for Individuals

- With effect from 1 January 2015, the income tax definition of tax residency for individuals has been amended. Individuals living in Korea will qualify as tax residents if they reside in the country for at least 183 days over two consecutive years (down from 365 days previously). In practice the effect of this change will likely be small because of the special treatment of foreigners who will only be taxed on Korea sourced income if they have been a resident of the country for less than five of the last 10 years. Foreign source income will be taxable only when remitted to Korea or paid in Korea.

Foreign Technicians or Engineers

- Foreigners who are engineers or technicians working at a qualifying R&D centre in Korea of a foreign company or working under a qualifying Technology Inducement Contract will only be taxed on 50 percent of their wages. This treatment will apply until 31 December 2018.

Use of Patents Registered Outside of Korea is Not Subject to Tax

- The Korean Supreme Court ruled that payments made for the use of patents registered outside Korea for domestic use is not considered Korean-source income. Thus, royalty payments made by Korean-based payers to foreign persons for the use of certain patents registered outside Korea for manufacturing, distribution or other functions within Korea is not subject to tax in Korea. As a result, some US taxpayers should consider seeking refund claims for taxes withheld on payments from Korea.

International Developments

- PRC. The Social Security agreement between the PRC and Korea entered into force on 16 January 2013. The agreement generally applies from 16 January 2013.
- Bermuda. On 13 February 2015, the Bermuda - Korea Exchange of Information Agreement (2012) entered into force. The agreement generally applies from 13 February 2015.
- Hong Kong. On 12 December 2014, Hong Kong ratified the Hong Kong - Korea (Rep.) Income Tax Agreement (2014).

MALAYSIA

Goods and Services Tax (GST)

- The GST Act 2014 took effect on 1 April 2015. Taxable companies are required to register for GST if their taxable turnover exceeds the prescribed threshold (we refer to the previous edition of this bulletin). Under the GST Act 2014, any person who makes taxable supplies in Malaysia and whose annual turnover exceeds the threshold of MYR 500,000 must be registered. On 2 February 2015, the Royal Malaysian Customs Department (RMCD) announced that the registration deadline for GST was extended to 28 February 2015. Companies that are required to be registered, but fail to do so by the stipulated date, will be registered by force and may be liable to a maximum fine of MYR 30,000 or imprisonment of up to two years, or both.

Mutual Agreement Procedure Guidelines Issued

- On 5 December 2014, the Inland Revenue Board of Malaysia (IRBM) issued the mutual agreement procedure (MAP) guidelines. The purpose of the guidelines is to provide guidance to persons that fall within the scope of an effective tax treaty that Malaysia has with its treaty partners, on obtaining assistance from the Malaysian competent authority (CA). This assistance is provided to taxpayers in order to try to resolve international tax disputes involving double taxation and inconsistencies in the interpretation and application of a tax treaty.
- Where a Malaysian resident considers that the actions of Malaysia and/or its treaty partner are not in accordance with the provisions of the tax treaty, the resident may

request MAP assistance. A taxpayer resident in Malaysia may initiate the MAP for problems arising from
  » Transfer pricing adjustments;
  » Determinations of resident status;
  » Withholding taxes;
  » Attributions of profits to permanent establishments; and
  » Characterisations or classifications of income.

- Most of the Malaysian tax treaties include time limits with regard to MAP requests. Where the time limit for MAP is not specified in the relevant treaty, the Malaysian CA will adhere to a time limit of three years from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty.
- An application should be made in writing to both CA offices of the Ministry of Finance and the IRBM. The request should contain all relevant information, including but not limited to:
  » Relevant data concerning the taxpayer;
  » Relevant data concerning the other treaty partner involved in the request;
  » Facts and information of the case;
  » Data of the relevant tax periods;
  » A summary of the facts and analysis of the issues;
  » Information on whether the taxpayer has filed any notice of appeal or objection;
  » A consent statement for any person acting on behalf of the taxpayer in the request;
  » Information on issues currently or previously considered as part of an advance pricing agreement (APA) in Malaysia or in the country of a treaty partner; and
  » A copy of the settlement or agreement reached with the treaty partner that may affect the MAP process.
- The CA may deny any request if the taxpayer fails to provide complete and accurate information. Further information and documents may additionally be required from the CA during the MAP process.
- In cases where the CA rejects the assistance request, a notification with reasons will be provided to the taxpayer. When the request of a taxpayer is approved by the CA, the process is initiated. The taxpayer has the right to be informed of the status during the entire MAP process.
- Once the agreement has been reached via a MAP, the taxpayer will be notified in writing of the date and contents of the agreement. The taxpayer is free to accept or reject the outcome of the agreement.
- The taxpayer may also withdraw its application at any point before the tax authorities of both countries reach an agreement.
- The MAP process may be terminated under the following circumstances, including but not limited to:
  » The issue raised is out of scope of the tax treaty;
  » The application and/or documents contain insufficient or incorrect information;
  » The time limit for retrieval of the necessary documents has lapsed;
  » When the taxpayer rejects the proposed agreement reached in the MAP; and
  » When no agreement can be reached in the MAP.
- A request for CA assistance does not suspend the requirement to pay the tax liability or collection action by the IRBM.

FATCA Draft Guidance Notes

- On 30 June 2014, Malaysia reached an agreement on the Model 1 intergovernmental agreement (IGA) with the United States (US) to implement the Foreign Account Tax Compliance Act (FATCA) (*see* United States-8, News 2 July 2014). The IGA is still in the process of finalisation and is expected to be signed before 30 June 2015.
- Under the terms of the IGA, all reporting Malaysia-based financial institutions (MYFIs) are required to provide information on financial accounts belonging to US persons to the Inland Revenue Board of Malaysia (IRBM). Thereafter, that information will be exchanged with the US Internal Revenue Service (IRS).
- In line with the above, the IRBM published the draft guidance notes on compliance requirements for the Malaysia-US IGA on FATCA on 15 March 2015. The objective of the guidance notes is to provide guidance to MYFIs in meeting their due diligence and reporting obligations under the FATCA enacted by the United States. The guidance notes are also relevant to other businesses, entities and persons in Malaysia affected by FATCA.
- The scope of the guidance notes covers the following:
  » The key implementation milestones;

- » The financial institutions (FIs) that are required to report;
- » The financial accounts to be reported;
- » Exempt FIs, account holders and financial accounts;
- » The required procedures for identification of US reportable accounts;
- » The information to be reported; and
- » The timeline for reporting and how to submit the information.

The draft is open to public comments until 15 April 2015.

PHILIPPINES

BIR Priority Programmes for 2015

- On 13 January 2015, the Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular No. 3-2015 that outlined 27 priority programmes and initiatives to achieve the internal revenue taxes target for 2015. All BIR offices are to align their activities, projects and other undertakings with these priority programmes to sustain revenue collection efficiency.
- Transfer pricing programme. This programme aims to complement the transfer pricing guidelines issued through Revenue Regulations No. 2-2013 dated 23 January 2013 (see Philippines-1, News 25 January 2013). The proposed transfer pricing programme will include the crafting or finalizing of related issuances on transfer pricing, such as:
  - 1. - 2. Revenue Regulations on Advance Pricing Agreements (APA);
  - 3. - 4. Revenue Memorandum Order on Transfer Pricing Documentations; and
  - 5. - 6. Revenue Memorandum Order on Transfer Pricing Risk Assessment.
- Industry issues resolutions programme. This programme was introduced by the Large Taxpayers Service (LTS) in June 2014. For this purpose, the LTS Core Group was created to address and tackle any industry tax issues and concerns of large taxpayers. Several areas of discussion for resolution by the LTS Core Group include the crafting of appropriate revenue issuances or amendments to existing issuances.

Tax Exemption Threshold for Employees' Bonuses Increased

- With effect from 12 February 2015, the tax exemption threshold for employees' bonuses has been increased from PHP 30,000 to PHP 82,000. The tax exemption covers all bonuses, including the 13th month pay and Christmas bonus.

SINGAPORE

Budget 2015

The Budget for 2015 was presented to Parliament by the Finance Minister on 23 February 2015.

CORPORATE TAXATION (UNLESS OTHERWISE INDICATED, CHANGES WILL APPLY FROM THE YEAR OF ASSESSMENT (YA) 2016)

- A 30 percent corporate income tax rebate capped at SGD 20,000 per YA will be granted to all companies for YAs 2016 and 2017.
- The following is about tax incentives:
  - » A tax deduction for qualifying donations made in 2015 to institutions of a public character and other qualifying recipients will be increased to 300

percent. The rate will revert to 250 percent for qualifying donations made from 1 January 2016 until 31 December 2018.

- » The Production and Innovation Credit (PIC) Bonus will lapse after YA 2015.
- » The Mergers & Acquisition (M&A) scheme will be extended until 31 March 2020 with the following changes that will take effect from 1 April 2015:
  - o Revised tax benefits under the M&A scheme – the M&A allowance rate will be increased to 25 percent of the value of qualifying acquisitions subject to a revised cap of SGD 20 million per YA. The stamp duty relief on the transfer of unlisted shares will be capped at SGD 20 million on the value of qualifying M&A deals, which works out to a cap of SGD 40,000 of stamp duty per financial year.
  - o Revised shareholding eligibility tiers – the minimum amount of ordinary shares that an acquiring company must acquire in a target company, whether directly or indirectly, have been revised to the following:
    - > At least 20 percent shareholding in the target company (if the acquiring company's original shareholding in the target company was less than 20 percent), subject to conditions; or
    - > More than 50 percent ordinary shareholding (if the acquiring company's original shareholding in the target company was 50 percent or less).

- The existing 75 percent shareholding eligibility tier will be removed. Acquisitions that result in the acquiring company owning at least 75 percent ordinary shareholding will no longer qualify under the M&A scheme.
- The 12-month look back period for step acquisitions that straddle across financial years will be removed.

More details on the above changes will be released by May 2015.

- The qualifying expenditure under the double tax deduction for internationalisation scheme will be enhanced to include manpower expenses incurred for Singaporeans posted to new overseas entities capped at SGD 1 million per approved entity per year, subject to conditions, applicable for expenses incurred from 1 July 2015 to 31 March 2020. International Enterprise Singapore (IE) will release further details by May 2015.
- The International Growth Scheme (IGS) will be introduced, whereby qualifying Singapore companies will enjoy a concessionary tax rate of 10 percent for up to five years on their incremental income from qualifying activities. This scheme will be administered by IE and the approval window will be from 1 April 2015 to 31 March 2020. Further details will be released by May 2015.
- The Angel Investors Tax Deduction (AITD) scheme will be extended until 31 March 2020. New qualifying investments that are co-funded by the government under the Start-up Enterprise Development Scheme (SEEDS) and the Business Angel Scheme (BAS) made from 24 February 2015 onwards will also qualify for AITD.
- A 5 percent concessionary tax rate will be accorded to approved venture capital fund management companies managing funds qualifying under section 13H of the Income Tax Act (ITA), on their specified income. The approval window is from 1 April 2015 to 31 March 2020. The Pioneer Service Incentive will be withdrawn from 1 April 2015 as venture capital is no longer a pioneering activity in Singapore, although Pioneer certificates already issued will not be affected by this change. The tax exemption under section 13H will be reviewed on 31 March 2020.
- The Investment Allowance – Energy Efficiency (IA-EE) scheme and IA-EE for green data centres will be combined into one scheme known as the Investment Allowance – Energy Efficiency Scheme from 1 March 2015 and extended until 31 March 2021. This scheme will be administered solely by the Economic Development Board (EDB). More details will be released by the EDB by March 2015.
- The Development and Expansion Incentive for International Legal Services (DEI-Legal) will be extended until 31 March 2020, with the same existing conditions.
- The Approved Foreign Loan (AFL) incentive will be reviewed on 31 December 2023. Additionally, the minimum loan requirement of the AFL incentive will be increased to SGD 20 million from 24 February 2015.
- The approved royalties incentive will be reviewed on 31 December 2023.

- The Writing Down Allowance (WDA) scheme under Section 19A of the ITA will be reviewed on 31 December 2020.
- The tax concession under the Monetary Authority of Singapore (MAS) Notices 612 (subject to caps as stipulated under section 14I of the ITA), 811 and 1005 will be extended to YA 2019 or 2020, depending on the financial year of the bank or finance company.
- The tax incentive schemes for insurance businesses will be extended until 31 March 2020 and will be known as the Insurance Business Development Incentive. The concessionary tax rate remains at 10 percent. A renewal framework will be introduced from 1 April 2015, and MAS will release further details by May 2015.
- The Enhanced-Tier Fund Tax Incentive Scheme will also apply to special purpose vehicles (SPVs) held by the master fund (subject to conditions) with effect from 1 April 2015. MAS will release further details by May 2015.
- Tax concessions for real estate investment trusts (REITs) will be extended until 31 March 2020. The stamp duty concessions will lapse after 31 March 2015, while all other conditions remain the same. MAS will release further details by May 2015.
- The Maritime Sector Incentive (MSI) has been enhanced and extended until 31 May 2021. Some of the changes to MSI that will take effect from 23 February 2015 are:
  - » The automatic withholding tax exemption will now cover finance leases, hire-purchase arrangements and loans to finance equity injections into wholly owned SPVs, or intercompany loans to wholly owned SPVs for the SPVs' purchase/construction of vessels, containers and intermodal equipment;
  - » The definition of qualifying ship management activities under this incentive will be updated to keep pace with industry changes; and
  - » The MSI-Singapore Registry of Ships (MSI-SRS) and MSI–Approved International Shipping Enterprise (MSI-AIS) award will now cover mobilisation fees, demobilisation fees, holding fees and incidental container rental income of qualifying shipping operations. The Maritime Port Authority of Singapore will release further details by May 2015.
- The following incentives will be discontinued:
  - » The concessionary tax rate on income derived from offshore leasing of machinery and plant (section 43I of the ITA) will be withdrawn from 1 January 2016;
  - » The Approved Headquarters Incentive (section 43E of the ITA) will be withdrawn from 1 October 2015; and
  - » The tax concession on royalties and other payments from approved intellectual property or innovation (section 10(16) of the ITA) will be withdrawn from YA 2017.

INDIVIDUAL TAXATION

- A new income tax rate structure will take effect from YA 2017 with a maximum rate of 22 percent on annual taxable income exceeding SGD 320,000.
- A personal income tax rebate of 50 percent capped at SGD 1,000 per taxpayer will be granted to all tax resident individuals for YA 2015.
- An individual who derives passive rental income from residential property in Singapore may claim a specified amount of rental expenses (based on 15 percent of the gross rental income) in lieu of claiming the actual amount of deductible expenses incurred (excluding interest expenses). This change, however, does not apply to rental income derived by an individual through a partnership in Singapore and from a trust property. Further details of this change will be released by May 2015.
- Income derived by non-tax resident mediators for mediation works carried out in Singapore from 1 April 2015 to 31 March 2020 will be exempt from tax.
- The current tax exemption on income derived by non-residents on or after 3 May 2002 from arbitration work carried out in Singapore will be reviewed on 31 March 2020.
- The self-employed tax relief cap will be raised to SGD 37,740 from YA 2017 onwards.

GOODS AND SERVICES TAX

- The Inland Revenue Authority of Singapore (IRAS) will simplify the pre-registration claim rules to allow newly GST-registered business to claim pre-registration GST in full on the following goods acquired within six months before the GST registration date of the business:
  - » Goods held by the business at the point of registration; and
  - » Property rental, utilities and services that are not

directly attributable to any supply made by the business before GST registration. This change will take effect from 1 July 2015. IRAS will release further details by June 2015.

INCENTIVES

- The GST remission for listed real estate investment trusts (REITs) and registered business trusts (RBTs) in the infrastructure business, ship leasing and aircraft leasing sectors will be extended until 31 March 2020. Additionally, the listed REITs and RBTs will be allowed to claim the GST on business expenses incurred to set up special purpose vehicles (SPVs) that are used solely to raise funds for the REITs or RBTs, and that do not hold qualifying assets of the REITs and RBTs, directly or indirectly. These REITs and RBTs will also be allowed to claim the GST on the business expenses of such SPVs. The enhancement will be effective from 1 April 2015 until 31 March 2020. Further details will be released by March 2015.

OTHER MEASURES

- The CPF salary ceiling will be increased from SGD 5,000 to SGD 6,000.

FATCA Agreement with USA

- On 17 March 2015, the Inland Revenue Authority of Singapore (IRAS) issued an e-Tax Guide to provide guidance to businesses, entities and persons affected by the intergovernmental agreement (IGA) that Singapore signed with the United States for implementation of the Foreign Account Tax Compliance Act (FATCA).
- The Singapore-US IGA was signed on 9 December 2014 and entered into force on 18 March 2015.
- The e-Tax Guide covers the main aspects of due diligence and reporting requirements under the IGA that include the following:
  - » Schedule of key implementation steps;
  - » The financial institutions (FIs) that must report;
  - » The account holders and US reportable accounts;
  - » Exempt FIs and excluded financial accounts;
  - » The due diligence procedures required to be performed by reporting Singapore FIs to identify the US reportable accounts;
  - » The information to be reported; and
  - » The timeline for such reporting.

Transfer Pricing

- On 6 January 2015, the Inland Revenue Authority of Singapore (IRAS) issued revised transfer pricing (TP) guidelines. The 2015 TP Guidelines are generally in line with the OECD Transfer Pricing Guidelines (2010) as well as some relevant areas of the Base Erosion and Profit Shifting (BEPS) initiative.

International Tax Developments

- France. On 16 January 2015, Singapore signed a new double tax treaty with France. It is the second tax treaty between the countries and contains reduced withholding tax rates compared with the current tax treaty. Dividends are subject to 5 percent or 15 percent dividend withholding tax, depending on the percentage ownership (the lower rate applies to ownership of 10 percent or more) and provided that the recipient of the dividends is the beneficial owner of the dividends. Interest is generally subject to only 10 percent withholding tax whereas royalties are exempt from withholding tax except for film-royalties and fees for commercial experience. The treaty contains a general time threshold to avoid that the services or projects (as defined) will constitute a permanent establishment in the source country. Interestingly, aside from a remittance clause, the treaty contains an anti-abuse provision which denies the benefits of the treaty if the main purpose of a transaction is to benefit from the tax treaty and if this breaches the spirit and purpose of the treaty itself. Once ratified, the treaty can take effect at the start of the next calendar year.
- Uruguay. On 16 January 2015, Singapore signed a new tax treaty with Uruguay. It is the first tax treaty between the countries. It contains a generous 270 days time test for projects below which a project will not be subject to income tax in the source country. For services, the time test is 183 days in any twelve-month period. The treaty does not contain any specific anti-abuse clauses and reduces dividend withholding tax to either 5 percent or 10 percent (with the lower rate applying to at least 10 percent ownership cases). Interest payments are subject to 10 percent withholding tax and royalties (as defined) are subject to 5 percent (copyrights and film royalties) or 10 percent withholding tax. Interestingly, the treaty does not contain a remittance clause, which is

usually found in most of Singapore's tax treaties, and there is a Most Favourable Nation clause in the protocol to the treaty with respect to dividends and interest, enabling Singapore investors to benefit from the lower withholding taxes provided under Uruguay's other tax treaties.

TAIWAN

Suspension of Additional Capital Gains Tax on Sale of Shares

- It was reported on 18 January 2015 that Taiwan's Legislative Yuan recently unanimously passed an amendment to the Income Tax Act, postponing for three years the imposition of an additional individual capital gains tax on the sale of shares that was scheduled to begin on 1 January 2015.
- Before the amendment, resident individuals who sell more than TWD 1 billion (about USD 31.9 million) in shares listed on the Taiwan Stock Exchange (TAIEX), traded on the over-the-counter (OTC) market, or registered on the emerging market board would have had to choose between paying an additional 0.1 percent tax on the portion of gross sales exceeding the TWD 1 billion threshold or a flat 15 percent net CGT on all sales. The so-called Whale Clause that permits individuals to choose the rate of tax imposed on gains from their sales of shares was introduced as an amendment to article 14-2 of the ITA in 2013. The amendment passed by the Legislative Yuan on 26 December 2014, postponed the effective date of the clause to 1 January 2018.

AMENDMENTS TO INDIVIDUAL INCOME TAX

- The individual income tax (IIT) has been amended, and the main amendments, which apply from 2015 onwards, are as follows:
  - » The top rate of IIT has been increased from 40 percent to 45 percent on taxable income over TWD 10 million;
  - » The standard deduction has been increased from TWD 79,000 to TWD 90,000 for singles, and from TWD 158,000 to TWD 180,000 for couples;
  - » The special deductions for salary earners and disable persons have been increased from TWD 108,000 to TWD 128,000; and
  - » The imputation system has been changed from full-credit to half-credit for the dividends distributed during 2015, which means that only 50 percent of corporate income tax paid can be credited to IIT (the current corporate tax rate is 17 percent and the credit rate is reduced to 8.5 percent). The change will raise the effective tax rate on the dividend income of an individual shareholder from 40 percent to 53.5 percent (45 percent + 8.5 percent). The Ministry of Finance of Taiwan stated that the amendment to the imputation system reflects the tax policy of the government on the increase of tax burden for wealthy individuals and meets social expectations.

INTERNATIONAL TAX DEVELOPMENTS

- Austria. Details of the Austria-Taiwan Income Tax Agreement (2014), signed on 12 July 2014, have become available. The maximum rates of withholding tax are 10 percent on dividends, interest (certain exceptions apply) and royalties.

THAILAND

Tax Incentives for Headquarter Companies and Trading Companies

- The Thai cabinet has in January 2015 approved the new criteria for tax incentives for International Headquarter Companies (IHQ) and International Trading Companies (ITC). The approval still requires a Royal Decree before it will take effect.
- The tax incentive for IHQs would comprise a specially reduced 15 percent personal income tax rate for expatriates working for the company, a tax exemption on dividends from subsidiaries, a dividend withholding tax exemption on dividends paid by the IHQ and a 10 percent corporate income tax rate on qualifying intercompany service fee income earned by the IHQ. In addition, there will be non-tax legal privileges for such companies, such as inter alia 100 percent foreign ownership.
- The tax incentive for ITCs will include an income tax exemption on intercompany trade of product which originates from outside Thailand and is sold to buyers outside Thailand with no goods passing through Thailand. There will be a 10 percent corporate income tax rate on the sale by the ITC of Thailand originated raw materials to overseas associated companies, who require the raw materials for manufacturing purposes. The ITC will be exempt from dividend withholding tax and expats working for the ITC will be taxed at a rate of only 15 percent. As with the IHQs, the ITC will be eligible for non-tax legal privileges.

VIETNAM

New Investment Law

- The National Assembly recently adopted the Law on Investment (LoI) which will take effect on 1 July 2015. The LoI specifies that investment procedures and conditions that a corporate entity must fulfil vary depending on the percentage of foreign-owned capital in that entity. In particular, Article 23 of the LoI provides that a company must comply with investment procedures and conditions applicable to foreign investors if:
  - » 51 percent of charter capital or more is held by foreign investors, or the majority of the general partners are foreigners if the company is a partnership;
  - » 51 percent of charter capital or more is held by companies mentioned in the above item or
  - » 51 percent of charter capital or more is held in aggregate by foreign investors and companies mentioned in the first item.
- Other than the entities specified above, corporate entities should comply with investment procedures and conditions applicable to domestic investors.
- This amendment appears to be a clear attempt by the National Assembly to resolve ambiguity and confusion over what level of foreign investment defines a "domestic" or "foreign" investor. While it remains to be seen how licensing authorities will interpret and implement this provision, this will hopefully clarify the confusion caused by inconsistent interpretation of when an investment certificate is (and is not) required as a result of foreign shareholding. This also signals an attempt by the National Assembly to address more complex shareholding structures where foreign investors may invest in Vietnam through intermediate levels.
- However, there are a few issues to watch out for. First, we will need to consider what implementing regulations are introduced with respect to the LoI and by which ministries and state bodies to see how this provision will be executed in practice and its impact on foreign investment. It also remains to be seen how the LoI would interact with other laws and international treaties. For

example, although Article 29.4 of the current Investment Law dated 29 November 2005 provides that the procedures application to domestic investors should apply if Vietnamese investors hold 51 percent of charter capital or more in that company, which goes further than Vietnam's WTO Commitments, Article 29.4 in practice has not been properly implemented by many licensing authorities. In such cases, these entities have not been treated as domestic investors for licensing purposes and the restrictions in respect of foreign investment set out in the WTO Commitments still applied. While the National Assembly cannot pass laws that impede Vietnam from fulfilling its obligations under international treaties, WTO Commitments serve as a floor and not a ceiling and the National Assembly may provide for more rights to foreign investors. For more information, our firm's Hanoi or Ho Chi Minh City offices can assist.

Decree No. 12 – Corporate Income Tax

- Courtesy IBFD we report the following about Decree No. 12/2015/ND-CP (Decree 12). Decree 12, on the implementation of Law No. 71/2014/QH13 dated 26 November 2014 was issued on 12 February 2015. Decree 12, which is effective from 1 January 2015, supplements and amends a number of tax laws. The main details of the measures regarding corporate income tax (CIT) are summarized below.
- Deductible expenses now include:
  - » Expenses incurred on occupational education and training activities for employees;
  - » The interest expense on loans obtained for investment purposes if the company's capital is fully contributed; and
  - » Actual amount on life insurance incurred for employees. The previously applicable cap of VND 1 million per month per employee has been removed.
- New investment projects in the manufacturing sector are entitled to be taxed at 10 percent for 15 years subject to certain conditions. Decree 12 clarifies that major manufacturing projects with an investment capital of at least VND 6 trillion and which have either an annual revenue of VND 10 trillion or 3,000 employees, would be eligible for the incentive. (*Note*. Decree 12 now allows contract workers with a term of less than one year and part-time employees to be included in arriving at the threshold of 3,000.)
- Decree 12 confirms that tax incentives will not apply to income from trading and service activities implemented outside the economic zones, industrial zones, hi-tech zones and incentivized locations.
- Decree 12 reinstates a number of tax incentives previously available under Law 32/2013/QH13. The tax incentives, which had been abolished, will run for the taxpayer's respective remaining period (as per Decree 218), from the tax year 2015. The incentives generally apply to qualifying enterprises having investment expansion projects and having investment projects in prescribed industrial zones.
- Decree 12 has also extended the list of tax incentive entitlement areas.
- Decree 12 appears to introduce a new regulation to tax income from the capital transfer of foreign entities, i.e., offshore capital transfer transactions "irrespective of the place of business". However, pertinent details on the scope and administration of this regulation are lacking and more guidance is thus required.
- Income from processing agriculture and aquaculture products may be exempt from CIT subject to conditions. Decree 12 also supplements the application of the tax rate of 10 percent for income from the processing of agriculture, forestry and aquaculture products in areas with difficult socio-economic conditions and 15 percent for income from agriculture and aquaculture activities in other areas.

Decree No. 12 – Personal Income Tax

- Individuals carrying on a business are subject to income tax at the following deemed rates, depending on the industry in question:

Business	Rate (percent)
Leasing/rental	5.0
Insurance/multi-level marketing/lottery agent	5.0
Distribution/supply of goods	0.5
Services, construction without materials	2.0
Production, transportation, services associated with goods, construction with materials	1.5
Other business activities	1.0

- Income tax exemption for one-off relocation allowance for Vietnamese citizens on long-term overseas

assignments on their return to Vietnam.

- Guidance on withholding obligations for the taxable benefit of life insurance premiums (excluding voluntary pension insurance) and other non-compulsory insurance of a cumulative nature purchased by the employers for their employees.
- A deduction not exceeding VND 1 million is permitted for voluntary pension fund contributions.
- Vietnamese tax residents working overseas are entitled to deduct compulsory insurance contributions made in the work country.
- Employer-provided housing and other related benefits do not constitute taxable income if they are provided in designated industrial or hardship zones.
- Income derived from capital investment made by owners of a private entity or one-member limited liability companies will not be subject to PIT if CIT has been declared and paid on the same income.
- Taxable income on the transfer of securities and real estate will be determined based on the one-off transfer price. Such income will be taxed at deemed rates of 0.1 percent and 2 percent respectively. The option to pay tax based on the net profit is no longer available.
- Ten percent withholding is applicable on insurance provided by the employer or voluntary insurance benefits by either the employer or insurance provider.

Decree No. 12 – Value Added Tax

- Fertilizers, livestock feed and equipment exclusively used for agricultural production are not subject to VAT. Previously, a VAT rate of 5 percent was applicable. Additionally, the input VAT relating to these goods will not be creditable but deductible for corporate income tax (CIT) purposes instead.
- Cigarettes, spirits and beer which are imported and subsequently re-exported shall not be entitled to output VAT of 0 percent.
- Enterprises which undergo dissolution, bankruptcy or termination before commencement of operations and which did not generate output VAT from the main business activities are not required to adjust the credited/refunded input VAT. Circular 26 clarifies that where output VAT is generated, any refunded input VAT must be repaid to the tax office. The recovered amount shall not include input VAT on disposed assets. Further guidance is expected on the tax treatment of the transfer of investment projects, disposal of assets of the investment projects or a change in business purpose.

Decree No. 12 – Tax Administration

- Supporting documents which have previously been submitted to the tax authorities need not be submitted again with the tax returns.
- Regarding VAT, Special Consumption Tax and natural resources tax, no detailed lists or supporting documents are required to be submitted together with the monthly/quarterly tax return.
- The applicable exchange rate for computing import/export duty shall follow the provision under clause 3, article 21 of Decree 08/2015/ND-CP of 21 January 2015 providing guidance on the implementation of the Law on Customs. Per Circular 26, the foreign exchange conversion rate of revenue, expenses and taxable prices should adhere to Circular 200/2014/TT-BTC.
- A single interest rate at 0.05 percent per day will apply on late tax payment instead of two rates of 0.05 percent per day and 0.07 percent per day as previously. Circular 26 clarifies that the new rate applies to penalties imposed from 1 January 2015 onwards.

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