Asia Tax Bulletin

In This Edition

We are pleased to present the Winter 2022 edition of our firm's *Asia Tax Bulletin.*

Dear Reader,

This edition of the Asia Tax Bulletin covers many different tax developments in ASEAN, Greater China, Japan, Korea and India including the PRC's tax reliefs to facilitate debt settlements in the country, the tax incentive for family-owned investment funds, India's case law ruling that beneficial ownership is not required under India's tax treaty with Mauritius in order to still enjoy the capital gains tax exemption under the treaty and Indonesia's tax reform called the Harmonisation Law, to name just a few. Of special interest perhaps may be Hong Kong's and Malaysia's new tax rules for foreign sourced investment income, which for both jurisdictions were prompted by the European Union's threat to otherwise put both jurisdictions on its Blacklist of Tax Havens, which would have had serious economic repercussions. In Hong Kong, in the last weeks of 2022, the proposed law, with a few changes, was passed by the Legislative Council and became law with effect from 1 January 2023. The new tax rules represent a profound change in the way Hong Kong taxes foreign investment income. On 29 December 2022, Malaysia's tax authority surprised the local business community by adding to the conditions which it had previously announced in August, the requirement to have sufficient economic substance in Malaysia, in order to enjoy tax exemption on foreign dividends received in Malaysia. The conditions for tax exemption have retroactive effect to 1 January 2022. It will be interesting to watch for transactions which occurred prior to 29 December 2022, how the IRB can enforce a condition which taxpayers could not have been aware of. Compared with Hong Kong, Malaysia's new tax rules for foreign sourced investment income are more demanding, as Malaysia's requirements for tax exemption require a combination of economic substance and foreign tax liability, whereas Hong Kong's new rules provide tax exemption if the Hong Kong company either has sufficient economic substance or sufficient overseas tax liability. The coming months in 2023 will be full of action for more guidance on the level of economic substance needed in Hong Kong and Malaysia in order to be exempt from income tax on investment income.

Happy new year and our best wishes for a prosperous and healthy Year of the Rabbit!

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JURISDICTION:

China (PRC)

Tax Incentives for fundamental research

Courtesy IBFD, it was reported that from 1 January 2022, enterprises that fund non-profit scientific and technological research institutions, universities, and governmental natural science foundations for basic research (fundamental research) may claim an additional deduction of 100% of the actual expenses (super-deduction) in computing their taxable income for the purpose of enterprise income tax.

The funds for basic research received by non-profit research institutions and universities from enterprises, individuals and other organizations are exempt from enterprise income tax.

The new incentives were promulgated in the Announcement of the Ministry of Finance and the State Taxation Administration [2022] No. 32 which also defines the eligible institutions and universities and basic research. The Announcement expressly states that the term "basic research" excludes basic research carried out outside China, and social science, artistic, humanitarian and literature studies.

VAT e-invoicing

To cope with the new practice, the official online VAT system (called the "Golden Tax System"), has launched its phase-VI version with effect from 1 January 2023 and will be accessible to all taxpayers and industries by 2025. The whole VAT e-invoicing program will progress in two stages, issuance and receipt.

VAT taxpayers in three pilot places, i.e. Shanghai, Guangdong, and Inner Mongolia, can now issue VAT e-invoices to their customers in China as long as they have access to the online VAT invoicing function in the Golden Tax System.

Online format

Companies in most industries in the said three areas can now issue electronic VAT invoices – creating the same legal effect as their paper version. Moreover, specially formatted e-invoices are also available online for transactions in some scarce sectors like the sales of rare earth, cigarettes, construction or transportation services, real estate sales and leasing services, agricultural product acquisition, photovoltaic acquisition, collection of vehicle and vessel taxes and sales of self-produced agricultural products etc. For the time being, an exception still applies to the sales of automobiles (new or second-hand) and the collection of highway tolls. Until the online system is available, these business operators still have to continue issuing paper versions of VAT invoices.

Invoice quota

In principle, the same invoice quota still applies to their electronic version. The aggregate value of invoices issued per month, in paper or electronic formats, should not exceed the monthly limit set by the tax authorities for each company. However, there is no ceiling set on the maximum value of a single e-invoice, as opposed to paper invoices which have a pre-set par value. For e-invoicing, upward quota adjustment will be made easier for those taxpayers of good credibility.

Customers, no matter where they are in China, can now receive VAT e-invoices issued by companies based in Shanghai, Guangdong, and Inner Mongolia and process them as input VAT. They can also verify the validity and the data of an e-invoice by quoting its twenty-digit number online.

Reliefs for debt settlement

In order to support financial institutions and financial assets management companies in the settling of distressed debts of borrowers, the Ministry of Finance and the State Taxation Administration announced several tax reliefs applicable in the period from 1 August 2022 to 31 July 2023 (Announcement of the Ministry of Finance and the State Taxation Administration [2022] No. 31).

Financial institutions in the banking business and financial asset management companies that are general taxpayers for VAT purposes may, in computing the taxable amount of VAT on the disposal of immovable property for debt settlement, elect to deduct the price valued at the time of acquisition of the immovable property from any sale proceeds and extra charges received. The result after deduction is subject to VAT at a rate of 9%. For the deduction, the legal documents issued by courts or an arbitration body are required and the seller may not issue a VAT invoice for the deducted part of the transaction to the purchaser.

Financial institutions and financial asset management companies are exempt from stamp duty in respect of the contracts and documents related to the transfer of ownership upon acquisition or disposal of the assets in a debt settlement. The announcement emphasizes that other parties to the transaction are subject to stamp duty as usual.

Financial institutions and financial asset management companies are exempt from deed tax in respect of the acquisition of assets in a debt settlement.

The local authorities (the departments of the local governments) may reduce or exempt house property tax and urban land use tax in accordance with the relevant laws and regulations and contingent on local circumstances in respect of immovable properties taken over by financial institutions in banking business or financial asset management companies for the purpose of debt settlement.

The announced measures only apply to immovable properties and assets used for paying distressed (bad) debts that have been settled through rulings of the People's Courts or decisions of an arbitration institution.

Revised Catalogue of Encouraged Industries for foreign investment

On 28 October 2022, the National Development and Reform Commission and the Ministry of Commerce published the Catalogue of Encouraged Industries for Foreign Investment (2022 Edition). The new Catalogue will replace the one from 2020 and apply as from 1 January 2023.

The Catalogue consists of two catalogues, one applies nationwide (National Catalogue) and another one specifically covers the central, western, and north-eastern regions (Regional Catalogue). The industries listed in the catalogues are eligible for tax and non-tax preferential treatment of foreign direct investment. The revised catalogue contains 1,474 items of which 519 items are listed in the National Catalogue and 955 in the Regional Catalogue.

The changes are mainly in the continued promotion of foreign investment in the manufacturing industry, encouraging foreign investment in producer services and expansion of the scope of the encouraged industries in the regional catalogue.

JURISDICTION:

Hong Kong

New tax regime for offshore sourced investment income

On 28 October 2022, the Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Bill 2022 (the "Bill") was gazetted. This was in response to pressure from the European Union ("EU") as the EU regarded Hong Kong's territorial tax code as a harmful tax practice facilitating the erosion of the tax base of certain EU Member States by promoting tax avoidance schemes and structures. As anticipated, the Bill passed through the Legislative Council and took effect on 1 January 2023. We refer to the previous edition of this Bulletin, in which we reported about the upcoming tax changes.

Accordingly, with effect from 1 January 2023, foreign dividends, interest or intellectual property income and gains on the sale of equities (all hereafter referred to as Specified Income) earned by Hong Kong companies or permanent establishments which are part of a multinational group and whose financial accounts are included in consolidated financial accounts of the group, will be subject to 16.5% profits tax on the Specified Income unless the income is (i) not received in Hong Kong (nor deemed received), (ii) exempt from tax under the new participation exemption (relevant only for dividends and equities), (iii) exempt from tax under the modified nexus rule (relevant only to patents and copyrighted software) *or* (iv) exempt because the recipient has sufficient economic substance in Hong Kong (relevant for dividends, interest and gains on the sale of equities).

It is important to realise that the new legislation does not set aside the territoriality principle which has governed Hong Kong's profits tax regime since the 19th century. One still has to determine whether the Specified Income is offshore sourced in order to find out whether it is potentially taxable. If the income is offshore sourced but not received (nor deemed received) in Hong Kong, then it will in principle continue to be non-taxable income. Specified Income will be deemed received in Hong Kong if the income is used to either satisfy any debt incurred in respect of a trade, profession or business carried on in Hong Kong or to purchase movable property which is subsequently brought into Hong Kong. These situations were copied from Singapore's deeming provisions, which are the same.

A taxpayer can apply for an advance ruling from the IRD on whether its Specified Income is exempt from tax under the new tax rules. This includes the question whether it has sufficient economic substance or whether it satisfies the participation exemption conditions (for dividends and gains on the sale of equities) or the modified nexus conditions (for intellectual property income). The economic substance requirement will look at whether the recipient has sufficient manpower in Hong Kong and whether it incurs sufficient expenditure given its activity. A distinction is drawn between 'pure equity holding companies' and other businesses, with the former being subject to reduced economic substance conditions.

The modified nexus exemption rule for foreign royalties from patents or copyrighted software follows the OECD's action report on the taxation of intellectual property income, and requires the recipient to conduct sufficient R&D in or outside Hong Kong in relation to the intellectual property.

Under the participation exemption rule, foreign dividends and gains on the sale of equities received in Hong Kong are exempt from tax if they originate from subsidiaries which have been liable to at least 15% profits tax (which can be profits tax paid anywhere within the chain of ownership for up to five tiers under the Hong Kong recipient), the Hong Kong recipient owns at least 5% of the shares of the foreign subsidiary and has held these shares for at least 12 months prior to the receipt of the income. Based on these conditions, any (indirect) interests in businesses in jurisdictions which have a profits tax rate of less than 15% or which provide tax holidays or other forms of tax incentives would not be tax exempt under the participation exemption.

The new rules force existing businesses to carefully examine their income flows and economic substance in Hong Kong in order to ensure that they will not find themselves having to pay profits tax in Hong Kong.

Stamp duty refund for eligible incoming talent

On 19 October 2022, the Chief Executive announced in his 2022 Policy Address that, to encourage incoming talents to stay in Hong Kong for long-term development, the Government would refund the extra stamp duty paid by eligible incoming talents in purchasing residential property in Hong Kong.

For eligible incoming talents who purchase a residential property in Hong Kong on or after 19 October 2022, and subsequently become a Hong Kong permanent resident after residing in Hong Kong for seven years, they can apply for a refund of the Buyer's Stamp Duty (15%) and the New Residential ad valorem Stamp Duty (15%) paid for the first residential property purchased and still held, but they still need to pay *ad valorem* stamp duty (AVD) at Scale 2 rates, such that the overall stamp duty charged will be on par with that charged on first-time home buyers who are Hong Kong permanent residents. Such arrangement applies to any sale and purchase agreement entered into on 19 October 2022 and onwards.

Eligible incoming talents include those who enter Hong Kong under designated talents admission schemes (including General Employment Policy, Admission Scheme for Mainland Talents and Professionals, Quality Migrant Admission Scheme, Immigration Arrangements for Non-local Graduates, Technology Talent Admission Scheme, Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents and the newly launched Top Talent Pass Scheme).

Family investment funds

The Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022 (Bill) was gazetted on 9 December 2022. The Bill seeks to provide profits tax concession for eligible family-owned investment holding vehicles (FIHVs) managed by single family offices (SFOs) in Hong Kong, such that the FIHV's assessable profits earned from qualifying transactions and incidental transactions (the latter being subject to a 5% threshold) would be subject to a 0% profits tax rate for a year of assessment commencing on or after 1 April 2022.

The Bill was introduced into the Legislative Council on 14 December 2022, and will be subject to the scrutiny and approval of the Legislative Council before being enacted into law.

JURISDICTION:

India

Beneficial ownership and capital gains tax under tax treaty

Courtesy of Nishith Desai Associates it was reported that in May 2022, the Mumbai bench of the Income Tax Appellate Tribunal ("ITAT") set aside an assessment order denying benefits with respect to the taxation of capital gains under Article 13 of the India Mauritius double taxation avoidance agreement ("DTAA") (on account of the Mauritius seller not being the beneficial owner of the capital gains received).

While the ITAT reiterated the well-established principles of treaty interpretations, holding that the 'beneficial ownership' test cannot be read into Article 13 of the DTAA as it would amount to re-writing of the DTAA provisions. However, in doing so, the ITAT (despite being the final fact-finding authority) remitted the matter back to the Assessing Officer ("AO") to make a fresh finding on the issue (i.e., (a) whether the test of beneficial ownership applies to Article 13 of the DTAA; and if so, (b) whether the taxpayer satisfies the test and is therefore allowed to claim the benefits under Article 13). Thus, though the ITAT reiterated the principles of tax certainty, good public policy, and good faith interpretation of tax treaties, on the other hand, it refrained from providing a decisive ruling on the issue at hand (thereby prolonging the dispute).

The taxpayer subsequently filed a miscellaneous application before the ITAT, seeking rectification of the impugned ITAT order. The claim of the taxpayer was that there was enough material on record to hold that the assessee was the beneficial owner of the shares in the Indian companies, and that it is purely academic as to whether or not the test of beneficial ownership can be read into Article 13 of the DTAA. In doing so, the taxpayer pointed out that the ITAT is the final fact-finding authority, and thus, cannot remand matters back to the lower authorities on questions of law and on matters where all facts have been disclosed and are available on record. As such, the taxpayer's application argued that there was a 'mistake apparent on record' in the order of the ITAT, which needed to be corrected (relying on the High Court rulings in the case of Sony Pictures Network India Ltd vs ITAT (Write Petition no. 3509 of 2018, Bom HC), and Coca Cola India Pvt Ltd vs Assistant Registrar [(2014) 52 taxmann.com 399 (bom)]).

The ITAT, in response recalled the matter for adjudication themselves, on the question of whether beneficial ownership can be read into Article 13 of the India Mauritius DTAA (on merits). In doing so, the ITAT explained that at the time of its initial order, the ITAT was not satisfied with the question of the beneficial ownership requirements being read into Article 13; however, since the affected parties were not heard on this aspect, it was considered as appropriate to remit the matter back to the AO on this aspect. Thus, while the ITAT had expressed their prima facie view in this respect, since none of the parties were hard on this aspect, it was remitted to the AO for proper adjudication on this foundational aspect.

The ITAT accepted that remanding the matter back to the AO for adjudication was a mistake, since the ITAT itself should have taken a call (based on merits) as to the requirements (or lack of requirements) in Article 13 with respect to beneficial ownership (by directing the parties to address the ITAT on this aspect). To this extent, the approach of the ITAT was contrary to the law laid down by the High Court in the above-mentioned cases. Thus, the ITAT found that there was indeed a 'mistake apparent on record' to the extent of remitting the matter back to the AO on a question of law, when all the material facts are on record. While recalling the matter for adjudication on merits (and giving a date to the parties to be heard based on merits of this aspect), the ITAT also noted that remitting the matter to the AO would imply substantial delays in the matter reaching finality.

The order of the ITAT to recall and adjudicate on the issue is appreciated, given that we may now expect a conclusive ruling on the issue of whether the test of beneficial ownership can be read into Article 13 of the India-Mauritius DTAA (without express language to such effect). Given the *prima facie* findings of the ITAT in the May, 2022 order, it seems that the taxpayer may finally find relief in this aspect.

JURISDICTION:

Indonesia

Implementing rules of Income Tax under the Harmonisation Law

On 20 December 2022, the Government issued Regulation No.GR-55 to implement the Income Tax Law (ITL) amendments introduced under the Harmonisation of Tax Regulations *(Harmonisasi Peraturan Perpajakan/HPP)* Law. GR-55 revokes several Government Regulations (GR) and consolidates the contents into this GR. Other implementing regulations (i.e. other than GRs) remain valid to the extent that they do not contradict GR-55. GR-55 covers the following broad topics:

a) territorial taxation for foreigners;
b) non-taxable objects;
c) deductible expenses;
d) depreciation and amortisation;
e) benefits-in-kind;
f) anti-tax-avoidance measures, and
g) international tax agreements.

GR 55 brings changes to especially topics (d) through (g).

Depreciation.

The HPP Law stipulates that, if a permanent building or other intangible asset has a useful life of more than 20 years, then the depreciation or amortisation can be carried out using: a) the straight-line method over a 20-year period; or b) the actual useful life based on the taxpayer's bookkeeping. GR-55 further stipulates that these new rules apply for permanent buildings or intangible assets that are: a) owned and used prior to Fiscal Year (FY) 2022; and b) are depreciated/amortised according to a useful life of 20 years. In this case the taxpayer may choose to depreciate/amortise according to the actual useful life based on the taxpayer's administration. This is by submitting a notification to the Director General of Taxes (DGT) by the end of FY 2022 (i.e. as a single year concession). In addition, the MoF will separately stipulate the depreciation rules for repairs of tangible assets which have a useful life of more than one year.

Benefits in kind.

The HPP Law changed the rules on the treatment of benefits *(kenikmatan)* and in-kind (natura) remuneration, collectively referred to as Benefits-in-Kinds (BIKs). Under this change, BIKs are now taxable to the employee (with some exceptions) and the cost is deductible to the employer (providing that the cost serves to obtain, collect and preserve income). GR-55 defines "in-kind" as compensation in goods other than with money. A "benefit" is defined as compensation in the form of the right to use a facility or a service which is provided by either the employer or a third-party where the asset is rented or paid for by the employer. The BIK categories excluded from taxable income are a) food and beverages provided to all employees; b) BIKs in certain areas; c) BIKs necessary to carry out the employees' work activities; d) BIKs sourced or financed from the regional/state revenue budget; or e) BIKs of certain types and/or thresholds. The scope of BIKs under point a) and b) above has been regulated under PMK1674. GR-55 has now added food or beverage ingredients available to all employees with certain thresholds under point a). The scope of point c) was taken from the elucidation of the previous ITL. GR-55 now adds BIKs received in the context of handling endemics, pandemics, and national disasters to the scope of point c). The determination of taxable value for in-kind remuneration is based on market value. The taxable value for benefits is the actual cost incurred (or what should have been incurred) by the employer.

Anti-avoidance.

This section implements Article 18 of the ITL (which deals with 'special relationships') and represents a significant development with regard to Indonesia's now evolving anti-avoidance framework. Interestingly, the policies introduced in this GR are based on the elucidation of the article rather than the body of the article itself. The elucidation to Article 18 of the ITL states that the government is authorised to prevent tax avoidance by taxpayers who seek to reduce, avoid, or defer the payment of tax that is otherwise due and where this is contrary to the purpose and objectives of the tax laws and regulations. GR-55 outlines the measures that can be taken by the government to combat this. In addition to the measures stipulated under Article 18 (1) to (3d), GR-55 provides the MoF the authority to carry out the following:

- Recalculation of tax due based on financial performance comparison in related party situations.
- Recalculation of tax due by denying deductibility of amounts relating to hybrid entities or instruments; this can also be done in non-related party situations and typically applies where there is a mismatch in the way the income is taxed between Indonesia and the country of the foreign recipient.
- Redetermination of tax due based on "substance-over-form" principle. This can also be done in non-related party situations and provides that, in the case of tax avoidance that cannot be prevented using any other measure, the Director General of Taxation can redetermine the tax that should be due based on a "substance-over-form" approach. These measures must be carried out with "good governance" and with the taxpayer retaining general dispute resolution rights. Further details on the above will be set out in MOF regulations. Much remains unclear about this third measure and further guidance should be provided about the technical and practical limits.

International agreements.

The government has the authority to enter into bilateral or multilateral tax agreements with other countries or jurisdictions. In light of the developments on international collaboration to end tax avoidance (BEPS), GR-55 lists the types of international tax agreements to which Indonesia can be bound:

a) Double Taxation Avoidance Agreements;
b) Multilateral Conventions to implement Tax Treaties related measures to prevent BEPS;
c) Exchange of Information agreements for tax purposes;
d) Bilateral or Multilateral Competent Authority Agreements; and
e) (this is new) Agreements to address the tax challenges arising from the digitalisation of the economy and/or other BEPS actions, which pertains to the Two Pillars in BEPS 2.0.

GR-55 acknowledges that a new concept of allocating taxing rights has been designed based on a new business model without the need for a physical presence which gives broader taxing rights to the source country. In addition, other solutions are also designed to end profit shifting to no-tax or low-taxed countries/jurisdictions and to ensure Multinational Enterprises (MNEs) pay a global minimum tax as agreed in the agreement. GR-55 serves as a legal basis to incorporate components of each Pillar as follows:

a) Pillar One: MNEs that satisfy certain criteria determined in an international tax agreement (such as consolidated turnover and profit level) are considered to fulfil the subjective and objective tax obligations and therefore, subject to tax in Indonesia.

b) Pillar Two: The group of MNEs that falls within the scope of the international tax agreement will be subject to a global minimum tax collected in Indonesia based on the said agreement. Detailed implementing rules on the Two-Pillar Solution in Indonesia will be regulated further in MoF Regulations.

Implementing rules of VAT under Harmonisation Law

On 2 December 2022, the Government issued Regulation No.GR-44 to implement the Value Added Tax (VAT) and Luxury Sales Tax (LST) provisions introduced under the Harmonisation of Tax Regulations (Harmonisasi Peraturan Perpajakan/HPP) Law. GR-44 revokes GR-1 and all VAT provisions in GR-9.

The delivery of foreclosed assets by a creditor to a buyer is included in the delivery of rights to a taxable good under an agreement that is subject to VAT. Foreclosed assets are defined as taxable goods taken over by a creditor based on mortgage rights, fiduciary guarantees, pawn or other similar arrangements. The limitation on foreclosed assets, the taxable event, and the procedure to collect, pay and report the VAT will be set out in a separate Minister of Finance (MoF) regulation. The elucidation provides examples of the VAT imposition on the delivery of foreclosed assets by a bank and a finance company.

Under the VAT Law the delivery of taxable goods as collateral is not treated as a VATable delivery. GR-44 elaborates that this includes the delivery as collateral under Sharia financing transactions. This is as long as the taxable goods are eventually returned to the party that initially delivered them.

The HPP Law introduced a "Final" VAT regime where the prevailing VAT rate is multiplied by a prescribed percentage resulting in an effective "Final" VAT rate. GR-44 provides details on this regime as follows:

- Input VAT for the buyer – Whilst the relevant Input VAT cannot be credited by the seller, the elucidation to this GR confirms that the "Final" VAT charged to a buyer can be credited as Input VAT by the buyer.
- Delivery of strategic goods/services under "Final" VAT regime – If a VATable Entrepreneur (Pengusaha Kena Pajak/PKP) delivers strategic goods or services that are subject to this "Final" VAT regime, then the VAT rate used is the "Final" VAT rate and the VAT is still exempted or not collected under the strategic goods/services facility. In this situation, the Input VAT is not creditable.
- Internal deliveries, own use and free gifts – If a VAT-registered taxpayer (PKP) under the "Final" VAT regime conducts a delivery of goods from the headquarters to a branch (or vice versa) then the tax base to be used is IDR zero (nol rupiah). The elucidation also stipulates that the application of nol rupiah as a tax base is used for the delivery of own use and free gifts under the Final VAT regime.

In the event that there is a change in the applicable VAT rate then the former VAT rate is used when the time of the VAT due date is prior to the effective date of the revised VAT rate change and the VAT Invoice or equivalent document is issued prior to the effective date of the VAT rate change.

Buyers of taxable goods or recipients of taxable services are jointly responsible for any underpaid VAT if the VAT cannot be charged to the seller and the buyer cannot show proof that the VAT has been paid to the seller. GR-44 stipulates that a VAT underpayment in this situation is due by the buyer using a tax payment slip (Surat Setoran Pajak). Otherwise, payment can be collected via an Underpaid Tax Assessment Letter (Surat Ketetapan Pajak Kurang Bayar/SKPKB). Previously, the underpayment was directly collected through a SKPKB.

The HPP Law authorises the Directorate General of Taxes (DGT) to appoint "Other Parties" as tax collectors. GR-44 stipulates that if this "Other Party" carries out transactions or facilitates a transaction with a VAT Collector (appointed under Article 16A of VAT Law) then the party that has the obligation to collect, pay and report VAT is the Other Party.

The VAT Law stipulates that a delivery by a PKP within the customs area is subject to VAT where it is carried out within the framework of its business activities. GR-44 further confirms that the business activities cover the entire delivery of taxable goods or services arising from operational activities (i.e., from principal revenue producing activities excluding investing and financing activities) as well as from non-operational activities.

GR-44 stipulates that for foreign currency transactions the VAT and LST payable should be converted into Rupiah using the exchange rate stipulated by the MoF applicable at the time that the VAT Invoice (or equivalent document) was required to be issued. This provision is applicable when the VAT Invoice is not issued on time or when there is an amendment to a VAT Invoice, whereby the actual time of the issuance of the VAT Invoice may differ from the time it was required to be issued.

If a PKP issues a VAT Invoice more than three months after the required date, then the VAT Invoice is not treated as valid and cannot be credited. GR-44 emphasises that the three-month deadline ends on the date following three months prior to the initial due date. If a VAT Invoice should have been issued on 30 September, then the three months would end on 29 December. If the VAT Invoice would be issued on 30 December or after, then the VAT Invoice is not treated as valid.

The DGT can determine certain documents to be equivalent to a VAT Invoice. GR-44 confirms that the due date to issue these documents follows the general due date for issuance of a VAT Invoice. This means that when the VAT is due may differ depending on the type of goods or services and the taxable event.

Under the VAT Law, transfers in relation to certain corporate restructurings are not treated as taxable deliveries. In the previous GRs, a business expansion (pemekaran usaha) was given a specific definition without reference to the Company Law. GR-44 now defines a business expansion and the splitting of a business (pemecahan usaha) within the definition of a 'demerger (pemisahan usaha)' according to the Company Law.

e-Court implementation at Supreme Court

On 28 September 2022, the Supreme Court issued Regulation No.PERMA-6 to govern administrative procedures for appeal and Judicial Review requests and electronic proceedings at the Supreme Court. Previously, PERMA-1 and PERMA-4 were issued to regulate electronic administration proceedings for courts below the Supreme Court. As the implementation of these PERMAs were found to be successful, PERMA-6 now largely extends the provision to the Supreme Court. In line with this, the Supreme Court has also issued PERMA-7 as an amendment to PERMA-1. The scope of PERMA-6 is to provide a framework to electronically file and proceed with appeal and Judicial Review requests at the Supreme Court for the following legal disputes:

- Appeal or Review of General Civil Cases, Special Civil Cases, Religious Civil Cases, State Administration Cases or Arbitration Appeals;
- Appeal or Review of General Criminal Cases, Special Criminal Cases, Jinayat, or Military Crime Cases;
- Appeal for legal purposes for Criminal Cases, Jinayat or Military Crime Cases; and
- Judicial Reviews with regard to Tax Court Decisions.

For a Judicial Review of a Tax Court Decision, PERMA-7 makes an exception on the implementation at the Tax Court, whereby the implementation is conducted based on the stipulation of the Head of the Tax Court. Therefore, the administration of proceedings at the Tax Court (including the filing of Judicial Reviews against Tax Court Decisions) will be conducted "as is" until the issuance of the regulation by the Head of Tax Court on the electronic administration.

Electronic customs and excise objection procedure

On 13 September 2022, the Minister of Finance (MoF) issued Regulation No.PMK-136 that governs the Customs and Excise Objection procedure. PMK-136 stipulates the way in which the Customs and Excise Objection procedure is conducted to apply with effect from 1 January 2023. This is for those activities carried out electronically through the Director General of Customs and Excise (DGCE) portal such as:

- filing objections;
- submission of supporting reasons/evidence;
- revocation of objections; and
- the issuance of submission receipts and the DGCE Decision Letters.

In the event of an operational disruption (e.g. where the DGCE Portal is out of order), the procedure must be carried out manually at the nearest customs office. In such situations the submission receipt and the Objection Decision Letter will also be issued manually. In general, the procedures and deadlines remain the same. However, PMK-136 stipulates, since Objection Letters must be submitted electronically, that the due date of Customs and Excise Objections will not be postponed to the next working day where this coincides with a Public Holiday.

With regard to the format of objection letters, the Bank Accounts and the Identification Number of Excisable Goods Entrepreneurs (Nomor Pokok Pengusaha Barang Kena Cukai/NPPBKC) is no longer required.

This new regulation also introduces a format for an objection letter for a customs assessment with no financial claim such as Assessment Letters for Prohibited/ Restricted Goods (Surat Penetapan Barang Larangan/Pembatasan/SPBL). All the Objection Letters or Revocation of Objections that were submitted before 1 January 2023 are still subject to PMK-51.

JURISDICTION:

Japan

Budget 2023

Japan's ruling coalition has proposed to introduce a new tax incentive scheme for start-ups and a minimum tax on extremely high income earners, among other measures, in Budget 2023.

The Budget for the fiscal year beginning April 2023 addresses the government's short and long-term goals, such as overcoming the rising cost of living and realizing sustainable economic growth. To this end, the government will develop an environment that fosters start-ups and promote green and digital transformation, and implement measures to strengthen supply chains, develop human resources through education and build up Japan's defence capabilities.

Incentives for start-ups, research and development

- To strengthen the start-up ecosystem, a new tax exemption on gains from stock transfers, capped at JPY 2 billion, will be introduced. The exemption will be applied when the gains are used for the establishment of a business or investment in start-ups of pre-seed/seed period. The scope of the exemption will be expanded to promote open innovation activities.
- To encourage larger R&D investments, the R&D tax incentive scheme will be revised. A new system will be introduced wherein the current 25% tax credit limit for R&D expenditure will be changed between 20% to 30% depending on the rate of increase or decrease in R&D spending. Further, the scope of open innovation R&D start-ups will be expanded to encourage joint research and contract research with a wide range of start-ups. Lastly, a new preferential treatment in the R&D tax credit system will be established for corporations that employ PhD holders and researchers with certain experience.

International taxation

The Income Inclusion Rule (IIR) under Pillar 2 of the OECD/G20 Inclusive Framework on BEPS will be implemented.

Individual taxation

- To keep the tax burden fair, a new minimum tax on individuals with extremely high levels of income will be introduced effective from 2025.
- To encourage individuals to invest more in the Nippon Individual Savings Account (NISA), the tax exemption limit for dividends and capital gains derived from NISA will be increased to JPY 18 million (from JPY 8 million) for the instalment investment type and to 12 million (from JPY 6 million) for the growth investment type. The non-taxable holding period will be made permanent (from 20 years and 5 years for the instalment and growth investment types, respectively). The annual contribution limit will also be increased. The proposed changes will apply from January 2024.

Defence spending

The following measures were proposed to be implemented in or after 2024 for the JPY 1 trillion defence budget in FY 2027:

- corporate taxation: a new 4%-4.5% surtax on the corporate tax amount will be imposed. A JPY 5 million deduction from the tax base will be allowed considering the impact on small and medium-sized corporations;
- individual taxation: a new 1% surtax on income tax will be imposed. Consequently, the rate of special income tax for reconstruction for the 2011 Great East Japan Earthquake will be reduced by 1% and the taxation period to secure the total reconstruction fund will be extended; and
- the tobacco tax will be gradually increased.

Other measures

The current tax break on motor vehicle tonnage tax for eco-friendly cars will remain unchanged until the end of 2023 as an extraordinary measure to mitigate the impact of the semiconductor shortage and other factors. Thereafter the standards for the tax break will be raised in 2024 and 2025, respectively.

JURISDICTION:

Korea

Tax exemption on government bonds for foreign investors

Korea has exempted from tax the interest and capital gains derived on or after 17 October 2022 on government bonds and monetary stabilization bonds. The exemption applies to non-residents and foreign corporations that do not have a permanent establishment in Korea.

The exemption was initially planned to apply to interest payments or sales occurring on or after 1 January 2023, but it was brought forward in a bid to cope with the volatility in the foreign exchange market. The government hopes the measure will lead to increased foreign investment in Korean government bonds, provide stability in the foreign exchange market and reduce interest and exchange rates.

Technically, this is a temporary exemption and is available only up to the end of 2022. If the tax bill exempting tax on interest from government bonds and monetary stabilization bonds is approved by the Korean National Assembly, the exemption will continue to be available on or after 1 January 2023.

Corporate tax changes

The ruling and opposition parties finally came to an agreement on 22 December 2022 to reduce the corporate income tax (CIT) rate for each income bracket effective from 2023. With the reduction, the highest rate will come down from 25% to 24%.

The Presidential Office and ruling party had pushed hard for the government bill which proposed a 3% CIT reduction for the highest income bracket, but they finally agreed to the compromise bill suggested by the Speaker of the Korean National Assembly.

Under the compromise bill agreed by both parties, the CIT rates will be as follows:

Tax base (KRW million)	Current CIT rates*	CIT rates effective from 2023*
Up to 200	10%	9%
200 to 20,000	20%	19%
20,000 to 300,000	22%	21%
Over 300,000	25%	24%

* Local income surtax (10% of the CIT rates) applies.

The tax-related changes also include participation exemption for dividends received from foreign subsidiaries, an increase in the deduction limit for carried forward losses for companies other than small and medium-sized enterprises and exemption of interest and capital gains derived from government bonds and monetary stabilization bonds by non-residents and foreign corporations that do not have a permanent establishment in Korea.

The Bill also contains the following measures:

- extension of the current 5-year limit for the concessional flat tax rate of 19% on salary income earned in Korea by foreign employees to 20 years;
- extension of the current 5-year limit for the 50% tax exemption for foreign technicians to 10 years;
- implementation of a global minimum tax of 15%, from 1 January 2024, that will apply to multinational enterprises with revenue above EUR 750 million during at least 2 fiscal years out of the immediately preceding 4 fiscal years;
- extension of the requirement to retain books and records related to offshore transactions from 5 years after the expiry of the statutory due date for tax return filings to 7 years, which is the same as the statute of limitations for international transactions;
- retention of transfer pricing related documents, including an organizational chart, roles and responsibilities, agreements involving asset sales and purchases, at a place of business in Korea, such as the address registered with the local tax office;
- abolishment of the tax on retained corporate earnings; and
- introduction of a special rule addressing the tax issues of Korean institutional investors arising from EU reverse hybrid entity legislation.

JURISDICTION:

Malaysia

Foreign Source Income Exemption

On 29 December 2022, the Inland Revenue Board (IRB) issued the amended guidelines on the tax treatment of foreign-sourced income received in Malaysia to include the economic substance requirement as an additional qualifying condition for tax exemption on foreign sourced dividend income received by resident companies.

Earlier, in the guidelines dated 29 September 2022, the IRB stipulated that from 1 January 2022 to 31 December 2026, foreign-sourced dividend income received in Malaysia by resident companies, limited liability partnerships (LLPs) and individuals in relation to a partnership business in Malaysia are exempt from tax, provided that:

- the dividend income has been subject to foreign tax; and
- the headline tax rate in the source country is at least 15%.

However, in the IRB's amended guidelines issued on 29 December 2022, in addition to the above requirements, resident companies, LLPs and individuals in relation to a partnership business in Malaysia are also required to comply with the economic substance requirements.

The taxpayers referred to will be regarded as having economic substance if they have:

- employed an adequate number of employees with the necessary qualifications to carry out the specified economic activities in Malaysia; and
- incurred an adequate amount of operating expenditure to carry out the specified economic activities in Malaysia.

The IRB stated that as the mode of operation varies from industry to industry, it is neither feasible nor appropriate to specify any minimum thresholds for the economic substance requirement and therefore would depend on the facts of each case. Factors that will be taken into consideration include:

- the number of employees according to the nature of the relevant activities, e.g. whether it is a capital or labour-intensive industry;
- whether the employees are employed on a full-time or part-time basis; and
- whether the office premises have been used for undertaking the relevant activities and whether the premises are adequate for such activities.

Venture capital tax incentive

The Inland Revenue Board (IRB) has issued public ruling (i.e. tax guidance) PR 07/2022 on the tax incentives for venture capital companies which were gazetted earlier in 2022. The PR contains details with respect to conditions applicable for the tax incentive including what constitutes a venture capital company, a VCC management company and qualifying investments. Under the tax incentive, qualifying venture capital companies and venture capital management companies are tax exempt on qualifying income from qualifying investments for up to five years.

Tax exemption for Malaysian shipping business

The exemption from income tax on statutory income derived by a person from a business of a 'Malaysian ship' has been extended for a further period of three years from year of assessment 2021 to year of assessment 2023 under the Income Tax (Exemption) (No. 7) Order 2022 [P.U.(A) 312/2022] ('the Exemption Order').

A "Malaysian ship" is defined in section 54A(6) of the Income Tax Act 1967 as "a sea-going ship registered as such under the Merchant Shipping Ordinance 1952, other than a ferry, barge, tug-boat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessel." Therefore, a sea-going ship (save for the exceptions mentioned in section 54A(6) of the Income Tax Act 1967) registered under Part IIA (Malaysia Shipping Registry) and Part IIC (Malaysian International Shipping Registry) of the Merchant Shipping Ordinance 1952 will qualify as a Malaysian ship for the purposes of the Exemption Order.

The Exemption Order extends the tax exemption granted for years of assessment 2014 to 2020 under the Income Tax (Exemption) Order 2018 [P.U.(A) 38/2018] and Income Tax (Exemption) (No. 2) Order 2018 [P.U.(A) 48/2018] ('Previous Exemption Orders') but imposes additional conditions that have to be fulfilled in order to qualify for exemption under the Exemption Order.

To qualify for tax exemption under the Exemption Order and the Previous Exemption Orders, the person must be a resident in Malaysia who carries on the business of (a) transporting passengers or cargo by sea on a Malaysian ship, or (b) letting out on charter a Malaysian ship owned by him on a voyage or time charter basis.

The new conditions introduced under the Exemption Order are the requirement for the person to obtain annual certification from the Ministry of Transport Malaysia that:

- an annual operating expenditure of at least RM250,000 has been incurred for each Malaysian ship;
- each Malaysian ship has the following number of full-time employees in Malaysia: the majority of on-shore employees, including the chief executive officer, an administrative and finance officer, an operating officer and an officer in charge of health, protection, safety and environmental affairs, are Malaysian citizens; and
- the employees who are ship personnel as provided under Part III of the Merchant Shipping Ordinance 1952, shall be subject to the minimum requirement as specified in the Safe-Manning Certificate issued by the Marine Department Malaysia.

Recovery of taxes from taxpayers leaving Malaysia

Courtesy IBFD, it was reported that the Inland Revenue Board (IRB) has updated the public ruling (PR) that explains the circumstances and procedures for recovering taxes and debts due from taxpayers who will be leaving Malaysia. The main amendments made under PR 4/2022 (Recovery from persons leaving Malaysia) dated 20 October 2022 are set out below.

Under section 104 of the Income Tax Act 1967 (ITA), if the Director General of Inland Revenue (DGIR) is of the opinion that a taxpayer is about to leave Malaysia without paying the tax, sums or debts payable from him, the DGIR may issue a certificate to a Commissioner of Police or a Director of Immigration to prevent the taxpayer from leaving Malaysia until all amounts payable are paid or a security for the payment is furnished to the satisfaction of the DGIR.

The category "all sums payable" for which the DGIR may issue a certificate under PR 4/2022 has been updated:

- par. 4.1.2(a) increase in tax charged for late payment of tax - the reference to the ITA has been revised to "subsection 103 (3), (5) or (7) of the ITA"; and
- par. 4.1.2(e) has been added - increase in tax imposed on tax payable if:
  - » no estimate is furnished and no Notice of Instalment Payments (CP 205) is given by the DGIR to make payment by instalment;
  - » no prosecution under paragraph 120 (1)(f) of the ITA has been instituted in relation to failure to furnish such estimate; and
  - » tax is payable by the company, LLP, trust body or co-operative society pursuant to an assessment for that year of assessment.

For the purposes of section 104 of the ITA, the DGIR does not have to prove that a taxpayer intends to leave the country permanently.

Effective 1 January 2021, the IRB can submit a taxpayer travel restriction certificate to the Malaysian Immigration Department electronically.

Budget 2023

Courtesy of IBFD, on 7 October 2022, the Minister of Finance presented to Parliament the Budget for 2023 which includes, among other tax measures, tax cuts for small and medium enterprise, individual tax cuts, tax exemption for women returning to work after a career break and the introduction of e-Invoicing. The Budget's responsive, responsible and reformist agenda focuses on ensuring the well-being of the people, business continuity, economic prosperity and efficiency of public services.

Corporate income tax

- Income tax rate for SMEs will be reduced from 17% to 15% for the first MYR 100,000;
- the government will introduce the minimum effective tax rate at the global level as recommended under Pillar Two of the BEPS Action Plan 1 and plans to implement the qualified domestic minimum top-up tax after further studies are made and targeted for implementation in 2024;
-
- the scope of existing tax incentives for individual investors in start-up companies through equity crowdfunding will be expanded;
- contributions to non-government organizations involved in sports grassroots development will be allowed a tax exemption;
- contributions to a trust account to be set up for rare diseases will be allowed a 10% tax exemption;
- a special tax deduction will be introduced for hotels that purchase local handicraft products of up to MYR 500,000;
- the additional tax deductions to be introduced for employers who employ ex-convicts are also extended to ex-residents of the Henry Gurney School, protective institutions, government rehabilitation centres as well as registered non-government care centres;
- a 100% tax exemption will be granted on statutory income of tour operators who bring at least 200 foreign tourists a year or handle at least 400 local tourists;
- a reinvestment allowance for selected hospitality and tourism projects will be introduced under the Income Tax Act 1967;
- the existing tax incentives for the export of private health care services will be extended until 2025;
- the tax incentives for food production projects will be extended until the end of 2025 with the scope of incentives also expanded to include modern agricultural projects based on Controlled Environment Agriculture;
- the tax incentive for companies with BioNexus status will be extended for applications received until the end of 2024. In addition, this incentive will be improved with income tax exemption on statutory income increased from 70% to 100%;
- the government will provide Accelerated Capital Allowance and exempt 100% income tax on capital expenditure in the agricultural sector. This incentive will apply to the manufacturing, agricultural and service sectors including those related to medicine that adapt Industry 4.0 elements as well as operators that implement closed cage systems;
- tax incentives for intellectual property development will be extended until 31 December 2025;
- relocation incentives will be introduced to attract electrical and electronics sector investors affected by geopolitical uncertainty and supply chain disruptions to relocate to Malaysia by extending existing tax incentives and a 15% tax rate for C-Suite positions until 2024;
- the tax incentives for local pharmaceutical product manufacturers will be extended until the end of 2025;
- to attract new aerospace companies and encourage the development of existing companies, income tax incentives and investment tax allowances will be extended until 31 December 2025;
- manufacturers of EV charging equipment are given 100% income tax exemption on statutory income from YA 2023 until YA 2032 and 100% investment tax allowance; and
- the government plans to introduce a carbon tax and will study the feasibility of a carbon pricing mechanism.

Individual income tax

- Income tax rate reduction of 2% for resident individuals with income between MYR 50,000 to MYR 100,000 as follows:
- for taxable income between MYR 50,000 – MYR 70,000, the tax rate is reduced to 11% from 13%;
- for taxable income between MYR 70,001 – MYR 100,000, the tax rate is reduced to 19% from 21%;
- income tax exemption for 5 years, from year of assessment (YA) 2023 until YA 2028, for women returning to the workforce after a career break;
- resident individuals with annual income brackets of MYR 250,000 to MYR 400,000 and MYR 400,001 to MYR 600,000 will be subject to tax at the rate of 25%;
- the tax relief for life insurance premiums or takaful contributions will be expanded to include voluntary contribution to the Employee Provident Fund of up to MYR 3,000;
- the tax relief for deposits with Skim Simpanan Pendidikan Nasional for a taxpayer's child(ren) of up to MYR 8,000 will be extended until 2024;
- the tax relief for preschool and kindergarten school fees of up to MYR 3,000 will be extended until YA 2024; and
- the tax relief for medical expenses for a taxpayer, their spouse and children will be expanded to include dental examinations and treatments limited to MYR 1,000 from YA 2023.

Indirect tax

- An import duty and sales tax exemption will be introduced for nicotine therapy to encourage people to quit smoking;
- the government plans to extend the stamp duty exemption by up to 100% on loans or financing restructuring or rescheduling agreements until 2024;
- purchase of houses worth between MYR 500,000 to MYR 1 million will be eligible for an increase in stamp duty exemption from 50% to 75% until 31 December 2023;
- stamp duties for the transfer of property between families will be subject to stamp duty of MYR 10; and
- excise duty and sales tax exemption will be expanded from regular individual taxi owners who change ownership or dispose of their taxi to include owners of exclusive taxis and airport taxis.

Tax administration

- E-Invoicing will be implemented by the Inland Revenue Board in stages from 2023 through system development and pilot projects with selected taxpayers; and
- the Tax Identification Number (TIN) has been implemented to expand the tax base. From 2023, individual citizens and permanent residents who reach the age of 18 years will be automatically given a TIN and the use of a TIN is mandatory for all documents and instruments.

FATCA Malaysia and United States

The US Treasury Department has released the official text of the intergovernmental agreement (IGA) that the United States virtually signed with Malaysia on 21 July 2021 for implementation of the Foreign Account Tax Compliance Act (FATCA). The Malaysia–US IGA is based on the non-reciprocal Model 1B agreement. Accordingly, financial institutions in Malaysia will be required to report tax information about US account holders to the government of Malaysia, which will in turn relay that information to the US Internal Revenue Service (IRS) on an automatic basis. The Malaysia-US IGA entered into force on 3 October 2022. Malaysia is treated as having an IGA in effect as of 30 June 2014.

JURISDICTION:

Philippines

Taxation of equity awards

On 7 October 2022, the Bureau of Internal Revenue (BIR) issued Revenue Regulations (RR) No. 13-2022 to provide more definitive guidelines, procedures and requirements for the proper income tax treatment of equity-based compensation of any kind. One of the most important features of the RR is the blanket treatment of equity awards as compensation subject to tax under Section 32 of the National Internal Revenue Code (NIRC) of 1997, as amended, and implemented by RR No. 2-98, as amended. This rule will be applied regardless of the employment status of the grantee-employee, who could either be rank-and-file or occupying a supervisory or managerial position.

Equity-based compensation covers all types of employee equity schemes that come in different forms such as stock options, restricted stock units, stock appreciation rights, and restricted share awards, which may or may not pertain to the shares of stock of the grantor itself, but which all have the common feature of being granted to existing employees of the grantor as a performance incentive for services rendered by the employees and are typically dependent on performance, outstanding business achievements and exemplary organizational, technical or business accomplishments.

Section 32 (A) of the NIRC, as amended, defines gross income as all income derived from whatever source, including compensation for services in whatever form paid, including but not limited to, fees, salaries, wages, commissions and similar items. As implemented, compensation includes payment in a medium other than money.

According to RR No. 13-2022, the equity grants under the applicable equity schemes of the grantor will give rise to a realized benefit on the part of the grantee-employees. The equity grants to be awarded to the employees are for the services being rendered by the employees.

Consequently, the equity grants under the equity plans, once exercised or availed of by the grantee-employees, are considered compensation to be taxed as such under Section 32 of the NIRC. This rule will apply regardless of the employment status of the grantee-employee who could either be rank-and-file or occupying a supervisory or managerial position, considering that Section 32 of the NIRC and all applicable issuances do not make a distinction for purposes of applying the tax implication on all forms of compensation, including equity-based compensation. This is a departure from the BIR's previous position that equity-based awards received by non-rank-and-file employees are subject to fringe benefits tax.

The BIR expressly declared that the provisions of Revenue Memorandum Circular (RMC) No. 079-2014 dated 31 October 2014 and any regulations, rulings or orders, circulars, or portions thereof that are inconsistent with the provisions of RR No. 13-2022 are revoked, repealed or amended accordingly.

Passive income and financial intermediary taxation

On 14 November 2022, the House of Representatives passed a priority tax bill of the government with regard to the taxation of passive income and financial intermediaries. The bill has been transmitted to the Senate on 15 November 2022.

The bill specifically proposes to:

- reduce the number of tax bases and rates applicable to passive income, financial intermediaries and financial transactions;
- rationalize the rates on passive income and financial intermediaries by:
- gradually reducing the tax rates on royalties and interests from 20% to 15%;
- imposing a single tax rate of 15% on interest income, royalties, dividends, and capital gains on the sale of shares of stock not traded in the stock exchange;
- imposing a single tax rate of 5% gross receipt tax on the income of banks, quasi-banks and other non-bank financial intermediaries (instead of rates differentiated by the maturity period of the instrument or the type of income);
- imposing a harmonized 2% tax on premiums for pre-need, life insurance and health maintenance organizations products; and gradually reducing the stock transaction tax from six-tenths of 1% to one-tenth of 1%;
- repeal the income tax exemption of interest on foreign currency deposits;
- rationalize the rates of documentary stamp tax;
- remove the excise tax exemption of pick-up trucks introduced in Republic Act No. 10963; and
- harmonize the threshold in determining whether a citizen or non-resident alien will be considered as a non-resident citizen or non-resident alien engaged in trade or business, respectively.

VAT on digital transactions

On 14 November 2022, the House of Representatives passed a priority tax bill of the government with regard to the imposition of value added tax (VAT) on electronic or online sale of services, such as online advertisement and digital services rendered in exchange for a regular subscription fee. Draft bill HB 4122 proposes to:

- define who are liable digital service providers (DSPs);
- require non-resident DSPs to collect and remit the VAT on the transactions that pass through their platform;
- simplify the invoicing and registration requirements for VAT-registered non-resident DSPs;
- provide a transition period of 180 days from when the bill becomes law to enable the Bureau of Internal Revenue to establish implementation systems before VAT is imposed on DSPs; and
- require non-resident DSPs to designate a representative office or agent who shall be a resident corporation registered under Philippine law to assist in compliance.

The bill has been transmitted to the Senate on 15 November 2022.

JURISDICTION:

Singapore

Insurers

On 21 October 2022, the Inland Revenue Authority of Singapore published an e-Tax Guide on the tax treatment of insurers adopting FRS 117.

Financial statements prepared under FRS 117 will not contain information such as premiums, expenses and claims paid, nor provide information by lines of business or types of insurance funds. Accordingly, an insurer must instead prepare its tax computations using insurance returns filed with the Monetary Authority of Singapore for regulatory purposes (MAS Statutory Returns) with effect from year of assessment (YA) 2024 (for insurers whose financial year end (FYE) is 31 December) or YA 2025 (for insurers whose FYE is not 31 December).

As a result of using the MAS Statutory Returns as the basis for preparing tax computations, certain changes to existing tax treatment will be introduced:

- Singapore dollar figures in an insurer's MAS Statutory Returns will be accepted for the preparation of tax computations, subject to certain conditions, such as the exchange rate used must be obtained from prescribed sources, regular updating of the exchange rate (at least once every 3 months) and use of the same exchange rate consistently for income tax computations, goods and services tax, internal business reporting and accounting purposes;
- as the MAS Statutory Returns are generally prepared on a calendar-year (rather than financial-year (FY)) basis, an insurer whose FYE is not 31 December must submit its corporate income tax returns and tax computations for a YA relating to a calendar year (rather than FY). Additionally, it must submit its Estimated Chargeable Income by 31 March of the year following the last day of its annual reporting period of its MAS Statutory Returns;
- the MAS Statutory Returns (rather than financial statements) will be relied upon to determine the opening and closing values of policy liabilities and, in particular, whether there is an increase (or decrease) in policy liabilities that is deductible (or taxable); and
- financial instruments held by an insurer will generally be taxed on a mark-to-market (MTM) basis (as required under the Insurance (Valuation and Capital) Regulations 2004) as opposed to the accounting treatment under FRS 109, unless a specific tax treatment is established under case law or provided by statute, or where the regulatory reporting treatment deviates significantly from tax principles (in which case the latter will prevail).

Country-by-Country Reporting

On 31 October 2022, the Inland Revenue Authority of Singapore (IRAS) announced updates to the country-by-country (CbC) reporting requirements, including: (a) revisions to the information to be reported to the Comptroller of Income Tax for CbC reporting purposes; and (b) the introduction of a notification requirement for multinational enterprise (MNE) groups that are required to prepare and submit a CbC report.

CbC reporting obligation

Under the Income Tax (International Tax Compliance Agreements) (Country-by-Country Reporting) Regulations 2018, where the ultimate parent entity of a MNE group is a Singapore tax resident (Reporting Entity), it must prepare and submit a CbC report to the Comptroller within 12 months from the end of the relevant financial year (FY) if both of the following conditions are satisfied:

- the consolidated revenue of the MNE group in the preceding FY is SGD1.125 billion or more; and
- the MNE group has subsidiary(ies) or operation(s) in one or more non-Singapore tax jurisdictions.

From 31 October 2022, CbC reports submitted to the Comptroller must contain the information, and adhere to the prescribed format, as set out in the Annex to the updated IRAS e-Tax Guide entitled "Country-by-Country Reporting (Fourth Edition)". In particular, CbC reports must be prepared using "CbCR XML Schema Version 2.0"– and submitted via email to ct_transfer_pricing@iras.gov.sg with the following details:

- reporting entity's registered name;
- reporting entity's tax reference number;
- reporting entity's financial reporting period; and
- a letter of authority for a third party (for example, a tax agent) to submit the CbC report on behalf of the reporting entity, where applicable.

The Comptroller would not accept CbC reports prepared in any other format and/or submitted using any other method.

A reporting entity must retain all records and documents used to prepare its CbC report for 5 years from the end of that FY.

Notification obligation

Additionally, a reporting entity must notify the Comptroller of its CbC reporting obligation for a particular FY within 3 months from the end of that FY by submitting the following information via Form SG at https://go.gov.sg/cbcr:

- reporting entity's registered name;
- reporting entity's tax reference number;
- reporting entity's financial reporting period;
- a declaration that the reporting entity satisfies the requirements in respect of the reporting obligation for that financial reporting period;
- full name, designation, contact number and email address of the individual authorized by the reporting entity as its point of contact; and
- full name, designation, contact number and email address of the individual authorized by the reporting entity to file the notification.

The reporting entity would receive confirmation of its CbC reporting obligation from the Comptroller within 2 months of receipt of the notification.

Non-compliance

A reporting entity that, without reasonable excuse, either:

- fails to notify the Comptroller of its CbC reporting obligation; or
- fails to submit or is late in submitting its CbC report to the Comptroller,

would be guilty of an offence and, upon conviction, would be liable to a fine of up to SGD 5,000 or imprisonment of up to 6 months (if the fine is not paid). The reporting entity would be liable to a further daily fine of SGD 100 where the offence continues after conviction.

In addition, a reporting entity that, without reasonable excuse, fails to retain all records and documents used to prepare its CbC report for a period of 5 years from the end of the relevant FY would be guilty of an offence and, upon conviction, would be liable to a fine of up to SGD 1,000 or imprisonment of up to 6 months (if the fine is not paid). The reporting entity would be liable to a further daily fine of SGD 50 where the offence continues after conviction.

Goods and Services Tax

With effect from 1 January 2023, the standard GST rate has increased from 7% to 8%. The rate will be increased again with effect from 1 January 2024, from 8% to 9%.

On 24 November 2022, the Singapore President gave assent to the Goods and Services Tax (Amendment) Act 2022 (Amendment Act) which was passed by the Singapore Parliament on 7 November 2022. The Amendment Act enacts a number of amendments to the Goods and Services Tax Act 1993 (GST Act) which were first proposed in the draft Goods and Services Tax (Amendment) Bill 2022 (Draft Bill).

The provisions contained in the Amendment Act largely mirror those in the Draft Bill, with the following key differences:

- the Amendment Act introduces new provisions to refine and clarify the rules in respect of the operation of the Reverse Charge regime (section 2 of the Amendment Act);
- the new section 13(3A) of the GST Act proposed in the Draft Bill, which sought to clarify the place of supply rules in respect of supplies taxable under the Seventh Schedule to the GST Act, is excluded from the Amendment Act (section 2 of the Draft Bill);
- the Draft Bill introduced a new section 62C offence in connection with missing trader fraud schemes and the Amendment Act incorporates a new provision on the extra-territorial scope of the offence. In particular, if a section 62C offence is committed outside of Singapore, the person may be dealt with as if the offence is committed in Singapore (section 10 of the Amendment Act); and
- finally, the Amendment Act also confirms that the Minister for Finance may, within 2 years from the date of commencement of a particular provision of the Amendment Act, prescribe additional saving or transitional provision(s) as may be regarded as necessary or expedient to facilitate the operation of such a provision (section 20(2) of the Amendment Act).

JURISDICTION:

Thailand

Staff training costs, trade fair and exhibition expenses

Staff training costs

An income tax exemption (by way of a deduction) will apply to costs incurred by juristic companies and partnerships for staff training seminars held in Thailand, particularly in secondary tourism provinces enumerated in Royal Decree 757.

Juristic companies and partnerships will be allowed a 200% deduction for training seminars held in secondary tourism provinces or any other tourism areas prescribed by the Director-General. A 150% deduction will apply to training seminars held in localities other than those mentioned above or in contiguous localities between the areas mentioned above and other areas, where the staff training expenses incurred in each area cannot be clearly separated.

The deduction covers seminar room fees, expenses incidental to the seminar, including transportation and accommodation fees, and service fees paid to tour organizers and guides.

The measure will incentivize juristic companies and partnerships to support the tourism industry and organize seminars in these areas.

Trade fair and exhibition expenses

Juristic companies and partnerships participating in local trade fairs or exhibitions will be allowed an income tax exemption (also by way of a deduction) equal to 200% of the space rental or service fees incurred to participate in an event (Royal Decree 758). Qualifying trade fairs and exhibitions must commence between 15 July 2022 and 31 December 2022. The company or partnership must have a certificate from the organizer that it has actually attended the event.

New BOI Incentives for investment retention, relocation and investment in sustainable activities

Courtesy IBFD, it was reported that on 4 November 2022, the Thai Board of Investment announced new incentive packages for investors, including tax incentives for qualifying long-standing investors, companies that relocate their activities to Thailand, and companies that invest in sustainable activities. The new incentives apply from January 2023.

Retention and expansion programme

Investors that in the past 15 years have been granted investment benefits for at least three projects with a combined value of not less than THB 10 billion and that are seeking approval for a new project or expansion project with an investment of THB 500 million or more will receive special incentives, including an additional corporate income tax (CIT) exemption for up to 3 years or a 50% CIT reduction for up to 5 years.

Relocation programme

Companies that relocate all of their activities (i.e. regional headquarters, research and development (R&D) centre and manufacturing facilities) to Thailand will be granted an additional CIT exemption of 5 years. Companies that relocate their manufacturing and regional headquarters will receive an additional CIT exemption of 3 years while those that relocate their manufacturing and R&D centre will receive between 1 and 5 years of CIT exemption, depending on the industry.

Creation of new industry categories

The BOI has approved the creation of new promoted industry categories that will receive special incentives. These categories include:

- electric vehicles (EV): production of fuel cell EVs and setting up of EV battery swapping stations;
- renewable energy: generation of hydrogen-based electricity and related activities;
- food production for the future: novel and organic food production; and
- aerospace industry: manufacture of equipment for repair, maintenance and ground service, as well as manufacture of mechanical or electronic parts for various satellite and space objects, etc.

Advance technology sectors

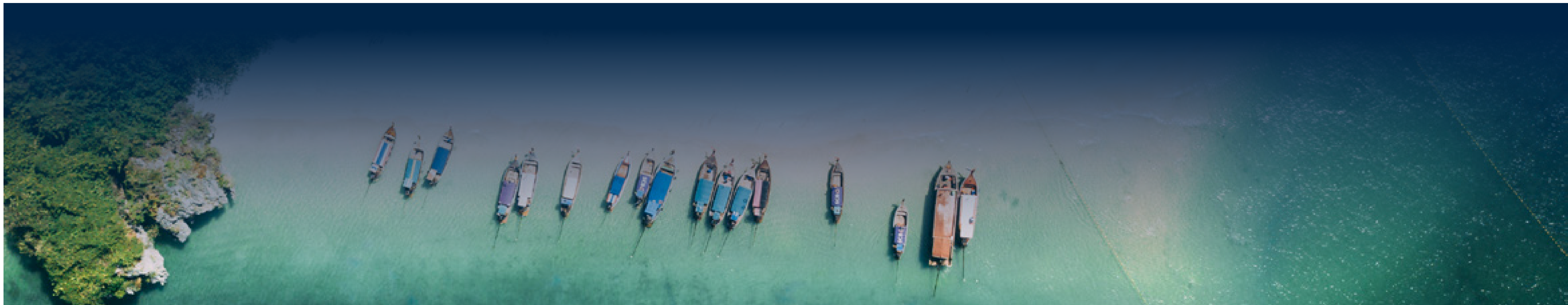
Projects classified as "A1+" in the BOI's nomenclature will be eligible, depending on the activity, to 10 to 13 years CIT exemption without a cap. These include investments in upstream activities that entail innovation and high technology (e.g. biotech, nanotech and advance material technology) and involve technology transfer and cooperation with Thailand's higher education system and research entities.

New economic corridors

The BOI has also approved the designation of new economic corridors, namely the Northern Economic Corridor, North-Eastern Economic Corridor, Central-Western Economic Corridor and Southern Economic Corridor, as special investment zones. These four zones will add to the existing Eastern Economic Corridor. A wide range of incentives are available to investments in such areas.

VAT exemption for data centre businesses

It was reported on 16 November that the Thai government has gazetted a royal decree (Royal Decree 759) exempting data centre businesses from value added tax (VAT). A qualifying data centre business is required to submit an application to the Director-General of the Revenue Department within 5 years from 9 November 2022 (the date on which the royal decree comes into effect).



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