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Asia Tax Bulletin

Spring 2023

In This Edition

We are pleased to present the Spring 2023 edition of our firm's *Asia Tax Bulletin.*

Dear Reader,

This Spring edition of the Asia Tax Bulletin features the tax changes due to the Government Budget taxation measures issued during the past three months by the governments of Hong Kong, Malaysia (including the proposed introduction of a capital gains tax in 2024) and Singapore. It also highlights the tax reform changes in Korea and addresses a host of other tax developments which you may find to be of interest, including the details of Hong Kong's tax incentive for qualifying family investment holding companies.

We trust this edition contains useful information in order to keep abreast with the latest tax developments in the Asian jurisdictions featured in this Bulletin.

Please do not hesitate to let your trusted Mayer Brown contact know if you have any questions.

Pieter de Ridder

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JURISDICTION:

China (PRC)

Equity incentive income

On 16 January 2023, the PRC's Ministry of Finance (MOF) and the State Taxation Administration (STA) jointly issued Bulletin [2023] No. 2 ("**Bulletin 2**") to extend the preferential individual income tax (IIT) treatment for equity incentive income for one additional year with effect until 31 December 2023. Taxpayers can continue enjoying preferential IIT treatment on equity incentive income, annual bonus and expatriates' allowances in 2023.

The extension of the IIT preferential treatment for equity incentive income is welcome news for taxpayers. Meanwhile, it is important to note that the Chinese tax authority has been strengthening the individual income tax (IIT) compliance administration relating to equity incentive income. During 2022, we have seen local tax bureaus actively enforcing the reporting requirements imposed under Shui Zong Ke Fa [2021] No. 69 ("**Notice 69**") on equity incentive income. In some cities, in addition to the grant and/or vesting filings in accordance with Cai Shui [2005] No. 35, Notice 69 filings must be completed in order for the relevant employees to enjoy the preferential IIT treatment.

In light of this practical environment, companies are recommended to take measures to ensure the compliance with their IIT withholding and/or reporting obligations and address historic non-compliances (if any).

The prevailing preferential individual income tax (IIT) policy for equity incentive income as provided under Cai Shui [2018] No. 164[4] ("**Notice 164**") was originally set to expire by the end of 2021. On 31 December 2021, the MOF and STA jointly issued Bulletin [2021] No. 42 ("**Bulletin 42**") which granted a one-year extension for the preferential IIT treatment for equity incentive income.

More recently, on 16 January 2023, the MOF and STA issued Bulletin 2 to further extend the preferential IIT treatment for equity incentive income for one additional year. Pursuant to Bulletin 2, PRC tax resident employees can continue enjoying preferential IIT treatment on qualified equity incentive income for the period from 1 January 2023 to 31 December 2023.

It is not surprising to see the preferential IIT policy on equity incentive income was further extended. In fact, it is common for the Chinese government to first set a limited effective period for tax incentives and then grant extensions from time to time. This approach provides the Chinese government the flexibility on whether to continue granting the relevant tax incentives depending on the specific circumstances.

In addition to equity incentive income, the prevailing preferential IIT treatments for annual bonus and expatriates' allowances are also scheduled to expire by the end of 2023. It remains to be seen if these preferential IIT policies would be further extended after 2023.

Value Added Tax for Small-scale Taxpayers

Courtesy IBFD, it was reported that on 9 January 2023, China clarified the value added tax (VAT) treatment of small-scale taxpayers from 1 January to 31 December 2023. A small-scale taxpayer is a taxable person whose business revenue in the last 12 months is less than CNY 5 million. As clarified in Announcement of the Ministry of Finance and State Taxation Administration [2023] No. 1, a small-scale taxpayer whose monthly revenue is not more than CNY 100,000 is exempt from VAT.

Small-scale taxpayers that are subject to the 3% collection rate will be taxed at a 1% collection rate instead. The reduction of the collection rate from 3% to 1% also applies to advance VAT payments. Taxpayers engaged in services of a productive nature are allowed an additional 5% of input tax credit. These taxpayers are those whose aggregated revenues from postage, telecommunications, modern services (such as R&D and technical services), and lifestyle services (including food and beverage, cultural and sports services, education, health care, travel, hotel, entertainment and citizens' daily services such as funeral services, hairdressing, massage, and elderly care) account for more than 50% of their total revenues. This additional 5% input tax credit will be increased to 10% for taxpayers whose revenue from lifestyle services only is more than 50% of the total revenue.

In respect of other tax issues in relation to the additional input tax credit, Announcement of the Ministry of Finance, State Taxation Administration and General Customs [2019] No. 39 and Announcement of Ministry of Finance and State Taxation Administration [2019] No. 87 must be complied with.

Super-Deduction for R&D activities

From 1 January 2023, the special deduction for research and development (R&D) activities conducted by enterprises, which can be claimed in addition to actual expenses, is 100% of the expenses incurred if the R&D activities have not created an intangible asset. Where the R&D activities have resulted in an intangible asset, the amortization base of that intangible will be 200% of the cost incurred. This is promulgated by the Announcement of the Ministry of Finance (MoF) and the State Taxation Administration (STA) [2023] No. 7. The super-deduction is not new, however, the new Announcement applies to all enterprises regardless of the size of the enterprises (small or large) and sets no expiration date. In respect of the requirements for eligibility and details regarding the implementation of the super-deduction, Circular of the Ministry of Finance (MoF) and the State Taxation Administration (STA) [2015] No. 119 and Circular of the MoF and the STA [2018] No. 64 continue to apply.

JURISDICTION:

Hong Kong

Family-owned Investment Holding Vehicles and Family-owned Special Purpose Entities

The Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022 (the Amendment Bill) was gazetted on 9 December 2022 and introduced into the Legislative Council on 14 December 2022. The Amendment Bill aims to amend the Inland Revenue Ordinance (Cap. 112) (IRO) to provide profits tax concessions for (a) eligible Family-owned Investment Holding Vehicles (FIHVs) managed by eligible Single Family Offices (SFOs) in Hong Kong; and (b) Family-owned Special Purpose Entities (FSPEs). Only the assessable profits of FIHVs and FSPEs arising from qualifying transactions and incidental transactions would be eligible for profits tax concessions, which would apply in respect of a year of assessment commencing on or after 1 April 2022.

For an FIHV to enjoy the profits tax concession, it must satisfy the following conditions:

- Structure: the FIHV must be an entity (established or created in or outside Hong Kong) that is not a business undertaking for general commercial or industrial purposes. Entity means a body of persons (corporate or unincorporate) or a legal arrangement and includes a corporation, partnership and trust (including a discretionary trust);
- Ownership: the FIHV must relate to one or more than one member of a single family;
- Central management and control (CMC): the FIHV must, at all times during the basis period for the year of assessment, exercise CMC in Hong Kong;
- Management of FIHV: the FIHV must be managed by an eligible SFO and meet the minimum asset threshold; and
- Substantial activities requirement: the FIHV must carry out its core income generating activities (CIGAs) in Hong Kong and meet the requirements of qualified full-time employees and operating expenditures.

To associate an FIHV with a single family, one or more than one member of the family must have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the FIHV at all times during the basis period for the year of assessment. Members of the family include a natural person (Person A) and all of the persons related to Person A (whether alive or deceased) mentioned below:

- a spouse of Person A (Person B);
- a lineal ancestor of Person A (Person C);
- a lineal ancestor of Person B (Person D);
- a lineal descendant of Person A (Person E);
- a sibling of Person A, Person B, Person C or Person D (Person F);
- a lineal descendant of Person F (Person G); and
- a spouse of Person E, Person F and Person G.

If a person ceases to be a spouse (i.e. other than being deceased) during a year of assessment that begins on or after 1 April 2022, the spouse and those persons who are connected to the spouse and considered as members of a family before the cessation would still be regarded as members of the family for the subject year of assessment and the following year of assessment (i.e. a total of two years). A lineal descendent includes adopted and step children of the person's spouse (including a deceased spouse) or former spouse.

An FIHV must be managed in Hong Kong by an eligible SFO of the family to which the FIHV is related. To be an eligible SFO of a family, the SFO must:

- be a private company (incorporated in or outside Hong Kong) exercising CMC in Hong Kong;
- have at least 95% of its beneficial interest being held (directly or indirectly) by members of the family;
- provide services to specified persons of the family during the basis period for the year of assessment and the fees for the provision of those services are chargeable to tax; and
- fulfill the safe harbour rule whereby at least 75% of the eligible SFO's assessable profits should derive from the services provided to specified persons of the family.

A specified person in relation to a family means:

- an FIHV that is related to the family;
- an FSPE in which the FIHV has a beneficial interest (whether direct or indirect);
- an interposed FSPE of the FIHV; and
- a member of the family.

An FIHV is managed by an eligible SFO of the family to which the FIHV is related if the eligible SFO carries out the investment activities in relation to the FIHV. The activities include the following:

- conducting research and advising on any potential investments to be made by the FIHV;
- acquiring, holding, managing or disposing of property for the FIHV; and
- establishing or administering an FSPE for holding and administering one or more underlying investments of the FIHV.

A cap is imposed such that not more than 50 FIHVs managed by the same eligible SFO may benefit from the profits tax concession.

An FIHV can elect for the profits tax concession through an election mechanism. The key features of the election mechanism are as follows:

- the election must be made in writing;
- the election, once made, will apply to all subsequent years of assessment (i.e. no annual election is required); and
- the election made is irrevocable.

The aggregate value of assets specified under Schedule 16C to the IRO (specified assets) managed by an eligible SFO for the FIHV (or multiple FIHVs) of a family must be at least HK$240 million. In determining whether the minimum asset threshold is met, the aggregate amount of the net asset value (NAV) of the specified assets of each relevant FIHV managed by the eligible SFO (Aggregate NAV) at the end of the FIHV's basis period for the year of assessment (subject year) will be considered.

In case the Aggregate NAV for the subject year falls below HK$240 million, the minimum asset threshold is considered to be met if the Aggregate NAV during the period listed below is at least HK$240 million:

- At the end of the FIHV's basis period for the year of assessment immediately preceding the subject year (1st preceding year), or
- At the end of the FIHV's basis period for the year of assessment immediately preceding the 1st preceding year.

In calculating the NAV, the assets held by an FSPE of the FIHV will be included.

Assets specified under Schedule 16C to the IRO (specified assets) include the following:

- Securities;
- Shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a private company;
- Futures contracts;
- Foreign exchange contracts under which the parties to the contracts agree to exchange different currencies on a particular date;
- Deposits other than those made by way of a money-lending business;
- Deposits (as defined by section 2(1) of the Banking Ordinance (Cap. 155)) made with a bank (as defined by Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571));
- Certificates of deposit (as defined by Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571));
- Exchange-traded commodities;
- Foreign currencies;
- OTC derivative products (as defined by Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571)).

In compliance with the latest international tax standards, an FIHV which would benefit from the profits tax concession must carry out its CIGAs in Hong Kong. The FIHV must have an adequate number of qualified full-time employees and incur an adequate amount of operating expenditure for carrying out the CIGAs in Hong Kong during the basis period for the year of assessment. At a minimum, the FIHV is required to have:

- at least two full-time employees in Hong Kong who carry out the activities concerned and have the qualifications necessary for doing so; and
- at least HK$2 million operating expenditure incurred in Hong Kong for carrying out the activities concerned.

Outsourcing of CIGAs to the eligible SFO is permitted provided that the use of outsourcing is not for circumventing the substantial activities requirement. For the purpose of satisfying the substantial activities requirement, the number of qualified full-time employees employed and the amount of operating expenditure incurred by the FIHV, or by the eligible SFO on behalf of the FIHV if the CIGAs are outsourced, must be commensurate with the level of the CIGAs carried out in Hong Kong.

An FIHV may enjoy profits tax concession in respect of transactions in specified assets (qualifying transactions) and transactions incidental to the carrying out of qualifying transactions (incidental transactions) subject to a 5% threshold. For the latter, it means that the FIHV's trading receipts from incidental transactions must not exceed 5% of the total of the FIHV's trading receipts from qualifying transactions and incidental transactions in the basis period for the year of assessment. The qualifying transactions of an FIHV must be carried out in Hong Kong by or through an eligible SFO of the relevant family, or arranged in Hong Kong by the eligible SFO.

It is quite common for an FIHV to establish FSPEs for holding and administering the FIHV's assets. Therefore, profits tax concessions will be provided at both the FIHV level and the FSPE level to the extent which corresponds to the percentage of beneficial interest of the FIHV in the FSPE.

If an FIHV or an FSPE is exempted from the payment of profits tax in respect of its assessable profits earned from qualifying transactions and incidental transactions for a year of assessment, any loss sustained by the FIHV, or the FSPE in relation to the FIHV, from any of those transactions is not available for set off against any of the assessable profits of the FIHV or FSPE for the year of assessment concerned or any subsequent year of assessment.

The concessionary profits tax rate for the assessable profits of an FIHV or an FSPE earned from the qualifying transactions and incidental transactions for a year of assessment commencing on or after 1 April 2022 is 0%.

Private companies may hold any type of assets in Hong Kong. To reduce the risk of tax evasion by FIHVs and FSPEs through their investment in private companies, an FIHV and FSPE will be taxed on its profits from such investment that do not meet the following three tests:

- Immovable property test: If an FIHV or an FSPE invests in a private company that holds, whether directly or indirectly, more than 10% of its assets in immovable property (excluding infrastructure) in Hong Kong, the FIHV or FSPE will be taxed on the profits arising from such an investment in the private company.
- Holding period test: If the immovable property test is satisfied and the investment in the private company has been held by the FIHV or FSPE for less than two years, the FIHV or FSPE will be taxed on the profits arising from the transaction of the private company.
- Control test and short-term asset test: If the immovable property test is satisfied but the holding period test is not satisfied, profits tax concession would not apply if:
    - » the FIHV or FSPE has control over the private company; or
    - » the FIHV or FSPE does not have control over the private company, but the latter holds more than 50% of the value of its assets in short-term assets. Short-term assets are assets (excluding specified assets and immovable property in Hong Kong) held by the private company for less than three years before the date of disposal.

Anti-round Tripping Provisions

Anti-round tripping provisions are devised to prevent abuse of the profits tax exemption. Given the special features of family office and diverse holding structures of FIHVs, a family may hold FIHVs directly or indirectly through resident companies, and such companies are likely to be associated with the FIHVs. In this connection, the anti-round tripping provisions would not be applicable to the following:

- resident individuals; and
- certain resident non-individual entities (i.e. an eligible SFO of the relevant family and a specified entity).

The specified entity must be a passive investment holding vehicle not carrying on any trade or business. At the same time, it must fulfill the following conditions:

- at least one member of the family to which the FIHV is related must have a direct or indirect beneficial interest in the entity;
- the entity is interposed between the family members and the FIHV; and
- regardless of the extent of the beneficial interest held by the family members in the entity, at least 95% of the beneficial interest in the FIHV must be held by family members.

Anti-avoidance Provisions

To prevent tax abuse, if the Commissioner is satisfied that:

- the main purpose, or one of the main purposes of an FIHV or an FSPE in entering into an arrangement; or
- the main purpose, or one of the main purposes of a person making a transfer of any asset or business to the FIHV or FSPE,

is to obtain a tax benefit, whether for the FIHV or FSPE or another person or entity, the profits tax concession will not apply to the FIHV or FSPE concerned.

However, for a transfer of asset or business to an FIHV or FSPE, the profits tax concession may still apply if the transfer is carried out on an arm's length basis and the transferor is chargeable to tax in respect of the assessable profits arising from the transfer.

A responsible person for an FIHV and the eligible SFO should keep sufficient records to enable the identity and particulars of the beneficial owner(s) of the FIHV and the eligible SFO to be readily ascertained. Penalties will be imposed on the FIHV and the eligible SFO if they fail to comply with the record-keeping requirements without reasonable excuse.

To obtain tax certainty, FIHVs and FSPEs may apply to the Commissioner for advance rulings on their eligibility for the profits tax concessions upon the enactment of the relevant amendment ordinance.

For more information about application for advance ruling, please refer to Departmental Interpretation and Practice Notes No. 31 – Advance Rulings.

Foreign sourced income taxation

On 15 February 2023, the Hong Kong Special Administrative Region (HKSAR) Government issued a statement in which it welcomes the European Union (EU)'s positive feedback given on February 14 on the efforts made by Hong Kong in putting in place a new foreign-sourced income exemption (FSIE) regime with effect from January 1, 2023. At the same time, the HKSAR Government will continue to refine the FSIE regime with regard to foreign-sourced disposal gain in relation to assets other than shares or equity interests in the light of the EU's recent update to its Guidance on Foreign Source Income Exemption Regimes.

In response to the EU's inclusion of Hong Kong in its watchlist on tax co-operation in 2021, the HKSAR Government enacted the Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022 last December to put in place a new FSIE regime for foreign-sourced dividend, interest, intellectual property income and disposal gain in relation to shares or equity interests received in Hong Kong. This regime has come into effect on January 1 this year. It seeks to address possible exploitation of Hong Kong's tax arrangement by multinational enterprise entities (MNE entities) without substantial economic substance in Hong Kong to bring about 'double non-taxation' of such income. The EU reportedly confirmed on 14 February that Hong Kong's FSIE regime is fully in compliance with its Guidance on FSIE Regimes originally published in 2019 with regard to dividend, interest and intellectual property income. However further action is needed in respect of the taxation of foreign capital gains.

In December 2022, the EU promulgated another Guidance, explicitly requiring capital gains, as a general class of income covered by an FSIE regime, to be subject to the economic substance requirement. Jurisdictions with ongoing FSIE reforms, such as Hong Kong, will therefore be kept in the watchlist by the EU until necessary legislative amendments are made by these jurisdictions with regard to the treatment of foreign-sourced capital gains by the end of this year for implementation with effect from January next year.

A Hong Kong government spokesperson stated that in formulating the refined FSIE regime, Hong Kong will observe several key principles, i.e. the territorial source principle of taxation will be maintained, while due regard will be given to Hong Kong's tax competitiveness and minimisation of the compliance burden. Under the to-be-formulated refined regime, foreign-sourced capital gains in relation to assets, regardless of their financial or non-financial nature, received by MNE entities in Hong Kong will remain exempt from tax provided that the economic substance requirement is complied with. Individuals, standalone local companies and purely local groups will not be affected.

On 23 March 2023, the Government launched a consultation exercise to introduce a safe harbour tax exemption provision in respect of the sale of equities if the transferor owns at least 15% or more of the shares of a Hong Kong or foreign company and has held these shares for at least 24 months prior to the sale. A carve-out would be made for shares in real property companies and for transferors who are insurers.

Government Budget Tax Proposals 2023

On 22 February 2023, the Financial Secretary announced the government's tax changes proposed for the Budget for the fiscal year 2023/2024. There were no changes to the tax rates. The key items are the following:

Reducing profits tax, salaries tax and tax under personal assessment

The Financial Secretary proposed a one-off reduction of profits tax, salaries tax and tax under personal assessment for the year of assessment 2022/23 by 100%, subject to a ceiling of HK$6,000 per case.

For profits tax, the ceiling of the tax reduction is applied to each business. For salaries tax, the ceiling is applied to each individual taxpayer; but for married couples jointly assessed, the ceiling is applied to each married couple (i.e. capped at HK$6,000 in total). For personal assessment, the ceiling is applied to each single taxpayer or married person who elects for personal assessment separately from his/her spouse. If a taxpayer elects for personal assessment jointly with his/her spouse, the tax reduction is capped at HK$6,000 for the married couple.

The proposed tax reduction is not applicable to property tax. Individuals with rental income, if eligible for personal assessment, may be able to enjoy such reduction under personal assessment.

A taxpayer who is separately chargeable to salaries tax and profits tax can enjoy tax reduction under each of the tax types. For a taxpayer having business profits or rental income and electing for personal assessment, the reduction will be based on the tax payable under personal assessment. It might be different from the amount of tax reduction he/she would get if he/she was not assessed under personal assessment. The exact position will need to be evaluated case by case.

To elect for personal assessment, eligible taxpayers should complete Part 7 of his/her tax return for individuals (BIR60) for the year of assessment 2022/23. Individuals having salaries income only, but no business profits and rental income, need not elect for personal assessment.

The proposed reduction will reduce taxpayers' amount of tax payable for the year of assessment 2022/23. Taxpayers should file their profits tax returns and tax returns for individuals for the year of assessment 2022/23 as usual. Upon enactment of the relevant legislation, the Inland Revenue Department will effect the reduction in the final assessment. For any final assessment for the year of assessment 2022/23 issued before the enactment of the law, the Inland Revenue Department will make a reassessment after the enactment. Taxpayers are not required to make any applications or enquiries to the Department.

The proposed tax reduction will only be applicable to the final tax for the year of assessment 2022/23, but not to the provisional tax of the same year. Therefore, taxpayers are still required to pay their provisional tax on time despite the proposed reduction measure. The provisional tax paid will be applied to pay the final tax for the year of assessment 2022/23 and the provisional tax for the year of assessment 2023/24. Excess balance, if any, will be refunded.

Increased child allowance

The Financial Secretary proposed to increase child allowance starting from the year of assessment 2023/24. The basic child allowance for each child and the additional child allowance for each child born during the year of assessment will both increase from the current HK$120,000 to $130,000. After the increase, the total allowance for a child born during the year of assessment will be HK$260,000, and the allowance for each subsequent year will be $130,000.

After enactment of the relevant legislation, the Inland Revenue Department will automatically apply the new level of child allowances in calculating the provisional salaries tax for the year of assessment 2023/24. Taxpayers are only required to complete their tax returns for the year of assessment 2022/23 and claim the child allowance and they do not need to make separate applications.

Providing tax deduction for spectrum utilisation fees

The Financial Secretary proposed to provide tax deductions for the spectrum utilisation fees to be paid by the future successful bidders of radio spectrum.

Increasing tax deduction for voluntary contributions made by employers to the Mandatory Provident Fund for employees aged 65 or above

The Financial Secretary proposed to increase the tax deduction for voluntary contributions made by employers to the Mandatory Provident Fund for employees aged 65 or above from the current 100 per cent to 200 per cent.

Adjusting the value bands of ad valorem stamp duty at Scale 2 rates

The Financial Secretary proposed to adjust the value bands to which the ad valorem stamp duty at Scale 2 rates apply. The Government will introduce the Stamp Duty (Amendment) Bill 2023 (the Bill) into the Legislative Council to take forward the proposed adjustment. To enable property purchasers to benefit from the measure as soon as possible, the Chief Executive has made the Public Revenue Protection (Stamp Duty) Order 2023 (the Order) under the Public Revenue Protection Ordinance (Cap. 120) to give full force and effect of law to the Bill before its enactment. Pursuant to the Order, the new value bands will be applicable to any instrument for residential or non-residential property transaction executed at 11 am on 22 February 2023 or thereafter that is subject to the ad valorem stamp duty at Scale 2 rates despite that the Bill is pending the scrutiny by the Legislative Council.

Global minimum tax, onshore gains exemption and patent box tax incentive

Finally, last but not least, the Finance Secretary announced the government's plan to apply the global minimum effective tax rate (15%) on large multinational enterprise (MNE) groups and implement the domestic minimum top-up tax starting from 2025 onwards. Also, the government will introduce a patent box tax incentive to provide tax concessions for profits sourced in Hong Kong from qualifying patents generated through R&D activities, with consultation on the patent box tax arrangements in 2023 and legislative amendments aimed to be proposed in the first half of 2024.

As a separate measure, the government will put forward an enhancement proposal to provide clearer guidelines on whether onshore gains on disposal of equity interests are subject to profits tax. Such proposal is eagerly anticipated, given the fact that Singapore introduced such a measure some ten years ago, which has turned out to be extremely helpful for, especially, the private equity, venture capital and investment funds sectors.

Anti avoidance under tax treaties

According to an update of 21 February 2023, published by the OECD, Hong Kong deposited a notification on 21 February 2023 confirming the completion of its internal procedures for the entry into effect of the OECD's Multilateral Tax Treaty (MLI) provisions with respect to 31 of its covered tax agreements identified in the notification, pursuant to article 35(7)(b) of the MLI.

Budget 2023/2024

The Finance Minister of India presented the Union Budget 2023-24 to the parliament on 1 February 2023.

Direct Tax

- The following changes have been proposed to the tax slab rates:

Existing slabs	Rate	Proposed slabs	Rate
Up to INR 2,50,000	Nil	Up to INR 3,00,000	Nil
INR 2,50,001 to INR 5,00,000	5%	INR 3,00,001 to INR 6,00,000	5%
INR 5,00,001 to INR 7,50,000	10%	INR 6,00,001 to INR 9,00,000	10%
INR 7,50,001 to INR 10,00,000	5%	INR 9,00,001 to INR 12,00,000	15%
INR 10,00,001 to INR 12,50,000	20%	INR 12,00,001 to INR 15,00,000	20%
INR 12,50,001 to INR 15,00,000	25%	Above INR 15,00,000	30%
Above INR 15,00,000	30%	-	-

- The new tax regime will be the default regime and the taxpayer will be required to expressly opt for the old tax regime for claiming deductions.
- The benefit of lower rates under the new tax regime is now being extended to Association of Persons (other than a cooperative society), Body of Individuals, and Artificial Juridical Persons.
- The income limit for availing rebate (i.e., benefit of no-tax) has been increased from INR 500,000 to INR 7,00,000.
- The peak rate of surcharge is proposed to be capped at 25% for taxpayers under the new tax regime whose income exceeds INR 5,00,00,000. Currently the peak rate of surcharge is 37%. Consequent to this proposal, the effective tax rate will reduce from 42.75% to 39%.
- For a better understanding, a comparative table is provided below:

Existing slabs	Surcharge	Proposed slabs	Rate
Up to INR 50 lacs	Nil	Up to INR 50 lacs	Nil
INR 50 lacs to INR 1 Crore	10%	INR 50 lacs to INR 1 Crore	10%
INR 1 Crore to INR 2 Crore	15%	INR 1 Crore to INR 2 Crore	15%
INR 2 Crore to INR 5 Crore	25%	Above INR 2 Crore	25%
Above INR 5 Crore	37%	-	-

- The benefit of 'Standard Deduction' of INR 50,000 is extended to the new tax regime.
- Maturity receipts from Life Insurance Policies issued after 01 April 2023 (other than ULIPs) will be taxable for those policies where the aggregate annual premium exceeds INR 5 lacs (per policy).
- Gifts by residents to a 'not ordinarily resident' will now be taxable (currently, only 'non-residents' were liable to tax).
- Interest on capital borrowed for acquisition/ improvement of house property will not be included in the 'cost of acquisition' for capital gains purposes, if a deduction was claimed on such interest earlier.
- Issuance of shares (by a closely held company) to a non-resident for a consideration in excess of the Fair Market Value ('FMV') will now attract Angel Tax. The closely held company will be liable to tax on the consideration which is in excess of the FMV. Currently, Angel Tax is applicable only to resident investors.

Start-ups

- Last date for incorporation to claim a 'tax holiday' now extended to 01 April 2024
- Benefit for carry forward and set off of losses extended to 10 years (currently 7 years)

Promoting timely payments to MSMEs

- Payments made beyond the time limit specified in Micro, Small and Medium Enterprises Development Act, 2006 ('MSMED Act") will be allowed as a deduction only on payment basis. Section 15 of the MSMED Act, mandates payments within the time as per the written agreement, which cannot be more than 45 days. If there is no such written agreement, the payment is required to be made within 15 days.

Capital Gains

- Gains on Market Linked Debentures ("MLDs") are proposed to be taxable as short-term gains irrespective of the period of holding.
- Exemption is restricted to INR 10 crores on long term gains generated on sale of capital assets where investment is made in a residential property for claiming an exemption.

Tax Deducted at Source ('TDS') / Tax Collected at Source ('TCS')

- The TCS rate is proposed to be increased to 20% (currently 5%) on the following remittances:
  - » Under the Liberalized Remittance Scheme of Reserve Bank of India
  - » For overseas tour packages
- Currently, TDS @ 30% is applied on payment of accumulated Provident Fund balance if the employee fails to furnish a Permanent Account Number. To avoid hardships to the low- income group employees, such TDS rate is proposed to be reduced to 20%.
- TDS will now be applicable on interest payable on securities held in dematerialized form and listed on a recognized stock exchange.
- TDS @ 30% is proposed on 'net winnings' from Online Gaming, to be done at the end of the financial year or upon withdrawal during the year, whichever is earlier. No de-minimis threshold is prescribed. Computation of 'net winnings' to be prescribed.
- Prosecution provisions for failure to deduct tax at source have been extended to the following transactions:
  - » On benefits or perquisites
  - » On Virtual Digital Assets
  - » On net winnings from Online Games

The 15-year tax benefit to Special Economic Zone units will be restricted, if:

- Income tax return is not filed before the prescribed due date; or
- Export proceeds from sale of goods or provision of services is not received or brought into India in convertible foreign exchange within 6 months from the end of year or within such further time the competent authority may allow.

Time limit for submission of information/ documents under the 'Transfer Pricing' related provisions has been reduced from 30 days to 10 days, from the date of receipt of notice from Assessing Officer/ Commissioner (Appeals).

Threshold for availing benefit of presumptive taxation has been revised as under:

- Small businesses - Increased to INR 3 crores (currently 2 crores)
- Professionals – Increased to INR 0.75 crores (currently 0.50 crores)

Additional condition to be fulfilled – total cash receipts during the year does not exceed 5% of the total turnover/ gross receipts of the relevant financial year.

Goods and services tax (GST)

- Input tax credit will be restricted on goods and services in relation to:
  - » the supply of warehoused goods to any person (as referred to under Schedule III of the Central Goods and Services Tax Act), which will be considered as an exempt supply; and
  - » corporate social responsibility expenses as referred to in the Companies Act, 2013.
- Registration will not be required if a supply relates exclusively to exempted business.
- The coverage of the OIDAR will be expanded to:
  - » include services in relation to business and commerce to unregistered recipients; and
  - » exclude the condition for a service being essentially automated and involving minimal human intervention.
- The key GST amendments for e-commerce operators are:
  - » suppliers of goods through e-commerce operators can opt for the Composition Scheme for GST payment; and
  - » penal provisions will be introduced on e-commerce operators for the supply of goods and services made through them by unregistered persons, inter-state supply by persons not eligible to carry such supplies, and failure to furnish correct details in tax collected at source (TCS) returns for the supply of goods by unregistered persons.
- The place of supply of services by way of transportation of goods to a place outside India, in case both the supplier and recipient are in India, will be amended to be the location of the registered recipient or the location of handing over of goods in case of an unregistered recipient.
- The following offences will be decriminalized:
  - » obstructing or preventing officers from performing duties,
  - » tampering with evidence or documents,
  - » failing to supply information or providing false information.
- Specified offences involving a value less than INR 20 million (except for offences relating to the issuance of invoice without supply) will be decriminalized.
- In terms of the compounding of offences:
  - » there will be no compounding benefit in the case of an offence relating to the issuance of invoice without supply; and
  - » the amounts of compounding benefit will be rationalized, such that the minimum will be reduced from INR 10,000 or 50% to 25% of the tax amount involved and the maximum will be reduced from INR 30,000 or 150% to 100% of the tax amount involved.
- A new provision will be inserted to enable the Common Portal to share specified information furnished by registered persons with such other systems (as may be notified), in form and manner as may be prescribed, with the consent of the recipient/supplier.

Customs duty

- The government will continue to incentivize domestic value addition by:
  - » reducing the effective customs duty rates on camera lenses and components used in mobile phones and parts of open cells of TV panels;
  - » increasing the effective customs duty rates of motor vehicles in semi knocked down (SKD) form (including electric vehicles) and completely built unit (CBU) form; and
  - » immediately increasing duties on finished goods, such as chimneys, bicycles and toys.
- Separate classifications will be introduced to align products under international standards with Indian standards for chemicals; specific entries for flat panel display modules will be created.
- Over 150 exemptions will be extended under Notification No. 50/2017 and standalone exemption notifications. About 30 exemptions will be discontinued.
- Solar power plants and solar power projects will be excluded from power project import benefits that allow imports under a concessional customs duty rate.

Amendments to indirect taxes now subsumed under the GST Act

Central excise

The proposed changes to central excise, which apply to certain products manufactured in India that are outside the purview of GST, are the following:

- the National Calamity Contingent Duty (a form of excise duty) on specified cigarettes will be increased by 16%; and
- an excise duty exemption will be provided to blended compressed natural gas (CNG) to the extent of the GST paid on the biogas or compressed biogas contained in the blended CNG.

Central sales tax (CST)

The Central Sales Tax Appellate Authority (a body constituted under the CST Act) will no longer be functional. Pending cases will be transferred to the Central Excise Service Tax Appellate Tribunal (CESTAT). The CESTAT will have jurisdiction over any disputes relating to the inter-state sale of goods.

JURISDICTION:

Indonesia

Tax Incentives for investments in Nusantara (new capital)

Indonesia has issued Government Regulation Number 12 of 2023 (GR 12/2023) regarding the granting of business licenses, ease of doing business, and investment facilities for businesses in the capital city of Nusantara, the future capital of Indonesia. GR 12/2023 came into effect on 6 March, 2023.

The regulation aims to provide greater certainty, opportunity and participation for businesses to accelerate the development of the capital city, so that development can be evenly distributed and move the Indonesian economy forward.

The tax incentives available for investments in Nusantara as stipulated under GR 12/2023 include:

- 100% income tax reduction (tax holiday) for domestic taxpayers with capital investments of at least IDR 10 billion. The duration of the tax holiday depends on the business sector and timing of the investment as follows:
  - public infrastructure and public services, up to 30 years;
  - economic generation, up to 20 years; and
  - other business sectors, up to 10 years;
- income tax reduction incentive for up to 25 years for investments made from 2023 to 2035 and 20 years for investments made from 2036 to 2045, for financial sector activities as follows:
  - 100% income tax reduction for domestic corporate taxpayers and permanent establishments conducting banking, insurance and sharia finance on the amount of corporate income tax payable on income that is used for investment or financing construction, development and economic activities in Nusantara and/or partner areas;
  - 85% reduction of corporate income tax payable on: (i) income from foreign investments in the financial sector capital markets, derivative finance and carbon exchanges and international commodity trade/exchange; or (ii) the share of income originating from businesses and/or communities located in Nusantara, for other financial services; and
  - tax exemption on income from investments in Nusantara received or earned by non-resident taxpayers for 10 years starting from the initial placement of funds in the financial centre;
- 100% reduction of income tax payable for up to 10 years, followed by a 50% reduction of income tax payable in the following 10 years, available until the year 2045 for the following taxpayers:
  - non-residents who establish and/or move their head offices and/or regional offices to Nusantara; and
  - domestic taxpayers who establish their head offices and/or regional offices in Nusantara on income received or obtained from businesses or the community in Nusantara; and
- the following incentives are available until the year 2035:
  - gross income reduction of up to 250% of the total costs incurred for work practice, apprenticeships and/or learning activities by domestic taxpayers for the development of specific competency-based human resources;
  - gross income reduction of up to 350% of the total costs incurred for certain research and development activities within a certain period of time for domestic corporate taxpayers that conduct such activities;
  - gross income reduction of up to 200% of the total contribution and/or costs incurred for the construction of facilities, such as public facilities, social facilities or other non-profit facilities, by domestic taxpayers;
  - income tax under article 21 of the Income Tax Law will be borne by the government and is a final tax for the income received by certain employees;
  - final income tax of 0% on income from the gross turnover of certain businesses for micro, small and medium enterprises;
  - reduction of income tax on the transfer of rights over land and buildings;
  - non-collection of value added tax and exemption from sales tax on luxury goods on the delivery of certain taxable goods; and
  - import duty exemption and PDRI (*Pajak dalam Rangka Impor*) facility for goods imported for the growth and industrial development of Nusantara and partner areas.

JURISDICTION:

Japan

Consumption tax

Japan's consumption tax (JCT) system has been amended to introduce a qualified invoice requirement. The amendment has been subject to a lengthy grace period. However, the effective date for the new requirement is now approaching, with the new rules coming into effect from 1 October 2023.

Under the existing JCT system, a JCT taxpayer can claim an input JCT credit or refund even if its vendors are not JCT taxpayers (input JCT availability is based on the books and records which describe the details of the transactions, as opposed to the invoices). In these circumstances, vendors who are non-JCT taxpayers can retain the JCT collected, which has historically resulted in an economic benefit for such vendors. The legislative purpose of the qualified invoice system is to remedy this outcome regarding the non-JCT taxpayers. The amendment is also made in the context of Japan being the only OECD country that does not have such an invoice system for VAT.

Under the new system, in order to claim input JCT credits and receive JCT refunds (where creditable input JCT exceeds output JCT for the year) one must have qualified invoices. In order to issue qualified invoices, taxpayers are required to register and become "qualified invoice issuers." This differs from the current system, where there is no such registration requirement and JCT taxpayers can also recognize JCT input credits for transactions with suppliers that are JCT exempt (i.e., a qualified invoice issuer must be a JCT taxpayer). After 1 October 2023, a JCT taxpayer will be unable to recognize an input tax credit for transactions with non-registered invoice issuers, as a rule. As a temporary transitional measure, a partial JCT credit may be available over a six-year transition period (from 1 October 2023 to 30 September 2026, 80% of the input credit amount will be available, and from 1 October 2026 to 30 September 2029, 50% of the input credit amount will be available).

The new rules specify the information that must be stated in a qualified invoice. This includes the supplier name, the qualified invoice registration number, a description of the goods or services, the invoice amount (as well as the exact JCT amount denominated in JPY) and the customer name. For businesses that provide JCT taxable transactions to numerous counterparties (e.g., retail businesses, restaurants, etc.), simplified qualified invoices which do not include the customer names are allowed.

The application process for registration as a qualified invoice must be submitted by 31 March 2023 for applicants to be qualified invoice issuers on the day that the new rules become effective. If a non-JCT taxpayer registers as a qualified invoice issuer, non-JCT taxpayer status is forfeited, and the taxpayer becomes a JCT taxpayer. After registration, the name of the qualified invoice issuer and their qualified invoice registration number can be confirmed through Japan's National Tax Agency (NTA) website.

While Japanese law contains a strictly enforced due date to become a voluntary JCT taxpayer, there is an exception for non-JCT taxpayers who register as qualified invoice issuers during their fiscal year in which the 1 October 2023 effective date falls. This exception allows these taxpayers to become voluntary JCT taxpayers from the date of registration as a qualified invoice issuer.

In addition to the invoice itself, the introduction of the qualified invoice system has implications for accounting, tax and IT/ERP systems and broader business, including management and price negotiations between registered and unregistered suppliers, document retention policies for tax audit preparation, accounting entries and JCT classification codes, calculation of input and output JCT during the transition period and compliance with the JCT law in contracts.

The updated rules are expected to have varying impacts on different business models. For example, for intermediary transactions, such as consignment sales, if both the consignor and the consignee are registered invoice issuers, the consignee can issue qualified invoices to the counterparty to the transaction (such as the customer) subject to certain conditions (e.g., retention requirements regarding copies of the qualified invoices for both the consignor and the consignee, etc.)

For platform operators, the impact of the qualified invoice rules is potentially complex and will depend on the type of transactions the platform conducts with customers in Japan. If the platform transacts directly with, and charges service fees directly to, customers, the impact may be fairly straightforward, and the platform operator should decide whether to register as a qualified invoice issuer under the new regime and ensure it complies with the necessary invoicing requirements. However, for platforms that simply collect payments from Japanese customers for transactions with sellers, the rules are more complex, and the platform may be able to issue qualified invoices on behalf of the sellers as an agent/intermediary if certain requirements are met (e.g., sellers are registered as qualified invoice issuers, etc.).

In relation to the digital service JCT system, currently offshore service providers may register with the Japanese tax authorities in order for their "B2C4B" customers to enjoy an input JCT credit for the digital service payments to the registered offshore service providers. This registration system for digital service providers will be abolished effective 1 October 2023, and offshore service providers registered as of 1 September 2023 will automatically be deemed to be qualified invoice issuers effective from 1 October 2023.

Related to this issue, the Japanese government is currently contemplating the introduction of a so-called "deemed reseller" (referred to as a "platformer") taxation system. Under such a system, a platformer of digital services would be responsible for handling digital service JCT imposed on digital transactions from each digital service provider operating on the platform, although no details have been disclosed at this stage. The 2023 Japanese Tax Legislation Proposal (by the ruling parties) briefly mentions a "platformer taxation" system as one item to be considered for tax reform in subsequent years. We speculate that it may take time to introduce such a "deemed reseller" concept in the JCT system, as it would require substantial changes to the systems for offshore platformers (and we also expect that some grace period would be allowed).

JURISDICTION:

Korea

Pillars – Global Minimum Tax

Of the 15 BEPS Actions, Actions 2-15 are comfortably on track in the majority of OECD countries. The four minimum standards in particular, namely Action 5 (countering harmful tax practices), Action 6 (countering treaty abuse), Action 13 (transfer pricing documentation and country-by-country reporting), and Action 14 (improving tax dispute resolution mechanisms) are being implemented smoothly, under the peer review system of the Inclusive Framework. Action 1 however, which focuses on taxation of the digital economy, has not yet been completed, after the framework agreement on a two-pillar solution in October 2021. Pillar One, which focuses on rules for taxing excess profits of MNEs, with a formula for allocating a certain portion of these profits to market jurisdictions, is still under discussion, although the main building blocks are now in place. The OECD has a target deadline of mid-2023 to conclude the legal texts for Pillar One, though this deadline may be ambitious.

In contrast, Pillar Two, which concerns introducing a global minimum corporate income tax rate of 15%, is much closer to implementation. The model rules for participating countries have been finalized, and in the case of Korea specifically, Pillar Two rules have been enacted in domestic legislation. In this sense, Korea is ahead of the global trend, with Korea being one of the first countries to codify Pillar Two rules in its domestic legislation. Korea's Pillar Two rules are codified into the Korean domestic law called the "Law for the Coordination of International Tax Affairs," and is supposed to take effect from 1 January 2024. They closely follow the OECD Model Rules, containing an "Income Inclusion Rule" and "Supplementary Rules for Income Inclusion" (known as the UTPR in the OECD Model Rules). The new rules are expected to affect both Korean MNEs and certain foreign companies with a Korean subsidiary or permanent establishment.

Tax changes[1]

For all tax brackets, the corporate income tax (CIT) rates have been reduced by 1%:

Tax bracket	Pre-2023 marginal tax rate (including local tax)	2023 marginal tax rate (including local tax)
Up to KRW 200 million	10% (11%)	9% (9.9%)
KRW 200 million – 20 billion	20% (22%)	19% (20.9%)
KWR 20 billion – 300 billion	22% (24.2%)	21% (23.1%)
Over KRW 300 billion	25% (27.5%)	24% (26.4%)

[1]Courtesy Lee & Ko, Seoul, Korea.

Prior to 2023, companies were able to use **Net Operating Loss** (NOL) that arose in previous taxable years up to a limit of 60% of the tax base for a given taxable year (or 100% in the case of SMEs). As of January 2023 however, the limit has now been raised to 80% (still remaining at 100% for SMEs).

Prior to 2023, in order to apply for a tax treaty benefit, it was necessary to submit an application form and certificate of residence to the relevant local tax office. Post-1 January 2023 however, these documentary requirements have been strengthened as follows:

I. The tax authorities now have the power to request further information if they consider the submitted documents to be insufficient;

II. Additional evidentiary documents are required, provided that the benefit being claimed via the pertinent tax treaty is 1 billion KRW (per case or cumulative claimed amount for the last year) or above, namely:

  » Where the applicant is a company, proof of establishment of the company (e.g., proof of the status of directors and shareholders) and its operations (e.g. an auditor's report for the most recent three-year period).

  » Where the income to which tax applies is royalties, documents substantiating the actual owner of the intangibles (e.g., license agreement and documents showing the owner of the IP and place of registration).

Post 1-January 2023, books and other evidentiary documents relating to intra-group transactions must be retained at a place of business in Korea, such as the address registered with the local tax office.

The number of thresholds below which there is an exemption to the requirement to submit **related party transaction details** have been increased, so the new thresholds as of 1 January 2023 are as follows (newly added thresholds underlined)

Document	2023 exemption threshold
Statement of Cross-border Related Party Transactions (per counterparty)	• KRW 500 million or below for tangible good transactions; or • KRW 100 million or below for service and intangible transactions respectively
Summarized P/L for foreign related parties (per counterparty)	• KRW 1 billion or below for tangible good transactions; • KRW 200 million or below for service and intangible transactions respectively
Statement of Transfer Pricing Method (per counterparty)	• Entire amount of foreign related party transactions: KRW 5 billion or below for tangible good transactions and KRW 1 billion or below for service and intangible transactions respectively; or • Per each foreign related party: KRW 1 billion or below for tangible good transactions and KRW 200 million or below for service and intangible transactions respectively

Liaison offices. Previously, the 2021 tax law amendments introduced new rules requiring liaison offices of foreign companies in Korea to submit additional information on their Korean operations such as personal details of representatives, how the operating funds are sourced, information on foreign headquarters and other subsidiaries in Korea, and data on their transacting parties within Korea. As of 2023, in addition to the foregoing compliance burden, another layer of compliance has been added with the requirement for liaison offices to submit an aggregate summary of tax invoices received from vendors, by February 10th of the year following the year in which the invoice is issued.

Allowing issuance of revised **import VAT invoices**. Prior to 2023, revised import VAT invoices were issued by the Head of the Customs Office in very limited situations only, which made it difficult for importers in Korea to reclaim input VAT. As of 2023 however, it will be much easier for taxpayers to

obtain revised import VAT invoices after they have voluntarily amended (upward) their import prices, even in expectation of an imminent customs audit. Ultimately, this revision will allow taxpayers to reclaim additional input VAT. The only exceptions to the new rules are in situations where taxpayers fraudulently report their import prices, or repeatedly make mistakes with respect to their import prices due to gross negligence.

New **dividend deduction for foreign subsidiaries**. Prior to 2023, dividends received from a foreign subsidiary were included in a Korean company's taxable income, and subject to CIT at the normal rates, with any double taxation relieved by a foreign tax credit. The 2023 tax reforms introduced a dividend deduction rule (aka, participation exemption), whereby 95% of dividends received from a foreign subsidiary are deducted/excluded from a Korean company's taxable income. In order to benefit from this new rule, the Korean company must have held at least a 10% ownership interest in the foreign subsidiary, and for at least 6 months as of the dividend record date.

Tax credits. The 2023 tax reforms relaxed the eligibility criteria for indirect foreign tax credits, as follows:

Pre-2023 criteria	2023 criteria
• Shareholding threshold: at least 25% of the shares or interests in a foreign subsidiary • Holding period: at least six months prior to the dividend declaration date (i.e., the date on which dividend payment is approved at the shareholders' meeting) of the foreign subsidiary	• Shareholding threshold: at least 10% of the shares or interests in a foreign subsidiary • Holding period: at least six months prior to the dividend record date

Changes to the **CFC regime**. An expansion to the CFC exception was made for foreign companies engaged in financial or insurance business that disposed of the shares in their subsidiary in the relevant taxable year. As of 2023, foreign subsidiaries engaged in financial or insurance business are eligible for a CFC exception with respect to passive income arising in the ordinary course of their financial or insurance business.

Hybrid entities. As of 2023, a new anti-hybrid rule has been introduced. This rule applies to investments made by domestic investors in overseas pass-through entities. Where an investment is made into such an entity, if it is treated as a tax transparent entity for the purposes of the jurisdiction in which the entity is located, it will also be treated as tax transparent for Korean tax purposes. In order to apply for this new tax treatment, Korean taxpayers that are shareholders of the overseas pass-through entity should file an application to the relevant local tax office.

Foreigners working in Korea can opt to be taxed on their employment income at a flat rate of 19% (20.9% including local income tax), rather than the normal progressive rates of taxation. Whereas in previous years this 19% flat rate had a 5-year limitation period, as of 1 January 2023, there is now a 20-year limitation period, with no sunset provision. In order to claim the 19% flat rate, the taxpayer must submit an application to the tax authorities when filing their annual IIT return, or to their employer at the time of their monthly payroll withholding or year-end settlement.

Under the previous law, **foreign engineers and researchers** who met certain criteria were entitled to a 50% reduction of their IIT for a 5-year period (or in certain cases, a 70% reduction for the first 3 years, and a 50% reduction for the subsequent 2 years). Applicable to income earned on or after 1 January 2023, the 5-year tax reduction period has now been extended to 10 years.

Tax exemption on interest and capital gains derived from government bonds by non-residents and foreign companies without a Korean PE. Effective from 1 January 2023, interest and capital gains received from Korean government bonds and monetary stabilization bonds by non-residents and foreign companies without a Korean PE, are now exempt from tax in Korea. This amendment expands the scope of the exemption from qualified bonds denominated in foreign currency (interest and gains from which were already exempted, even prior to 2023) to also include KRW bonds. To invest in these bonds, the non-resident or foreign company will have to open an account directly with the relevant government institution. To benefit from the tax exemption, it will be necessary to file an application at the relevant district tax office.

Increased interest rate on tax refunds. The Ministry of Finance has proposed an increase in the statutory interest rate on tax refunds from 1.2% to 2.9% per year. The change is proposed to be made in the enforcement decree on the 2022 corporate tax reforms and is estimated to take effect in mid-March 2023.

Tax treaty eligibility concerns for Korean Investors in US Funds

On December 23, 2022, the South Korean National Assembly passed an amendment (the "Amendment") to the Special Taxation Act,1 which may have important implications with respect to the application of US withholding rules for certain Korean investors. The Amendment allows eligible Korean investors to treat foreign entities as fiscally transparent under Korean tax law and eases concerns regarding the application of section 894(c) of the Internal Revenue Code ("Section 894(c)") to certain investments made through commonly used US investment vehicles. As a result, Korean investors may now qualify for treaty benefits that were previously uncertain or unavailable to them. In this Legal Update, we briefly discuss how this Amendment affects US tax withholding decisions and fund structures developed for Korean investors to mitigate the adverse consequences of Section 894(c).

AMENDMENT TO THE KOREAN SPECIAL TAXATION ACT

Under the Amendment, a Korean taxpayer (including individuals, corporations, and certain trusts) who invests through a foreign entity can apply to the Korean taxing authorities to treat such entity as a transparent entity under Korean tax law for the purpose of attributing income from the entity to the investors. If granted, the foreign entity will be treated as transparent for Korean tax law purposes, and the income from such entity will be treated as if it were received directly by the Korean investor, subject to the regular graduated rates applicable to the Korean investor. The Amendment also states that a presidential decree will prescribe rules for calculating the tax liability for investors who receive income from such entities.

APPLICATION OF SECTION 894(C) WITH RESPECT TO KOREAN INVESTORS

Section 894(c) generally denies treaty benefits for certain payments made through an entity that is treated as fiscally transparent for US federal income tax purposes but opaque under the laws of the jurisdiction of the person claiming treaty benefits. Under US income tax regulations, a foreign person may only claim treaty benefits on income earned or received indirectly via a pass-through entity if such pass-through entity is treated as fiscally transparent under the laws of the treaty jurisdiction and the income is "derived by" the taxpayer of the treaty jurisdiction. Historically, it has not been entirely

clear or consistent whether certain types of non-Korean entities should be treated as fiscally transparent for Korean tax law purposes, in part due to seemingly inconsistent case law in Korea. Therefore, the anti-hybrid rule under Section 894(c) caused a fair amount of uncertainty and confusion as to whether reduced treaty withholding rates under the United States-Korea Income Tax Treaty would be available with respect to investments by Korean investors in certain non-Korean entities, such as Cayman exempted limited partnerships and Delaware limited partnerships. Furthermore, Section 894(c) has been generally interpreted as denying the benefits of the United States-Korea Income Tax Treaty if a payment is made to a Korean investor through a US limited liability company (an "LLC") that is treated as a partnership for US federal income tax purposes because, prior to the Amendment, an LLC was treated as a corporation under Korean tax law.

The Amendment would allow Korean investors who invest via a non-Korean entity to mitigate the adverse consequences of Section 894(c) by applying to treat such entity as fiscally transparent for Korean tax purposes.

FEEDER REIT STRUCTURE FOR KOREAN INVESTORS

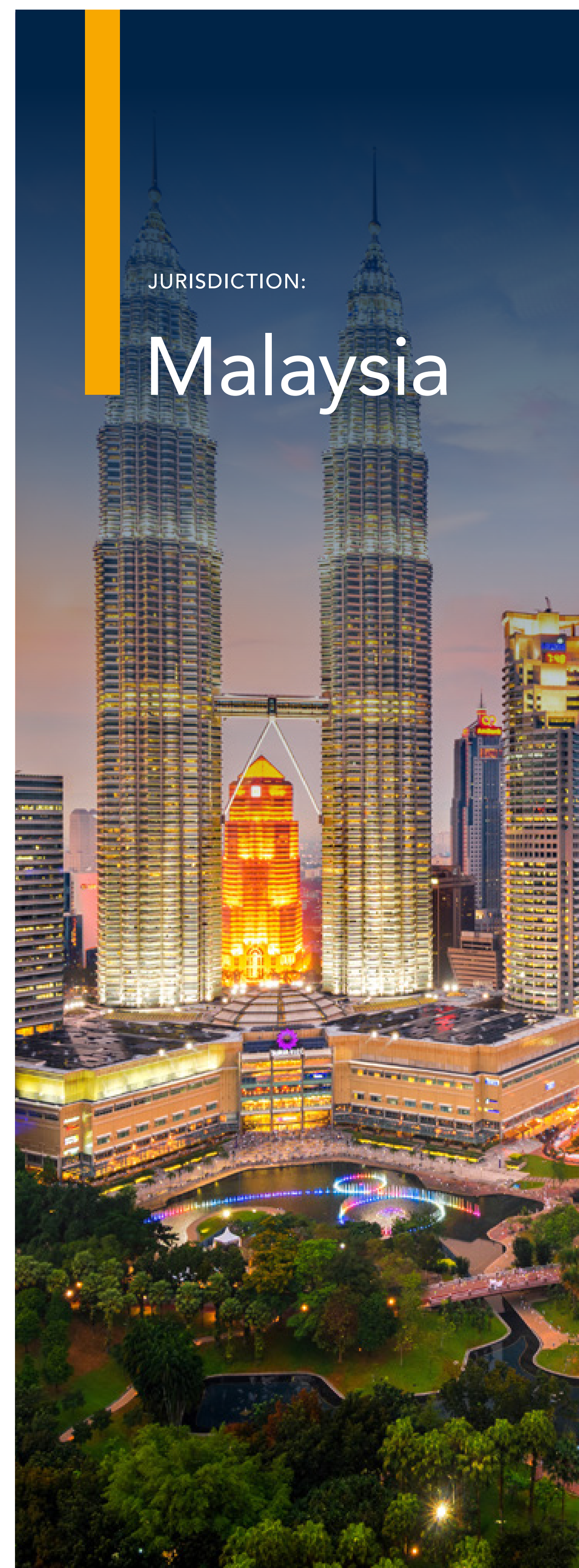
Given the historic uncertainty surrounding the Korean tax treatment of commonly used fund investment vehicles, many Korean investors have opted for more complex structures. For example, a typical structure for US real estate funds involves investors participating in a Delaware limited partnership that holds all of its investments through a US real estate investment trust (a "REIT"). Instead of investing directly into the Delaware limited partnership, many Korean investors have opted to hold their investment through a "feeder REIT" structure to mitigate the effects of Section 894(c). By structuring the investment in a way that allows ordinary REIT dividends to be received directly from the feeder REIT, such Korean investors sought to eliminate any uncertainty as to the tax treatment of intermediary entities under Korean tax law. These feeder REIT structures add complexity, cost and sometimes unintended collateral tax consequences to deal structures. Consequently, US sponsors and Korean investors that have established one or more feeder REITs may want to revisit whether there is a continuing need for the additional structuring and evaluate whether any unnecessary feeder REITs can be liquidated.

KEY TAKEAWAYS

Korean investors who invest in foreign pass-through entities can now apply to treat them as fiscally transparent for Korean tax purposes due to the Amendment. This change in the law creates more flexibility for Korean investors to make US investments through various types of intermediary entities, without jeopardizing potential benefits of the United States-Korea Income Tax Treaty. A US withholding agent, with respect to certain payments made to a Korean investor through non-Korean entities, may request that the Korean investor apply to treat such entities as transparent for Korean tax purposes to eliminate withholding compliance risk. A US sponsor that has established a feeder REIT solely to manage withholding compliance risks with respect to Korean investors should consider whether it would make sense to simplify existing structures.

Increased tax credit for Technology Sector Investment

On 30 March 2023, the parliament passed legislation to increase the tax credit for facility investments in the areas of qualified strategic technologies (often known as the K-Chips Act). With effect from 1 January 2023, the tax credit for such investments has been increased from 8% to 15% for large enterprises, while the rate for small and medium-sized businesses is increased to 25%. For investments to be made in 2023, an additional tax credit of 10% will be granted for investment amounts above their previous 3-year average. Accordingly, the tax credit will be up to 25% for large enterprises. Qualified strategic technologies refer to those relating to semiconductors, secondary batteries, hydrogen, etc. Details will be provided by Presidential Decree, which is expected to be announced in April 2023.



JURISDICTION:

Malaysia

Budget Tax Changes 2023

Due to the general elections and the formation of the government in late 2022, Malaysia's new government came out with its Budget tax proposals in February. The key tax items proposed in the Budget are the following:

Corporate tax

- From the year of assessment (YA) 2023, the tax rate on the first MYR 150,000 chargeable income of micro, small and medium enterprises (MSME) will be reduced by 2% from 17% to 15%, and the tax rate for the remaining taxable income will be maintained at 17% and 24%. The reduced tax for eligible businesses is relatively small.
- The government will conduct a study to introduce Capital Gains Tax for the disposal of unlisted shares by companies from 2024. It intends to fix the tax rate at a low amount without providing details. The introduction of a capital gains tax would be an income tax liability. Presently, capital gains are not taxable in Malaysia unless it concerns a sale of real property assets (or of shares of real property holding companies) in Malaysia. The introduction of a capital gains tax in the income tax law begs the question whether domestic or foreign investors should revisit their existing Malaysian investment holding companies for their overseas investments. Singapore, which does not tax capital gains and has a safe harbour provision in its income tax law which exempts qualifying gains from being subject to tax, will probably be the beneficiary of this measure if it leads to the introduction of a capital gains tax.
- Malaysia aims to include the global minimum effective tax rate under Pillar Two and the Qualified Domestic Minimum Top Up Tax (expected in 2024).
- Investments in the manufacturing of electric vehicle charging equipment are eligible for 100% tax exemptions on statutory income from YA 2023 until YA 2032 and there will be an investment tax allowance of 100% for 5 years.

- A company that rents non-commercial electric vehicles (EVs) will be given a tax deduction on the rental amount for up to RM 300,000 from YA 2023 until YA 2025.
- Companies undertaking carbon, capture and storage (CCS) in-house activity or CCS services are eligible for tax incentives such as the investment tax allowance, import duty and sales tax exemptions and tax deductions for allowable pre-commencement expenses from YA 2023 until YA 2027.
- The income tax exemption rate on the statutory income of BioNexus status companies will be increased from 70% to 100% and the application period will be extended for 2 years from 1 January 2023.
- The accelerated capital allowance claim and 100% income tax exemption on qualifying expenditure for automation equipment will be enhanced to include the adaptation of Industry 4.0 elements under the scope of automation, the tax incentive is expanded to include the agriculture sector and the limit of capital expenditure is coordinated and increased up to MYR 10 million, from 1 January 2023 until 31 December 2027.
- There will be an extension of the income tax exemption and the investment tax allowance tax incentive for the aerospace industry (3 years) and ship building and ship repairing industry (5 years), from 1 January 2023.
- The tax deduction of up to MYR 1.5 million on the cost of listing on the Access, Certainty, Efficiency and Leading Entrepreneur Accelerator Platform Markets is extended up to YA 2025. This tax deduction is also expanded to include the cost of listing technology-based companies in the Bursa Main Market.
- Tax incentives for food production projects are expanded to include agricultural projects based on Controlled Environment Agriculture and the application period is extended for 3 years from 1 January 2023.

Individual tax

- The government proposes to reduce the tax rate for the lower income categories and to increase the rate for the higher income categories. From the year of assessment (YA) 2023, the resident individual income tax rate will be reduced by 2% for each chargeable income band between MYR 35,001 to MYR 100,000 as follows:

Chargeable income (MYR)	Current tax rate (%)	Proposed tax rate (%)
35,001 - 50,000	8	6
50,001 - 70,000	13	11
70,001 - 100,000	21	19

- From YA 2023, the income tax rate for resident individuals will be increased by 0.5% to 2% for the following chargeable income bands:

Chargeable income (MYR)	Current tax rate (%)	Proposed tax rate (%)
100,001 - 250,000	24	25
250,001 - 400,000	24.5	25
400,001 - 600,000	25	26
600,001 - 1,000,000	26	28

- Tax relief for childcare and kindergarten fees will be extended for another year until YA 2024.
- From YA 2023, the tax relief for medical treatment expenditure will be increased from MYR 8,000 to MYR 10,000. The scope of tax relief for medical treatment expenses will be expanded to include the intervention expenditure for autism, attention deficit hyperactivity disorder (ADHD), global developmental delay (GDD), intellectual disability, down syndrome and specific learning disabilities limited to MYR 4,000.
- The 15% tax rate will be extended for C-Suite executives in companies that make new strategic investments.
- The scope of tax relief for life insurance premiums or life takaful contributions is expanded to include voluntary contributions to EPF of MYR 3,000 from YA 2023.

Special voluntary disclosure programme

- The voluntary disclosure programme which offers a 100% penalty waiver for voluntary disclosures made is reintroduced from 1 January 2023 until 31 May 2024.

Indirect taxes

- The government stated that the time is not right to (re)introduce a Goods and Services Tax. A luxury goods tax will be introduced, starting from 2023, with a certain limit according to the type of luxury items such as luxury watches and luxury fashion goods. The tax will probably be levied as a higher tax rate under the Sales Tax provisions.
- Excise duty will be imposed on liquids or gels containing nicotine used for electronic cigarettes and vapes.
- An import duty and sales tax exemption will be available for studios and filming production equipment, providers of studio equipment, production and post-production services for a period of 3 years from 1 April 2023.
- Tax incentives for electric vehicles (EVs) will be extended as follows:
  - » full import duty exemption on components for locally assembled EVs until 31 December 2027;
  - » full excise duty and sales tax exemption on locally assembled Completely Knocked-Down EVs until 31 December 2027; and
  - » full import duty and excise duty exemption on imported Completely Built-Up EVs until 31 December 2025.
- The duty stamp on the instruments of transfer of property will be fully exempted, limited to the first MYR 1 million of the property's value for the transfer of property between parents and children, grandparents and grandchildren. The remaining balance of the property's value is subject to an ad valorem duty rate and is given 50% remission on the stamp duty imposed. This stamp duty treatment applies to the recipients who are Malaysian citizens, for the instrument of transfer of property executed from 1 April 2023.
- The fixed duty of MYR 10 on educational loan/ scholarship agreements to pursue tertiary education (diploma and above) at higher learning institutions will be expanded to include educational loan/scholarship agreements to pursue education at all levels including certificate (education/skills/professional) in any educational and training institutions for agreements executed from 1 June 2023.

- There will be an extension of full stamp duty exemption on restructuring or rescheduling of the loan/financing agreement executed from 1 January 2023 to 31 December 2024.
- There will be a stamp duty exemption for first-time home ownership for houses valued at MYR 500,000 and below until the end of 2025. The exemption rate will be increased from 50% to 75% for houses valued from MYR 500,001 to MYR 1 million until 31 December 2023.

On 14 March 2023, the Finance Bill 2023 was presented for the first reading in the parliament. The Bill includes amendments to the Income Tax Act 1967 (ITA), Real Property Gains Tax Act 1976, Stamp Act 1949 and Petroleum (Income Tax) Act 1967. The Bill also contains the measures proposed in the retabled Budget 2023 and additional amendments.

- From year of assessment (YA) 2024, additional shareholding requirements will be introduced for micro, small and medium enterprises (MSMEs) to qualify for the reduced tax rate as follows:
  - for companies: not more than 20% of the paid-up ordinary share capital being owned directly or indirectly by any companies incorporated outside Malaysia or individuals who are not Malaysian citizens; and
  - for limited liability partnerships (LLPs): not more than 20% of the total capital contribution being contributed directly or indirectly by companies incorporated outside Malaysia or any person who is not a Malaysian citizen.
- The definition of "plant" under the ITA for capital allowance purposes will be amended to remove the exclusion of intangible assets. However, the Ministry of Finance will be empowered to prescribe other assets that should be excluded from the definition of "plant".
- Effective YA 2024, companies, LLPs, trust bodies and co-operative societies must electronically submit their returns, including amended income tax returns and employer returns.
- Effective 1 January 2023, companies will be allowed to accumulate withholding tax on payments made to authorized agents, dealers and distributors on a monthly basis and to remit the withholding tax to the Inland Revenue Board before the end of the following calendar month.
- Effective 1 January 2023, the scope of application of relief under section 97A of the ITA is expanded to cover payments made to authorized agents, dealers and distributors.

Real Property Gains Tax Act 1976

- For transfers of assets between former spouses who are Malaysian citizens as a result of the dissolution or annulment of their marriage pursuant to a court order, the disposal price of the chargeable asset will be considered equal to its acquisition price.
- For transfers of assets owned by an individual (or persons mentioned in schedule 2, paragraph 3(1)(b)(ii) of the Real Property Gains Tax Act 1976) to a company where the disposal price of a chargeable asset will be deemed to be equal to its acquisition price, the company must be incorporated in Malaysia (currently, it also applies to a company incorporated outside Malaysia).

Stamp Act 1949

Effective 1 June 2023 or upon coming into operation of the Finance Act 2023, the fixed duty of MYR 10 imposed on certain instruments pursuant to an agreement for discounting invoices or hire purchase receivables or factoring agreement entered into by small and medium enterprises will be expanded to include the government or any government agency that provides financing to small and medium enterprises.

Petroleum (Income Tax) Act 1967

Chargeable persons will be required to electronically furnish certain returns as provided under Petroleum (Income Tax) Act 1967 effective YA 2023.

Sales tax on low value goods imported into Malaysia

Changes are being made to the Sales Tax Act 2018 ("**STA**") in phases to impose sales tax on low value goods ("**LVG**"). The changes are effected pursuant to the Sales Tax (Amendment) Act 2022 and the relevant regulations and orders issued thereunder (with provisions effective from 1 January 2023 and 1April 2023 respectively). This is in line with the announcement made by the Ministry of Finance in Budget 2022 to ensure a level playing field and fair treatment between taxable goods manufactured in Malaysia and imported goods, as local manufacturers are already being charged a 5% or 10% sales tax.

LVG are goods from outside Malaysia which have a sale value of not more than RM500 and are brought into Malaysia by land, sea or air. Pursuant to the Guide on Sales Tax on Low Value Goods issued by the Royal Malaysian Customs Department ("**RMCD**"), the LVG tax is mainly intended to implement sales tax on LVG sold through online marketplaces. Therefore, these changes will heavily impact e-commerce businesses where LVG are sold through an online marketplace and imported into Malaysia in the prescribed manner.

Effective from 1 January 2023, both foreign and local sellers who sell LVG, and exceed RM500,000 in their total sales value within 12 months, are required to register under section 13 of the STA as a Registered Seller.

In particular, the total sales value threshold is triggered at the end of any month where the total sale value of that month and the eleven preceding months exceeds RM500,000 (i.e. historical method); or where the total sale value of LVG in that month and eleven months succeeding that month will exceed RM500,000 (i.e. future method), whichever is earlier. RMCD has also clarified that the 12 month period is calculated on a rolling basis, as opposed to being based on a fiscal year.

The effective date of imposition of sales tax on LVG is 1 April 2023. The rate of sales tax for LVG to be charged and levied is fixed at 10%. The sales value used in the calculation of sales tax excludes any tax, duties, transportation and insurance costs (such as shipping fees) imposed on the imported LVG.

The LVG sales tax becomes due and payable at the time when the LVG is sold by the Registered Seller. In relation to each transaction, the STA requires a Registered Seller to issue an invoice, or any document containing prescribed particulars, to the consumer.

The Registered Seller will be assigned a taxable period of three months ending on the last day of any month of any calendar year, for which he is required to account for his tax in his return to be furnished to the Director General.

In view of the coming into force of the imposition of LVG tax in April 2023, consumers in Malaysia will likely be required to pay an additional 10% sales tax for any LVG purchased from abroad via an online marketplace. Sellers in turn, with a total sales value of LVG in 12 months which exceeds RM500,000, should start applying to be registered as Registered Sellers under the STA.

As for online marketplace operators, it is unclear at this juncture whether they will be required to remit the LVG tax. While this query has been raised during a recent webinar conducted by the RMCD, there has yet to be any clarification provided by the RMCD on this point. It therefore remains to be seen whether online marketplace operators will be liable to remit LVG tax, or are under any other obligation in respect of LVG tax for the sales of LVG carried out on their platforms.

On 10 March 2023, the Royal Malaysian Customs Department announced that the imposition of sales tax on low-value goods (LVGs) will be deferred until further notice. The imposition of sales tax on LVGs was previously deferred to 1 April 2023.

JURISDICTION:

Philippines

Exchange of information

On 20 January 2023, the Philippines became the 17th member of the Asia Initiative by endorsing the Bali Declaration, a call to enhance the use of tax transparency for sustainable domestic resource mobilisation in Asia.

The Asia Initiative was launched in November 2021 by the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum). It aims at supporting the effective implementation and use of the tax transparency standards to fight tax evasion and other illicit financial flows, helping mobilise domestic resources and develop tax co-operation across the region.

The Global Forum is the leading multilateral body mandated to ensure that jurisdictions around the world adhere to and effectively implement both the exchange of information on request standard and the standard of automatic exchange of financial account information. These objectives are achieved through a robust monitoring and peer review process. The Global Forum also runs an extensive capacity-building programme to support its members in implementing the standards and help tax authorities make the best use of cross-border information sharing channels.

VAT on digital transactions

Courtesy SyCip Salazar Hernandez and Gatmaitan, the Philippine government is seeking to take advantage of the extensive use of digital service providers by Philippine consumers to generate more revenue. In November 2022, the House of Representatives approved House Bill (HB) No. 4122, which amends the National Internal Revenue Code (the Tax Code) by imposing a 12% value added tax (VAT) on digital transactions. HB No. 4122 is currently pending before the Senate. To become law, HB No. 4122 must also be passed on three readings by the Senate and approved by the president.

Persons who, during trade or business, engage in the sale, barter, exchange, or lease of digital or electronic goods, or those who render services electronically, are now expressly subject to VAT. This includes non-resident digital service providers. A "digital service provider" refers to a service provider of digital services or goods to a buyer, through operating an online platform for the purposes of buying and selling of goods or services or by making transactions for the provision of digital services on behalf of any person.

A digital service provider may be:

- a third party that sells multiple products, through information-based technology or the internet, for its own account or as an intermediary;
- a platform provider that uses the internet for marketing purposes;
- a host of online auctions conducted through the internet;
- a supplier of digital services in exchange for a regular subscription fee; or
- a supplier of goods or services that can be delivered through an information technology infrastructure.

A "digital service" refers to any service that is delivered or subscribed to over the internet or other electronic network, which cannot be obtained without the use of information technology and which may be automated. This includes, among others:

- the online licensing of software;
- mobile apps;
- video games;
- online games;
- webcasts;
- the provision of digital content;
- advertisement platforms;
- online platforms; and
- social networks.

A "buyer" refers to any person who resides in the Philippines or consumes taxable digital services in the Philippines from a digital service provider either for their personal consumption, or for trade or business purposes.

The definition of "sale or exchange of services" is broadened to expressly include those services which are rendered electronically or otherwise. It is also specified that the term "sale or exchange of services" includes:

- the supply by any resident or non-resident person of digital services for the purposes of online advertisement or in exchange for a regular subscription fee; and
- the supply of electronic and online services that can be delivered through an information technology infrastructure.

The list of the transactions exempt from VAT has also been broadened to include an exemption of educational services that are rendered online and the sale of online subscription-based services to duly recognised educational institutions.

Payments to non-resident digital service providers are subject to 12% withholding VAT at the time of payment, unless the providers are duly registered with the Bureau of Internal Revenue (BIR). A non-resident digital service provider is not entitled to creditable input taxes, even if it is subject to VAT. Non-resident digital service providers are subject to the same registration requirements as other VAT taxpayers.

The power of the Commissioner of Internal Revenue to temporarily close or suspend a business also applies to digital service providers. A non-resident digital service provider must designate a representative office or agent, which must be a resident corporation under Philippine law, to assist it in complying with the provisions of the Tax Code.

Around one year ago, the House of Representatives also approved a separate bill, HB No. 7425, which also sought to amend the Tax Code to impose VAT on digital transactions. However, HB No. 7425 was not approved by the Senate. Some of the differences between HB No. 4122 and HB No. 7425 are as follows:

HB No. 7425 provides that books, newspapers, magazines, reviews, and bulletins that are sold electronically or online are exempt from VAT. HB No. 4122 limited the VAT exemption on the sale of online subscription-based services to educational institutions recognised by the Department of Education, the Commission on Higher Education, and state universities and colleges.

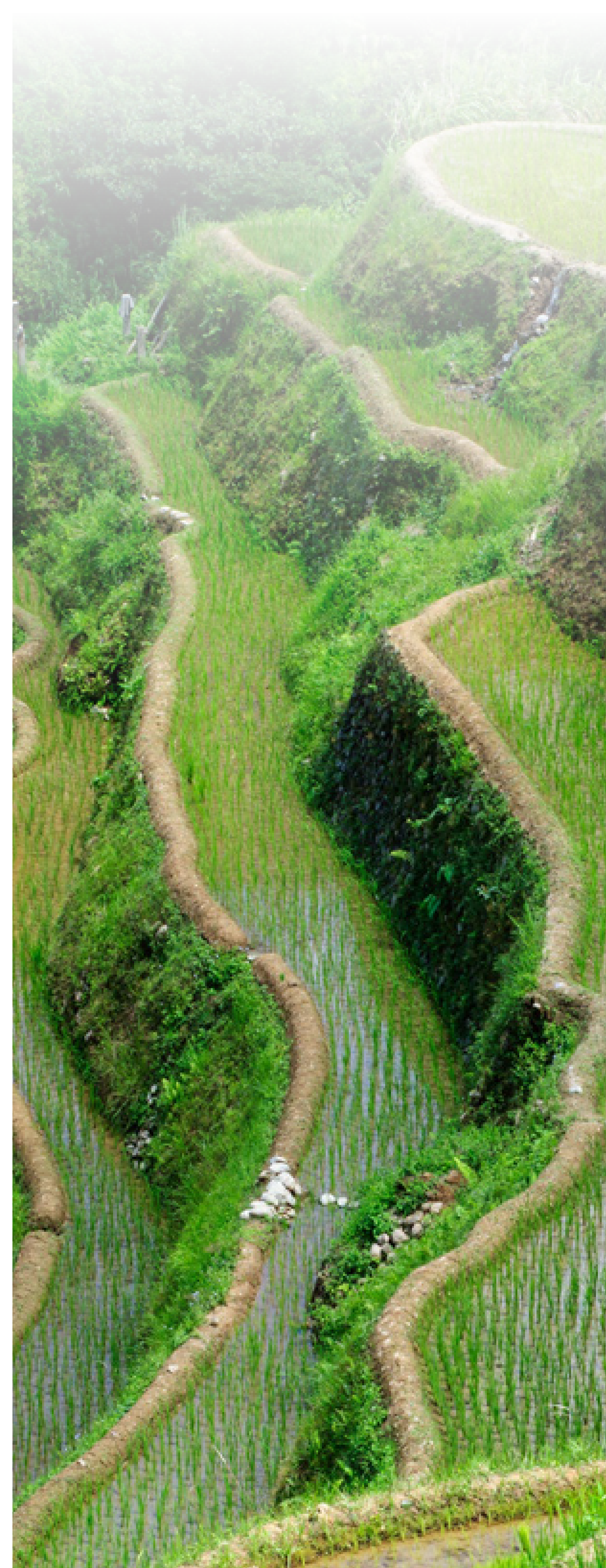
HB No. 4122 provided that the 5% incremental revenue from the imposition of VAT on digital service providers would be allocated to and used exclusively for the Creative Industries Development Fund established under the Philippine Creative Industries Development Act.

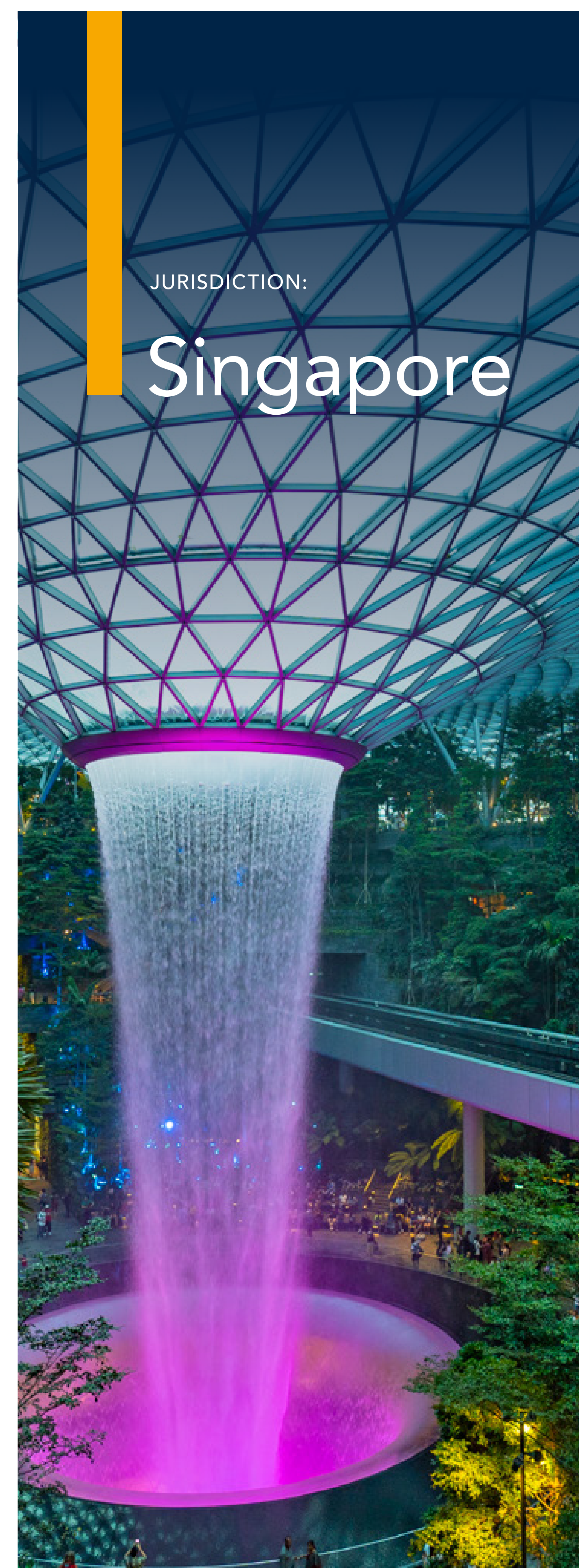
HB No. 4122 added the National Telecommunications Commission (together with the BIR and the Department of Information and Technology) to the agencies that would aid the Department of Finance in the issuance of the implementing rules and regulations for the effective implementation of the law.

Under the proposed amendments to the Tax Code, only the place of consumption is considered when determining the place where the digital service is rendered, which may not be fully consistent with the territorial nature of VAT. Also, the current bill does not address potential problems that could arise in connection with the requirement to register as VAT-registered entities if certain thresholds are met.

Requiring non-resident digital service providers to register for VAT purposes may result in issues to do with doing business in the Philippines. The non-resident digital service provider may be considered to have a business presence in the Philippines, which could bring about the imposition of income tax and the imposition of fines or criminal liabilities and other consequences for failure to comply with the necessary registration and regulatory requirements not only under the Tax Code but also under other applicable laws (eg, the Revised Corporation Code). Also, given that VAT is an indirect tax, Philippine consumers will have to bear the burden of the VAT imposition as it will lead to higher costs for online service providers' goods and services.

Finally, the enforcement of the Philippines' tax jurisdiction over non-resident digital service providers will likely result in additional implementation costs to monitor the online activities covered by HB No. 4122. Thus, the advantage of gaining additional revenue from the imposition of VAT on non-resident digital service providers must be balanced with its possible effects on Philippine consumers, and any implementation and monitoring requirements that the Philippine government may have to put in place to effectively enforce the amendments.





JURISDICTION:

Singapore

Related party loans

The Inland Revenue Authority of Singapore (IRAS) has published the indicative margin for related party loans not exceeding SGD 15 million obtained or provided during the period 1 January to 31 December 2023. The indicative margin for 2023 is +230 bps or 2.30%.

The IRAS' indicative margin is added to the base reference rate to approximate an arm's length interest rate for a related party loan not exceeding SGD 15 million. The threshold (i.e. SGD 15 million) is based on the loan committed and not the loan utilised.

The use of the indicative margin is optional. Taxpayers may adopt a different margin provided that it is consistent with the guidance provided by the IRAS to determine the arm's length interest rates. A taxpayer is exempt from preparing the transfer documentation for such related party loan on which the indicative margin is applied. The indicative margin is published on the tax authority's website at the beginning of each year.

Automatic exchange of financial information (CRS)

On 2 February 2023, the Inland Revenue Authority of Singapore (IRAS) published an updated list of reportable jurisdictions under the Automatic Exchange of Information CRS. The new list includes Ghana, Jamaica and Maldives. For the 2022 reporting period, submission from Reporting Singapore Financial Institutions (SGFI's) is required by 31 May 2023.

Government Budget tax proposals 2023

Stamp duty

In its budget proposals for 2023 announced on the 14th of February 2023, the government has increased the stamp duty for buyers (BSD) of real property located in Singapore with effect from 15 February:

- An increase in BSD for residential properties in excess of S$1.5 million;
- An increase in BSD for non-residential properties in excess of S$1 million.

The new BSD rates for residential and non-residential properties are as follows:

Property value (SGD)	Residential properties	-	Non-residential properties	-
-	BSD rate on or before 14 Feb 2023 (%)	BSD rate on or after 15 Feb 2023 (%)	BSD rate on or before 14 Feb 2023 (%)	BSD rate on or after 15 Feb 2023 (%)
First 180,000	1	1	1	1
Next 18,000	2	2	2	2
Next 640,000	3	3	3	3
Next 500,000	4	4	-	4
Next 1.5 million	-	5	-	5
Above 3 million	-	6	-	-

The rates for Additional Buyers' Stamp Duty ("ABSD") remains unchanged.

The Additional Conveyance Duties for buyers of equity interest property-holding entities will be raised from up to 44% to up to 46%.

Corporate tax

- Under Pillar Two Global Anti-Base Erosion (GloBE) Rules of the OECD/G20 Base Erosion and Profit Shifting (BEPS) 2.0 project, affected multinational groups (MNEs) will be subject to a minimum effective tax rate (ETR) of 15%. Singapore has now confirmed that it intends to implement the GloBE rules and a domestic top-up tax (DTT) to top-up the ETR of large multinational groups (with annual revenues exceeding EUR 750 million) operating in Singapore, from businesses' financial year commencing on or after 1 January 2025. The government will continue to monitor international developments and adjust the implementation timeline as needed if there is a delay to the international implementation of the GloBE rules.
- The government proposes to introduce a new Enterprise Innovation Scheme (EIS). From years of assessment (YA) 2024 to 2028 (i.e. FYs 2023 to 2027), tax deductions for businesses engaged in prescribed activities, such as R&D conducted in Singapore, registration of intellectual property (IP) rights (for example, patents, trademarks and designs), acquisition and licensing of IP rights for businesses with revenue less than SGD 500 million, and approved training courses, will be increased to 400% of the qualifying expenditure for each activity (from the current rate of 250%), subject to a cap of SGD 400,000 per annum per activity. Businesses engaged in innovation projects carried out with certain Singapore educational institutions will qualify for a 400% deduction of qualifying expenditure, subject to a cap of SGD 50,000 per annum. Businesses without sufficient profits to maximize the

  benefits of tax deductions will have the option to convert 20% of their total qualifying expenditure per YA into a cash pay-out of up to SGD 20,000.
- Businesses will be given an option to accelerate the claiming of capital allowances relating to the cost of acquiring plant and machinery and renovation or refurbishment, as a temporary broad-based support to businesses undergoing restructuring.
- Various tax incentives that were due to lapse in 2023 were extended for another 5 years, including the Pioneer Certificate Incentive, Development and Expansion Incentive, IP Development Incentive, Qualifying Debt Securities Scheme (QDS), tax incentive scheme for Approved Special Purpose Vehicles (ASPV) engaged in Asset Securitization transactions, and the Financial Sector Incentive (FSI) Scheme. Refinements were also introduced to the QDS Scheme, the ASPC Scheme and the FSI Scheme.

Individual income tax and CPF

- From 1 January 2024, the Working Mother's Child Relief will be changed from a percentage of a mother's earned income to a fixed dollar relief.
- From 1 January 2024, the Foreign Domestic Worker Levy Tax Relief will lapse.
- A new tax incentive scheme will be introduced for qualifying donors with family offices operating in Singapore, subject to qualifying conditions. Qualifying donors can claim 100% tax deduction for overseas donations made through qualifying local intermediaries, subject to a cap of 40% of the donor's statutory income.
- The donor's 250% tax deduction for donations to qualifying charities will continue to apply till 31 December 2026.
- From 1 January 2026, the monthly Central Provident Fund salary ceiling will be raised to SGD 8,000 (from the current monthly salary ceiling of SGD 6,000).
- Car registration fees have been raised significantly.

General anti avoidance rule

The e-Tax Guide on the general anti avoidance provision in the Income Tax Act (section 33) has been updated to insert the new tax avoidance categories and examples, specifically:

- Setting up of conduit entity to obtain treaty benefit for the purpose of avoiding withholding tax, and
- Assignment of debt to an offshore jurisdiction for the main purpose of obtaining tax advantage.

New Tax Incentives for R&D and Equipment Investment

The Legislative Yuan (Congress) passed an amendment to article 10-2 of the Statute for Industries Innovation on 7 January 2023 to provide tax incentives in the form of tax credits for investment in research and development (R&D) and equipment to encourage technological innovation and enhance the country's position in the global supply chain.

The tax credits are summarized as follows:

- pioneer innovation R&D investment credit: 25% of R&D expenditure incurred in a fiscal year; and
- advanced manufacturing equipment investment credit: 5% of equipment purchase price exceeding a certain amount in a fiscal year but no upper limit.

The total tax credit amount for both incentives is limited to 50% of income tax payable in a fiscal year. To qualify for the tax credit, the following three conditions must be fulfilled:

- the R&D expenditure and the ratio of R&D expenses to operating net revenue must exceed a certain scale in a fiscal year;
- the applicable alternative minimum tax rate is 12% in 2023 and may be raised to 15% in 2024 depending on the legislative progress of the OECD Global Minimum Tax System (Pillar 2); and
- there has been no violation of environmental protection, labour or food safety and public sanitation laws in the past 3 fiscal years.

The effective period for the two incentives is from 1 January 2023 to 31 December 2029. The detailed regulations on the applicable scope, qualifying conditions, application period, procedures, documentation and calculation of the tax credit amount will be published by the Ministry of Economic Affairs after consultation with the Ministry of Finance.

Global Minimum Tax Under Pillar Two

The Cabinet has approved, in principle, a proposal to collect the global minimum tax in Thailand in line with Pillar Two of the OECD/G20 Inclusive Framework on BEPS. In a meeting on 7 March 2023, the Cabinet directed the Revenue Department to draft legislation and determine the appropriate guidelines to:

- collect the top-up tax in accordance with Pillar Two;
- allocate 50-70% of the top-up tax collection to the National Competitiveness Enhancement for Targeted Industries Fund under the National Competitiveness Enhancement for Targeted Industries Act B.E. 2560 (2017) (subject to further discussions with the Board of Investment (BOI)); and
- deliver information on payers of top-up tax to the BOI;

The BOI was assigned the following tasks:

- amend the National Competitiveness Enhancement for the Targeted Industries Act B.E. 2560 (2017) to increase funding sources by way of the top-up tax collections, to support the implementation of investment promotion measures;
- propose measures to enhance competitiveness by subsidizing qualifying investors; and
- propose measures to mitigate the impact of the new tax collection guidelines under the Investment Promotion Act B.E. 2520 (1977).

The Cabinet notes that the Revenue Department is currently drafting a law on the collection of the top-up tax, which is expected to be issued in 2023 and take effect in 2025.

Tax incentive for adopting electronic tax systems

The government has gazetted a ministerial regulation extending the incentive period for taxpayers that invest in and/or use electronic tax systems to 31 December 2025. Furthermore, a draft ministerial regulation was approved, modifying the incentive for using the electronic withholding tax system and further extending the incentive period to 31 December 2025. Both measures were previously available until 31 December 2022. These measures aim to promote the digital economy and encourage taxpayers to adopt electronic tax systems.

The tax measures are as follows:

- a deduction equal to 200% of the amount paid for the following tax systems from 1 January 2023 to 31 December 2025, subject to conditions:
  - » investment in electronic tax systems (i.e., e-Tax Invoice, e-Receipt and e-Withholding Tax) including payments for the purchase of computers, related equipment and computer programs; and
  - » payments to service providers for the use of electronic tax systems, such as service fees for electronic data preparation, transmission and storage; and
- a reduction of the statutory withholding tax rates on certain payments from 2%, 3% or 5% to 1% between 1 January 2023 and 31 December 2025, provided the tax is remitted through the e-Withholding Tax system. Previously, withholding tax rates on certain payments were reduced from 3% or 5% to 2%, provided the e-Withholding Tax system was used.

  The reduction of the statutory rates applies to amounts:

  - » paid to companies and juristic partnerships doing business in Thailand, except foundations and associations:
    - – income from hire of work (section 40(2) of the Revenue Code);
    - – income derived from goodwill, copyright and other similar rights (section 40(3));
    - – income from property rental (section 40(5)(a)) other than ship rental;
    - – income from liberal professions (section 40(6));
    - – income from contract of work (section 40(7)), including registered branches of foreign companies;
    - – prizes from competitions, lucky draws, etc. (section 40(8)); and
    - – certain income under section 40(8); and
  - » paid to individuals:
    - – income from property rental (section 40(5)(a)) other than ship rental;
    - – income from liberal professions (section 40(6));
    - – income from contract of work (section 40(7));
    - – prizes from competitions, lucky draws, etc. (section 40(8));
    - – income of public entertainers domiciled in Thailand (section 40(8)); and
    - – certain income under section 40(8).

Electric Vehicle Subsidies

On 7 March 2023, the Cabinet approved a draft decree exempting from corporate income tax government subsidies granted to domestic automotive industry operators that manufacture and assemble battery-powered electric cars, pickup trucks and motorcycles in the years 2022-2025. The proposed exemption will apply to companies and juristic partnerships that qualify for subsidies from the state, subject to the rules, procedures and conditions announced by the Excise Department.

The Cabinet also approved a draft notification exempting from customs duty the importation of electric vehicle parts and battery-powered electric boats until 31 December 2025, subject to conditions.

Digital tokens

The Cabinet has approved, in principle, a draft decree exempting from corporate income tax and value added tax (VAT) transfers of digital tokens for investment to the public in the primary market, whereas transfers of digital tokens in the secondary market will be exempt from VAT. Digital assets, i.e., cryptocurrencies and digital tokens, traded in licensed exchanges are exempt from VAT until 31 December 2023. If the draft decree would be approved, it will apply retroactively from 14 May 2018.

Investments in automation systems

The Cabinet has approved three draft decrees that extend further the incentive period for juristic companies and partnerships that invest in automation systems, employ highly skilled personnel or invest in the development of highly skilled personnel, until 31 December 2025. The tax incentives, which were granted under the Thailand Plus package to attract foreign investments, expired on 31 December 2022.

Land and Building Tax reduced

Courtesy Tilleke & Gibbins it was reported that Thailand has issued a royal decree officially reducing the land and building tax due in 2023. The Royal Decree on Land and Building Tax Reduction (No. 3) B.E. 2566 (2023), which was announced and published in Thailand's Government Gazette on March 19, 2023, and came into effect the following day, will effectively reduce land and building tax payments by 15% in 2023 for the following types of land and buildings:

- Land or buildings used for agricultural purposes;
- Land or buildings used for residential purposes;
- Land or buildings used for other purposes; and
- Vacant or unused land or buildings.
- Owners of these types of land or buildings are therefore only required to pay 85% of the land and building tax normally owed for 2023.

Furthermore, owners of certain types of land or buildings that were eligible for tax reduction of 50% or 90% under the Royal Decree on Land and Building Tax Reduction B.E. 2563 (2020) will enjoy an additional 15% reduction of the tax amount that was reduced by 50% or a continuation of the 90% tax reduction, depending on the circumstances.

JURISDICTION:

Vietnam

Deadline for tax payments

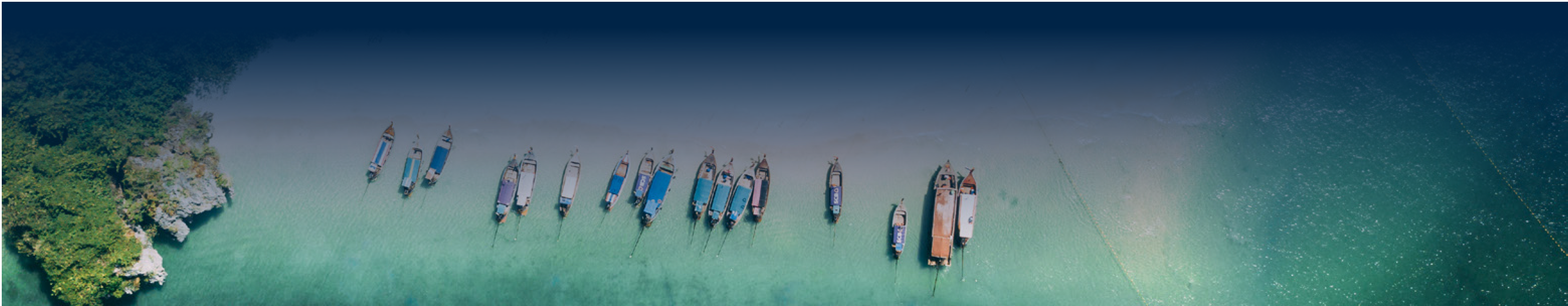
The Ministry of Finance has launched a public consultation on the proposed extension of tax payment deadlines for corporate income tax, personal income tax and value added tax (VAT) in 2023. The proposed extensions will apply as follows:

- corporate income tax for the first and second quarters of 2023: 3 months;
- personal income tax and VAT for business households and individuals for 2023: by 30 December 2023; and
- VAT for enterprises and organizations: 6 months for the period January to May 2023 and the first quarter of 2023, and 5 months for June 2023 and the second quarter of 2023.

A 6-month extension is also proposed for the payment of 50% of land rent.

Information exchange

As a major step forward on the path of being able to properly enforce its tax laws, on 22 March 2023, Vietnam became the 147th jurisdiction to join the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. This means that it will be able to benefit from information exchange with 147 jurisdictions concerning taxable income. In practice this will likely mean that overseas jurisdictions will share information with Vietnam.



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