Asset and Wealth Management Tax Highlights – Asia Pacific

January to March 2017

In this edition's asset and wealth management tax highlights for the Asia Pacific region, we highlight industry and tax developments from Australia, China, Hong Kong, India, Philippines, and Singapore, which may impact your asset and wealth management business. We hope you find these updates of interest, and will be pleased to discuss these developments and issues with you further.

Australia

Large multinational measures passed

Legislation containing the Australian Diverted Profits Tax (DPT) and the increase in penalties for Significant Global Entities has been enacted. Broadly, these measures apply to multinational groups with more than AUD1bn global revenue from 1 July 2017. The DPT imposes a 40% penalty rate to profits diverted offshore through related party arrangements. For further details refer to the Sep – Dec 2016 edition of our Asset and Wealth Management Tax Highlights.

Corporate tax rate reduction

On 31 March 2016, the Senate approved amendments to a Bill introducing reductions to the company tax rate. The Bill proposes the following measures:

- The corporate tax rate for small business entities (with aggregated turnover of less than AUD10m) will be reduced to 27.5 per cent from 28.5 per cent for the 2016-2017 income year. This 27.5 percent rate will then be extended to other corporate tax entities:
  - For the 2017-2018 income year – aggregated turnover of less than AUD25m
  - For the 2018-2019 income year and later income years – aggregated turnover of less than AUD50m
- The 27.5 per cent rate for corporate entities with aggregated turnover of up to AUD50m will subsequently be reduced to:
  - 27 per cent for the 2024-2025 income year
  - 26 per cent for the 2025-2026 income year
  - 25 per cent for the 2026-2027 income year and later income years

ATO focus on stapled securities

On 31 January 2017, the Australian Taxation Office (ATO) issued Taxpayer Alert 2007/1 (the Alert) expressing concern over the use of stapled securities to recharacterise trading income to favourably taxed passive income. Stapled structures are created when two or more securities are contractually bound (or "stapled" together) such that they cannot be bought or sold separately. As an example, a trust, which owns an asset, can be stapled to shares of a trading company. These investment structures are commonly used in the property and infrastructure sectors.

The ATO has raised concerns over transactions within certain stapled structures - in particular, finance staples, synthetic equity staples, royalty staples and rental staples. The ATO has stated that taxpayers who implement these types of arrangements will be subject to increased scrutiny. However, the Alert does not extend to Australian REITs who derive all or most of its rental income from unrelated third parties and have not entered into arrangements discussed in the Alert.

Following the release of the Alert on 24 March 2017, the Australian Treasury released a consultation paper on stapled structures. The Government is seeking views from stakeholders regarding policy options regarding stapled structures, taxation of real property and the recharacterisation of trading income. In particular, the Government seeks to find the right balance between the appropriate level of tax paid by non-residents and encouraging foreign investment. The closing date for submissions was 20 April 2017.

China

Circular 140 and its supplement bring clarity to the industry's major concerns after B2V transformation

On 21 December 2016, the Ministry of Finance (MOF) and the State Administration of Taxation (SAT) jointly issued circular Caishui [2016] No. 140 (Circular 140) clarifying certain VAT policies for the asset management industry. Circular 140, together with its supplement (Circular 2) addresses some major concerns of the industry and clarified the following:

- the definition of "principal-protect earning, remuneration, fund possession cost and compensation"
- investment income from non-principal-protected financial products received during the holding period (including to the date of maturity) is not subject to VAT
- asset management products that are held to maturity does not fall into the category of trading of financial products
- the asset management product manager to be the taxpayer for the VAT taxable activities during the operation of the asset management products

Although Circular 140 resolves some major concerns in the asset management industry, some issues still remain unclear and need to be further clarified. To name a few, whether or not the determination of principal-protected earnings is simply based on the contractual terms, how to determine "maturity", etc.

In light of the above, asset managers are suggested to assess the impact of Circular 140 and its supplement, including but not limited to, the need to transform its business processes, reconfigure its system and realign their tax relationship with their customers, business partners, etc. Additionally, asset managers should also closely monitor any further developments with a view to more clarification on the uncertain matters.

For more details, please refer to the following URL:

https://www.pwchk.com/en/industries/financial-services/asset-and-wealth-management/china-amtax-news-dec2016-2.html

New rules for setting up WFOE PFMs

In January 2017, the Asset Management Association of China (AMAC) published Illustrative Guidance for the Registration and Filing of WFOE and JV Private Securities Investment Fund Managers (PFM) (Illustrative Guidance). The Illustrative Guidance sets out the detailed requirements for the registration of WFOE PFMs. AMAC also announced the registration of the first WFOE PFM in January 2017. We anticipate that more qualified foreign institutions will register for PFM in the near future.

While foreign institutions are encouraged to embrace the new policies to open up the asset management industry for foreign participation, they should also proactively assess the potential tax impacts e.g. potential VAT implications on the WFOE PFMs derived from the securities investment activities of the funds under management, transfer pricing, etc.

Hong Kong – China Bond Connect Scheme

Following the Hong Kong - China Stock Connect Scheme, we are anticipating the launch of the Hong Kong - China Bond Connect in 2017, confirmed by the Premier of the China State Council, Mr Li Keqiang, at a press conference after the closing of the fifth session of the 12th National People's Congress in March 2017. The exact time for launching the Hong Kong - China Bond Connect has not yet been announced.

There are two bond trading markets in the PRC:

1) the inter-bank bond market, operated by the National Association of Financial Market Institutional Investors (NAFMII) under the direct supervision of the People's Bank of China (PBOC)

2) the bond market hosted by the stock exchange system, which is smaller and less liquid compared to 1) the inter-bank bond market

Currently, foreign investors can invest in the China bond market indirectly through the qualified foreign institutional investors (QFII) regime or Renminbi qualified foreign institutional investor (RQFII) funds. Additionally, foregin investors can also access the Mainland China bond market through bond funds sold under the China - Hong Kong mutual recognition of funds (MRF) scheme. With the future introduction of the Hong Kong - China Bond Connect Scheme, investors in Mainland China and Hong Kong will have more direct cross-border access to bonds traded in both markets.

Investors looking for investment opportunities in the China bond markets via the Hong Kong - China Bond Connect scheme would have to consider the following uncertain tax issues, and are suggested to closely monitor the tax developments relating to the same:

- Whether or not investors in the Bond Connect Scheme could enjoy similar tax exemption treatments for capital gains like per the Stock Connect?
- Whether or not there will be a centralised withholding mechanism exercised by the clearance house before interest is paid to the Hong Kong investor? If not, how to obtain a tax clearance for the bond interest? Which tax bureau should take charge? What is the frequency for tax reporting?
- How to define the characteristics for premium or discount?
- What are the VAT implications on corporate bond interest paid to Hong Kong investors?

Hong Kong

The 2017/18 Hong Kong Budget

There is no change to the profits tax but there are various profits tax proposals in the Budget (please see below for details). Same as last year, various one-off relief measures are also proposed in the Budget.

1. Profits tax rates for companies (16.5%) and unincorporated businesses (15%) remain unchanged.
2. Introduce profits tax concession to promote aircraft leasing and financing.
3. Extend the profits tax exemption to onshore privately-offered open-ended fund companies.
4. Set up a tax policy unit in the Financial Services and the Treasury Bureau to comprehensively examine the international competitiveness of Hong Kong's tax regime and address the problem of a narrow tax base e.g. studying ways to foster the development of pillar and emerging industries through tax measures including enhanced deductions for innovation and technology expenditure.
5. Waive 75% of profits tax for 2016/17 (subject to a HK$20,000 ceiling) to be deducted from the taxpayer's final tax payable for the year.

Signing of the Hong Kong / Belarus CDTA

Hong Kong and Belarus signed a CDTA on 16 January 2017. With the signing of a tax treaty with Belarus, Hong Kong has now signed tax treaty with 15 out of 65 countries along the Belt and Road. The 15 countries are: Belarus (not yet effective), Brunei, China, Czech Republic, Hungary, Indonesia, Kuwait, Latvia (not yet effective), Malaysia, Qatar, Romania, Russia, Thailand, United Arab Emirates and Vietnam.

If the treaty is ratified and enters into force within 2017, it will become effective from 1 April 2018 (in Hong Kong) and from 1 January 2018 (in Belarus).

Signing of the Hong Kong / Pakistan CDTA

Hong Kong and Pakistan signed a CDTA on 17 February 2017. With the signing of a tax treaty with Pakistan, Hong Kong has now signed tax treaty with 16 out of 65 countries along the Belt and Road.

- For Hong Kong, if the treaty is ratified and enters into force within 2017, it will become effective from year of assessment 2018/19.
- For Pakistan, if the treaty is ratified and enters into force within 2017 and before 1 July 2017, it will have effect from 1 July 2017 or taxable year beginning on 1 July 2017. If the treaty is ratified and enters into force within 2017 but after 1 July 2017, it will have effect from 1 July 2018 or taxable year beginning on 1 July 2018.

Hong Kong revises its strategy on implementing automatic exchange of financial account information

On 24 March 2017, the HKSAR Government gazetted the Inland Revenue (Amendment) (No.3) Bill 2017 (the Bill) to expand the current list of "reportable jurisdictions' for automatic exchange of financial account information (AEOI) purposes from 2 to 74 jurisdictions."

The Bill seeks to amend:

1. the definition of "reportable jurisdiction" in section 50A(1) of Inland Revenue Ordinance (IRO) such that an effective tax treaty or tax information exchange agreement between Hong Kong and a jurisdiction is no longer required to be in place before that jurisdiction becomes a reportable jurisdiction; and

2. Part 1 of Schedule 17E of the IRO such that 72 jurisdictions will be added to the list of reportable jurisdictions (in addition to Japan and the UK which are already in the current list).

Financial institutions will be required to collect financial account information in respect of these 72 newly added reportable jurisdictions for the period from 1 July to 31 December 2017 and finish the data collected to the IRD in the first reporting year i.e. 2018.

The Bill will be introduced into the Legislative Council (LegCo) on 29 March 2017 and subject to the approval of the LegCo before being enacted into law. Once enacted, the Amendment Ordinance will come into effect on 1 July 2017.

Hong Kong ready for the buoyant aircraft leasing market with the new tax regime

The Inland Revenue (Amendment) (No.2) Bill 2017 was gazetted on 10 March 2017. The Bill mainly seeks to:

1. introduce a concessionary profits tax rate of 8.25% for the assessable profits derived from qualifying aircraft leasing activities and qualifying aircraft leasing management activities carried out in Hong Kong;

2. deem the taxable amount of qualifying profits derived by a qualifying aircraft lessor from leasing of aircraft to a non-Hong Kong aircraft operator as 20% of the gross lease payments less deductible expenses, excluding tax depreciation allowance; and

3. introduce various qualifying conditions for the above concessionary tax treatments and certain anti-abuse rules.

The Bill will be introduced into the Legislative Council (LegCo) on 22 March 2017 and subject to the approval of the LegCo before enacted into law. Once enacted, the concessionary tax regime is expected to apply from year of assessment 2017/18.

For more details, please refer to the following URL:
https://www.pwchk.com/en/services/tax/publications/hongkongtax-news-mar2017-4.html

India

Tax updates

- **Clarification on overseas transfer provisions (Circular No. 41/2016) kept in abeyance**

  On 17 January 2017, Central Board of Direct Taxes (CBDT) issued a press release keeping in abeyance its earlier circular issued on 21 December 2016 clarifying the applicability of overseas transfer provisions in the context of Foreign Portfolio Investors (FPIs).

- **CBDT issued guiding principles for POEM determination**

  On 24 January 2017, the CBDT issued a Circular laying down the final guidelines for determination of the Place of Effective Management (POEM) of a company. The final guidelines take forward the concept set out in the draft guidelines of POEM determination based on the bifurcation of companies engaged in active business outside India, and other companies.

  Further, on 23 February 2017, the CBDT issued a circular clarifying that provisions relating to POEM would not apply to companies having turnover or gross receipts less than Rs 50 crores during financial year.

- **CBDT clarification on taxability of income / loss arising from transfer of unlisted shares - removal of exception for Alternative Investment Funds (AIFs) I and II**

  CBDT clarified that where any income arises from transfer of unlisted shares the same would be considered under the head "Capital Gains" irrespective of the period of holding. The clarification shall not apply in cases where :

  1) the genuineness of transactions in unlisted shares itself is questionable; or

  2) the transfer of unlisted shares is related to an issue pertaining to lifting of corporate veil; or

  3) the transfer of unlisted shares is made along with the control and management of underlying business.

  On 24 January 2017, the CBDT clarified that exception (3) as mentioned above will not apply in the case of Category I and II AIF.

  The rationale being investment by such AIFs are predominantly in unlisted shares of start-ups / ventures and hence some level of control and management is required / exercised to safeguard the interest of the investors.

- **CBDT gives its views on the applicability and implementation of General Anti-Avoidance Rules (GAAR)**

  On 24 January 2017, the CBDT, after considering the comments of the Working Group, issued Circular No. 7 of 2017 providing its views on some aspects of GAAR. These include its views on the interplay between GAAR and specific anti avoidance rules (SAAR) and the Limitation of Benefit test under certain tax treaties. The CBDT also indicated the manner of determination of the threshold for tax benefit for invoking and the scope of investments, which will be grandfathered from the applicability of GAAR.

- **Union Budget 2017**

  On 1 February 2017, the Finance Minister presented the Budget 2017 proposals. The thrust of this year's Budget is to "Transform, Energise and Clean India". In line with said agenda and with a view to build stable and stronger institutions in the financial sector, the Finance Minister announced key policy measures entailing the abolition of the Foreign Investment Promotion Board, proposal for further liberalisation of the foreign direct investment policy, categorisation of systemically important NBFCs as QIBs, trading and listing of Securitisation Receipts, etc.

  On the tax side, the fous has been on stimulating growth, promoting affordable housing, simplifying tax administration etc. The key tax proposals listed by the Finance Minister include the following:

  – Measures to promote affordable housing and real estate sector (e.g., rationalising tax holiday for affordable housing projects, clarity on Joint Development Agreement taxation etc.)

  – Measures for stimulating growth (e.g., sunset provisions for interest income earned from Non convertible debentures / External Commercial Borrowings extended, lowering of corporate tax rates for Micro, Small and Medium Enterprises, etc.)

- Ease of doing business (e.g., restricting the scope of domestic transfer pricing, exempting investors in Category I and II FPIs etc.)
- Further, the Finance Minister reiterated the commitment of the Government to implement the Goods and Service Tax as per schedule

On March 31, 2017, Finance Bill 2017 received President's assent.

- **India and Austria sign a Protocol amending the India / Austria Double Taxation Avoidance Convention**

On 6 February 2017, India and Austria signed a Protocol amending the existing Convention between the two countries for Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income. The Protocol will broaden the scope of the existing framework of exchange of tax related information which will help curb tax evasion and tax avoidance between the two countries and will also enable mutual assistance in collection of taxes.

- **India / Israel tax treaty revised**

On 14 February 2017, the Ministry of Finance notified the Protocol to amend the India/Israel tax treaty. The key highlights of the Protocol are:

- Newly inserted Limitation of Benefit clause provides that treaty benefit will not be available "if the main purpose or one of the main purposes of the creation or existence of such resident or of the transaction undertaken by it, was to obtain benefits under this Convention that would not otherwise be available"
- Domestic GAAR application would be applicable in the event of treaty misuse
- Introduction of 'beneficial ownership' test for availing the treaty benefits
- Removal of tax credit mechanism which provided for 15% tax credit on dividend income
- Provides for internationally accepted standards for effective exchange of information (EOI) on tax matters including bank information and information without domestic tax interest.

Philippines

Procedure for claiming tax treaty benefits for dividend, interest and royalty income of non-resident income earners

The Commissioner of Internal Revenues (CIR) issued last 28 March 2017 Revenue Memorandum Order (RMO) No. 8-2017 dated 24 October 2016 (the Order), to provide for new procedures in claiming preferential tax treaty benefits on dividend, interest and royalty income of non-residents pursuant to effective tax treaties of the Philippines, thereby amending for this purpose, RMO No. 72-2010.

The Order provides the following guidelines and policies, among others:

- The Certificate of Residence for Tax Treaty Relief (CORTT) Form (copy attached in the Order), is a newly created BIR Form that replaces the old 0901 Forms intended for tax treaty relief application (TTRA) for dividend, interest and royalty income.

- The mandatory TTRA shall no longer be filed with the International Tax Affairs Division (ITAD). In lieu thereof, the preferential treaty rates for dividends, interests and royalties shall be applied and used outright by the withholding agent upon submission of a CORTT Form by the non-resident.
- The use of the preferential rates shall be done through withholding final taxes at applicable treaty rates as shown in "Annex A" of the Order.
- For dividend income purposes, the CORTT Form shall be valid for two years from date of issuance. However, if a prescribed certificate of residency of the country of residence is used, the date of validity of the latter document will prevail over the two year period given.
- For interest and royalty income purposes, the CORTT Form shall be valid per contract.
- Withholding agents or income payors can withhold at a reduced rate or exempt the non-resident based on the duly accomplished CORTT Form submitted to them.
- Failure to submit a CORTT Form to the withholding agent/income payor would mean that the non-resident is not claiming any tax treaty relief and therefore such income shall be subject to the normal rate provided under the Tax Code.
- Failure to supply accurate and complete information in the CORTT Form and BIR Forms 1601F and 1604-CF will render the non-resident and withholding agent non-compliant. Non-compliance shall be a ground for the denial of the use of preferential treaty rates and the disallowance of the pertinent expense/s of the withholding agent.
- Non-residents who already filed TTRAs with the BIR on dividend, interest and royalty income prior to the effectivity of the Order will be allowed to use the tax treaty rates invoked based on effective tax treaties of the Philippines with other countries. However, the same will be subjected to compliance check.
- The Order shall take effect after 90 days upon signing to afford non-resident income earners time to secure the required CORTT Form or prescribed certificate of residency from their respective countries of residence.

Singapore

The Singapore Variable Capital Company

On 23 March 2017, the Monetary Authority of Singapore (MAS) announced the public consultation of the Singapore Variable Capital Company (S-VACC) legislation, marking the city-state's latest investment fund innovation. Please refer to the link below for some of the key aspects of the S-VACC and how it will elevate Singapore's position in becoming a globally competitive fund domicile.

For more details, please refer to the following URL:

https://www.pwc.com/sg/en/asset-management/singapore-variable-capital-company.html

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