

# Asia Pacific Financial Services

## Tax Highlights





March 2023

Welcome to our March 2023 edition of Asia Pacific Financial Services Tax Highlights, where we draw your attention to the latest developments and hottest issues facing the industry in the region.

We encourage you to get in touch with any one of our contacts listed, or your usual PwC contact, should you wish to discuss anything further.

### Legend:

This development is relevant to the following:

-  Asset & Wealth Management
-  Banking & Capital Markets
-  Insurance
-  All

### Australia

- On 16 March 2023, the Australian Treasury released for comment draft legislation (Exposure Draft) to introduce the previously announced changes to Australia's interest limitation rules i.e. the thin capitalisation rules. New earnings based tests will replace the existing thin capitalisation asset-based safe-harbour and worldwide gearing tests for more taxpayers, for income years commencing on or after 1 July 2023. The arm's length debt test will also be replaced with a more restrictive external third-party debt test.

The Exposure Draft also proposes to remove interest deductions for borrowings to invest in an offshore subsidiary. If passed, this would have a material impact on financing across the market and presents particular challenges for outbound multinationals.

Click [here](#) for more information.

Other [monthly tax updates](#) include:

- On 16 February 2023, the [Treasury Laws Amendment \(2023 Measures No. 1\) Bill 2023](#) (Bill) was introduced into Parliament. The Bill contains previously announced tax measures in relation to:
  - amending the off-market share buy-back rules for listed public companies to align with the tax treatment of on-market share buy-backs, with effect for off-market buy-backs announced to the market by listed public companies after 7:30pm, by legal time in the Australian Capital Territory, on 25 October 2022; and
  - preventing frankable distributions funded by certain capital raising activity with effect for distributions that occurred on or after 15 September 2022.

### Hong Kong SAR

- Further to our [November 2022 Highlights](#), China submitted on behalf of Hong Kong SAR a notification to the OECD on 21 February 2023, confirming that Hong Kong SAR has completed its internal procedures for the provisions of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument or MLI) to enter into effect with respect to 31 of its covered tax agreements.

Subject to the MLI status of the contracting parties, the provisions of the MLI will enter into effect in Hong Kong SAR with respect to the 31 covered tax agreements on 1 April 2023 (for taxes withheld at source) and 1 April 2024 (for other taxes) at the earliest.

A copy of the notification can be accessed via this [link](#).

- Following the announcement by the Financial Secretary in Hong Kong's 2023/24 Budget in February 2023, the HKSAR Government launched a 2-month consultation on 23 March 2023 on a proposed scheme to enhance the tax certainty of non-taxation of onshore gains on disposal of equity interests.

Subject to the following eligible criteria and certain exclusions, onshore gains on disposal of equity interests by an eligible investor entity would be regarded as non-taxable for profits tax purpose under the proposed enhancement scheme. In other words, there is no need to adopt the 'badges of trade' approach to examine whether such disposal gains are of capital nature and thus not subject to profits tax. If not all criteria are met, the disposal gains

would continue to be examined using the 'badges of trade' approach.

Subject to the views collected in the consultation, an amendment bill is planned to be presented to Legislative Council in the second half of 2023 so that the proposed enhancement scheme could be put in place with effect from 1 January 2024.

More publications and news relating to the financial services industry are available [here](#).

### India

- In a recent decision, The Mumbai bench of the Income-tax Appellate Tribunal (Tribunal) held that the receipt of shares in a listed company (List Co) by the taxpayer is a capital receipt that is not chargeable to tax under either sections 56(1) or 28(iv) of the Income-tax Act, 1961 (the Act). Read [this](#) for more details.
- The Finance Bill 2023 was passed by the Lok Sabha on 24 March 2023. The related [tax highlights](#) include:
  - the tax rate applicable on royalty and fees for technical services in case of non-resident taxpayers who do not have a permanent establishment in India is increased to 20%.
  - capital gains taxation regime proposed for market-linked debentures is expanded to Specified Mutual Fund units acquired on or after 1 April 2023.
  - surcharge and cess will be removed on certain income earned by specified funds in the International Financial Services Centre (IFSC).
  - concessional tax rates are offered on dividends issued by the IFSC unit to its non-resident shareholders and interest earned on long-term bonds or rupee-denominated bonds listed only on the IFSC stock exchanges.

Other tax updates and insights in India are available [here](#).

### Korea

The [latest monthly tax updates](#) include:

- The Presidential Decrees of tax laws were amended and proclaimed on 28 February 2023. The amended Presidential Decrees include a few changes to the original bill to amend the Decrees:
  - the amended Presidential Decree of the Corporate Income Tax Law (CITL) clarifies the scope of qualifying foreign subsidiaries with respect to the six-month period in case of a tax qualified corporate restructuring (merger, spin-off or property contribution in kind).
  - the amended Presidential Decree lowers the 25% threshold of shareholding in a foreign grandchild subsidiary to 10% for at least six months prior to the dividend record date, rather than the dividend declaration date, in order to bring the rule into alignment with the eased criteria for a foreign subsidiary eligible for indirect foreign tax credits.
- The Ministry of Trade, Industry and Energy (MOTIE) announced on 27 February 2023 the government's core mineral resources strategy that includes the reintroduction of the tax credits for investments in overseas natural resources developments which sunset in 2013. The government plans to adopt again in 2023 the investment tax credit\* aimed at facilitating the development of overseas natural resources (\*tax incentives for investment in mining rights).

The plan also calls for expanding the scope of deductible expenses incurred to develop natural resources and relieving the tax burden on dividends received from overseas subsidiaries relevant to the resources development in case of failed projects in resources development.

### Malaysia

[Budget 2023 \(Retabled\) Edition](#) highlights the key tax proposals of Budget 2023 as announced by the Prime Minister and Finance Minister, YAB Dato' Seri Anwar bin Ibrahim on 24 February 2023:

- In line with international best practices, the Government will conduct a study to introduce tax of capital gains from disposal of unquoted shares made by companies at a low tax rate. An engagement session will be held by the Government with stakeholders to examine the details of the proposal.

The [latest newsletter](#) include:

- The Ministry of Finance (MOF) has indicated in the Touchpoints to Budget 2023 that as part of measures related to fiscal sustainability and to increase revenue collection, Malaysia will be implementing the global minimum tax based on the OCED-led Pillar 2 project including the qualified domestic minimum top-up tax or 'QDMTT'.
- The Inland Revenue Board (IRB) has announced on their website that the new Malaysia-Poland Double Taxation Agreement (DTA) which was signed on 8 July 2013 has entered into force on 12 January 2023.

### Philippines

- The Court of Tax Appeals (CTA) recently issued a decision with a comprehensive analysis of the nature of Philippine Depository Receipts (PDRs) and related tax implications of the involved transactions (CTA Crim. Case Nos. O-679 to O-682 dated Jan. 18, 2023). The Court ruled that PDRs may fall under the classification of securities similar to shares of stock but in a different category under the SRC (i.e., derivatives like options and warrants, and other instruments as may in the future be determined by the Commissioner).

CTA concludes that there is no basis for the alleged imputed trading gain upon the issuance of PDRs and issuer of PDRs is not a dealer in securities and is not liable for VAT.

Click [here](#) for more information.

### Singapore FS

- In the 2023 Budget presented in parliament on 14 February 2023, Deputy Prime Minister and Finance Minister Mr Lawrence Wong noted that Singapore plans to implement the Global Anti-Base Erosion (GloBE) rules as well as a domestic top-up tax (DTT) for in-scope multinational enterprises (MNEs) from their financial year beginning on or after 1 January 2025. Click [here](#) for details.

### Thailand FS

- On 7 March 2023, the Thai Cabinet approved measures to introduce the global minimum tax rules (Pillar Two) in Thailand and announced the actions that will be taken by The Board of Investment and The Ministry of Finance. According to the Cabinet resolution, the draft Pillar Two rules are intended to be introduced in 2023 and may become effective in 2025.

Read our [tax update](#) for more information.

### International FS

- On 14 February 2023, the EU's ECOFIN Council approved the latest list of non-cooperative jurisdictions for tax purposes. Four jurisdictions, Russia, British Virgin Islands, Costa Rica and Marshall Islands were all added to Annex I (the so-called blacklist). No countries were removed from the previous list (published in October 2022). Annex II of the list (greylisted countries) was also updated with Albania, Aruba and Curaçao added, while North Macedonia, Barbados, Jamaica and Uruguay have been removed from the greylist. Read the full Tax Policy Alert [here](#).

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Contact our Asia Pacific Financial Services Tax Leadership network



**Rex Ho**

Asia Pacific Financial Services Tax Leader  
Hong Kong SAR



**Matthew Wong**

Asia Pacific Asset & Wealth Management Tax Leader  
Mainland China



**Liam Collins**

Asia Pacific Banking & Capital Markets Tax Leader  
Australia



**Brendan Egan**

Asia Pacific Insurance Tax Leader  
Singapore



**Stuart Porter**

Asia Pacific Real Estate Tax Leader  
Japan



**Jesse Kavanagh**

Asia Pacific Financial Services Tax Transformation Leader



**Sarah Hickey**

Partner  
Australia



**Tushar Sachade**

Partner  
India



**Margie Margaret**

Partner  
Indonesia



**Kenji Nakamura**

Partner  
Japan



**Hoon Jung**

Partner  
South Korea



**Jennifer Chang**

Partner  
Malaysia



**Darryl Eady**

Partner  
New Zealand



**Malou P. Lim**

Partner  
Philippines



**Lennon Lee**

Partner  
Singapore



**Jessie Chen**

Partner  
Taiwan



**Orawan Fongasira**

Partner  
Thailand



**Nghiem Hoang Lan**

Partner  
Vietnam

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