# Asia Pacific Financial Services Tax Highlights

November 2023 – January 2024

Welcome to our November – January 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:

- AWM Asset & Wealth Management
- BCM Banking & Capital Markets
- INS Insurance
- FS All

## Australia FS AW

The latest monthly tax updates include:

- The tax treatment of off-market share buy-backs undertaken by listed public companies and the ability to make frankable distributions in certain cases that are funded by capital raisings has changed following the passage of legislation (Treasury Laws Amendment (2023 Measures No. 1) Act 2023).

  In broad terms, the new off-market share buy-back rules for listed public companies are aligned with the tax treatment of on-market share buy-backs. In simple terms, this means that no part of the buy-back price will be treated as a dividend.

  In addition, to ensure alignment in tax outcomes across the capital management activities of listed public companies, a distribution by a listed public company that is "consideration for" the cancellation of a membership interest in itself, as part of a selective reduction of capital, is unfrankable and will give rise to a franking debit.

- The Australian Taxation Office (ATO) has issued Taxation Determination TD 2023/6 which considers the Commissioner's view as to what is an "expense" that is "incurred" for purposes of applying the early stage test for eligibility under the early stage innovation company (ESIC) regime.

  The object of the ESIC regime is to encourage new investment in small Australian innovation companies with high-growth potential, by providing a tax offset and modified capital gains tax treatment to qualifying investors.

- The ATO has updated Practical Compliance Guideline PCG 2021/1 which sets out the ATO's approach to applying the market value substitution rules when there is a buy-back or redemption of hybrid securities and the investor holds the securities on capital account.

- The ATO has released Draft Law Companion Ruling LCR 2023/D1 which considers the operation of the new Collective Investment Vehicle (CCIV) regime. A CCIV is a legal form company limited by shares that is available for funds management. From a regulatory perspective, a CCIV is a registered company with its assets and liabilities segregated into 'sub-funds' and is operated by a single corporate director.

  The tax framework treats each CCIV sub-fund as a separate tax entity that is a trust. The general intent is to align the tax outcomes of CCIVs and their investors with the existing treatment of investors in attribution managed investment trusts (AMITs). General trust taxation rules (with modifications) apply to a CCIV where it does not qualify for the AMIT regime.

- On 28 November 2023, amendments to Treasury Laws Amendment (Making Multinationals Pay Their Fair Share - Integrity and Transparency) Bill 2023 - which contains the proposed reforms to Australia's thin capitalisation regime - were released in advance of their introduction in the Senate. This is likely to be the final round of changes before the Bill completes its passage through Parliament. As such, the Bill, combined with these amendments, offers the complete picture of how the new thin capitalisation regime will operate.

## Mainland China FS

- China's State Taxation Administration (STA) on 19 December 2023 published the China Advance Pricing Arrangement Annual Report (2022) (2022 Annual Report). The 2022 Annual Report contains statistical data and analysis of the advance pricing arrangement (APA) cases from 2005 to 2022.

  According to 2022 Annual Report, the STA signed 19 unilateral APAs (including three renewals) and 15 bilateral APAs (including seven renewals). In total 34 APAs were signed during 2022, reaching a record high from 2005 to 2022. Similar to the previous years, the manufacturing industry accounted for the majority of APAs signed, highlighting the role of taxation in serving the real economy.

  Read our publication to know more.

- On 29 December 2023, Shanghai Municipal Tax Service of the State Taxation Administration issued the Administrative Measures for Advance Tax Rulings by the Shanghai Municipal Tax Service (Trial) (HuShuiBanFa [2023] No. 33). As the first set of formal advance ruling procedures released by a provincial or equivalent tax authority in China, it is a landmark in tax administration services.

  Starting now, enterprise taxpayers in Shanghai can request for advance rulings regarding the application of tax laws and regulations to proposed complex tax matters. The advance tax ruling regime will provide taxpayers, particularly enterprises involved in mergers and acquisitions (M&A), and those expanding into emerging markets, with greater tax certainty. Advance tax rulings will assist these enterprises in better evaluating tax costs and making informed business decisions.

  Click here for more information.

## Hong Kong FS

- Two important tax legislative bills were recently passed into law. Firstly, the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Bill 2023 (FSIE Bill 2023), together with the proposed Committee Stage Amendments that only involve minor textual amendments, were passed by the Legislative Council on 29 November 2023. The FSIE Bill 2023 seeks to refine the existing foreign-sourced income exemption (FSIE) regime under the Inland Revenue Ordinance by expanding the scope of assets in relation to foreign-sourced disposal gains to cover assets other than equity interests. The FSIE Bill 2023 was gazetted as the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Ordinance 2023 (FSIE Ordinance 2023) on 8 December 2023. The refined FSIE regime as amended by the FSIE Ordinance 2023 comes into operation on 1 January 2024.

  Then on 15 December 2023, the Inland Revenue (Amendment) (Disposal Gain by Holder of Qualifying Equity Interests) Bill 2023 that proposes the implementation of the tax certainty enhancement scheme (Enhancement Scheme) was gazetted as an amendment ordinance. The Enhancement Scheme applies to gains (i) derived from an eligible onshore equity disposal that occurs on or after 1 January 2024 and (ii) accrue in or after the year of assessment 2023/24.

  See our News Flash for further details.

- As foreshadowed in the 2023-24 Budget announced in February 2023, Hong Kong will implement the 15% global minimum tax on in-scope multinational enterprise groups and the domestic minimum top-up tax in Hong Kong (HKMTT) starting from 2025 onwards.

  On 21 December 2023, the Government published its much-anticipated consultation paper on the implementation of the global minimum tax and the HKMTT in Hong Kong (Consultation Paper). The consultation is open until 20 March 2024, with the expectation that draft legislation will be published in the second half of 2024.

  Click here for more information.

- The Inland Revenue Department issued a set of new Departmental Interpretation and Practice Notes No. 63 (DIPN 63), elaborating its views and practice as regards tax treatments in relation to (i) qualifying (court-free) amalgamations of companies; and (ii) transfer or succession of specified assets without sale under certain circumstances, after the enactment of the Inland Revenue (Amendment) (Miscellaneous Provisions) Ordinance 2021.

  Refer to our News Flash for a summary of salient points and discussion on related implications.

- Our Hong Kong Tax Review 2023 is now available, summarising the significant tax updates in 2023 and previews the upcoming tax developments in 2024.

## India FS

- The Central Board of Direct Taxes has recently amended the Safe Harbour Rules for international transactions, i.e. rules 10TA and 10TD of the Income-tax Rules, 1962, vide a notification. These latest amendments are with respect to the definition of operating expense and operating revenue and the scope of intra-group loan transactions that will be covered within the ambit of the Safe Harbour Rules. The amendments will come into force from 1 April 2024.

  Click here for more information.

- In line with its policy initiative to allow Indian companies to list their securities directly on international exchanges in permissible jurisdictions, the Government of India has in the first phase permitted direct listing of equity shares by an Indian public company on the India International Exchange and the NSE International Exchange located in Gujarat International Finance Tec-City, International Financial Services Centre.

  Click here for key highlights.

On another note, we bring you a concise analysis of important judgements and noteworthy regulatory developments in corporate tax, financial services, M&A, transfer pricing and indirect taxes during 2023.

We are pleased to present our annual compilation, Tax Glimpses 2023.

## Indonesia FS

- On 29 December 2023, the Minister of Finance (MoF) issued regulation No. PMK-172 regarding an implementing guideline for the application of the Arm's Length Principle on Related-Party Transactions. This regulation serves as a one-stop source as a guideline for transfer pricing matters.

  PMK-172 revokes several MoF regulations, i.e. PMK-213, PMK-49, PMK-22; their contents are streamlined and elaborated into this PMK. In addition, some of the contents of PMK-172 are aligned with the Harmonisation of Tax Regulations (*Harmonisasi Peraturan Perpajakan/HPP*) Law which have also been accommodated under GR-50 and GR-55.

  This TaxFlash highlights the key changes in PMK-172.

## Japan FS

- On 14 December 2023, the ruling parties in Japan released their 2024 Tax Reform Proposal, commonly known as Taiko. Draft legislation implementing these proposals will be presented to the Japanese parliament (Diet) in early 2024.

  Click here for a brief and immediate summary highlighting significant developments of interest to Japan's financial services industry and real estate market.

## South Korea FS AW

- To encourage private sector investments in venture firms, amendments have been made to the Presidential Decree of the Value Added Tax (VAT) Law. These changes will allow VAT exemptions for asset management and operation services rendered by operating partners of a private fund for indirect venture investment to the private fund. These private funds for indirect venture investment encompass entities formed by companies seeking to invest indirectly in SME startups, new technology venture capital firms and asset management firms as specified by the Venture Investment Promotion Law.

  Click here for more information.

- With the global minimum tax rules to be enforced on 1 January 2024, the Ministry of Economy and Finance (MOEF) announced a bill to amend the Presidential Decree of the Law for Coordination of International Tax Affairs, seeking public comments on the proposed rules concerning global minimum tax.

  Click here for key parts of the proposed amendments to the Presidential Decree.

- Following the amendment of tax laws at the end of December 2023, the MOEF announced the government's bill to amend the Presidential Decrees of these tax laws on 23 January 2024 to seek public comments thereon until 14 February 2024.

  Provided here is a brief summary of the selected significant changes contained in the government's bill to amend the Presidential Decrees of the tax laws.

## Malaysia FS AW

- The Income Tax (Exemption) (No. 7) Order 2023 was gazetted on 29 December 2023 to exempt companies, limited liability partnerships, trust bodies and co-operative societies from capital gains tax in respect of gains or profits from the disposal of shares of unlisted companies incorporated in Malaysia.

  Further details are available here.

- The Finance Minister II has announced on 16 January 2024 that unit trusts will be exempted from capital gains tax and income tax on foreign-sourced income.

  Click here for more information.

- The Inland Revenue Board (IRB) has issued a new Public Ruling No. 8/2023 to provide clarification on the tax treatment for a company that establishes an SPV solely for issuing sukuk under section 60I of the ITA 1967 (sukuk other than asset-backed sukuk).

  Refer to our newsletter for key tax treatments.

## Singapore FS

- Changes to Singapore's tax regime for foreign-sourced income, first proposed in June 2023 (refer to our earlier Tax Bulletin), came into effect on 1 January 2024.

  A new section 10L of the Income Tax Act 1947 imposes tax on gains from the disposal of foreign assets taking place on or after 1 January 2024 when they are received in Singapore by an entity of a relevant group (unless certain exclusions apply).

  Click here for more information.

Other Singaporean tax updates and publications are also available here.

## Vietnam FS

- Further to our Newsbrief on the draft Resolution on global minimum tax policy, the long-awaited Resolution was finally approved by the National Assembly on 29 November, and will come into effect from 1 Jan 2024. The Resolution provides that Vietnam will adopt (i) the Qualified Domestic Minimum Top-Up Tax rule and (ii) the Income Inclusion Rule.

  This aims to protect Vietnam's tax base in light of the fact that many countries that have investments in Vietnam have announced that they will introduce the IIR from 2024 (e.g., Japan, Korea, etc.). This provides some transparency and certainty for business in Vietnam, particularly as more countries implement global minimum tax rate policy rules. Read this for some insights.

## International FS

- The OECD Secretarial published the latest set of Administrative Guidance on the Global Anti-Base Erosion Model Rules (GloBE rules) of Pillar Two on 18 December 2023 intended to clarify the operation of the GloBE rules. This is the third set of administrative guidance, and along with the guidance released in February and July 2023 it will be incorporated into a revised version of the GloBE Commentary, which, according to the OECD, will be released in 2024. This latest release is the final set of guidance supplementing and clarifying the Pillar Two rules before they come into effect in many countries from 1 January 2024. Further guidance is expected in 2024 across a range of issues.

Concerning Amount A of Pillar One, a statement was also published noting that “members of the Inclusive Framework (IF) reaffirm their commitment to achieve a consensus-based solution and to finalise the text of the Multilateral Convention (MLC) by the end of March 2024, with a view to hold a signing ceremony by the end of June 2024.” In addition to recognizing that work to resolve the outstanding issues on the text of the MLC will go on into 2024, the IF statement mentions that this includes work to extend the standstill on Digital Services Taxes (DSTs) and other relevant similar measures (which is currently set to expire at the end of this year).

For more information, see our PwC Tax Policy Alert.

For other international tax developments, updated on a monthly basis, please click here.

# Asia Pacific Financial Services Tax Highlights

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