



## Tax Must-Knows

*Dissect the Region's Key Tax Issues*

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*Facilitated by:*  
Accredited Tax Advisor (Income Tax) Mr Rohan Solapurkar

**F**rom new anti-avoidance legislation to changes in documentation requirements, a plethora of tax developments have been occurring both in Singapore and our neighbouring countries, as well as the rest of the world.

Against the backdrop of an ever-changing and increasingly complex international tax landscape, a technical session was specially crafted to shed light on the region's key tax developments and provide valuable insights on the corresponding business implications. Co-organised by the [Singapore Institute of Accredited Tax Professionals](#) (SIATP) and the [Institute of Singapore Chartered Accountants](#) (ISCA), the session was facilitated by Accredited Tax Advisor (Income Tax) Rohan Solapurkar, Tax Partner, Deloitte Singapore.

### *Recent Tax Developments in Singapore*

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#### **REFINEMENTS TO FINANCE AND TREASURY CENTRE SCHEME**

Under the Finance and Treasury Centre (FTC) scheme, an approved FTC may enjoy a concessionary tax rate of 8% on income derived from specific qualifying activities. To ease the administrative and compliance burden on approved FTCs, qualifying counterparties for certain transactions of approved FTCs have been streamlined (for example, approved FTCs will no longer need to obtain confirmation that the counterparties involved are qualifying counterparties for FTC purposes). The changes apply to (both new or renewal) incentive awards approved on or after 21 February 2017.

#### **ENHANCEMENTS TO GLOBAL TRADER PROGRAMME**

Several enhancements were made to the Global Trader Programme (GTP) in Budget 2017, such as the expansion of the scope of qualifying income.

Following the change, physical trading income attributable to storage in Singapore, or any activity carried out in Singapore which adds value to commodity by any physical alteration, addition or improvement (such as refining, blending, processing or bulk-breaking), will qualify for GTP.

Another notable enhancement (which alleviates compliance burden) is the removal of the requirement for qualifying transactions to be carried out with qualifying counterparties. With this change, GTP companies would no longer need to segregate both buy and sell transactions with qualifying and non-qualifying parties from 21 February 2017.

#### **NEW REPORTING REQUIREMENT FOR RELATED PARTY TRANSACTIONS**

With effect from Year of Assessment 2018, companies will need to complete and submit a form for the reporting of related party transactions together with their income tax returns if the value of their related party transactions in the year exceeds S\$15 million.

### AUSTRALIA

#### RELATED PARTY LOANS

In a recent transfer pricing (TP) case involving an Australian entity of the Chevron group (AusCo) and the Australia Taxation Office (ATO), the ATO challenged the rate of interest charged on a related party loan (from a US subsidiary) to AusCo.

The interest rate charged was based on standalone credit rating and TP analysis using actual terms and conditions, but did not consider the security (in the form of parent guarantee) that Chevron (the ultimate parent company) may have provided should AusCo borrow from external parties. On the basis that the AusCo had not shown that the interest paid was equal to or less than arm's length, and that the intent of the legislation and real-world commercial considerations should be taken into account, the Court ruled in favour of the ATO.

This judgement highlighted the importance for multinational companies (MNCs) to demonstrate the commercial context of their intercompany financing arrangements with supporting evidence.

#### MULTINATIONAL ANTI-AVOIDANCE LAW

As part of Australia's efforts to combat tax avoidance by MNCs operating in the country, the Multinational Anti-Avoidance Law (MAAL) was established to ensure that MNCs pay their "fair share of tax" on the profits earned in Australia.

Effective from 1 January 2016, the ATO has the power to cancel any tax benefits a significant global entity (SGE) (that is, an MNC with annual global income of more than A\$1 billion) obtains from certain schemes. SGEs are also subject to increased penalties for tax shortfalls arising from the application of MAAL.

### CHINA

#### CASH REPATRIATION

A key issue that MNCs operating in China face is cash repatriation. While the dividend distribution process in China has been simplified in recent years, it is important for companies to ensure that they are able to fulfill the substance requirement in order to meet the limitation of benefit clause in tax treaties. This may be an issue for Chinese subsidiaries with investment holding parent companies (which have little substance). MNCs thus need to be mindful when setting up their business structures supporting their investments in China.

#### TRANSFER PRICING

On 1 April 2017, China's State Administration of Taxation issued Bulletin 6 which contains guidance on the application of the arm's length principle, including guidance with respect to intangible property transactions, intercompany services transactions, location specific advantages and TP requirements. Bulletin 6 also provided detailed guidance on mutual agreement procedures.

The above complements Bulletin 42 which was introduced earlier to deal with the reporting of related party transactions and contemporaneous documentation. Bulletin 42 introduced a three-tier documentation framework (as set out in the OECD's final report on BEPS Action 13), enhanced the information disclosure requirements and updated the submission deadline of documentation. It should be noted that the bulletins have strengthened China's position in TP audits, increasing the risk of TP audits in China.

With the host of information provided in such documentation, it is vital for companies operating in China to review their operating models and their related party transactions vis-à-vis the substance in China relative to other countries.

## INDIA

### LIMITATION ON INTEREST DEDUCTION

One of the key tax changes in Budget 2017 was to restrict deduction of interest paid or payable by an Indian entity to its associated enterprise to 30% of the entity's earnings before interest, taxes, depreciation and amortisation (EBITDA). This restriction will apply to Indian companies or permanent establishment (PE) of foreign companies in India which pays interest or similar consideration (exceeding INR10 million) in respect of any debt issued by a non-resident associated enterprise. Any excess interest expense can be carried forward for eight years, subject to the same restriction.



Accredited Tax Advisor (Income Tax) Rohan Solapurkar, Tax Partner, Deloitte Singapore, provided participants with a snapshot of the recent tax developments in Singapore and Asia Pacific.

### GENERAL ANTI-AVOIDANCE RULE

The General Anti-Avoidance Rule (GAAR) provisions, which empower the Indian tax authorities to deny tax benefits to any arrangements entered into with the main purpose of obtaining tax benefits and which lack commercial substance, will be effective from financial year 2017-18. The Indian authorities issued various clarifications on the implementation of GAAR following representations made by stakeholders. For example, it has been clarified that GAAR will not be invoked merely because the taxpayer is located in a tax-efficient jurisdiction.

## INDONESIA

### TRANSFER PRICING DOCUMENTATION REQUIREMENTS

Since 30 December 2016, Indonesia has implemented a three-tier approach for its TP documentation requirement, consisting of the master file (to provide a broad overview of a business group's operations), local file (to provide information on the Indonesian taxpayer) and Country-by-Country report from 30 December 2016. The documentation has to be submitted in Bahasa Indonesia. It can be observed that tax authorities are progressively seeking more information on related party transactions; companies would be wise to focus their attention and resources in this area.

## MALAYSIA

### WITHHOLDING TAX ON OFFSHORE SERVICES

The scope of the Malaysian withholding tax regulations has been expanded to include service fee paid to a non-resident for services performed overseas.

It should be noted that under the Avoidance of Double Taxation Agreement (DTA) between Singapore and Malaysia, technical fees (including consulting fees) would only be taxable in Malaysia if the services are performed in Malaysia. Hence, to the extent that a Singapore company which is tax resident in Singapore performs technical services for a Malaysia customer in Singapore, such technical fees in relation to the services should not be taxable in Malaysia under the DTA.

## THAILAND

### INVESTMENT PROMOTION

To encourage investment in Thailand, the Thailand Board of Investment (BOI) announced a new seven-year investment promotion strategy for years 2015 to 2021. In granting the investment promotion to an applicant, the BOI would consider various criteria (for example, the new investment capital must exceed THB1 million, and the ratio of liabilities to registered capital must not exceed 3:1). Successful applicants may, depending on the type of investment activities, enjoy a variety of incentives (such as corporate income tax exemption, exemption of import duty, and others).

The tax landscape has changed drastically in the past few years. International tax developments, such as the 2017 signing of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (which essentially updates bilateral DTAs without the need for re-negotiation of individual DTAs), will continue to impact companies' tax positions. Now more than ever, companies have to keep abreast of the latest tax happenings around the world and plan ahead.



Accredited Tax Advisor (Income Tax) Rohan Solapurkar, Tax Partner, Deloitte Singapore, answering participants' queries on the region's key tax issues.

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#### Facilitator



**Mr Rohan Solapurkar**

Tax Partner  
Deloitte Singapore  
T: +65 6531 5027  
E: rohans@deloitte.com

*This technical event commentary is written by Felix Wong, Head of Tax, and Angelina Tan, Technical Specialist, SIATP. This article is based on a technical briefing jointly organised by [SIATP](#) and [ISCA](#) and facilitated by Accredited Tax Advisor (Income Tax) Rohan Solapurkar, Tax Partner, Deloitte Singapore.*

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