



# Asia Pacific Tax Weekly

KPMG Asia Pacific Tax Centre | Content to 17 December 2015



## Asia Pacific Tax Developments

### Australia

#### **Australia: China – Australia Free Trade Agreement**

The China – Australia Free Trade Agreement (ChAFTA) has reached its last hurdle prior to implementation, with the exchange of diplomatic notes occurring on 9 December 2015.

ChAFTA will enter into force on Sunday 20 December 2015, with the immediate benefits of first-year tariff reductions occurring from that date. The second-year of tariff reductions will commence from 1 January 2016, delivering two rounds of tariff reductions in close succession.

[More details](#)

#### **Australia: Obtaining certainty – or are you?**

For nearly 25 years, private rulings have been used by taxpayers seeking advice from the Commissioner about how a tax law applies to a particular scheme (broadly defined) or circumstance.

KPMG in Australia highlights the importance of fostering a consultation process with the ATO and implementing public rulings.

[More details](#)

#### **Australia: Postcard from London – KPMG Global Pensions Meeting**

Together with other KPMG Pension global industry leaders, KPMG Australia has been meeting with UK trustee directors, global custodians, asset managers and service providers to discuss the global challenges facing pension funds.

KPMG in Australia outlines many of the global challenges facing pension funds as part of their attendance at the KPMG Global Pensions Meeting held in London.

[More details](#)

### **Australia: PPP framework offers clarity on the securitized license structure**

KPMG in Australia provides insight into the Australian Taxation Office's recently released tax framework outlining the Australian income tax and goods and services tax (GST) implications of the standard public private partnership (PPP) structure – the securitized license.

[More details](#)

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## **India**

### **India: New monetary limits for filing of appeals by the tax department before the Tribunal, High Court and SLP before the Supreme Court**

The Central Board of Direct Taxes vide an Instruction prescribed revised monetary limits for the filing of appeals by the tax department before the Tribunal, High Court and Special Leave Petition before the Supreme Court.

In suppression of the above Instruction, the CBDT has recently issued a Circular where it stated that the tax department may file an appeal on merits before the Tribunal, High Courts and SLP before the Supreme Court keeping in view the specified monetary limits and conditions.

[More details](#)

### **India: Circulation of draft Goods and Services Tax law**

The draft Goods and Services Tax law has been circulated/uploaded on few tax [portals](#). However, the said draft GST law is not officially released by the government or Empowered Committee of state's finance ministers.

We expect that once the GST Law Drafting Committee has fine-tuned various provisions of the GST law, a final version will be released by the government for reference of the trade and industry.

[More details](#)

### **India: Corporate guarantee made for subsidiary, transfer pricing adjustment rejected**

The Ahmedabad Income-tax Appellate Tribunal held that a corporate guarantee made by a parent company for a subsidiary was not in the nature of a "provision for service" (but was more in the nature of "shareholder activities / quasi capital") and thus could not be defined as an "international transaction" under India's tax law.

Accordingly, the Tribunal rejected a transfer pricing adjustment determined with respect to the guarantee, by further distinguishing a corporate guarantee from a bank guarantee.

[More details](#)

## **India: Investing in India 2015**

KPMG in India has released a report discussing the developments on the tax and regulatory front and their implications on the way you do business in India.

[More details](#)

## **India: Report on employee pensions in India at FICCI's conference on pension sector**

KPMG in India, in association with Federation of Indian Chambers of Commerce and Industry (FICCI), published a white paper titled, 'Employee pensions in India – current practices, challenges and prospects.' The report was released at the 'Conference on Pensions Sector in India', organized by FICCI, on 9 December 2015.

[More details](#)

## **India: No disallowance under section 14A of the Income-tax Act**

The Bombay High Court dealt with a case under Section 14A of the Income-tax Act, 1961 where investment in tax-free bonds has been made from a common pool of owned and borrowed funds. The High court held that since the issue was fully covered in favor of the taxpayer, the tax department's appeal was dismissed.

In another case, the Gujarat High Court held that where the taxpayer had owned interest-free funds and there was no direct nexus between interest bearing borrowed funds and investment, no disallowance of interest expenditure could be made under Section 14A of the Act.

[More details](#)

## **India: Payment of a penalty to the U.S. government/Court does not attract the withholding tax provisions**

The Authority of Advance Ruling held that the applicant would not be required to deduct tax at source under provisions of the Income-tax Act, 1961 on an amount of penalty paid to the U.S. government/Court.

The AAR observed that a penalty levied for violating the provisions of the U.S. Securities Exchange Act would not attract tax under the Act, and thus, the payment made would not be subject to deduction of tax at source under Section 195 of the Act.

[More details](#)

## **India: Rules for issuing tax notices, summons, other communication**

India's Central Board of Direct Taxes set forth rules with respect to the service of notices, summons, requisition, order and other communications.

Also, In order to improve taxpayer services, enhance the efficiency and usher in a paperless environment for carrying out assessment proceedings, the CBDT introduced the concept of using e-mail for corresponding with taxpayers and sending through emails the questionnaires, notice, etc. at the time of scrutiny proceedings and getting responses from them using the same medium on a pilot basis.

[More details](#)

## India: Incorrect permanent account number

The Ahmedabad Bench of the Income-tax Appellate Tribunal held that an incorrect “permanent account number” (PAN) provided inadvertently does not invoke section 206AA of the Income-tax Act, 1961 because there was no intention to furnish an incorrect PAN with respect to withheld tax (or “tax deducted at source” as referred to in India).

[More details](#)

## India: “Schemes of arrangement” of listed entities

The Securities and Exchange Board of India (SEBI) issued new listing regulations that, effective 1 December 2015, replaced prior circulars stipulating or modifying the provisions of listing agreements. The SEBI on 30 November 2015 issued procedural requirements for listed entities and the stock exchange in respect of “schemes of arrangement.”

[More details](#)

## India: Use of a bright line approach inappropriate for determining the existence of an international transaction and for making an adjustment

Earlier this year, the Delhi High Court in the case of Sony Ericsson had adjudicated on the issue of marketing intangibles for taxpayers engaged in marketing and distribution functions. However, there was still no clarity on the applicability of the bright line concept to licensed manufacturers.

The Delhi High Court in the recent case of Maruti Suzuki India Limited provided the much needed clarity for taxpayers functioning as licensed manufacturers.

[More details](#)

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## Japan

### Japan: Draft outline, tax reform proposals for 2016

The tax commission of the ruling coalition (the Liberal Democratic Party and New Komeito) on 10 December 2015 reached an agreement for a draft outline of tax reform proposals for 2016.

Among the items in the draft outline agreement are proposals for reduced effective corporate tax rates, and revisions to the tax loss carry forward rules, depreciation methods, anti-tax haven (CFC) rules, the scope of tax-qualified contributions-in-kind, and other business tax items.

[More details](#)

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## Korea

### Korea: Agreement with India, suspending tax collection during pending MAP

Representatives of the governments of South Korea and India on 9 December 2015 signed a “memorandum of understanding” (MoU) for the suspension of the collection of taxes, for up to five years, when there is a mutual agreement procedure (MAP) pending. In Korea, the collection of

taxes is suspended for entities that have applied for a MAP until the conclusion of the MAP, under Korean transfer pricing regulations. The MoU will relieve the burden of double taxation for Korean taxpayers doing business in India while the MAP is being processed.

[More details](#)

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## Calendar of Events

Date	Event	Location
24 November - 16 December 2015	2015 KPMG China Annual Tax Update Conference <a href="#">More details</a>	Multiple Location
28 December 2015	US GAAP and SEC Update Seminar <a href="#">More details</a>	Beijing
8 January 2016	Remuneration Reporting in Forms IR8A/IR21 Workshop 2016 <a href="#">More details</a>	Singapore
Week of 9 May 2016	2016 KPMG Asia Pacific Tax Summit	Beijing

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## Beyond Asia Pacific

### Netherlands: Salary amounts for “highly skilled migrant” workers (2016)

Guidance in the Netherlands announces the gross monthly salary amounts for “highly skilled migrants” for 2016.

[More details](#)

### Nigeria: Considerations for tax amnesty

Tax revenue in Nigeria contributes only 7% to GDP (gross domestic product), whereas the recommended GDP contribution of tax collections is 15%. Against the backdrop, an article proposes a plan of tax amnesty to enhance tax revenue collection in Nigeria.

[More details](#)

## TaxNewsFlash by Region

For the latest tax developments from other regions see the following links:

[Africa](#)

[Americas](#)

[Europe](#)

[United States](#)

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# KPMG Asia Pacific Tax Centre Contacts

## Asia Pacific Regional Leader, Tax



**Warrick Cleine**  
**Partner & CEO, KPMG in Vietnam**  
T: +84 8 3821 9266  
E: [warrickcleine@kpmg.com.vn](mailto:warrickcleine@kpmg.com.vn)

## Asia Pacific Tax Centre Leader, Regional Tax Partner



**Brahma Sharma - KPMG Asia Pacific Limited**  
**Asia Pacific Tax Centre Leader, Regional Tax Partner**  
T: +65 8186 7369  
E: [brahmasharma@kpmg.com.sg](mailto:brahmasharma@kpmg.com.sg)

## Asia Pacific Regional Client Service Team

### Regional Client Partner



**Rick Asquini - KPMG in Singapore**  
**Regional Client Partner**  
T: +65 6213 3300  
E: [rickasquini@kpmg.com.sg](mailto:rickasquini@kpmg.com.sg)

## Asia Pacific Indirect Tax Compliance Centre of Excellence



**Adrienne Mcstocker - KPMG in Singapore**  
**Regional Leader, Asia Pacific Indirect Tax Compliance**  
T: +65 6597 5810  
E: [amcstocker1@kpmg.com.sg](mailto:amcstocker1@kpmg.com.sg)

## Service Line Specialists

### Transfer Pricing Services



**Tony Gorgas - KPMG in Australia**  
**Asia Pacific Regional Leader, Transfer Pricing Services**  
T: +61 2 9335 8851  
E: [tgorgas@kpmg.com.au](mailto:tgorgas@kpmg.com.au)

### Financial Services Transfer Pricing



**John Kondos - KPMG in China**  
**Asia Pacific Regional Leader, Transfer Pricing Services in the Financial Services Sector**  
T: +852 2685 7457  
E: [john.kondos@kpmg.com](mailto:john.kondos@kpmg.com)

#### Indirect Tax Services



**Lachlan Wolfers - KPMG in China**  
Asia Pacific Regional Leader,  
Indirect Tax Services  
T: +85 22 685 7791  
E: [lachlan.wolfers@kpmg.com](mailto:lachlan.wolfers@kpmg.com)

#### Trade & Customs



**Angelia Chew - KPMG in Singapore**  
Asia Pacific Regional Leader,  
Trade & Customs Services  
T: +65 6213 3768  
E: [angeliachew@kpmg.com.sg](mailto:angeliachew@kpmg.com.sg)

#### Global Compliance Management Services



**Oi Leng Mak - KPMG in Singapore**  
Asia Pacific Regional Leader,  
Global Compliance Management  
Services  
T: +65 6213 7319  
E: [omak@kpmg.com.sg](mailto:omak@kpmg.com.sg)

#### Global Mobility Services



**Andy Hutt - KPMG in Australia**  
Asia Pacific Regional Leader,  
Global Mobility Services  
T: +61 2 9335 8655  
E: [ahutt@kpmg.com.au](mailto:ahutt@kpmg.com.au)

#### International Tax



**Christopher Xing - KPMG in China**  
Asia Pacific Regional Leader,  
International Tax  
T: +852 2978 8965  
E: [christopher.xing@kpmg.com](mailto:christopher.xing@kpmg.com)

#### Deal Advisory M&A Tax



**Angus Wilson - KPMG in Australia**  
Asia Pacific Regional Leader,  
Deal Advisory M&A Tax  
T: +61 2 9335 8288  
E: [arwilson@kpmg.com.au](mailto:arwilson@kpmg.com.au)

#### Research & Development (R&D) Tax Incentives



**Alan Garcia - KPMG in China**  
Asia Pacific Regional Leader,  
R&D Tax Incentives  
T: +86 21 2212 3509  
E: [alan.garcia@kpmg.com](mailto:alan.garcia@kpmg.com)

#### Dispute Resolution and Controversy



**Angela Wood - KPMG in Australia**  
Asia Pacific Regional Leader,  
Dispute Resolution and  
Controversy  
T: +61 3 9288 6408  
E: [angelawood@kpmg.com.au](mailto:angelawood@kpmg.com.au)

#### Legal Services



**David Morris - KPMG in Australia**  
Asia Pacific Regional Leader,  
Legal Services  
T: +61 2 9455 9999  
E: [davidpmorris@kpmg.com.au](mailto:davidpmorris@kpmg.com.au)



## Market Sector Specialists

### Financial Services



**Christopher Abbiss - KPMG in China**

**Asia Pacific Regional Tax Leader,  
Financial Services and Banking Sector**

**T:** +852 2826 7226

**E:** [chris.abbiss@kpmg.com](mailto:chris.abbiss@kpmg.com)

### Alternative Investments & Private Equity



**Simon Clark - KPMG in Singapore**

**Asia Pacific Regional Tax Leader, Alternative Investments and Private Equity sector**

**T:** +65 6213 2152

**E:** [simonclarkl@kpmg.com.sg](mailto:simonclarkl@kpmg.com.sg)

### Sovereign Wealth and Pension Funds



**Angus Wilson - KPMG in Australia**

**Asia Pacific Regional Leader,  
Sovereign Wealth and Pension Funds Sector**

**T:** +61 2 9335 8288

**E:** [arwilson@kpmg.com.au](mailto:arwilson@kpmg.com.au)

### Energy & Natural Resources



**Carlo Franchina - KPMG in Australia**

**Asia Pacific Regional Tax Leader,  
Energy & Natural Resources Sector**

**T:** +61 8 9263 7239

**E:** [cfranchina@kpmg.com.au](mailto:cfranchina@kpmg.com.au)

### Insurance



**John Salvaris – KPMG in Australia**

**Asia Pacific Regional Leader,  
Insurance Sector**

**T:** +61 3 9288 5744

**E:** [jsalvaris@kpmg.com.au](mailto:jsalvaris@kpmg.com.au)

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