



Asia Pacific Tax Weekly

KPMG Asia Pacific Tax Centre | Content to 26 January 2017



Asia Pacific Tax Developments

Australia

Australia: Grandkids and foreign tax credit headaches

KPMG Australia discusses the implications of recent changes to the Korean indirect foreign tax credit regime for Australian companies.

[More details](#)

Australia: Right claims for expenditure on commercial websites

KPMG Australia explains the ATO's position on the deductibility of expenditure related to building and maintaining a commercial website.

[More details](#)

Australia: Setting aside assessments, a high hurdle to jump

KPMG Australia talks about the Federal Court's recent decision regarding the validity of an ATO assessment.

[More details](#)

Australia: Smaller states pushing ahead with duty reform

KPMG Australia examines recent changes to duties laws in Tasmania and South Australia.

[More details](#)

China

China: Import tax policy , “13th Five-Year Plan”

The year of 2017 is important for the implementation of the “13th five-year plan”, a critical period for the transformation and reform of Chinese economy. To encourage and support the industry restructuring and reform in 2017, the Chinese government has launched a series of

tax policies on the import goods, which reflects the development logics like “adaption”, “seize the opportunity” and “Lead the new trends” for the economy in the coming five (5) years.

[More details](#)

China: Work permits allowed for qualified foreign graduates

The Ministry of Human Resource and Social Security, Foreign Affairs and Education jointly announced that qualified foreign graduates with no working experience are allowed to get work permit in China.

[More details](#)

China: Tax Weekly Update - Issue 4

KPMG China issues a newsletter that provides various tax updates on the followings:

- Measures to boost foreign investment in China (Guo Fa [2017] No. 5)
- China to regulate third-party payment businesses (Yin Ban Fa [2017] No. 10)
- China tightens app store regulations
- Tax incentives for private education (Guo Fa [2016] No. 81)
- Laws on arable land occupation tax

[More details](#)

Hong Kong SAR

Hong Kong SAR: Proposed New Tax Regime for Aircraft Leasing in Hong Kong

The Hong Kong Government plans to introduce a new set of tax rules for offshore aircraft leasing into the Legislative Council in April 2017.

[More details](#)

India

India: Writ petition is maintainable against initiation of reassessment proceedings

The Supreme Court of India held that a writ petition challenging the initiation of reassessment proceedings by issuing notices under Section 148 of the Income-tax Act, 1961 is maintainable before the High Court.

[More details](#)

India: Central Board of Direct Taxes (CBDT) issues guiding principles for determination of the Place of Effective Management of a company

The CBDT issued guiding principles to be followed for determination of the place of effective management, concerning rules related to whether a company is a resident in India.

[More details](#)

India: Supreme Court grants immunity from prosecution on payment of sum specified in the settlement order

The Supreme Court of India granted immunity from prosecution to the appellant on payment of the sum specified in the settlement order, beyond the time granted by the settlement commission but before filing the special leave application with the Supreme Court.

[More details](#)

India: Amendments to the Modified Special Incentive Package Scheme (M-SIPS)

After the revision of the M-SIPS policy in August 2015, the cabinet has approved another modification to the said policy for better administration as well as to accelerate investments into India.

[More details](#)

India: CBDT issues FAQs on the taxation and investment regime for Pradhan Mantri Garib Kalyan Yojana, 2016

The CBDT has issued a circular clarifying queries received from various stakeholders on the Pradhan Mantri Garib Kalyan Yojana, 2016.

[More details](#)

India: 'De Facto' or 'De Jure' participation in the management, capital or control by itself is not relevant in establishing associated enterprise relationship in terms of Section 92A of the Income-tax Act

The Ahmedabad Bench of Income-tax Appellate Tribunal in case of Veer Gems has held that the mere fact of participation by one enterprise in the management or control or capital of the other enterprise, or the participation of one or more persons in the management or control or capital of both the enterprises shall not make them associated enterprises under sub-section (1) to Section 92A of the Income-tax Act, 1961 unless any of the criteria specified in sub-section (2) to Section 92A is fulfilled.

[More details](#)

India: Dismantling and seaworthy packing of machinery is 'contract of work' and not 'contract of service' and therefore such services are not taxable as fees for technical services

The Kolkata Bench of the Income-tax Appellate Tribunal in the case of Emami Paper Mills Ltd. held that dismantling and sea worthy packing of paper mill machinery is 'contract of work' and not 'contract of service' and therefore such services are not taxable as Fees for Technical Services (FTS).

[More details](#)

India: Expenditure on Freebies are allowed as Business expenditure since Indian Medical Council (MCI) Regulations are not applicable to Pharma Companies

The Mumbai Tribunal in the case of PHL Pharma P Ltd. held that the expenditure incurred on holding seminars, sponsoring lectures on updates, sponsoring travel and accommodation for conferences, small gifts with logo and brand names and cost of samples given to medical practitioners are in the nature of sales promotion expenditure incurred for the business of the taxpayer. Since the MCI Regulations are not applicable to pharmaceutical companies, such expenditure should not be disallowed.

[More details](#)

India: Export commission is not taxable in India in the absence of specific FTS article in the respective tax treaties

The Ahmedabad Bench of the Income-tax Appellate Tribunal in the case of Welspun Corporation Limited held that the export commission paid to non-resident commission agents is not taxable in India since there is no specific FTS article in respective tax treaties.

[More details](#)

India: GST Council takes key decisions on contentious issues of dual control and effective date of implementation

Decisions were taken by the GST Council to resolve the following pending issues during its ninth (9th) meeting held on 16 January 2017:

- Dual control over the taxation base
- Cross empowerment
- Implementation date

[More details](#)

India: Loss-making companies as comparables

The Ahmedabad Tribunal held that consistent loss-making companies cannot be rejected as comparables unless the functional profile is different, and various comparability adjustments including capacity adjustment, volume adjustment and warranty cost adjustment are to be allowed.

[More details](#)

India: Validity of penalty proceedings under Section 271(1)(c) of the Income-tax Act

The Hyderabad Bench of the Income-tax Appellate Tribunal in the case of Sri Nilaya AR Projects held that since the Assessing Officer (AO) did not mention whether the notice issued is for concealment of income or for furnishing of inaccurate particulars of income, the notice issued by the AO under Section 274 read with Section 271(1)(c) of the Income-tax Act, 1961 (the Act) is not valid and consequently, the order passed by the AO for concealment of income under Section 271(1)(c) of the Act is also not valid.

[More details](#)

Calendar of Events

Date	Event	Location
2 March 2017	Singapore Budget 2017 Seminar Contact person: Kartini Rafiin More details	Orchard Hotel, 442 Orchard Road, Singapore 238879

Beyond Asia Pacific

Poland: Research & Development (R&D) “super deduction” on corporate tax return for 2016

Business taxpayers have an opportunity to claim new, enhanced tax treatment for certain R&D expenses on their annual corporate income tax returns for 2016

[More details](#)

United States: Trump Administration temporary freeze on regulations

Reince Priebus, Assistant to the President and Chief of Staff, on January 20, 2017, sent a memorandum to heads of executive departments and agencies, on behalf of President Trump, directing a temporary freeze on new and pending regulations, pending review by the incoming administration

[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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