



Asia Pacific Tax Weekly

KPMG Asia Pacific Tax Centre | Content to 20 July 2017



Asia Pacific Tax Developments

Australia

Australia: Additional Tier 1 capital domestic banks through their foreign branches

Australian Taxation Office (ATO) issued Practical Compliance Guideline 2017/10, in which the ATO has adopted a more practical and commercial approach to applying section 215-10 of the Income Tax Assessment Act 1997 than its previous interpretation.

[More details](#)

Australia: Navigating the Australian grants landscape

The Australian federal, state and territory governments provide a number of grants to Australian businesses to fund key projects and activities to help them innovate, find new markets or help them to grow. Navigating the grants landscape can be complex and businesses are often unaware of what funding is available, whether they are eligible for assistance or how to apply.

[More details](#)

Australia: Single Touch Payroll – Time to look under the hood

The advent of Single Touch Payroll gives tax managers the opportunity to take a look under the hood and gain a better understanding of how payroll works. This is essential to ensure that the company is compliant with its tax obligations and support 'justified trust' with the ATO.

[More details](#)

Australia: Transfer pricing update - After the flood, more rain

In this article, KPMG Australia reviews the increasing ATO compliance activities in relation to transfer pricing. This includes:-

- Introduction of the Diverted Profits Tax
- Adoption of 2015 OECD BEPS Actions 8-10 report
- Increased administrative penalties for Significant Global Entities
- CbC Report, Master File and Local File
- ATO's win in its legal battle with Chevron
- Issuance of a number of practical compliance guidelines

[More details](#)

China

China: China Tax Weekly Update

Issue 25

The following matters are covered in this issue:

- New negative list for foreign investment in FTZs
- China A-shares included in MSCI global index from 2018
- Further measures for Mainland China-Hong Kong Bond Connect
- China to increase innovation demonstration zones
- First indirect offshore transfer case appeal to Chinese Supreme Court – appeal rejected and tax authority position confirmed

[More details](#)

Issue 26

The following matters are covered in this issue:

- New negative list for guiding foreign investments
- Mainland China-Hong Kong Closer Economic Partnership Arrangement enhanced
- OECD discussion drafts on PE profit attribution and TP profit splits
- OECD releases TP toolkit for developing countries
- Implementation rules on environmental protection tax
- Tax incentive treatment for high and new technology enterprises

[More details](#)

China: Customs Policy Update - June 2017

The following matters are covered in this issue:

- Catalogue of Industries for Guiding Foreign Investment (Revision 2017)
- Announcement on Issuing the Administrative Ruling on Commodity Classification for 2017 (I)
- Origin Criteria for Added Goods Entitled to Zero Tariff under Hong Kong and Macao CEPAs as from 1 July 2017 and Other Relevant Matters
- China, New Zealand to Implement AEO (Authorized Economic Operator) Customs Agreement
- GACC Announcement [2017] No. 24 on Customs Industrial Standards
- GACC Announcement [2017] No. 25 on Customs Clearance Integration Nationwide
- Further Simplified Administration of Origin of Goods Transhipped via Hong Kong/Macao
- Matters Concerning Certificate of Approval for Import and Export of Gold and Gold Products
- Guangzhou Customs Decides to Repeal and Invalidate Some of Formerly Issued Announcements

[More details](#)

China: New China negative list for foreign investment modifies sectoral restrictions

On 28 June 2017, the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) jointly issued the Catalogue of Industries for Guiding Foreign Investment (2017 revisions) (the new Catalogue), effective from 28 July 2017. The new Catalogue is to replace the existing Catalogue issued in 2015 (2015 Catalogue).

The issuance of this document follows on from an executive meeting of the State Council on 28 December 2016, chaired by Premier Li Keqiang, which approved new guidelines to further attract foreign investment. The conclusions of this meeting highlighted a need to:

- i. Amend the Catalogue to encourage foreign investment;
- ii. Encourage foreign enterprises to invest in high-end manufacturing industry and services;
- iii. Promote the “Negative List” system to regulate pre-approvals for foreign investment.

Subsequently, the State Council on January 2017 published a new policy on foreign investment setting out 20 measures. This clarified that the Catalogue would be amended to relax restrictions on foreign investment and operations in the Chinese service, manufacturing and mining sectors.

To implement these State Council policies, the NDRC and MOFCOM jointly revised the 2015 Catalogue. The new Catalogue is the 7th revision since the first publication of the Catalogue in 1995. The layout of the Catalogue has been realigned to confirm with the new “negative list” system. This allows for simple MOFCOM records to be made for investments in industries where foreign investment is encouraged or permitted, with pre-approvals limited to industries where investment is restricted. Detailed analysis of the new Catalogue are set out in this Alert.

[More details](#)

Hong Kong SAR

Hong Kong: Updated AEOI guidance for financial institutions, CRS regime

On 14 July 2017, the Inland Revenue Department of Hong Kong issued updates to the Chapter 8 (Due Diligence: General Requirements) and Chapter 9 (Due Diligence: Pre-existing Individual Accounts).

[More details](#)

India

India: A foreign company constitutes a service PE in India under the India-UAE tax treaty. Services provided in the form of sharing or permitting to use the special knowledge or expertise falls within the term 'royalty' under the tax treaty

The Bengaluru Bench of the Income-tax Appellate Tribunal found there was a "service permanent establishment" (service PE) in India because the taxpayer had been furnishing services to the Indian company even without any physical presence of the taxpayer's employees in India. In addition, the tribunal held that the services provided by the taxpayer were in the form of sharing or permitting to use the special knowledge, expertise, and experience of the taxpayer and can be taxed as royalty under the India-UAE income tax treaty.

[More details](#)

India: Capital gains arising to Netherlands entity on sale of shares of its Indian subsidiary deriving its value from immovable property is not taxable in India under the India-Netherlands tax treaty

Recently, the Andhra Pradesh and Telangana High Court held that capital gains arising out of the sale of shares by the taxpayer of its Indian subsidiary deriving its value from the immovable property are not taxable in India under the India-Netherlands tax treaty.

[More details](#)

India: CBDT issues a notification prescribing the method for valuation of unquoted shares for the purposes of Section 56(2)(x) and Section 50CA of the Income-tax Act

The Central Board of Direct Taxes (CBDT) issued guidance prescribing the method of valuation for transferring of unquoted shares for tax purposes. The amended rules are effective 1 April 2018 and will apply for assessment year 2018-19 and subsequent years.

[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 High Court of Gujarat (High Court) has upheld the decision of the Income-tax Appellate Tribunal, Ahmedabad (the Tribunal) in the case of Veer Gems (the taxpayer). The Tribunal earlier ruled in favour of the taxpayer and had 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 (the Act) unless any of the criteria specified in sub-section (2) to Section 92A is fulfilled.

[More details](#)

India: Disallowance of expenditure under Section 14A read with Rule 8D in relation to exempt income is mandatory irrespective of whether expenditure is incurred or not

The Chennai Bench of the Income-tax Appellate Tribunal held that even in instances when no expenditure has been incurred, the tax authority must disallow any expenditure in instances involving exempt income.

[More details](#)

India: Disallowance under Section 14A does not apply to computation of MAT

The Delhi Special Bench of the Income-tax Appellate Tribunal held that disallowance under section 14A of the Income-tax Act, 1961 does not apply to Minimum Alternate Tax (MAT) computation. Following a decision of the Delhi High Court in the case of Bhushan Steel Ltd, it was determined that the computation under the MAT provisions is to be made without resorting to the computation as contemplated under section 14A read with Rule 8D of the Income-tax Rules, 1962.

[More details](#)

India: Employees' Provident Fund Organisation (EPFO) issues clarification on definition of Indian International Workers

The definition of Indian international workers has been clarified with respect to employee provident funds. Earlier amendments brought International Workers under the purview of the Indian social security regime.

[More details](#)

India: EPFO issues revised Certificate of Coverage application for Indian workers

Recently, the EPFO has issued a circular with regards to the revised COC application for Indian workers (holding an Indian passport) who are going to work in countries with which India has a Social Security Agreement.

[More details](#)

Press release on partial relief by the Hon'ble Supreme Court for linking Permanent Account Number with Aadhaar

The CBDT issued a press release to clarify the effect of the recently pronounced decision of the Supreme Court on Aadhaar-PAN linkage.

[More details](#)

India: The Chamber of tax Consultants challenges the constitutional validity of ICDS

The Chamber of Tax Consultants has recently filed a writ petition before the Delhi High Court challenging the constitutional validity of a provision of the Income-tax Act, 1961 that requires compliance with income computation and disclosure standards (ICDS).

[More details](#)

Japan

Japan: Agreement with EU would remove, reduce customs tariffs

Representatives of Japan and the European Union reached an "agreement in principle" on the main elements of the Japan-EU economic partnership agreement. Both sides have made a

commitment to eliminate customs tariffs on industrial goods. Particularly, the agreement could have a significant effect on the apparel industry from a tariff reduction perspective.

[More details](#)

Japan: CFC regime measures amended, 2017 tax reform

The Japanese CFC regime is a mechanism to include income generated by a Controlled Foreign Company (CFC) in its Japanese parent company's income and tax it in Japan in the hands of the Japanese parent company under certain conditions in order to deter tax avoidance by utilising CFCs. Under the 2017 tax reform, the Japanese CFC regime has been extensively amended in light of the final report of the OECD's BEPs Action 3 - Designing effective controlled foreign company rules.

[More details](#)

Vietnam

Vietnam: Tax and transfer pricing implications of technology transfers

The Vietnam National Assembly has ratified the Law on Technology which will take effect on 1 July 2018. The said law will have an impact on the following in the determination of tax obligations:

- Registration of technology transfer.
- Payment method of technology transfer
- Audit of technology transfer price
- Tax incentive policies for technology application, transfer and renewal

[More details](#)

Calendar of Events

Date	Event	Location
8 August 2017	Tax and Immigration Considerations for Cross Border Employees to Malaysia Contact person: Ms Carmen Yong / Ms Katherine Subramaniam More details	One World Hotel, Petaling Jaya

Significant International Tax Developments



OECD: Additional guidance for country-by-country reporting (BEPS Action 13)

The OECD released additional guidance under the BEPS inclusive framework. The additional guidance addresses two specific issues:

- How to treat an entity owned and/or operated by two or more unrelated MNE groups
- Whether aggregated data or consolidated data for each jurisdiction is to be reported in Table 1 of the CbC report

[More details](#)

Beyond Asia Pacific

Canada: Finance targets private company tax planning

A consultation paper released by the Department of Finance could affect owners of private companies in Canada—it includes significant measures and complex proposed rules and approaches to address certain tax planning strategies involving private corporations that Finance believes “inappropriately reduce personal taxes.” Finance is seeking input on its proposals by 2 October 2017.

[More details](#)

EU: Exchange of customs-related information with third countries, consultation

The European Commission has launched a public consultation concerning a proposal for a systematic exchange of customs-related information between the EU Member States and third countries.

[More details](#)

TaxNewsFlash by Region

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

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[Americas](#)

[Europe](#)

[United States](#)

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