



Grant Thornton

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APAC Tax Update

March 2018



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Cambodia

Cambodia

Cambodia introduces Transfer Pricing (TP), signs doubt tax agreements, amends classification of taxpayers, issues proper tax regulation for oil and mine resource business and promotes tax compliance

2018 represents major milestone in Cambodia's ongoing tax evolution with the introduction of new regulations, more details on specific business operation previously unknown to Cambodia's business industry, incentives for taxpayers and regional and international collaboration with other countries. The tax development is quite a big jump as we can see in the late 2017 and early 2018. Cambodia's tax department is gradually strategically reformed and enforced with the restrict laws and incentive as a mean to collect more tax revenue and reduce tax evasion in the upcoming year.

- **Transfer Pricing (TP)**

Transfer pricing was finally introduced in Cambodia with the Prakas issued by the Ministry of Economy and Finance ("MEF") of the Kingdom of Cambodia during October 2017 for its implementation in 2018. However, the Prakas was somewhat blur towards the practical documentation. It provided detail regarding the related parties' transaction, transfer price and arm's length price along with the 5 methods of finding arm's length price very similar to the guideline of the Organization for Economic Co-operation and Development ("OECD"). It is still doubtful over how to prepare the acceptable documentation, to apply it forward or backward, the acceptable languages etc. Taxpayers are required to have everything ready upon request by the tax authorities though. We are expecting to hear more regarding the TP as the tax department is expected to issue clearer guidance in the upcoming months.

- **Double tax agreement (DTA)**

Cambodia has signed tax treaties with few countries in the recent years, including Singapore, Thailand, China and Brunei, with the DTAs for Singapore and Thailand coming into effect from 1 January 2018. This development in tax agreements shows a steady growth of Cambodia's tax evolution and reform. The double tax agreements would simply help eliminate the double taxation of income emerging from one territory and paid to tax resident of another. Still, the implementation of such agreement is seemingly blur with the expectation of further instructions and guidelines to be issued hopefully in the forthcoming months.

- **Amendment of taxpayers' classification**

Previously, the tax department of Cambodia introduced 3 classes of real regime taxpayers such as small, medium and large. This introduction was made to eliminate the former estimated tax regime. In the early 2018, the MEF has amended the threshold for medium taxpayers for any enterprise whose turnover ranges from KHR 700 million (USD 175,000) to KHR 4,000 million (USD 1,000,000). The maximum range is up from the previous KHR 2,000 million (USD 500,000). Also, the diplomatic mission and foreign consulate, international organization and any technical cooperation agency of the government, formerly categorized as large taxpayers, would be classified as medium taxpayers.



Cambodia

- **Proper tax regulation for oil and mine natural resource**

During the late 2017, we saw the promulgation of the Financial Management Law for 2018 which included numerous changes and addition for Cambodia's taxation system. The big addition would be the introduction towards the proper tax regulation for oil and mine natural resource. Oil and mine natural resource was antecedently known to have the corporate income tax rate of 30%, the highest rate for any business operation in Cambodia, with no other available information. In the law, we were provided with the explanation and definition of oil and mine natural resource, agreement zone for such operation and deductible/non-deductible expenses and other noticeable calculation for corporate income tax purpose. Further guidelines and notifications are expected since the operation on oil and mine natural resource is quite new for Cambodia.

- **Certificate of tax compliance**

Recently, the enforcement of tax collection is getting stronger as the tax department is strategized to have taxpayers voluntarily pay tax rather than wait until the event of a tax audit investigation. In late 2017, the tax department has introduced incentives to promote compliance with the tax law with the issuance of a Certificate of Tax Compliance to 3 levels of compliant taxpayers - gold, silver and bronze. The gold certificate would represent the high level of compliance and enjoy the incentive of VAT refund up to KHR 500 million without being audited in advance.



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India

India

Corporate tax

- It is proposed to reduce the corporate tax rate to 25% for companies whose turnover does not exceed Rs 250 crore during FY 2016-17.
- Standard deduction of Rs 40,000 is proposed. Exemptions with respect of Transport allowance of INR 19,600 per annum and medical expense reimbursement to Rs 15,000 per annum are proposed to be withdrawn.
- Long Term Capital Gains (LTCG) from sale of listed equity shares/units of equity oriented mutual funds/units of business trusts in excess of R 100,000 is now proposed to be taxed at 10%.
- Companies undergoing insolvency proceedings permitted to carry forward tax losses, even in case of a change in substantial shareholding. Further, entire brought forward loss (including unabsorbed depreciation) allowed to be set-off in computing book profit for MAT purpose.

Personal tax

- Standard deduction of INR 40,000 has been proposed. Exemptions with respect of Transport allowance of INR 19,600 per annum and medical expense reimbursement to INR 15,000 per annum are proposed to be withdrawn
- Education cess of 3% proposed to be substituted with health and education cess of 4%.
- Deduction of medical treatment of specified diseases for senior and very senior citizens is proposed to be increased from Rs 60,000 and Rs 80,000 respectively to Rs 100,000
- Under the existing regime, only an employee contributing to the National Pension Scheme (NPS) is allowed an exemption of 40% at the time of withdrawal or closure of the account. It is proposed to extend the said benefit to non-employee subscribers as well

International

The term business connection (that establishes source of income to be in India, and therefore taxable here) has been widened to include in its ambit 'agents playing principal role in concluding contracts' and 'significant economic presence'. A non-resident will be considered to have a 'significant economic presence' if he transacts in India beyond a specified monetary threshold or undertakes a systematic and continuous soliciting of business through digital means with customers beyond a threshold as may be specified.

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Indonesia

Indonesia

Transfer Pricing

Transfer Pricing issues continue to be the one of the areas that attract Tax Authority attention, especially in a tax audit case.

Planning on amendment of tax law and issuance new of tax regulations/tax incentives

- a. the tax authority undergo the process of drafting and consulting the draft of amendment to the tax laws, e.g. on Law No. 6 of 1983 that has been amended several times, which latest amendment was done in 2000.
- b. some tax related incentives have been included in the tax authority agenda to sharpened and/or simplified tax facilities/incentives/treatments, e.g. tax facilities on R&D, IT related businesses and particular type of investments.
- c. there is indication that there could be reduction on luxury tax rates on sedan and tax reductions/incentives on electric powered vehicles.

Opened access for tax authority on financial transactions data

The Tax Authority is the process of executing their right to have access on taxpayer financial transactions data. This may require the taxpayers to review and make sure that all financial data/status consistent with the one declared in their tax returns.

More requirements in tax treaty provisions utilisation

Beneficiary ownership and the substance of the overseas party(ies) receiving income from Indonesia are in place to utilise tax treaty provisions. In short, unless meeting relevant criteria, an entity/foreign tax resident may not be eligible to benefit from the tax treaty.

Tax audit / Tax disputes

The taxpayers have greater possibility to face tax audit. Many cases showed that the tax audit results are unfavourable for the taxpayers. Therefore, more and more cases are going to the upper level, i.e. Tax Objections and Tax Appeal. With this situation, taxpayers may be required to increase their awareness on the need to increase their compliance level with the tax regulations as well as identify any potential significant tax risks that may be in place.



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Japan

Japan

2018 Tax Reform

The Outline of the 2018 Tax Reform, which was released on December 22, 2017, includes a proposal to amend the definition of a PE in line with BEPS Action 7. The amendments have been already included in the 2017 draft OECD Model Tax Convention and bilateral tax treaties Japan has concluded.

1.Expanded agent PE concept – Commissionaire arrangements and similar strategies

The agent PE concept has been expanded to deal with commissionaire arrangements and similar strategies. Where an agent plays habitually the principal role leading to contracts that are routinely concluded without material modification by an enterprise, the agent is deemed a PE even though it does not have the authority to actually conclude contracts.

These contracts are:

- i. in the name of the enterprise, or
- ii. for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
- iii. for the provision of services by that enterprise.

An independent agent who acts for an enterprise in the ordinary course of its business is not deemed an agent PE. However, if the agent acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent.

2.Preparatory or auxiliary character – Specific activity exemption

Where activities conducted in a fixed place of business are of the type listed below, the fixed place of business does not constitute PE provided such activities are of a preparatory or auxiliary nature. The preparatory or auxiliary nature condition was applicable only to f) in Article 5 of the 2014 Model Convention. In the 2017 Model Convention, the condition is applicable to all of the activities.

- i. the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- ii. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- iii. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- iv. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- v. the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- vi. the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e).

Japan

3. Anti fragmentation of activities rule

A further provision has been made to prevent abuse of the activities exemptions above by fragmenting the functions of an overall business operation into smaller operations in order to take the position that the smaller operations are each preparatory or auxiliary. The new provision seeks to combine the activities conducted in a place of business, with activities conducted in another place by the same or a related enterprise.

The Model 2017 Conventions states:

“The above rule shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same country and:

- i. that place or other place constitutes a Permanent Establishment for the enterprise or the closely - related enterprise, or
- ii. the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely - related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.”

As a result, although fragmenting the activities of a business operation may mean that each activity is preparatory or auxiliary in nature, this strategy will not result in the activities exemption being met and a PE may still be created

4. Splitting-up contracts

A building, construction or installation project crosses the threshold for a PE if it continues for 12 months or longer. To avoid this, it was possible previously to split a contract split into separate contracts each lasting fewer than 12 months.

Under the reform, if the principal purpose of splitting up a contract to avoid creating a PE, the duration of the project is determined by aggregating the period of each split contract.

5. Other amendments

In addition to BEPS Action 7, the following amendments are proposed:

- i. Where the definition of PE exists in both domestic tax laws and in a bilateral tax treaty, the definition under the bilateral treaty should be take precedence.
- ii. A “fills order agent” (an agent “who maintains in Japan sufficient goods to meet the normal requirements of a foreign corporation's or non-resident's customers and delivers the goods to the customers to meet such requirements) and a “secures order agent” (an agent who exclusively or principally on behalf of a foreign corporation or non-resident secures orders) are excluded from the definition of a PE.

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Malaysia

Malaysia

Malaysia budget 2018

The following proposals were announced subject to various conditions:

- Reduction of individual income tax rates for resident individuals be reduced by 2 percentage points for the 3 chargeable income bands, i.e. RM20,001 to RM35,000; RM35,001 to RM50,000; and RM50,001 to RM70,000.
- Tax exemption on rental income from residential homes received by Malaysian resident individuals from year of assessment (YA) 2018 to YA 2020.
- Extension of period for resident individuals' income tax relief on net savings in the National Education Savings Scheme.
- Tax incentive for women returning to work after career break. Income tax exemption is eligible to be claimed in YA 2018 to YA 2020.
- Capital allowance be allowed for information and communication technology (ICT) equipment and software.
- Review of tax incentives for automation for applications received by MIDA from 1 January 2018 to 31 December 2020.
- Accelerated Capital Allowance and Automation Equipment Allowance be provided on the first RM10 million qualifying capital expenditure incurred in YA 2018 to YA 2020 for transformation to Industry 4.0 and is fully claimable within 2 years of assessment.
- Tax incentive for principal hub be extended for another 3 years.
- Expansion of tax incentives for hiring the disabled.
- Period for application of incentives for new 4 and 5 star hotels be extended for another 2 years until 2020.
- The existing tax incentives for tour operating companies be extended for another 2 years from YA 2019 to YA 2020.
- Extension of period for tax incentive be given for medical tourism for applications submitted to MIDA until 31 December 2020.
- Expansion of the scope of double deduction incentive be given for expenses incurred in obtaining certification for quality system and standard.
- Companies registered with Malaysia Healthcare Travel Council (MHTC) that provide dental and ambulatory healthcare services are now given double deduction for expenses incurred in obtaining certification for quality systems and standards from the 5 certification bodies.
- Review of tax incentives for export of private healthcare services.
- Review of tax incentives for venture capital. Tax exemption be given for a period of 5 years from YA 2018 to YA 2022.

Malaysia

- Extension of period for tax incentives for angel investors. The application period be extended for another 3 years.
- Harmonising GST treatment on reading materials (magazines, journals, periodicals and comics) to zero-rated supply from 1 January 2018.
- Management and maintenance services of stratified residential buildings be treated as an exempt supply.
- All supplies made by Local Authorities is not subjected to GST (out of scope supply).
- 100% GST relief be given on construction services for the construction of school buildings and places of worship financed through public donations.
- Companies carrying out activities in aviation, shipping and oil and gas industries be given relief from paying GST on the importation of big ticket items.
- Relief from payment of GST be given to companies involves in the oil and gas industry on the importations of goods under lease agreements into Malaysia from Designated Areas.
- Cruise ship operators are given relief from payment of GST on handling services provided by sea port operators in Malaysia.
- Merger of Customs Appeal Tribunal and GST Appeal Tribunal.
- Malaysia participated in the Organisation for Economic Cooperation and Development (OECD) taxation initiatives and has given its commitment to fulfil the OECD BEPS Action Plan initiatives.
- Earning Stripping Rules (ESR) is implemented in replacement for Thin Capitalisation Rules (TCR) from 1 January 2019.
- Stamp duty exemption be extended for another 3 years to revive abandoned housing projects.
- Stamp duty exemption be given on contract notes for trading of Exchange Traded Funds (ETF) and Structured Warrants (SW) by investors executed from 1 January 2018 to 31 December 2020.
- To finance the external review expenditure in line with the guidelines as set out by the Securities Commission of Malaysia, income tax exemption be given to each recipient of the Green Sustainable and Responsible Investments (Green SRI) sukuk grant for applications received by the Securities Commission of Malaysia from 1 January 2018 to 31 December 2020.
- Fund manager managing Sustainable and Responsible Investments (SRI) fund approved by the Securities Commission of Malaysia be given tax exemptions on management fee income from managing conventional and Shariah-compliant SRI fund from YA 2018 to YA 2020.

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Philippines

Philippines

Philippines simplifies personal income tax system, rationalises the VAT and increases excise taxes and DST

The new year heralded the arrival of a new tax law in the Philippines, the Tax Reform for Acceleration and Inclusion, better known as the TRAIN. On board the TRAIN is a mix of tax reforms aimed at making the Philippine tax system fairer, simpler and more efficient. The front coach is loaded with lowering of the income tax rates for low and mid-salaried employees and simplification of taxation of self-employed individuals and professionals. Somewhere in the middle coaches are reforms in the VAT system, increase in the documentary stamp tax (DST) rates, increase in some excise taxes particularly for oil and petroleum, automobiles and a new excise tax on cosmetic procedures. Riding the last coaches are reforms in the administrative provisions and penalties for non-compliance.

The TRAIN is the first of five tax reform packages that the Duterte administration hopes to implement to fund the President's "Build, Build, Build" infrastructure programs. Below are the highlights of the TRAIN.

Simplification of the personal income tax system

Package 1 adjusted the personal income tax table from 5%-32% to 0%-35%. It exempted from income tax low income earners with an annual income less than 250,000 pesos (US\$5,000). It reduced the personal income tax of middle income earners to 25 percent from the former 32 percent and increased the income tax rate for individuals earning more than 8 million pesos (US\$160,000) annually to 35 percent. Moreover, tax exemption of 13th month pay and other benefits were increased to an annual amount of P90,000 (US\$1,800). However, personal exemption to the taxpayer of P50,000 (USD1,000) and P25,000 (US\$500) for each dependent were withdrawn.

For self-employed and professionals earning less than Three Million pesos (US\$60,000) annually, the new law gave them the option to be taxed at the flat rate of 8% on gross sales or receipts. The 8% tax is in lieu of income tax and percentage tax.

Restructuring donor's and estate taxes

Previously, estate tax is imposed on the net taxable estate at a schedular tax rate of up to 20%. The tax reform law changed it to a flat rate of 6 percent. In addition, the Standard Deduction is increased from P1 Million to P5 Million while the deduction for the family home was increased from P1 Million to P10 Million.

The old Donor's Tax rates of 2-15% (if given to relatives) and 30% (if given to strangers and on corporate donations) was also unified to a single rate of 6%.

Expansion of the VAT base

Package 1 increased the VAT threshold from P1,919,500 to P3,000,000 annual gross sales or receipts; exempted the sale of medicines for diabetes, high cholesterol and hypertension; increased VAT exemption for lease of a residential unit from P12,800 to P15,000 monthly lease; exempted association dues, membership fees, and other assessments collected by homeowners' associations and condominium corporations; and removed a host VAT exemptions provided under various laws.

Philippines

Sale of shares

For sale of shares of stock listed and traded through local stock exchange, the tax rate imposed is increased to 6/10 of 1% from ½ of 1% of the stock's gross selling price.

Capital gains earned by a resident individuals and Philippine corporations from sale of shares not listed and traded in the local stock exchange are subject to capital gains tax of 15% (from the old rate of 5% and 10%).

Excise tax

Package 1 also adjusted the excise tax rates on automobiles. Excise tax of 2% on automobiles costing not over P600,000 (US\$12,000) is increased to 4% while the rate on automobiles costing over P4,000,000 (US\$80,000) is now 50%. However, purely electric vehicles and pick-up trucks shall be exempt from excise tax.

On sweetened beverages, a tax of P12.00/liter is imposed on beverages using high-fructose corn syrup while P6.00/liter is imposed on those using caloric and non-caloric sweeteners.

The excise tax on fuel has also been increased. Diesel fuel which used to be exempt, is now subject to excise tax of P2.50/liter in 2018, P4.50 in 2019 and P6.00 in 2020.

Excise tax on minerals were doubled. A new excise tax was imposed on invasive cosmetic procedures at 5% of the fees for the services.

Documentary stamp tax

Package 1 doubled the Documentary Stamp Tax rates on almost all taxable documents.

Tax Administration and Policy Reforms

Package 1 simplified the tax administration provisions by removing the monthly tax filings for certain withholding taxes and limiting the tax return filings to quarterly. The income tax return shall be simplified to contain no longer than four pages. Threshold for requirement of independent audit of financial statements was raised to P3 Million in annual revenues.

Petroleum excise taxes will be monitored through fuel marking.

Full Speed Ahead

With the TRAIN fast rolling in, taxpayers and tax administrators are now faced with the task of catching their ride and not being left behind. There are bound to be certain amount of difficulties as taxpayers and tax administrators adjust with the changes. This journey may even have a few stop overs and few delays. And yet, even while both taxpayers and tax administrators are still reeling from the changes introduced by the TRAIN, the Department of Finance submitted to Congress on January 15, 2018 the draft for the Tax Reform Package 2. The proposed law is geared towards introducing tax reforms for corporate taxpayers by decreasing the corporate income tax from 30% to 25% and rationalising the fiscal incentives granted by various laws. The administration hopes to pass package 2 within the year with implementation starting 2019.

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Singapore

Singapore

Singapore budget 2018

Corporate tax

- Enhanced deduction for R&D on qualifying expenditure incurred in Singapore, raised from 150% to 250%. No cap.
- The corporate tax rebate has been increased as follows:
 - YA 2018 → 40% of tax payable, capped at S\$15k
 - YA 2019 → 20% of tax payable, capped at S\$10k
 - The threshold for the partial tax exemption (PTE) and full tax exemption for new start-up companies (SUTE) will be reduced to \$200k with effect from YA 2020. Details are as follows:
 - 75% of first \$10,000 and 50% of next \$190,000 (Total PTE - \$102,500)
 - SUTE – 75% of first \$100,000 and 50% of next \$100,000 (Total SUTE - \$125,000)
- New double tax deductions (200%) for IP licensing and IP registration fees, each capped at S\$100k per year.
- Tax deductions for qualifying donations (IPC) of 250% will be extended 3 more years until 31 Dec 2021.
- Business and IPC Partnership Scheme will be extended 3 more years until 31 December 2021.
- Increased qualifying expenditure cap for internationalisation scheme, from S\$100k to S\$150k in YA 2019.
- Refinement, enhancement and lapse of certain industry specific schemes

Goods and Service Tax

- GST rate to be increased from 7% to 9% sometime between 2021 and 2025.
- From 1 Jan 2020, imported services to be subject to GST if the receiving business cannot fully reclaim its GST.
- Overseas vendors and electronic market place operators, providing digital services to local consumers, will have to register for GST from 1 January 2020 in Singapore subject to certain thresholds.

Singapore

Personal tax

- With effect from 19 Feb 2018, excise duties on all tobacco products increased by a further 10%.
- From 20 Feb 2018, stamp duty on residential properties increases from 3% to 4% for the value exceeding S\$1 million. This change will also affect businesses investing in residential property. There is no change to the stamp duty rate on values up to and including S\$1 million.
- By way of reminder, as previously announced by Singapore Finance Minister Heng, total personal income tax relief is capped at S\$80k with effect from YA2018.
- From 2020, the introduction of carbon tax is likely to increase household utility bills by about 1% but there will be subsidies for certain sectors of society.
- Sometime between 2021 and 2025 the GST rate increase to 9% is likely to add to the cost of living for certain sectors of society.

Environmental

- With the introduction of carbon tax, measures will be introduced to assist the environment. The tax will be levied on businesses at \$5 per tonne for emissions of 25,000 tonnes or more per year. The levy commences in 2020 and will be based on 2019 emissions.
- The government expects to raise S\$1 billion of carbon tax revenue in the first 5 years.
- The government will increase the carbon tax levy to a rate of between S\$10 to S\$15 per tonne of emissions by 2030.
- There is no increase in other environmental taxes.

Singapore

Transfer pricing

Following the enactment of the updated legislation of transfer pricing rules in the Singapore Income Tax Act (“ITA”) on 26 October 2017, the Inland Revenue Authority of Singapore (“IRAS”) released its 5th edition Transfer Pricing Guidelines (“TPG”) on 23 February 2018. The revised TPG provides guidance on the implementation of the transfer pricing (“TP”) related amendments made to the ITA. Key changes include the following:

- **Arm’s length adjustment by the IRAS.** The IRAS will make TP adjustments if taxpayers do not comply with the arm’s length principle. The IRAS will disregard an actual related party transaction or replace it with an alternative transaction if arrangements made lack commercial rationality and independent parties would not have entered into the same arrangements.
- **Revisions to transfer pricing documentation (“TPD”) requirements.** An entire new section has been added to the new TPG on TPD requirements. Effective year of assessment (“YA”) 2019, taxpayers who meet either of the following conditions must prepare a TPD:
 - (1) Gross revenue derived from their trade or business is more than \$10 million for that basis period; or
 - (2) TPD is required to be prepared for the previous basis period.
- **Clarifications to the frequency of TPD updates.** TPDs can be refreshed every three years if the TPD prepared in the first year is considered a “qualifying past TPD.” For years TPDs are not refreshed, a simplified TPD still needs to be prepared. The conditions for a TPD to be considered a “qualifying past TPD” are outlined in the new TPG.
- **Penalty on TPD non-compliance.** In alignment with the new legislation, effective YA2019 and after, taxpayers are considered TPD non-compliant and a fine of up to \$10,000 can apply. Taxpayers can be deemed TPD “non-compliant” under the following circumstances:
 - (1) Not preparing a TPD by the time of filing the tax return;
 - (2) Not preparing a TPD with the required details specified in the ITA and TPG;
 - (3) Not retaining the TPD for a period of at least 5 years;
 - (4) Not submitting the TPD within 30 days upon request by the IRAS; or
 - (5) Providing TPD with false or misleading information known by the taxpayers
- **Surcharge on TP adjustment.** In addition to imposing penalties when taxpayers are TPD non-compliant, with effect from YA2019, a 5% surcharge on the TP adjustments made by the IRAS may be levied, regardless of whether there is a tax payable on the TP adjustments.

The revised TPD requirements have become more complex. Taxpayers should ensure they have appropriate TP policies and review their related party transactions carefully to assess their TP compliance requirements. In addition to the above, taxpayers are reminded that effective YA 2018, the IRAS introduced a new Related Party Transaction form (RPT) that needs to be submitted with the Corporate Income Tax Return if certain thresholds are met.

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Taiwan

Taiwan

Taiwan on Base Erosion and Profit Shifting (BEPS)

Background

After much discussion, Taiwan's Ministry of Finance has announced that it will adopt the OECD recommendations and will require taxpayers meeting certain criteria to prepare three layers of transfer pricing documentation being as follows:

- i. a master file giving an overall perspective on the business
- ii. a local file containing information for each country
- iii. a country by country reporting file.

Recommendation

For transfer pricing, the burden of proof is on the shoulders of the taxpayer. If a taxpayer is unable to provide supporting documentation as required, the tax office may proceed to adjust the profit margin of the Taiwan entity to a level that the tax office deems appropriate. Such an adjustment can be severe and arbitrary.

This regulation requiring three layers of transfer pricing documentation comes into effect for the first time on fiscal year ending 31 December 2017. We recommend large multi-national companies to check whether or not they meet the criteria requiring them to prepare the three layers of documentation. If so, we recommend the ultimate parent company and related Taiwan entity to plan ahead and work together to ensure that required documentation can be presented to the Tax Office before relevant deadlines.

Type of document	Criteria
Master File	Annual revenue plus non-operating income for the Taiwan entity exceeds NTD 3 billion, and carried out related-party transactions in excess of NTD 1.5 billion per annum.
Local TP file	Same as existing criteria
Country by Country report (CbCR)	Consolidated total group revenue for the prior year is in excess of NTD 27 billion.

Type of document	Deadline
Master File	Needs to be ready before the corporate income tax return is filed. The filing deadline is the end of subsequent year. For 2017, the filing deadline is 31 December 2018.
Local TP file	Needs to be ready before the corporate income tax return is filed. The filing deadline is the end of subsequent year. One only needs to provide a copy to the tax office when called for.
Country by Country report (CbCR)	The filing deadline is the end of subsequent year. For 2017, the filing deadline is 31 December 2018.

Taiwan

Compulsory VAT Registration for Foreign E-commerce Operators

In the past, foreign companies having no permanent establishment in Taiwan did not need to register for Taiwan VAT. In order to close this e-commerce tax collection gap, the Taiwanese Ministry of Finance has revised VAT regulations. Effective from 1 May 2017, international e-commerce operators that meet certain criteria will be forced to complete Taiwan VAT registration.

VAT registration

Effective from 1 May 2017, foreign e-commerce operators having no fixed place of business in Taiwan but who provide services to individuals in Taiwan via the internet must register for VAT if their annual Taiwan sales exceed TWD 480,000 (Approximately USD 15,500). Affected e-commerce operators should register for VAT either by themselves or through a tax agent. To register for VAT, foreign e-commerce operators need to provide the following information:

- Name of the foreign e-commerce operator
- Responsible person's name
- Description of the business
- Contact information
- Tax agent information
- Banking details
- Company registration papers from the country of origin
- Power of attorney for appointing a tax agent

In accordance with Article 45 of Taiwan's VAT Regulations, the penalty for not completing VAT registration can range from TWD 3,000 ~ TWD 30,000. If a foreign enterprise fails to comply after being notified of an offense, they can be subject to consecutive penalties.

Issuance of local invoices (also known as GUI's)

As per tax office exemption, foreign e-commerce operators having no fixed place of business do not need to issue GUI's to customers. This exemption shall remain in effect until 31 December 2018.

Filing of VAT returns

Registered foreign e-commerce operators must file VAT returns bi-monthly, within 15 days after the end of each filing period.

Related Industries

This amendment affects foreign e-commerce operators that sell services in Taiwan, whether or not they have a place of business in the country. Hotel booking sites such as Agoda and Airbnb, ridesharing apps such as Uber, online game valet sites such as Facebook, app stores, online stores, and online bidding sites are all subject to this amendment.

Income Tax Implication

The Ministry of Finance has announced that registered foreign registered e-commerce operators should also be liable for Taiwan corporate income tax.

Taiwan

Corporate Income Tax Increase

The corporate income tax for FY 2018 is 20%, an increase from 17% the previous year.

Increased Withholding Tax on Dividends for Nonresidents

Taiwan plans to increase withholding tax on dividend distributed to nonresidents from 20% to 21%. This change is expected to take effect from 1 January 2018.

Expatriate income tax concessions

Taiwan has published a set of new rules to allow high income earning foreign professionals meeting certain criteria or holding immigration gold cards to enjoy special income tax concessions. The concession allows 50% of salary income exceeding TWD 3 million to be tax exempted. The implementation date for the new set of rules has yet to be announced.



The background is a solid dark purple color. It features several large, overlapping, curved shapes in a lighter shade of purple, creating a sense of depth and movement. These shapes are primarily located on the right side and bottom of the frame, with one large shape curving from the top right towards the center.

Thailand

Thailand

Thailand on Base Erosion and Profit Shifting (BEPS)

In June 2017, Thailand becomes the 98th jurisdiction to join the Inclusive Framework on BEPS ("IF") and will participate on an equal footing with all other IF members. In the beginning of 2017, Thailand joined the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum).

The first joint induction visits of the IF on BEPS and of the Global Forum was held on 31 May to 2 June 2017 in Bangkok. This on-site visit launched the first joint induction programme for the implementation of the international standards on exchange of information and of the BEPS measures. The programme will assist Thailand to implement new international tax standards with a focus on Country-by-Country Reporting (CbCR) and the other BEPS minimum standards, and the standards for exchange of information on request and for the automatic exchange of financial account information (the "Common Reporting Standard").

Thailand is undergoing a rigorous peer review procedure. Under the transparency framework, Thailand is required to exchange information on five (5) categories of taxpayer-specific rulings: (i) rulings relating to certain preferential regimes; (ii) unilateral advance pricing arrangements (APAs) or other cross-border unilateral rulings in respect of transfer pricing matters; (iii) rulings providing for a downward adjustment of taxable profits; (iv) permanent establishment (PE) rulings; and (v) related party conduit rulings. The requirement to exchange information on the rulings in the above categories includes certain past rulings issued on or after 1 January 2010 as well as future rulings, which were issued on or after 1 April 2016. Certain preferential tax regimes, under the Board of Investment (BOI) promotion were also reviewed, and the Thai government is now in the process of reviewing and amending those regimes.

Transfer Pricing

The Thai government updated the transfer pricing law in July 2017, which was originally drafted in May 2015. The Thai Cabinet has approved the draft in January 2018. It is now being reviewed by the parliament. Based on whatever was made available to the public, we provide below the summary of the transfer pricing law:

- The Revenue Department (RD) can adjust the taxpayer's revenue or expense relevant to the related party transactions if he believes that the arm's length principle was not followed by the taxpayer. The meaning of the term 'related party' may differ in different situations.
- Companies with revenue of 30 million Baht and below from its business operations is exempt from the mandatory transfer pricing disclosure and documentation. The Ministerial Regulation that will be issued by the Director-General will provide further details of the threshold.
- The transfer pricing law provides for a penalty for non-compliance of the mandatory transfer pricing disclosure and documentation.
- Once the initial review is undertaken by the RD officer, he has 5 years from the date of filing the corporate income tax return to request for a more detailed transfer pricing report.

Thailand

Thailand joined the Madrid Protocol on Intellectual Property

The Government of Thailand has recently joined the Madrid Protocol. Effective 7 November 2017, Thai brands can now protect their trademarks and other intellectual properties in other 116 countries that have signed up for the Madrid Protocol. This decision of the Thai government was aimed at encouraging Thai traders to invest in new markets and promote innovation and R&D.

In the past, registration of IPs entitles the registrant to be protected within Thailand only. If the owner of the IP wants to get protection in other countries, it has to apply separately in each of those jurisdictions. With this development, registration of the IP in Thailand (following certain procedures) entitles the registrants of equal protection in certain other countries.

Eastern Economic Corridor (EEC)

As Thailand is now ready to move forward to the era of Thailand 4.0, three (3) provinces have been designated for the development of the Eastern Economic Corridor (EEC), a pilot project for the economic development of Thailand's Eastern Seaboard. These provinces are: Chachoengsao, Chonburi and Rayong. The EEC area covers over 13,000 square kilometres, and the Thai government has launched measures to support and accelerate the economic growth in the area. For instance, measures to develop public utilities, transportation systems, logistics, human resources, and investor's facilitation in the form of One-Stop Service Centre have been put in place.

It is expected that the EEC will grow into a modern metropolitan, a hub of trade and investment, a centre for regional transportation and logistics, a significant source for human resources, a tourist attraction and most importantly, the most modern Gateway to Asia.

Projects that will enhance competitiveness in the EEC are certain targeted industries utilizing advanced technologies, infrastructure development, development of tourist destinations, research and development (R&D) and high-value services. These industries (so-called S-Curve industries) are as follows:

- next-generation automotive;
- smart electronics;
- affluent, medical and wellness tourism;
- agriculture and biotechnology;
- food for the future;
- robotics;
- aviation and logistics;
- biofuels and biochemicals;
- digital; and
- medical hub

The projects eligible for corporate income tax (CIT) exemption will be given an additional 50% tax reduction for 5 years and a maximum income tax holiday of 15 years.

Thailand

Smart Visa

Aiming at encouraging foreign talents and investors to invest in the 10 targeted (S-Curve) industries in Thailand and enhancing knowledge transfer, and therefore, increase the competitiveness of Thailand in the global economy, the Thai government has launched the so-called SMART Visa, which is a new type of visa.

These benefits include:

- i. visa validity of up to four years, instead of the regular 1-year visa;
- ii. no requirement of getting a work permit as it serves as a working visa;
- iii. the 90-day reporting is extended to a yearly reporting; and
- iv. the legal dependents (spouse and children) of the SMART type Visa holder have the right to live and work in Thailand equivalent to the SMART visa holder.

The 4 categories of people who are eligible to apply for SMART Visa are:

- i. talents;
- ii. investors;
- iii. executives;
- iv. start-up entrepreneurs; and
- v. others (legal dependents of the smart t visa holder)



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Vietnam

Vietnam

Supports to start-up and high-tech enterprises

Vietnamese government's recent business policy starts to focus on small and medium enterprises instead of large corporations as the country targets to have one million start-ups by 2020. Small and medium size enterprises (SMEs), defined by Vietnam's regulation, are enterprises have less than 200 regular employees and have capital no more than VND100 billion (USD4,4 million) or revenue no more than VND 300 billion (USD13,2 million). According to the special law takes effect 01 January 2018, SMEs are entitled to favorable conditions including assistance in getting loans, deductions in government fee and charges and special tax rate. The current tax laws shall be amended to give the preferred corporate income tax (CIT) rate and simplified tax procedures for SMEs.

Preferred tax rate, tax exemption and deduction for Da Nang City high-tech zone

According to new decree takes effect from 20 February 2018 new projects invest in Da Nang hi-tech zone will get the preferred CIT rate of 10% in 15 years instead of current standard rate of 20%. These projects also get the CIT exemption for 4 years and CIT deduction of 50% for next 9 years. Especially for projects with invested capital of VND3.000 billion (USD132 million) or more, they could get CIT rate of 10% in 30 years.

Exported technology transfer could get preferred tax rate

New law on technical transfer effective from 01 July 2018 states that some entities are eligible for tax incentives such as: machinery and equipment which is imported to research and develop to serve innovative startups and technology business development; tech hub or entities or individuals who support innovative startups. This law also regulates that exported technology transfer activities or entities having research and technology development activities will also get tax incentives. The current tax laws will be amended to follow above regulations.

New regulation on VAT refund

From 01 February 2018, enterprises having international trading activities could get value added tax (VAT) refund. Enterprises operate in natural resources productions (which total natural resources and energy accounted for more than 51%) and exporting those products could get VAT refund or VAT deduction. It is notable that the above two types of enterprises previously were not eligible to get VAT refund.

Tighten control over casino operation

New Circular which takes effect since 12 February 2018 has regulated management and supervision of casino tax collection. Accordingly, all transactions related to cash and tokens in casino must be managed by computer software and must be transferred to tax authorities in specific form on monthly basis. In addition, casino must arrange a place with necessary means and equipment to serve the supervisory tax agency in performing the tasks of management and surveillance directly or via electronic equipment and camera system.

Effective date : changes with effective in 2018

Vietnam

Proposal to increase VAT rate, reduce CIT for start-ups and amendment to SCT

Vietnam's Ministry of Finance (MOF) has a proposal to the Government to amend current tax laws included of corporate income tax (CIT), value added tax (VAT), special consumption tax (SCT) and personal income tax (PIT) (the Proposal) on 17 August 2017. Below are some highlights of the Proposal:

- Propose preferred tax rate for start-up enterprises
Special law for SMEs already takes effect since 01 January 2018 provided some favourable conditions for SMEs. Accordingly, the MOF proposes to reduce the CIT rate for SMEs to 17% (standard CIT flat rate is 20%). For micro enterprise (which generate revenue of no more than VND 3 billion or USD130.000), the proposed CIT rate is 15%.
- Proposal to increase VAT rate and improve non-cash transaction
MOF proposes to increase VAT rates from 10% and 5% to 12% and 6% respectively from 1 January 2019. Certain items of goods and services that are currently taxed at a 5% VAT rate will be subject to the new 12% standard VAT rate.

MOF also proposes all transactions having value more than VND10 million (USD 440) should make via bank transfer. The current level is VND20 million (USD880).

- Proposal on new personal taxable income level
It is proposed to reduce the number of taxable income levels from 7 to 5 in the income threshold. Details are as below:

Proposed	
Taxable income (mil VND)	Tax rate (%)
< 10	5
10 – 30	10
30 – 50	20
50 – 80	28
>80	35

- Proposal on SCT imposition
MOF proposes to impose SCT on soft drinks at the tax rate of 10% from 01 January 2019.
For cigarettes, SCT tax rate is proposed to increase from 70% to 75% from 2019 and surcharges also be proposed to impose on cigarettes and cigar upon importation and production from 01 January 2020.



Contact us

If you would like to know more about how we can help you, please connect to our professional in your country.

Cambodia

Ronald C. Almera

20th Floor, 315 Canadia Tower
Preah Ang Duong Street
Sangkat Wat Phnom, Khan Daun Penh
Phnom Penh
T +855 23 966 520
E ronald.almera@kh.gt.com

India

Shashishekhar Chaugule

5th Floor, 65/2, Block A
Bagmane Tridib, Bagmane Tech Park
C V Raman Nagar
Bengaluru 560093
T +91 80 4243 0700
E shashi.shekhar@in.gt.com

Indonesia

Tommy David

Sampoerna Strategic Square
South Tower Level 25
Jalan Jend. Sudirman Kav
45-46 Jakarta Selatan 12930
T +62 (0) 21 5795 2700
E tommy.david@id.gt.com

Japan

Yoichi Ishizuka

Aoyama Bldg. 12F
1-2-3 Kitaayama
Minato-ku, Tokyo
107-0061
T +81 (0) 3 5770 8822
E yoichi.ishizuka@jp.gt.com

Malaysia

Seah Siew Yun

Level 11
Sheraton Imperial Court
Jalan Sultan Ismail
Kuala Lumpur 50250
T +60 (3) 2692 4022
E siewyun.seah@my.gt.com

Philippines

Lea Roque

19th & 20th Floor, Tower 1
The Enterprise Center
6766 Ayala Avenue
Makati City 1200
T +63 2 988 2288
E lea.roque@ph.gt.com

Singapore

Lorraine Parkin

39 Robinson Road
18-04 Robinson Point
Singapore
068911
T +65 6805 4110
E lorraine.parkin@sg.gt.com

Taiwan

Jay Lo

5th Floor No. 21 Zhongxiao
East Road Sec. 6
Taipei 11575
Taiwan, R.O.C.
T +886 (0)2 27890887 ext. 314
E jay.lo@tw.gt.com

Thailand

Melea Cruz

18th Floor Capital Tower, All
Seasons Place
87/1 Wireless Road, Lumpini
Pathumwan, Bangkok 10330
T +66 2 205 8222
E melea.cruz@th.gt.com

Vietnam

Hoang Khoi

18th Floor, Hoa Binh International
Office Building, 106 Hoang Quoc
Viet Street, Nghia Do Ward
Cau Giay District, Hanoi
T +84 24 3850 1686
E khoi.hoang@vn.gt.com



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