

32nd Annual Asia Pacific Tax Conference

10 – 11 November 2016

JW Marriott Hotel Hong Kong



Asia Pacific Tax Update

Chair: John Walker, Australia

Amy Ling, China

Sanjiv Malhotra, India

Ponti Partogi, Jakarta

Dennis Dimagiba, Manila

Soo-Jeong Ahn, Yulchon LLC, South Korea

Panya Sittisakonsin , Bangkok

Jo Daniels, Myanmar

Pigeonhole

- Wi-Fi log in details
- **Network:**
JWMarriott_Conf
- **Password:** BAKERM

BAKER & MCKENZIE

Q&A with Pigeonhole

Join the conversation in 5 easy steps:

- 1 Log in into Wi-Fi on your mobile device. Information will be provided on screen.
- 2 Open your browser and go to this URL: <https://pigeonhole.at/>
- 3 Type in the password.

BAKERM
- 4 Post your question.
- 5 Take part in the audience poll and get instant access to poll results.

China

- Bulletin 42: New transfer pricing documentation rules
 - Country-by-country reporting
 - Master file
 - Local file (value chain and location specific advantages)
- More aggressive enforcement on anti-avoidance
 - RMB58 billion anti-avoidance revenue in 2015
- Bulletin 7: Update on indirect transfer rules
 - Three-step analysis: safe harbors, blacklist, reasonable commercial purpose
 - Voluntary reporting and withholding
- Completion of the VAT reform
 - Business tax completely replaced with VAT from 1 May 2016

India

Recent Initiatives by the Indian Government

- Efforts to reform India from a “*tax-aggressive*” to a “*taxpayer-friendly*” jurisdiction
 - Implementation of GST
 - “Make in India” initiative
 - Simplification of tax regulations
 - Alignment with global reforms
 - Administrative reforms to reduce litigation
 - Acceleration of dispute settlement mechanisms such as APA / MAP / Safe Harbors
 - Formulation of regulations has become more consultative

Impact of BEPS

- India has fully endorsed the final BEPS reports
- CbCR regulations enacted – detailed guidelines awaited
- Equilization levy in response to BEPS Action 1
- Action 8 – 10 to be used for transfer pricing matters
- BEPS reports may be used for past audits and thus may have a retrospective application
- Budget 2016 introduced a Patent Box regime
- India also supports the work done by UN Tax sub-committee

Transfer Pricing

- Introduction of range concept (35th to 65th percentile)
- Use of multiple-year data allowed in transfer pricing comparability analyses
- Advance Pricing Agreements
 - APAs gaining significant momentum – provides certainty for a period up to 9 years (including 4 years of rollback)
 - Approximately 700 taxpayers have filed APA applications since March 2013 (first round of filing)
 - 108 APAs concluded
 - 2 BAPAs concluded with Japan and UK, each – many more at advanced stages with Japan

Transfer Pricing

- Mutual Agreement Procedures
 - MAP and domestic litigation can be pursued together
 - MAP provides strategic advantage of suspending tax demands (for cases with US, UK, Denmark and Korea)
 - Recently, more than 100 cases in technology sector settled with US
- APA / MAP resolutions adopted by State Courts and Tax Courts for years other than the covered years, provided transactions and facts remain similar

Key controversies

- Permanent Establishments
- Income characterization for tax deduction at source
- Transfer Pricing
 - Marketing intangibles
 - Cost plus mark-ups
 - Management charges and payment for intangibles
 - Characterization of entities
- Indirect taxes – service tax refunds

Key takeaways

- BEPS will impact in a big way
- UN work on taxation cannot be ignored
- Government keen to reduce tax litigation – explore options such as APA, advance rulings
- Transfer pricing will become more complicated – need to invest in stronger documentation
- Indian tax officers are learning fast from global developments – *“Global thinking – local implementation”*

Indonesia

Mechanisms for enhancing source based taxation

Indonesia

- 2016 Tax Amnesty Program
- Newly amended Tax Treaty between Indonesia and India
- The Exchange of Information Policy issued by the Financial Service Authority

Philippines

Philippine Updates


- Comprehensive Tax Reform Program
 - Government to revamp Tax Code
 - Individual income tax, corporate, VAT, excise taxes, donor's tax, estate tax, investment income tax
 - Rationalize fiscal incentives granted to ecozone locators and to other industries
 - Relax bank deposits secrecy laws
- Tax Amnesty Bill Submitted to Senate

South Korea

- Additional TP documentation requirements for multinational enterprises
 - CRIT: Local file and Master file
 - Proposed CbC: Korean multinationals
 - Proposed deadline extension
 - Proposed exemption for APA-approved transactions
- Exemption for B2B transactions from the new VAT reporting regime for foreign digital service providers
- Revision of the foreign investment tax incentive regime to further curb abuse

- Extension of special income tax regime (17% flat tax) for expatriate workers; proposed modification to 19%
- Proposed amendment to taxation of software royalties
- Proposed limit on use of losses carried forward for foreign companies
- A Supreme Court decision (2016) upholding the substance of UK intermediate holding company
- IGA (FATCA) and Korea-Hong Kong Tax Treaty: ratified and in effect

Thailand

- 
- Inheritance tax and gift tax became into force on February 1, 2016
 - New Land and Buildings Tax Bill (2017)
 - 2016 Tax Amnesty Programme for SMEs
 - VAT rate continue at 7% until September 2017
 - Venture capital investment made more attractive in certain industries
 - Establishment of the Appeal Tax Court

- New Thailand's tax treaty with Singapore and India
- Supreme Court overturned Central Tax Court's judgment on profits and losses of BOI projects
 - NMB-Minebea Thai Ltd. v. Revenue Department
 - Remedy for BOI companies proposed by Ministry of Finance
 - New BOI Regulation on Loss Carried Forward

Myanmar

Recent Development

- New Union Tax Law 2016 has been introduced
- New Special Commercial Tax Law/Commodities Tax Law has been introduced
- Issued three Notifications (17/2016),(18/2016) and (19/2016)
- Self-assessment
- Supported by US Treasury and others

Union Tax Law 2016

- Very similar to Union Tax Law 2015
- Significant changes are as follow:
 - Personal Income Tax Threshold 4.8 million Kyat is introduced and if the personal income is less than threshold amount, will be exempted from personal income tax
 - Commercial Tax expanded to domestic air transportation services and imposed at 3 percent
 - Exemption of Commercial Tax extended to additional 14 types of goods and services

Amendment of Income Tax Law

- Income Tax Return shall file quarterly and must be submitted within 10 days from the end of three months
- The definition of salary has been changed
- The penalty for fraud is increased to 100 percent of the amount of tax

Advance Tax

- Notification 17/2016 was published and legalizes 2 percent advance tax on export and import which has already practice last 2015

Amendment of Commercial Tax Regulation

- Off-setting is expanding further as below:

“Manufacturer, trader or service provider can set-off on commercial tax already paid on land cost at the time of importation and on the purchase from another manufacturer, trader or importer. Furthermore, manufacturer can set-off on the service charges as for services which is related to the manufacturing, trader and service can also set-off on the services charges as for services which is related to trading or the services relatively.”

Special Commodities Tax

- Special Commodities Tax was introduced and imposed certain types of commodities

Special Commodities Tax – Goods apply

- Cigarettes, Tobacco, Virginia, Cheroots, Cigars, Pipe Tobacco, Chewing Tobacco
- Alcohol, Beer, Wine
- Teak
- Jewelry, Precious Stone (Raw or Finished)
- Cars >1800cc engines (except double cab 4 door pickup)
- Kerosene, Diesel, Gasoline, Jet Fuel
- Natural Gas

Special Commodities Tax – Tax Rate (Import & Manufacture)

Cigarette	3 – 15 Kyat per stick
Cigarette (imported)	120 percent on land cost
Tobacco, Virginia, Cheroots, Cigars, Pipe Tobacco, Chewing Tobacco	60 percent
Alcohol	56 Kyat – 60 percent of value per liter
Alcohol (imported)	60 percent on land cost
Beer	60 percent
Wine	50 Kyat – 50 percent of value per liter
Teak	25 percent
Precious Stone (raw) (e.g. Ruby, Emerald and etc)	20 percent
Precious Stone (finished) and Jewelleries	5 percent
Cars >1800 cc engines	25 percent
Kerosene, Diesel, Gasoline, Jet Fuel	5 percent
Natural gas	8 percent

Special Commodities Tax – Tax Rate (export)

Natural Gas	8 percent
Teak	50 percent
Precious Stone (raw) (e.g. Ruby, Emerald and etc)	20 percent
Precious Stone (finished) and Jewelleries	5 percent
Others	0 percent

Asia Pacific Tax Update

Chair: John Walker, Australia

Amy Ling, China

Sanjiv Malhotra, India

Ponti Partogi, Jakarta

Dennis Dimagiba, Manila

Soo-Jeong Ahn, Yulchon LLC, South Korea

Panya Sittisakonsin , Bangkok

Jo Daniels, Myanmar