Baker & McKenzie

TEI Tax Summit 2016

Asia Pacific

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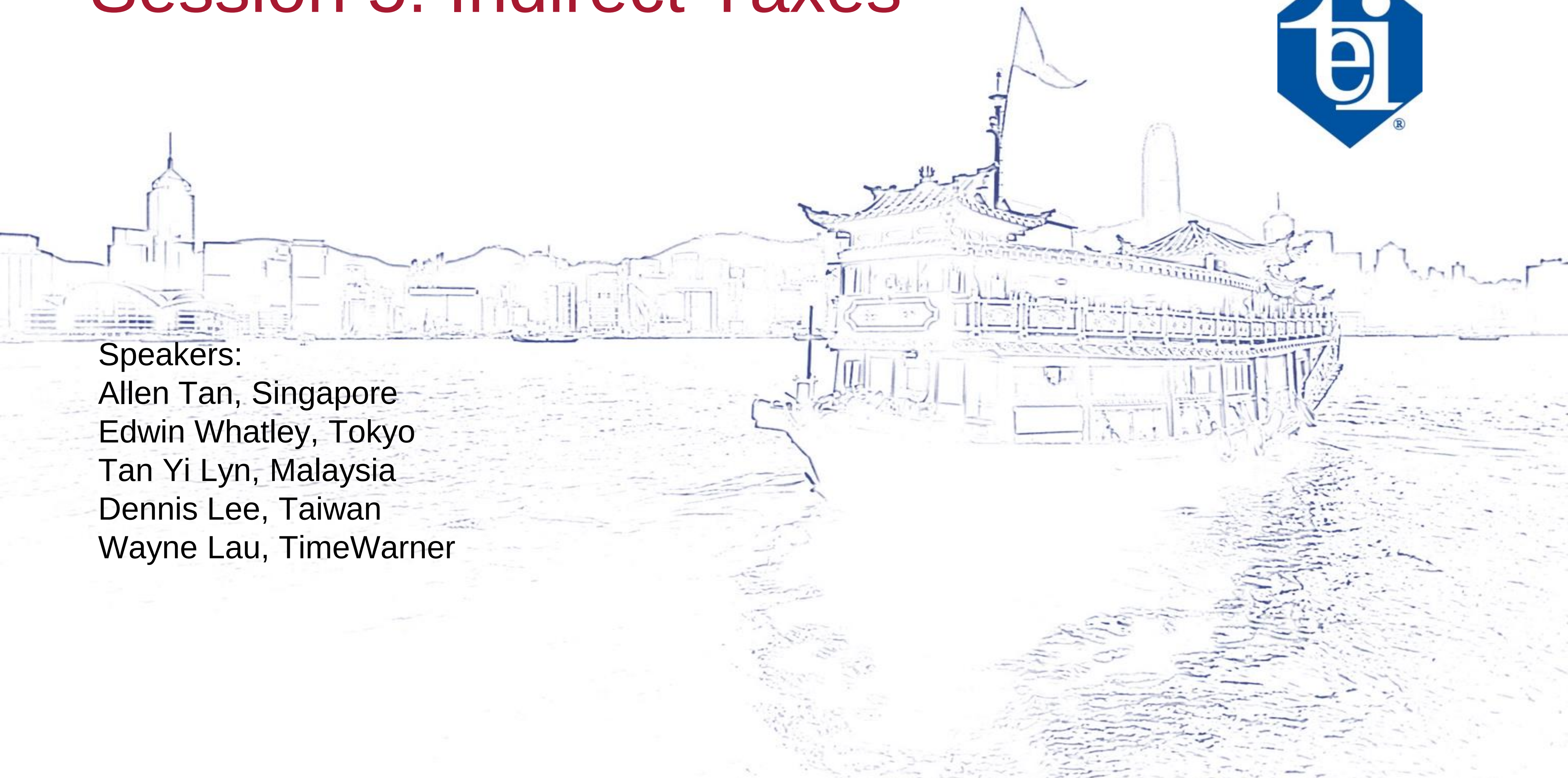
Session 5: Indirect Taxes



Speakers:
Allen Tan, Singapore
Edwin Whatley, Tokyo
Tan Yi Lyn, Malaysia
Dennis Lee, Taiwan
Wayne Lau, TimeWarner

Overview

Topics to cover

- BEPS and Indirect Taxes
  - Is it really smooth sailing for indirect taxes and industries impacted
- Key Developments
  - APAC changes
- Impact to the Business
  - Concluding thoughts on what you need to do

BEPS and Indirect Taxes

The Digital Economy

- Ability of companies to have a significant digital presence in a country without a physical presence.
- Difficulty of determining where value creation occurs, given the digital economy's reliance on intangibles.
- According to the OECD, the digital economy does not generate unique BEPS issues, but its key features exacerbate BEPS risks.

The Digital Economy (cont'd)

- For VAT/GST purposes the digital economy creates challenges for the collection of VAT/GST, particularly where goods, services and intangibles are acquired by private consumers or VAT/GST exempt taxable persons, from suppliers abroad.

Digital Economy and Digital Developments

<u>The internet of things:</u> the ability to connect any device or object over time to a network of networks.

Virtual Currencies

VAT / GST qualification?

Streaming of movies?

How do you determine where the service is “consumed” ? What proxy will be used to determine location of the “customer” (e.g. IP address, bank details?)

Sharing Economy (P2P)

- How to tax and how to comply with compliance issues?
- VAT / GST consequences P2P networks and transactions?

Integration of internet into medical services

- Composite transactions?

(e.g. supply of medical device with an add-on of electronic services?)

E-Books and E-commerce supplies

- Role of the neutrality principle with domestic suppliers?

Electronic Commerce

– E-commerce defined as “the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders” (OECD, 2011). Three main models:
  - Business-to-business (“B2B”) transactions
  - Business-to-consumer (“B2C”) transactions
  - Consumer-to-consumer (“C2C”) transactions

Key Developments

Recent Developments

Date	Event
18 December 2014	OECD releases draft guidelines on the “place of taxation for B2C supplies of Services and Intangibles”, where it recommended the adoption of the “Destination Principle”.
1 January 2015	EU implements VAT changes for B2C e-commerce transactions.
1 July 2015	Korea’s consumption tax is amended to apply to certain inbound e-commerce supplies.
1 October 2015	Japan’s consumption tax is amended to apply to certain inbound e-commerce supplies.
5 October 2015	OECD releases final report on “Addressing the Tax Challenges of the Digital Economy”.

Recent Developments

Date	Event
6 November 2015	OECD publishes its consolidated "International VAT/GST Guidelines", where it recommended the adoption of the "Destination Principle".
24 March 2016	China issues rules effective on 8 April 2016 to levy VAT and consumption tax (if applicable) to cross-border e-commerce supplies of tangible goods, with per transaction threshold of RMB 2000 or annual threshold of RMB 20,000. Replaces the so-called "postal tax" that was previously applied to B2C supply of goods.
3-5 May 2016	Australia: Amendment to legislation passed and received royal assent. Subjects cross-border digital e-commerce supplies to GST (B2C only). Effective from 1 July 2017. Australia also announces the removal of the low value import threshold for goods (e.g. goods sold by non-resident e-tailers to consumers will be subject to GST). Effective from 1 July 2017.
10 May 2016	New Zealand: Passes GST changes taxing B2C cross-border digital e-commerce supplies by non-residents. Effective from 1 October 2016.

Indirect Taxes in the Asia-Pacific Region

Country	Indirect tax	Rate	Specific rules targeting e-commerce?	Other comments
Australia	GST	10%	Yes – from 1 July 2017	Legislation targeting intangible e-commerce supplies has been passed. Changes have also been proposed to impose GST on all consumer goods sold into Australia irrespective of value.
China	VAT	3%, 6%, 11%, 17%	Yes, from 8 April 2016 (for tangible goods)	China also has Consumption Tax on luxury goods. China is expected to create rules to tax cross-border B2C transactions in digital goods and services within 1-2 years.
Hong Kong	-	-	-	
Indonesia	VAT	10%	No	Note that new OTT regulations proposed mean that OTT suppliers may need to establish a local presence to make supplies to Indonesian consumers.
Japan	Consumption Tax	8% (expected to increase to 10% wef 1 October 2019)	Yes	Japanese CT is collected via the subtraction method (rather than the invoice-credit method)
Korea	VAT	10%	Yes	VAT rules targeting e-commerce transactions already effective since 1 July 2015.
Malaysia	GST	6%	No	

Indirect Taxes in the Asia-Pacific Region

Country	Indirect tax	Rate	Specific rules targeting e-commerce?	Other comments
Myanmar	Commercial Tax	5%-100% (goods) 5% (services)	No	
New Zealand	GST	15%	Yes – from 1 October 2016	Legislation targeting intangible e-commerce supplies has been passed.
Philippines	VAT	12%	No	
Singapore	GST	7%	No	
Taiwan	Business tax (consists of VAT and GBRT)	5% (VAT) 0.1%-25% (GBRT)	No	Proposal to change VAT rules to tax cross-border digital services under discussion at MOF level.
Thailand	VAT	7% (expected to increase after 30 Sep 2016)	No	
Vietnam	VAT	5%, 10%	No	VAT assessed on payments to offshore entities for purchase of services is collected through withholding mechanism when the customers are business entities or business individuals.

Singapore

- No specific action has been taken in response to BEPS Action 1 on the Digital Economy.
- The reverse charge mechanism only applies to imported services which have been prescribed by the Minister of Finance and since the Minister has not prescribed any services yet, there is currently no reverse charge applicable.
- No general requirement for foreign operators making supplies to Singapore customers to register for GST, unless they have a fixed or business establishment in Singapore.

Singapore

– However, foreign operators making supplies to Singapore customers may face increased audit risks:
  - E.g., the presence of human and technical resources in Singapore may result in the foreign operator being regarded as "belonging" in Singapore, and therefore making taxable supplies under the GST Act (Cap. 117A).

Malaysia

- Guidelines on E-Commerce Services issued by the Malaysian Customs on the application of the standard GST rules to e-commerce transactions.
- No special rules specifically targeted at e-commerce transactions or digital supplies.
- No indication thus far of any plans by Customs to adopt the Action 1 recommendations.
- Recent announcements by the Ministry of Finance that there are also no plans to increase the GST rate yet.

Malaysia

- Ministry of Finance recently announced intention to tax "online businesses".
- No formal guidelines or draft regulations published yet, and it is not clear if this targets Malaysian or non-resident businesses.
- Current focus seems to be on direct taxes for Malaysian businesses selling goods online.

Taiwan

– Proposed change to VAT Law to require offshore e-commerce operators to register in Taiwan for supply of digital goods and services

Japan

- New JCT rules came into effect on Oct. 1, 2015
  - Insufficient time for many companies to prepare
  - Uncertainty about applicability of rules to specific situations
  - Grandfather clause exists, but difficult to apply in practice

Japan

- Major issues include the following:
  - Important - is the service provided B2B, B2C, or a mixture?
  - Who is the recipient of a service, and who is the provider?
  - Where the service is a mixture of B2B and B2C, is it better for service provider to collect JCT from all companies, and allow businesses to take an input credit, or to split transaction? (Will authorities even *allow* the splitting of transactions? Unclear.)

Japan

– Major issues (continued):
  - Does the foreign company meet the taxable sales threshold over which filing a tax return is required? (Complicated “base period” rules)
  - How to pay the tax – use of a foreign company’s subsidiary versus appointing a third party tax representative – no direct payment of tax to authorities from offshore allowed
  - How to identify whether service provided to user located in Japan
  - Registration – identify what registration is actually required
  - Going forward – how will new invoicing requirements and multiple tax rates affect the JCT law? Only speculative…

Impact to the Business

If your business is making supplies that are caught under extra-territorial indirect tax regimes, you should consider:

- Effective dates
- Registration / reporting thresholds
- VAT / GST Rates
- Covered services
  - B2C vs. B2B
- Other issues
  - Transition rules
  - Compliance issues: supplier responsibility to check versus relying on customer declarations and invoicing
  - Use of platform companies

But what if your business is not in the targeted industries, you still cannot ignore the BEPS impact to indirect taxes because:

- Changes in international tax norms will lead to different tax results which ultimately will cause changes to indirect tax positions
- E.g., Lower PE thresholds mean that businesses may have PEs in multiple jurisdictions, each with a local indirect tax registration and compliance obligation
- E.g., changes to TP methodologies will create “knock-on” effects in indirect tax charging, claiming and reporting positions as well as customs declarations (for goods)

Concluding thoughts:

- BEPS does not change key indirect tax goals generally:
  - Tax on consumption; i.e., businesses should not bear the cost
  - Destination principle
  - Tax neutrality
- But to achieve these goals, consider
  - Changes to structure to avoid disruption to the business; and
  - There will be more hurdles / issues to cross and compliance costs will increase.

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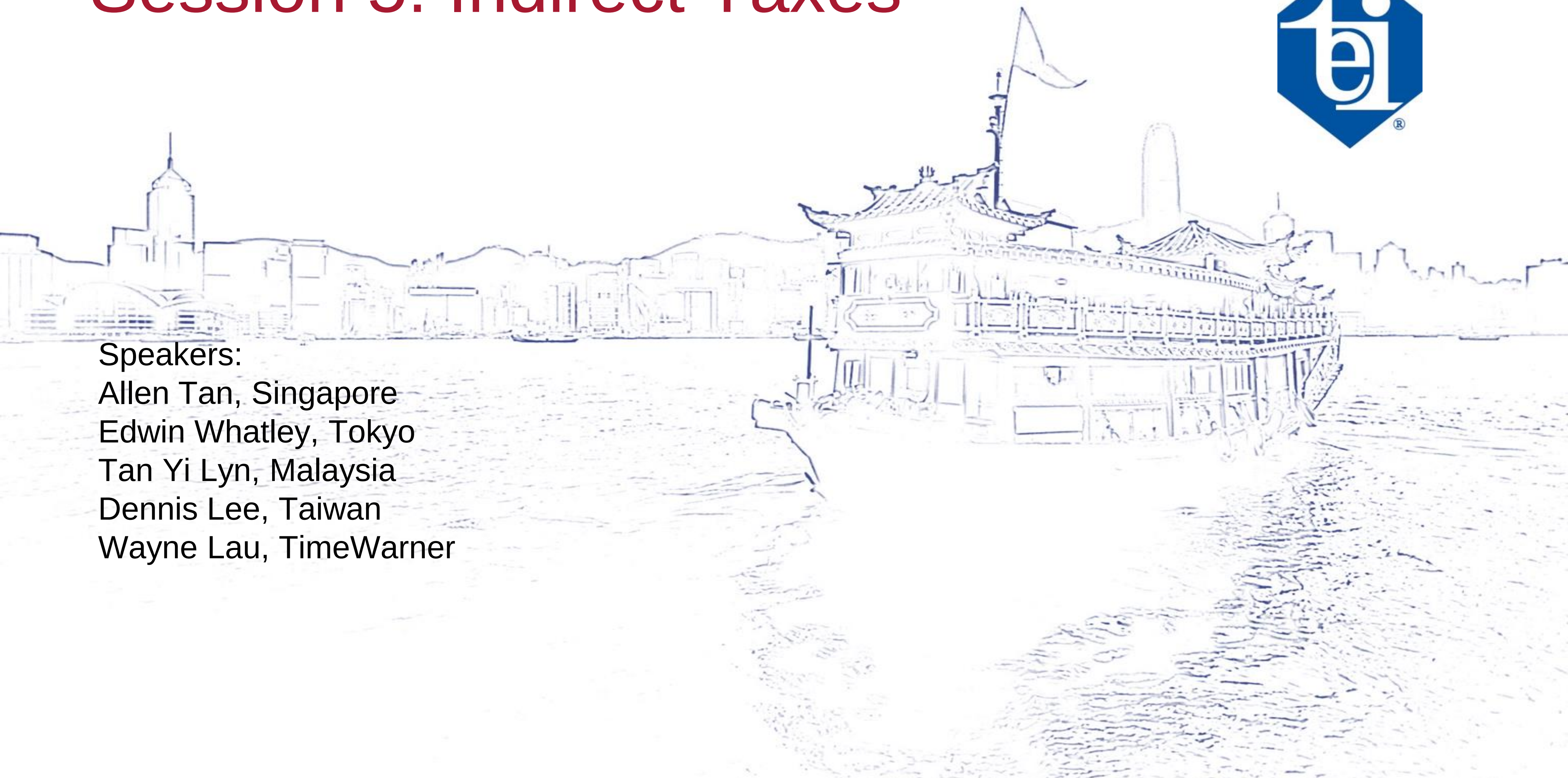

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