

LAWASIA

TAXEdge

OCTOBER 2025



Promotion of
Inclusive and Effective
International Tax
Co-operation At The
United Nations

Malaysia's Digital
Transformation of
Tax Administration:
E-Invoicing

Autumn Budget 2024:
Overview of Changes
to Taxation of Non-UK
Domiciled Individuals

AND MORE

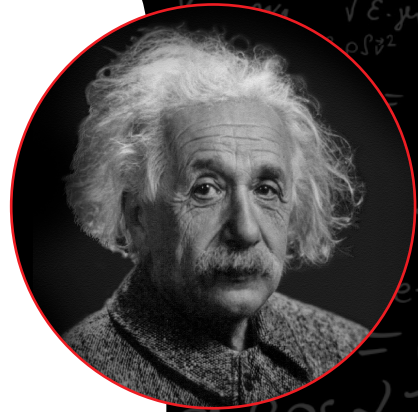
ISBN 978-629-97606-7-2



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**“The
hardest thing
to understand
in the world is
the income tax.**

– Albert Einstein





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Published by:

LAWASIA

The Law Association for
Asia and the Pacific

www.lawasia.asn.au

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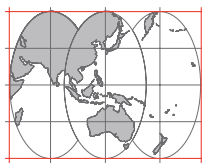
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Shyam Divan
President, LAWASIA



While it is often said that nothing in life is certain except death and taxes – anyone who has ventured into the world of cross-border tax will know that taxes are, in fact, far less certain – and certainly very complex.

It gives me great pleasure to present TAXEdge, LAWASIA's flagship publication on taxation and customs, which brings together the insight and experience of practitioners and scholars across Asia, the Pacific, and beyond. This edition, with its 10 thoughtfully crafted chapters, addresses critical developments from Germany to Korea, India to Malaysia, Australia to the United Kingdom. From e-invoicing reforms to global minimum taxes, and from the challenges of taxing in a digital era to the promise of inclusive international tax cooperation, this publication covers terrain as vast and dynamic as our region itself.

Taxation may not always make for light reading – but TAXEdge proves that it can certainly make for relevant, rigorous, and rewarding reading. The diversity of jurisdictions and perspectives represented in these pages speaks to the richness of LAWASIA's membership and our shared commitment to legal excellence across borders.

A special word of recognition is owed to Mr. S. Saravana Kumar, Chairperson of LAWASIA's Taxation and Customs Committee, whose tireless efforts have brought this publication to life. His leadership, good humour, and eye for both detail and direction have been invaluable. If ever a tax lawyer deserved a rebate, it is Saravana.

I hope that TAXEdge not only informs but sparks dialogue, inspires collaboration, and supports the continued development of sound tax policy and practice in our region.

S. Saravana Kumar*Editor*

This inaugural issue of LAWASIA TaxEdge aims to provide a platform for meaningful discourse, critical insight and collaborative dialogue on global tax developments.

This publication comes at a pivotal time as tax regimes in many countries are evolving rapidly to meet the twin imperatives of revenue mobilisation and economic resilience. Governments are increasingly turning to policy tools such as voluntary disclosure programmes, digital taxation, capital gains tax and luxury goods tax as part of broader strategies to close fiscal gaps, enhance compliance and ensure fairness in tax administration. These policy choices raise important questions about long-term sustainability, administrative efficiency and equity.

In this first issue, we bring together tax professionals from across 9 jurisdictions to reflect on these dynamic developments.

Our diversity is both a strength and a challenge. Across LAWASIA member jurisdictions, we see varying approaches to digital taxation, environmental levies, transfer pricing reforms and international cooperation on Base Erosion and Profit Shifting (BEPS).

What unites us is the growing recognition that tax policy is not merely about revenue – it's about shaping inclusive growth, digital equity and cross-border fairness.

I hope LAWASIA TaxEdge will evolve into a publication that links tax practitioners, policy advocates and institutions across Asia and beyond to exchange ideas, highlight local perspectives and explore global solutions.

I would like to express my sincere gratitude to the contributors for their support.

Finally, this publication was made possible with the encouragement of Mr Shyam Divan, LAWASIA President and Dr Gordon Hughes AM, LAWASIA Secretary-General for their unwavering support in bringing this publication to life.

A special thanks to our readers for joining us on this maiden journey. Your feedback will be vital in shaping the direction of LAWASIA TaxEdge in the issues to come.

As the global tax landscape continues to shift, let us be proactive, informed and above all, collaborative.

Happy reading.

TRUSTS WITHOUT BORDERS: The Australian Tax Implications

by Frank Hinoporos & Todd Bromwich
Hall & Wilcox

The globalised economy has brought with it an increasing prevalence of global families, with family members (oftentimes younger generations) migrating internationally for work, riches or love. Australia is a beneficiary of this trend, consistently enjoying high rates of net inbound migration.

In many countries, wealthy private clients favour private trust structures as optimal vehicles for wealth generation and asset protection. As a common law creature, the exact form of these trusts may differ between jurisdictions. This poses a challenge for clients, and their advisers, in managing these structures where family members relocate overseas.





Readers should note that while Australia does not have gift or inheritance taxes, deceased estates are viewed as trusts for Australian income tax purposes.

This article briefly discusses the key Australian tax risks that should be considered where:

- an offshore trust distributes assets or provides other benefits (including loans) to Australian resident beneficiaries;
- an individual with a position of responsibility in relation to an offshore trust (including a trustee, director, appointor, guardian or protector) relocates to Australia; or
- an Australian tax resident contributes funds to an offshore trust - or a non-resident contributes funds to an offshore trust, then relocates to Australia.

Readers should note that while Australia does not have gift or inheritance taxes, deceased estates are viewed as trusts for Australian income tax purposes. The issues discussed in this article should therefore be considered in relation to offshore deceased estates that benefit Australian residents.

Readers should note there are additional tax risks that should be considered for foreign residents intending to participate in Australian investments, which are not covered in this article.

Australia's compliance environment

Australia's income tax regime requires taxpayers to self-assess their income tax liability and report this to the Australian Taxation Office (ATO). If the ATO queries or disagrees with a taxpayer's self-assessment, the taxpayer has the burden of proving (with evidence) that disclosures they have made are correct. Ignorance of the law is met with little sympathy and a lack of supporting evidence may just mean the taxpayer cannot defend a claim by the ATO for additional tax.

The ATO has broad powers to compel taxpayers and third parties (including financial institutions and professional



advisers) to provide documents and attend interviews, to ensure taxpayers are complying with Australian tax laws. This is complemented by strong relationships with international revenue authorities and a network of information sharing arrangements with many countries.

Trusts and their beneficiaries are facing increased scrutiny by the ATO, through the work of the ATO's Tax Avoidance Taskforce and similar programs, coupled with a renewed enthusiasm on the ATO's part to invoke arcane taxation provisions including, section 99B (discussed below) and section 100A, to address perceived tax avoidance or aggressive tax planning.

A recent area of focus for the ATO is inbound transfers of funds to Australian residents that are not being reported as income, on the basis that they are (for example) gifts or loans from offshore family members. If taxpayers are unable to substantiate, with evidence and contemporaneous documents, the source and character of the funds, they may face significant tax liabilities and penalties.

The ATO is investing heavily in its information sharing and data-matching capabilities. This includes automatic reporting of money transfers to and from Australian financial institutions of AU\$10,000 or more from the Australian Transaction Reports and Analysis Centre (AUSTRAC). This is leading to more targeted and more informed compliance activities, with room for non-compliant taxpayers to hide.

Distributions to Australian beneficiaries from offshore trusts

If an Australian resident beneficiary is granted a legal entitlement to current-year income of an offshore trust, they will be taxed in Australia on that entitlement. Their tax liability will be determined by the character of the amount and, in the case of non-Australian sourced income, the extent to which a foreign income tax offset is available for any foreign income tax or withholding taxes paid on the distributed income.

Additionally, if an Australian resident beneficiary receives any property or benefits directly or indirectly from an offshore trust, or if they are granted legal entitlements to property of an offshore trust, they may be taxed in Australia on those amounts under a taxation provision known as 'section 99B'. This may include:

- A distribution of the trust's past-year retained earnings to a beneficiary.
- A transfer of a trust asset 'in-specie' to a beneficiary.
- The provision of certain benefits to a beneficiary, including provision of a nil-interest loan, forgiveness or a loan, or use of a trust asset (such as a yacht, residential property or artwork) at no cost.
- A distribution of assets from an offshore deceased estate to an Australian beneficiary.

There are exceptions to this general rule, including where the trust property represents trust corpus (ie capital contributed to the trust at its inception or a later date), amounts that have already been taxed in Australia, or amounts that would not have been subject to tax in Australia had they been received by an Australian resident taxpayer instead of the trust. In a deceased estate context, corpus of the estate will include assets owned by the deceased just prior to their death. Where cash or other assets have passed between different trusts before being distributed to an Australian beneficiary, a ‘tracing’ exercise is required to determine the original source and character of the distributed amount.

As noted above, the ATO will expect the Australian beneficiary to be able to demonstrate, with supporting evidence, whether and to what extent the amount they receive is subject to Australian income tax. In practice, this can be hampered by a lack of appropriate accounting and financial records, or an offshore trustee that is unwilling or unable to disclose this information to the

ATO. In our experience, and as shown in recent Australian case law, the application of section 99B presents difficult evidentiary challenges.

Careful consideration should be given to these matters before any proposed distribution of assets or provision of benefits by an offshore trust to an Australian beneficiary.

Key person relocates to Australia

A relocation to Australia can have consequences not just for the individual that is relocating, but also companies and trusts associated with them.

A trust will be an Australian resident for income tax purposes where a trustee (emphasis is placed on the singular tense) of the trust:

- is a resident of Australia; or
- the central management and control of the trust is in Australia.

Australia’s tax law defines the term ‘trustee’ very broadly. It is not only the ‘named’ trustee in the trust document, but may also executors, administrators and guardians (and arguably covers similar persons, such as protectors and appointors) in addition to any persons formally appointed as a trustee.

The upshot of this is that if a trustee or some other individual in a position of responsibility in relation to an offshore trust relocates to Australia, this may cause the trust to



become an Australian resident trust, bringing that trust within Australia's tax jurisdiction. This is subject to the application of any applicable international tax agreements, which may provide for dual tax residency 'tiebreaker' rules, although the application of international tax agreements to trusts and deceased estates can often be ambiguous.

Australian resident contributes funds to an offshore trust

If an Australian tax resident transfers funds, property or some other thing of value to an offshore trust, the individual may be considered the 'transferor' to that trust and they may be taxed in Australia on a portion of the trust's annual profits on an accruals basis, regardless of whether those profits are repatriated to Australia. These rules seek to avoid Australian residents transferring wealth overseas to generate income in low or no-tax jurisdictions.

The application of these rules differs depending on the location of the trust and source of its income, and whether they are in a 'listed' country with similar or equivalent tax systems to Australia, or 'unlisted' countries with more lenient tax systems. Certain exceptions apply, including where trusts are established in a divorce settlement to benefit overseas relatives, or an executor of an Australian deceased estate makes the transfer to an offshore trust.

What should you do?

While this article may read like a Stephen King horror novel, all is not lost. The tax pitfalls outlined in this article can be avoided and outcomes can be managed, provided clients proactively seek advice on these matters before any international relocation of key persons or liquidation or distribution of trust assets. 

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The authors can be contacted at:

frank.hinoporos@hallandwilcox.com.au

Todd.Bromwich@hallandwilcox.com.au

GERMANY

TAX

UPDATE ON TAX LEGISLATION IN GERMANY AND THE EU

Legal Insights Germany

by Dr. Jann Jetter
Morgan Lewis

The so-called “Immediate Investment Program” has already been implemented, and with the DAC8 Implementation Act concerning reporting obligations for cryptoassets, the new federal government has launched another tax initiative. At the EU level, the ATAD3 Directive (Unshell) and the Transfer Pricing Directive shall not be further pursued for the time being due to a lack of support.

Law for an Immediate Investment Program to Strengthen Germany as a Business Location

As already laid down in the coalition agreement between the Conservative Parties (CDU/CSU) and the Social Democratic Party (SPD), a tax bill for an Immediate Investment Program has been introduced shortly after the formation of the government. This has already been passed by the Federal Parliament and the Federal Council and contains the following key measures:

- Declining fixed-asset depreciation for movable fixed assets (Section 7 (2) EStG)
- Reduction of the corporate income tax rate in five steps by one percentage point per year, starting in 2028 from currently 15% to 10% from 2032 onwards (Section 23 (1) KStG)
- Reduction of the tax rate applicable to undistributed profits pursuant to Section 34a EStG from the current 28.25% in three steps: 27% (fiscal year 2028/2029), 26% (fiscal year 2030/2031), 25% (from 2032 onwards) (Section 34a (1) sentence 1 EStG)
- Introduction of an arithmetic-degressive depreciation for newly acquired electric vehicles (Section 7 (2a) – new – EStG)
- Increase of applicable price limits for the so-called company car taxation for the preferential treatment of electric vehicles to €100,000 (approximately \$116,656) (Section 6 (1) No. 4 sentence 2 No. 3 and sentence 3 No. 3 EStG)
- Extension of the research allowance (Section 3 FZulG)

DAC8 Implementation Act

On July 4, 2025, the Federal Ministry of Finance presented a revised draft bill for a law implementing Directive (EU)



2023/2226 (DAC8) and released it for consultation with associations. The deadline for comments ended on July 14, 2025.

The DAC8 Directive of October 17, 2023 ((EU) 2023/2226) provides for the introduction of new reporting requirements in connection with transactions involving cryptoassets.

These will be implemented primarily through the newly introduced Crypto Asset Tax Transparency Act (KStTG), which contains provisions on due diligence and reporting obligations for providers of crypto services and on the automatic exchange of reported information (Art. 1). In addition, further DAC8 regulations relating to existing instruments of administrative assistance will be implemented by amending the EU Administrative Assistance Act (Art. 2), the Financial Account Information Exchange Act (Art. 3), the Tax Code (Art. 4; including, among other things, an amendment to Section 138f of the Tax Code with regard to the information contained in the data set) and the Platform Tax Transparency Act (Article 5). In addition, the

In accordance with the requirement that the DAC8 Directive be transposed into national law by December 31, 2025, the legislative amendments are scheduled to enter into force on January 1, 2026.

Financial Administration Act (Article 6) is being amended to take account of the expansion of the tasks of the Federal Central Tax Office as a result of the KStTG.

In accordance with the requirement that the DAC8 Directive be transposed into national law by December 31, 2025, the legislative amendments are scheduled to enter into force on January 1, 2026.

EU: ATAD3 and Transfer Pricing Directive Postponed

In June, the Council of the EU (ECOFIN – Economy and Finance) agreed not to further pursue the Unshell directive proposal (ATAD3) on the abusive use of letterbox companies.

In its semi-annual report on tax issues, ECOFIN justified this decision by stating that the resulting administrative burden would be too high, that there were overlaps between the ATAD3 drafts and DAC6, and that multiple reporting obligations could not be ruled out. Overall, the Council now believes that the objectives of the Unshell proposal can also be achieved by clarifying or amending the DAC6 hallmarks. However, the report does not specify any concrete proposals for amendments. It remains to be seen whether, when, and how the Commission will take up the Council's position.

In addition, the Council decided not to pursue the draft transfer pricing directive presented in September 2023 due to a lack of support from member states. Instead, the introduction of a transfer pricing platform to be set up by the Commission will be examined. 

The authors can be contacted at:
jann.jetter@morganlewis.com

Tax Assessments In **DIGITAL ERA-EVOLUTION** Of Administration For The New Age

by Gagan Kumar
Krishnomics Legal

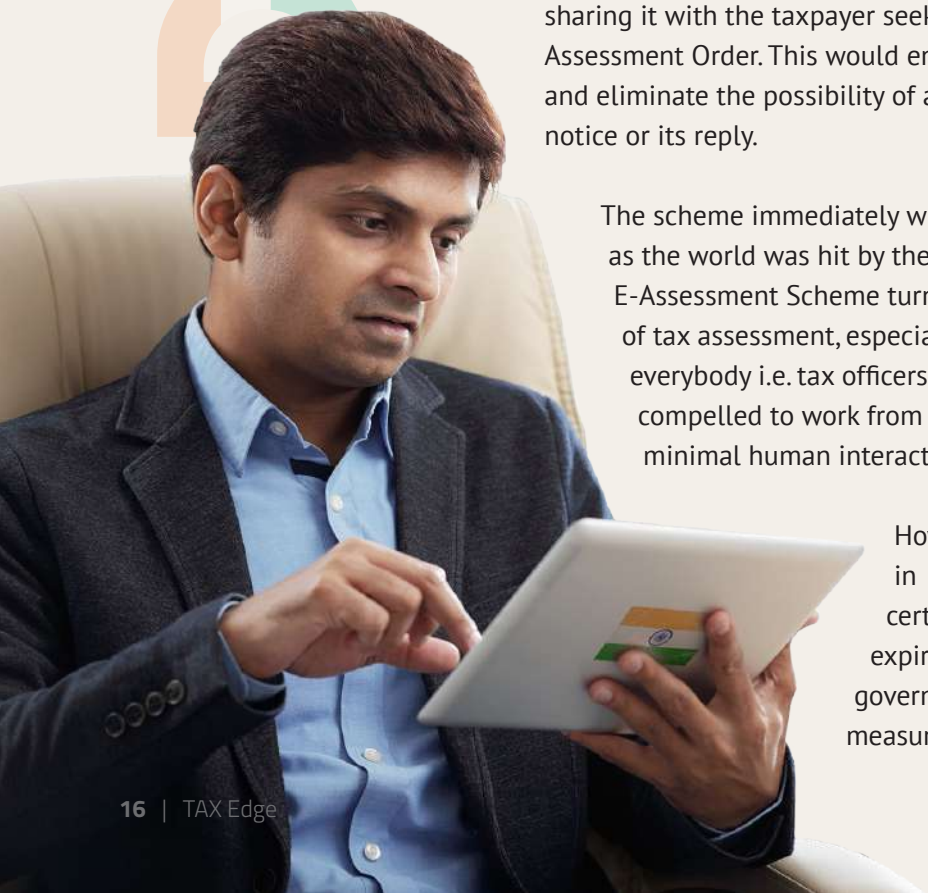


On 5 July 2019, the then Finance Minister presented first budget of the second term of the NDA government. Amongst other things, this was an epochal moment for the tax administration in India. For decades there were complaints of high handedness and inconsistency in the Income Tax Assessments. Since the first term of the NDA government, the emphasis has been given to make government departments efficient particularly by adopting digital technology. Following the same theme, the Finance Minister introduced *E-Assessment Scheme*.

The necessary amendments were introduced during budget presentations before Parliament. The detailed scheme later followed by notification dated September 12, 2019 calling it as 'E-Assessment Scheme 2019'. The scheme had been designed in a manner wherein the taxpayer would receive questionnaire via email/on the Income Tax Portal and he shall upload his replies on the portal itself. The key feature was that the taxpayer would not know who the Assessing Officer dealing with the assessment is. The scheme also provided for in-built safeguard wherein the Draft Assessment Order would be reviewed internally by a separate team before sharing it with the taxpayer seeking his response on the Draft Assessment Order. This would ensure complete transparency and eliminate the possibility of any error or missing on any notice or its reply.

The scheme immediately witnessed turbulent weather as the world was hit by the Covid pandemic. Yet, the E-Assessment Scheme turned out to be an efficient way of tax assessment, especially during the time when everybody i.e. tax officers as well as taxpayers were compelled to work from home with negligible or minimal human interaction.

However, the pandemic threw in another challenge as certain limitations were set to expire during the pandemic. The government took an extraordinary measure brought in the *Taxation and*



Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA). Around the same time, the Income Tax Act was again amended and the E-Assessment Scheme, which initially came through a notification only for original assessment was codified in the law itself by way of section 144B of the Act with effect from 1st April 2021. Along with this, the manner of reopening of past Tax Assessment was completely changed. It is to be noted that TOLA generally extended the limitation period for various provisions until 30 June 2021. The scope of faceless assessment was further expanded to include re-assessment proceedings with effect from 1st April 2022. It is pertinent to note that under the new scheme of reassessment it is provided that a preliminary notice would be issued to the taxpayer, confronting him with the information based on which tax officer thinks that the case must be reopened. It provided that in case the taxpayer gives satisfactory reply, the case shall not be reopened, otherwise the tax officer would proceed by issuing a notice under section 148 of the Act thereby reopening the tax assessment.

It is pertinent to note that under the new scheme of reassessment it is provided that a preliminary notice would be issued to the taxpayer confronting him with the information based on which tax officer thinks that the case must be reopened. It provided that in case the taxpayer gives satisfactory reply, the case shall not be reopened...

The first round of litigation arose as many of the tax cases were reopened after 1st April 2021 albeit following the old provisions relating to reassessments. Such notices seeking to reopen old cases were challenged on the ground that any reopening after 1st April 2021 had to be done following the new law and the proceedings initiated following the old law were *void-ab-initio*. Several High Courts¹ accepted the contention of the taxpayer and declared all such notices as invalid. The matter reached Supreme Court² and looking at the enormity of the issue, the Supreme Court invoked its extraordinary power under Article 142³ of the Constitution and held that all such notices issued under the old law may be considered as preliminary notices issued under the new law *i.e.*, section 148A of the Act and thereafter follow the procedure as per the new law.

1 Ashok Kumar Agarwal v. Union of India (2022) 2 All LJ 580
Bpip Infra Pvt. Ltd. Vs. Income Tax Officer & Others (2022) 440 ITR 300
Mon Mohan Kohli Vs. Assistant Commissioner of Income Tax (2022) 441 ITR 207
Bagaria Properties & Investment Pvt. Ltd. Vs. UOI (2022) 441 ITR 359
Manoj Jain Vs. Union of India (2022) 441 ITR 418
Sudesh Taneja v. Income Tax Officer (2022) 442 ITR 289
Vellore Institute of Technology Vs. CBDT (2022) 442 ITR 233
Tata Communications Transformation Services Vs. ACIT (2022) 443 ITR 49

2 Union of India & Ors. v. Ashish Agarwal (2022) 444 ITR 1

3 Article 142 of the Indian Constitution gives the Supreme Court the power to pass any orders or decrees it deems necessary to achieve complete justice in a pending matter.

After the Supreme Court delivered its judgment in the *Ashish Agrawal* case, one issue was still left unaddressed as to what should be the period which shall be considered to be excluded for the purpose of reckoning the limitation period. This was later clarified by another judgment of Supreme Court in the case of *Union of India and Ors. V. Rajeev Bansal*⁴ wherein the court said that starting from the date of deemed preliminary notice (as per the Ashish Agrawal judgment) and ending on the time period allowed to the taxpayer to respond to such notice, the said period shall be considered as period of Stay of operation of the first notice and hence shall not be counted while determining the limitation period.

Dealing with another issue, it was so held by Delhi High Court that in case the tax officer issues a fresh notice despite the earlier notice being preserved by the judgment of Hon'ble Supreme Court in the case of Ashish Agrawal, then it may be viewed as a withdrawal of the first notice, and if the fresh notice is not within the limitation prescribed then the proceedings so initiated shall be considered as *void ab initio*.⁵

Another controversy, which is still plaguing the E-Assessment Scheme, is whether the notice for re-assessment could be issued by the Jurisdictional Assessing Officer (JAO) or Assessing Officer under the Faceless regime (FAO). This issue first came before Hon'ble Delhi High Court in the case of *Sanjay Gandhi Memorial Trust v. Commissioner of Income-tax (Exemption)*⁶,

4 *Union of India and others v. Rajeev Bansal* 2024 SCC OnLine SC 2693

5 *Genpact India Pvt. Ltd. v. Assistant Commissioner of Income Tax*, 2024 SCC OnLine Del 6329



wherein the High Court held that JAO has a concurrent jurisdiction along with FAO. The court relied upon the notification dated 13 August 2020 which expressly so provided. It may be noted that this case was not of re-assessment but regular assessment. It may, however, be noted that the notice in question was issued under the E-Assessment Scheme and not section 144B of the Act. The difference is important to be noted as section 144B starts with a *non-obstante* clause. Further the notification of 13 August 2020 was issued in the context on E-Assessment scheme 2019. Subsequently, the Bombay High Court⁷ has taken the view that after the introduction of section 144B, JAO is precluded from issuing any notice for reopening the tax assessment. While this issue is currently contested by the tax department before the Supreme Court, in the meantime the Delhi High Court in its judgment⁸ has taken a contrary view and disagreed with the judgment of Bombay high court on two counts – (i) the section 144B is a procedural section and not a substantive law and (ii) the Bombay High Court did not consider the notification dated 13 August 2020.

The issue, therefore, currently remains open for debate and only the Supreme Court would be able to decide whether after the introduction of section 144B JAO has the power to issue notice to reopen the tax assessment.

In the nutshell, the digitization of tax administration is yet to mature. However, considering the increased cost of tax administration and also bearing in mind that India is aiming to be third largest economy, it is only a matter of time that tax administration would have to work in a digital era and use technology not only for its own benefit but also for ensuring ease of doing business in India. 

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6 Sanjay Gandhi Memorial Trust v. Commissioner of Income-tax (Exemption) (2023) 3 HCC (Del) 396

7 Hexaware Technologies Ltd. v. Assistant Commissioner of Income-tax [2024] 464 ITR 430

8 T.K.S. Builders (P) Ltd. v. Income-tax Officer 2024 SCC OnLine Del 7508



Korean

National Assembly Enacts 2024 Tax Law Amendments

by Choi Yong Whan
Yulchon

The 2024 tax law amendment bills were officially promulgated through publication in the Official Gazette on December 31, 2024, after being approved by the National Assembly on December 10, 2024.

Below is a summary of the key changes that relate to international tax or may have an impact on multinational enterprises (“MNEs”) with investments or operations in Korea.

Higher integrated investment tax credit for incremental investment (Act on Restriction of Special Taxation (often referred to as the Tax Preferential Control Act (“TPCA”)) §24(1))

For investment made in tax years beginning on or after January 1, 2025, the additional tax credit for incremental investment will be permanently increased to 10% (to remain the same as the additional tax credit temporarily granted in 2023).

Table 1: Credit Rates for Integrated Investment Tax Credit

Technology	Base Tax Credit for Current Period Investment			Additional Tax Credit for Incremental Investment
	Large Companies	Mid-Sized Companies	Small or Med-Sized Companies	
General Technology	1%	5%	10%	3→10%
New Growth / Original Technology	3%	6%	12%	
National Strategic Technology	15%		25%	4→10%

Expanding the scope of costs eligible for R&D tax credit (TPCA Presidential Decree (“PD”) §9, Annex 6)

Compared to general technology, higher R&D tax credits are available for national strategic technology and new growth / original technology (collectively, “national strategic technology”).

Going forward, if a R&D staff primarily performs R&D activities in relation to national strategic technology, the employer can apply the higher R&D credit rates available for national strategic technology in respect of the relevant portion of the staff’s employment costs (prorated based on the time spent on national strategic technology-related activities).

Abolishing financial investment income tax (Personal Income Tax Act (“PITA”) Chapter 2-2, PTCA §14, etc.)

In 2020, the Korean Government announced that it will introduce financial investment income tax in 2023. However, the Government subsequently delayed the implementation to 2025 and ultimately repealed the financial investment income tax as part of the 2024 Tax Law Amendment.

Financial investment income tax was supposed to apply on gains realized from the sale, redemption, etc. of financial investment products such as shares, bonds, funds and derivatives. Under the financial investment income tax regime, capital gains from the sale of Korean-listed shares and bonds, which are currently non-taxable for investors other than the largest shareholders, were to become taxable.

Streamlining the criteria for denying excessive interest deduction (Law for the Co-ordination of International Tax Affairs (“LCITA”) PD §55)

Under Korean tax law, if a Korean company’s net interest expense relating to foreign related party debt exceeds a certain threshold (30% of earnings before net interest and depreciation expenses), the excess net interest expense is treated as non-deductible for tax purposes.

However, this interest deduction limitation rule does not apply to Korean companies operating in the financial and insurance industry as companies in this industry are highly leveraged due to industry characteristics. In the Korean Standard Industrial Classification (“KSIC”) codes, the financial and insurance industry includes “holding companies (industry code 64992)”. Although general holding companies fall under the financial and insurance industry in the KSIC codes, they are not typically highly leveraged.

Going forward, general holding companies will be subject to the interest deduction limitation rule despite the fact that they fall under the financial and insurance industry in the KSIC codes. The interest deduction limitation rule will apply to interest incurred by general holding companies in tax years beginning on or after January 1, 2025 (i.e. their excess net interest expense will be treated as non-deductible for tax purposes).

Simplifying the tax exemption application and tax withholding procedures for investments via overseas investment vehicles (“OIVs”) (PITA §119-3, PITA PD §179-4, Corporate Income Tax Act (“CITA”) §93-3, CITA PD §132-4)

Under Korean tax law, if a Korean company’s net interest expense relating to foreign related party debt exceeds a certain threshold, the excess net interest expense is treated as non-deductible for tax purposes.



Under Korean tax law, non-resident individuals and foreign corporations are exempt from Korean tax on the interest and capital gains realized from Korean government bonds and Monetary Stabilization Bonds (collectively, “**Government Bonds**”).

Previously, non-resident individuals and foreign corporations investing in Government Bonds via OIVs could only apply this special tax exemption if each beneficial owner (i.e. the upper-level investors) submits a tax exemption application and supporting documents such as a certificate of tax residence.

The 2024 Tax Law Amendment introduced a special rule which deems OIVs as the beneficial owner of the interest and capital gains realized from Government Bonds in cases where non-resident individuals or foreign corporations invest in Government Bonds via OIVs (including both publicly offered and privately offered vehicles). Therefore, the interest and capital gains these OIVs realize from Government Bonds will be exempt from taxation in Korea without having to verify the upper-level investors. However, if any of the upper-level investors are Korean resident individuals or Korean corporations, they must directly report and pay tax on the income they receive as no tax is withheld at the time of payment of income.

The amendment will be effective for payments made on or after January 1, 2025.

Allowing non-resident individuals / foreign corporations to directly submit tax refund applications (PITA §119-3(6) and (7), CITA §93-3(6) and (7), PITA PD §179-4(7) and (8), CITA PD §132-4(7) and (8) newly introduced)

From January 1, 2025, non-resident individuals and foreign corporations can directly submit tax refund applications.

Going forward, if a non-resident individual or foreign corporation cannot apply the tax exemption for the interest or capital gains realized from Government Bonds at the time of receipt of the income, the non-resident individual

/ foreign corporation, the income payer or a qualified foreign financial institution can directly submit a tax refund application and seek a refund of the tax paid within 5 years from the 11th day of the month following the month of tax withholding.

Allowing tax refund applications for underreporting of tax credit (Framework Act on National Taxes §45-2(1))

Under Article 45-2(1) of the Framework Act on National Taxes, taxpayers can submit a tax refund application if the taxpayer over-reported the tax base and tax liability, or under-reported the tax loss or refundable tax amount. Going forward, taxpayers can also submit tax refund applications for under-reporting of applicable tax credit. Taxpayers will be able to request tax refunds in respect of tax credits even if their request does not change the amount of tax payable for the relevant year.

In addition, the 2024 Tax Law Amendment introduces a special transitional provision which temporarily allows taxpayers to submit tax refund applications for carried forward tax credits that arose in tax years for which the normal tax refund request period (i.e. 5 years) has not already passed. Taxpayers wishing to apply this special transitional provision must file tax refund applications by December 31, 2025. It is also important to note that tax credits can only be carried forward for 10 years. This means that only the tax credits that arose within 10 years from the year of utilization will have the actual effect of reducing tax liability.

Requiring submission of treaty exemption applications and payment statements for Korean-sourced personal service income (PITA §156-2, PITA PD §216-2, CITA §98-4, CITA PD §162-2)

Under Korean tax law, if a non-resident individual or foreign corporation wants to apply a tax exemption in respect of their Korean-sourced income under a tax treaty, the non-resident individual or foreign corporation must submit an Application for Non-Taxation / Tax Exemption, together with



The 2024 Tax Law Amendment introduces a special transitional provision which temporarily allows taxpayers to submit tax refund applications for carried forward tax credits that arose in tax years for which the normal tax refund request period (i.e. 5 years) has not already passed.

relevant supporting documents (documents to substantiate the beneficial ownership for the Korean-sourced income received) to the income payer. However, for Korean-sourced business profits and personal service income, an exemption is available and non-resident individuals and foreign corporations can apply a tax treaty exemption without having to submit these documents.

Going forward, this document submission exemption for personal service income will not be available. The 2024 Tax Law Amendment requires non-resident individuals and foreign corporations to submit an Application for Non-Taxation / Tax Exemption and relevant supporting documents to the income payer to apply a tax exemption in respect of Korean-sourced personal service income under a tax treaty.

In addition, for Korean-sourced personal service income derived by non-resident individuals and foreign corporations, withholding agents (i.e. income payers) currently do not have an obligation to submit payment statements. However, going forward, withholding agents of Korean-sourced personal service income will be required to submit relevant payment statements.

The amendments will be effective for payments made on or after January 1, 2026.

Streamlining the procedure for tax refund applications relating to taxpayers' transfer pricing position (LCITA §6)

Previously, a taxpayer submitting a tax refund application in relation to its transfer pricing position (i.e. seeking a tax refund on the basis that the transfer pricing position taken in the original tax return results a higher tax liability than that based on an arm's length price) was required to submit a Transaction Price Adjustment Report. Due to the 2024 Tax Law Amendment, such taxpayer will also be required to submit 'documents substantiating the arm's length price'. Details about 'documents substantiating the arm's length price' will be prescribed by the LCITA PD and ER.

In addition, the 2024 Tax Law Amendment extends the processing time for tax refund applications relating to taxpayers' transfer pricing position (currently 2 months from the date of receipt of the tax refund application) to 6 months from the date of receipt of the tax refund application.

The 2024 Tax Law Amendment will also introduce a new provision to allow the Korean tax authority to request supplementation of documents within a 30-day period if they determine that the documents initially submitted are insufficient. The time taken to request and provide additional documents will be excluded from the tax refund application processing time.

The amendments will be effective for tax refund applications filed on or after January 1, 2025.

Removing the deadline for requiring submission or supplementation of documents relating to foreign subsidiaries (LCITA §58)

Previously, if a taxpayer fails to submit documents (or submits false documents) regarding its foreign subsidiaries, etc., the Korean tax authority could request submission or supplementation of documents within 2 years from the day following the statutory due date for submission of relevant documents. The 2024 Tax Law Amendment removes this 2-year period, and enables the tax authority to request submission or supplementation of documents in relation to taxpayers' foreign subsidiaries at any time (based on our understanding, this amendment should also be subject to the statute of limitations for tax inquiry, etc. (e.g. currently 5 years)).

The amendment will be effective for document submission / supplementation requests made on or after January 1, 2025. 



The 2024 Tax Law Amendment will also introduce a new provision to allow the Korean tax authority to request supplementation of documents within a 30-day period if they determine that the documents initially submitted are insufficient.

The authors can be contacted at:
ywchoi@yulchon.com

Promotion of Inclusive and Effective International Tax Co-operation at the **United Nations**

by **S. Saravana Kumar & Amira Azhar**
Rosli Dahlan Saravana Partnership (RDS)

International taxation is a complex and rapidly evolving field, with significant implications for both developed and developing countries alike. As countries become increasingly interconnected and globalised, the need for cooperation and coordination in taxation has become more pressing than ever before. For the past century, international tax cooperation has focused on reducing the negative effects of individual countries' tax policy has on productive cross-border trade and investment, through the implementation of bilateral tax treaties. In recent years, the United Nations has played an increasingly important role in promoting inclusive and effective international tax cooperation, recognising the importance of international tax policy in achieving sustainable development and reducing inequality.



In this context, the Base Erosion and Profit Shifting (BEPS) Project by the Organization for Economic Cooperation and Development (OECD) has emerged as a crucial initiative aimed at addressing these issues and promoting greater transparency and cooperation in international tax matters. In this article, we highlight the urgent need for inclusive and effective international tax cooperation and call on the United Nations to play a key role in implementing the BEPS Project. By taking concrete steps to promote greater coordination and collaboration among countries, we can build a more equitable and sustainable global tax system that benefits all nations and contributes to the achievement of the UN's sustainable development goals.

Recently, the International Bar Association (IBA) Taxes Committee, which has 1,037 members from around the world, submitted their input on tax issues addressed in the United Nations (UN) General Assembly Resolution 77/244 (the Resolution), titled "Promotion of inclusive and effective tax cooperation at the United Nations." RDS Partnership has been invited as one of the representatives from Malaysia to participate in this project.

The IBA Taxes Committee's input primarily focuses on the role that the UN may play in helping to implement the OECD's Base Erosion and Profit Shifting (BEPS) project, particularly by ensuring that the project adequately protects the interests of developing nations and promotes sustainable development.

In line with the Resolution, this article primarily focuses on the role that the UN may play in helping to implement the OECD's Base Erosion and Profit Shifting (BEPS) project, particularly by ensuring that the project adequately protects the interests of developing nations and promotes sustainable development.

In essence, the Resolution noted the harmful effects of aggressive tax avoidance and evasion; encouraged a "scaling up" of tax cooperation (i.e., by adopting policies that are universal in approach and scope and take into account the different needs and capacities of all countries); and committed

countries to discuss the development of an international tax cooperation framework that is developed through a UN intergovernmental process as international tax policies should ensure taxes are paid where economic activity occurs

The BEPS Project

There are two BEPS 2.0 pillars, which together comprise the global action plan:

BEPS 2.0 Pillar One

Pillar One involves a new taxation methodology aimed at digitised companies and consumer-serving organisations that trade or communicate with customers through a digital format. Revenues generated from consumers in one country or from consumer data extracted from that country will be subject to tax regardless of whether the organisation has a physical presence in the jurisdiction.

In summary, Pillar One means that:

- Taxing rights will belong to the country where the company's customer is located.
- Organisations with revenues of €20 billion or more and a profit margin of 10% or greater will be subject to the new rules.
- Over time, the threshold for inclusion will drop to €10 billion in annual revenue.

Profit allocations between countries will rely on a formulaic approach, a significant change from the current transfer pricing regulations.

BEPS 2.0 Pillar Two

Pillar Two introduces global tax reforms that aim to end the competition between countries to offer the lowest possible corporation tax rates to attract foreign investment.

In essence, the Resolution noted the harmful effects of aggressive tax avoidance and evasion; encouraged a “scaling up” of tax cooperation...

The primary factor in Pillar Two is a set of rules called GloBE (Global anti-Base Erosion). These rules mean that the largest multinationals, with a revenue of €750 million or more per annum, should pay a minimum effective tax of 15% in every jurisdiction in which they trade. Countries will be permitted to apply top-up tax rates where a multinational in their jurisdiction is taxed below the minimum threshold.

There are some exclusions to GloBE, for:

- Countries where a multinational group has a revenue of below €10 million and profit of under €1 million (according to the GloBE calculations).
- Groups beginning an international expansion, with less than €50 million in tangible assets held overseas and a presence in no more than five additional jurisdictions.
- Pension funds, governmental and intergovernmental organisations and investment entities.

Along with additional parent company tax charges for low-taxed foreign revenue, Pillar Two allows for taxation at source for low-tax paying organisations.

Advancing and Protecting the BEPS Effort

The BEPS project has progressed rapidly. Many such changes are positive developments and the IBA Taxes Committee supports the OECD's work in this area. However, the interests of many jurisdictions

– including developing countries – are not adequately represented in the current package of GloBE reforms that are set to be implemented. In contrast to the UN, the OECD's membership and mandate are more limited, and the OECD is perceived as focusing on the interests of large, developed countries. Only the GloBE rules have made progress and Pillar 1 faces considerable practical obstacles to adoption, and their rules remain underdeveloped.

The implementation of the BEPS project requires an active approach by all countries. The UN can play a crucial role in securing policy results that serve the interests of all, including developing countries. Otherwise, there is a risk that developing countries could resort to financing alternatives that may enable tax avoidance and evasion, including those that the UN has identified as undermining domestic resource mobilization in developing countries.

While the OECD has been instrumental in developing the BEPS framework more generally, the UN may be better equipped than the OECD to address the needs and concerns of the global community as a whole (including developing countries) as that framework is implemented into law – especially given its broad membership and important focus on developing countries and sustainable development.

The Inclusion Of Developing Countries

The UN could facilitate the negotiation of a multilateral instrument that would aid in the development and easier adoption of



the BEPS rules, including portions of the model rules that commentators have noted are controversial and may lead to significant legal disputes. By doing so, the UN could promote the interests of developing countries.

Where developing countries may lack the capacity to fully participate in the implementation of Pillar 1, the UN can provide technical assistance and capacity building support by advocating for the inclusion of developing countries in the negotiation and implementation of Pillar 1.

The UN Committee On Digital Taxation

The UN Committee on Digital Taxation was proposed in a report by the UN Secretary- General's High-Level Panel on International Financial Accountability, Transparency and

Integrity for Achieving the 2030 Agenda (FACTI Panel) to develop a global framework for digital taxation such that best practices and coordinate efforts to implement the new rules can be shared.

The proposed committee would have a broad mandate to consider issues related to digital taxation, including the allocation of taxing rights in the digital economy, the tax treatment of digital transactions, and the development of a global minimum tax rate while taking into consideration the needs of developing countries.

The Drafting of A Model Convention On Digital Taxation

The UN could facilitate the drafting of a model convention on digital taxation that would form a standardized template establishing a set of rules for the allocation of taxing rights in the digital economy to provide guidance on the tax treatment of digital transactions. This could be useful for negotiating bilateral agreements related to digital taxation.

The UN is well-positioned to lead this process since the UN Model Convention on Double Taxation has been in use for over 40 years and provides a common framework for the negotiation of bilateral tax treaties between countries.

Harmonising Bilateral investment treaties (BITs) and Stabilisation Mechanisms with Pillar 2

Developing countries use various fiscal stabilization mechanisms and investor protections included in BITs to encourage foreign direct investment. BITs provide foreign direct investors with various protections with respect to the host country's law. A developing country seeking to implement a Qualified Domestic Minimum Top-Up Tax (QDMTT) or other aspects of Pillar 2 will expose itself to investor-state claims that the change violates one or more of the protections provided by a BIT.

Under a QDMTT, a jurisdiction in which a low-tax entity is resident gains the right to collect any top-up tax calculated with respect to that entity, before other jurisdictions may do so.

However, BITs and fiscal stabilization mechanisms present challenging issues for developing countries, as investors may argue that the enactment of a QDMTT or other Pillar 2 legislation violates investor protections. Accordingly, the IBA Taxes Committee recommends that the UN considers a declaration that would include the following:

- a. A statement of the UN position that the enactment of a QDMTT should not violate a fiscal stabilization

agreement, as any profits taxed under a QDMTT would otherwise be taxed by another country under the other Pillar 2 operating rules, and thus it is arguable that there would be no economic damages to support a claim under domestic legislation or a fiscal stabilization agreement with respect to the imposition of a QDMTT;

- b. A statement encouraging foreign direct investors to waive certain protections under a fiscal stabilization mechanism to the extent the amount of tax paid under a QDMTT would otherwise be paid to another jurisdiction under the Pillar 2 rules; and
- c. If a developing country is considering future fiscal stabilization, a statement that the UN encourages developing countries to exclude Pillar 2 taxes from future fiscal stabilization mechanisms.

The UN is well-positioned to lead this process since the UN Model Convention on Double Taxation has been in use for over 40 years and provides a common framework for the negotiation of bilateral tax treaties between countries.

Implementation of Effective transfer pricing documentation requirements

Transfer pricing analysis requires taxpayers and/or tax administrations to identify and understand the key features of a transaction between related parties, and analyse the functions performed, risks assumed, and assets used by those parties in order to determine and apply the most appropriate transfer pricing method. This analysis involves a complex examination of a large amount of information.

Thus, the introduction of effective transfer pricing documentation requirements is a critical component of compliance management to address transfer mispricing, as access to such information allows tax administrations to target taxpayers and transactions that pose the greatest risk of base erosion and profit shifting.

The IBA Taxes Committee's suggestion is to strengthen the effectiveness of transfer pricing documentation requirements in developing countries by relying on the standards set forth by the UN Practical Manual on Transfer Pricing for

Developing Countries (2021, chapter 12 “Documentation”), recently updated with the outcome of the Action 13 of the OECD/G20 BEPS initiative, simplifying the approach as follows:

- a. providing that not all transactions that occur between associated enterprises are sufficiently material to require full documentation in the transfer pricing documentation;
- b. examining these guidelines from the perspective of developing countries, bearing in mind the administrative constraints that may exist in the tax administration and the MNE; and
- c. considering that the obligation for transfer pricing documentation in developing countries shall require modernization of tax environment and no marginal compliance burden, introduction of ad-hoc tax incentives for compliant companies.

Increasing Tax Certainty Through A UN Tax Tribunal

Establishing a global tribunal by the U.N. would contribute to international tax cooperation.

A cross-border ruling procedure that clarifies the legal situation and a fast dispute resolution mechanism if countries do not agree on how to tax certain situations could be the key to promoting the payment of taxes, as this would provide certainty for businesses.

The establishment of an International Tax Tribunal by the United Nations could provide



a fair and impartial resolution mechanism for international tax law questions or disputes. The judges of the arbitration court called upon could be composed of five distinguished tax experts, with two nominated by the highest tax courts of the countries involved and three nominated by the permanent International Tax Tribunal where by at least one of the three is from an OECD country and one is from a country that is not a member of the OECD.

In the context of a joint ruling to be issued by two (or more) countries, the arbitration shall decide on the question of the ruling.

Conclusion

The IBA Taxes Committee is of the view that the United Nations - as a truly global organisation with significant influence in international affairs - has an important role to play in this process, as this will encourage compliance and cooperation among member states. The UN's widespread membership and global reach provide a platform for promoting compliance and cooperation among member states. By

leveraging its diplomatic channels and convening power, the UN can encourage countries to adhere to international tax standards and foster collaboration between tax authorities.

Through the UN Committee of Experts on International Cooperation in Tax Matters (the “Tax Committee”), the UN has a broad tax mandate to promote cooperation between tax authorities, with special attention to the needs of developing countries and countries with economies in transition. This emphasis on inclusivity ensures that the interests and concerns of a wide range of nations are taken into account when formulating global tax policies and guidelines.

Given the UN’s important broader mandate and global credibility, the Tax Committee is essential to ongoing multilateral efforts to improve the global tax system and implement the OECD BEPS project. Most importantly, the UN serves as a trusted platform for dialogue and consensus-building, providing legitimacy and global recognition to initiatives aimed at improving the global tax system. The Tax Committee’s engagement in implementing the OECD BEPS project demonstrates the commitment to addressing the challenges of base erosion and profit shifting, which impact the fairness and integrity of international taxation.

Clearly, the UN and its Tax Committee play a vital role in the continuous improvement of the global tax system. By leveraging its global influence, the UN can foster compliance and cooperation among member states. Meanwhile, the Tax Committee’s broad mandate and emphasis on inclusivity ensure that the needs of developing countries and those with economies in transition are adequately addressed. With the UN’s overarching mandate and global credibility, the Tax Committee’s involvement becomes essential for advancing the global tax system and effectively implementing initiatives like the OECD BEPS project. 

The authors can be contacted at:

sara@rdslawpartners.com

amira@rdslawpartners.com



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Malaysia's Digital Transformation of Tax Administration: E-Invoicing

by **Nicholas Mark Pereira**
Juen, Jeat, Nic & Nair

As a result of technological developments and the growth of the digital economy, tax authorities globally are looking at modernising or revamping their tax administration systems. The aim of the digital transformation of tax administration across the globe is to make taxation easier and less costly for taxpayers.

E-Invoicing

From the Malaysian perspective, the main change that is currently being implemented in stages is the e-invoicing regime administered by the Inland Revenue Board of Malaysia (“**IRBM**”). Come 1st July 2026, all taxpayers (unless exempted, e.g. individuals not conducting business and taxpayers with an annual turnover of less than RM500,000) will be part of IRBM's e-invoicing regime.



This was legislated through the enactment of Section 82C of the Income Tax Act 1967 (“ITA”) which requires every taxpayer, subject to prescribed conditions and specifications, to issue an electronic invoice (i.e. e-invoice) for each transaction in respect of any goods sold or services performed by that taxpayer. Any e-invoice issued must be transmitted electronically to, and validated by, IRBM.

Failure to comply with Section 82C of the ITA is an offence under Section 120 of the ITA, punishable with a fine between RM 200 to RM 20,000 or imprisonment for a term not exceeding 6 months or to both. As the obligation to issue an e-invoice is for each transaction, a taxpayer who fails to issue e-invoices for a period of time would be technically committing separate offences for each transaction in respect of which an e-invoice was not issued.

The benefits of the e-invoicing regime, according to IRBM, is that it would not only provide a seamless experience to taxpayers but would also improve business efficiency and increase tax compliance. In this regard, IRBM’s E-Invoice Guideline (as at 4 October 2024) states that the overall benefits include the following:

- “1. Unified invoicing process through the streamlining of transaction document creation, and submission of data electronically to IRBM. The automation of data entry for transactions reduces manual efforts and human errors;
2. Facilitate tax return filing through seamless system integration for efficient and accurate tax reporting;
3. For larger businesses, the adoption of e-Invoice enables the streamlining of operations, resulting enhanced efficiency and significant time as well as cost savings through automated processes, seamless data integration, and improved invoice management; and
4. For micro, small and medium-sized enterprises (MSMEs), the phased implementation offers a progressive and manageable transition to e-Invoice, allowing MSMEs to align their financial reporting and processes to be digitalised with industry standards, ensuring that MSMEs adapt over a longer period and mitigating potential disruptions.”

Perhaps the greatest benefit of the e-invoicing regime, at least to IRBM and the country in terms of tax collections, is that it would reduce tax leakages. IRBM would now have real-time transactional data as opposed to relying on taxpayers to file yearly tax returns under the self-assessment system. The information collected from one taxpayer can be cross-checked with what has been declared by another taxpayer. IRBM can also compare data with other sources, e.g. instruments submitted for adjudication for stamp duty purposes and real property gains tax returns. The law allows for the sharing of information between IRMB and the Royal Malaysian Customs Department (“RMCD”) so IRBM can also compare with data and information that RMCD obtains from a taxpayer from sales tax & service tax returns and import & export declarations. Similarly, RMCD can cross check returns & declarations filed with RMCD against information obtained by IRBM from e-invoicing.

Perhaps the biggest benefit of the e-invoicing regime, at least to IRBM and the country in terms of tax collections, is that it would reduce tax leakages.



IRBM has to be commended for their efforts in this monumental task of implementing the e-invoicing regime and in providing assistance to taxpayers in terms of educating taxpayers and providing administrative concessions.

However, as one can expect, there are still challenges being faced by taxpayers. The following are some of the challenges:

- The cost of purchasing and maintaining the right software and systems to cater for e-invoicing. Some are too entrenched in manual processes that it are either too expensive or too difficult to migrate to digital and automated systems.
- Keeping up with the latest requirements. Invoicing is now no longer a “Finance Department” problem; other departments like IT and sales may need to be involved. Taxpayers will need to educate all the relevant personnel. The guidelines are constantly being updated and taxpayers need to ensure all those involved are being kept up to date of the latest requirements.
- Billing practices have to be reviewed. All e-invoices issued will be used as proof of income for the supplier and proof of expense for the purchaser. Current billing practices have to be reviewed and potentially changed to cater for this. One example of this is the current practice of certain car sales agents providing inflated invoices to assist a customer in getting a ‘full loan’ from the financier, as reported by New

Straits Times in its article “Car buyers may struggle for “full loan” with e-invoicing in place: TA Securities”.¹

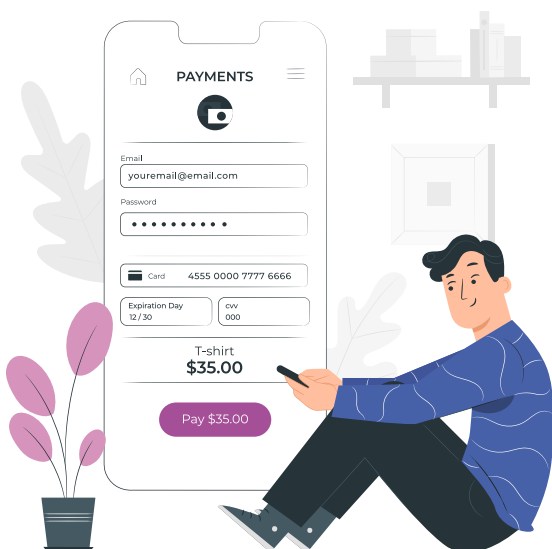
The author hopes that IRBM’s friendly and forgiving approach continues for some time so that taxpayers are not penalised for unintentional non-compliance when they are still getting used to the e-invoicing regime.

What’s next?

As it stands, the ITA does not specifically provide that a tax deduction would be disallowed if the taxpayer does not have a corresponding e-invoice as proof of the expense incurred. One would expect that the ITA will be amended soon to provide for this expressly.

Given that IRBM would have real time transactional data at an unprecedented scale as a result of the e-invoicing regime, and perhaps IRBM would even have more data about taxpayers than the taxpayer themselves, one would also expect that the next step for IRBM would be to work towards automated pre-filled income tax returns, where certain fields in the returns would be automatically populated based on data available to IRBM. RMCD may also seek to implement automated pre-filled sales tax & service tax returns, in a similar manner.

¹ <https://www.nst.com.my/business/corporate/2024/07/1078602/car-buyers-may-struggle-full-loan-e-invoicing-place-ta-securities>



Whilst the digitalisation of the Malaysian tax administration system to enhance tax collections and reduce tax leakage appears to be the Government’s focus (as it should be), it is hoped that the Government would also look into updating and revamping the current tax appeal system.

The Malaysian tax system adopts a “pay first, appeal later” system under which taxpayers are supposed to pay all taxes and penalties assessed first notwithstanding any appeal filed against the assessment. However, appeals before the specialised tax tribunals (i.e. the Special

Commissioners of Income Tax and the Customs Appeal Tribunal) take a long time. Additionally, the tax tribunals do not have the power to order a stay on the payment of taxes pending the determination of the taxpayer's appeal.

Thus, if a taxpayer is eventually successful in its challenge after all avenues of appeal have been exhausted, the taxpayer would have been “out of pocket” for a number of years; in practice, the entire process could take at least 3 years. The taxpayer would be entitled to a refund of the money but may not be adequately compensated for the loss of the use of the money from the date of payment up to the date of refund.

In the 2020 Budget Speech, the then Finance Minister announced a plan to merge the Special Commissioners of Income Tax and the Customs Appeal Tribunal into the Tax Appeal Tribunal (“**TAT**”). It was said that the aim of the merger was to “*improve efficiency of taxpayer appeals*”. However, to date, the merger has not taken place.

Voluntary tax compliance would be increased significantly if taxpayers have confidence in the tax authorities and the tax system. Having an efficient, speedy and fair tax appeal system would go a long way to boost confidence. The plan to establish the TAT should therefore be revisited and ought to be prioritised. Some of the other things that ought to be considered in the process are:

- whether the tax tribunals should be given the power to order a stay of payment of taxes pending the determination of the appeal where there are special circumstances justifying the stay;
- whether the tax tribunals should be given the power to award interest to taxpayers in appropriate cases and at the appropriate rate; and
- how can the entire appeal process be simplified and sped up. 

Voluntary tax compliance would be increased significantly if taxpayers have confidence in the tax authorities and the tax system. Having an efficient, speedy and fair tax appeal system would go a long way to boost confidence.

The authors can be contacted at:
nic@jjnn.com.my

SINGAPORE

Singapore Tax

by Vikna Rajah
Rajah & Tann Singapore

The global tax landscape has shifted significantly in the past few years. As cross-border structures grow increasingly prevalent, tax policies have become increasingly multi-lateral. At the forefront lies the global OECD BEPS Pillar 2 initiative, which Singapore is part of. However, Singapore has also separately enacted its own local legislation – separate from BEPS Pillar 2 – to combat cross-border tax avoidance. For Singaporean tax practitioners, a seismic shift came in the form of section 10L of the Singapore Income Tax Act 1947 (“ITA”), which took effect from 1st January 2024.

Unlike many jurisdictions, Singapore did not have any capital gains tax prior to the introduction of section 10L. This was a core facet of Singapore’s tax jurisprudence – and an attractive feature for businesses seeking to dispose of significant capital assets. However, increasing overseas scrutiny by jurisdictions – in particular, the European Union – spurred the introduction of section 10L of the ITA.

Nevertheless, the introduction of section 10L does not represent a sweeping implementation of capital gains tax in Singapore. As will be discussed below, the application of section 10L is carefully restricted, and is unlikely to apply to many capital transactions in Singapore.

Overview of section 10L

Traditionally, there is no capital gains tax in Singapore. However, from 1 January 2024, any gains made from the sale of foreign assets received in Singapore will be subject to income tax under section 10L of the ITA, unless the taxpayer avails themselves to certain prescribed exceptions.

It may be apposite to note that section 10L is not, strictly speaking, a capital gains tax. Instead, gains falling within the ambit of section 10L are deemed income falling within section 10(1)(g) of the ITA.

Scope of section 10L

For section 10L of the ITA to apply, the following conditions should be met:

- The assets are disposed of by a legal person (other than an individual), a general partnership, limited partnership, or a trust;
- The assets disposed of are foreign assets i.e. assets situated outside Singapore;
- The entity disposing of the assets is part of a relevant group;
- The entity disposing of the assets does not have adequate economic substance; and
- The entity does not fall within the specified exemptions to section 10L of the ITA.

The above conditions work in concert to limit the scope of 10L, allowing it to target the mischief of using entities in Singapore to take advantage of the absence of capital gains tax.

Foreign assets

Foreign assets under section 10L refer to all moveable and immoveable property situated outside Singapore. By limiting its geographical scope to assets located outside Singapore, the application of section 10L is heavily circumscribed, limiting its impact to Singaporean businesses engaging in primarily local activity.

Certainty in this regard is further improved by section 10L(15), which provides the following comprehensive definitions for determining an asset's location:

- any immovable property, or any right or interest in immovable property, is situated where the immovable property is physically located;
- any tangible movable property, or any right or interest in such property, that is not the subject of any other paragraph

in this subsection, is situated where the tangible movable property is physically located;

- a ship or aircraft, or any right or interest in a ship or aircraft, is situated where the owner, or the person entitled to the right or interest, is resident;
- a secured or unsecured debt (other than a judgment debt or securities), or any right or interest in such secured or unsecured debt, is situated where the creditor is resident;
- a judgment debt, or any right or interest in a judgment debt, is situated where the judgment is recorded;
- any shares, equity interests or securities issued by any municipal or governmental authority, or by any body created by such authority, or any right or interest in such shares, equity interests or securities, are situated where that authority is established;
- subject to paragraph (f), any shares in or securities issued by a company, or any right or interest in such shares or securities, are situated where the company is incorporated;
- subject to paragraph (f), any equity interests in any entity which is not a company, or any right or interest in such equity interests, are situated where the operations of the entity are principally carried out;
- subject to paragraph (f) (and despite paragraphs (g) and (h)), any registered shares, equity interests or securities, or any right or interest in any registered shares, equity interests or securities, are situated where the shares, equity interests or securities are registered or, if registered in more than one register, where the principal register is situated;
- goodwill relating to a trade, business or profession is situated where the trade, business or profession is principally carried on;
- any intellectual property right, or any licence or other right in respect of any intellectual property right, is situated

Foreign assets under section 10L refer to all moveable and immoveable property situated outside Singapore.

Further, understanding Singapore's importance as a financial hub, the IRAS e-Tax Guide entitled "Income Tax: Tax Treatment of Gains or Losses from the Sale of Foreign Assets" ("10L Guide") clarifies that foreign-sourced disposal gains are generally deemed to be received in Singapore only if such gains belong to an entity that is located in Singapore.

where the owner of the intellectual property right, licence or right is resident;

- any intangible movable property, or any right or interest in any intangible movable property, that is not the subject of any paragraph in this subsection, is situated where the ownership rights in respect of the property, right or interest would be primarily enforceable.

Relevant group

The application of section 10L of the ITA is further limited by restricting its application to groups with a multinational presence. As such, to be a relevant group, the group's entities must not be all incorporated, registered or established in a single jurisdiction. Or alternatively, any entity of the group should have a place of business in more than one jurisdiction.

As an illustration, a group should not be a relevant group if it only has Singapore entities and operates only in Singapore. However, if one of the entities of the group has a place of business, such as a branch or permanent establishment, outside Singapore, the group should be considered a relevant group for the purpose of section 10L of the ITA.

A unique aspect of section 10L is how entities are considered to be part of a group. Rather than referring to shareholding or control, the group's consolidated financial statements are used as the litmus test. In this regard, an entity would be a part of a group if (1) its assets, liabilities, income, expenses and cash flows are included in the consolidated financial statements of the parent entity of the group, or (2) its assets, liabilities, income, expenses and cash flows are excluded from the consolidated financial statements of the parent entity of the group solely on size or materiality grounds or on the grounds that the entity is held for sale.

Received in Singapore

Section 10L only applies to gains received in Singapore. As such, the mere presence of a relevant group in Singapore would

not automatically subject its gains from the disposal of foreign assets to tax. Gains would be received in Singapore when:

- any amount from such gains that is remitted to, or transmitted or brought into, Singapore;
- any amount from such gains that is applied in or towards satisfaction of any debt incurred in respect of a trade or business carried on in Singapore;
- any amount from such gains that is applied to the purchase of any movable property which is brought into Singapore.

Further, understanding Singapore's importance as a financial hub, the IRAS e-Tax Guide entitled "Income Tax: Tax Treatment of Gains or Losses from the Sale of Foreign Assets" ("10L Guide") clarifies that foreign-sourced disposal gains are generally deemed to be received in Singapore only if such gains belong to an entity that is located in Singapore. As such, a foreign entity that only makes use of the banking facilities in Singapore and has no operations in Singapore is not within the scope of section 10L of the ITA.

Adequate economic substance

The key limiting conditions of section 10L is the requirement that the entity disposing of the foreign asset should not have adequate economic substance. This excludes entities engaging in genuine business operations, allowing section 10L to target shell companies set up to hold capital assets.

A carefully designed test, section 10L creates two different sets of requirements – one for pure equity-holding entities ("PHEs") and one for non-pure entity-holding entities ("non-PHEs"). Broadly speaking, the former refers to entities whose sole function is to hold equity interests in other entities and receive income relating to those equity interests. A catch-call category, non-PHEs refer to any entity that is not a PHE. Given the broadness of the non-PHE category, their economic substance will be determined based on an analysis of the non-PHE's core income generating activities in Singapore.



The differing requirements are briefly illustrated with the table below:

Condition	PHE	Non-PHE
Submissions to public authority	The entity submits to a public authority any return, statement or account required under the written law under which it is incorporated or registered, being a return, statement or account which it is required by that law to submit to that authority on a regular basis.	N.A.
Management and performance	The operations of the entity are managed and performed in Singapore (whether by its employees or outsourced to third parties or group entities).	
Substance in Singapore	The entity has adequate human resources and premises in Singapore to carry out the operations of the entity.	The entity has adequate economic substance in Singapore, taking into account the following considerations: 1. number of full-time employees (or other person managing or performing the entity's operations) in Singapore; 2. the qualifications and experience of such employees or other persons; 3. the amount of business expenditure incurred by the entity in respect of its operations in Singapore; and 4. whether key business decisions of the entity are made by persons in Singapore.

Further, the illustrations in the 10L Guide demonstrate that the requirements are not particularly onerous. For example:

PHE

Company A, a pure equity-holding entity, holds shares issued by Company B, a foreign-incorporated company. During the financial year 2024, Company A disposes some Company B shares.

Company A has an employee (which includes a director of the company but excludes a nominee director) in Singapore, and it shares an office with an associated company in Singapore. During the financial year 2024, the employee manages the investments (e.g., the employee monitors/ reviews the performance of the investments or makes buy/ sell decisions on the investments) and ensures that Company A complies with its filing requirements with the Accounting and Corporate Regulatory Authority and the Inland Revenue Authority of Singapore. In this regard, Company A will be regarded as having met the economic substance requirement for the financial year 2024.

Non-PHE

Company H is a small entity with an annual turnover of less than \$5 million. It is not a pure equity-holding entity or an investment holding entity. It disposes some foreign assets in 2024.

It employs one full-time employee in Singapore to carry out its core income generating activity and make key business decisions. It also incurs \$50,000 of local

business expenditure in 2024. It will be considered to have met the economic substance requirement in 2024.

The desire to avoid unnecessarily undermining business in Singapore is further demonstrated by a modification made to the draft Bill on section 10L. The draft bill initially required non-PHEs carry out carry on a trade, profession or business in Singapore. However, this was removed following concerns that investment holding companies would be negatively affected by such an onerous requirement. Such an intention is further illustrated by the following illustration in the 10L Guide:

Company G is an investment holding entity in Singapore that mainly invests in equities and provides loans to its related parties. As Company G provides loans in addition to investing in equities, it is a non-pure equity-holding entity. Company G disposes some shares in a foreign company in 2024.

Company G has two full-time employees with relevant qualifications to manage the investments in Singapore and they make decisions in relation to the company's investments and financing arrangements. It also incurs \$100,000 of local business expenditure in 2024. It will be considered to have met the economic substance requirement in 2024.

However, it is apposite to note that the adequate economic substance exclusion does not apply to the gains derived from the disposal of a foreign intellectual property rights. This likely reflects concerns surrounding the higher mobility of such

assets. Nevertheless, this is mitigated by the fact that qualifying intellectual property will enjoy a concessionary tax rate under section 43X of the ITA.

Other Exceptions

As an aside, do note that gains from the disposal of foreign assets (not being an intellectual property right) by entities enjoying certain licenses and tax incentives may be excluded from section 10L. The applicable licenses and incentives are as follows:

- (u) a bank licensed under the Banking Act 1970;
- (v) a merchant bank licensed under the Banking Act 1970;
- (w) a finance company licensed under the Finance Companies Act 1967;
- (x) an insurer licensed or regulated under the Insurance Act 1966;
- (y) a holder of a capital markets services licence under the Securities and Futures Act 2001;
- (z) Aircraft Leasing Scheme;
- (aa) Development and Expansion Incentive;
- (bb) Finance and Treasury Centre Incentive;
- (cc) Financial Sector Incentive;
- (dd) Global Trader Programme;
- (ee) Insurance Business Development Incentive;
- (ff) Maritime Sector Incentive;
- (gg) Pioneer Certificate Incentive.



Key Takeaways

Section 10L is best understood as part of a broader global effort against international tax avoidance, rather than an attempt to increase tax revenue or reverse the longstanding absence of capital gains tax. For many businesses in Singapore, section 10L is unlikely to impact their tax liabilities. Entities with substantive activities or are not part of a group with a multinational presence are unlikely to feel the effect of section 10L.

However, for businesses seeking to park their capital assets in Singapore for tax purposes, section 10L would be a salient consideration. To avoid being met with an unexpected tax liability, entities of a group with a presence in more than one jurisdiction should periodically review business structures and record-keeping practices to ensure that economic substance requirements can be met and proven for each financial year. In this regard, where there is doubt as to the application of section 10L, an application for an advance ruling on the disposing entity's economic substance may be made to IRAS.

Nevertheless, section 10L remains a relatively new statute, having only taken effect from 1st January 2024. How it will impact Singapore's tax and business landscape in the long run remains to be seen. 

Section 10L is best understood as part of a broader global effort against international tax avoidance, rather than an attempt to increase tax revenue or reverse the longstanding absence of capital gains tax.

The authors can be contacted at:
vikna.rajah@rajahtann.com

A woman with long dark hair, wearing a white long-sleeved shirt with colorful embroidery on the sleeves and a colorful patterned skirt, is seen from behind. She is holding a large red parasol. Her hand is being held by another person's hand, which is visible in the foreground. They are standing in front of a traditional Thai temple with ornate wooden architecture and colorful statues. The sky is blue with white clouds.

CABINET APPROVES GLOBAL MINIMUM TAX IN THAILAND:

A Step Towards Adopting BEPS 2.0 Pillar Two

by Kudun Sukhumananda &
Chanattorn Thunyaluck
Kudun & Partners

On December 11, 2024, Thailand's Cabinet approved two key Emergency Decrees related to tax increases for multinational corporations (MNEs) to align with global standards set by the Organisation for Economic Co-operation and Development ("OECD"). The draft laws, forming part of Thailand's commitment to international tax reforms, include provisions for a global minimum tax (Pillar Two) and a redistribution of tax revenues to enhance Thailand's competitive capabilities in targeted industries.

The key points of the draft laws are summarized below:

1. Affected Entities

The draft laws apply to legal entities within Thailand that are part of MNE groups with consolidated revenue from their Ultimate Parent Entity (UPE) of no less than EUR 750 million.

2. Key Features of the Draft Laws

The draft laws aim to implement the "Top-up Tax" (a supplementary tax) in accordance with the Global Anti-Base Erosion (GloBE) rules set by the OECD. The main provisions are as follows:

(i) General Information

The proposed tax is classified as an "assessed tax," distinct from corporate income tax. The collection of this tax will be under the purview of the Revenue Department.

(ii) Scope of Application

As mentioned, the draft laws apply to entities within Thailand that are part of MNE groups with consolidated revenue from their UPE exceeding the threshold of EUR 750 million. This consolidated revenue is to be evaluated over a period of at least two accounting periods within the four fiscal years before the relevant tax period.

However, certain entities are exempt from these provisions, such as state agencies, international organizations, non-

profit entities, pension funds, and investment vehicles with specific tax characteristics.

(iii) Taxpayer Responsibilities

Each constituent entity within Thailand, part of an MNE group, is responsible for paying the Top-up Tax.

(iv) Tax Base and Determination of Low-Tax Jurisdictions

The Top-up Tax is designed to address situations where the profits of an MNE group are taxed in jurisdictions with low “Effective Tax Rates” (ETRs). A jurisdiction is considered a “low-tax jurisdiction” if its ETR is below 15%. The formula to determine the ETR is as follows:

$$\text{ETR} = \text{Adjusted Covered Taxes} / \text{Net GloBE Income}$$

Adjusted Covered Taxes: This refers to the total amount of taxes paid by each constituent entity of the MNE group, after adjustments, for the relevant accounting period.

Net GloBE Income: This is the total income of the MNE group, as determined by the GloBE rules, for the relevant accounting period.

If an MNE group operates in a jurisdiction with an ETR below 15%, the Top-up Tax may be levied to ensure the group meets the global minimum tax requirements.

(v) Additional Provisions

The draft laws also outline specific guidelines for various corporate structures, such as corporate restructuring, joint ventures, multi-parent MNEs, flow-through entities, and investment entities. Additionally, provisions for tax elections and how entities may opt to comply or opt out of the provisions under certain circumstances will be included in the subordinated laws.

(vi) Top-up Tax Calculation

The amount of Top-up Tax to be paid by an MNE group entity is the sum of domestic Top-up Tax and Global Minimum Tax (GMT), as determined under the Income

Inclusion Rules or Undertaxed Payment Rules, depending on specific situation.

3. Appeal Process

Entities disagreeing with the assessment of their Top-up Tax can appeal to the Tax Appeal Committee within 30 days of receiving the assessment notice. If the entities disagree with the decision of the appeal to the Tax Appeal Committee, the entity may file a lawsuit with the Tax Court within 30 days of receiving the decision from the Tax Appeal Committee. Furthermore, the draft law includes provisions for resolving disputes through international agreements potentially suspending the appeal process until the dispute is resolved. However, it is important to note that appealing or utilizing international dispute resolution rights will not suspend the obligation to pay the Top-up Tax.

Conclusion

The introduction of these draft laws mark Thailand's commitment to international tax reforms. These measures align Thailand with the OECD's BEPS initiatives, which aim to create fairer, more effective global tax systems for MNEs. The laws could significantly impact large MNEs operating in Thailand, especially regarding the enforcement of the global minimum tax rate and its implementation through domestic tax legislation.

With the global minimum tax set to take effect in early 2025, MNEs must prepare to address these challenges, requiring readiness in inter alia, knowledge, resources, Top-up Tax computation, and compliance with reporting obligations. MNEs planning group restructurings should carefully evaluate how these transactions may impact their Pillar Two profiles. Strategic planning will be crucial to manage risks and ensure alignment with the new tax framework. Consulting with tax professionals is advisable to effectively navigate these changes. 

The introduction of these draft laws mark Thailand's commitment to international tax reforms. These measures align Thailand with the OECD's BEPS initiatives, which aim to create fairer, more effective global tax systems for MNEs.

The authors can be contacted at:

Kudun.s@kap.co.th

chanattorn.t@kap.co.th



Highlighting RECENT TAX AND CUSTOMS DEVELOPMENTS In Vietnam

by **Nguyen Hung Du**
Rajah & Tan LCT Lawyers

Tax Policy on Transfer of Mortgaged Real Estate

A local tax authority has issued new guidance regarding the tax implications of transferring mortgaged assets (Ruling No. 1641/CTDTH-TTHT, dated September 30, 2024). Enterprises which transfer assets to banks as collateral for loans are not required to issue Value Added Tax (“VAT”) invoices for these transfers. However, if the enterprise gains from the assets sold by the banks to recover debts, it is obligated to declare Corporate Income Tax (“CIT”) on those gains.

While banks are responsible for selling the transferred assets, they must issue VAT invoices for the sale and declare VAT and CIT on any profits. Importantly, the guidance indicates that the tax base for calculating CIT for the enterprise differs from that of banks.

Tax Implications on Transfer of Real Estate

On October 4, 2024, a local tax authority released guidance concerning the tax implications of real estate transfers (Ruling No. 54481/CTHN-TTHT). Transfers of real estate are subject to a VAT of 10%, calculated at a price that excludes the value of the land. The land value is defined according to Item 1, Article 1 of Decree 49/2022/ND-CP dated 29 July 2022 amending Decree 209/2013/ND-CP dated 18 December 2013, which elaborates and guides the implementation of certain articles of VAT law. Additionally, gains from real estate transfers are subject to CIT at a rate of 20%. Taxable revenue and deductible expenses related to these transfers are determined per Article 17 of Circular 78/2014/TT-BTC dated 18 June 2014 guiding the implementation of Decree 218/2013/ND-CP dated 26 December 2013, which elaborates and guides the implementation of CIT Law.

Tax-Deductible Expenses for Employment Benefits

The General Department of Taxation (“GDT”) has provided guidance on tax policies regarding employment benefits (Ruling No. 4388/TCT-CS, dated October 1, 2024). This guidance references an earlier response from GDT to a local tax authority in 2015 (Ruling No. 5452/TCT-CS). In the ruling, GDT clarifies that employment benefits include subsidies for school tuition for Vietnamese employees’ children. Enterprises can deduct these subsidies from their annual CIT liabilities, provided the subsidies are documented in the enterprise’s policy and backed by proper invoices or payment vouchers. However, local tax authorities often scrutinise tax-deductible expenses that are not clearly defined in tax laws and may deny these deductions during tax audits. 

The authors can be contacted at:
du.nguyen@rajahtannlct.com



AUTUMN BUDGET 2024:

Overview of Changes to Taxation of Non-UK Domiciled Individuals

by Ravi Francis
Mills & Reeve

On 30 October 2024, the UK's Labour government announced its Autumn Budget, introducing significant reforms to the UK taxation system. These changes are particularly impactful for individuals who live in the UK but are not originally from there, and who do not regard the UK as their permanent home. The relevant legislation and the Treasury's published guidance makes it clear that these reforms are radical, complex and will require careful planning.

UK inheritance tax (IHT)

These are perhaps be the most seismic changes for international families with connections to the UK. They represent a significant shift in the UK's approach to IHT, aiming to create a more formulaic and equitable system based on residency status.

Since 6 April 2025, domicile is no longer be a connecting factor when determining liability to UK IHT. Instead, non-UK assets are subject to IHT if an individual has been a UK resident in at least 10 out of the last 20 tax years (known as a “long-term resident”) before the tax year in which the chargeable event, such as death, occurs. A long-term UK resident will therefore be liable to IHT on their non-UK and UK assets.

A long-term resident who becomes non-UK resident will remain within the scope of IHT until they have been non-UK tax resident for 10 consecutive years (known as the “IHT tail”). The tail period for those with 10-13 years of UK residence out of a 20-year period will be 3 years, increasing by one year for each additional year of residence up to a maximum tail of 10 years. Special rules will apply for individuals aged 20 or younger. If an individual has been both a UK resident and a non-UK resident during a tax year, it will count as a full year of UK tax residence for the long-term resident test.

Transitional Rules: IHT

Transitional rules will apply to individuals who are either non-UK domiciled or deemed UK domiciled and are non-UK residents in the 2025-26 tax year. The IHT status of these individuals will be determined by the historic domicile tests, one of which considers whether they have been UK resident for 15 out of the 20 tax years preceding the tax year of charge. The new rules, requiring 10 years of UK residence in the last 20 tax years, will apply if they subsequently return to the UK.

Impact on Trusts: IHT

Since 6 April 2025, the “excluded property” status of non-UK settled assets is no longer be determined by the settlor’s domicile at the time the assets are added to the trust. Instead, assets will only be excluded property if, at the time of a chargeable event, the settlor is not considered a long-term UK resident.

If the settlor died before 6 April 2025, the historic domicile-based IHT rules will apply, and non-UK assets will remain excluded property, provided the settlor was non-domiciled when the trust was established. If the settlor dies after 5 April 2025, the IHT status of the trust will be determined by the settlor's long-term residence status at the time of their death. For trusts created before 30 October 2024, non-UK assets already settled in such trusts will not be part of the settlor's estate for IHT purposes upon their death, but will still fall within the relevant property regime once the settlor becomes a long-term resident.

Changes to income and capital gains tax (CGT)

Since 6 April 2025, the existing "remittance basis of taxation" will be replaced by a new, four-year foreign income and gains ("FIG") regime, which applies to all individuals. This new regime aims to provide substantial tax relief for some, but requires compliance through detailed disclosures and timely claims.

Starting from 6 April 2025, the existing "remittance basis of taxation" will be replaced by a new, four-year foreign income and gains ("FIG") regime, which applies to both UK domiciled and non-UK domiciled individuals.

1. Eligibility and Relief:

- Individuals who become UK resident after 10 years of consecutive non-UK residence will benefit from a 100% UK tax exemption during their first four years of UK tax residence on all non-UK income and capital gains arising after 5 April 2025.
- Current UK residents who were tax resident for fewer than 4 years on 6 April 2025, after 10 consecutive years of non-residence, can also be taxed under the FIG regime for any tax year within the initial 4-year period.

2. Post-FIG Taxation:

- Once the four-year period concludes, individuals will be subject to UK taxation on their worldwide income and gains, subject to tax relief such as through a relevant double tax treaty.

3. Temporary Absences:

- Temporary absences from the UK within the four-year period do not disqualify individuals from claiming FIG treatment upon their return, although they will lose the relief for the year they were absent.

4. Claiming FIG Relief:

- Significant disclosure to HMRC will be required, and claims must be made annually through self-assessment.
- Claims will be independent of each other, meaning FIG treatment can be claimed on foreign income separately from foreign gains.
- Applicants will forfeit their personal allowance and CGT exempt amount, but there is no charge for claiming FIG relief.
- Claims must be submitted by 31st January in the tax year following the tax year to which the claim relates.

Launch of the Temporary Repatriation Facility (TRF)

From 6 April 2025 to 5 April 2028, those who previously claimed the remittance basis can remit FIG which arose prior to 6 April 2025 to the UK at a reduced rate of tax.

The tax rate on these remittances will be 12% for tax years 2025-26 and 2026-27, increasing to 15% in 2027-28. This is a significant tax saving, with income tax rates otherwise as high as 45%.

The TRF must be claimed in an individual's self-assessment; the charge is payable upon the designation of FIG on the self-assessment return and no further tax is payable upon remittance to the UK. This is potentially a very valuable relief for individuals who wish to remain in the UK, and who currently claim the remittance basis and have FIG 'trapped' outside the UK.

Introduction of Rebasing Relief

Since 6 April 2025, individuals who have utilised the remittance basis in the past can revalue their personally held foreign capital assets for CGT purposes to their market value as at 5 April 2017. To be eligible for this rebasing relief, the individual must have been UK domiciled or deemed domiciled before the 2025-26 tax year, they must have claimed the remittance basis between the 2017-18 and 2024-25 tax years, the asset in question must have been owned on 5 April 2017, the asset must not be disposed of until on or after 6 April 2025 and the asset must have remained outside the UK from 6 March 2024 to 5 April 2025.

This is therefore a potentially valuable relief for individuals planning to remain UK resident, but care must be taken not to inadvertently lose the relief.

Enhancements to Overseas Workday Relief (OWR)

Since April 6, 2025, the Overseas Work Relief (OWR) will extend its tax relief on earnings from employment duties performed outside the UK to a maximum of four tax years, aligning with the Foreign Income and Gains (FIG) regime. Previously, OWR was available for three years. Those eligible for the FIG regime can also apply for OWR. New arrivals who haven't been non-residents for ten consecutive years and are ineligible for the FIG regime can still benefit from OWR for the first three years. The annual relief will be limited to the lesser of 30% of qualifying employment income or £300,000.

Offshore trusts (income tax and CGT)

There have been significant changes to the UK taxation of offshore trusts and individuals connected to them, the details of which cannot be fully conveyed in this short article. The most significant change for income tax/ CGT is perhaps the withdrawal of the "protected" settlements regime which was only introduced in April 2017.



Pre-6 April 2025 FIG in “protected” non-UK resident trusts was not be taxed unless distributions were made to a UK resident individual.

Since 6 April 2025 income and gains from settlor-interested non-UK resident trusts are taxable for any year the settlor is UK tax resident, unless they qualify for the FIG regime.

Case Studies (IHT)

Case Study 1

Aisha was UK domiciled under common law but moved to Malaysia in December 2016, becoming non-resident in the 2017-18 tax year. A ‘split year’ is treated as a full year of UK residency for the long-term residency test, meaning she was counted as UK resident in 2016-17. She lived in the UK for 20 years before moving.

- As Aisha was UK domiciled as of 30 October 2024, the transitional IHT provisions do not apply to her.
- In the 2025-26 tax year, Aisha is considered a long-term resident under the 10 out of 20 test, bringing her non-UK personal assets and any non-UK assets settled into trust within the scope of UK IHT. She would be subject to the 10-year IHT tail. Her IHT status will reset in the 2027-28 tax year, as she’d have had 10 consecutive years of non-UK residence. Thereafter, her non-UK assets and any non-UK assets settled into trust will fall outside the scope of IHT.

Case Study 2

Anil is UK resident and non-domiciled, and was a remittance-based user. He has children at school in the UK and wishes to remain in the UK for the next 4 years. He has been a UK resident for 3 years so far.

- He could claim TRF for FIG that he receives pre-6th April 2025.
- He qualifies for the FIG treatment on FIG that arose after April 2025 for the 2025/26 tax year, but will not qualify for FIG treatment in the 2026/27 and 2027/28 tax years.
- He will not be a long-term resident for IHT purposes provided he leaves before 10 years of residence out of a 20 year period.

Concluding remarks

We act for many high-net-worth and international families who are considering whether the UK remains the right place for them. However, as is the case under any taxation regime, there are opportunities for some, and options for everyone.

The UK remains an attractive destination for some inpatriates, e.g. those looking to work in the UK for a fixed period, and might be highly tax-efficient for those expecting to realise capital gains or receive income within their first 4 years.

For existing long-term residents of the UK, including those connected to offshore trusts, the TRF may allow them to bring funds to the UK for the first time or collapse existing structures at a comparatively low rate of tax, and they might then wish to explore more traditional UK tax planning opportunities (e.g. family investment companies).

People with an English domicile of origin who wish to return to the UK after a long spell abroad may find they have the ability to benefit from a much more favourable tax regime from April 2025 onwards compared with the current, domicile based one.

Amongst the opportunities, there are traps for both inpatriates and UK domiciliaries under the new IHT regime. Engaging with their advisers early will, therefore, be more important than ever.

Finally, it's clear is that compliance under the new regime will be onerous. Offshore trustees will need to ensure they have detailed financial records and be ready to deal with additional UK compliance, and taxpayers will need to be in contact with their tax advisors well in advance of reporting deadlines. 

People with an English domicile of origin who wish to return to the UK after a long spell abroad may find they have the ability to benefit from a much more favourable tax regime from April 2025 onwards compared with the current, domicile based one.



The authors can be contacted at:
ravi.francis@mills-reeve.com

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