Towards a simpler tax system
PIC+: making Singapore’s SMEs more productive
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BEPS: the story continues to unfold
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Managing tax controversy in today’s shifting global landscape
Insurance: rewriting the rules
Singapore’s Budget 2014 has come and gone, yet one thing that strikes me is the subtlety in which the theme of tax simplicity has been embedded in the fiscal blueprint for this year.

“Towards a simpler tax system” pinpoints some of the Budget measures to reduce complexity and also introduce an element of certainty, making paying taxes an easier process from a compliance standpoint. An example of this is the waiver of withholding tax requirements for payments made to Singapore branches.

For the past few years, no Singapore Budget is without an enhancement or measure to boost productivity. This year is no different. The new PIC+ scheme enhances the existing Productivity and Innovation Credit (PIC) scheme, by raising the expenditure cap for tax deduction from S$400,000 to S$600,000 per qualifying activity per year and is targeted at SMEs. “PIC+: making Singapore’s SMEs more productive” has more details.

The Trans-Pacific Partnership is one of the biggest free trade agreements to be negotiated, with 12 members and counting. Export oriented economies stand to be winners as trade barriers are knocked down and lower costs could possibly be passed on to consumers. Read “Trans-Pacific Partnership: who wins?” for more information.

Transmitting withholding tax accurately and in a timely manner to the tax authorities is an important compliance obligation for accounting or tax executives in any organisation. Therefore, it is important to build a solid foundation for the reporting of this process. Failure to do so could result in errors and penalties. As the name suggests, “Withholding tax compliance: getting it right” shares some useful tips in this regard.

By now, you should be somewhat familiar with this four-letter term: BEPS. Progress has sped up for this movement on Base Erosion and Profit Shifting, with the Organisation for Economic Co-operation and Development having issued several discussion drafts on some of the Action Plans for BEPS. ‘BEPS: the story continues to unfold” brings you up-to-date on some of these developments.

“Hong Kong in pursuit of innovation” delves into the city-state’s latest Budget announcement. Like Singapore, Hong Kong is making the quest of innovation a national agenda. Read this article how these two city-states stack up against each other in this area, and also in the area of financial services.

In our recent Budget Seminar held in March 2014, we had a panel discussion on “Managing tax controversy in today’s shifting global landscape”. This article has some excerpts from the panel discussion. You may find how BEPS will impact the Singapore tax compliance scene interesting.

A changing regulatory landscape is setting the stage for insurers to relook at how they do business, with significant changes on the horizon. These have tax implications, of course. In conversation with Hugh von Bergen, “Insurance: rewriting the rules” dives deeper into these areas.

I hope you find this issue informative.
Towards a simpler tax system

Embedded in Budget 2014 is the theme of simplicity, with a number of tax initiatives to reduce taxpayers’ compliance costs, enhance tax certainty and simplify the tax system.

PIC+: making Singapore’s SMEs more productive

Introduced in Budget 2014, the PIC+ scheme, which offers greater tax deductions, is aimed at encouraging SMEs to beef up investments in productivity.

Trans-Pacific Partnership: who wins?

The sheer size of the Trans-Pacific Partnership, a comprehensive free trade agreement, will significantly liberalise trade and allow export-oriented economies access to more markets.

A fresh look at

Withholding tax compliance: getting it right

Failure to pay due attention to withholding tax compliance could result in penalties. Businesses need to know the income recipient’s residency status, nature of the payment to the non-resident, where the services are performed by the non-resident and when withholding tax is triggered.
BEPS: the story continues to unfold

Since the Organisation for Economic Co-operation and Development announced its 15 Action Plans on Base Erosion and Profit Shifting (BEPS), significant progress has been made. Among them is the proposal to have a country-by-country reporting template which will require multinational companies to devote huge resources to data gathering.

Hong Kong in pursuit of innovation

Hong Kong’s latest Budget revealed proposals to promote the innovation and technology industries. Find out how these compare with similar measures in Singapore.

Managing tax controversy in today’s shifting global landscape

The OECD’s BEPS project means companies will have to measure up to increased transparency standards and substance requirements to withstand scrutiny by tax authorities.

Insurance: rewriting the rules

Amidst a changing regulatory landscape, the insurance industry has to undergo restructuring to stay competitive. Various tax challenges are also surfacing such as in the areas of indirect tax and transfer pricing.

At a glance

This section lists the latest Inland Revenue Authority of Singapore e-Tax guides, Monetary Authority of Singapore circulars and treaties signed or ratified.
The drive for productivity has been a key part of our economic transformation over the last few years. Naturally, the extension of the Productivity and Innovation Credit (PIC) scheme and the new PIC+ scheme are eye-catching and popularly discussed.

While these initiatives have been the center of interest, it is worthwhile to note that embedded in this year’s Budget is the theme of simplicity. There are a number of tax initiatives that serve to reduce the taxpayers’ compliance costs and provide for simplicity and certainty in our tax system.

Simplify with fewer options

The tax deferral option under the PIC scheme allows businesses to defer a dollar of their tax for the Year of Assessment (YA) 2011 to YA 2014 with every dollar of PIC qualifying expenditure incurred in the corresponding financial years 2011 to 2014, up to a cap of S$100,000 per YA.

This option certainly alleviates a company’s cash flow in the first year that the tax deferral option is adopted. However, this cash flow benefit is once-off due to the catch up payment in the following year. Hence, even if the scheme is available for YA 2011 to 2014, businesses only benefit once.

The PIC cash payout, on the other hand, offers eligible companies a cash payout of S$60,000 on PIC qualifying expenditure of S$100,000 and this payout can be claimed in each YA from YA 2013 to YA 2018. Since the PIC cash payout scheme serves a similar purpose of helping businesses relieve their cash flow, it makes sense to simplify the options by allowing the tax deferral option to lapse with effect from YA 2015.

Another example is the removal of transfers of qualifying deductions and deficits between spouses. Married couples no longer need to ponder over whether to make an election to utilise the transfers on a year-to-year basis. The removal of this benefit is likely to save the Inland Revenue Authority of Singapore (IRAS) some man-hours to re-compute the assessments of the transferor and transferee to take into account the transfers after the election is made.

This year’s Budget also allows some schemes that are assessed to be no longer relevant to lapse. One of such schemes is the investment allowance (IA) scheme for aircraft rotables which was introduced to encourage investments in aircraft rotables that would increase the productive capacity of the aerospace maintenance, repair and overhaul companies. The IA scheme for aircraft rotables will be allowed to lapse after 31 March 2015.

Simplify to relieve burden

Ensuring compliance with withholding tax obligations has been a key challenge and a burden on businesses. Any business that is making payments that fall under the scope of section 12(6) or (7) of the Income Tax Act to a non-resident person has to be mindful of withholding tax requirements. Such payments include interest and royalties.

Often businesses may fall into the trap of tagging a Singapore branch of a foreign company to be a Singapore person. This may result in a failure to observe and comply with withholding tax obligations. The consequence is that the payer could face recovery action from the IRAS including late payment penalties. Those who are aware that a Singapore branch of a foreign company is regarded as a non-resident person for Singapore income tax purposes also do not have an easy time. They have to determine whether to accommodate to the Singapore branch’s request not to withhold tax, and the circumstances under which it can do so. All these add up to additional administrative burden and compliance costs.

Unless a withholding tax waiver is obtained from the IRAS, a Singapore branch could suffer withholding tax upfront and then it would have to go through the process of obtaining a tax refund after its tax matters for the relevant YA have been finalised.

The waiver of withholding tax that takes effect for all payment obligations arising on or after 21 February 2014 brings relief to not only the payers and the Singapore branches for time and professional costs saved, but also certainly to the IRAS as man-hours will be saved from processing applications for indefinite waiver by Singapore branches!
“The rationalisation and simplification of the tax system should be an ongoing process – the Budget need not be the only platform.”

Simplify for certainty

Additional Tier 1 instruments are a new type of capital instrument under the Basel III global capital standards for which the tax treatment has not been publicly clarified. The tax announcement made in this year’s Budget provides immediate clarity on the tax treatment of such instruments – debt for tax purposes under certain circumstances - and this move by the authorities is very welcomed by the industry. The tax certainty will reduce complexity and facilitate the tax return preparation.

Streamlining measures

Another case in point is that the basis of computing the stamp duty amount is now made much simpler too. The basis and calculation of stamp duty on immovable properties, share transfer, leases and mortgages executed on or after 22 February 2014 will be subject to an ad valorem or percentage based rate structure. For example, stamp duty for transfers of shares will be computed at 0.2% of the purchase price or market value of the stock or shares transferred, whichever is higher (rounded down to the nearest dollar).

This is unlike the past where the stamp duty is imposed on a specific dollar value basis relative to the underlying consideration or value of such instruments. For example, in respect of share transfers, the stamp duty was computed based on twenty cents on every $100 of the purchase price or market value of the stock or shares transferred, whichever is higher (rounded down to the nearest dollar).

The rationalisation and simplification of the tax system should be an ongoing process – the Budget need not be the only platform. The above initiatives are indeed a step in the right direction.

There are also other areas that can be simplified. For one, the waiver of withholding tax could be expanded to cover Singapore incorporated companies that are not Singapore tax residents. Businesses making payments to Singapore incorporated companies, in particular special purpose vehicles in Singapore, would then not need to determine if these companies are tax resident of Singapore, relieving them of an administration burden.

Another area that could be streamlined is the restriction on medical expenses claimed by employers. Currently, employers are allowed to claim tax deduction on medical expenses, capped at 1% of total employee remuneration. This cap is raised to 2% if the employer implements certain portable medical benefits. In light of increasing medical and hospitalisation costs, it may be timely to re-consider and simplify the tax deduction claim on medical expenses.

With simplification and certainty in our tax system, productivity of both businesses and the IRAS is set to improve too.

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It’s been more than three years since Singapore rolled out the Productivity and Innovation Credit (PIC) scheme – part of an ambitious plan to build capabilities needed for a productivity “phase shift” in the economy. Raising the bar on productivity, especially for SMEs, was meant to wean us off our dependence on foreign labour and keep the engine of growth humming along.

SMEs, which make up almost 99% of enterprises in Singapore, have clearly been called upon to up their productivity game. For the past few Budgets, the government has made helping this group a priority. Since 2011, more than S$1b has been dished out in the form of PIC benefits. Two-thirds of SMEs with a turnover of more than S$1m have gained from these. Yet, SMEs still need all the help they can get to “transform”.

In Budget 2014, the government went one step further by introducing the PIC+ scheme, targeted at SMEs to help them make greater investments in productivity. This new scheme enhances the existing PIC scheme by raising the expenditure cap for tax deduction from S$400,000 to S$600,000, per qualifying activity per year.

Facts about PIC+

The PIC+ scheme is available from YA 2015 to YA 2018. During this period, qualifying SMEs can claim the 400% tax deduction on an additional S$200,000 per activity per year as the qualifying expenditure ceiling has been raised from S$400,000 to S$600,000 per activity. This translates into maximum additional tax savings of S$612,000 per year from YA 2016 to YA 2018 (see Table 1 for illustration).

The expenditure cap cannot be combined across activities, but can be combined across certain years. For the year of assessment (YA) 2015, qualifying SMEs can enjoy a combined expenditure cap of S$1.4m per activity (i.e., S$400,000 for YAs 2013 and 2014 respectively, and S$600,000 for YA 2015). Alternatively, they can also claim up to S$1.8m in PIC benefits for YAs 2016 to YA 2018 combined.

The six qualifying activities covered by PIC+ remain the same as those under the PIC scheme: acquisition and leasing of PIC IT and automation equipment; training of employees; acquisition and in-licensing of intellectual property rights; registration of patents, trademarks, designs and plant varieties; R&D activities; and design projects approved by the DesignSingapore Council.

The cash payout option is still capped at combined expenditure of S$100,000 per year at a rate of 60%, available up to YA 2018.
“Larger SMEs are more likely to benefit from PIC+ as they would have more financial clout to make investments at these significant amounts.”

<table>
<thead>
<tr>
<th>Activity</th>
<th>Expenditure in YA 2015 (S$)</th>
<th>Total deduction with PIC (S$)</th>
<th>Total deduction with PIC+ (S$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Acquisition and leasing of PIC IT and automation equipment</td>
<td>600,000</td>
<td>1.8m</td>
<td>2.4m</td>
</tr>
<tr>
<td>2. Training of employees</td>
<td>600,000</td>
<td>1.8m</td>
<td>2.4m</td>
</tr>
<tr>
<td>3. Acquisition or in-licensing of intellectual property rights</td>
<td>600,000</td>
<td>1.8m</td>
<td>2.4m</td>
</tr>
<tr>
<td>4. Registration of patents, trademarks, designs and plant varieties</td>
<td>600,000</td>
<td>1.8m</td>
<td>2.4m</td>
</tr>
<tr>
<td>5. R&amp;D activities</td>
<td>600,000</td>
<td>1.8m</td>
<td>2.4m</td>
</tr>
<tr>
<td>6. Design projects approved by the DesignSingapore Council</td>
<td>600,000</td>
<td>1.8m</td>
<td>2.4m</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3.6m</strong></td>
<td><strong>10.8m</strong></td>
<td><strong>14.4m</strong></td>
</tr>
<tr>
<td>Deduction value @ 17%</td>
<td>612,000</td>
<td>1.836m</td>
<td>2.448m</td>
</tr>
<tr>
<td>Additional deduction value with PIC</td>
<td></td>
<td>1.224m</td>
<td>612,000</td>
</tr>
<tr>
<td>Additional deduction value with PIC+</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
To meet the definition of a qualifying SME, businesses (sole proprietorships, partnerships or companies) must have an annual turnover of not more than S$100m or employ not more than 200 employees as at the last day of the basis period for the relevant YA. If the SME is part of a group, the “revenue” or “employment size” criterion will be applied at the group level. In this case, a group refers to a parent and its subsidiaries, determined based on Financial Reporting Standard (FRS) 110 and covers both local and overseas entities. Whether or not an SME is part of a group is based on its status on the last day of the relevant basis period.

For YA 2015 and YA 2016, SMEs have the flexibility to choose the basis period to determine whether they meet the “revenue” or “employment size” criterion. For YA 2015, they can look at either YA 2014 or YA 2015 and for YA 2016, they can look at either YA 2015 or YA 2016. This provides SMEs with more flexibility to qualify for the PIC+.

SMEs can claim PIC+ for the YA 2016 to YA 2018 from the YA in which they meet the eligibility criteria. This is so even if the SME does not meet the eligibility criteria in subsequent years. For example, if Company A meets the qualifying criteria in YA 2016, but not in YA 2017, it can still enjoy the benefits of the PIC+ scheme in YA 2017 and YA 2018. There is however an exception to this. SMEs will need to re-assess their eligibility if there is a change in the parent or if the SME becomes part of a group. A re-assessment has to be done in the basis period in which the change in control occurs.

What should you do

If you intend to invest in productivity-enhancing initiatives, here are some steps you need to do in order to claim the PIC+:

- SMEs need to self-assess their eligibility for PIC+ and this should be done early. You can develop a self-assess checklist based on clarifications on the PIC+ released by the Inland Revenue Authority of Singapore (IRAS) on 31 March 2014.
- It is important to understand the documentation requirements and collate sufficient documents in case the IRAS requests for verification. The IRAS has, on an ongoing basis, been conducting audits on companies to determine whether taxpayers have made errors in their PIC claims and to identify taxpayers which have made fraudulent PIC claims. Examples of documentation include group structure and consolidated group financial accounts to support the revenue criterion and HR records of employees of the group to support the employment size criterion.
- Taxpayers should understand the scope of qualifying expenses and the required qualifying conditions. The IRAS constantly provides updates and clarifications and it is crucial to keep up-to-date on these developments. If necessary, you should get case-by-case approval early for claiming PIC on IT and automation equipment.
- Cash flow is important and it would advisable to plan the timing and spending (including for capital expenditure) as early as possible.

Conclusion

Larger SMEs are more likely to benefit from PIC+ as they would have more financial clout to make investments at these significant amounts. Smaller SMEs, which usually favour cash flow over tax benefits, may not have the resources to invest up to the annual cap of the PIC+. This is because taxpayers have to spend first, before they can claim the enhanced deductions or cash payouts.

As such, the financing aspect could be an area which the tax authorities could look at in refining the scope of the PIC+.

No stone has been left unturned in the bid to get SMEs to ramp up productivity. Productivity has, and will always be, about chasing a moving frontier. It is time SMEs wake up to that reality.

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Trans-Pacific Partnership: who wins?

Shubhendu Misra and Tan Juan Fook discuss how the Trans-Pacific Partnership can benefit partner countries

Four years in the making, the Trans Pacific Partnership (TPP) now boasts of 12 members that account for US$27.6 trillion or nearly 40% of global GDP and one-third of world trade. The negotiation for this comprehensive free trade agreement (FTA) currently involves Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the US and Vietnam, with more countries expected to join in the future.

The TPP, touted as a “21st century” comprehensive and high standard FTA, includes 29 chapters that cover trade in goods, services, labour standards, investment, competition policy, environment, intellectual property and state-owned enterprises, among other areas. It aims to liberalise trade in nearly all goods and services and includes commitments beyond those currently established under the World Trade Organization (WTO).

The TPP will add to the mix of FTAs that already exist between partner countries. For instance, with the TPP, New Zealand and Singapore will have four FTAs in common (i.e., the bilateral FTA, the “Pacific 4” Partnership Agreement and the ASEAN-Australia-New Zealand FTA). Accordingly, businesses will need to make an informed decision as to which FTA is most beneficial for them, since the rules of origin, tariff concessions and procedural requirements may differ among the respective FTAs.

A major advantage of the TPP is the sheer size of the grouping, which provides an expansive area for regional sourcing as the FTA will presumably allow cumulation, where raw materials and inputs sourced from partner countries could be treated as “local” materials and help the manufacturer meet the rules of origin for the finished products.

Table: Who stands to gain?

<table>
<thead>
<tr>
<th>TPP country</th>
<th>Number of common FTAs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>4 – Chile, Mexico, Peru, US</td>
</tr>
<tr>
<td>Mexico</td>
<td>5 – Canada, Chile, Japan, Peru, US</td>
</tr>
<tr>
<td>New Zealand</td>
<td>6 – Australia, Brunei, Chile, Malaysia, Singapore, Vietnam</td>
</tr>
<tr>
<td>Peru</td>
<td>6 – Canada, Chile, Japan, Mexico, Singapore, Vietnam</td>
</tr>
<tr>
<td>US</td>
<td>6 – Australia, Canada, Chile, Mexico, Peru, Singapore</td>
</tr>
<tr>
<td>Vietnam</td>
<td>6 – Australia, Brunei, Japan, Malaysia, New Zealand, Singapore</td>
</tr>
<tr>
<td>Australia¹</td>
<td>7 – Brunei, Chile, Malaysia, New Zealand, Singapore, US, Vietnam</td>
</tr>
<tr>
<td>Brunei</td>
<td>7 – Australia, Chile, Japan, Malaysia, New Zealand, Singapore, Vietnam</td>
</tr>
<tr>
<td>Japan¹</td>
<td>7 – Brunei, Chile, Malaysia, Mexico, Peru, Singapore, Vietnam</td>
</tr>
<tr>
<td>Malaysia</td>
<td>7 – Australia, Brunei, Chile, Japan, New Zealand, Singapore, Vietnam</td>
</tr>
<tr>
<td>Singapore</td>
<td>9 – Australia, Brunei, Chile, Japan, Malaysia, New Zealand, Peru, US, Vietnam</td>
</tr>
<tr>
<td>Chile</td>
<td>10 – Australia, Brunei, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, US</td>
</tr>
</tbody>
</table>

The table shows the common FTA partners amongst the TPP countries. It appears that Canada will stand to gain substantially as the TPP will provide it with preferential market access into seven additional countries in the Asia-Pacific region. Countries such as Chile and Singapore may appear to “lose out” as they are essentially negotiating

¹Australia and Japan signed a bilateral FTA in April 2014 which is pending implementation.
"A major advantage of the TPP is the sheer size of the grouping, which provides an expansive area for regional sourcing."
with one or two “new FTA partners”. However, the coverage of benefits under the TPP might be better than those obtained in the respective bilateral FTAs. Also, in the area of Rules of Origin, the expansive regional sourcing will assist manufacturers in meeting the origin criteria for their products compared to other bilateral agreements which offer limited scope for sourcing of materials. With its relatively small domestic economy this is particularly helpful for Singapore.

Meanwhile export-oriented TPP economies such as Malaysia and Vietnam can hope to gain preferential access to the US market, provided the agreed rules of origin are favourable for them.

More importantly, will the TPP result in cheaper goods for consumers? Will the tariff savings achieved be shared with or passed on to consumers in the form of cheaper prices of imported goods? As Singapore is a relatively duty-free country, this “issue” is confined to only a handful of products such as beer, stout, samsu (distilled rice wine) and medicated samsu.

Conversely, will the additional obligations in the FTA result in increased costs? For example as TPP is expected to mandate a stronger intellectual property protection regime, it may delay the introduction of generic medicines into the domestic market and thus result in increased health care spending.

Singapore is a staunch proponent of free trade as evident in its relatively duty free trading regime and network of 21 FTAs implemented over the last 15 years. The open trading regime coupled with the FTA links provides Singapore companies with better market access and connectivity.

When will the TPP be concluded?

The negotiations, which started in March 2010, have been a long-drawn affair. TPP countries had missed their targeted deadline of December 2013. At the most recent TPP meeting in Singapore in February 2014, which was attended by ministers and heads of delegation, the countries have charted a path forward to resolve issues in the context of a comprehensive and balanced outcome. Interestingly the countries have not made any announcement on the revised deadline for the completion of the negotiation.

Of notable interest is that prior to the Ministerial meeting in December 2013, Australia and the US had separately issued statements welcoming South Korea's interest to join the TPP. Surely, one of South Korea's concerns is how they could influence the negotiations on the outstanding issues once they are allowed to enter negotiations. South Korea's possible entry in the near future could stretch negotiations well into the second-half of 2014. Another window of opportunity is for South Korea to join the TPP after the conclusion of negotiations and accept the agreement as is.

In comparison to the TPP, the WTO Agreement on Trade Facilitation was successfully concluded during the ninth WTO Ministerial Conference held in Bali, Indonesia, in December 2013. This agreement aims to enhance technical assistance and capacity building, and improve effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. Instead of a single undertaking approach, in which nothing is agreed until everything is agreed, this agreement is expected to enter into force individually as part of an early harvest program allowed in accordance with the Doha Declaration made in 2001.

Perhaps the TPP countries could take a leaf out from the recent WTO meeting by agreeing to designate certain chapters for early harvesting so that companies in certain sectors can enjoy the fruits of the TPP earlier.
Withholding tax compliance: getting it right

Chai Wai Fook and Ang Sau Tze share some insights on how businesses can get it right when complying with their Singapore withholding tax obligations

Withholding tax compliance is an area often overlooked or not given sufficient attention when Singapore businesses are making payments to non-Singapore tax residents. Under Singapore’s withholding tax regime, when a Singapore payer makes certain specified payments to non-residents that attract income tax in Singapore, it is the duty of the payer to withhold tax on that payment and forward that tax amount to the Inland Revenue Authority of Singapore (IRAS) within a prescribed period. In effect, the Singapore payer is the tax-collecting agent on behalf of the IRAS.

If the Singapore payer is not familiar with the rules of withholding tax compliance, the payer may face a situation where it is liable for the withholding tax amount imposed on the payment to the non-resident recipient and penalties for non-compliance. Further, the rates of withholding tax vary for different types of payment. They can range from 10% to 20% or even reduced to zero if specific exemptions under the Singapore withholding tax regime or relevant Singapore tax treaties apply. If the Singapore payer fails to withhold or under-withholds the tax amount, the IRAS can recover the withholding tax from him together with late payment penalties of up to 20% of the tax involved. Thus businesses should understand the rules of withholding tax compliance when making payments to non-residents.

In this article, we highlight some common areas that Singapore payers need to pay attention to and practical tips to mitigate the compliance risk of discharging their Singapore withholding tax obligations.

Know the residency status of the recipient of the income

The starting point is that the Singapore payer needs to know whether it is paying to a non-resident recipient. A company is considered a resident of Singapore if the control and management of its business is exercised in Singapore. Hence, a non-resident company is one where the control and management of its business is exercised outside Singapore. The Singapore payer should check with the income recipient on its residency status before making payment.

In some instances, it may be uncertain as to who is the party that the Singapore payer is liable to make payment to. To illustrate, the non-Singapore tax resident may ask the Singapore payer to make the payment to a Singapore company. The issue is whether the party to whom the Singapore payer is liable to pay to is the non-resident or the Singapore company. In this situation, it is prudent for the Singapore payer to check the contract or agreement to determine who the contracting party is and thus liable to make payment to.

A Singapore branch of a foreign company would generally follow the residency status of its foreign head office and therefore be regarded as a non-resident. Hence, specified payments which attract withholding tax made to a Singapore branch of a foreign company are subject to Singapore withholding tax unless the Singapore branch has obtained a waiver of withholding tax from the IRAS. To ease the administrative burden for Singapore businesses, it was announced in the Singapore Budget 2014 that payers will no longer be required to withhold tax on specified payments made to Singapore branches. This change will take effect for payment obligations that arise on or after 21 February 2014.
“A common pitfall in withholding tax compliance is where the Singapore payer fails to pay attention to where the services were performed by the non-resident and has difficulty justifying to the IRAS that the service fee is not subject to withholding tax.”
Know the nature of the payment to the non-resident

Not all payments to non-residents attract withholding tax. Withholding tax is only imposed on certain specified payments including, among others:

- Interest, commission, fees or other payments in connection with any loans or indebtedness
- Royalties
- Payment for the use of or the right to use knowledge or information
- Service fees
- Management fees
- Rental or other payments for the use of movable property.

Understanding the types of payments to non-resident recipients is crucial for withholding tax compliance. Having said this, complications may arise in determining the nature of the payments when a Singapore payer is processing the payment. For example, a Singapore company makes a payment to a non-resident for the purchase of equipment without knowing that the payment also includes fees for installation of the equipment and provision of training to the non-resident in Singapore. Whilst the cost of the equipment does not attract withholding tax, the payment for the installation services and provision of training may have withholding tax implications.

Therefore, it is critical that the personnel involved in processing payments are well-trained in withholding tax and are kept aware of all the withholding tax changes. They need not be a tax expert but they should at least be aware of it, so that they can bring it to the attention of their in-house tax personnel or their external tax advisers.

Know where the services are performed by the non-resident

Currently, fees for services performed outside Singapore are specifically excluded under the Singapore income tax law and hence are not within the scope of withholding tax. If the services are performed in Singapore, withholding tax at the prevailing corporate rate (or reduced under relevant tax treaties that Singapore has concluded with various countries) would be imposed on the service fee payments to the non-resident.

A common pitfall in withholding tax compliance is where the Singapore payer fails to pay attention to where the services were performed by the non-resident and has difficulty justifying to the IRAS that the service fee is not subject to withholding tax. To illustrate, say a Singapore payer engaged a non-resident for certain technical research services. The non-resident came to Singapore for information gathering, performed the rest of the research services outside Singapore, and subsequently returned to Singapore to report to the management. Arguably, a portion of the services were performed in Singapore and therefore attracts Singapore withholding tax.

To prevent such disputes or issues, it is advisable for the Singapore payer to agree upfront with the non-resident the scope of services and the place where the services would be performed. Where necessary, the agreement with the non-resident should be reviewed by a tax adviser to ensure that such withholding tax implications are covered.

Know when withholding tax is triggered

Currently, Singapore payers are required to forward the tax collected to the IRAS together with a prescribed form by the 15th of the second month following the date of payment to the non-resident. The date of payment is defined by the IRAS to mean the earliest of the following dates:

- When the payment is due and payable based on the agreement or contract. In the absence of any contract or agreement, the date of invoice will be deemed the date of payment (credit terms should not be taken into consideration)
- When payment is credited to the account of the non-resident or any other account(s) designated by the non-resident
- The date of actual payment.
It is therefore crucial for Singapore payers to understand the above criteria so as to pay over the withholding tax to the IRAS on a timely basis. Take the example of a loan agreement which states that interest is due and payable annually on 31 December, and the interest payment must be made within 30 days after 31 December. The date the interest is deemed paid for the purpose of withholding tax will be 31 December notwithstanding that the loan agreement provides a 30-day credit term.

To mitigate such risk of non-compliance, Singapore payers should consider putting in place tax-related control measures, such as a withholding tax checklist, to assist the appropriate personnel in identifying the nature of payments made. Such a checklist can also include a reminder to the personnel on the relevant due date for compliance with withholding tax obligations.

Conclusion

Compliance with the Singapore withholding tax regime can impact the financial position of Singapore payers as they can be liable for the withholding taxes on certain specified payments to non-residents and penalties for non-compliance. It is therefore imperative for Singapore businesses to ensure that proper controls are put in place to minimise the risk of non-compliance. By taking proactive steps, Singapore payers can get their withholding tax compliance obligations right.

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Elsewhere outside Singapore

BEPS: the story continues to unfold

Russell Aubrey and Aw Hwee Leng discuss the latest developments in the OECD’s plan to overhaul international tax rules

Last July, the Organisation for Economic Co-operation and Development (OECD) rolled out an ambitious plan to re-write “archaic” international tax rules which have not kept up with today’s changing global business landscape. The Wall Street Journal has called the OECD’s 15-point Action Plan on Base Erosion and Profit Shifting (BEPS) “an attempt to limit corporate global tax competition and take more cash out of the economy”. Be that as it may, the G7-backed blueprint aimed at enhancing transparency and preventing tax avoidance marks a turning point for international businesses and tax practitioners.

The BEPS blueprint lays out 15 separate “Actions”, with delivery deadlines from September 2014 to December 2015. Progress has gained momentum with five discussion drafts, inviting feedback, issued in the first quarter of this year alone.

Transfer pricing documentation

Released in January, the first of the five discussion drafts addresses Action 13 on transfer pricing documentation and proposes a two-tier approach involving a global master file and local country files. The master file should contain comprehensive information about the global operations of a multinational group while the local country files should have transactional information relevant to each country.

Perhaps the most controversial element of the discussion draft is the proposed country-by-country (CbC) reporting template, which requires multinational groups to provide extensive information on the business operations and taxes paid to each country in which each entity in the group operates. This includes information on the entity’s place of effective management, business activities undertaken, its revenue and income information, withholding tax paid, number of employees, amount of employee cost, book value of tangible assets and information on intercompany payments made.

Needless to say, the CbC reporting template has garnered much attention and comments. While the feedback suggests the template could be simplified, the information requirements are still expected to remain just as onerous.

The sheer volume of information required for the CbC reporting template will place a great compliance strain on multinational groups. Although the template is still in draft form, multinational groups should consider how to prepare for this new reporting environment. In particular, attention should be paid to existing financial reporting systems and the availability of data sources that could be used to provide information of the type and in the form contemplated in the draft template. Tax authorities want the template so that they can understand the “big picture” about a company’s transfer pricing, and use it for risk assessment purposes.

Tax challenges of the digital economy

Tax legislation has not kept up with the explosion of business transactions conducted in the borderless virtual world. Action 1 on addressing tax challenges of a digital economy seeks to plug this gap. These challenges include the characterisation of digitally-derived income for tax purposes and how the source and residence concepts should be applied to the digital world.

The discussion draft on Action 1, released in March, outlines the issues raised by the Task Force on the Digital Economy and its suggested menu of proposals to address them. The suggestions include modifications to definition
“Companies need to ensure that the structuring of any new acquisition, financing or supply chain transaction can be robustly defended by substance.”
of permanent establishment status, imposition of withholding tax on certain types of digital transactions and imposition of an indirect tax on digital transactions.

These are to ensure that taxation is more aligned with where economic activity giving rise to the income takes place. This should restore the taxing rights at the level of both the market or source jurisdiction and the residence jurisdiction of an ultimate parent company.

**Treaty abuse**

A discussion draft titled “Preventing the Granting of Treaty Benefits in Inappropriate Circumstances” in connection with Action 6 on treaty abuse was also released in March. It contains proposed tax treaty provisions and domestic law provisions to address treaty shopping and other potential treaty abuse.

It recognises that countries are already using a variety of approaches to address instances of treaty shopping and recommends a series of additions or changes to the OECD Model Treaty, such as the inclusion of a limitation of benefits provision and a general anti-abuse rule that is based on a main purpose test, to address the same.

The discussion draft clarifies that tax treaties are not intended to be used to generate double non-taxation and also identifies tax policy considerations for countries intending to enter into a tax treaty with another country.

**Hybrid mismatch arrangements**

Two discussion drafts on Action 2 on neutralising the effects of hybrid mismatch arrangements have been the latest to be released by the OECD. The first discussion draft proposes domestic law changes to neutralise the effect of hybrid mismatch arrangements.

The second discussion paper recommends changes to the OECD Model Convention to clarify the treatment of hybrid entities, such as the inclusion of a new provision to deal with transparent entities, and providing suggestions on the limitation of relief provided under the treaty.

**Progress underway**

In the OECD’s second webcast on 2 April 2014 on the BEPS project, Pascal Saint-Amans, the think tank’s tax director, updated that work on both Action 5 on harmful tax practices and Action 15 on the development of a multilateral instrument for amending bilateral tax treaties is well underway. Meanwhile, discussion drafts for action plans with 2015 implementation dates are expected to be released by the second of half of this year.

The OECD may have made rapid progress on hammering out details of the BEPS project, but getting countries aligned to the changes may take considerably longer.

Meanwhile, some countries have gone ahead by introducing domestic legislative changes specifically related to BEPS. The 2014 French Finance Bill introduced measures to deny deductions for interest accrued to low-taxed related party lenders and requirements to mandatorily disclose foreign tax rulings as part of transfer pricing documentation. Meanwhile, Italy has included new tax provisions concerning the digital economy in its 2014 budget law. The Netherlands unveiled a new decree on 1 January 2014 which requires Dutch companies claiming treaty benefits or benefits under the EU Directive to declare whether or not they have met a defined set of substance requirements, failing which the Dutch tax authorities will inform the foreign tax authority.

In Asia-Pacific, countries such as Indonesia are unilaterally taking measures to counter BEPS in their home territory. Non-OECD members such as India and China have also been actively engaging with the OECD on the BEPS project, including participating in the consultation process.
Are you BEPS ready?

With these developments unfurling, companies cannot afford to remain passive and adopt a wait-and-see attitude.

The central theme of the Action Plan is to achieve alignment between taxation and the relevant substance that creates economic value. Companies need to ensure that the structuring of any new acquisition, financing or supply chain transaction can be robustly defended by substance – and they need to act now rather than later.

They should also review their existing structures, assess the impact of the BEPS Actions on their operations, and consider next steps to ensure they are BEPS ready. For example, it is critical to ensure that the company’s supply chain set-up can be defended and that the company’s financial reporting system can cater for the level of detail that may be required in the CbC reporting template.

Tax authorities around the globe are keen to defend their tax revenue turf. This, coupled with the need to be perceived as being “cooperative” with the larger international community in setting tax policies, will see countries more likely to act on the OECD’s recommendations.

Companies need to keep abreast on OECD developments. More importantly, they should also keep their ears close to the ground on the viewpoints of the countries in which they operate or plan to invest as this would have an impact on their business models and structures.
Elsewhere outside Singapore

Hong Kong in pursuit of innovation

Angela Tan and Jimmy Yu highlight some of the key announcements in the Hong Kong Budget and how they compare with Singapore

Hong Kong aims to bring more ideas to fruition, its latest fiscal blueprint reveals. This mirrors Singapore’s strategy of building a vibrant R&D ecology to boost innovation and productivity.

Hong Kong’s Financial Secretary John Tsang delivered the city-state’s 2014-2015 Budget Speech on 26 February 2014, five days after Singapore announced its Budget 2014 measures. Just like Singapore, Hong Kong left its corporate and personal tax rates untouched — salaries tax, profits tax, property tax and stamp duty were maintained.

The Budget revolved around the central theme of competitiveness, with proposals aimed at improving the business landscape, creating jobs and sustaining healthy public finances. In particular, the Budget identified the innovation and technology industries as key economic drivers, which also played a crucial role in employing a younger generation of workers.

In this article, we review key planks of Hong Kong’s Budget in the areas of innovation and financial services, and how these compare with similar measures in Singapore.

Encouraging innovation and technology

To further stimulate R&D activity, the Hong Kong Budget announced the set-up of an Enterprise Support Programme under the Innovation and Technology Fund. This new scheme will provide private sector companies, irrespective of their size, with funding of up to HK$10m, rising from a previous ceiling of HK$6m, for each R&D project. The recipient company must shoulder at least half of the project costs and can retain all intellectual property rights of the project.

Separately, the government also proposed the set-up of an Innovation and Technology Bureau, a centralised body to coordinate and promote innovation and technology policy.

These measures are aimed at encouraging companies to step up their R&D investment and commercialise their innovations.

If Hong Kong’s focus on innovation and technology seems all too familiar, it’s because Singapore, its closest competitor, has also been on a similar ambitious productivity and innovation drive. For the past three years, productivity has been a central plank in Singapore’s annual government Budget after the introduction of the Productivity and Innovation Credit (PIC).

While both Hong Kong and Singapore seemed to have embraced similar themes, they have adopted different strategies in promoting R&D, innovation and productivity. Singapore prefers to actively cultivate the development of its own innovation and technology industries through various tax incentives.

Currently, Singapore businesses can enjoy an additional 50% tax deduction on spending on R&D activities up to the year of assessment 2015, for R&D conducted in Singapore. This tax deduction has been extended by another 10 years to YA 2025, giving businesses certainty that their qualifying R&D activities will continue to attract tax benefits.

Singapore also grants a 400% tax deduction under the PIC scheme on up to S$400,000 incurred on spending in qualifying investments in areas such as IT and automation equipment, training, R&D and the registration and acquisition of certain intellectual property.
“If Hong Kong’s focus on innovation and technology seems all too familiar, it’s because Singapore, its closest competitor, has also been on a similar ambitious productivity and innovation drive.”
Promoting international and financial services

The financial services industry is a key pillar of the Hong Kong economy, so it's no surprise that the recent Budget has devoted attention to retaining Hong Kong's competitive edge in this area.

Finance and treasury functions
Multinational groups often concentrate their cash resources within a particular region in a regional treasury company. Under such an arrangement, operating companies with surplus cash would lend to the treasury company which will then on-lend to group companies in need of funds.

Under current provisions of Hong Kong's Inland Revenue Ordinance (IRO), interest derived by the treasury company could be taxable in Hong Kong, but the interest paid by the treasury company to overseas group companies that are not financial institutions would generally not be tax deductible. This may dim Hong Kong's allure as a preferred regional treasury centre in the eyes of multinational groups.

To attract more treasury functions to Hong Kong, the Hong Kong Budget proposed the appointment of a task force to review the requirements under the IRO for interest deductions for corporate treasury activities and clarify the criteria for these deductions. Conceivably, relaxing the deduction rules may mean that the company concerned would have to meet certain conditions to qualify as a treasury company.

Hong Kong also does not currently impose withholding tax on interest payments made to overseas group companies.

In contrast, to establish itself as a preferred location as a regional treasury centre, Singapore has the Finance and Treasury Centre (FTC) incentive scheme, which provides for profits from qualifying transactions to be taxed at a concessionary corporate tax rate of 10%, instead of the headline 17% tax rate. In addition, the FTC incentive scheme grants withholding tax exemption on interest payments in relation to qualifying FTC transactions.

From a tax deduction standpoint, the interest expenses incurred in relation to the funding of FTC activities are generally deductible against the profits from the FTC activities.

Private equity funds
Hong Kong’s asset management industry has reason to cheer. First mooted in the previous year’s Budget, the proposal to allow private equity funds to enjoy tax exemption for offshore funds as a sweetener to expand their business in Hong Kong has been given the green light in this year’s Budget. It was announced that the government has completed industry consultation and the regulatory framework will be drawn up very soon.

Under the Profits Tax Exemption for Offshore Funds Ordinance introduced in 2006, all non-resident persons (including individuals, corporations, partnerships and trusts) enjoy tax exemption if their activities in Hong Kong are restricted to “specified transactions”. This includes transactions in securities, other than shares or debentures etc., in a private company.

This has been perceived as too restrictive, given that private equity funds usually invest in start-up businesses by taking up a stake in these private companies. Hong Kong’s broadening and relaxation on the definition of shares or debentures etc. in a private company will be welcomed by industry players.

This move will also align Hong Kong with Singapore’s exemption regime for offshore funds.

Singapore’s tax exemption regime for offshore fund vehicles (outside Singapore) exempts tax on “specified income” derived from “designated investments”. Singapore also has a tax exemption regime for onshore Singapore resident fund vehicles. The list of designated investments is quite comprehensive and includes shares and securities issued by both listed and unlisted companies (as long as the unlisted company is not in the business of trading or holding of Singapore real estate companies).

Singapore’s tax exemption regime for funds is generally considered more favourable over Hong Kong’s as the former covers most types of Singapore company shares, including companies with active business or trade. It also covers other forms of investments, such as prescribed derivatives and loans to persons outside Singapore (not just debentures), as long as these loans do not give rise to interest payments that are subject to Singapore withholding tax requirements.
While the objectives for excluding private companies holding local real property are similar in Singapore and Hong Kong, Singapore’s exclusion rules do not contain a stipulated percentage of the value of all the private company’s assets at any time within the three-year stipulated threshold. This may be considered less onerous than Hong Kong’s proposed tax exemption provisions. It may impact companies that are not in the business of trading or holding of Singapore real properties but may nevertheless hold immovable properties.

Conclusion

Singapore and Hong Kong have both adopted a common goal in the promotion of innovation and technology with a particular focus on R&D. It would be interesting to see which strategy yields better results: Hong Kong’s direct funding of R&D projects or Singapore’s enhanced tax deductions for R&D projects?

The review of the interest tax deduction for treasury activities to attract more treasury functions to Hong Kong and the introduction of the tax exemption scheme for private equity offshore funds to improve Hong Kong’s competitiveness in the financial industry, bear very close similarities with Singapore’s existing tax incentives. Will Hong Kong adopt Singapore’s approach in introducing more tax incentives schemes to promote other developments such as the use of Hong Kong as a regional or international headquarters, or as an operational base for global trading? Only time will tell.

“Believe in opportunity, not fate”, concluded John Tsang at the end of his Budget speech. Indeed, any economy is not immune to challenges. But within these challenges, lie opportunity.
Managing tax controversy in today’s shifting global landscape

In EY’s Budget Seminar 2014, held in March 2014, our panel of tax leaders discussed the tax controversy environment in Singapore, and how the OECD’s Action Plan on Base Erosion and Profit Shifting could alter the landscape. Here are some excerpts from the panel discussion.

Panelists:
Jonathan Stuart-Smith,
Asia-Pacific Global Tax Desk Leader
Soh Pui Ming, Partner, Global Compliance and Reporting
Luis Coronado, Partner, Transfer Pricing
Michele Chen, Director, Tax Performance Advisory

Jonathan: BEPS – which stands for Base Erosion and Profit Shifting – is part of a study launched by the Organisation for Economic Co-operation and Development a couple of years ago, with a lot of political weight behind it. It is relevant to us working in Singapore, as we will discuss later, but let’s start off by looking at the tax controversy scene in Singapore.

Pui Ming: The tax landscape in Singapore is becoming more litigious. The number of Board of Review cases in the last 10 years has tripled, compared to the previous decade. There has also been a sharp increase in the number of tax queries in Singapore by the Inland Revenue Authority of Singapore. The IRAS is drilling down very deep for details.

Luis: I agree. The queries have become a lot more detailed. The first round of queries may be general questions on arm’s length prices, for instance. Questions may be more pointed and specific by the third round of queries. We also continue to see the IRAS issuing questionnaires and asking detailed questions about transfer pricing, in particular the documentation you have in place.

Pui Ming: A common question from IRAS is expense allocation. For example, for a company that has an active business in trading or manufacturing, and at the same time also a holding company that provides management services to its subsidiaries, one can expect the IRAS to be drilling down on how the expenses are allocated across all these three functions.

Expenses allocated to stewardship function will be disallowed whereas expenses allocated to management services, to the extent it is not charged out, will also not be deductible. On top of that, there is deemed income exposure for management service charged out at cost.

We have also seen intensive queries on R&D expenses and PIC claims.

Desk audits are also becoming more common. In such cases, IRAS may ask for general ledger listings. Certain items may be scrutinised more closely, such as entertainment, travel, and, transport, miscellaneous expenses, and even cost of sales.

Because of the punitive nature of penalties ranging from 100% of the tax underpaid for an incorrect return, to 400% for cases with wilful intent to evade tax, it is important that when we take a tax position, it is a defensible position.

There are also some common issues that lead to errors. The first one is related to lack of controls. This happens very often when there is no proper handover when staff resign or go on maternity leave. This may lead to gaps in tax filings or missed tax instalment payments. Very often, we hear our clients say “I am sure we have the documents somewhere but we cannot find the file.” Therein lies the problem. Where do you keep all your documents and files and are you able to retrieve them?

Another issue is with manual extraction of data. All of us know that private car expenses are not deductible. But when it comes to tax filing season, does your accountant manually comb through your general ledger to extract private car expenses? Because this can be captured under various categories: miscellaneous expenses, transport or even staff benefit. It is hard to be 100% accurate given the work and time pressure. Let’s not forget there is also the likelihood of human errors.
“We need to keep abreast of what’s happening around us in the region as well as globally, because tax risk will be emerging from quarters where you least expect it with the increased transparency through BEPS and also with other tax authorities starting their own initiatives.”

The next point is insufficient training and guidance. The biggest problem is that sometimes we do not know what we don’t know. If your staff are not trained properly and kept up to speed on the latest changes, they may not know what to look out for and what data to extract!

Finally, not having sufficient time to verify the information and check the tax returns can be a big issue.

**Michele:** I think it would be good if we contrast this with what finance personnel do. They’ve got their finance month-end close, quarter-end close, year-end close nailed down. It is systematic, they know exactly what do and they know how to draw the data.

But when it comes to tax returns and data extraction, very often it is not systematic, it is ill defined and it is manual. And that’s where the lack of knowledge and therefore the risk of errors being made in the financial data entered for the tax return happens.

And because the tax compliance process is not systematic and not well planned like the financial close process, you find that there is a lack of time. So, you spend time doing manual extraction and gathering the data and not enough time in challenging and reviewing whether it is actually correct before it goes into your return.

Contrast that with how the statutory accounts are prepared. So much review and so much challenge happens, before the accounts are eventually signed. So there is a disjoint in terms of the two processes, which in my view are equally important.

**Luis:** Another point here is lack of alignment in certain documents. We often see situations where current terms or transfer pricing policies have not been updated or contractual obligations that you forget about. Say you’ve changed your transfer pricing policy from cost-plus-10% to cost-plus-5%. You go ahead and put the changes in the financial statements, but you never updated the legal documents.
Jonathan: I think we all agree that Singapore tax controversy is on the rise and there are challenges in how to prepare the right level of data to answer the questions coming in from IRAS. Let’s now take a look through the global lens of BEPS.

The OECD started its work on BEPS in 2012. There have been many high profile cases, particularly in the UK and Europe, and to some extent in Australia and the US. There were lots of newspaper articles and hearings in front of parliaments about multinational companies who were allegedly avoiding tax. There was a concern that if corporates are viewed as not paying their fair share of tax, then individuals may be tempted to follow suit. This could lead to a real undermining of the credibility of tax systems.

The G8 and G20 are fully behind the OECD on BEPS. The interesting thing is that this is not just a rich countries club. The OECD has deliberately brought on board the whole of the G20 and that includes China, India and Indonesia, from this part of the world, with equal representation in the process and who will be committed to implementing the results of the process. So, there is cross-country support for this move.

Our view is that these changes will come. This is already happening in some countries, even before the OECD reports back. So, we think that companies really need to be aware of these changes and start to think about what they could mean for their existing structures.

There are 15 BEPS Action Plans from the OECD. We’ll take a deeper dive into the ones that are we think are the most relevant for Singapore.

Action 5 has definite relevance for Singapore and is about so-called harmful tax practices. In other words, tax incentive regimes.

The OECD is looking at two things. The first is substance: does the tax incentive actually have substance requirements? Our view is that Singapore is well placed in this regard because Singapore’s incentives do require substantial substance here in Singapore. The second aspect is transparency. Say you are a Singapore subsidiary of an Australian group, and there’s a treaty between Singapore and Australia. If the Singapore subsidiary obtains a ruling, then the OECD is suggesting that the Singapore authorities should automatically pass that ruling to Australia.

Michele: On the substance requirements, we have seen that the incentive agencies have stepped up their monitoring of whether companies are meeting the incentive conditions that they have committed to. We may even see formal monitoring of these conditions and requirements for external audit sign offs. That would apply to quantitative conditions such as total business spending, headcount and milestone attainment.

To meet all those requirements, you should start putting in place the processes and governance framework to draw that data and track that data internally.

Pui Ming: I believe that the authorities will be stepping up on the checks to make sure that all the milestones are properly met.

Jonathan: Yes, that is the reality and the message that Singapore should be communicating. The interesting thing about this action plan is that this year the OECD will look at OECD member countries’ incentive regimes. But next year, they will move on to non-OECD member countries. So we expect that they will take a closer look at the Singapore incentives.

Now, let’s move on to transfer pricing and value creation, which are covered in Actions 8, 9 and 10.

Luis: I think in the three Action items, again the key is going to be substance. Authority, capability and control will be very important. Take for instance intangible property. In the past, as long as we had the financial means and perhaps the registration of the intellectual property in Singapore, that would have been enough to claim that we own all the IP rights. Now, countries like China and India are challenging this by examining other factors such as efforts in the maintenance of the intellectual property and R&D activities.

Jonathan: So if you do have a regional hub based here in Singapore, then it is probably a good time to look at the level of substance you have and is this aligned with your transfer pricing position. Evaluate whether you need even to move more substance to Singapore to bolster your position.

Action 13 is about the documentation requirements and country-by-country reporting template. In January, the OECD issued a discussion draft and showed us what they propose this country-by-country reporting template will look like. It is actually asking for 17 different pieces of data for every entity that your group has around the world. This is a huge data gathering exercise! And the current proposal is that all of that data for all of your worldwide subsidiaries and branches should be disclosed to every country in which you do business – in full.
Submissions have gone in to say that this is unreasonable compliance burden on business. We hope that the OECD will be listening to these submissions.

Luis: The documentation revolves around the Masterfile concept and the local country report or component. In that respect, there have been proactive approaches that have worked. The EU is the best example of the Masterfile concept working where the head office will prepare the master file and each of the subsidiaries prepares their complementary country-by-country reports.

But we also have situations where it hasn't worked, such as the PATA initiative, which involved the US, Canada, Japan and Australia trying to work out a consensus on what documentation should look like in those four countries. Quite frankly, it didn't turn out well because it was a combination of the requirements of those four countries.

So these recommendations from the OECD, though positive, are not new.

Chapter 5 of the OECD Transfer Pricing Guidelines has always talked about documentation. Yet, different countries have different interpretations of this. Hopefully there will be some alignment between the countries on the requirements because we currently have more than 50 with documentation rules.

Obviously, disclosure of too much information is also a concern. There is a concern of whether there is going to be a lack of confidentiality when some of these documents are being submitted.

Jonathan: If tax controversy is going to increase even more and tax risk is going to increase even more, what can you do as a finance manager or tax manager based in Singapore. How can you prepare?

Michele: Our recommendation in this area is that it is no longer good enough to take a silo view of taxes. We need to keep abreast of what’s happening around us in the region as well as globally, because tax risk will be emerging from quarters where you least expect it with the increased transparency through BEPS and also with other tax authorities starting their own initiatives.

The second area is really intuitive — get your hygiene right in terms of your tax returns. That would reduce the amount of controversy that you dispute with the tax office. You need to get the financial data that is going into your tax return as accurate as possible. This builds up your credibility as a taxpayer and reduces the disputes, if any, to real tax technical disputes rather than erroneous returns disputes.

The third area is improving the documentation that you keep as an organisation to support your tax positions. Can you defend the expenses that you have claimed? Do you have the supporting details in your general ledger? That really goes a long way in helping to help your people who have to defend the tax return positions when you are no longer in the organisation, for example.

Organisations need to have increased tax awareness of what their responsibilities are. This would be linked back to more training and more education for all persons who have responsibility for taxes in your organisation.
The insurance industry is facing a sea of regulatory change, with the Solvency II initiative in Europe and the Risk Based Capital 2 proposals here in Singapore. Tell us more about what’s happening on insurance solvency regulation and what does this mean, from a capital and risk management standpoint, for insurance companies in Singapore and the Asia-Pacific?

Solvency II is the EU’s proposed insurance solvency standard which is expected to be fully introduced in the European Economic Area by 2016. Solvency II comprises three pillars — a risk based system to measure solvency and capital requirements; a comprehensive risk management framework to be embedded in the insurer’s business as usual processes; and wide ranging disclosures on the company’s solvency and risk position. The aim is to provide a much more effective regulatory framework for the industry and to ensure that insurance companies will be financially sound and can withstand difficult periods. This will protect policyholders, both consumers and businesses, and preserve the stability of the financial system.

The EU was also looking to set the standard for insurance regulation around the world and the development of the Solvency II rules has been closely watched by other regulators around the world. For example, here in the Asia-Pacific region, the Australian regulators have been developing an equivalent regime whereas several other countries are at a much earlier stage in the development of their rules.

As you might expect, Singapore has been very much at the forefront of regulatory developments in Asean. In March, the Monetary Authority of Singapore published a second consultation paper on proposed revisions to the Risk-based Capital framework for insurers to improve the comprehensiveness of risk coverage. These include updated proposals to calibrate capital requirements and refine the capital adequacy framework.

As they get to grips with the new capital and risk frameworks that will be imposed on them, many multinational insurance groups are also taking the opportunity to look again at their legal entity structures both here in Singapore and the Asia-Pacific. They want to be confident that they have the right structure for the way they want to manage and grow their business. Typically this has seen them move from a country-by-country structure to a regionally-integrated model with a strengthened regional headquarters. In some cases they are also responding to more direct pressure from regulators who are keen to see local subsidiaries rather than branch operations in their respective countries.

Singapore’s well developed insurance market and infrastructure and its attractive tax incentive regime mean that it is already used as a regional HQ location and regional hub for many insurance groups. This role is potentially growing as several groups are looking at expanding both their operating capabilities and their balance sheets here.
“As they get to grips with the new capital and risk frameworks that will be imposed on them, many multinational insurance groups are also taking the opportunity to look again at their legal entity structures both here in Singapore and the Asia-Pacific.”
As part of the regional restructuring, will insurance groups be looking to drive further operational efficiencies?

Certainly, insurance groups will be looking to harness economies of scale and operate more efficiently and economically. In many cases, this means introducing one or more shared service centres to support their operations across the region. These would typically mean housing back-office activities in lower-cost territories such as the Philippines, India and Malaysia.

On the other hand, other groups may want to move up the value chain by introducing higher value-added activities such as actuarial or product development services in “centres of excellence” around the region. This would be very much focused on an optimum location from a recruitment and business efficiency perspective rather than on a traditional low-cost territory.

Let’s not forget that tax considerations also come into play. This can be seen from a two-fold perspective. For one, there is the indirect tax impact. Establishing a shared service centre, a centre of excellence or both, means that an insurance group is disaggregating its value chain and, in doing so, risks not being able to recover all their input value-added tax or goods and services tax on the cross charges.

A second tax facet is transfer pricing, which requires careful consideration.

I’ve mentioned that shared service centres are typically located in low cost territories. An effect of this is that profits are dragged into these territories and very often, profit repatriation may be fiscally inefficient because those territories tend to have significant withholding taxes on dividends. These can impose a potentially significant cost on bringing profits out of these territories.

Let’s discuss the indirect tax impact on insurance companies. Are there any difficulties in managing this?

A feature of GST or VAT regimes in the Asia-Pacific region is the diversity of treatment of insurance. For example, general insurance in Singapore is fully taxable for GST purposes, while it is exempt in Korea and Japan.

In the past, many insurance groups have seen no benefit in managing indirect taxes on a regional basis because the rules are so different across countries.

However, the introduction of GST in Malaysia, the progressive roll-out of VAT in China, as well as a significant increase in the consumption tax rate in Japan means that indirect taxes across the region are becoming increasingly important to insurance groups.

There are a growing number of insurance companies which are now looking to manage indirect taxes on a regional basis. This could involve, for example, implementing common systems, processes and control frameworks across the region to capture the inputs required. Although there may be different indirect tax rules across the region, underlying it all are the same processes.

Transaction taxes need to be managed from the initial input into the accounting system right through to the tax return and the systems, processes and control frameworks that support that could be common across all territories.

The excuse that tax systems are different is no longer valid. While standardisation can initially be challenging, it is becoming a very real possibility. A regional approach to managing indirect taxes also brings the benefit of translating planning strategies from one country to another.

Let’s also take a deeper dive into transfer pricing, since you’ve mentioned that it needs to carefully considered. Why is this important?

Many countries in the region have introduced more stringent rules on transfer pricing documentation and insurance groups in the region are already gearing up to deal with these enhanced requirements. Many are also alert to the fact that head office or regional office recharges are an easy target for tax authorities who have built up considerable experience in reviewing and challenging them.
Less well understood by them, however, are the intra-group, cross border reinsurance contracts that many of the larger insurance groups have in place. These are a well-established and widely-used tool for managing and pooling risk in multinational insurance groups, but there is little evidence that many tax authorities in the region properly understand their importance from a commercial or, indeed a transfer pricing point of view. Having said that, we are beginning to see signs of a growing number of enquiries into, and challenges to, the pricing methodology used.

So it is no surprise that insurance companies have their work cut out for them. They need to develop very robust documentation procedures to capture transfer pricing methodologies and the assumptions made in the pricing of related-party transactions in order to withstand increased scrutiny by tax authorities.

Global mobility programmes are becoming more common, especially among multinational insurance companies with a presence in the region. What is the tax impact, from a human capital perspective, in this regard?

It is true that you see a significant increase of movement of people around the region – both in terms of relocation or short-term assignments. Insurance companies have had to build their skills in managing a mobile workforce and become more adaptable.

This also means understanding the tax consequences of deploying your talent to another country, not just for the individual concerned but also for the organisation as a whole.

An employee who goes on a short term assignment or a longer term secondment will face a raft of tax issues around payroll taxes, social security contributions and pensions and global mobility teams need to take great care that the employee’s and the organisation’s position is properly understood and protected.

Mobile employees can also expose multinational groups to permanent establishment or PE risk, that is to say, the risk that their profits will become taxable in another territory because of the activities of their staff or agents in that country. In the insurance sector it is the reinsurers and large commercial risks insurers who are perhaps most at risk. Typically their business involves a lower number of higher value contracts, each of which requires extensive interface and detailed negotiation with the customer. Whereas life insurance and personal lines general insurance is usually sold through a local establishment, larger risk insurance and reinsurance is often sold on a cross-border basis, with sales and account management personnel fanning out across the region on short or longer term marketing assignments. The activities of these staff need to be very closely defined and policed if PE risks are to be avoided. Often it is the regional carriers based in Singapore that rely on these outbound salesforces and which become exposed to these PE risks.

Lastly, what do you see are the challenges for the insurance industry in the region?

The real challenge for all insurers is how to attract and retain customers and service them more efficiently. This ranges from developing new markets and new ways to access and service customers through to improving the way they manage and process data, whilst dealing with an ever-changing overlay of regulation and tax law.

This region comprises a wide diversity of markets many of which have real potential for growth. Singapore itself is one of the more developed markets in the region, but it remains an important platform for expansion in the region, particularly in the ASEAN countries. The test for insurance companies is how use that platform to reach those customers and service them efficiently and profitably. I am certainly excited about what this region has to offer!
### Corporate and personal tax

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<thead>
<tr>
<th>Date</th>
<th>Description</th>
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<tbody>
<tr>
<td>24 March 2014</td>
<td>Writing-down allowance on payment for indefeasible right of use</td>
</tr>
<tr>
<td>1 March 2014</td>
<td>Income tax treatment of limited liability partnerships (LLPs) (second edition)</td>
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<td>Income tax treatment of limited partnerships (LPs)</td>
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### Goods and Services Tax (GST)

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<td>1 April 2014</td>
<td>GST: guide for the fund management industry</td>
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<tr>
<td>31 March 2014</td>
<td>GST guide for e-commerce</td>
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<td>GST guide for retailers participating in tourist refund scheme</td>
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<td>31 March 2014</td>
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<td>31 March 2014</td>
<td>GST: guide for retailers</td>
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<tr>
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<td>GST: guide for the insurance industry</td>
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<td>GST: import GST deferment scheme</td>
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<td>31 March 2014</td>
<td>GST: major exporter scheme</td>
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<td>31 March 2014</td>
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<td>31 March 2014</td>
<td>GST: guide on the use of business premises by third party for free</td>
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<tr>
<td>21 March 2014</td>
<td>GST: advance ruling system</td>
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<td>17 February 2014</td>
<td>GST: approved refiner and consolidator scheme (ARCS) (third edition)</td>
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<tr>
<td>28 January 2014</td>
<td>GST: general guide for businesses (second edition)</td>
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### Stamp duty

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<tr>
<td>21 February 2014</td>
<td>Budget 2014: streamlining the stamp duty rate structure</td>
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### Monetary Authority of Singapore (MAS) circulars issued from 1 January 2014 to 30 April 2014

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<tr>
<td>31 March 2014</td>
<td>GST remission on expenses for prescribed funds managed by prescribed fund managers in Singapore</td>
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### Agreements for Avoidance of Double Taxation (DTAs) signed or ratified from 1 January 2014 to 30 April 2014

#### DTAs signed

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<tbody>
<tr>
<td>3 April 2014</td>
<td>Singapore – Sri Lanka</td>
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<td>21 February 2014</td>
<td>Singapore – Lao People’s Democratic Republic</td>
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#### DTAs ratified

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<tr>
<td>25 April 2014</td>
<td>Singapore – Barbados</td>
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<tr>
<td>6 February 2014</td>
<td>Singapore – Austria (exchange of diplomatic notes)</td>
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<td>6 February 2014</td>
<td>Singapore – Poland (revised DTA)</td>
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<td>15 January 2014</td>
<td>Singapore – Morocco</td>
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Our tax professionals in Singapore provide you with deep technical knowledge, both global and local, combined with practical, commercial and industry experience. We draw on our global insight and perspectives to build proactive, truly integrated direct and indirect tax strategies that help you recognize the opportunity in business change and build sustainable growth, in Singapore and wherever else you are in the world.

We draw on extensive accounting and compliance experience and tried-and-tested methodologies that allow you to manage your direct and indirect tax compliance and reporting obligations effectively. We help you assess, improve and monitor your tax function’s processes, controls and risk management and maintain effective relationships with tax authorities.

Our talented people, consistent methodologies and unwavering commitment to quality service help you to build the strong compliance and reporting foundations and sustainable tax strategies that help your business succeed.

**Business Tax Services**

Our Business Tax Services in Singapore are designed to meet your business tax compliance and advisory needs. Our tax professionals draw on their diverse perspectives and skills to give you a seamless service through all the challenges of planning, financial accounting, tax compliance and maintaining effective relationships with tax authorities. Our holistic approach builds sustainable tax strategies based on technical, practical, commercial and industry knowledge.

**Quantitative Services**

We offer a scaleable set of services to assist clients with analysing tax opportunities, typically related to large data sets, efficiently and systematically identifying multi-country tax regulations and the benefits that can be attained. Our services can include assistance with: accounting methods and inventory, research incentives, flow-through entity planning, and capital assets and incentives.

Our Business Incentives Advisory team works closely with the Business and International Tax Services as well as Indirect Tax Services groups to assist in incentives negotiations for our clients. For Singapore incentives, we evaluate and assess possible incentive opportunities based on project parameters for our clients, provide suggestions to avail of incentive opportunities, strategise the approach for discussions with the authorities, facilitate meetings with the authorities and our clients, assist in applications for relevant incentives, and assist in the process design for incentive maintenance, tracking and reporting obligations. We also conduct regional incentive studies where we provide cross-country comparisons of potential incentives for site location or competitive benchmarking.

We also assist with R&D tax deduction, where we will meet with technical personnel to assess the potential qualifying R&D projects, work with your finance and tax teams to identify qualifying R&D expenditure, prepare or review the R&D plans for submission to tax authorities, and assist you with queries raised by the authorities surrounding claims.

**Global Compliance and Reporting**

Compliance and reporting make huge demands on tax and finance functions today. Our market-leading approach combines extensive local compliance and accounting experience — in 140 countries — with a standard global compliance process and web-based tools.

You can access the resources of our dedicated compliance and reporting professionals in one country or globally with a single point of contact. Our advice can accommodate local-to-local service, where you need it, at the same time as centralising and automating aspects of the process where it makes sense.

Our next generation model focuses on global data management, making it easier to centralise and re-use data across the financial supply chain and geographical boundaries. This can result in more accurate data and less manual intervention. In one country or many, we can give you an integrated, consistent, quality service that unlocks the potential of your compliance function, with tax compliance, statutory accounts preparation and tax accounting calculation support.

**Tax Performance Advisory**

Your tax function needs to efficiently manage competing responsibilities and stakeholders while delivering enhanced performance not just in the tax department but across the wider business as well. We can help you build strong compliance and reporting foundations, effective risk management protocols and a high performing tax function. We have experience delivering projects to companies of all sizes across all aspects of the tax life cycle: planning, provision, compliance and controversy. Our holistic approach allows us to speak the same language as your tax, finance, information technology and business professionals, which is necessary to drive enhanced tax function performance across the enterprise.

**Tax Policy and Controversy**

Developing a tax policy that resolves impediments to business needs a team that can work with government to explain issues, clarify objectives, and achieve a successful outcome for everyone. Our global tax policy network has extensive experience of helping develop and implement policy initiatives, both as external advisers to governments and companies, and as advisers inside government. Our dedicated teams of tax policy professionals and business modelers help address your specific business environment and improve the chance of a successful outcome.

In addition, our global tax controversy network works with you to address your global tax controversy, enforcement and disclosure needs. We focus on pre-filing controversy management to help you properly and consistently file your returns and prepare the relevant back-up documentation. Our controversy professionals leverage the network’s collective knowledge of how tax authorities operate, and increasingly work together, to help resolve difficult or sensitive tax disputes.

**Personal Tax Services**

Our Personal Tax practice offers tax-related domestic and cross border planning and compliance assistance to business-connected individuals and their associated entities. In addition, in today’s global environment, cross border services help meet the ever-growing needs of internationally positioned clients.

**Tax Accounting and Risk Advisory Services**

As demand for transparency increases and tax departments are under pressure to be more effective, we can help you with tax accounting by supporting: your tax provision calculations, validating tax balance sheet accounts, implementing new accounting standards under IFRS and local GAAP; tax function performance by improving operating strategy and organisation design, tax processes controls, and data and systems effectiveness; and tax risk by identifying and prioritising key risks and assisting with controls monitoring and remediation.
Financial Services Tax

Our Financial Services Tax Team is dedicated to delivering value to our clients in the financial services industry who are facing a constantly evolving tax landscape. Whether you are in Banking and Capital Markets, Asset Management, or Insurance sector, we will be able to assist you in managing your direct and indirect tax obligations and tax risks, navigating the complex tax rules across jurisdictions, pursuing tax incentives or concessions, dealing with transfer pricing issues, handling queries by the tax authorities, assessing your tax provisions and analysing your uncertain tax positions.

We can also advise you on the tax implications of new financial products or transactions, and assist in applying for Revenue rulings where applicable. We can advise on the structuring of your new businesses and new funds, or on the review of such structures in an internal reorganisation or in the event of mergers or acquisitions, from the tax perspective. Individual tax issues often feature prominently in structuring or restructuring exercises, and we actively engage with our Human Capital colleagues to advise our financial services clients accordingly.

Human Capital

Our Human Capital services’ holistic approach, across a broad continuum of services, and our responsive, high-performing teams provide the interconnected competencies and insight required to address broad business issues and minimise risk. Through our global footprint, we advise many of the world’s largest employers, as well as those just venturing abroad for the first time. We help our clients manage the complex challenges of deploying a globally mobile workforce.

With teams specialising in Singapore and US taxes, business immigration and global mobility policy and processes, we help you meet your executive compliance obligations, stay on top of regulatory change and manage your global talent effectively.

Indirect Tax

Global Trade

Our Global Trade professionals can help you develop strategies to manage your costs, speed up your supply chain and reduce the risks of international trade. We can help to improve trade compliance and import and export operations, enhance adherence to rules of origin under free trade agreements (FTAs), reduce customs and excise duties, and enhance supply chain security. We help you to address the challenges of doing business in today’s global environment to help your business achieve its potential.

GST Services

Our network of dedicated Indirect Tax professionals can advise on the GST treatment of transactions and supplies and help resolve classification or other disputes and issues with the authorities. We provide assistance in identifying risk areas and sustainable planning opportunities for indirect taxes throughout the tax lifecycle. We provide you with effective processes to help you improve your day-to-day reporting for indirect tax, reducing attribution errors, reducing costs and ensuring indirect taxes are handled correctly. We can support full or partial GST compliance outsourcing, help identify the right partial exemption method and review accounting systems.

International Tax Services

International Tax

Our dedicated international tax professionals assist our clients with their cross-border tax obligations, planning, reporting and risk management. We work with you to build proactive and truly integrated global tax strategies that address the tax risks of today’s businesses and achieve sustainable growth.

Global Tax Desk

Our market-leading Global Tax Desks Network – a co-located team of highly experienced professionals from multiple countries – has transformed the way we provide international tax services. The Global Tax Desks Network are senior tax specialists on temporary assignment from their home jurisdictions to work, in “clusters”, with other desks and with local tax professionals. Clusters are located strategically in major business centers so that our desks can respond to your challenges immediately and cost-effectively, avoiding time zone barriers and the high price of international travel.

The desks work as a team – tackling the same problem from all sides – thoughtfully identifying considerations with your cross-border transaction. We work with you to help you manage global operational changes and transactions, capitalisation and repatriation issues, transfer pricing and your supply chain – from forward planning, through reporting, to maintaining effective relationships with tax authorities.

Transfer Pricing

Our transfer pricing professionals help you review, document, manage and defend your transfer pricing policies and processes – aligning them with your business strategy. Whether you are changing business structures or models, managing the impact of major transactions or negotiating with the tax authorities, we bring you a global perspective based on our knowledge and long-standing experience of the subject.

Operating Model Effectiveness

Our teams work with you on supply chain design, business restructuring, systems implications, transfer pricing, direct and indirect tax, customs and accounting. We can help you build and implement the structure that makes sense for your business, improve your processes and manage the cost of trade.

Transaction Tax

Every transaction has tax implications, whether it’s an acquisition, disposal, refinancing, restructuring or initial public offering. Understanding and planning for these implications can mitigate risk, enhance opportunity and provide crucial negotiation insights.

Our Transaction Tax Services comprise a network of worldwide professional advisors who can help you navigate the tax implications of your transaction. By combining diverse cross-border transaction experience with local tax knowledge across a broad spectrum of industry sectors, we can help you make informed decisions and navigate the tax implications of your transaction. We mobilize wherever needed, assembling a personalised, integrated global team to work with you throughout the transaction lifecycle, from initial due diligence through post-deal implementation. We can suggest restructuring alternatives to balance investor sensitivities, promote exit readiness and raise opportunities for improved returns.
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