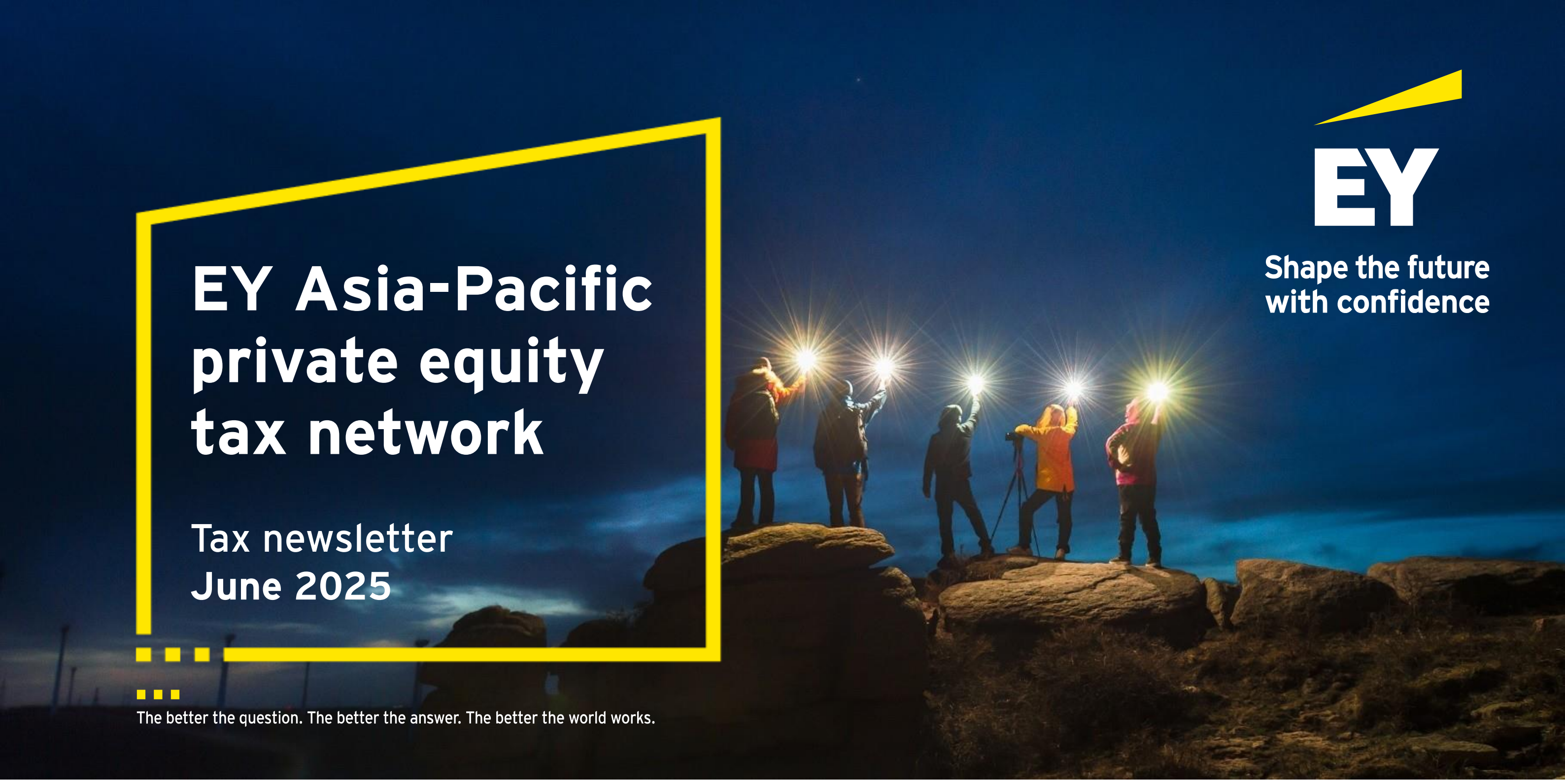

EY Asia-Pacific private equity tax network

Tax newsletter
June 2025

Shape the future with confidence

The better the question. The better the answer. The better the world works.

Australia

1 Renewed foreign investment review guidance note issued in Australia which increases the level of tax information collected by the Australian Taxation Office (ATO) as part of the Foreign Investment Review Board (FIRB) process

On 14 March 2025, The Treasury published an updated Guidance Note 12 (Tax Conditions GN) and an updated tax checklist in connection with FIRB applications. We have outlined below certain of the key changes to these guidance documents and our observations from current activity and client engagement in the market.

Tax Conditions GN

The Tax Conditions GN includes a new preamble stating the government is increasing its scrutiny of tax arrangements which pose a risk to Australian tax revenue, a key consideration of the national interest, to ensure that multinationals are adhering to Australia's taxation laws.

The Tax Conditions GN no longer distinguishes between "standard" and "additional" tax conditions, nor refer to the "enhanced" tax conditions we occasionally saw imposed on specific deals / sectors. The above prior list of conditions has been replaced with a list of "specific tax issues of interest" and a non-exhaustive guide in relation to information which may be required under tax conditions, categorized between the general and specific areas.

These appear to align with the Australian Commissioner of Taxation's current areas of interest, including:

- Acquisitions which involve restructures which may represent initial steps of a planned Australian tax avoidance arrangement (e.g., inversions facilitating profit shift, avoidance of capital gains tax (CGT) through use of Multiple Entry Consolidated (MEC) groups, intangibles migration, debt creation)
- Acquisitions which involve related party financing (e.g., avoidance or reduction to the withholding tax (WHT), excessive related party debt)
- Acquisitions of entities which are subject to thin capitalization rules
- Investments structured through effective low or no tax jurisdictions where there is limited relevant economic activity taking place
- Transactions involving private equity, in particular exit tax considerations
- Transactions involving structures and financing instruments designed to obtain more favorable Australian tax outcomes under the hybrid mismatch rules

It can be expected that more precisely tailored enquiries and tax conditions may come as part of a FIRB process, with a likely expanded information gathering process by the ATO (through FIRB) to understand a taxpayer's proposed arrangements at the outset and impose bespoke tax conditions if necessary.

Tax checklist

The information in the prior tax checklist was framed as being new information that the ATO may request during the application process, particularly for large investments and those in the infrastructure space. The updated tax checklist now states the information contained is required by the ATO for all applications, regardless of size or industry.

The updated tax checklist now includes questions which seek to address transactions involving private capital and the debt deduction creation rules.

Where such information is not included, the application must state when the information will be made available. It is stated that a failure to provide the information in the initial application is likely to cause delays in receiving FIRB approval, as the ATO will have to request the information or make provision of the missing information a condition of approval.

Observations in current market

It is too early to project how far the above updated guidance and Treasury / ATO approach may translate to information requests and the imposition of tax conditions that have a real value or execution impact on deals. We have however certainly begun to see more tailored lines of questioning through FIRB which depart from an approach that had otherwise "normalized" over the last 12 months. Some of our recent experiences include:

- Tax risk notifications and additional enquiries where a treaty-qualified holding platform is used to make the Australian investment. We have seen this extend to questions pertaining to the structures used for non-Australian investments made through the platform.
- In cases of co-investment by a Managed Investment Trust (MIT) and other investors, enquiries as to whether the investors are able to act in concert or vote collectively to veto a decision of the target through their combined rights.

EY Asia-Pacific private equity tax network

Private equity thought leadership quarterly tax newsletter

1 Renewed foreign investment review guidance note issued in Australia which increases the level of tax information collected by the ATO as part of the FIRB process (cont.)

We are also seeing parties give additional consideration to the way that the FIRB condition precedent is drafted in sale documents, in contemplation of the possible tax conditions that may be imposed.

Market feedback is that these are matters which continue to be of significant interest to all investors (foreign or domestic) - whether as a foreign applicant, as part of a consortium which includes a foreign applicant, or general assessment of the competitive field.

2 Federal Budget – clarification of use of MIT as a single member investment vehicle and deferral of the start date for changes to the non-resident CGT exemption regime in Australia

On 25 March 2025, the Federal Government handed down its Budget for 2025-26. The re-election of the government on 3 May 2025 means that it is likely that its previously announced tax measures may continue.

Previous announcements - Amendment to managed investment trusts rules to confirm foreign owned funds eligibility

The government previously announced that they will amend the income tax laws to confirm that MITs ultimately wholly owned by widely held foreign funds (e.g., foreign pension funds) can continue to access concessional withholding tax rates in Australia. The announcement followed the issue of taxpayer alert TA 2025/1 which highlighted the ATO's concerns with restructures of an existing inward investment structure to access the MIT withholding regime. However, TA 2025/1 also included a statement that the general anti-avoidance rules in Part IVA of the Income Tax Assessment Act 1936 might potentially apply to MIT originally established which were indirectly wholly owned by a single foreign entity. The amendments will not affect the ATO's power to apply Part IVA where non-commercial restructures are undertaken to inappropriately access the MIT regime. The measure will apply to fund payments from 13 March 2025 and there is no quantifiable cost to the revenue.

Deferral of strengthening the foreign resident capital gains tax regime measures

The government announced a deferral of the proposed amendments to the foreign resident CGT regime announced in the 2024-25 Budget.

It is proposed to clarify and broaden the types of assets that foreign residents are subject to CGT on, to amend the point-in-time principal asset test to a 365-day testing period and to require additional ATO notifications where foreign residents dispose of shares and other membership interests exceeding $20m in value. The application date will be changed from CGT events that occur on or after 1 July 2025 to events that occur from the later of 1 October 2025 or the first 1 January, 1 April, 1 July or 1 October after the Act receives Royal Assent. The deferral is estimated to decrease receipts by $50m in 2025-26, while the original measure was estimated to increase receipts by $600m over the five years from 2023–24.

Hong Kong

3 Government consults industry on enhancing preferential tax regimes for funds, family owned investment holding vehicles and carried interest

The Financial Services and the Treasury Bureau (FSTB) has issued a consultation paper (CP) on 25 November 2024 on the proposed enhancements to the preferential tax regimes for privately offered funds, family owned investment holding vehicles (FIHVs) managed by single family offices and carried interest.

The proposed enhancements to the unified fund exemption (UFE) include:

- Extending the scope of funds to include pension funds and endowment funds
- Clarifying certain business undertakings carried out by a fund may not disqualify it from being a "fund"
- Expanding the scope of qualifying investments to cover: loans and private credit investments, immovable property situated outside Hong Kong and virtual assets (amongst others)
- Removing the 5% threshold for incidental income and introducing an exclusion list
- Extending the scope of activities that a special purpose entity (SPE) can perform and the extent of its tax exemption
- Removing the "holding period test" and "short-term asset test" applicable to transactions in investee private companies (IPCs)
- Relaxing deeming provisions for anti-round tripping by resident investors generally (but tightening this for financial entities)
- Imposing tax reporting and substantial activities requirements

The proposed enhancements to the UFE may also be correspondingly reflected in the preferential tax regime for FIHVs.

The proposed enhancements to the preferential tax regime for carried interest include:

- Removing the certification requirement of funds by the Hong Kong Monetary Authority (HKMA)
- Expanding the coverage of qualifying payers of eligible carried interest

EY Asia-Pacific private equity tax network

Private equity thought leadership quarterly tax newsletter

3 Government consults industry on enhancing preferential tax regimes for funds, family owned investment holding vehicles and carried interest (cont.)

- Removing the "hurdle rate" requirement for eligible carried interest
- Expanding the sources of profits or income of a fund which may give rise to eligible carried interest
- Eligible carried interest to qualifying employees not required to be paid through a "qualifying person"

We generally welcome the proposals to enhance the UFE, FIHVs and carried interest preferential tax regimes. In particular, the proposed inclusion of private credit investments to the scope of UFE, given the growth of this asset class in recent years, and the proposed changes to the carried interest concession which should align more closely with common market practice. That said, the proposed tax reporting and substantial activities requirement and removal of the "holding period test" and "short-term asset test" applicable to transactions in IPCs, has been viewed less favorably by the industry.

Overall, these enhancements, if implemented, would further promote Hong Kong as a regional hub for wealth and asset management activities.

India

4 Revamp of old income tax law and replacement with new simplified income tax law

In July 2024, the Indian Finance Minister announced the decision of the government to undertake a comprehensive review of the existing Income tax Act, 1961 (ITA). The intent was to make the law simple, straightforward and minimize controversies arising from the complex language used in existing income tax law.

The Income tax Bill, 2025 (ITB 2025) was tabled in the Indian Parliament on 13 February 2025. The Central Board of Direct Taxes (CBDT) also issued two sets of FAQs and a navigator for mapping of comparable provisions of the existing income tax law with the new version. Following are key features of ITB 2025:

- Proposed to be brought into effect from 1 April 2026.
- Preserves the familiar 23-Chapter structure, heads of income, substantive provisions, and the assessment and appeal procedures. The annual Finance Act will continue to set tax rates for a particular year.
- Reduces word count by nearly half (from 512k to 260k) and number of sections from 819 to 536 as compared to existing income tax law.
- Replaces the terms "assessment year" and "previous year" with consistent "tax year" for clarity in understanding, compliance and reporting.
- Simplifies language, introduces formulas and tables to succinctly convey information on topics, streamlines enumeration of multiple items by moving them to distinct schedules. Simplified compliance burden in certain circumstances. Removes outdated sections.

There are no significant policy changes proposed in ITB 2025.

The Parliamentary Select Committee formed to vet the ITB 2025 is holding another round of stakeholder consultations before making its recommendations for consideration by the government. The revised bill may then be approved by Parliament and enacted into law by Presidential assent. The administrative and procedural changes through rules, forms, notifications, orders or circulars for implementation through delegated legislation may follow the enactment in due course, with the existing rules remaining in force during the transitional period.

It is expected that a substantial reduction in compliance burden may be brought about through delegated legislation. Stakeholders may need to continue engaging with the government in the journey of the evolution of income tax law.

5 Recent audit experience with respect to claim of Double Taxation Avoidance Agreement (DTAA) benefits on sale of shares / securities

The Delhi bench of the Income Tax Appellate Tribunal (ITAT) in the case of SC Lowy P.I. (LUX) S.A.R.L. vs. ACIT (ITA No 3568/Del/2023), has adjudicated on the merits of the Principal Purpose Test (PPT) provisions and granted the benefit of the India-Luxembourg DTAA on income earned from its India investments based on facts. The tax authorities had invoked the PPT provisions and alleged that the principal purpose of setting up the taxpayer entity in Luxembourg was to claim DTAA benefits on account of the following reasons:

a. The taxpayer has adopted treaty shopping mechanism to claim the DTAA benefit (i.e., the taxpayer was set up in Luxembourg by its Cayman Islands-based holding company for the purpose of obtaining a benefit under the India-Luxembourg DTAA)

b. Taxpayer was a conduit and not the beneficial owner of the income earned from the India investments

c. Setting up of taxpayer in Luxembourg lacks commercial rationale

d. Taxpayer did not incur any expenditure in Luxembourg

Upon appeal, the Dispute Resolution Panel (DRP) affirmed the order of the tax authorities. Upon further appeal, ITAT ruled in favor of the taxpayer. The purpose of setting up in Luxembourg, the fact of taxpayer's investments in other jurisdictions being significantly higher than the India investments and the taxpayer having incurred substantial operational expenditure was considered sufficient by ITAT for the taxpayer to meet the PPT.

This ruling should assist taxpayers with similar facts and circumstances to navigate the intricacies relating to the PPT and assess their eligibility to claim DTAA benefits.

Separately, the Indian Ministry of Finance released Circular No. 01/2025 dated 21 January 2025 to provide guidance on the application of the PPT under India's DTAAs. Vide the aforesaid Circular, it is clarified that the PPT provisions embodied in DTAA or Multilateral Instrument shall apply prospectively and should not impact grandfathered investments.

5 Recent audit experience with respect to claim of Double Taxation Avoidance Agreement (DTAA) benefits on sale of shares / securities (cont.)

Vide the aforesaid Circular, it is clarified that the PPT provisions embodied in DTAA or Multilateral Instrument shall apply prospectively and should not impact grandfathered investments.

The above Circular provides much needed clarity that the protocol introducing the PPT provisions under the India-Mauritius DTAA does not impact grandfathered investments.

However, it may be noted that recently, the Hon'ble Supreme Court of India (SC) has put a stay on the favorable Hon'ble Delhi High Court's judgment in case of Tiger Global International which had granted benefit of the India-Mauritius tax treaty based on tax residency certificate citing that it has pan India implications. Previously, in January 2024, the SC had similarly put an interim stay on another favorable Hon'ble Delhi High Court judgment which held that a tax residency certificate is sufficient evidence for claiming benefits of the India-Singapore tax treaty.

The outcome of the SC judgements may be critical and may need to be carefully reviewed for grandfathered investments (i.e., investments acquired prior to 1 April 2017).

Korea

6 Abolition of financial investment income tax regime

To protect Korean investors and stimulate the domestic capital markets, the financial investment income tax regime scheduled to commence on 1 January 2025 was abolished, while maintaining the existing capital gains tax regime for stocks and similar assets.

7 Introduction of new rules for foreign investors with respect to domestic exemptions on government bonds

The withholding tax procedure is simplified in which foreign individuals or corporate investors investing in government bonds and monetary stabilization through either private or public overseas investment vehicle (OIV) may apply for the domestic withholding tax exemption by submitting the exemption application with OIV's resident tax certificate as a deemed beneficial owner.

To ease the tax refund process for foreign investors, foreign investors may make the relevant refund claim directly for the suffered withholding taxes on interests/capital gains derived from government bonds.

8 Amendment to method of computing foreign tax credits for Korean fund vehicles

Effective 1 January 2025, to address double taxation on foreign taxes paid by regulated investment vehicles, including investment trusts under FISCMA and real estate investment trusts (REIT) under the Real Property Investment Company Act, the process for foreign tax relief I I change to each investor or beneficiary of the fund vehicles applies foreign tax credits directly at the time each investor or beneficiary files its own corporate income tax returns in Korea.

Previously, the method of claiming foreign tax refunds is by filing a separate foreign tax refund application with the Korean tax authorities at the vehicle level.

Taiwan

9 Draft amendment for alternative minimum tax

In response to the global enforcement of Pillar 2 requirements across multiple jurisdictions, the Taiwan tax authorities are planning to incorporate the principles of Pillar 2 into Taiwanese regulatory framework, specifically through an amendment related to the Alternative Minimum Tax (AMT). The current proposal for this amendment suggests an increase in the tax rate from 12% to 15%. This new rate will apply to enterprises that meet the threshold criteria of Pillar 2, which stipulates that any two of the previous four fiscal years must show consolidated group revenue of at least EUR750 million.

Taiwan-incorporated financial institutions and foreign private equity entities with a fixed place of business or a business agent in Taiwan will be subject to the AMT. The proposed increase in the AMT rate may complicate the evaluation processes, investment strategies, and tax incentives for these investors. This complexity arises from the fact that, while most financial instruments in the capital markets are exempt from corporate income tax (CIT), they should be added back during the AMT recalculation. As a result, investors may need to carefully navigate these changes to manage their tax positions and investment outcomes.

The draft amendment was proposed by the Ministry of Finance (MOF) in late 2024, with the intention of taking effect from 1 January 2025. However, the draft amendment is still under discussion in the Legislative Yuan and has not yet received final legislative approval due to the global political climate in 2025. Although the proposal has not been approved as for now, this move reflects Taiwan's commitment to aligning its tax policies with international standards and ensuring that large multinational corporations contribute a fair share of taxes. As the global landscape continues to evolve, businesses operating in Taiwan should prepare for these changes and assess their potential impact on financial planning and compliance strategies.

EY Asia-Pacific private equity tax network

Private equity thought leadership quarterly tax newsletter

Vietnam

10 New updates on CGT from Law on Corporate Income Tax 2025 (CIT Law 2025)

Currently, foreign investors deriving capital gains from transfers of equity in non-public companies are subject to a 20% tax on taxable net gains, calculated as the selling price minus the sum of the cost basis of the transferred equity and any related transfer expenses. This applies to both direct and indirect capital transfers.

It has been recognized that determining the cost basis of transferred equity can be challenging in many instances, particularly for companies that were incorporated a long time ago and have undergone multiple capital injections and transfers since their incorporation. Additional challenges arise in relation to indirect transfer transactions.

The 15th National Assembly has approved CIT Law 2025 during the session held on 14 June 2025, with the effective date set for 1 October 2025. The CIT Law 2025 will result in changes to the taxation of foreign investor deriving capital gains form both direct and indirect transfers from the effective date.

Article 11, clause 2 of the CIT Law 2025, states that the government will stipulate the corporate income tax to be paid, calculated as a percentage of revenue for foreign enterprises without a permanent establishment in Vietnam. This could be interpreted to mean that the law introduces taxation on foreign investors deriving capital gains (both direct and indirect transfers) at a percentage of the sale proceeds, with the specific percentage to be provided later in a Decree providing guidance for the law.

The final version of law is still subject to the proofreading process and is expected to be published soon. Companies should continue to monitor the status of the Decree for guidance and further developments.

Philippines

11 A bill in relation to Capital Markets Efficiency Promotion Act (CMEPA) has been signed and approved by the President

The legislation which seeks to be enacted as the CMEPA has been submitted for further review and approval. The purpose of the bill is to minimize the tax liabilities on capital markets and boost trade and investment in Philippine shares. The salient provisions of this pending legislation are the following:

- Lowering of the Stock Transaction Tax (STT) from 0.6% to 0.1% of the gross selling price of shares that are sold in the stock exchange
- Lowering of the Documentary Stamp Tax (DST or stamp duties) on the original issuance of shares from 1% to 0.75% of the total par value of the shares issued
- Gains from the redemption of shares or units of participation in mutual funds and Unit Investment Trust Funds (UITFS) are exclusions from gross income, thus exempting such gains from tax
- Removal of preferential tax rates and exemptions on long-term deposits and investments

EY Asia-Pacific private equity tax network

Private equity thought leadership quarterly tax newsletter

EY Asia-Pacific key Private Equity Tax contacts

Sophie Lindsay
Ernst & Young Tax Services Limited
+852 3189 4589
sophie.lindsay@hk.ey.com

Steve Strathdee
Ernst & Young Tax Services Limited
+852 2629 3378
steve.strathdee@hk.ey.com

Desmond Wong
Ernst & Young Solutions LLP
+65 6309 8392
desmond.wong@sg.ey.com

Amy Ang
Ernst & Young Solutions LLP
+65 6309 8347
amy.ang@sg.ey.com

Matt Weerden
Ernst & Young
+61 2 8295 6788
matt.weerden@au.ey.com

Tobias Lintvelt
Ernst & Young Tax Co.
+81 3 3506 2110
tobias.lintvelt@jp.ey.com

Mikihito Kuraya
Ernst & Young Tax Co.
+81 3 3506 2110
mikihito.kuraya@jp.ey.com

Subramaniam Krishnan
Ernst & Young LLP
+91 22 61921949
subramaniam.krishnan@in.ey.com

Nachiket Deo
Ernst & Young LLP
+91 22 61922336
nachiket.deo@in.ey.com

Shuck Il Cho
Ernst & Young Han Young
+82 2 3787 4174
shuck-il.cho@kr.ey.com

Yishian Lin
Ernst & Young
+886 2 2728 8870
yishian.lin@tw.ey.com

Thy Thi-Anh Huynh
EY Consulting Vietnam JSC
+84 28 3629 7733
thy.anh.huynh@vn.ey.com

Betheena C Dizon
SyCip Gorres Velayo & Co.
+63 917 101 8119
betheena.c.dizon@ph.ey.com

Sharon Yong
Ernst & Young Tax Consultants Sdn Bhd
+60 37 495 8478
sharon.yong@my.ey.com

Kasem Kiatsayrikul
EY Corporate Services Limited
+662 264 9090
kasem.kiatsayrikul@th.ey.com

This quarter's contributors

Matt Weerden
Steve Strathdee
Young Sil Jin
YiJu YJ Li
Duyen T Nguyen
Betheena C Dizon
Niraj K Shah
Susan Xu

EY is building a better working world by creating new value for clients, people, society and the planet, while building trust in capital markets.

Enabled by data, AI and advanced technology, EY teams help clients shape the future with confidence and develop answers for the most pressing issues of today and tomorrow.

EY teams work across a full spectrum of services in assurance, consulting, tax, strategy and transactions. Fueled by sector insights, a globally connected, multidisciplinary network and diverse ecosystem partners, EY teams can provide services in more than 150 countries and territories.

All in to shape the future with confidence.

EYG Number 005025-25Gbl
ED None

ey.com/china