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June 2019

Australia

Victorian stamp duty

Proposed changes to the stamp duty regime in Victoria related to investment in property and infrastructure assets:

- a) Investors who currently do not incur duty on investing in major infrastructure located on leased land in Victoria, or without an interest in land, will see most future investment subject to duty of up to 5.5%. From 1 July 2019, these items will be included as “dutiabale property” and their dealings will be subject to duty if they are valued over \$2 million, subject to concessions for items with a value of less than \$3 million.
- b) The stamp duty surcharge on foreign investors will increase from 7% to 8% and the land tax for “absentee owners” will increase from to 2%.
- c) Changes aimed at widening the duty base will result in many land development agreements commonly used by developers now being subject to duty. Such developers will also become ‘landholders’, with the consequence that duty could be charged on dealings in their securities.
- d) The Victorian corporate reconstruction exemption regime is being modified, replacing the exemption with a 90% concession and removing the three year post-association period.

Source: *KPMG Australia*, June 2019

Income tax measures aimed at foreign investment

A series of new laws were enacted just before the May 2019 Federal election. These measures are specifically aimed at non-residents and will change how foreign investment, particularly in infrastructure and real estate, is structured and taxed, and include:

- a) The use of “stapled structures” to invest in non-traditional real asset sectors with an associated service or non-rental element (e.g. hotels, data centers, aged care) has been modified to limit the ability of these investments to access the 15% concessional MIT withholding regime unless third party rental income is being derived.
- a) Importantly, amendments prior to the new law being enacted have resulted in investments in student accommodation continuing to be eligible for the MIT regime.
- b) Investments in residential assets, outside of affordable housing, are now specifically excluded from the MIT regime. This is expected to have a major impact on the emerging build to rent (multi-family) sector in Australia.
- c) The interest and dividend withholding tax exemptions available to qualifying foreign pension funds has now been restricted to non-portfolio like investments (e.g. less than 10% equity investment in the borrower, no influence).

- e) Sovereign immunity from Australian income tax for sovereign, non-commercial investments has now been codified into law with a set of qualification criteria that is narrower than previous ATO interpretation.

These changes will apply for new investments from 1 July 2019. Certain pre-existing investments may be able to qualify for grandfathering for a period of 7 to 15 years subject to meeting qualifying criteria.

Source: *KPMG Australia*, June 2019

June 2019

British Virgin Island

Draft Economic Substance Code published

The International Tax Authority ("ITA") of the British Virgin Islands ("BVI") has published the draft International Tax Authority Economic Substance Code on 22 April 2019, which sets out the effect of the legislation enacted by the BVI to secure compliance with international standards on economic substance for entities in zero or nominal tax jurisdictions.

The Code comprises:-

- a) extracts from legislation;
- b) rules made by the ITA; and
- c) guidance issued by the ITA.

The Code is a supplement of the Economic Substance (Companies and Limited Partnerships) Act, 2018 which came into effect on 1 January 2019 and was further amended on 30 January 2019 (the "Economic Substance Act") published 28 December 2018.

- For more details, please refer to the [Draft Economic Substance Code](#) from the International Tax Authority

Source: *International Tax Authority*, April 2019

- Maples Group published an [industry update](#) discussing the details of the Economics Substance.

Source: *Maples Group*, May 2019

Regulatory obligations and filing deadlines 2019

Pursuant to the Securities and Investment Business Act, 2010 ("SIBA") and the Mutual Funds Regulations, 2010, all BVI private, professional and public funds ("Funds") and all BVI investment business licence holders ("Licensees") are required to appoint, and at all times have, an auditor for the purposes of auditing their financial statements, unless expressly exempted from this requirement.

All Funds and Licensees are required to submit a copy of their audited financial statements to the Financial Services Commission (the "Commission") within six months of the end of each financial year. Funds and Licensees with a financial year ending on 31 December are therefore required to submit their audited financial statements for the 2018 financial year to the Commission on or before 30 June 2019. Funds and Licensees are likely to be faced with administrative penalties and / or enforcement action if they fail to meet the deadline.

Key Dates

- a) Audited accounts – 30 June 2019
- b) Fund annual return – 30 June 2019
- c) Record keeping – ongoing
- d) Register of directors – ongoing
- d) AEOI – 31 May 2019 (reporting deadline)

- For further details please refer to [industry updates](#) from Maples Group

Source: *Maples Group*, May 2019

June 2019

Cayman Islands

Cayman Islands amends Securities Investment Business Law

(Additional SIBL reporting requirements to be submitted by 15 August 2019)

The Cayman Islands Government has passed the Securities Investment Business (Amendment) Law, 2019 (the "Amendment Law"), the principal effect of which is to introduce important changes to the regulatory and supervisory framework applicable to those persons currently registered as 'excluded persons' under the Securities Investment Business Law (2019 Revision) ("SIBL") including Cayman Islands fund managers, investment advisers and broker dealers ("Excluded Persons").

Concurrently, the Cayman Islands Monetary Authority ("CIMA") has set out a requirement for all currently registered Excluded Persons to complete and submit two detailed forms relating to AML and CFT risks and processes. These forms (the "AML/CFT Forms") must be submitted through the Cayman Islands registered office of the Excluded Person by 15 August 2019.

- For further details, please refer to [industry update](#) published by Maples Group

Source: *Maples Group*, May 2019

The Data Protection Law, 2017 comes into force on 30 September 2019

The Data Protection Law, 2017 (the "Law") comes into force on 30 September 2019. The Law will introduce legal requirements based on internationally accepted principles of data privacy and will become the principal legislation regulating general data privacy in the Cayman Islands.

Overview of the law as follows:

- The Law introduces certain technical definitions and concepts including "data controller", "data processor", "personal data", and "data subject".
- The Law applies directly to data controllers, and data controllers are required to ensure that the personal data which they process (or which are processed on their behalf by any data processor) are processed in accordance with the data protection principles (discussed below).
- The Law does not apply directly to data processors, but data controllers who wish to appoint data processors are required to ensure that data processors give certain contractual assurances with respect to the personal data that they process.
- Generally speaking, a data controller will be subject to the Law only if it is established in the Cayman Islands (including branches or agencies) and it processes personal data in connection with such establishment.
- However, a data controller which is not established in the Cayman Islands could still be subject to the Law if the data controller processes personal data in the Cayman Islands for any purpose "other than for purposes of transit through the Cayman Islands". The Cayman Islands Ombudsman (the "Ombudsman") (discussed below) considers this to be the case where overseas providers of services and products actively solicit Cayman Islands residents.
- Such foreign data controllers need to nominate a representative in the Cayman Islands.
- The Law does not explicitly address the question of data transfers from one data controller to another. However, the Ombudsman would expect any data controller sharing personal data with another data controller to make reasonable efforts to ensure that the receiving controller will be compliant with data protection principles.

Source: *Maples Group*, April 2019

June 2019

Hong Kong

SFC issues further guidance on regulatory requirements for sale of complex products

The Securities and Futures Commission (SFC) has issued a Circular providing further guidance by way of Frequently Asked Questions (FAQs) on the regulatory requirements for online and offline sale of complex products (which may include private real estate funds among other investment products). The FAQ relate to the Guidelines on Online Distribution and Advisory Platforms and paragraph 5.5 of the SFC Code of Conduct, both of which will enter into force on 6 July 2019.

The newly added FAQs seek to:

- a) Clarify that paragraph 5.5 of the Code of Conduct is applicable only when a client purchases a complex product on an unsolicited basis (i.e. no solicitation or recommendation has been made by an intermediary);
- b) Clarify that the provision of a loan to facilitate a client to purchase a non-complex product would not convert the product into a complex product given that the loan does not alter the terms, features and risks of the product itself;
- c) Provide guidance on the implementation of the Requirements in the case where an execution broker executes orders placed by an investment adviser or asset manager on behalf of a client³; and

- d) Clarify our expectation on the disclosure of product information for solicited or recommended repeat purchases generally and for compliance with paragraph 5.5 of the Code of Conduct for repeat purchases of the same complex product or complex products of the same product category.

- For more details, please refer to the [Circular](#) and [examples of complex and non-complex investment products](#) from Securities and Futures Commission

Source: *Securities and Futures Commission*, June 2019

HKMA introduces key measures on sustainable banking and green finance

The Hong Kong Monetary Authority (HKMA) unveiled three sets of measures to support and promote Hong Kong's green finance development. These measures include:

- a) Green and Sustainable Banking
- b) Responsible Investment
- c) Centre for Green Finance (CGF)

As the manager of the Exchange Fund, the HKMA will adopt a principle that priority can be given to Green and ESG investments if the long term return is comparable to other investments on a risk-adjusted basis. Specifically, to support Responsible Investment, the HKMA will accord green accreditation as a predominant factor in investment in their real estate portfolio.

Future initiatives of HKMA:

- a) Source projects with sustainable features
- b) Include green accreditation (e.g. US' LEED and UK's BREEAM) as a predominant factor for investment in buildings
- c) Conduct ESG evaluation as a mandatory part of due diligence of all LTGP investments

- For further details, please refer to [press release](#), [speech](#) and [media briefing](#) from HKMA.

Source: *Hong Kong Monetary Authority*, May 2019

June 2019

Japan

Task Force on Climate-related Financial Disclosures (TCFD) consortium launched

The TCFD Consortium of Japan will be launched, as a platform where financial institutions and business corporations pursue climate-related financial disclosures recommended by the TCFD. The Consortium is chaired by Kunio Ito, Professor at the Graduate School of Commerce and Management, Hitotsubashi University, and held a launch ceremony on 27th of May 2019.

- Click here for the [Overview of the TCFD Consortium of Japan](#)

Source: *Financial Services Agency (FSA)*, May 2019

Singapore

MAS updates FAQs on licensing and registration of fund management companies

The Monetary Authority of Singapore (MAS) has updated its set of frequently asked questions (FAQs) on the licensing and registration of fund management companies (FMCs) by, amongst other things:

- a) updating the answer to the FAQ 24 to revise the procedures for cessation of business by an FMC. Under the revised procedure:
 - i. an FMC should ensure that, prior to the cessation, all funds and managed accounts managed or advised by it have been transferred to another fund management company, and/or liquidated and all underlying assets and moneys returned to their beneficial owners or customers;
 - ii. 'Form 7 of the Securities and Futures (Licensing and Business Conduct) Regulations (SF(LCB)R)' and 'Form 24A of the SF(LCB)R' will be required to be accompanied by an auditor's certification that the FMC has fully discharged all client obligations and liabilities before ceasing its business; and
 - iii. upon receipt of the forms and the auditor's certification, the MAS will review the submissions and will inform the FMC via email of the effective date of the license cancellation or acknowledge the registered

fund management company's cessation of business. The FMC will be removed from the fund management company's cessation of business. The FMC will be removed from the Financial Institutions Directory on the MAS' website by the next working day following the MAS' email. For the avoidance of doubt, even after the submission of Form 7/Form 24A, the FMC continues to be subject to all relevant regulatory requirements, including being liable for all license and 'MASNET' fees as applicable, until the receipt of the MAS' email as above.

- b) adding a new FAQ 25, which sets out the procedures that will be applicable for the acquisition of a licensed FMC. Among other things, a person must submit an application to the MAS in a prescribed form for its approval before acquiring effective control of a licensed FMC.

Source: *Clifford Chance*, June 2019

- For further details, please refer to [FAQs](#) from MAS.

Source: *Monetary Authority of Singapore*, June 2019

June 2019

Singapore

MAS launches second consultation on proposed framework for variable capital companies

The Monetary Authority of Singapore (“MAS”) is now consulting on (i) the proposed new regulations for the VCC framework; and (ii) other amendments to existing rules and regulations, such as the SFR (CIS), CIS Code and AML/CFT notice for VCCs, to provide the operational framework to facilitate the implementation of this new regime.

The proposed regulations are adapted from existing regulations under the Companies Act (Cap. 50) (“CA”). Among other things, these proposed regulations set out details in relation to the operation of the VCC framework, including the incorporation of a VCC, the registration of sub-funds and the re-domiciliation to Singapore of foreign corporate entities as VCCs.

- For more details, please refer to the [consultation paper](#) and other [key resources](#) from Monetary Authority of Singapore

Source: *Monetary Authority of Singapore*, April 2019

Singapore fund tax incentives – circular of Budget 2019 issued

The Singapore Budget 2019 (“Budget 2019”) was delivered on 18 February 2019, and several key proposals with regard to the fund tax incentive schemes were announced. Following this announcement, the MAS has issued a circular (FDD Cir 09/2019) on 7 June 2019 (the “Circular”). Here are the key relevant points of the Circular.

- a) Investments in S-REITs and REIT ETFs qualify for 10% concessionary rate
Non-resident funds under 13CA, 13X and 13Y Schemes can now enjoy the 10% concessionary tax rate applicable to qualifying non-resident non-individuals when investing in S-REITs and REIT ETFs provided:
 - i. the fund does not have a permanent establishment in Singapore (other than the fund manager in Singapore); or
 - ii. the fund operates through a permanent establishment in Singapore (other than the fund manager in Singapore), but the funds used to acquire units in the S-REITs or REIT ETFs are not obtained from the operation in Singapore.

This enhancement will apply to S-REITs and REIT ETFs distributions made during the period from 1 July 2019 to 31 December 2025.

- b) Other areas of interests
Other amendments to the tax incentives that could be of broad interest to real estate funds include:
 - i. 13R Scheme - condition to not derive income before application filed now modified;
 - ii. 13CA Scheme - waiver of qualifying investor test for retail unit trusts for the initial period; managed accounts deemed as qualifying fund;
 - iii. 13X Scheme - Master-Feeder-SPV Scheme; co-investments allowed in Master-Feeder-SPV and Master-SPV structures; scheme for managed accounts
- For further details of each of the above schemes, please refer to the [Updates](#) from PwC

Source: *PwC*, June 2019