ANREV

REGULATORY AND TAX NEWSLETTER April 2015

AUSTRALIA

AUSTRALIA INVESTMENT MANAGER REGIME PUBLIC CONSULTATION

On 18 December 2014, the Government reaffirmed its intention to introduce a practical Investment Manager Regime (IMR) and release draft legislation implementing Element 3 of the IMR reforms for public consultation in early 2015.

The IMR reforms remove tax impediments to investing in Australia in order to attract foreign investment to Australia and promote the use of Australian fund managers.

These draft amendments extend the IMR concession to cover investments in Australian assets (excluding real property, but including land held for rental income purposes) that are of a portfolio nature and broaden the 'widely held' test. Foreign entities will be eligible for the IMR concession if they directly invest in Australia or invest via an Australian fund manager.

These amendments also simplify the operation of the existing regime and make technical changes to ensure that some entities are not inadvertently disadvantaged or excluded.

Source: Australian Government The Treasury, March 2015

For Details, please see
http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2015/Implementing-Element-3-of-the-Investment-Manager-Regime

CHINA

CHINA'S NEW INDUSTRY CATALOGUE FOR FOREIGN INVESTMENT TO TAKE EFFECT

The National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) have published the 2015 Catalogue for the Guidance of Foreign Investment. The 2015 Catalogue, which took effect from 10 April 2015, follows a public consultation in 2014. Among other things, the 2015 catalogue relaxes restrictions on investment in real estate. Clifford Chance has prepared a briefing paper on the key changes. To view a copy of this briefing paper, please click on the PDF link below.

Source: Clifford Chance Client Briefing, April 2015

For Details, please see
http://www.cliffordchance.com/briefings/2015/04/china_s_new_industrycatalogueforforeig.html

HONG KONG

SFC UPDATES FAQS ON REAL ESTATE INVESTMENT TRUSTS

The Securities and Futures Commission (SFC) has updated its series of frequently asked questions (FAQs) on real estate investment trusts by adding a new Question 16A. The new question provides guidance on whether an independent non-executive director of the management company of a REIT can serve more than nine years.

Source: Clifford Chance Alert, HKSFC, April 2015

For Details, please see
http://www.sfc.hk/web/EN/faqs/product-authorization/real-estate-investment-trusts.html

HONG KONG AND CHINA SIGN FOURTH PROTOCOL ON AVOIDANCE OF DOUBLE TAXATION

Hong Kong and Mainland China have signed the Fourth Protocol to the Arrangement for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income.

The Fourth Protocol clarifies the conditions under which an investment fund would be qualified for Hong Kong resident status, thus giving certainty to investment funds' application of the tax avoidance arrangements. According to the provision in the Fourth Protocol, the gains derived by a Hong Kong resident from the sales and purchase of shares in a Mainland listed company shall be taxable only in Hong Kong. This is also applicable to the gains derived by a Hong Kong resident from the sale and purchase of A shares listed on the Shanghai Stock Exchange, under the Shanghai-Hong Kong Stock Connect.

Furthermore, the Fourth Protocol expands the coverage of tax types under the exchange of information arrangement of the avoidance of double taxation arrangement, so as to fulfil Hong Kong's international obligation to meet global standards for enhancing tax transparency.

The Fourth Protocol will come into force after the completion of the ratification procedures and notification by both sides. In the case of Hong Kong, an order is required to be made by the Chief Executive in Council under the Inland Revenue Ordinance. The order is subject to negative vetting by the Legislative Council.

Source: Clifford Chance Alert, HKSFC, April 2015

For Details, please see
http://www.ird.gov.hk/eng/ppr/archives/15040102.htm

INLAND REVENUE AMENDMENT BILL GAZETTED — PROFITS TAX EXEMPTION FOR OFFSHORE FUNDS EXTENDED TO PRIVATE EQUITY FUNDS

The Hong Kong Government published the Inland Revenue (Amendment) Bill (the Bill) 2015, which extends the current profits tax exemption for offshore funds to private equity (PE) funds, in the Gazette on 20 March 2015. The Bill was introduced to the Legislative Council on 25 March 2015. PWC has prepared a summary which can be accessed by clicking on the PDF link below.

Source: PWC Tax Insights, March 2015

For Details, please see
http://www.pwchk.com/webmedia/doc/635628145129727552_pe_tax_news_mar2015.pdf

JAPAN

AMENDMENT TO ARTICLE 63 EXEMPTION

On 24 March 2015, a bill to amend the Financial Instruments and Exchange Act of Japan (the "FIEA") was submitted to the Diet. The bill includes an amendment to the Article 63 Exemption which has been relied upon by numerous partnership type funds (both Japanese and foreign) to avoid the general partners of the funds having to be registered as Type II Financial Instruments Business Operators and Investment Management Business Operators pursuant to the FIEA.

The bill intends to restrict the use of the Article 63 Exemption to protect investors' interest by, among other things, limiting the eligible investors and the eligibility of applicants, requiring the applicants to submit certain additional documents and publicly disclosing certain items and imposing certain code of conduct and book keeping obligations on the applicants. The existing funds currently taking the benefit of Article 63 Exemption are also expected to be subject to the amendment in some respects.

The exact details of the regulatory framework regarding the Article 63 Exemption will only be known after the bills passes and the Japanese Financial Service Agency publishes the implementing regulations. The amendment is expected to take effect within one year after it is promulgated. Since the amendment affects not only new funds but also existing funds, it is necessary to keep a close eye on this development.

Source: Clifford Chance, Eiichi Kanda

For Details, please see
http://www.fsa.go.jp/en/conference/minister/2015/20150324.html

SINGAPORE

GST RULES AFFECTING OFFSHORE FUNDS/MANAGERS

Rules affecting offshore funds

With effect from 1 April 2015, if an overseas incorporated fund or manager wholly relies on a Singapore-based fund manager (SFM) to carry on its business, the offshore fund/manager will be treated as having a business establishment (BE) in Singapore through the SFM.

The SFM is wholly carrying on the offshore fund/manager's business if it has the overall responsibility to oversee or carry on the activities of the offshore fund/manager, such as the day-to-day operation and core business function and is the sole contracting fund manager (FM) with the fund/manager.

The implication is that the supply of fund management services by the SFM to these offshore funds/ overseas FMs would not meet the zero-rating condition as they belong in Singapore, thus the supply is to be standard-rated.

GST remission to qualifying funds/offshore FMs

GST remission is granted from 1 April 2015 to allow qualifying SFM not to charge GST to a qualifying fund and an offshore FM of a qualifying fund that is treated as belonging in Singapore solely on account of its wholly reliance of the SFM to carry out its business activities.

GST exposures of non-qualifying offshore funds/fund managers/investment holding companies

For non-qualifying offshore funds/fund managers that would be treated as belonging in Singapore under the recently published rules, this would mean that:

- 7% GST on fund management services received from GST-registered FMs, and other services received from GST-registered service providers; and
- local FMs who have previously obtained approval for exemption from GST registration on the basis that their services qualify for zero-rating must now re-assess their liability to register for GST.

For an overseas investment holding company or a special purpose company (SPC) that relies wholly on a Singapore entity to carry on its business, there appears to be a GST exposure. A 7% GST could be payable on services provided by Singapore GST-registered service providers as the Singapore entity could be treated as the overseas company's BE and thus belonging in Singapore

KPMG has prepared a briefing, which is available by clicking on the PDF link below.

Source: KPMG, April 2015

For Details, please see
http://www.kpmg.com/SG/en/IssuesAndInsights/tax/taxalert-201506_1.pdf

SWITZERLAND

NON-SWISS FUND MANAGERS – NEW SWISS FUND MARKETING REGIME APPLIES

The two-year transitional period applicable to the amended Swiss fund marketing rules ended on 1 March 2015 and any fund marketing activity taking place after this date must be in compliance with the amended rules governing the distribution of funds under the Swiss Collective Investments Schemes Act (CISA) and Collective Investment Schemes Ordnance (CISO).

Clifford Chance has prepared a briefing paper discussing the new regime.

Source: Clifford Chance Alert, February 2015
For Details, please see http://www.cliffordchance.com/briefings/2015/02/non-swiss_fund_managersnewswissfun.html

For enquiries, please contact professional.standards@anrev.org