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# ASIA TAX AND TRADE BULLETIN

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(Country reports by Terry Hayes, Mabel Joyce Vergara and Paul Vicente Curimao, V; Edited by Terry Hayes and Keith Koo)



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On 24 December 2015, the Japanese Cabinet approved the 2016 tax reform proposal (2016 Tax Reform), which includes revisions to Japanese transfer pricing (TP) documentation requirements. The revisions are based on recommendations in the "Transfer Pricing Documentation and Country-by Country Reporting, Action 13 2015 Final Report" (Action 13 Report) published on 5 October 2015 as part of the BEPS Project carried out by OECD and G20. The proposal is expected to be passed into law by the Diet without substantive change.

Under the reform, the preparation and filing of a Master File and a Country-by-Country Report (CbC Report) principally will be required of the ultimate parent company of a multinational enterprise (MNE). The new rules also will require the contemporaneous preparation of a Local File by all taxpayers that meet a transaction threshold. The contents of the Local File are those set out in Article 22-10 (1) of the Ordinance for Enforcement of the Act on Special Measures Concerning Taxation of Japan (the ASMT Ministerial Order), which will be changed slightly for some clarifications and the addition of some reportable items by the reform. Various effective dates apply for the new rules, as stated below.

This article outlines the revised TP documentation requirements in Japan, with reference to the recommendations in the Action 13 Report, and highlights some of the potential implications for taxpayers in Japan.

**TP documentation requirements**

The 2016 Tax Reform includes new TP documentation requirements for the preparation of a Master File, Local File, and CbC Report in Japan, and the filing of the Master File and CbC Report. The required documentation is consistent with the 3-tiered approach to TP documentation set out in the Action 13 Report.

The Master File and CbC Report are newly required, while the Local File largely is equivalent to the documentation currently required under the ASMT Ministerial Order. More specific details of each requirement are provided below; some remaining areas of uncertainty are expected to be clarified at a later date by Order or Directive.

***Master File***

The Master File is intended to provide an overview of the MNE for the relevant tax administrations to evaluate the presence of significant TP risks. Thus, the Action 13 Report explains that the Master File should include the nature of the MNE's global business operations, its overall TP policies, and its global allocation of income and economic activity. However, the Master File is only intended to

provide a high-level overview of the MNE's TP pricing practices, and detailed information is not intended to be provided.
The submission and filing of the same general information as set out in the Action 13 Report will be required in Japan for taxpayers belonging to an MNE that meets a threshold test of group consolidated revenues of over JPY100 billion (in the preceding fiscal year). Submission thus will be required for both (a) Japanese-headquartered MNEs and (b) subsidiaries or branches of foreign-headquartered MNEs, where the MNE to which they belong meets this test. In the latter case, the Japanese taxpayer will be required to submit the Master File to the Japanese tax authority - it will not be obtained by the Japanese tax authority through the exchange of information provision of tax treaties (unlike for the CbC Report).

The new requirement will be effective for taxpayers' fiscal years beginning on or after 1 April 2016, with the submission deadline one year following the close of the ultimate parent company's fiscal year to which the Master File relates. The Master File can be prepared in either Japanese or English. The submission must be made electronically.

***Local File***

The Action 13 Report provides that the Local File should contain more detailed information relating to specific intercompany transactions, in compliance with the tax laws of each local jurisdiction. According to the Action 13 Report, the information required in the Local File supplements the Master File and is intended to help meet the objective of assuring that the taxpayer has complied with the arm's-length principle.

As the contents specified in the Action 13 Report largely are equivalent to the documentation already listed in the ASMT Ministerial Order, law changes to be made to adopt the Local File requirement in Japan will be limited to some clarifications and the addition of some reportable items.

Both Japanese parent companies of MNEs and Japanese subsidiaries (of both Japanese parent companies and foreign parent companies) will be required to prepare Local Files covering their own related-party transactions, effective for fiscal years beginning on or after 1 April 2017. The reason for the one-year delay in implementation (as contrasted with the Master File and CbC Report) is that a contemporaneous preparation requirement also is being introduced for the Local File.

This contemporaneous preparation requirement will apply to taxpayers having transactions with a related party that exceeded a total transaction amount in the preceding tax year of JPY5 billion or having intangible property transactions with a related party that exceeded a total transaction amount in the preceding tax year of JPY300 million. For taxpayers with such transactions, the Local File must be prepared at the time the taxpayer's corporate tax return for the relevant year is filed; the corporate tax return generally is due 3 months after the fiscal year-end. ***Given the short time frame within which the Local File must be prepared following year-end, the reform provides an additional one year for taxpayers to prepare***.

The requirement for submission of the Local File ***will continue to be without delay*** (defined below) upon request in an audit. For those taxpayers that do not meet the transaction threshold described above, the contemporaneous preparation deadline will not apply.
The reform adds a provision that specifically defines the timing for submission of TP documentation. For taxpayers that meet the transaction threshold described above (i.e., those that must prepare

documentation contemporaneously), the deadline is within 45 days following a request by the tax authority. For taxpayers that do not meet the transaction threshold (i.e., those that are not required to prepare documentation contemporaneously), the deadline is 60 days.

***CbC Report***

Per the Action 13 Report, the CbC Report provides aggregate tax information for each jurisdiction in which the MNE operates, including information relating to the global allocation of income, the taxes paid, and certain indicators of the locations of economic activity. The report includes a listing of all the MNE entities, specifying the nature of the main business activities carried out by each entity. The Japan CbC Report will be in the same format as Annex III of the Action 13 Report, ***and must be prepared in English only***.

As with the Master File, filing of the CbC Report will be required in Japan for taxpayers belonging to an MNE that meets the threshold test of group consolidated revenues of over JPY100 billion (in the preceding fiscal year). Submission thus will be required for both (a) Japanese parent companies of MNEs and (b) Japanese subsidiaries or branches of foreign headquartered MNEs, if they meet this test. In the latter case, Japan will obtain the CbC Report through exchange of information agreements with other jurisdictions. If, however, the Japanese tax authority cannot obtain a copy of the CbC Report in this manner, the subsidiary or branch in Japan will be required to submit the CbC Report itself.

The CbC Report will be required for taxpayers' fiscal years beginning on or after 1 April 2016, with the submission deadline one year following the close of the ultimate parent company's fiscal year to which CbC Report relates. ***The submission must be made electronically***.

**Penalties**

The reform implements penalties for a failure to file the Master File or CbC Report by the due dates. The exact nature of these penalties and to whom they apply are expected to be clarified in a later Order or Directive.

The reform does not implement any monetary penalty for failure to prepare the Local File contemporaneously, or for failure to submit the Local File upon request in an audit within the 45 or 60 day period. However, ***the reform does reemphasize current law, which provides that where TP documentation is not provided in a timely manner when requested in an audit, the tax examiners may raise an assessment by using the so-called "presumed method" or by using secret comparables***.
The presumed method allows the tax examiners to raise an assessment using a relaxed standard of comparability (which presumably would result in a large assessment). The examiners' ability to use the presumed method or secret comparables thus is the effective "penalty" for failure to provide the requested documentation.

**The takeaway**

In line with the recommendations of the Action 13 Report, the objectives of the new TP documentation rules are (i) to ensure that taxpayers give appropriate consideration to TP requirements when establishing prices for transactions between related companies, and (ii) to provide tax authorities with the information necessary to conduct an informal TP risk assessment

before conducting a TP examination. Therefore, the TP documents are designed to demonstrate the appropriateness of the taxpayer's TP policies and procedures. Where properly prepared, they may reduce the risk of a TP audit (and potential assessment).

As described above, however, the new TP documentation rules require more information to be provided by taxpayers that belong to MNEs that meet the group consolidated revenue threshold and require the information to be prepared and/or submitted within certain deadlines not contained in the existing rules. In view of these changes, ***it is recommended that companies commence preparation earlier than in the past***, in order to allow sufficient time to collect and analyse the necessary information, and to prepare their TP documentation appropriately. This is particularly the case for Japanese-headquartered MNEs, given the significant new requirements of the Master File and CbC Report.

*Note*: ***The new preparation and submission deadlines for the Local File depart from the current TP documentation rules, which do not have specified due dates***. A failure to submit the Local File within 45 (or 60) days upon request by the tax authorities may result in application of the presumed method (or the use of secret comparables). Because the current law does not clearly define when documentation must be submitted when requested by the tax authority, it is not clear under what circumstances the tax authorities can use the presumed method or secret comparables; this uncertainty may have caused tax examiners to be reluctant to use them. As a result of the clarification in the 2016 Tax Reform of the time within which documentation must be submitted, the tax examiners may become less reluctant to use the presumed method or secret comparables if documentation is not timely submitted. ***Although the 45 or 60-day period may seem an adequate time to prepare documentation "when requested in an audit," the resources required to manage other audit requests may make it difficult to do so***. Moreover, the time frames would not allow much time to address unusual or unexpected transactions or results that may arise in the documentation.

The addition of these deadlines to the law, along with the increasing number of requests for submission of TP documentation in audits, leads to a ***strong recommendation that taxpayers prepare their TP documentation well in advance of any audit commencing***.

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## [2]. THAILAND'S SPECIAL ECONOMIC ZONES COULD BRING SIGNIFICANT ECONOMIC BENEFITS – *BY JAY BURABHASIKHRIN, INTERNATIONAL TRADE SPECIALIST - THAILAND, ONESOURCE GLOBAL TRADE, THOMSON REUTERS*

While Thailand is something of a late-comer to the idea of Special Economic Zones, their potential to bring the country significant economic benefits and strong ground for future business development cannot be denied.

### *Background*

The Special Economic Zone (SEZ) is not a new concept for Asia. In fact, there were a few past attempts led by growing Asian economies a few decades ago including India (Gujarat's Kandla SEZ in 1965) and the 4 Tigers East Asian Miracles (Hong Kong, Singapore, South Korea and Taiwan) in adopting and implementing this concept as an opportunity for companies.

However, it seems that only China is portrayed as an able nation with the right mechanisms in place

to establish and deliver this concept successfully as demonstrated by Guangdong (Shen Zhen, Zhuhai and Shantou) and Fujian (Xiamen) Provinces, which started in the 1980s. Although China was not the first country to implement the SEZ policy, it seems to be successful in attracting and boosting China's economy, which makes China's SEZ policy one to emulate.

There is clear evidence from many researchers that there has been growth and an increase in exports across many cities in China and in particular, the SEZ areas. China's SEZ policy is one of the tools the country has been using to promote a market-led economy and entice foreign investment since the early days of the endeavour [currently there are around 20 multilevel diversified form of SEZ areas in China including Pudong District/ Shanghai Municipality, Xiamen/ Fujian Province, Shantou, Shenzhen and Zhuhai / Guangdong Province, Kashgar/ Xinjiang Province, Hainan Province and etc], by offering many trade liberalisation tools such as special tax investment incentive schemes and special corporate establishment structures including Sino-foreign Joint Ventures and Partnerships (SFJVs) through the Wholly Own Foreign Enterprises (WFOEs). These schemes help many MNCs operate in China with flexibility in deciding their investment structures. [Currently, there are around 20 of the multilevel diversified form of SEZ areas in China including Pudong District/ Shanghai Municipality, Xiamen/ Fujian Province, Shantou, Shenzhen and Zhuhai / Guangdong Province, Kashgar/ Xinjiang Province, Hainan Province and etc.]

Many developing countries in the world have followed China's SEZ liberalisation policy tools such as Iran, Jordan, Poland, Kazakhstan, the Philippines, Russia, and Ukraine.

A unique feature of the China SEZ model is that it has many flexible and international rules and policies written specifically for the business establishment. In fact, the China SEZ allows all types of industries an opportunity to invest such as livestock, fish breeding, and poultry farming to the areas of research and manufacturing, thus creating a diverse cluster and breadth of supporting industries that are labour intensive to technology focused.

Therefore, the Chinese SEZ model has been a success story and is regarded as a blueprint for other emerging economies to follow, in particular South Korea, Taiwan, the Philippines and India (so far, more than 430 SEZs has been approved in India in recent years with the highest in a state of Maharashtra (where Mumbai and Pune are the top major cities)). Thailand has recently adopted the SEZ model into its own policy system, and is going to commence a full scale linkage of its SEZs by 2016.

***ASEAN Economic Community and the Mekong Sub-region (GMS)'s Economic Corridors***

At the end of last year, the ASEAN Economic Community (AEC) became effective (Thailand as one of the founding members is part of the community), with the aim of trade and customs de-regulation among its members. There are high hopes to make the region a global single market and common production base for investors. Because of this, there has been a tremendous effort to face-lift the region's connectivity to support its trade and investment success. An example of one of the major enhancements is the Logistics infrastructure that will inter-connect the Greater Mekong Sub-region (GMS)'s Economic Corridors under the ASIAN Development Bank. So far, the budget for this initiative has been approved for around US$30 billion under the 5-year investment framework implementation plan (2014-2018). This budget has largely been poured into the transport sector.

Therefore, the AEC will not only provide a huge market opportunity, but also its members' breadth and depth of products and services should prove to be more diverse and competitive - and poised to

gain more distributed market share in the global market. The total merchandise export volume from the emerging ASEAN continent countries alone has already exceeded US$400 billion in 2014. From an industry standpoint, according to a survey taken by the US Chamber of Commerce, most of the American firms are very optimistic about the profit outlook in ASEAN. Around 66% of 2015 respondents cite that ASEAN markets will become more important for their worldwide revenues over the next 2 years and 80% believe their companies' level of trade and investment within the region will be increased significantly by 2020.

***Thailand's Special Economic Zone (SEZ)***

The SEZ in Thailand was approved by the government in 2014 and is expected to be an effective tool to make the country's economy move in a positive direction with the upcoming regional economic drivers. There is an initial pilot of 5 SEZs, and later in 2016, for another 5.

There will be all together 10 SEZs along the borders across the country with the aim to target Thailand key industries. The 10 SEZs are planned to be located in "Tak and Kanchanaburi" which border Myanmar, "Chiang Rai" on the Thailand-Lao-Myanmar border, "Mukdaharn, Nong Khai and Nakhon Phanom" on Thailand-Laos border, "Trat and Sa Kaew" on the Thailand-Cambodia border, and "Songkhla and Narathiwas" in the southern part of Thailand which borders Malaysia. There are 13 major industries involved including: Agriculture and fisheries; ceramics; garments, textiles and leather; furnishings and furniture; gems and jewellery; medical equipment, automobiles and parts; electrical appliances and electronics; plastics; pharmaceuticals; logistics; industrial estates and tourism-related.

Each zone has its target business activities which are decided and categorized by the area where the SEZ is located, for example: raw materials, and economic and business conditions. For example, Songkhla in the South is close to the sea and has rich forest areas, and therefore its target industries are agriculture and fisheries, furniture, garments, textiles and leather products, logistics, industrial estates and tourism.

The SEZs provide not only one-stop service centres with customs checkpoints, but also enhanced services for licensing and permission applications, and issuance procedures in each zone. The SEZs provide the maximum incentive benefits to business entities, if their investment falls under the initial 13 target business activities. The mixed incentives from the Customs and Excise Department through the Board of Investment (BOI) are well positioned for investors because of the corporate tax reductions and exemptions with an opportunity for another additional 50% extension, free of import duty for machines and raw materials for export production, exclusive rights to use foreign labour, and other non-tax incentives benefits such as low interest rate loans, land occupation rights, double deductions from the costs of transportation, electricity and water supply for 10 years. In particular, the permission to use unskilled foreign labour is a very large incentive to those MNCs. Thailand's workforce is shrinking and the foreign labour law now is quite cumbersome, so this permission will be a promising point for investors.

***Trade and business implications***

Despite the fact that Thailand is a few years behind other emerging ASEAN neighbours in setting up SEZs, the impetus for change is clear. Myanmar for example, passed the Special Economic Zone Law in January 2014 to accommodate its 3 major SEZs; Dawei in the Southeast), Thilawa located near previous capital Yangon, and Kyaukphyu in the Northwest.

Meanwhile, Laos PDR has already completed 8 SEZs with a total area of around 26,055 acres with the aim to add another 13 areas by 2020. The majority of investors are coming from China, Vietnam and Thailand to set-up operations. However, the set-up plan for Thailand has been a big step and brought high hopes for the country to move forward in order to stimulate and strengthen its economy during the region's economic integration. The Ministry of Commerce has cited that once the SEZs are ready, the cross-border trade, which accounts for around 10% of the total trade volume of the country, will be significantly increased by 50%, bringing its figure to reach THB 1.5 Trillion in years to come.

With the right policy tools and supporting infrastructure in place, the SEZs could potentially not only bring significant economic benefits and strong ground for future business development, but also help the community increase its common collaboration in peace, enhance border security, an improved quality of life and social welfare along the less developed areas along those borders. An obvious advantage would be the potential in reducing illegal trade, smuggling, and human trafficking as well as facilitate cross-border trade to the region as a whole.

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## ASIAN TAX AND TRADE NEWS AND UPDATES

### SINGAPORE

### [3]. SINGAPORE BUDGET 2016 – DELOITTE'S PROPOSALS, INCL BEPS-RELATED MEASURES

Singapore's 2016 Budget will be delivered to Parliament on 24 March 2016 by Singapore's new Finance Minister, Mr. Heng Swee Keat. Minister Heng is also chairing the Committee on the Future Economy ("CFE") which will chart Singapore's next phase of growth. A key focus of CFE, and by extension, Budget 2016 and future Budgets, would be to move the Singapore economy up the innovation ladder, from one that is "value-adding" to one that is "value-creating".

In looking forward to the Budget, Deloitte has outlined its proposals for the Budget.

The firm says value-creation, or innovation-led enterprises, is core to every sector of the economy and is crucial to deliver new sources of growth and high-wage jobs. The focus on building new business capabilities and value-creation is ever more important for Singapore as a slower pace of growth is expected in 2016 and middle and back office jobs in the country are under threat from lower cost locations.

Fiscal policies drawn up to achieve this would be introduced amidst an international drive to combat tax avoidance. In this connection, Budget 2016 will be keenly watched as it will also be the first Budget to be released after the publication by the OECD of its final set of recommendations under the BEPS Project for a "comprehensive, coherent and co-ordinated reform of international tax rules".

Thus, Deloitte says a balance must be achieved between keeping Singapore's tax system simple whilst ensuring that it remains coherent and acceptable in the international tax arena, such as calibrating and articulating our available tax incentives such that they are only awarded based on substantive activities being performed in Singapore.

Mindful of these constraints, Deloitte says its proposals for Budget 2016 call for the strengthening of

initiatives to promote innovation whilst meeting the twin challenges of keeping our tax regime competitive and addressing the implications arising from the BEPS Project.

Deloitte's proposals for Budget 2016 include recommendations on:

- Shaping fiscal policy with a view to encouraging a culture of innovation and promoting start-ups in Singapore.
- Preserving Singapore as an attractive destination for foreign investment in an environment where international tax issues are high on the political agenda.
- Reviewing certain tax policies in a bid to keep Singapore's tax regime competitive while meeting increased spending on social safety nets.
- Maintaining Singapore's edge over the competition in select industry sectors by ensuring Singapore's tax policies evolve in tandem with business developments.
- Refining personal tax rules to address rising healthcare and childcare costs.

***Specific tax measures***

On some specific tax-related measures, Deloitte comments as follows:

- Re ***BEPS Action 5*** (Harmful tax practices), Deloitte suggests that Singapore should seek to collaborate with other developing countries with similar tax incentive regimes t o ensure that views are represented to the OECD in this area in a coordinated manner.
- Re ***BEPS Action 6*** (Treaty abuse), Deloitte says that in order for Singapore to maintain its attractiveness as a hub location, it must ensure it adheres to the minimum standards established through Action 6. Singapore should also ensure it represents its interests proactively through the negotiations for the BEPS multilateral instrument.
- Re ***BEPS Actions 8-10*** (Transfer pricing), Deloitte recommends that Singapore should review and implement new transfer pricing approaches that are being developed by the OECD into its Transfer Pricing Guidelines where OECD countries do so. Ensuring Singapore adopts consistent transfer pricing approaches with its key trading partners and investor countries will be important to ensuring the risk of disputes is minimised.
- Re ***BEPS Action 13*** (CbC reporting), Deloitte recommends that Singapore adopt CbC reporting to ensure it is in line with international standards and does not put itself at a disadvantage in bilateral negotiations.
- Deloitte considers Singapore can do more to pursue ***new tax treaties***, particularly in developing markets such as East Africa. In addition, some of Singapore's older treaties (eg with Australia and Taiwan) do not include any preferential tax treatment for technical services.
- Singapore's ***Finance and Treasury Centre (FTC) incentive*** should be extended past 31 March 2016 and also improved eg to grant exemption from Singapore withholding tax on interest arising from loan notes, debentures and other debt securities. Hong Kong's moves to relax tax treatment for corporate treasury centres (CTCs) should be noted eg relaxed interest deduction rules, and a 50% reduction in Profits Tax for CTCs for certain specified treasury activities.
- Consideration should be given to removing the existing S$100,000 cap for ***loss carry-back relief*** permanently or alternatively, increasing it to S$300,000 for assessment years 2016 to 2018.
- Singapore should refine its ***employee share scheme tax rules*** to make them more attractive to start-up companies or SMEs in hiring and retaining staff.

- To level the playing field between overseas and Singapore talent, the requirement for NOR (Not Ordinarily Resident) applicants to be a non-resident for the preceding 3 consecutive YAs prior to the YA of claim for Singapore citizens/SPRs should be removed or relaxed.
- Consider granting ***enhanced tax deductions*** for costs of recruiting Singaporeans in key roles.
- Enhance ***foreign-source income exemption and foreign tax credit schemes*** eg possibly granting full tax exemption to foreign-sourced income derives from markets within the ASEAN Economic Community.

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**[4]. EXTENDED DUE DATE FOR ITR FILINGS**

A common bulk extension date of 30 June 2016 will be given for those tax agents filing individual income tax returns for Year of Assessment (YA) 2016.

IRAS has advised all tax agents to adhere to the extended due date strictly as no further extension will be granted.

To request a bulk extension, tax agents are required to file a list of clients using a template provided by IRAS and submit it between 1 Feb and 31 March 2016. IRAS will only accept requests that are coursed through e-mail at bulkreq@iras.gov.sg.

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**MALAYSIA**

**[5]. NO INCREASE IN GST RATE PLANNED BY THE GOVERNMENT**

The Malaysian Government is not planning any increase in the Goods and Services Tax (GST), Prime Minister Datuk Seri Najib Tun Razak has said.

According to *Bernama*, Najib, who is also Finance Minister, said the government at this stage was taking into consideration the welfare and ability of the people. "I don't think the people have the capacity to absorb any additional or increase of GST ... increase of GST is not 'on board'... not on the table," he told a news conference on 15 January 2016.

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**[6]. ROYAL MALAYSIAN CUSTOMS CONTINUES GST GUIDES UPDATE**

Royal Malaysian Customs has continued its updating process and has updated several further GST guides:

- ***Accommodation premises and similar establishments*** (revised as at 15 January 2016) – Under the GST Act 2014, supplies of accommodation in "hotels, inns, boarding houses and similar establishments" and other facilities such as food and beverages, recreational and rental supplied in the course or furtherance of business are subject to GST. Any person who carries on or operates commercial accommodation premises is required to be registered for GST if his annual taxable turnover exceeds RM500,000. Any rental on holiday accommodation, and rental on home-stays, is subject to GST. However, sales of serviced apartments is an exempt supply.
- ***Approved Toll Manufacturer Scheme*** (revised as at 14 January 2016) – Under normal rules,

even though a toll manufacturer is an approved person under the Scheme, he is still liable to pay import duties and GST on imported goods at the time of importation.

- ***Duty Free Shop*** (revised as at 14 January 2016) – Certain categories of manufactured goods in Malaysia such as food, beverages and goods as gifts (eg watches and cameras) which are not subjected to any duty or tax are allowed to be sold in DFS subject to conditions imposed by the Director General. These goods are now subject to GST at a standard rate.
- ***Leasing*** (revised as at 15 January 2016) – The general GST treatment where real properties are leased is as follows: (i) the lease of private residence, eg an apartment is an exempt supply; (ii) the lease of commercial property, eg a shop is a taxable supply; (iii) the lease of long-term commercial residence, eg on site van is an exempt supply. The lease of government or state owned land is an out of scope supply. However, the lease of other than government or state owned land is a taxable supply of services at standard rate. The Guide says the assignment of the right to rental income under a real property lease is an exempt financial supply and is not subject to GST.
- ***Professional services*** (revised as at 13 January 2016; replaces the revised 8 Jan 2016 guide) – professional services includes accounting and legal services.
- ***Societies and similar organisations*** (revised as at 14 January 2016) – Societies and similar organizations (including charitable entities) providing taxable supplies are subject to the same rules on registration for GST as other businesses. Generally, membership subscription charged by any GST registered society or similar organization (including charitable entity) is subjected to GST if the value of the supply given to its members is substantial. That is, the benefit to the members in return of the subscription is substantial. An accountant's membership of their professional association would not be subject to GST.
    - The Guide notes that any registered person under s 20 of the GST Act, organising a fund raising event, making supplies of goods or services in such an event is eligible to be given relief from charging GST on those supplies under item 1 of the Second Schedule of the Goods and Services Tax (Relief) Order 2014 subject to conditions stipulated in the Order. This person must not be in a business of raising fund as in the case of a professional fund raiser.
    - In one of the examples given in the Guide, it is stated that the service provided by a footballer imported by the Football Association of Malaysia to play for the Association is regarded as an imported service and the Association has to account for the GST by way of reverse charge mechanism.

***Specific guides also updated***

Customs has also released the following updated specific GST guides:

- ***Capital goods adjustment*** (revised at 18 December 2015) - Capital goods are normally defined as any goods which are capitalized for accounting purposes and in accordance with Generally Accepted Accounting Principles (GAAP) and written off over several years. The GST treatment on capital goods in Malaysia is as follows: (i) a supply of capital goods is standard-rated; (ii) input tax can be claimed in full on all capital goods that are used to make wholly taxable supplies.
- ***Designated Area*** (revised as at 12 January 2016) – the update adds a new FAQ. Supplies of goods made by any person within or between designated areas (DA) are not subject to GST. This means that there is no GST (output tax) imposed on such supplies.

- ***Export*** [of goods] (revised as at 21 December 2015) - All goods exported from Malaysia are zero-rated that is GST charged at 0%. This means that an exporter does not collect GST on his exports but he is able to claim GST incurred in his acquisitions as his input tax if he is a taxable person.
- ***Free Commercial Zone*** (revised as at 12 January 2016) – This industry guide seeks to assist businesses in understanding matters with regard to GST treatment on Free Zone for Commercial Activities (FCZ). Under Part XV of the GST Act, FCZ is regarded as a place outside the Principal Customs Area (PCA). Generally, all FCZs are located at ports and airports. No GST is payable upon any importation of goods into a FCZ, irrespective of whether the free zone is located at ports/ airports or not, provided such goods are for commercial or retail trade activities approved under the Free Zones Act 1990.
- ***Free Industrial Zone and Licensed Manufacturing Warehouse*** (revised as at 12 January 2016) – For GST purposes, FIZ and LMW are regarded as part of Principal Customs Area (PCA). A company operating in a FIZ or having LMW status is treated as any company carrying out a business in Malaysia where normal rules of GST apply. However, a few FIZs are located at ports such as at Port Klang Free Zone in Selangor, Tanjung Pelepas Free Zone and Pasir Gudang Free Zone in Johor where the GST treatment is similar to the tax treatment for FCZ.
- ***Import*** [of goods] (revised as at 12 January 2016) – Generally, all imported goods into Malaysia are subject to GST. However, certain goods imported by any person or class of persons are given relief from payment of GST upon importation under the Goods and Services Tax (Relief) Order 2014.
- ***Input tax credit*** (revised as at 29 December 2015) – the update amends para 10 (about Blocked input tax) with a new example and additional material. The guide explains the implications of recovery of input tax. Input tax is the GST incurred on any purchase or acquisition of goods and services by a taxable person for the purpose of making a taxable supply in the course or furtherance of business.
- ***Registration*** (revised as at 13 January 2016) – In Malaysia, a person who is registered under the Goods and Services Tax Act 2014 is known as a “registered person”. A registered person is required to charge GST (output tax) on his taxable supply of goods and services made to his customers. Any person who makes a taxable supply for business purposes and the GST exclusive value of the taxable turnover of that supply for a period of 12 months or less exceeds the threshold of RM500,000 is required to be registered for GST.
- ***Supply*** [of goods or services] (revised as at 12 January 2016) – GST is charged on all taxable supplies of goods and services in Malaysia except those specifically exempted. GST is also charged on importation of goods and services into Malaysia.
- ***Tax invoice and Record keeping*** (revised as at 30 December 2015) – The most important document in the GST system is the tax invoice. This document is generally issued by the supplier notifying the purchaser of the obligation to make payment in respect of any transaction. It contains certain information such as details of registered person and supply, GST rate and the amount of GST payable as stipulated under the GST law. Section 36 of the GST Act requires every taxable person and certain non-taxable person to keep full and true records of all transactions which affect or may affect his liability to tax. These records should be kept in Malaysia except as otherwise approved by the Director General and shall be in the National or English Language, and should be preserved for a period of 7 years from the latest date to which the records relate.
- ***Valuation*** (revised as at 30 December 2015) - The value of a supply needs to be determined in order to charge GST. In addition to that, the determination of value of supply is also important for registration purposes. This guide seeks to provide necessary information and guidance for businesses to determine the value of a supply.

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**[7]. TPP COULD BRING LARGE FOREIGN INVESTMENT TO MALAYSIA**

Malaysia is expected to receive additional investment of over US$100 billion (RM440 billion) by 2027 with the implementation of the Trans-Pacific Partnership Agreement (TPPA), said International Trade and Industry Minister Datuk Seri Mustapa Mohamed.

He said the projected investment figure comes from a study by PwC on the trade pact's benefits for Malaysia.

*Bernama said* that a special 3-day session on Malaysia's participation in the TPPA will be held at the Dewan Rakyat (Malaysia's House of Representatives) and Dewan Negara (Malaysia's Senate) from 26 January 2016.

The contents of the TPPA as well as findings of the 2 cost-benefit analyses will be tabled in Parliament. The TPPA needs Parliament's approval before it can be ratified.

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**[8]. MINOR AMENDMENT TO LAWS RELATED TO TPPA, SAYS MUSTAPA**

Only minor amendments will be made to the 26 Malaysian State and Federal laws and regulations related to the Trans-Pacific Partnership Agreement (TPPA), said International Trade and Industry Minister Datuk Seri Mustapa Mohamed. *Bernama said* Mustapa reiterated that Malaysia would finalise the amendments, which would include labour rules and regulations and, intellectual property rights within the time frame of two years after the signing of the pact.

*Bernama also noted* that Malaysia's Chief Negotiator said that Malaysian companies can participate in government procurement and tenders of all TPPA member countries once the trade pact is sealed.

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**THAILAND**

**[9]. THAI PROSECUTOR CHARGES PHILIP MORRIS THAILAND IN CIGARETTE IMPORTS CASE**

Thailand's prosecutor has charged the local unit of Philip Morris International of under-reporting the value of imported cigarettes, which led to tax revenue losses of about 20 billion baht (US$551.27 million), the Attorney-General has said.

The case involves cigarettes imported by Philip Morris Thailand from the Philippines between 2003 and 2007, the prosecutor told reporters. In addition to the company, 7 Thais were also charged, as well as 4 foreigners who were outside the country, they added.

Reuters said a court will hear the case on 25 April 2016. If convicted, the company will have to pay 80 billion baht in damages, and each defendant faces up to 10 years in prison.

Philip Morris Thailand said the charges were unjust. "Not only are these charges wholly without merit ... they also call into question Thailand's commitment to fairness, transparency and rule of law," branch manager Troy Modlin said in a statement.

A 2010 ruling by the World Trade Organization said that Thailand had no grounds to reject the import price of cigarettes from the Philippines, and Thailand has previously lost a case over the issue.

The Philippines has complained that a series of domestic taxation and customs valuations by Thailand that started in 2006 had undermined the competitiveness of its cigarettes against those produced by the state-controlled Thailand Tobacco Monopoly.

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**[10]. FOREIGN ENTITIES AND THAI TAX FILINGS: A REMINDER - KPMG**

In releasing its 2016 Thailand Tax Calendar, KPMG has reminded taxpayers that the filing of tax returns under the Revenue Code is required to be made at the District Office where the place of business is registered. Currently, the Thai Revenue Department also provides the services of filing and paying tax on-line through their website (www.rd.go.th).

In addition, KPMG says a branch of a foreign entity that sends a sum representing profits out of Thailand is required to withhold income tax, and at the same time file form Por Ngor Dor 54, with the District Office within 7 days after the last day of the month in which the profit remittance is made.

For remittances of other types of income which are subject to withholding income tax (subject to the provision of the Double Tax Agreement between Thailand and the country of which the recipient of income is a residence), and self-assessment VAT to foreign companies with no permanent establishment in Thailand, KPMG says the payer must file form Por Ngor Dor 54 to accompany the income tax payment and form Por Por. 36 to accompany the self-assessment VAT within 7 days after the last day of the month in which the income payment is made.

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**VIETNAM**

**[11]. PREFERENTIAL IMPORT TARIFF UNDER VIETNAM-KOREA FTA**

In implementation of the Vietnam-Korea Free Trade Agreement in the tariff sector, the Ministry of Finance has released Circular 201/2015/TT-BTC enacting the special preferential import tariff schedule under the Agreement for the period of 2015-2018. The schedule consists of 9,502 tariff lines, of which 9,445 tariff lines are in 8 digit and 57 tariff lines in 10 digit. The circular came into effect from 20 December 2015, on the same day as the enforcement of the FTA.

The Ministry said Korea is the 3rd biggest trade partner of Vietnam, after China and USA.

The Ministry said Korea has committed to offer Vietnam tariff eliminations and applying quota for 11,679 tariff lines, including the Vietnamese key export goods such as fisheries, agricultural products, fresh flowers, tropical fruits, industrial products of textile, garment, mechanical instruments. For a number of goods in high MFN tariff categories from 241% to 420% such as garlic, ginger, honey, red bean, sweet potatoes, Korea has committed to grant market access for those goods, creating considerable advantage for Vietnam over other competitors in the region.

On the Vietnamese side, compared with ASEAN- Korea Free Trade Agreement commitments to 8,320 liberalized tariff lines, Vietnam has made additional commitments to 201 liberalized goods under Vietnam FTA including accessories of textile and footwear leather; electrical household appliances; equipment; electronic products and components, electrical cables, engine, automobile spare-parts, automobiles (trucks and cars have capacity of above 10 tons and 3,000 cc respectively).
Vietnam offers tax incentives to certain products of “supporting industries”

Vietnam has offered corporate income tax incentives to foster the development of "supporting industries". The preferential treatment applicable to certain products of supporting industries, according to a report by PMG, included:

- A preferential tax rate of 10% is available for a 15-year period.
- A tax exemption applies for 4 years, and a 50% tax reduction for the subsequent 9 years.

The Ministry of Industry and Trade also issued Circular 55/2015/TT-BTC (30 December 2015) establishing certain guiding procedures with respect to eligibility for the tax incentives because existing regulations did not clearly define the conditions or procedures for determining which products were eligible. KPMG said the guidance addressed the following matters:

- How to define a new investment project, manufacturing goods of supporting industries.
- What products are subject to the corporate income tax incentives.
- What is the process for the tax authorities to grant a certificate of tax incentives.
- What is the process for the withdrawal of the tax incentives certificate.

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**[12]. NEW BUSINESS REGISTRATION RULES TO TAKE EFFECT**

The General department of Taxation (GDT) has advised that specific forms for business registration have recently been introduced in Circular 20/2015/TT-BKHDT (Circular 20) to be applied consistently across the nation.

Accordingly, enterprises will need the following when filing an application: Investment Certificate separation; meeting minutes in the form of collected written opinions; a change of shareholders in joint-stock companies; and operation registration of branches and representative offices.

Under the rules, Circular 20 says:

· Enterprises are obliged to register for the amendment of operation registration content for branches, representative offices and business locations after having completed the process of business type conversion in the following cases:
o State-owned company converted to limited liability company or joint-stock company;
o Limited liability company converted to joint-stock company and vice versa;
o Privately-owned enterprise converted to a limited liability company.
· In cases where foreign investors as founding shareholders wish to transfer their ordinary shares to persons who are not founding shareholders within 3 years of the operation licence's issue date, Circular 20 dictates that the dossier submitted while requesting a change of founding shareholders must include a decision and a valid copy of the Meeting Minutes of the General Meeting of Shareholders.

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**CHINA**

**[13]. CHINA TO BOOST INCLUSIVE FINANCE: STATE COUNCIL**

The State Council has advised that it issued a circular on 15 January 2016, making a 5-year plan to develop the country's inclusive finance. Inclusive finance is financial services offered by financial institutions to micro-businesses, farmers, low-income population in urban areas, poor population, the disabled, and senior citizens.

The goal of the plan is to set an inclusive finance system that is in coordination with the construction of a moderately prosperous society by 2020 and satisfies people's need for financial services, the State Council said.

Under the new policy, full coverage of bank and insurance services will be accomplished in rural areas, and financial support will be improved for low-income population in urban areas, the poor, farmer entrepreneurs, college student entrepreneurs, and the disabled.

According to the circular, the coverage rate for farmer households that take part in agricultural insurance will be raised to above 95%.

Banks will play an important role in lowering debt costs for micro-businesses and improving financial services in mid-west regions, grain-producing areas, and regions that are hubs for micro businesses.

To improve financing services for micro-businesses, efforts will be made to expand financing channels of petty loan companies and pawnshops. Financial leasing companies and equipment leasing companies are encouraged to better support improvements for equipment and technology at micro-businesses and agricultural companies, according to the circular.

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**[14]. STATE COUNCIL APPROVES PILOT AREAS FOR CROSS-BORDER E-COMMERCE**

The State Council approved on 15 January 2016 the setting up of pilot areas for cross-border e-commerce to explore new business models in China.

According to the released document, Guo Han [2016] No. 17, the new pilot areas will be located in 12 cities, including Tianjin, Shanghai, Chongqing municipalities, Zhengzhou in Henan province and Guangzhou in Guangdong province. The pilot areas will be identified as "China (name of the city) Cross-border E-commerce Pilot Area", and the local governments will be in charge of releasing the detailed plans.

The State Council said the building of the new areas will be based on the 6 major systems and 2 platforms of the cross-border e-commerce pilot area in Hangzhou, Zhejiang province to promote mass innovation and entrepreneurship.

Related departments and provincial governments should simplify administration and delegate powers, and improve services to support the pilot areas to explore new models and innovate.

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**[15]. CHINA TO DEVELOP FREE TRADE AGREEMENT WITH AFRICA**

China plans to develop a free trade area with African countries - to increase the continent's exports to the far-east nation and offset the huge trade imbalance, a top official has said.

Prof Hu Hailiang, the Vice-Chairman of the Social Sciences of the Ministry of Education in China, told reporters in Dar es Salaam on 17 January 2016 that the envisaged free trade area falls under its new 5-year development plan slated to begin this year.

The free trade area agreement is expected to increase exports of goods from Africa to offset the huge trade imbalance between the continent and China, he said.

"China will negotiate with individual African countries and regional blocks to develop free trade area agreement to promote exchange of goods and services and investments," he said at a press conference organised after a seminar on new China.

China's policymakers are compiling the 13th Five-Year Plan (2016-2020), whose proposal was adopted at the Fifth Session of the 18th Communist Party of China (CPC) Central Committee in October last year.

The new 5-year national socio-economic development will charter an explicit blueprint for the country's development over the next five years - and provide more opportunities for the development of other countries.

China is Africa's largest trading partner, surpassing the United States in 2009. According to Brookings Education Institution, in 2012, China's trade with Africa reached US$198.5 billion, while US-African trade in 2012 was US$99.8 billion.

China's trade with Africa is only 5% of its global trade total. More than 80% of China's US$93.2 billion in imports from Africa in 2011 were crude oil, raw materials and resources.

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**[16]. CHINA-EU INVESTMENT TREATY TALKS CONTINUE**

From 12 to 15 January 2016, the 9th round of China-EU Bilateral Investment Treaty negotiation was held in Beijing. The Ministry of Commerce said the 2 parties were looking to make efforts to progress the negotiations as quickly as possible.

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**[17]. CHINA AND ARAB STATES SET TO SIGN AN FTA BY END 2016**

The Chinese Government and the Council of Arab States (GCC) have agreed in principle to commit on having a comprehensive Free Trade Agreement (FTA) signed within the year.

In a report by *China.org*, the Chinese Ministry of Commerce and the GCC Secretariat stated that the parties recently resumed their FTA talks and substantively concluded in principle the negotiations on trade in goods. The countries also agreed to accelerate the negotiation process and hold next rounds of talks in the second half of February.

China and the GCC, which includes Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, began their FTA talks in July 2004, but the process was suspended in 2009.

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**[18]. STATE COUNCIL SEEKS TO BOOST PROCESSING TRADE**

China plans to upgrade its processing trade to the high end of the global value chain by 2020, according to a State Council document released on 18 January 2016.

The document says efforts will be made to improve products' technological content, integrate manufacturing with the service trade, transform the majority of businesses from processing and assembly enterprises to firms based on technology, brands and marketing.

Also, the country will coordinate development of processing trade, driven more by innovation, in the eastern, central and western regions.

The government will seek to attract foreign investment in advanced manufacturing and emerging industries, support coastal areas to develop competitive industries such as electronic information, and encourage labour-intensive industries to move to the interior or border areas.

According to the document, China will encourage enterprises in industries such as construction materials, chemical engineering and food to develop cross-border partnerships, especially with African countries and countries along the route of the Belt and Road Initiative.

The country will also improve the management system and boost financial support to advance the initiative.

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**[19]. REVISED IMPORT POLICIES AND CATALOGUES: MAJOR TECHNICAL EQUIPMENT**

A number of Chinese government agencies have jointly issued guidance that is intended to adjust the import customs duty policies for "major technical equipment". KPMG says the new guidelines are effective 1 January 2016, but provide a 6-month transition period for projects approved under the prior regulations.

The new guidance - Cai Guan Shui [2015] No. 51 (1 December 2015), known in English as "notice on adjusting catalogues and provisions concerning import duty policies for major technical equipment" - was jointly issued by the Ministry of Finance, the National Development and Reform Commission, the Ministry of Industry and Information Technology, the General Administration of Customs, the State Administration of Taxation, and the National Energy Administration.

In revising the import duty policies for major technical equipment, KPMG says a notable change is an adjustment to product catalogues (as previously set forth in 2014 guidance).

KPMG considers that the new notice reflects the Chinese Government's continued support of the equipment manufacturing industry. Accordingly, the firm says importers of large amounts of equipment - such as manufacturers of major technical equipment supported by the state, domestic investment projects, foreign investment projects, R&D centres, and technological transformation projects - will want to examine the new requirements and consider the revised catalogue list (in an appendix) and, when appropriate, make arrangements for equipment imported during the transitional period and if eligible, file "tax break" applications for imports under the new policies.

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**[20]. MAJOR GLOBAL ACCOUNTING FIRM ANNOUNCES CHINA FIRM MERGER**

Mazars has announced that it finalised a merger with Chinese audit firm ZhongShen ZhongHuan in

December 2015, to create a full-service firm with the ability to support clients in 77 countries. Mazars said that since 1997, its integrated partnership model has proven successful in China, and the merger will enable the Mazars partnership to continue delivering value in the Chinese audit and consulting sector.

This merger will bring together more than 1,800 professionals, including 83 partners, from 15 offices across mainland China. Recognised as a leader in Financial Services (notably in the bank and insurance industries), Mazars says it will combine its expertise with ZhongShen ZhongHuan's market reach over the next 2 years, so as to be ready for the next mandatory audit rotation for banks. Mazatrs says the new group's unique integrated partnership structure offers numerous growth opportunities for professionals.

Mrs Zhang Liwen, Chief Chartered Accountant of ZhongShen ZhongHuan, has been appointed to the Mazars Group Executive Board. Mr Shi Wenxian, Chief Partner of ZhongShen ZhongHuan, has been appointed to the Mazars Group Governance Council.

Mazars is an international, integrated and independent organisation, specialising in audit, accountancy, tax, legal and advisory services. It originated in France in 1940.

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**[21]. CHINA WINS FASTENER DISPUTE WITH EU**

The World Trade Organization (WTO) recently ruled that the large tariffs imposed by the EU on fastener imports from China were illegal.

China is the world's biggest producer of screws, nuts, bolts and washers, and the EU is a major destination for its fasteners, which are used for a wide range of products from aircraft, high-speed trains, automotive parts to furniture. China shipped a total of US$1 billion worth of fastener products to the EU in 2008.

In January 2009, the European Union decided to impose anti-dumping duties of up to 85% on China's fasteners for 5 years. In July of that year, China brought its case to the WTO's dispute settlement mechanism.

Given the favourable decision, the Chinese Ministry of Commerce is working out in forwarding a trade retaliation request to the WTO to force the EU to remove the anti-dumping duties on Chinese fasteners if the EU does not negotiate terms or remove such an unfair duty after the ruling.

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**HONG KONG**

**[22]. IRD CALLS ON TAXPAYERS TO NOTIFY ANY CHANGE OF ADDRESS**

IRD says it will issue the Individual Tax Return (BIR60) on 3 May 2016. As the Department says it needs time to arrange for the bulk issue of tax returns on the same day, to ensure that taxpayers' tax returns can be sent to their correct address, they must notify the Department of any change of their postal address **not later than 3 March 2016**.

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**[23]. HONG KONG AND RUSSIA SIGN DTA**

The Secretary for Financial Services and the Treasury, Professor K C Chan, on behalf of the

Government of the Hong Kong Special Administrative Region, signed in Hong Kong on 18 January 2016 a comprehensive double tax agreement (DTA) with Russia, signifying the Government's ongoing efforts to expand its DTA network, in particular with economies along the Belt and Road.

Russia's State Secretary, Deputy Minister of Finance, Mr Yuriy Zubarev, signed the agreement on behalf of his Government.

Professor Chan said the agreement was the 34th DTA that Hong Kong had signed with its trading partners. He added that the agreement will bolster the economic and trade connections between the two places. It will also offer added incentives for companies in Russia to do business or invest in Hong Kong, and vice versa.

***Key points***

Key points about the DTA include:

- In the absence of a DTA, the profits of Hong Kong companies doing business through a permanent establishment (PE) in Russia may be taxed in both places if the income is sourced in Hong Kong. Under the agreement, double taxation will be avoided in that any Russian tax paid by the companies will be allowed as a credit against the tax payable in Hong Kong in respect of the income, subject to the provisions of the tax laws of Hong Kong.
- In the absence of a DTA, income earned by Russian residents in Hong Kong is subject to both Hong Kong and Russian tax. Under the agreement, tax paid in Hong Kong will be allowed as a credit against the tax payable on the same income in Russia.
- Under the agreement, Russia's withholding tax rate on royalties, currently at 20% (for companies) or 30% (for individuals), will be capped at 3%. Russia's dividend withholding tax rate on Hong Kong residents will be reduced from the current rate of 15% to 5% or 10%, depending on the percentage of their shareholdings.
- Further, Hong Kong airlines operating flights to Russia will be taxed at Hong Kong's corporation tax rate, and will not be taxed in Russia. Profits from international shipping transport earned by Hong Kong residents that arise in Russia, which are currently subject to tax there, will not be taxed in Russia under the agreement.
- The DTA has also incorporated an article on exchange of information, which enables Hong Kong to fulfil its international obligations on enhancing tax transparency and combating tax evasion.

Upon entry into force, the DTA will have effect in the Hong Kong Special Administrative Region in respect of Hong Kong Special Administrative Region tax, for any taxable periods beginning on or after 1 April in the calendar year next following that in which the Agreement enters into force.

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**[24]. IRD RELEASES NEWLY PUBLISHED ADVANCE RULING CASES ON ANTI-AVOIDANCE RULES**

The IRD has released 3 newly published Advance Ruling Cases, all dealing with the application of sections 61A and 61B of the Inland Revenue Ordinance ("IRO"). Section 61A counteracts transactions entered into for the sole or dominant purpose to obtain a tax benefit. Section 61B counteracts against tax avoidance by empowering the Commissioner to refuse to set off losses brought forward where he is satisfied that the sole or dominant purpose of a change in shareholding was the

utilization of those losses to avoid or reduce tax liability.

***Advance Ruling Case No. 55*** deals with a situation where Company A and Company B are private companies incorporated in Hong Kong. Their ultimate parent company was incorporated in Country C. Company A and Company B will be amalgamated with Company B. The IRD ruled that s 61A may be invoked and the un-utilized loss of Company A sustained prior to the Amalgamation will not be allowed for setting off against the assessable profits of Company B, the amalgamated company, under s 19C of the IRO. The IRD view is that, in the present case, Company A had neither business nor assets after the transfer of its business to the third party. Its directors planned to close it down by way of liquidation. Apparently, IRD says there is no commercial justification for the Amalgamation except an attempt to obtain tax benefits through utilizing the unabsorbed loss sustained by Company A to reduce the tax liability of Company B.

***Advance Ruling Case No. 56*** deals with a restructuring exercise by several Hong Kong companies. IRD says that in the present case, the HK Companies collectively run a business and there is genuine need for an amalgamation to achieve operational efficiency. Sections 61 and 61A of the IRO will not be applied to the Amalgamation.

***Advance Ruling Case No. 57*** deals with a case where Company A and Company B have been carrying on the same trading activities and sharing common resources. IRD says their amalgamation will achieve, among other things, operational efficiency and cost savings. As Company B would have adequate financial ability to take over Company A's business and the tax losses involved is insignificant, IRD considers that ss 61A and 61B should not be applied to the present arrangement.

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**[25]. STAMP DUTY EXEMPTION ON DERIVATES EXPLAINED: FINANCIAL SERVICES SECRETARY**

The Secretary for Financial Services recently had the opportunity to explain the exemptions provided on certain specified derivates when the question arose as to its exemption in the Legislative Council.

According to Prof. Chan, Secretary for Financial Services, the buyer and the seller each has to pay stamp duty in respect of instruments for transfer of Hong Kong stock.

The Stamp Duty Ordinance (SDO) provides that for each transfer of stocks, both the buyer and the seller must pay a stamp duty at a rate of 0.1% on the value of the transaction. However, transactions of specified derivatives, including derivative warrants (commonly known as "warrants") and callable bull/bear contracts, are exempted from the payment of stamp duty.

The Secretary said that, under the SDO, the term "Hong Kong stock" is defined to mean stock the transfer of which is required to be registered in Hong Kong, including any right, option or interest in respect of such stock.

If derivative products are settled by physical delivery, share transfers will be involved, and will therefore be chargeable to stamp duties. Generally speaking, if the holder of a derivative has no right to the underlying stock, the derivative will not be a "Hong Kong stock" as defined under the SDO, and its transfer will not be subject to stamp duty. At present, the trading of derivatives under the markets of the Hong Kong Exchanges and Clearing Limited (HKEx) is cash-settled and thus, it is not subject to stamp duty.

He also said that it is a common practice in international financial markets that derivative products

are not subject to stamp duty. Major international derivative markets including the United States, the United Kingdom, Germany, Australia, Singapore and China all do not levy stamp duty on trading of derivative products.

The Finance Secretary also stated that Hong Kong being an international financial centre, it must provide a competitive trading environment, including competitive transaction costs.

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**INDIA**

**[26]. REPORT RELEASED ON REVENUE-NEUTRAL RATE AND STRUCTURE FOR THE GST**

The Finance Ministry has released on its website the report on the revenue neutral rate and structure of rates for India's proposed GST. The 102-page report says India "is on the cusp of executing one of the most ambitious and remarkable tax reforms in its independent history" [although it must be noted that the GST Bill is still before Parliament – see 2016 ATB 1 [34] and [35] - Finance Minister Arun Jaitley is hopeful the upcoming Budget Session of Parliament will see passage of the Bill that had been blocked in 2 successive sessions].

According to the report, the Indian GST is expected to represent a leap forward in creating a much cleaner dual VAT which would minimize the disadvantages of completely independent and completely centralized systems. A common base and common rates (across goods and services) and very similar rates (across States and between Centre and States) will facilitate administration and improve compliance while also rendering manageable the collection of taxes on inter-state sales, the report said.

The report recommended a revenue neutral GST rate in the range of 15-15.5%, "with a strong preference for the lower end of that range".

The report goes on to discuss the rate structure, price impacts, compensation, etc.

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**[27]. INDIA TO REVISE LONG-TERM CAPITAL GAINS TAX ON VENTURE INVESTMENT**

India will revise its long-term capital gains tax structure for venture capital investments in the budget for the coming financial year, revenue secretary Hasmukh Adhia told a conference on start-up businesses on 16 January 2016.

Reuters said domestic venture capital funds have been seeking parity in tax structure with stock investments. Long-term capital gains tax is nil for the latter, compared to 20% for venture capital.

India will announce its Federal Budget on 29 February 2016.

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**[28]. PM MODI LAUNCHES START-UP INDIA INITIATIVE: TAX BREAKS INCLUDED**

On 16 January 2016, Prime Minister Shri Narendra Modiy launched the Start-up India initiative in New Delhi.

The Prime Minister unveiled the highlights of the Start-up Action Plan. He said a dedicated Start-up fund worth Rs. 10,000 crore will be created for funding of Start-ups. Also,Start-ups will be exempted from paying income tax on their profit for the first 3 years. He said the Government is working on a

simple exit policy for Start-ups. He also said the Government is working towards fast-tracking of Start-up patent applications.

He announced an 80% exemption in patent fees for Start-up businesses, and said a self-certification based compliance system for Start-ups would be introduced for 9 labour and environment laws.

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**[29]. CBDT DIRECTS ISSUE OF REFUNDS TO SMALL TAXPAYERS BY 31 JAN**

The CBDT has issued an Office Memorandum dated 14 January 2016 stating that in order to provide relief to the small taxpayers, refunds up to Rs.5,000 and refunds in cases where an arrears demand is up to Rs.5,000 may be issued without any adjustment of outstanding arrears under s 245 of the Act during FY 2015-16.

As a result of the special drive to issue smaller refunds, the CBDT said 18,28,627 refunds below Rs.50,000/- involving a sum of Rs.1,793 crore were issued between 1 December 2015 and 10 January 2016. These refunds relate to Assessment years 2013-14 to 2015-16.

It is stated that as at 9 January 2016, there were 64,938 cases of refunds below Rs.5,000 involving Rs.1,148.14 Crore in non-CASS cases for AYs 2013-14 and 2014-15 pending in AST.

The CBDT has directed Assessing Officers to issue these refunds without any adjustment of arrears under s 245. Similarly, non-CASS cases for those assessment years where the refund amount is more than Rs.5,000 but the outstanding arrear is Rs. 6,000/- or less have been directed to be processed for issue of refunds without any adjustment under s 245. It is further directed that the above exercise should be completed before 31 January 2016 and a compliance report be sent to the Member (Revenue).

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**[30]. INCOME TAX SIMPLIFICATION COMMITTEE RELEASES ITS FIRST RECOMMENDATIONS**

The Income Tax Simplification Committee, established in late October 2015 (see 2015 ATB 45 [13]), has released its first batch of recommendations for public comment. They are contained in a 78-page report. The draft report contains 27 suggestions for amendments to the Income-tax Act, 1961 and 8 recommendations for reform through administrative instructions. Comments on the report are due by 23 January 2016.

The Committee decided that in the first batch of recommendations that only the simpler issues and issues which, in addition to being simple, need immediate attention in light of the mandate given to the Committee, may be taken up. The more complex issues, which require a more exhaustive renew, will be dealt with in the Committee's next batch of recommendations.

The Committee divided its recommendations into 2 broad parts: (1) those requiring amendments to the Act, and (2) those which can be implemented through the issue of Circulars/administrative instructions, etc.

The recommendations made include:

- Amendments to provide that in cases where shares are shown as capital assets and held for one year or less, the Assessing Officer will not re-characterise the surplus on sale as business

income, provided the surplus in a year is rupees 5 lakhs or less;

- Amendments to s 14A to provide that (i) dividend received after suffering dividend-distribution tax and share income from firm suffering tax in the firm's hands will not be treated as exempt income and no expenditure will be disallowed as relatable to them; (ii) expenditure disallowed shall not exceed the amount claimed.
- Enhancement and rationalisation of the threshold limits and reduction of the rates of TDS. TDS rates for individuals & HUFs to be reduced to 5% as against the present 10%.
- Simplification and rationalisation of the provisions of s 197 and Rules for lower or non-deduction of TDS, aimed to improve ease of doing business.
- A presumptive income scheme for professionals.
- Exemption to non-residents not having Permanent Account Number (PAN), but who furnish their Tax Identification Number (TIN) in their country of residence from the applicability of TDS at a higher rate under s 206AA.

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**[31]. INCOME ATTRIBUTABLE TO BANK'S FOREIGN BRANCHES NOT TAXABLE IN INDIA**

The Bombay High Court has held that income attributable to a taxpayer's foreign branches, permanent establishments (PEs) outside India, is not taxable in India: *CIT v Bank of India*.

When the taxpayer has a PE abroad, the taxpayer must produce evidence regarding the payment of taxes on income of these establishments abroad. On production of such evidence, the taxpayer would be entitled to the appropriate tax treaty-related relief.

In a note on the High Court decision, KPMG said that an earlier 2012 Tribunal ruling, the taxpayer had sought relief in respect of the profit earned by the foreign branches on the basis of respective tax treaties. The AO granted relief re the branches in Singapore and Japan, but nowhere else. The CIT(A) allowed the taxpayer's claim.

On appeal, the Bombay High Court ruled that the bank's operations in all the foreign countries were carried on through its branches which were PEs outside India. Therefore, the Court concluded the income attributable to those branches could not be taxed in India.

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**[32]. INDIA-UK TO STRENGTHEN FINANCIAL COOPERATION; ADDRESS CROSS-BORDER TAX EVASION**

At the recent 8th UK-India Economic and Financial Dialogue in London, the UK Chancellor George Osborne and Indian Finance Minister Arun Jaitley reached a number of agreements to build on the economic relationship between the UK and India – focussing on financial services, infrastructure and technology.

The UK and India also welcomed the establishment of the Asian Infrastructure Investment Bank (AIIB) and look forward to working together to integrate the AIIB into the global financial system, and to support the AIIB's objectives of being a lean, clean and green institution.

In their joint statement, the leaders said the UK and India share a common commitment to address cross-border tax evasion and avoidance. Both sides welcomed the agreement reached under the G20/OECD BEPS Project. Both sides have committed to the Common Reporting Standards (CRS) on Automatic Exchange of Tax Information (AEoI) and will begin exchange in 2017. They called on other

countries to meet the commitments they have made and to implement the new standard on time.

***Indian National Infrastructure Partnership***

The agreement will see the UK government support the delivery of major infrastructure projects in India across key sectors including smart cities, renewable energy and railways, all of which are vital for India's future growth.

This initiative will support India's development and may also present significant new commercial opportunities for UK businesses offering expertise in infrastructure delivery and financial & professional services.

***Financial services***

During the dialogue, the 2 sides recognised that as the leading financial centre in the world and in the view of successful issuance of Masala bonds issued by the International Finance Cooperation last year, London will be an attractive location for issuance of rupee-denominated bonds.

***Liberalising the Indian Legal Services Market***

India will press ahead with liberalising the Indian legal services market to allow foreign lawyers the right to operate in India. Finance Minister Jaitley expressed his support for enabling foreign lawyers to establish a presence in India, provide legal advice on non-Indian law, and transact services as per regulations to be framed, and to employ and enter partnerships with Indian lawyers.

This will act as a catalyst for international investment in India and give businesses the access they need to international legal advice. Mr Osborne said it will also bring new opportunities for the UK profession, who will benefit from being offered similar rights to those that Indian firms already enjoy in the UK, allowing them to enter partnerships with Indian firms and bring their specialist expertise to India.

***Rupee Bond Commitments***

Both sides welcomed the prospect of a pipeline of rupee bond issuances in London by Indian corporates, and agreed that the first such public sector issuance would be by the Indian Railway Finance Corporation.

This will help build on the success of rupee bond issuances in London by the International Finance Corporation, and demonstrates the UK's position as a business partner of choice for the world's fastest growing economies, Mr Osborne said.

As the rupee markets build, London's capital markets will play a key role in financing India's continued rapid economic growth.

***Fintech tie-ups***

Both nations agreed to substantially strengthen links between the leading FinTech communities in India and Britain. This includes significant joint commitments to high-profile FinTech trade missions between the two nations and major steps towards UK FinTech companies helping to deliver 'digital

India', covering priority areas like access to finance for micro-enterprises.

India and the UK also agreed to work together with the aim of developing an Indo-UK partnership fund under the umbrella of the National Investment and Infrastructure Fund. The fund will seek to increase flows of private sector capital and expertise alongside multilateral support into Indian infrastructure.

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**[33]. INDIAN RULING CONFIRMS THAT SERVICE TAX DOES NOT APPLY TO SECONDMENT OF EMPLOYEES**

A recent ruling in India has determined that salary income, received by an employee for services rendered to the Indian subsidiary of a foreign company, will not be subject to Indian service tax if an employer-employee relationship is established with the Indian subsidiary.

In a report on the ruling, EY said the foreign company in question had seconded an employee to the Indian company for a specific length of time. During this period, the employee worked for the Indian company and the employee's salary and allowances were paid by the Indian company. The employee's social security obligations in the home country were paid by the foreign company and were not reimbursed by the Indian company.

The Indian company sought a ruling that the salary and allowances paid by the Indian company to the employee were for "service by employee to employer" and therefore not considered to be "service" for the purposes of service tax.

EY said the Ruling stated that the current definition of service under the service tax laws excluded services provided by an employee to its employer. No service tax is payable on salary paid by the Indian company to the employee as an employment relationship had been established with Indian company. The ruling also said that payment of home country social security of the employee by the foreign company did not amount to consideration paid by the Indian company.

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**[34]. INITIATIVES FOR REDUCING LITIGATION: CBDT**

The Central Board of Direct Taxes (CBDT) says that reducing litigation with the taxpayers has been a key focus area for the Income Tax Department. Several initiatives have been taken by the CBDT in the last 3 months up to December 2015 to significantly reduce disputes and provide relief to taxpayers facing long standing litigation.

The significant steps taken by CBDT include issue of a Circular revising the monetary limits for filing of appeals by the Department with the objective of reducing litigation as a part of its initiatives to reduce grievances of the taxpayers. CBDT has also directed Principal Chief Commissioners to constitute a collegium of Chief Commissioners of Income Tax to consider withdrawal of appeals filed by the Department in cases involving tax effect above the revised monetary limit from the High Courts in cases where, no question of law is involved, the issue is considered settled by the Department, or the appeal is no longer relevant in view of subsequent amendment.

The CBDT has also issued a number of Circulars for withdrawing or not pressing of appeals on settled issues relating to the subjects listed below:

- Non applicability of Rule 9A of the Income-tax Rules 1962 in case of abandoned feature films.

- Measurement of the distance for the purpose of s 2(14)(iii)(b) of the Income-tax Act for the period prior to assessment year 2014-15.
- Interest from non-statutory liquidity ratio (non-SLR) securities.
- Allowability of employer's contribution to funds for welfare of employees in terms of section 43(b) of the Income-tax Act.
- TDS under s 194Aof the Act on interest on fixed deposit made on the directions of the courts.

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**[35]. FINANCE MINISTER'S PRE-BUDGET CONSULTATIVE MEETINGS**

Finance Minister Arun Jaitley recently met with various representatives of industry groups (eg economists, banks, IT groups, social sector groups) in pre-Budget consultations.

At the meeting with banks and financial institutions, suggestions included increasing the exemption limit to Rs.2.5 lakhs for savings under the Income Tax Act, incentives for encouraging cashless transactions including through Debit/Credit cards, focus on promoting growth and increase in public spending till private sector investment picks-up. Other suggestions included listing of non-life insurance public sector undertakings while retaining majority Government control, PFRDA regulations for PFMs could be drafted with a vision to promote the growth of NPS sector with commercially viable incentives.

Other suggestions included that income which is subject to distribution tax and subsequently exempted in hands of recipient be excluded from the scope of the s 14A of the Income Tax Act or distribution tax be abolished. Special regime of taxation for income distribution by securitization trust, the Income Tax Act be suitably amended to allow Corporate Social Responsibility (CSR) expenses as business expenditure and amendment of s 41 (4A) of the Income Tax Act to specify a period of retaining the transfer amounts in special reserves to fulfill the purpose of granting long term finance and release of capital in the financial system for deployment purposes.

At Minister Jaitley's meeting with IT representatives, suggestions were made to continue with measures to facilitate exports, facilitating ease of doing business, measures for simplifying and rationalizing tax procedures. Other suggestions included the provision of Place of Effective Management (POEM) to be deferred by couple of years as this short period can be a hurdle for industrial growth. There was also a suggestion that the scope of POEM needed to be rationalized and made applicable to overseas shell companies. It was also suggested that the GST be implemented at the earliest.

At the Minister's meeting with economists, suggestions were made to change the small savings rate, to focus on poverty reduction, and that the LPG subsidy was regressive and should be abolished.

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**[36]. PROTOCOL TO DTA BETWEEN INDIA AND BELARUS ENTERS INTO FORCE**

It is understood that a second Protocol to the 1997 double tax agreement between Belarus and India entered into force on 19 November 2015. The Protocol, signed on 3 June 2015 replaces Article 27 (Exchange of Information), bringing it in line with the OECD standard for information exchange. The Protocol applies from the date of its entry into force.

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**[37]. INDIA'S MODEL BILATERAL INVESTMENT TREATY HAS BEEN APPROVED**

The Ministry of Finance has advised that India's new Model Bilateral Investment Treaty (BIT) has been approved. The Department of Economic Affairs will lead all negotiations on standalone BITs and investment chapters of Free Trade Agreements.

The Model Treaty says it will apply to measures adopted or maintained by a Party relating to investments of investors of another Party in its territory, in existence as of the date of entry into force of this Treaty or established, acquired, or expanded thereafter, and which have been admitted by a Party in accordance with its law, regulations and policies as applicable from time to time – Article 2.

It should be noted that, under Article 2.4 (ii), the Model Treaty says it will not apply to an law or measure regarding taxation, including measures taken to enforce taxation obligations. For greater certainty, the Model Treaty clarifies that where the State in which investment is made decides that conduct alleged to be a breach of its obligations under this Treaty is a subject matter of taxation, such decision of that State, whether before or after the commencement of arbitral proceedings, shall be non-justiciable and it shall not be open to any arbitration tribunal to review such decision.

The Model Treaty goes on to deal with matters such as:

- Treatment of investments.
- National treatment.
- Expropriation.
- Transfers.
- Compensation for losses.
- Subrogation.
- Entry and sojourn of personnel.
- Transparency.
- Investor obligations.
- Settlement of disputes between an investor and a Party.

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**JAPAN**

**[38]. JAPAN AND SLOVENIA TO NEGOTIATE DTA**

According to an announcement from Japan's Ministry of Finance, officials from Japan and Slovenia met on 19 January 2016 in Tokyo for the first round of negotiations for a double tax agreement between the 2 countries. Any resulting treaty will be the first of its kind between the 2 countries, and must be finalised, signed and ratified before entering into force.

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**SOUTH KOREA**

**[39]. COURT SENTENCES HYOSUNG GROUP CHAIRMAN TO JAIL FOR TAX EVASION**

A South Korean court on 15 January 2016 sentenced the chairman of textile-to-trading conglomerate Hyosung Group to 3 years of prison for tax evasion, Reuters has reported.

The Seoul Central District Court said Hyosung Group chairman S.R. Cho was also fined 136.5 billion won (US$112.5 million) for dodging about 130 billion won in taxes.

Reuters said Cho is one of several South Korean businessmen sentenced to jail in recent years for corporate misconduct amid a swell in public discontent over the behaviour of the chaebol, or family-run conglomerates, that dominate Asia's fourth-largest economy.

The 80-year-old former head of business lobby group Federation of Korean Industries was not taken into custody due to health issues, the court said.

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**TAIWAN (ROC)**

**[40]. TAIWAN AND CANADA SIGN DTA**

The Canadian Dept of Finance has announced that, on 15 January 2016 in Taipei, the Canadian Trade Office in Taipei and the Taipei Economic and Cultural Office in Canada signed a double tax arrangement (DTA) and Protocol.

The Arrangement limits the rate of withholding tax to 10% on dividends paid to a company that holds directly or indirectly at least 20% of the capital of the company that pays the dividends, and 15% on dividends paid in all other cases; and to 10% for payments of interest and royalties. The Arrangement also exempts from withholding tax certain payments of interest.

The Arrangement includes provisions reflecting the standard developed by the OECD for the exchange of tax information.

The Canadian Trade Office in Taipei and the Taipei Economic and Cultural Office in Canada will notify each other of the completion of the procedures required in their respective territories for the coming into effect of this Arrangement. The Arrangement will have effect in accordance with Section 27 (Entry into Effect) of the Arrangement. The provisions of the Arrangement will have effect in the territory in which the taxation law administered by the Taxation Administration, Ministry of Finance, Taiwan is applied:

- in respect of tax withheld at the source on amounts paid or payable to non-residents on or after the first day of January in the calendar year following that which includes the date of the later notification; and
- in respect of other tax, for taxation years beginning on or after the first day of January in the calendar year following that which includes the date of the later notification.

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**TRANS-PACIFIC PARTNERSHIP**

**[41]. AUSTRALIAN PM ENCOURAGES US CONGRESS TO SUPPORT TPP**

During his recent trip to the US, Australian Prime Minister Malcolm Turnbull met with the US Chamber of Commerce and encouraged them to encourage their congressmen and senators to support the Trans-Pacific Partnership (TPP). [The US Congress has some major concerns about the

TPP, and protecting American interests, and there are concerns it may not support it.]

US President Barack Obama said the US and Australia "are both part of the driving force that created this rules-based system that is now being prepared to ratify among the various nations. It is going to be good for our economy. It is going to be good for our workers and our businesses. And it reaffirms that in order for us to thrive in the 21st century, particularly economies that are respectful of rule of law and concerned about labour rights and environmental rights, it's important for us to be making the rules in this region, and that's exactly what TPP does".

PM Turnbull said the TPP "is much more than a trade deal". He went on: "And I think when people try to analyse it in terms of what it adds to this amount of GDP, that's important, but the critical thing is the way it promotes the continued integration of those economies. Because that is as important an element in our security, in the maintenance of the values, which both our countries share as all of our other efforts, whether they are in defence or whether they are in traditional diplomacy."

In his remarks to a US Chamber of Commerce breakfast on 19 January 2016, Mr Turnbull said the TPP "is a very critical part of America's continued presence in the Asia- Pacific. It is a very important element in the maintenance of the United States as the credible, strong, consistent enduring guarantor of the rules based international order. It sets a very high bar. It encourages countries to reform."

Mr Turnbull said claims that the TPP will only add very small percentage gains to some countries' GDP tends to "miss the things that are hard to measure" eg stability and growth of a region. He said the US has underwritten that growth "and everybody benefited, every country in the region – China, India, Korea, Japan, Australia, Indonesia – every country has benefited from that. But that needs to continue to be worked on, and the TPP is a critically important part of that."

Mr Turnbull said the TPP offers opportunity to the United States. There is very little at risk from freedom for such a strong, innovative economy as this, he said. "And there is so much to gain in our region because I say to you that the more we can tie the economies of our region together – the more connected they become, the more transparent they become, the stronger and more reliable the rule of law is in each country, the more of that interdependency – the greater the cost of anyone seeking to disrupt them."

The TPP is important for the world, it's important for our region, it's important for America, it is critically important as a vital building block in ensuring the ongoing stability and prosperity of the Asia-Pacific, and that is the driver of the global economy today, Mr Turnbull said.

Mr Turnbull said he would be encouraging US legislators to support the TPP. "Not to lose sight of the wood for the trees, not to get lost in this detail or that detail or that compromise, because the big picture is: the rules-based international order, which America has underwritten for generations, which has underwritten the prosperity and the economic growth from which we have all benefitted, the TPP is a key element in that."

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## TAX AND TRADE NEWS OF WIDER INTEREST

### GLOBAL CEO SURVEY

**[42]. PWC 19TH GLOBAL CEO SURVEY REVEALS CEO CONCERNS ABOUT THREATS TO BUSINESS, ALTHOUGH INDIA A BRIGHT SPOT**

PwC has just released the results of its 2016 Annual Global CEO Survey, the 19th such survey it has conducted.

Key findings from the survey showed:

- 66% of CEOs see more threats today than previously.
    - In Australia, CEOs see cyber, speed of technological change and availability of key skills as the top 3 threats to business growth.
- Over-regulation (79%) and increasing tax burdens are seen as major issues of concern.
    - In Australia, some 61% of CEOs believe a stable and effective tax system is a top priority for government.
- 59% of CEOs want to better communicate purpose and values.
- 76% of CEOs define business success by more than financial profit.
- 74% of CEOs are concerned about geopolitical uncertainty.
- Globally, CEOs see data and analytics, social media and CRM systems as the top 3 technologies that will generate the greatest return.
    - Mobile connectivity and social media in particular have become fundamental ways to get information and buy goods and services. The so-called 'Uberization' of a growing number of sectors – offering quick, simple and dynamic ways to access goods and services using mobile apps – is also becoming an important trend in changing customer perceptions of value, the survey said.
- CEOs continue to see investment opportunities across the BRICs, despite the complicated picture they present. The survey said India, which has continued to do well under Prime Minister Narendra Modi's pro-business government, is now among CEOs' 5 most promising overseas markets. "Brazil, meanwhile, has slipped only a notch despite its political and economic problems. Even Russia has held fast despite geopolitical tensions and its heavy dependence on oil and gas. While a few years ago, CEOs might have been tempted to consider the BRICs as one bloc (so to speak), today they seem to be sizing up opportunities on a case-by-case basis. Some are employing a 'wait and see' approach to these markets, while others are forging ahead bolstered by their confidence in these countries' longer term fundamental strengths – not least a large and growing middle class."
- There is evidence that most business leaders, for example, are optimistic about deeper economic integration as a result of the Asia Pacific Economic Cooperation (APEC).
- The United States and China, and to a lesser extent Germany and the UK, remain the countries that most CEOs cite among their top overseas growth markets.
- 90% of CEOs are changing how they use technology to deliver on wider stakeholder expectations.

PwC interviewed over 1,400 CEOs in 83 countries. In addition to the more than 1,400 CEOs interviewed, PwC also conducted face-to-face interviews with 33 CEOs from across 25 countries and more than 14 industry sectors in the fourth quarter of 2015.

In the APAC region, CEOs interviewed included:

- Chitra Ramkrishna, Managing director and CEO, National Stock Exchange of India Limited (NSE) – she noted that India is seen as one of the fastest growing countries and economies over the next 3-5 years.
- Don Lam, Chief Executive Officer and Founding Partner, VinaCapital, Vietnam – he considers there are more opportunities than threats. He said his firm is looking to take investors out of Vietnam into ASEAN. Lam said he was "very bullish" about ASEAN and Vietnam.
- Li Huaizhen, President, China Minsheng Investment Corp Ltd, China – he said ASEAN brings great opportunities. He stressed that the interests of the company and society should be aligned.
- Takeshi Niinami, President and CEO, Suntory, Japan – his concern is that, overall, he said there is a huge supply glut in the world and this will affect the activity of the world economy. He said companies have to have a long-term vision to be a good corporate citizen.
- Susan Lloyde-Hurwitz, CEO and Managing Director, Mirvac Group, Australia – she said a major worry was where is technical disruption coming from? She said the company can't just focus on the regulators, but must take a holistic approach to stakeholders.

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**AIIB NEWS**

**[43]. AIIB NOW OPEN FOR BUSINESS**

The Board of Governors of the Asian Infrastructure Investment Bank (AIIB) convened its inaugural meeting in Beijing on 16 January 2016, declaring the Bank open for business and electing Mr. Jin Liqun as President for a 5-year term. The AIIB will be located in Beijing.

The Bank will be a 21st-century multilateral lender with rigorous corporate culture, he said. It will have a “lean staff” and will strive to avoid red tape, according to Jin Liqun. It will combine the merits of existing multilateral development banks and competitive private companies, he said.

Jin said he is planning for the first loans to be approved before the end of this year. The scale of loans in the first year will be modest—between US$500 million and US$1.2 billion—with energy, power, transportation, rural infrastructure, environmental protection and logistics the priorities.

Mr. Jin has served as AIIB's President-designate since 1 September 2015. Prior to his selection as President-designate, Mr. Jin served as Secretary-General of the Multilateral Interim Secretariat, the entity tasked to prepare the legal, policy and administrative frameworks and undertake other preparatory work required for the establishment of AIIB.

President Xi Jinping and Premier Li Keqiang of China addressed the AIIB’s opening, which was held alongside the Board of Governors meeting. Also at the ceremonies were representatives from other multilateral development banks and financial institutions, whose support for the establishment of the Bank was warmly acknowledged.

The inaugural meeting of the AIIB's Board of Directors was convened in Beijing on 17 January 2016. The Board of Directors is made up of 12 Directors, of which 9 Directors represent regional members and the others non-regional members. Mr. Jin Liqun, President of the AIIB, chaired the meeting. The Board approved key policies to enable the start of the Bank’s operations. These include: the 2016 Business Plan and Budget, and the Bank’s policies on compensation and benefits, finance and pricing, operational and corporate procurement, financing operations and the Public Information Interim

Policy.

The Bank's President indicated that it will lend in US dollars.

China won't apply for financial support from the AIIB in its initial period, an official said on 16 January 2016, the day the bank began operating. "The primary goal and priorities of the AIIB are not to support domestic projects," said Shi Yaobin, Chinese Vice Finance Minister.

Further details about the Bank and its operations are on its website.

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**BEPS NEWS**

**[44]. UK TAX EXPERTS URGE DELAY TO BEPS RULES THEY CLAIM MAY DISADVANTAGE UK BUSINESSES**

The Chartered Institute of Taxation (CIOT), a major UK tax professionals body, has told the UK Government that it is unconvinced that proposed new BEPS rules, which will restrict interest expenses that can be deducted when a company calculates its taxable profit, are necessary in the UK.

The CIOT said that concerns around the use of interest expense being used to shift profits to other countries by multinational companies, which led to this aspect of the BEPS Action Plan, are either relatively unimportant for the UK or have been addressed by other aspects of the BEPS Action Plan and/or existing UK tax rules.

The Institute is calling for a delay beyond the earliest proposed implementation date of April 2017 to ensure all issues and complexities are properly addressed and the new rules do not disadvantage UK businesses.

Glyn Fullelove, Chairman of CIOT's International Taxes Sub-Committee, said: "While we recognise the need to tackle this issue globally, we are unconvinced of the practical need to introduce a structural interest restriction here in the UK".

He said the UK is not a high tax country, so the risk of groups placing higher levels of third party debt in the UK is no longer the threat it was when the UK's rate of corporation tax was close to or above 30%. This risk will be reduced further when the rules to counteract hybrids and other mismatches take effect, he noted.

"In addition, the UK has only relatively recently introduced the world-wide debt cap which addresses the same issues, so it is questionable whether it is appropriate to now introduce new rules to cover the same ground in a different manner."

Despite its reservations, the CIOT acknowledges that the UK Government is likely to introduce a structural interest restriction in the UK along the lines of that proposed by the OECD. The Institute said it recognises that there is merit in having rules which are consistent with those which are introduced by other countries, but this will only be the case if other countries do also implement similar rules.

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**EU NEWS**

**[45]. DUTCH SAY WILL LEAD EU FIGHT AGAINST MULTINATIONALS' TAX AVOIDANCE**

The Netherlands will be at the forefront of efforts to combat multinationals' tax avoidance, its Finance Minister said on 15 January 2016, amid a dispute with the European Commission over his country's tax treatment of Starbucks.

Reuters said the Commission, the EU's executive arm, will propose a new set of binding rules by the end of January 2016 to curb corporate tax avoidance, stepping up its pressure on multinationals which stand accused of paying too little tax.

"If the Netherlands has been part of the problem in the past, we want to be part of the solution from now on," Jeroen Dijsselbloem told reporters ahead of a meeting of European Union finance ministers that he chairs because his country holds the rotating presidency of the bloc.

In October 2015, the EU Commission ordered the Netherlands to recover €20 million to €30 million in back taxes from the US coffee shop chain. The Dutch appealed against that decision because they want full clarity on the standards that need to be applied on tax deals struck between public authorities and corporations, Dijsselbloem said.

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**[46]. EU PARLIAMENT CALLS FOR COMPENSATION FOR COUNTRIES THAT SUFFER FROM INFRINGEMENT OF TAX-RELATED STATE AID RULES; US NOT HAPPY**

The European Parliament has adopted a resolution that could see money recovered from tax rulings deemed illegal (as contravening EU state aid rules) go to countries that have suffered erosion of their tax bases as a result.

If the European Commission decides that an EU member state should recover money from a company due to infringements of tax-related state aid rules, this money should be returned not to the same member state, but to member states that have suffered an erosion of their tax bases or to the EU budget, says the European Parliament in a resolution approved on 19 January 2016 by 500 votes to 137, with 73 abstentions.

The report by Werner Langen (EPP, DE) - which responds to the Commission's annual competition report for 2014 - sets out general recommendations to improve competition and picks some bones with it on corporate taxation practices and state support to banks in the wake of the financial crisis.

"Globalisation and the digital economy require new rules on fair taxation, market dominance, European intervention opportunities and international cooperation. Here, the Commission faces bigger challenges than in the past. The European Parliament wants to be involved actively in these processes", said Mr Langen.

***Unfair tax competition***

The report welcomes the state aid investigations initiated by the Commission in 2014 into favourable "tax ruling" decisions for Starbucks (Netherlands), Fiat (Luxembourg), Amazon (Luxembourg),) and Apple (Ireland) and the subsequent investigations into all 28 member states' tax ruling practices. It calls on EU member states to cooperate fully with these investigations and with the ongoing work of the EU Parliament's Special Committee on Tax Rulings II.

[**Note** that The Luxembourg Government said on 4 December 2015 that it would appeal against the European Commission's decision ordering it to recover €20-30 million of back taxes from Fiat

Chrysler – see 2015 ATB 51 [29]. The Commission ruled in October 2015 that Fiat had benefited from illegal tax deals with the Luxembourg authorities, as well as Starbucks Corp with the Dutch – see 2015 ATB 44 [35].]

***US not happy***

In a recent letter to US Treasury Secretary Jack Lew, US Senate Finance Committee Chairman Orrin Hatch (R-Utah), Ranking Member Ron Wyden (D-Ore.), and Committee members Rob Portman (R-Ohio) and Chuck Schumer (D-N.Y.) warned that the EU's state aid investigations could lead to retroactive taxation on multinational enterprises and have an adverse impact on US-based companies.

In recent years, the EU has launched a series of formal investigations into its member countries' tax treatment of various multinational companies.

The Senate Finance Committee has examined the potential impact these investigation could have on US firms. The Senators urged Secretary Lew to increase efforts to caution the EU Commission to avoid imposing retroactive results that are inconsistent with international tax standards.

"Our concerns are driven not only by these initial cases, but also by the precedent they will set that could pave the way for the EU to tax the historical earnings of many more US companies – in some cases, the earnings in question could have been generated up to a decade ago," wrote the Senators. "We urge Treasury to intensify its efforts to caution the EU Commission not to reach retroactive results that are inconsistent with internationally accepted standards and that the United States views such results as a direct threat to its interests. We also ask that you consider, under section 891, whether US corporations are being subjected to discriminatory taxation."

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**[47]. EU MULLS CHANGES TO NATIONAL CORPORATE TAX LAWS TO TACKLE ABUSES: PROFIT SHIFTING, ETC**

The European Commission will propose in a package to be unveiled on 27 January 2016 that EU countries' corporate tax legislation be amended to tackle multinationals' tax avoidance schemes, EU officials have said.

Reuters said that multinational corporations have long been in the sights of European Union authorities due to the steps they take to reduce their tax bills.

In a new legislative package to be unveiled on 27 January, the EU executive arm will table "a set of measures to impose to member states to adapt their domestic corporate income tax legislation to have a system which is stronger to tackle tax avoidance schemes," an EU official told a news conference.

- Measures will be aimed at curbing specific tax avoidance schemes such as "profit shifting", whereby multinationals artificially move their profits to low-tax countries, a second official said.
- Other schemes to be targeted are those based on "excessive debt financing", with which corporations shift their debt to countries where interests on their debt are tax-deductible. This scheme unfairly reduces companies' tax bills, officials said. It also creates excessive debt burdens and keeps companies away from other sources of financing such as equities, which

are not usually tax-deductible.

- Also among the tax proposals are measures to allow national tax administrations to access the financial data of companies operating in their territories, in a further bid to discourage tax avoidance.
- The Commission will also push member states to find common definitions of several financial products and instruments, to avoid for instance a hybrid tool being labelled debt in one country but equity in another, creating distortions in the EU market and unfair tax advantages.

On 12 January 2016, the EU Commissioner in charge of taxation, Pierre Moscovici, told European lawmakers that the new legislative package will in some ways go beyond the voluntary guidelines agreed by the G20 group of the world's largest economies and by members of the OECD.
The Commission proposals will need the approval of all 28 EU states to become law. Tax issues are usually very controversial because are seen in many countries as purely national prerogatives.

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**[48]. EU PLANS FASTER INVESTMENT TAX REFUNDS FROM 2017**

European Union countries will have to introduce rules from 2017 to speed up tax refunds on cross-border investments, part of a drive to improve the working of financial markets and lift economic growth, according to an EU document seen by Reuters.

The executive European Commission wants to simplify "withholding tax" on stocks and bonds bought in one member state by an investor from another, dipping into a sensitive policy area that may raise hackles in finance ministries.

The EU executive had already signalled it wanted to reform withholding tax as part of a Capital Markets Union project to boost cross-border investment, and the Commission document seen by Reuters details how this would be done.

Reuters said the failure of past efforts to cut red tape has meant cross-border investments are often taxed twice, in the investor's own country and in the country where the investment is made.

Treaties between member states have failed to stop double taxation in practice, with investors waiting years in some cases for refunds, often giving up or not bothering to claim due to bureaucracy, the Commission said in the document.

Costs to investors from burdensome refund systems were an estimated €8.4 billion in 2009, with €5.47 billion a year in foregone tax relief alone, it said.

"Burdensome withholding tax procedures have for a long time been identified as a barrier to cross-border investment," the executive said in the document."All this translates into reduced returns for investors and contributes to the fragmentation of the asset management industry in Europe along borders."

A streamlined tax system would increase the bloc's economic growth by €3.4 billion or 0.028% a year, the Commission paper said.

"The Commission is planning to develop a code of conduct to be adopted by the Commission in 2017 whereby member states would commit at least to some basic principles," the paper said. The principles would include a short deadline for refunds of all claims for withholding tax, simplified

proofs of investor residence, and simplified documentation for making refund claims. Financial institutions would also be allowed to make refund claims on behalf of customers - currently the customers themselves must lodge the claim.

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**UNITED STATES**

**[49]. IRS ISSUES UPDATED PROCEDURES FOR OBTAINING RULINGS ON INTERNATIONAL TAX MATTERS**

In a Revenue Procedure, Rev Proc 2016-1, the IRS has updated procedures for taxpayers to obtain letter rulings, determination letters, closing agreements, and other guidance on international tax matters that are under the jurisdiction of the Associate Chief Counsel (International).

In general, the international tax matters under the jurisdiction of the Associate Chief Counsel (International) include the following:

- Tax treatment of non-resident aliens (NRAs) and foreign corporations;
- Withholding of tax on NRAs and foreign corporations;
- Foreign tax credit;
- Determination of sources of income, income from sources outside the US;
- Subpart F questions;
- Domestic international sales corporations (DISCs);
- Foreign sales corporations (FSCs);
- Exclusions under Code Sec. 114 for extraterritorial income (ETI);
- International boycott determinations;
- Treatment of certain passive foreign investment companies;
- Income affected by treaty, US possessions;
- Other matters relating to the activities of non-US persons within the US or US-related persons outside the US; and
- Changes in method of accounting for these persons.

Rev Proc 2016-1 sets out the taxpayer documents and information required in all letter ruling and determination letter requests. Each taxpayer's request must generally be submitted with the requested information.

Source: Thomson Reuters *International Taxes Weekly* – on CHECKPOINT™ WORLD

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**AUSTRALIA**

**[50]. GOVT ORDERS MORE FORCED SALES OF PROPERTIES BY FOREIGN NATIONALS FROM CHINA, INDIA AND MALAYSIA**

The Turnbull Government's strong foreign investment rules have enabled the Treasurer to ensure that the Australian Government has ordered that a further 8 Australian residential properties held in breach of the foreign investment framework be divested by foreign nationals.

The Treasurer Mr Morrison said the properties in question were purchased in Victoria, Queensland and New South Wales with prices ranging from about AUD$200,000 to over AUD$5 million. The individuals involved come from a range of countries – Canada, China, India, Malaysia and the United

States of America.

Mr Morrison said the foreign investors either purchased established residential property without Foreign Investment Review Board approval, or had approval but their circumstances changed meaning they were breaking the rules. He said this brings to 27 the number of properties the Coalition Government has already forced foreign nationals to dispose of since taking office in 2013.

The Treasurer said that under the reduced penalty period announced in May 2015, the investors linked to the 8 properties now have 12 months to sell the properties, rather than the normal 3 month period, and will not be referred for criminal prosecution.

The Government's transfer of responsibility to the ATO for compliance has enabled more active investigations and actions targeting illegitimate purchases. Since this transfer in May 2015, over 1,500 matters have been referred for investigation. Through information provided by the public, together with the ATO's own enquiries, over 800 cases remain under active investigation.

Foreign investors who breached the residential real estate rules had until 30 November 2015 to voluntarily come forward under the reduced penalty period. However, investors caught in breach of the rules now face severe penalties.

Illegal real estate purchases by foreign citizens attract criminal penalties of AUD$135,000 or 3 years' imprisonment, or both for individuals; and up to AUD$675,000 for companies. The new rules also allow capital gains made on illegal investments to be forfeited.

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**[51]. ENTITIES NEED TO PREPARE FOR COUNTRY-BY-COUNTRY REPORTING IN AUSTRALIA**

Organizations with Australia headquarters and a December year-end will be subject to new country-by-country (CbC) reporting rules. KPMG says taxpayers need to consider what steps to take next with the commencement of the reporting period. The first report doesn't need to be filed until 31 December 2017.

Entities are required to recognize that there may be flexibility in how the report is prepared, in preparation for CbC reporting, and with regard to the underlying information collection and the report preparation principles. KPMG said it will be important to capture correct information contemporaneously and some key decisions that may need to be made at the earliest possible time include:

- What will be considered to be a "tax"?
- How are withholding taxes going to be accurately identified and allocated to the right country?
- How are accurate employee numbers going to be collated, and how will business travelers be treated?
- Is the information going to be based on management accounts or regulatory financial statements?
- Is the information going to be based on group or local Generally Accepted Accounting Principles (GAAP)?

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**[52]. CALL FOR TAX REFORM TO GET AUSTRALIAN COMPANY TAX RATE AT THE AVERAGE RATE IN ASIA**

Australia's Financial Services Council has released details of a tax reform package it says is designed to grow the economy and reverse Australia's collapsing competitiveness and flat productivity. The package of growth-enhancing tax reform delivers lower company and personal income taxes, as well as fully compensating all households for an increase in the GST from 10% to 15%. The FSC's proposal, modelled by KPMG, shows a deep cut to company tax to 22% is essential to increase growth, investment and employment. The modelling shows Australia's economy will be 2% bigger and there will be a significant increase in new investment of around 4%.

Under the FSC's proposal, the new company tax rate of 22% and lower, flatter, indexed income tax rates would be paid for by a higher, broader GST. In turn, it will be incumbent on the States to remove stamp duties, the FSC said.

Andrew Bragg, FSC Director of Policy said that cutting Australia's company tax to 22% is the centrepiece of the new tax mix package. He said the average company tax rate in Asia is 22%, compared to Australia's 30%. The company tax rate in the UK will be lowered to 18% in 2020. He said a 22% company tax rate would also help reduce the Federal Budget's reliance on corporate tax - the OECD average reliance on company tax is 8%, while Australia's is more than 18%.

The new tax mix package is fully funded and will create tens of thousands of new jobs, Mr Bragg said.

[**Thomson Reuters note**: The Government is currently working on a tax reform package to take to the next Federal election, due later this year. Treasurer Morrison says the Government is looking at the tax system to ensure it "can be more supportive of growth and jobs".]

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**[53]. AUSTRALIA NOW FORMALLY A MEMBER OF AIIB**

By formal notice in Australia's *Commonwealth Gazette*, the Acting Treasurer Senator Mathias Cormann has that in pursuance of s 2 of the *Asian Infrastructure Investment Bank Act 2015*, Australia became a member of the Asian Infrastructure Investment Bank (AIIB) on 25 December 2015. The above Act enabled Australia's membership of the AIIB.

As reported at 2015 ATB 32 [1], the Act implements Australia's obligations under the Bank's Articles of Agreement:

- It provides an appropriation for the payment of Australia's capital contribution to the Bank. The Bank will initially have US$100 billion of total authorised capital and is expected to start operating by the end of the year. Australia's initial shareholding will total around US$3.7 billion, including US$738 million in paid-in capital. The remaining US$2.9 billion in callable capital will be a contingent liability against the Commonwealth.
- The Act authorises the Treasurer, as the responsible Minister, to issue promissory notes to the Bank to discharge Australia's financial obligations.
- The Act also enables regulations to be made to extend necessary privileges and immunities to the Bank, its staff and experts and consultants performing services for the Bank.

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**WORLD TRADE DEVELOPMENTS**

### [54]. WTO TRADE IN SERVICES AGREEMENT UNDER NEGOTIATION: HONG KONG, JAPAN, KOREA, TAIPEI PARTICIPATE

The EU and 22 countries (including Hong Kong, Japan, Korea, Taipei, Australia, Pakistan, New Zealand and the US), representing 70% of world trade in services (including financial services), are currently negotiating the Trade in Services Agreement (TiSA).

The EU Parliament on 18 January 2016 voted in favour of recommendations on the Agreement made by members of the European Parliament (MEPs). In a report, MEPs set out their guidelines to the Commission, which is negotiating the deal on behalf of the EU. Only once the talks are concluded will MEPs have the final say on whether to approve or reject a TiSA deal.

Significantly, MEPs supported China's request to join the negotiations and seek to ensure future "multilateralisation" of the agreement.

Points made in the MEP guidelines to the Commission include that the EU Commission should aim to:

- in particular, seek an ambitious opening up of partners' public procurement, telecoms, transport, financial and professional services markets;
- deliver more opportunities for highly-skilled EU professionals to work outside the EU;
- curb third countries' restrictive practices such as forced data localisation, which requires service suppliers to establish local servers, or foreign equity caps.

Noting that most - if not all - the services covered by the TiSA negotiations involve data flows, MEPs warned that the EU data protection standards "are not trade barriers, but fundamental rights" and as such should in no way be compromised by the forthcoming deal.

TiSA is an agreement being negotiated by 23 WTO members, including the EU, who want to further liberalise the trade in services between each other. By making it easier to export and import services, the EU expects to create a larger market for European companies and a wider choice for European consumers. The negotiations started in March 2013 and by the end of 2015, there had been 15 rounds of talks. The report of the 15th TiSA negotiation round, which took place in Geneva, is on the EC website. The European Commission is leading negotiations on behalf of the EU.

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## RECENT TAX ARTICLES

### [55]. RECENT TAX ARTICLES OF INTEREST

[*Citing tax and related articles from various journals of interest to practitioners, advisers and corporate tax departments; a useful research and reference tool*]

**The Chartered Accountant [Institute of Chartered Accountants of India], Vol 64 No 7, January 2016**
"'Make available' clause – tracing the contours" – Taxation of fees for technical services [p 1005]
"Fresh claim outside the return of income or in an appeal" [p 1010] – by Dr Gurmeet S Grewal,

Ranjan Chopra and Harsimran Grewal Dhillon
"Analysis of service tax provisions in banking sector" [p 1016] – by Suresh Goyal and Kashish Gupta

**Hong Kong Lawyer [Law Society of Hong Kong] – January 2016**
"Limited Liability Partnerships" [p 12] – by Ms Heidi Chu, Secretary General, Law Society of Hong Kong
"Face to face with Stephen Wong, Privacy Commissioner for Personal Data" [p 15] – by Cynthia G Claytor
"Hong Kong's new competition law takes effect – are you compliant?" [p 34] – by Neil Carabine and James Wilkinson
"'Dawn raids' [from the Hong Kong Competition Commission] – how do I survive?" [p 74] – by Danny Leung and Stephanie Tsui

[NOTE: From time to time, the *Asia Tax and Trade Bulletin* [formerly the ASEAN Tax Bulletin] will contain cross-references to different Issues of the Bulletin. They will appear as, for example, 2016 ATB 1 [12] – this means Issue 1 para [12] of the 2016 *Asia Tax and Trade Bulletin*.]

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