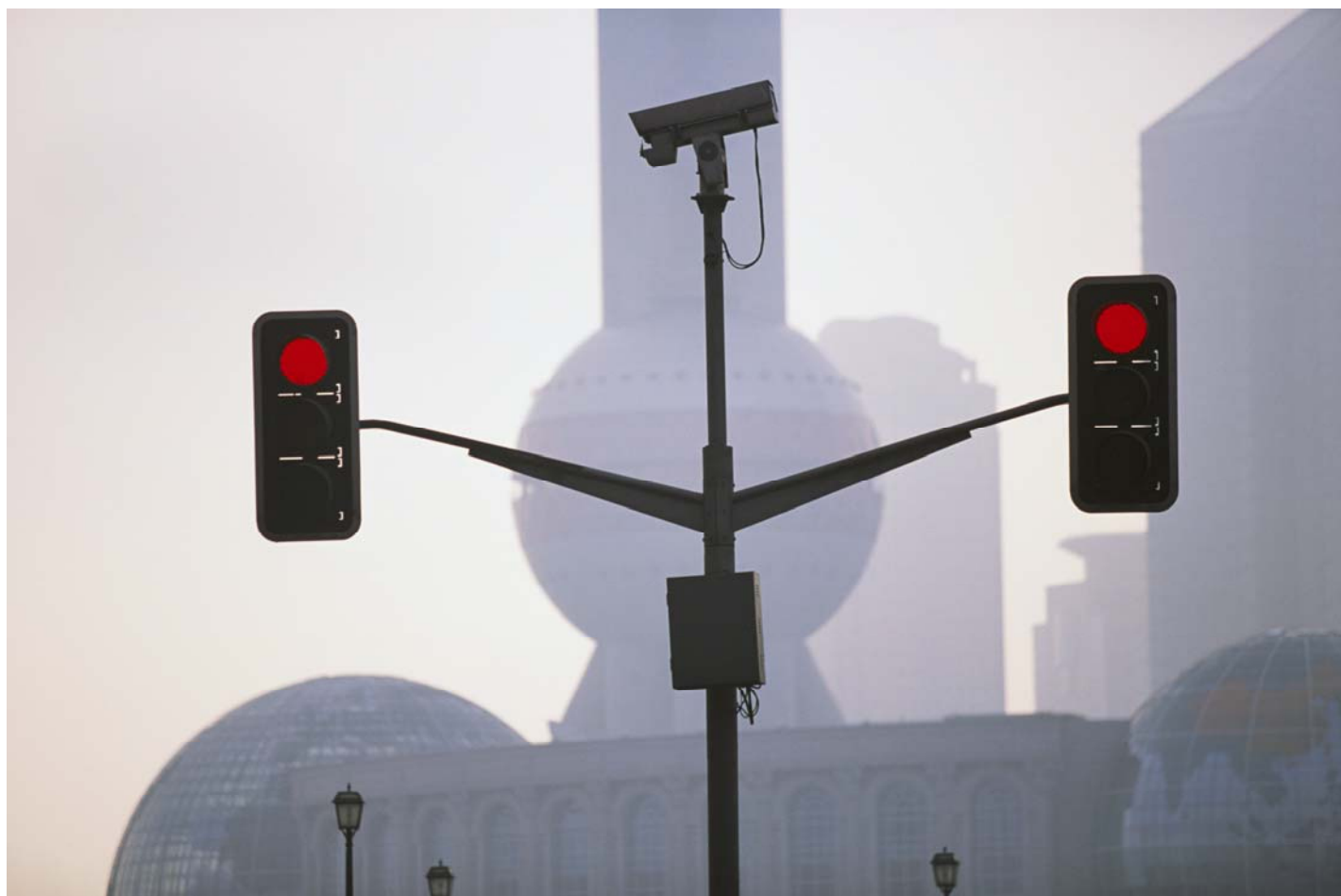


Asia Financial Services Tax Quarterly Developments Report

April to June 2008



PricewaterhouseCoopers (www.pwc.com) is the world's largest professional services organisation. Drawing on the knowledge and skills of more than 125,000 people in 142 countries, we build relationships by providing services based on quality and integrity.

This report aims to provide general guidance only and does not purport to deal with all possible questions and issues which may arise in any given situation. Should the reader encounter particular problems, he or she is advised to seek professional advice, which PricewaterhouseCoopers would be pleased to provide.

While all reasonable care has been taken in the preparation of this report, no responsibility or liability is accepted by the authors, PricewaterhouseCoopers, for any errors, omissions, or misstatements it may contain or for any loss or damage, howsoever occasioned, to any person acting or refraining from action as a result of any statement or omission in this report.

Copyright 2008 PricewaterhouseCoopers. All rights reserved.

'PricewaterhouseCoopers' refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

Introduction

For many years the PricewaterhouseCoopers Financial Services tax network in Asia has been sharing within the network a quarterly report on tax developments. We now share this knowledge with our valued clients.

This PricewaterhouseCoopers Asia Financial Services Tax Quarterly Developments Report covers the period ended 30 June 2008. It very briefly lists tax developments in the Asia region that are relevant to financial services operations.

The report is sorted by Asian territory. Please contact your local PricewaterhouseCoopers tax adviser if you wish to obtain further information on any development listed in this report.

We hope you find the report useful. I would be delighted to receive comments on the report.

John Masters

Asia Financial Services Tax Leader

Sydney

Ph: 61 2 8266 7265

Email: john.masters@au.pwc.com

Contents

<i>Australia</i>	5
<i>China</i>	9
<i>Hong Kong</i>	10
<i>India</i>	11
<i>Indonesia</i>	17
<i>Japan</i>	19
<i>Korea</i>	21
<i>Malaysia</i>	22
<i>New Zealand</i>	24
<i>Pakistan</i>	27
<i>Philippines</i>	29
<i>Singapore</i>	38
<i>Taiwan</i>	41
<i>Notes</i>	42

Australia

Sector: Insurance

Date: May 2008

Contact: Peter Kennedy - Sydney

Head company of a subsidiary life insurance company is not an offshore banking unit

The Australian Taxation Office has released an Interpretative Decision ATO ID 2008/70, which states that a head company of a consolidated group which is treated for income tax purposes as a life insurance company (because one or more of its subsidiaries are life insurance companies) is not eligible to be declared an “offshore banking unit”, which is subject to concessional treatment for Australian tax purposes.

Sector: Insurance

Date: Jun 2008

Contact: Peter Kennedy - Sydney

Demutualisation Legislation – New Bill released 26 June 2008

Tax Laws Amendment (2008 Measures No. 4) Bill 2008 was introduced into Parliament on 26 June 2008. The Bill amends the tax rules to provide capital gains tax relief for policyholders of private health insurers which demutualise. The proposed amendments ensure that policyholders who receive shares in a demutualised insurer or a cash payment will not be subject to capital gains tax when they receive the shares or cash payment.

Sector: Property

Date: Jun 2008

Contact: Michael Cox - Sydney

New Managed Investment Trust withholding tax rules

The Australian Government has introduced the *Income Tax (Managed Investment Trust Withholding Tax) Act 2008* which reduces the rate of withholding tax applying to certain distributions to foreign investors in Australian Managed Investment Trusts (MITs). After three years, the proposed law will reduce the headline rate of withholding tax from 30% to 7.5%.

The existing MIT withholding tax regime applies a 30% withholding tax rate on certain distributions of Australian sourced income (other than dividends, interest and royalties) to foreign resident investors. As the withholding tax applies to Australian source rental income and capital gains relating to taxable Australian property, the new rates of withholding are of most relevance to Australian real estate funds.

What is an MIT?

Broadly, an Australian trust will qualify as an MIT if the trustee of the trust is an Australian resident or the trust is centrally managed and controlled in Australia; the trust is a Managed Investment Scheme pursuant to Australian corporations law; and the trust is listed or has at least 50 unitholders.

Key aspects of the new rules

- An obligation to withhold arises when a payment is made by an MIT directly or via a custodian to an address or place outside Australia. The withholding tax rate will be at the reduced rate for the applicable year if the address or place of payment is in a country with an Effective Exchange of Information (EOI) arrangement on tax matters with Australia. These countries include all countries with which Australia has a double tax treaty except Austria, Belgium, Greece, Korea, Malaysia, Philippines, Singapore and Switzerland. Countries with which Australia has no double tax treaty but with which there is an EOI arrangement (and therefore included) are Bermuda and Netherlands Antilles.
- An obligation to withhold will also arise when a payment is made by an MIT to a foreign resident via an interposed entity (except corporate entities unless the company is acting in the capacity of custodian or agent). In such instances, it may be necessary for the foreign investor to be resident (as defined) in the EOI country in order to qualify for the reduced rate of withholding tax.

- The new law will apply from 1 July 2008 and introduces the following withholding tax rates for the following income years:

	2008 / 2009	2009 / 2010	2011 and subsequent income years
Rate	22.5%	15%	7.5%
Impact	Non-final tax	Final Tax	Final Tax

- A final 30% rate of withholding will apply to foreign investors not eligible for the reduced rate on distributions from MITs ie those located in countries not in the regulated list.
- For non-MITs the previous non-final withholding taxes continue to apply at rates of 30% to 45%.

Sector: Property

Date: Jul 2008

Contact: Michael Cox - Sydney

Scrip for Scrip roll-over and corporate restructures

In its 2008 Federal Budget, the Australian Government announced modifications to the 'scrip for scrip' capital gains tax (CGT) roll-over provisions in relation to corporate restructures.

Under the proposed changes, where shares are given as consideration in certain corporate restructures which result in a target entity joining a Australian consolidated or Multiple Entry Consolidated group, the acquiring group will be required to reflect the tax cost base of the target entity's net assets when determining the allocable tax cost base upon consolidation. Broadly, the modified rules will apply in respect of corporate restructures where the value of the acquiring entity is less than 20% of the value of the group post restructure.

The proposed amendments are intended to limit the ability of acquiring entities to sell assets of a target entity and take advantage of uplifts in the tax cost base of assets acquired.

It is unclear when the Australian government expects to release draft legislation in relation to this.

Sector: Property

Date: Jul 2008

Contact: Michael Cox - Sydney

New South Wales stamp duty relief for Capital Gains Tax top-hatting arrangements

The New South Wales State Government has introduced *The State Revenue and Other Legislation Amendment (Budget) Bill 2008* which contains a stamp duty exemption in relation to "top-hatting" arrangements, to be effective 1 July 2008.

Broadly, "top-hatting" arrangements occur where members of certain stapled groups dispose of their ownership interests in the stapled securities in exchange for an interposed public unit trust. These members may be eligible for Capital Gains Tax rollover relief in respect of the exchange of units to the extent the members would have realised a capital gain under the arrangement.

In the current stamp duty environment, the interposition of a public unit trust may give rise to significant land rich duty liabilities for both the interposed trust and security holders who transfer their securities under the "top-hatting" arrangement. The proposed exemption will apply to share transfer duties, unit transfer duty and land rich duty on transactions undertaken in New South Wales.

Victoria also introduced a top-hatting concession/exemption in June 2008, although not as broad as the NSW provisions. Western Australia has introduced from 1 July 2008 an exemption for certain "consolidation transactions" which should allow relief from WA land rich duty for a top-hatting arrangement (although subject to certain "clawback" conditions).

No similar exemption was mentioned in the Queensland budget statement. While it is hoped that Queensland, as well as all other jurisdictions, will bring in similar forms of stamp duty relief, it may still be possible to "top-hat" without giving rise to a Queensland land rich duty issue, depending on the precise circumstances.

Sector: Banking & Capital Markets **Date:** Mar 2008 **Contact:** Tom Toryanik - Sydney

Interaction of transfer pricing and debt/equity provisions

On 26 March 2008, the Australian Taxation Office released Draft Taxation Determination TD 2008/D3 which deals with the question whether the application of transfer pricing rules in determining an arm's length return from a particular arrangement should give regard to the classification of that arrangement under the Debt/Equity rules.

Briefly, the Debt/Equity rules may apply to classify a scheme as "debt", return from which is deductible, or "equity", return from which is non-deductible, but frankable.

The Determination gave a negative response, stating that the classification under the Debt/Equity rules is irrelevant. Interestingly, the Determination nevertheless implied that in determining an arm's length consideration from an arrangement, a question around whether the arrangement is equivalent to a debt or equity contribution may still be important.

The Draft Determination was issued as final Taxation Determination TD 2008/20 on 16 July 2008.

Sector: Banking & Capital Markets **Date:** Mar 2008 **Contact:** Tom Toryanik - Sydney

Deferred Purchase Agreements

On 26 March 2008 the Australian Taxation Office released Draft Taxation Determinations dealing with certain taxation implications from Deferred Purchase Agreements (DPA). Typically, a DPA is an arrangement where an investor pays a fixed amount upfront for an entitlement to an unspecified number of securities in the future. At maturity, a DPA is settled by the delivery of the securities.

Draft Determination TD 2008/D4 discusses whether a DPA is a "traditional security". It answers this question in negative on the basis that a DPA is not expected to be a "security", as defined in the legislation. Draft Determination TD 2008/D5 discusses the holding period of the securities acquired under a DPA. It concludes that the holding period starts at the delivery of the securities (and not at the time the DPA is entered into).

These conclusions confirm that a gain from the holding of a DPA is not subject to accrual taxation and a disposal of a DPA is likely to give rise to a capital gain.

Sector: Banking & Capital Markets **Date:** Apr 2008 **Contact:** Tom Toryanik - Sydney

Interest on Tier 1 capital arrangements may not be deductible

On 11 April 2008, the Federal Court handed down a decision in *St George Bank Limited v Commissioner of Taxation* [2008] FCA 453. In this decision, *Allsop J* disallowed a deduction for interest payments as payments in the nature of capital.

The interest in question was paid by St George Bank under a debenture in connection with a capital raising by the bank to improve its capital adequacy ratios.

The Bank has lodged an appeal to the Full Federal Court.

Sector: Banking & Capital Markets **Date:** May 2008 **Contact:** Tom Toryanik - Sydney

2008/09 Federal Budget

The 2008/09 Federal budget, delivered on 13 May 2008, included a number of important taxation proposals, including the following proposals relevant to the banking industry:

- Reintroduction of TOFA (Taxation of Financial Arrangements) (Stages 3 and 4) legislation with effect from 1 July 2009 (it was previously announced that the legislation will become effective 1 July 2008, subject to transitional provisions);
- Extension of debt/equity transitional arrangements to 1 July 2008 to ensure that the income tax rules preceding the debt/equity tax rules continue to apply to Upper Tier 2 instruments.

Sector: Banking & Capital Markets **Date:** May 2008 **Contact:** Tom Toryanik - Sydney

No withholding tax on State Government Bonds

On 20 May 2008, the Treasurer announced that legislation will be introduced to exempt from interest withholding tax payments under State Government Bonds made to non-residents.

Sector: Banking & Capital Markets **Date:** Jun 2008 **Contact:** Tom Toryanik - Sydney

Recognition of foreign financial markets

On 17 June 2008, the Treasury and the Australian Securities and Investments Commission (ASIC) issued a joint consultation paper on cross border recognition of foreign regulation of financial markets, financial products and services.

On 7 July 2008, ASIC signed a declaration of mutual recognition of cross border offerings of collective investment schemes with the Hong Kong Securities and Futures Exchange. The declaration will facilitate the sale of retail funds between Australia and Hong Kong.

Sector: Banking & Capital Markets **Date:** Jul 2008 **Contact:** Tom Toryanik - Sydney

Thin capitalisation changes

On 11 July 2008 the Government released draft legislation which will amend, when enacted, the thin capitalisation rules to accommodate certain impacts arising from the adoption of Australian equivalents to International Financial Reporting Standards (AIFRS). In particular, the draft legislation will allow entities to depart from the AIFRS on the intangible assets, deferred tax liability or asset and a defined benefit liability or asset.

China

Sector: All

Date: May 2008

Contact: Matthew Mui - Beijing

Canada-China Agreement for the Avoidance of Double Taxation

In May, the State Administration of Tax (SAT) issued a circular on the recent development of the Canada-China Agreement for the Avoidance of Double Taxation (DTA). The tax authorities of both States have reached an agreement to allow additional organisation(s) of both States respectively to be covered by paragraph 3 of Article 11 of the DTA whereby the interest income of certain organisations of one State derived from the other State is exempt from tax in the other State.

Hong Kong

Sector: Financial Services **Date:** May 2008 **Contact:** Peter Yu
Florence Yip - Hong Kong

Hong Kong / Vietnam DTAA negotiations

The third round of negotiations for a Double Tax Avoidance Agreement (DTAA) between Hong Kong and Vietnam was held on 26 and 27 May 2008 in Hong Kong. Other than a few technical issues, which require approval from the relevant Vietnamese authorities, a consensus has been reached on most of the provisions within the proposed DTAA. The proposed DTA is expected to be finalised and formally signed shortly.

Sector: Financial Services **Date:** Jun 2008 **Contact:** Peter Yu
Florence Yip - Hong Kong

Plans to expedite Hong Kong / India DTAA negotiations

Following the Vodafone-Essar deal, the India tax authority is planning to expedite the work on a Double Tax Avoidance Agreement (DTAA) with Hong Kong.

It was recognised that a DTAA will ensure that tax issues will not hinder investment flows into India by some of the biggest global companies that use Hong Kong as the hub for their Asia-Pacific Operations.

Sector: Financial Services **Date:** Jun 2008 **Contact:** Peter Yu
Florence Yip - Hong Kong

Budget amendments gazetted

The proposed amendments announced in the Hong Kong 2008/09 budget, were gazetted on 27 June 2008. Some of the amendments are outlined below.

Profits tax

- Reduction in profits tax rate by 1% to 16.5% and 15% for companies and unincorporated business respectively.
- Accelerated tax depreciation for environment friendly equipment and building installation.
- Increase in the ceiling of tax deductible charitable donations from 25% to 35% (equally applied to salaries tax and tax under personal assessment).

Government duties and charges

- Exempt alcohol duty on wine, beer and all other alcoholic beverages except spirits.
- Waiver of hotel accommodation tax.

One-off Measures

- Waiver of 75% of profits tax, property tax, salaries tax and tax under personal assessment for 2007/2008, subject to a ceiling of HK\$25,000, deducted from the taxpayer's final tax payable for the year.
- Waiver of rates for 2008/2009, subject to a ceiling of HK\$5,000 per quarter for each rateable tenement.
- Waiver of business registration fee for 2008/2009.

India

Sector: Banking

Date: Feb 2008

Contact: Sunil Gidwani
Vikram Bohra - Mumbai

Ruling in the case of Canara Bank

The Ahmedabad Bench of Income Tax Appellate Tribunal has held that the services provided by the MICR centre of State Bank of India fall within the definition of the term "Fees for Technical Services" and payments for services provided by the MICR centre would therefore be subject to deduction of tax at source under the income tax provisions.

Sector: Banking

Date: May 2008

Contact: Sunil Gidwani
Vikram Bohra - Mumbai

Ruling in the case of ICICI Bank Limited

Payments made to a US based Credit Rating Agency for rating services provided to ICICI for the floating rate Euronotes issue was held as not in the nature of royalties or fees for included services and hence not chargeable to tax in India in the absence of a permanent establishment of the Credit Rating Agency in India.

Sector: Capital markets

Date: Jun 2008

Contact: Sunil Gidwani
Vikram Bohra - Mumbai

Ruling in the case of Cushman and Wakefield (S) Pte. Ltd.

Referral fees received by a Singapore company for referring / recommending potential customers to Indian Group Company cannot be regarded as accruing or arising or deemed to accrue or arise in India under the provisions of the Income Tax Act. Further it cannot be regarded as "Fees for Technical Services", within the meaning of the said terms under the Double Tax Avoidance Agreement between India and Singapore. As the Singapore company did not have a permanent establishment in India, the income was held as not chargeable to tax in India.

This ruling may be relevant to financial services players in particular, the broking entities.

Sector: Insurance

Date: Apr 2008

Contact: Gautam Mehra
Rajesh Bhagat - Mumbai

Promotion of Insurance Broking by Corporate Houses

The Insurance Regulatory and Development Authority released a memorandum permitting Corporate Houses to promote Insurance Broking in addition to carrying on Insurance Business. By virtue of this Memorandum, the promoters are permitted to float a broking company. This is in accordance with International practice and such companies have to follow the corporate governance guidelines as prescribed in the memorandum.

Sector: Real Estate

Date: Jun 2008

Contact: Gautam Mehra / Radhakishan
Rawal - Mumbai

Amendments to the 2008 Industrial Park Scheme

The Central Board of Direct Taxes has notified amendments to the Industrial Park Scheme 2008 under sub-section (4) of section 80IA of the Income Tax Act 1961. According to the amended scheme, the ambit of "industrial activity" has been expanded to include (i) research and experimental development on natural sciences and engineering (ii) development of computer software; and (iii) information technology enabled services. Also, the minimum constructed floor area has been reduced to 15,000 square metres and the area allocated or to be allocated to industrial units has been reduced to 75% of the allocable area and provision has been made to allocate areas for commercial activity with a cap of 10% of the allocable area.

Sector: Banking and Capital Markets **Date:** Mar 2008 **Contact:** Sunil Gidwani
Vijayashree R. - Mumbai

Ruling in the case of V. Ravi Narayanan

In the above ruling, the Authority for Advance Ruling ruled as follows:

- The NRO (Non-Resident Ordinary) deposit made by the applicant with convertible foreign exchange in a banking company, which is not a private company, shall be treated as a 'foreign exchange' asset.
- Income by way of interest earned from the said NRO deposit shall be treated as 'investment income' and shall be liable to be taxed at the rate of 20%.
- The bank paying interest on the NRO deposit of the applicant is required to deduct tax at source at the rate of 20%.

Sector: Investment Management **Date:** Apr 2008 **Contact:** Punit Shah
Vijayashree R. - Mumbai

Double tax avoidance agreement between India and Iceland

The Tax Treaty between India and Iceland was signed on 23 November 2007 and came into force with effect from 1 April 2008. The Tax Treaty provides for a maximum tax rate of 10% in respect of income in the form of dividends, interest, royalties or fees for technical services. The Tax Treaty also contains a 'Limitation of Benefits' clause to restrict the persons/entities of other countries from utilising the benefits of this Tax Treaty.

Sector: Investment Management **Date:** Apr 2008 **Contact:** Punit Shah
Vijayashree R. - Mumbai

Double tax avoidance agreement between India and Kuwait

India signed a comprehensive Tax Treaty with Kuwait on 15 June 2006. The Tax Treaty came into force on 17 October 2007 and shall be given effect in India from the financial year beginning 1 April 2008.

Sector: Investment Management **Date:** Jun 2008 **Contact:** Punit Shah
Vijayashree R. - Mumbai

Double taxation avoidance agreement between India and Syrian Arab Republic

The Union Cabinet of India on 12 June 2008 gave its approval to the Agreement signed between India and the Syrian Arab Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion in relation to taxes on income.

Sector: Banking and Capital Market **Date:** Jun 2008 **Contact:** Sunil Gidwani
Vijayashree R. - Mumbai

Decision in the case of Shree Shyamkamal Finance & Leasing Co. Pvt. Ltd.

In this case, during the previous year, the assessee did not receive any dividends from their investment in shares and had claimed a tax deduction for interest paid on an unsecured loan. The Tribunal held that expenditure incurred by the assessee in relation to income earned during the year which is not included in the total income can be disallowed under the income tax provisions. It was held that since there was no dividend income, interest paid on the loan was allowed as a tax deduction.

Sector: Banking and Capital Market **Date:** May 2008 **Contact:** Sunil Gidwani
Vijayashree R. - Mumbai

Decision in the case of Ajay C. Mehta

In this case, during the previous year, the assessee had applied for certain share warrants and had also made some upfront payment for the shares. Ultimately, the assessee exercised the right with respect to part warrants only and claimed a short term capital loss with respect to the payment made for the balance rights which could not be exercised.

The Tribunal observed that the definition of 'transfer' is an inclusive definition which includes extinguishment of a right. Accordingly, it held that the moment an assessee loses the right attached to a share warrant for subscribing

to the equity shares of the company, there is an extinguishment of the right. The Tribunal further observed that there must be 'full value of consideration' out of which the expenditure and cost of acquisition have to be deducted for computing the capital gains. In the absence of any value being assigned to the consideration received on the transfer of warrants, the capital loss can not be computed and therefore the assessee cannot claim short term capital loss on the same.

Sector: Banking and Capital Market **Date:** Jun 2008 **Contact:** Sunil Gidwani
Vijayashree R. - Mumbai

Decision in the case of Jannhavi Investments (P) Ltd.

The assessee, in this case, acquired shares during 1977 which were held as stock in trade until 1987. During 1987, these shares were converted into capital assets. On sale of the shares, the assessee adopted fair market value (FMV) as at 1 April 1981 as the cost of acquisition. The Tax Officer rejected the contention of the assessee on the ground that as at 1 April 1981, shares were held as stock in trade and not capital assets. The High Court upheld the contention of the assessee by holding that the assessee was entitled to adopt the FMV of the shares as at 1 April 1981 as a cost of acquisition.

Sector: Investment management **Date:** Jun 2008 **Contact:** Punit Shah
Vijayashree R. - Mumbai

Decision in the case of Sumit Bhattacharya

In this case, the Special Bench of Tribunal held that redemption of Stock appreciation rights (SARs) is an employment related benefit which is in the nature of deferred wages and therefore, taxable as salary income. In this case, an employee of a group company received a substantial amount of SARs, which were granted to him by a foreign company in the same group. The Tribunal held that the taxability of the employee is not restricted to benefits directly flowing from the immediate employer and an amount received from others as reward for employment formed part of the employment income.

Sector: Banking and Capital Market **Date:** Jun 2008 **Contact:** Sunil Gidwani
Vijayashree R. - Mumbai

Decision in the case of Kay ARR Enterprises

Based on a catena of cases, it was found that the rearrangement of shareholdings in a company to avoid possible litigation among family members is a prudent arrangement which is necessary to control the company effectively by the major shareholders to produce better prospects and active supervision and avoid possible confrontations. Such a rearrangement of shareholdings between family members cannot be considered in the same manner as dealings between strangers. Therefore, such a realignment of interests among the family members would not amount to a transfer and not subject to capital gains tax.

Sector: Investment Management **Date:** Apr 2008 **Contact:** Sunil Gidwani
Vijayashree R. - Mumbai

Decision in the case of Reliance Industries Limited

In this case, it was held that taxes paid on the premium on redemption of debentures is nothing but part of the cost of borrowing in the form of FCC bonds. The payment made by the assessee by way of tax is not a tax on the profit of the assessee. The payment was held to be a contractual obligation and the payment was thus a cost of borrowing.

Sector: Banking and Capital Market **Date:** May 2008 **Contact:** Sunil Gidwani
Vijayashree R. - Mumbai

Decision in the case of Ashini Lease Finance Pvt. Ltd.

In this decision of the apex Court, the assessee had borrowed funds to invest in shares, acquired a company and claimed a deduction for the interest on the borrowed funds. The apex Court held that prima facie, the assessee had acquired the shares of the company taken over, through finances arranged from the third company, which finally effected the takeover, and it, if proved, indicates circular trading had been entered into solely with the objective of evading tax. The interest was therefore disallowed.

Sector: Banking and Capital Market **Date:** Apr 2008 **Contact:** Sunil Gidwani
Suresh V.Swamy - Mumbai

Foreign investment in Commodity Exchanges

The Reserve Bank of India, in consultation with the Government of India, has decided to allow foreign investment in Commodity Exchange subject to the following conditions:

- There is a composite ceiling of 49% foreign investment, with an FDI (Foreign Direct Investment) limit of 26% and an FII (Foreign Institutional Investors) limit of 23%
- Foreign direct investment permitted with specific approval of Government.
- FII purchases in equity of Commodity exchanges will be restricted only to the secondary markets.
- Foreign investment in Commodity Exchanges would also be subject to compliance with the regulations issued, in this regard, by the Forward Market Commission.

No foreign investor / entity, including persons acting in concert will be permitted to hold more than 5% of the equity.

Sector: Investment management **Date:** May 2008 **Contact:** Tushar Sachade
Himanshu Mandavia - Mumbai

Minimum networth requirement for portfolio managers enhanced

The Securities and Exchange Board of India (SEBI) has recently decided to increase the minimum net worth requirement for registration as a portfolio manager from the existing INR 50 lakh to INR 2 crores and to give effect to the requirement of maintaining continuous net worth separately for portfolio management activities. The existing portfolio managers, whose net worth is less than INR 2 crore will have to increase it to at least INR 1 crore within a period of six months and thereafter to the prescribed net worth of INR 2 crore in the next six months from the date of notification of amendment to the SEBI Regulations.

It was also decided that Portfolio Managers will not be permitted to float a scheme or pool the resources of the clients. They would be required to keep the assets of each client separate (ie no pooling of assets). A time frame of six months from the date of notification has been given to convert their operations managed on a pooled basis to an individual basis. The necessary amendments will be made to the Regulations.

Sector: Banking and Capital Market **Date:** Apr 2008 **Contact:** Gautam Mehra
Vijayashree R. - Mumbai

Foreign Investment in Credit Information Companies

Foreign Direct Investment (FDI) in Credit Information Companies has been allowed by the Reserve Bank of India (RBI), subject to compliance of the following, amongst others, conditions:

1. The aggregate Foreign Investment in Credit Information Companies would be capped at 49%.
2. Foreign Investment up to 49% will be allowed only with the prior approval from the Foreign Investment Promotion Board and regulatory clearance from RBI.
3. Investment by SEBI Registered Foreign Institutional Investors (FIIs) will be permitted only through purchases in the secondary market up to 24%.
4. Investment by SEBI Registered FIIs would be within the overall limit of 49% for Foreign Investment.
5. No FII can individually hold directly or indirectly more than 10% of the equity.

Sector: Banking and Capital Market & Investment Management
Date: Jun 2008
Contact: Punit Shah
 Bhavin Shah - Mumbai

Intermediaries regulations

The Securities and Exchange Board of India (SEBI) has issued a press release notifying of SEBI Intermediaries Regulations. SEBI registered intermediaries are subject to various requirements emanating from different regulations.

The Intermediaries Regulations apply to all intermediaries. Intermediaries, as defined in the regulations, include stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisors, depositories, participants, custodians of securities, credit rating agencies, asset management companies, clearing members of a clearing corporation or a clearing house, trading members of a derivative segment of a stock exchange and such other intermediaries who may be associated with the securities markets.

However, it does not include foreign institutional investors, foreign venture capital investors, mutual funds, collective investment schemes and venture capital funds.

The common requirements such as grant of registration, general obligations, common code of conduct, common procedure for action in case of default and miscellaneous provisions have been provided in the approved Intermediaries Regulations. The Intermediaries Regulations will come into force in relation to different classes of intermediaries on dates to be notified by SEBI.

Sector: Investment management Banking and capital markets
Date: May 2008
Contact: Tushar Sachade
 Bhavin Shah - Mumbai

Amendments to the ECB policy

The External Commercial Borrowing (ECB) policy is regularly reviewed by the Government of India in consultation with the Reserve Bank of India (RBI) to keep it aligned with the evolving macroeconomic climate, changing market conditions, sectoral requirements and the external sector. Pursuant to such a review, the ECB policy has been partially modified.

Presently borrowers proposing to avail ECBs up to US\$20 million for Rupee expenditure for permissible end-uses require prior approval of the RBI under the approval route. However, going forward:

- Borrowers in the infrastructure sector have now been permitted to avail ECB up to US\$100 million for Rupee expenditure for permissible end-uses under the Approval Route;
- In other cases, the existing limit of US\$20 million for Rupee expenditure for permissible end-uses has been increased to US\$50 million under the Approval Route.

Further, the all-in-cost ceilings in respect of ECBs have also been modified.

Sector: Banking and Capital Market
Date: Jun 2008
Contact: Sunil Gidwani
 Vijayashree R. - Mumbai

Issue and listing regulation for debt securities

The Securities and Exchange Board of India (SEBI) has announced that the Regulations for Issue and Listing of Debt Securities will be simplified around the regulatory framework for issuance and listing of non-convertible debt securities (excluding bonds issued by Governments) issued by any company, public sector undertaking or statutory corporations.

Sector: Banking and Capital Market **Date:** May 2008 **Contact:** Sunil Gidwani
Vijayashree R. - Mumbai

Public Offer and listing of securitised debt instruments regulations, 2008

With a view to develop the market for securitised debt instruments, SEBI has amended the SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations (2008) to take into account the market needs, cost of the transactions, competition policy, the professional expertise of credit rating agencies, disclosures and obligations of the parties involved in the transaction and the interest of investors in such instruments.

Sector: Investment Management **Date:** May 2008 **Contact:** Sunil Gidwani
Vijayashree R. - Mumbai

Undertaking by FII in respect of offshore derivative instruments

The undertaking required to be provided by the Foreign Institutional Investors (FIIs) and their sub-accounts with respect to the offshore derivative instruments (ODIs) has been revised with effect from the Monthly ODI Report from May 2008.

Sector: Investment Management **Date:** May 2008 **Contact:** Sunil Gidwani
Vijayashree R. - Mumbai

Amendment in SEBI (FII) regulations

SEBI has amended the Foreign Institutional Investor Regulations. As part of the amendments, the policy measures on Offshore Derivative Instruments (Participatory Notes) and changes to the registration criteria have been incorporated in the regulations. In order to streamline the process of registration, the Application Forms for grant of registration as a FII and Sub Account have been modified. An asset management company, investment manager or advisor or an institutional portfolio manager set up and/or owned by non resident Indians have been made eligible to be registered as an FII subject to the condition that they shall not invest their proprietary funds. The type of securities in which FIIs are permitted to invest in has been widened to include schemes floated by a Collective Investment Scheme.

Sector: Investment Management **Date:** Jun 2008 **Contact:** Sunil Gidwani
Vijayashree R. - Mumbai

Enhanced debt investment limit for FIIs

The Government of India has increased the cumulative debt investment limits from US\$3.2 billion to US\$5 billion and US\$1.5 billion to US\$3 billion for FII investments in Government Securities and Corporate Debt, respectively. The increased limits shall be allocated among the FIIs on a 'first come first served' basis, subject to a ceiling of US\$200 million per registered entity.

Sector: Investment Management **Date:** Jun 2008 **Contact:** Tushar Sachade
Vijayashree R. - Mumbai

Permission for short selling and lending and borrowing of securities by mutual funds

Existing mutual fund schemes are allowed by SEBI to engage in short selling of securities as well as lending and borrowing of securities after making additional disclosures including risk factors in the Scheme Information Document.

Indonesia

Sector: Capital Markets

Date: Apr 2008

Contact: Ray Headifen
Margie Margaret
Hendra Lie - Jakarta

Tax treatment of discounts on treasury bills

In early April 2008, the Indonesian Government issued Regulation (GR) No. 27/2008. It ruled that withholding tax for discounts on treasury bills (*Surat Perbendaharaan Negara*) should follow the same method as that applicable to discounts on state bonds. Hence, every transfer of treasury bills at a discount from one party to another, other than designated privileged parties, will attract a 20% final tax, subject to an application of a tax treaty. The designated privileged parties, which are exempt from the final tax, are banks (including branches of foreign banks established in Indonesia), government approved pension funds, and venture capital institutions.

Sector: All

Date: Apr 2008

Contact: Ray Headifen
Margie Margaret
Hendra Lie - Jakarta

Implementing regulation of Article 37A of 2007 tax administration (KUP) law

As a result of the 2007 tax administration Law (KUP) Article 37A, the Minister of Finance issued Regulation No. 66/PMK.03/2008 which confirms that an interest penalty exemption applies to underpaid tax resulting from a revision of an annual income tax return (AITR). This new policy applies only up to the end of 2008 and offers concessions as follows:

- Any data declared in the revised AITR cannot be used as a basis to issue assessments on any other taxes.
- The revised AITR will not be audited unless an overpaid tax refund is claimed or is proven to be incorrect.
- Filing a revised AITR which requires an additional tax payment may stop an on-going tax audit. This includes an audit of corporate income tax for which the revised AITR has been filed and also the audit of other taxes, as long as the relevant tax returns do not claim tax overpayments. The Director General of Taxes (DGT) may, however, at his own discretion, decide to continue the audit irrespective of the absence of overpaid tax returns.

Sector: All

Date: May 2008

Contact: Ray Headifen
Margie Margaret
Hendra Lie - Jakarta

Procedures for Article 25 monthly income tax instalment

The DGT issued Regulation No. 22/PJ/2008 regarding the online payment of the current year income tax liability (Article 25 monthly income tax instalments). This regulation states that an online payment of such tax with a validation number is considered a filing of the Article 25 income tax return. Separate filing is still required if such tax is not paid online.

Sector: All **Date:** May 2008 **Contact:** Ray Headifen
Margie Margaret
Hendra Lie - Jakarta

Fixed asset revaluation for tax purposes

The Minister of Finance (MoF) issued Regulation No. 79/PMK.03/2008 regarding the revaluation of a company's tangible fixed assets for tax purposes. This regulation states that a company may revalue all their tangible fixed assets (excluding land/buildings) or all their tangible fixed assets (including land/buildings) for tax purposes on the condition that the company has fulfilled its tax liability up to one month before the revaluation, except for companies with a license to use USD and English bookkeeping. A company wishing to use this facility must submit a request to the DGT for approval.

In addition, the value of the fixed assets as a result of the revaluation will be subject to a 10% final tax.

Sector: Securities **Date:** Jun 2008 **Contact:** Ray Headifen
Margie Margaret
Hendra Lie - Jakarta

Margin trading and short selling

In order to increase liquidity for securities transactions and the quality of settlement financing for securities transactions, The Capital Market and Financial Institution Supervisory Board has issued Regulation No.KEP-258/BL/2008. This outlines requirements for transactions that are financed by securities companies on behalf of customers and also short selling transactions carried out by securities companies.

Sector: All **Date:** Jun 2008 **Contact:** Ray Headifen
Margie Margaret
Hendra Lie - Jakarta

An update on the application of a tax-neutral merger, consolidation or expansion

Following the issue of MoF Regulation No. 43/PMK.03/2008 (Reg-43), the DGT issued Regulation No. PER-28/PJ./2008 on tax-neutral mergers and expansions. This Regulation is designed to provide further clarification on some points in Reg-43.

Some features of PER-28 are set out below:

- The surviving company must be the company with the lowest quantum of commercial and tax accumulated losses. Losses of the dissolving company are not allowed to be carried forward by the surviving company.
- It provides a more detailed explanation on the business purpose test (ie it is not tax driven).
- If within five years, the DGT (based on tax audits or reviews) discovers that the merger, consolidation, or expansion does not comply with the requirements, the DGT will revoke approval for applying a book value and tax assessment letters will be issued.
- In a merger case, an application for applying a book value is filed with the regional tax office by the company which receives a transfer of assets, while in an expansion case, it is filed by the company which transfers the assets. The application must be filed within six months of the effective merger or expansion date.

Japan

Sector: Banking & Capital
Markets
Insurance
Investment Management
Real Estate

Date: May 2008

Contact: Sachihiko Fujimoto
Katsuyo Oishi
Yuka Matsuda
Tetsuo Imura
Akemi Kitou
Hiroshi Takagi - Tokyo

2008 Japanese Tax Reforms Application Date for reforms affecting the Financial Services Industry

On 30 April 2008, the Reform of the Individual Income Tax Law and others and Reform of the Local Tax Law (together, "Tax Reform Laws") were approved by the Diet and the related enforcement orders and ordinances were published.

Although the Tax Reform Laws were expected to be approved on or before 31 March 2008, approval was delayed until 30 April 2008. This Report provides a summary of the application dates of the principal reforms for the financial services industry, including the special taxation measures which expired on 31 March 2008.

Main reforms which apply retroactively from 1 April 2008

1. Reform and extension of special taxation of interest and discount upon issuance of *Minkan Kokugaisai*

The above amendment (tax exemption) applies to interest and redemption gain of *Minkan Kokugaisai* issued on or after 1 April 2008 received by a foreign resident individual or foreign corporation. However, the withholding tax rule (imposition of withholding tax) on the interest of *Minkan Kokugaisai* received by Japanese resident individuals and corporations applies from 1 May 2008.

2. Independent Agent excluded from the scope of Permanent Establishment (PE) definition of an agent

In principle, the above amendment applies to determinations on or after 1 April 2008 in connection with whether an agent will create a PE.

3. Revision of the definition of a "family corporation" for Japan-Real Estate Investment Trust (J-REIT) purposes

The above amendment applies to fiscal years ending on or after 1 April 2008.

4. Revision of the statutory useful life of machinery and equipment

This amendment applies to fiscal years beginning on or after 1 April 2008.

5. Non-Deductibility of entertainment expenses

The above treatment applies to fiscal years beginning from April 1, 2006 to March 31, 2010.

Main reforms which apply from 30 April 2008

1. Revision of the treatment for the foreign income taxes paid by a *Tokutei Mokuteki Kaisha* (TMK) and a J-REIT

The amended rule applies to the foreign income taxes paid in a fiscal year beginning on or after 30 April 2008.

2. Non-application of the tax refund provision arising from loss carry-forwards

The above treatment applies to fiscal years ending from 30 April 2008 to 31 March 2010.

3. Special tax treatment of undercover (ie, nondisclosed payee) expenses

The above treatment applies to undercover expenses paid from 30 April 2008 to 31 March 2010.

Main reforms which apply from 1 May 2008

1. Revision of the sourcing rules for certain interest income on bonds issued by foreign corporations

The above amendment applies to bonds issued by foreign corporations on or after 1 May 2008.

The following concessions were extended as a transitional measure when the Tax Reform of the Special Taxation Measures Law to Avoid Disorder on the Life of the People and the Tax Reform Law of the Local Tax Law to Avoid Disorder of the Life of the People were approved by the Diet on 31 March 2008.

Furthermore, the applicable period of the following concessions has been abolished (ie, applied without a predetermined period) or extended with the partial revision of the tax rate under the Tax Reform Laws.

1. Abolishment of the applicable period

- Nontaxable treatment for interest income earned on funds on deposit in a special international financial transaction (offshore) accounts.
- Special treatment for interest income on bond repurchase transactions by foreign financial institutions.

2. Extension of the applicable period with the partial revision of the tax rate

- Reduced registration tax rates on the transfer of ownership of land.
- Reduced registration tax rates on the transfer of ownership where a TMK acquires certain real properties pursuant to an asset liquidation plan.

Korea

Sector: Banking & Capital
Markets
Investment Management
Insurance
Real Estate

Date: Jun 2008

Contact: J.Y. Lee - Seoul

Corporate Income Tax Rate

Under the proposed amendment to the Corporate Income Tax Act, the corporate income tax rate will be reduced to 11% for taxable income of up to KRW 200 million and 22% thereafter until 2009. Effective 2010, the tax rate will be 10% for taxable income of up to KRW 200 million and 20% thereafter. The reduced tax rate will apply to the interim tax returns for the period ended 30 June 2008.

Malaysia

Sector: Banking and Capital Markets
Insurance
Investment Management
Real Estate

Date: April 2008

Contact: Khoo Chuan Keat
Frances Po
Jennifer Chang
Lim Phaik Hoon
Lorraine Yeoh
Azura Othman - Kuala Lumpur

Income Tax (Exemption) (No.3) Order 2008

Non-resident experts in the field of Islamic finance who have been verified by the Malaysian International Islamic Financial Centre Secretariat are exempt from the payment of income tax.

This Order is deemed to have come into operation from 8 September 2007 until 31 December 2016.

Sector: Takaful

Date: June 2008

Contact: Khoo Chuan Keat
Frances Po
Jennifer Chang
Lim Phaik Hoon
Lorraine Yeoh
Azura Othman - Kuala Lumpur

Income Tax (tax deduction on the distribution of income for a family fund; family re-takaful or general fund) Rules 2008

Tax deducted on the distributed income of a family fund, family re-takaful or general fund which is deemed to be derived from Malaysia to a participant other than a participant which is a resident company, will be tax deductible.

This Order is deemed to have come into operation on 1 January 2008.

Sector: Capital Market

Date: May 2008

Contact: Khoo Chuan Keat
Frances Po
Jennifer Chang
Lim Phaik Hoon
Lorraine Yeoh
Azura Othman - Kuala Lumpur

Liberalisation of foreign exchange administration rules

(A) *Borrowing in foreign currency by residents*

1. Resident companies are now free to borrow any foreign currency amount from:
 - a. their non-resident non-bank parent company;
 - b. other resident companies within the same corporate group in Malaysia (previously approval was required for any amount); and
 - c. licensed onshore banks and licensed international Islamic banks.
2. Resident companies are free to obtain any amount of foreign currency credit for capital goods from non-resident suppliers.
3. Resident companies are free to refinance outstanding approved foreign currency borrowing, including principal and accrued interest.

The threshold for borrowing in foreign currency by resident companies on a corporate group basis was RM100 million.

(B) Borrowing in Ringgit by residents from non-residents

1. Resident companies are now allowed to borrow in Ringgit, including the issuance of Ringgit-denominated redeemable preference shares or loan stocks:
 - a. of any amount from their non-resident non-bank parent company to finance activities in the real sector in Malaysia
 - b. up to RM1 million in aggregate from other non-resident non-bank companies for use in Malaysia.

Previously, borrowing in Ringgit of any amount from non-residents required prior permission of the Controller of Foreign Exchange (the Controller).

(C) Lending in Ringgit by residents to non-residents

A resident company or individual is free to lend any amount in Ringgit to non-resident non-bank companies or individuals to finance activities in the real sector in Malaysia (previously, only up to RM10,000); and

A licensed onshore bank is free to lend any amount in Ringgit to non-resident non-bank companies or individuals to finance activities in the real sector in Malaysia (previously, only up to RM10 million in aggregate could be lent).

(D) Reclassification of definition of "credit facilities"

The definition of "credit facilities" for the purpose of foreign exchange administration rules are amended to exclude the following:

1. operational leasing facilities
2. factoring facilities without recourse
3. performance guarantees and financial guarantees

New Zealand

Sector: Real Estate

Date: Jun 2008

Contact: Eugen Trombitas
Gary O'Neill - Auckland

GST Issues Paper released

Key proposals outlined in the Issues Paper include:

- Replacing the current going concern rules with a wider reaching “domestic reverse charge” mechanism which would apply to going concerns, high value transactions (eg where the GST exclusive value of the supply exceeds \$50 million) and land transactions.
- Amending the rules regarding nominee transactions to ensure input tax deductions are not denied for nominee and related transactions. Under the suggested amendments, goods and services would generally be treated as being supplied by the vendor to the nominee giving rise to an output tax liability for the vendor and an input tax deduction to the nominee. Exceptions to this general rule would exist in certain situations.
- Making the payments basis of returning GST compulsory for taxpayers with taxable supplies below a certain threshold.
- Addressing certain GST timing schemes by strengthening the application of existing specific anti-avoidance measures accompanied by an increase in the payments basis threshold.
- Introducing various amendments to simplify and clarify the change-in-use adjustment rules.
- Providing clarification regarding the GST treatment of short term accommodation including redefining the terms “dwelling” and “commercial dwelling” and removing small scale and non-commercial supplies of accommodation from the definition of taxable activity.
- The Issues Papers also considers reducing the GST risk created by so-called “phoenix” arrangements. In broad terms, a phoenix arrangement involves the purchase of assets from a failed entity by a related “re-born” entity. The purchaser receives a GST deduction without a corresponding payment of GST required by the failed entity because of the priority ranking of the Inland Revenue Department.

Sector: Banking and Capital
Markets
Insurance
Investment Management

Date: May 2008

Contact: Eugen Trombitas
Gary O'Neill - Auckland

New IRD/ISI agreement on GST treatment of management fees

The agreement between the Inland Revenue Department and the Investment Savings and Insurance Association, concerning the application of GST to composite fund management fees charged by fund managers for administration and investment management, has been renewed.

Under the agreement, GST is to be applied at the benchmark rate of 10% for composite fund management fees.

The agreement is effective for two years from 1 January 2008.

Sector: Banking and Capital Markets
Insurance
Investment Management
Real Estate

Date: Apr 2008

Contact: Eugen Trombitas
Gary O'Neill - Auckland

Limited partnership registered under the Limited Partnerships Act 2008 included in the definition of company for GST purposes

Section 30 of the Taxation (Limited Partnerships) Act 2008 amended the definition of "company" in section 2 of the Goods and Services Tax Act 1985, to include any limited partnership registered under the Limited Partnerships Act 2008.

Section 2 of the Taxation (Limited Partnerships) Act 2008 provided that this amendment came into force on 1 April 2008.

Sector: All

Date: May 2008

Contact: Emma Richards - Wellington

Voluntary disclosures

The IRD has issued an Exposure Draft clarifying the rules in relation to voluntary disclosures.

It confirms that a full voluntary disclosure can be made to the IRD, either:

- before receiving notification of a pending tax audit (pre-notification); or
- after receiving notification of a pending audit but before the audit commences (post-notification).

When a taxpayer makes a pre-notification disclosure, shortfall penalties will be reduced by:

- 100% for lack of reasonable care and for taking an unacceptable position; and
- 75% for gross carelessness, taking an abusive tax position, evasion or similar act.

When a taxpayer makes a post-notification disclosure, all shortfall penalties will be reduced by 40%.

The penalties for temporary tax shortfalls will also be reduced by either 100% or 75%, depending on which shortfall penalty is imposed and when the shortfall is disclosed.

The exposure draft applies to voluntary disclosures made on or after 17 May 2007.

Sector: All

Date: Jun 2008

Contact: Ian Fay
Paul Mersi - Wellington

Budget tax bill enacted

The Bill introducing the tax changes included in the 2008 Budget has been enacted. The Taxation (Personal Tax Cuts, Annual Rates and Remedial Matters) Bill gives effect to personal tax cuts that are to be phased in over three and a half years and makes complementary changes to Working for Families tax credits.

Sector: All

Date: Jun 2008

Contact: Ian Fay - Wellington

Feasibility expenditure

The IRD has finalised the Interpretation Statement on the deductibility of feasibility expenditure. The issues discussed are relevant to many taxpayers, particularly large taxpayers investigating new business opportunities. In order for feasibility expenditure (which is defined as expenditure incurred by a taxpayer in determining the practicability of a new proposal) to be deductible, it must be incurred in deriving assessable income or incurred in carrying on a business for the purpose of deriving assessable income and it must not be capital in nature.

The Statement considers the application of the general deductibility permission to feasibility expenditure and the application of the capital limitation.

Sector: All

Date: May 2008

Contact: Ian Fay
Rachel Wards - Wellington

United States – New Zealand DTA to be updated

The double tax agreement between the United States and New Zealand is to be updated in negotiations (which were scheduled to take place on 16 June 2008). Resulting changes will be made through an amending protocol rather than through negotiation of a new treaty.

It is anticipated that there will be a number of technical improvements to the existing treaty, and possible changes to the non-resident withholding tax rates.

Pakistan

Sector: Investment Management **Date:** May 2008 **Contact:** Soli R. Parakh - Karachi
CM

Extension of tax exemption

A tax exemption on capital gains arising from the sale of listed or public companies' shares, modaraba certificates, term finance certificates, etc. has been extended for two years (until the income year ending 30 June 2010).

Sector: Banking & Capital Markets **Date:** Jun 2008 **Contact:** Soli R. Parakh - Karachi

Withholding tax on remitted profits from a branch to a head office

After tax profits remitted by branches to the Head Office will now attract withholding tax of 10%. This tax will be treated as the final tax liability of the foreign company.

Sector: Banking & Capital Markets **Date:** Jun 2008 **Contact:** Soli R. Parakh
Investment Management Syed Shabbar Zaidi - Karachi

Amalgamation of companies and use of losses

In the case of an amalgamation of non-banking companies, modarabas and insurance companies, accumulated losses under "Income from Business" of an amalgamating company can be set off or carried forward against the business profits of the amalgamated company up to six tax years immediately succeeding the tax year in which the loss was first computed.

Sector: Insurance **Date:** Jun 2008 **Contact:** Soli R. Parakh - Karachi

Withholding tax on insurance/reinsurance premiums paid to foreign companies

Insurance or reinsurance premiums paid to foreign companies have been deemed to be Pakistan sourced income, subject to withholding tax of 5%, to be treated as a final tax liability. Treaty protection can be availed, where applicable.

Sector: Banking & Capital Markets **Date:** Jun 2008 **Contact:** Soli R. Parakh - Karachi

Thin capitalisation application to branches of foreign companies

Thin Capitalisation rules will now apply to branches of foreign companies operating in Pakistan. The debt equity ratio is 3:1. However, the law is not clear what will be considered equity in the context of a branch office.

Sector: Banking & Capital Markets **Date:** Jun 2008 **Contact:** Soli R. Parakh - Karachi

Abolition of Minimum Tax

Minimum Tax payable by resident companies (at 0.5% of gross turnover) in cases where a loss was incurred or where the tax liability amounted to less than 0.5% of such turnover has been abolished.

Sector: Investment Management **Date:** Jun 2008 **Contact:** Soli R. Parakh - Karachi
CM

Abolition of stamp duty on the electronic transfer of listed shares

Stamp duty on the electronic transfer of listed shares leviable by the Central Depository Company of Pakistan has been abolished.

Sector: Banking & Capital Markets **Date:** Jun 2008 **Contact:** Soli R. Parakh - Karachi

Tax on cash withdrawals from banks

The rate of tax to be deducted by banking companies on cash withdrawals in a day exceeding Rs 25,000 has been increased from 0.2% to 0.3%.

Sector: Banking & Capital Markets **Date:** Jun 2008 **Contact:** Soli R. Parakh
Syed Shabbar Zaidi - Karachi

Tax deductions for classified advances and off balance sheet items

The specific provisions for banking companies contained in the Seventh Schedule introduced from 2008 have now been amended. Banking companies will now be allowed a deduction for classified advances (by the State Bank of Pakistan) and off balance sheet items if debts are written off in the accounts and the tax authorities are satisfied about their irrecoverability. The law already allows a deduction not exceeding 3% of the income arising out of a consumer loan for the creation of a reserve to write off bad debts arising from such loans.

Sector: Banking & Capital Markets **Date:** Jun 2008 **Contact:** Soli R. Parakh
Syed Shabbar Zaidi - Karachi

Business losses set off for amalgamating banking companies

A set-off of business losses is now permissible for amalgamating banking companies up to six tax years immediately succeeding the tax year in which the loss was first computed

Sector: Insurance
Banking & Capital Markets **Date:** Jun 2008 **Contact:** Soli R. Parakh - Karachi

Increase in Federal Excise Duty

Federal Excise Duty rate has been increased from 5% to 10% on non-fund services provided by banking companies or NBFCs.

Sector: Insurance
Banking & Capital Markets **Date:** Jun 2008 **Contact:** Soli R. Parakh - Karachi

Levy of Workers' Welfare Fund

The labour law related levy of Workers' Welfare Fund has been now made applicable to non-industrial concerns. It is payable at 2% of the taxable income or the profit before tax, whichever is higher. A clarification has been sought as to its applicability to banks and insurance companies, other services companies, etc.

Sector: Banking & Capital Markets **Date:** Jun 2008 **Contact:** Soli R. Parakh - Karachi

Investment in MCB Bank

Maybank of Malaysia has acquired 15% shares in MCB Bank - Pakistan with an investment of US\$667 million.

Philippines

Sector: Insurance

Date: Apr 2008

Contact: Malou Lim - Manila

Clarification on the taxability of insurance companies for Minimum Corporate Income Tax (MCIT), business tax and Documentary Stamp Tax (DST)

MCIT

For the purposes of computing MCIT, gross revenue should include direct premiums and reinsurance premiums received (net of returns and cancellations); miscellaneous income; investment income not subject to final tax; released reserves; and, all other items treated as gross income under Section 32 of the Tax Code.

Direct costs and identifiable direct revenue-related deductions refer to those incurred costs which are exclusively related or otherwise considered indispensable to the creation of the revenue from their activities as an insurance company, including the generation of investment income not subject to final taxes, and shall be limited to the following:

1. claims, losses, maturities and benefits net of reinsurance recoveries
2. additions required by law to reserve the fund
3. reinsurance ceded

Life Insurance

Business tax

1. Direct writings/premiums – Aside from the premiums received which are covered under Section 123 of the Tax Code, re-insurance fees, reinstatement fees, renewal fees as well as penalties paid to the life insurance company which are incidental to or in connection with the insurance policy contracts issued are considered akin to premiums. As such, these amounts should be subject to a 5% premium tax for the gross amount received.
2. Management fees, rental income or other income from unrelated services – these are not subject to a 5% premium tax but are subject to VAT or percentage tax, as the case may be.
3. Investment income – Income realised from investment activities utilising the premiums earned are exempt from business tax.
4. Income realised from funds solicited and pooled from policyholders for investments (and is recognised as liabilities of the insurance company) is subject to Gross Receipts Tax (GRT).
5. Apportionment of investment income – To determine which portion of the investment income is exempt and which portion is taxable, the investment income earned for the month shall be allocated between (i) liability account balance pertinent to the other funds solicited from the policyholders as of the end of such month; and (ii) to premiums earned for the month.

DST

- Life insurance policies issued are subject to DST of P0.50 on each P200 of the amount of premium collected.
- For certificates issued, DST of P15 is collected.
- With regard to health and accident insurance, DST shall be P0.50 on each P4 of the premium charged.

The taxability of other financial services/products sold by a life insurance company shall be as follows:

Variable unit link

- The management fee earned by the life insurance company in managing the investment portfolio is subject to VAT or percentage tax, as the case may be.
- Any certificate issued is subject to DST of P15.

Premium deposit fund

- Investment income earned is subject to GRT.
- Instrument issued evidencing deposit is subject to DST of P1 on each P200 of debt instrument.
- Interest earned by the policyholder is subject to 20% final withholding tax.

Non-life insurance

Business Tax

- Gross receipts shall be subject to VAT.

DST

- Insurance policies are subject to DST of P0.50 on each P4 of the premium.
- Health and accident insurance policies are subject to P0.50 on each P4 of the premium charged.
- Certificates issued are subject to DST of P15.

(Revenue Memorandum Circular No. 30-2008)

Sector:	Banking and Capital Markets Insurance Investment Management Real Estate	Date:	Apr 2008	Contact:	Malou Lim - Manila
----------------	---	--------------	----------	-----------------	--------------------

Clarification on the last day for Availing of the Tax Amnesty Act

The Bureau of Internal Revenue (BIR) clarified that the last day for availing of the benefits of the amnesty shall be six months from the effective date of the implementation of Department of Finance Order (DOF) No. 29-07. DOF No. 29-07 became effective on 7 November 2007 and therefore the last day for availing of the amnesty benefits shall be 5 May 2008.

(Revenue Memorandum Circular No. 29-2008)

Sector:	Banking and Capital Markets Insurance Investment Management Real Estate	Date:	Apr 2008	Contact:	Malou Lim - Manila
----------------	---	--------------	----------	-----------------	--------------------

Amendments on “De Minimis Benefits”

The BIR increased the amount of “de minimis benefits” with respect to the following items:

1. Rice subsidy from P1,000 per month to P1,500 per month; and
2. Uniform and clothing allowance from an amount not exceeding P3,000 per annum to P4,000 per annum

(Revenue Regulation No. 5-2008)

Sector: Investment Management **Date:** Apr 2008 **Contact:** Malou Lim - Manila

Rules on the taxation of the sale, barter, exchange or other disposition of shares of stock held as capital assets

The BIR issued a Regulation to consolidate the rules relating to the imposition of tax on the sale, barter, exchange or other disposition of shares of domestic corporations that are listed and traded through the Philippine Stock Exchange (PSE), or disposition of shares through an Initial Public Offering (IPO) or disposition of shares not traded through the Local Stock Exchange.

Relevant provisions are as follows:

1. *Sale, barter, exchange of shares of stock listed and traded through the PSE*

This includes block sale or other types of sales, trades or transactions on the PSE and executed through the trading system and/or facilities of the PSE in accordance with its rules as approved by the SEC.

Tax rate - Stock transaction tax at the rate of 0.5% of 1%.

Tax Base - Gross sale price or gross market value of the shares of stock sold, bartered, exchanged or otherwise disposed which shall be assumed and paid by the seller or transferor through the remittance of the stock transaction tax by the seller or transferor's broker.

2. *Sale, barter, exchange or issuance of shares of stock through Initial Public Offering (IPO)*

Tax Rate:

Proportion of disposed shares to outstanding shares tax rate

Up to twenty-five percent (25%)	4%
Over twenty-five percent (25%) but not over thirty three and one-third percent (33 1/3%)	2%
Over thirty-three and one third percent (33 1/3%)	1%

Tax base - Gross sale price or gross market value of the shares of stock sold, bartered, exchanged or otherwise disposed of.

Persons liable to pay tax:

- Primary Offering — the tax imposed shall be paid by the *issuer corporation* with respect to the Shares of Stock corresponding to the Primary Offering.
- Secondary Offering — the tax imposed shall be paid by the *selling shareholder(s)* with respect to the Shares of Stock corresponding to the Secondary Offering.

3. *Sale, barter, exchange of shares of stock listed and not traded through the PSE*

Tax Rate:

Capital Gains Tax Rate

Not over Php 100,000	5%
On any amount in excess of Php 100,000	10%

Tax base - Net capital gain realised *during the year* from the sale, barter, exchanges or disposition of shares of stock.

Determination of sale price

- In the case of a cash sale, the sale price shall be the total consideration as per the deed of sale.
- If the total consideration of the sale or disposition consists partly in cash and partly in kind, the sale price shall be the sum of the cash and the fair market value of the property received.
- In the case of an exchange, the sale price shall be the fair market value of the property received.
- If the fair market value of the shares of stock sold, bartered, or exchanged is greater than the amount of cash and/or fair market value of the property received, the excess shall be deemed a gift subject to donor's tax under Section 100 of the Tax Code, as amended.

Determination of Fair Market Value

- Listed shares traded outside the trading system = closing price on the day when shares are disposed or closing price on the day nearest to the date of disposition.
- Not listed and traded through LSE = book value of the shares of stock (as reflected in the audited FS).

Determination of gain or loss on sale or disposition

Amount of consideration contracted
Less: Tax basis for the property sold
Expenses of sale/disposition

(Revenue Regulation No. 6-2008)

Sector: Banking and Capital Markets
Insurance
Investment Management
Real Estate

Date: May 2008

Contact: Malou Lim - Manila

Policies and guidelines for Run After Tax Evaders (RATE) cases

Order No 24-2008 contains the following policies for the investigation and prosecution of cases under the RATE Program:

- In prosecuting a criminal case for the violation of internal revenue laws, the service of Assessment Notice to a taxpayer is not a requirement. However, RATE cases filed with the Court of Tax Appeals (CTA) must, as often as possible, be accompanied by an initial assessment.
- Letters of Authority (LAs) for RATE cases shall be signed by either the Deputy Commissioner for Legal & Inspection Group (DCIR-LIG) if investigated by the National Investigation Division (NID) or Policy Cases Division (PCD) or the Regional Director, if investigated by Regional Offices (RO).
- A LA shall only be issued for taxable years where fraud has been established.
- For RATE cases, the NID of the RO may conduct a second examination of the taxpayer's accounts and other accounting records even if the regular audit examination had been conducted.
- Verification with the Letter of Authority Monitoring System (LAMS) by the NID, PCD and Special Investigation Division (SID) is mandatory.
- The provisions of the LAMS relating to the encoding and status updating of LAs issued by all BIR investigating offices shall be strictly enforced.
- To speed up the development of RATE cases, the RDO (Regional District Office) shall act immediately on all requests made by NID, PCD or SID for information or data needed to validate or build up a RATE case.

To qualify under the RATE Program, a case must conform to the following conditions:

1. Cases representing violations under any of Sections 254, 255, 257 & 258 of the NIRC (National Internal Revenue Code) of 1997, including One-Time Transactions, etc;
2. High-profile taxpayers or taxpayers well-known within the community, industry or sector to which the taxpayers belong ; and
3. Estimated basic tax deficiency is at least P1M per year per tax type, but priority should be given to tax cases where the aggregate basic tax deficiencies for all tax types per year is P50M or more.

The NID and PCD shall conduct or undertake the investigation of RATE cases in the National Office, while the SID of each Revenue Region shall conduct or undertake the investigation of RATE cases in the regional offices.

(Revenue Memorandum Order No. 24-2008)

Sector: Banking and Capital Markets
Insurance
Investment Management
Real Estate

Date: May 2008

Contact: Malou Lim - Manila

Observation of the existing responsibilities of large taxpayers transferred from the supervision of Large Taxpayers Service (LTS) to regional offices

Large taxpayers transferred to regional offices, remain to be classified as such as long as they remain to qualify under existing criteria. Hence, they are required to continuously observe the following:

1. File and make tax payments through Electronic Filing and Payment System (EFPS); and
2. Withhold the required withholding tax on the purchase of goods and services as required from the Top 10,000 Corporations, in addition to other purchases subject to withholding tax under existing revenue regulations.

Revenue District Offices, now handling these large taxpayers shall include them under the Taxpayer Account Management program (TAMP).

(Revenue Memorandum Circular No. 38-2008)

Sector: Banking and Capital Markets
Investment Management
Insurance
Real Estate

Date: May 2008

Contact: Malou Lim - Manila

Mass revocation order of Securities and Exchange Commission license

This Securities and Exchange Commission (SEC) issued a circular which provides for the finality of the mass Revocation Orders rescinding the SEC license of certain corporations registered between 1936 and 2000 for failure to file required reports such as the General Information Sheet and Financial Statements.

The said corporations were given a deadline within which to file their Petitions to Set Aside the Order of Revocation with the SEC, otherwise the Revocation Order shall become final and executory.

A corporation registered between 1936 and 2000 may check with the Law and Regulation Division of the Company Registration and Monitoring Department of the SEC whether it is covered by this circular.

(SEC Circular No. 4, Series of 2008)

Sector: Banking and Capital Markets
Insurance
Investment Management
Real Estate

Date: May 2008

Contact: Malou Lim - Manila

Guidelines for preliminary analysis and audit/verification of 2007 Internal Revenue Tax Returns

The BIR authorises all heads of investigating officers to pre-audit 2007 income and business tax returns of taxpayers with a focus on the analysis of their tax compliance in relation to their gross sales/revenues/receipts.

Taxpayers shall be classified by industry or profession and the ratio of their tax due against their gross sales/revenues/receipts shall be determined. Based on the result of the analysis showing the normal or common ratio of income tax and business tax, a preliminary profile leading to an industry/profession benchmark can be established. If the tax compliance of certain taxpayers is below the normal or common benchmark within an industry/profession, their tax returns shall be selected for audit/verification.

(Revenue Memorandum Order No. 20-2008)

Sector: Banking and Capital Markets
Insurance
Investment Management
Real Estate

Date: May 2008

Contact: Malou Lim - Manila

Permission for the manual filing of tax returns of taxpayers enrolled in the Electronic Filing and Payments System (EFPS)

Due to technical problems with EFPS, enrolled taxpayers have been given permission to manually file their tax returns and taxes due for payment on or before May 26, 2008.

If cheques cannot be issued due to an absence of signatories, then payment can be made under the bank debit system. If this is not feasible, then the return can be filed manually and payment of tax due can be made via the bank debit system using an account with any bank, even if the depository bank is an Accredited Agent Bank (AAB) of any Revenue District Office (RDO) within the same Revenue Region, provided it reflects the correct RDO code.

These manually filed returns are to be reported to the BIR through the Limited Bank Data Entry System (LBDES) and the Electronic Data Transmission (EDT) by the AAB.

(Revenue Memorandum Circular No. 42-2008)

Sector: Banking and Capital Markets
Insurance
Investment Management
Real Estate

Date: May 2008

Contact: Malou Lim - Manila

Guidelines for the transfer of Integrated Tax System (ITS) Data and records of delisted and newly enlisted large taxpayers

The BIR issued guidelines to provide efficient and effective handling of ITS data and records of taxpayers for enlisting to or delisting from LTS (Large Taxpayer Service).

The relevant guidelines/procedures include:

Registration Records

- Transfer of ITS registration records of delisted taxpayers shall be handled by LTAD I/II/LTDO, while taxpayers enlisting to LTS shall be handled by the Information Systems Development Service (ISDS). Taxpayers are no longer required to submit BIR Form No. 1905 (Application for Registration Information Update) to effect the transfer of their registration to the new RDO/LTS Office concerned.
- Once the transfer has been effected, a new Certificate of Registration (COR) shall be issued upon surrender of the old COR.
- Upon the effective date of transfer, all compliance requirements shall be registered/submitted to the new RDO.
- All pending applications or taxpayer letters with the old RDO/LTS office shall be processed / acted upon by the new RDO / LTS office concerned from the effective date of transfer.
- All newly enlisted large taxpayers shall enrol with the Electronic Filing and Payment System (EFPS). All delisted large taxpayers shall continue using the EFPS in the filing of their tax returns and payment of taxes due thereon.

Filing of returns and payment of taxes

- All returns of the newly enlisted/delisted large taxpayers shall be filed with the new RDO/LTS office having jurisdiction over the said taxpayers using the EFPS facility.
- During the transition period, enlisted large taxpayers not yet enrolled in the EFPS shall be allowed to manually file their tax returns and pay the taxes due thereon at their Authorised Agent Banks (AABs).

Audit cases

- Taxpayers which were issued Letters of Authority (LAs)/Tax Verification Notices (TVNs)/Letter Notices (LNs) and any associated existing audits (including refund cases) shall be continued by the issuing office.
- However, LAs/TVNs/LNs for the 2006 taxable year issued to delisted taxpayers, that are not yet served to the taxpayer as of the effective date of transfer shall be cancelled by the issuing office and indorsed to the National Investigation Division (NID)/ Policy Cases Division for issuance of LA pursuant RMO 16-2008.
- For the 2007 taxable year, LAs/TVNs/LNs shall be handled by the relevant new RDO/L TS office.
- All assessments covering delisted / newly enlisted taxpayers, including Informal Conference Letters (infocon), Preliminary Assessment Notices (PAN), Formal Letters of Demand (FAN), Final Decisions on Disputed Assessments (FDDA) shall be handled by the old RDO/L TS office that issued such assessments until the complete termination of the case.

Accounts receivable cases

- All dockets of outstanding accounts receivable cases of transferred taxpayers as at the effective date of the transfer shall be transferred from the old RDO/LTAID I/II/LTCED to the relevant new RDO/LTS office.
- All applications for a compromise settlement and/or abatement that are not yet evaluated/recommended by the evaluators or processing office as of the effective date of transfer shall be transferred to the relevant new RDO/LTS office.
- However, Regional Office cases which were already evaluated/recommended and forwarded/directed to TWG-Compromise Settlement and/or TWC-Abatement Cases Regional Evaluation Board (REB) prior to the effective date of transfer shall still be processed by the old RDO/LTS office concerned.

(Revenue Memorandum Order No. 25-2008)

Sector:	Banking and Capital Markets Insurance Investment Management Real Estate	Date:	May 2008	Contact:	Malou Lim - Manila
----------------	---	--------------	----------	-----------------	--------------------

Permission for the manual filing of tax returns of taxpayers enrolled in Electronic Filing and Payments System (EFPS)

Due to technical problems with the EFPS around deadlines, enrolled taxpayers are given permission to manually file tax returns once the Information Systems Group (ISG) of the BIR makes an announcement via an official memorandum (which is posted on the BIR website) and BIR communicate via email the unavailability or limited capability of the system on the deadline date or the day before the deadline date.

If cheques cannot be issued due to an absence of signatories, then payment can be made under the bank debit system. If this is not feasible, then the return can be filed manually and payment of tax due can be made via the bank debit system using an account with any bank, even if the depository bank is an Accredited Agent Bank (AAB) of any Revenue District Office (RDO) within the same Revenue Region, provided it reflects the correct RDO code.

These manually filed returns are to be reported to the BIR through the Limited Bank Data Entry System (LBDES) and the Electronic Data Transmission (EDT) by the AAB.

However, these taxpayers are still required to lodge or file via EFPS said declarations or returns, up to the step of getting the Filing Reference Number, 15 days from the date of manual filing.

The ISG has the responsibility to continuously check EFPS capability on deadline date or one day before the deadline. The official announcement on EFPS capability shall be issued by the Deputy Commissioner of ISG, or in her absence, any Assistant Commissioner in the ISG.

(Revenue Memorandum Circular No. 43-2008)

Sector: Banking and Capital Markets
Investment Management
Date: May 2008
Contact: Malou Lim - Manila

Guidelines on Securities Borrowing and Lending (SBL) transactions in the Philippine Stock Exchange (PSE) involving borrowings by foreign entities of PSE-listed shares from local investors/lenders

This circular was issued by the BSP to authorise custodian banks to special Bangko Sentral Registration Documents (BSRDs) to cover PSE-listed shares of stock borrowed by foreign entities from local investors/lenders. This also allows foreign borrowers to purchase foreign exchange (FX) from the banking system for remittance abroad using peso sale proceeds of the borrowed shares including the related income from SBL transactions subject to certain conditions as provided in the circular.

Any violation shall be subject to the penalty provisions of the New Central Bank Act and other existing banking laws and regulations.

(BSP Circular No. 611)

Sector: Banking and Capital Markets
Insurance
Investment Management
Real Estate
Date: Jun 2008
Contact: Malou Lim - Manila

Supplementary provisions on the preliminary analysis and audit/verification of 2007 Internal Revenue Returns

The Order was issued to clarify the authorised signatories for the issuance of Letters of Authority (LAs) and Tax Verification Notices (TVNs) for the audit/verification of cases under Regional Offices.

The Regional Director is authorised to sign and issue LAs for selected regional cases, while the Revenue District Officer has authority to sign and issue TVNs that may fall under specified cases.

(Revenue Memorandum Order No.21-2008)

Sector: Banking and Capital Markets
Insurance
Investment Management
Real Estate
Date: Jun 2008
Contact: Malou Lim - Manila

Guidelines for the short-audit of the 2008 1st quarter Value Added Tax (VAT) of large and regional Taxpayers

The BIR has prescribed certain thresholds based on gross sales/revenues/receipts for the audit of VAT liabilities of regional taxpayers.

LAs shall be issued to cover the audit of regional taxpayers based on the following thresholds:

- Gross sales exceeding P5M for Revenue Region Numbers 5, 6, 7 and 8 (except Revenue District Office (RDO) Numbers 35, 36 and 37).
- Gross sales exceeding P10M for all other regions including RDO Numbers 35, 36 and 37.

TVNs shall be issued to cover audit of regional taxpayers based on the following thresholds:

- Gross sales of P5M and below for Revenue Region Numbers 5, 6, 7 and 8 (except RDO Numbers 35, 36 and 37).
- Gross sales of P2M and below for all other regions including RDO Numbers 35, 36 and 37.

(Revenue Memorandum Order No.22-2008)

Sector: Banking and Capital Markets
Insurance
Investment Management
Real Estate

Date: Jun 2008

Contact: Malou Lim - Manila

Procedures in handling taxpayers' requests for the transfer of registration

To effectively handle the requests for the transfer of taxpayers other than LTS, the following procedures were adopted:

- Transfers from one RDO to another shall be reflected in the BIR database at the end of the calendar year.
- Collections from taxpayers shall not be credited in the new RDO but in the old RDO.
- Tax returns should be filed and payments should be made in any authorised agent banks located within the new RDO but the taxpayer is mandated to use the old RDO code until the end of the calendar year.

(Revenue Memorandum Order No. 47-2008)

Sector: Banking and Capital Markets
Insurance
Investment Management
Real Estate

Date: Jun 2008

Contact: Malou Lim - Manila

Exemption of minimum wage earners from income tax

Congress increased the exemption from tax and deductions from Gross Income of certain taxpayers under the Act.

Among the relevant amendments made are:

- Minimum wage earners as defined under the Act shall be exempt from the filing and payment of income tax.
- The optional standard deductions allowed for taxpayers (except those earning compensation under employer-employee relationship) shall be in an amount not exceeding 40% of his/her gross sales or gross receipts.
- Basic personal exemption increased to P50,000 for each taxpayer.
- Additional exemption for dependents increased to P25,000 for each dependent not exceeding four.

(Republic Act No. 9504)

Singapore

Sector: Banking and Capital Markets

Date: May 2008

Contact: Paul Lau
Lennon Lee - Singapore

Enhancement and extension to the Financial Sector Incentive (FSI) scheme

Further to the proposed changes introduced in the 2008 Budget in relation to the FSI scheme, the Monetary Authority of Singapore (MAS) issued a circular on 30 May 2008 that provides additional details on the enhancement and extension of the FSI scheme:

FSI – Standard Tier (FSI – ST)

In order for companies to extend their FSI – ST award from 1 January 2009 to 31 December 2013 (both dates inclusive), companies must have a minimum of six professionals engaged in qualifying activities. Companies will also be expected to submit their business development plans.

FSI – Credit Facilities Syndication (FSI-CFS)

The FSI – CFS will be enhanced to allow more lending arrangements to qualify for the concessionary tax rate of 5%.

FSI – Bond Market (FSI – BM), FSI – Project Finance (FSI – PF) and FSI – CFS

With effect from 30 May 2008, the existing FSI – BM, FSI – PF and FSI – CFS awards will be merged into a new FSI – Debt Capital Market award. All the qualifying conditions for the existing awards will continue to apply.

Sector: Banking and Capital Markets

Date: May 2008

Contact: Paul Lau
Lennon Lee - Singapore

Tax concessions to promote Islamic Financial Services

Further to the proposed changes introduced in the 2008 Budget, the MAS issued a circular on 30 May 2008 providing details on the new FSI – Islamic Finance (FSI – IF) award that grants a concessionary tax rate of 5% for five years to prescribed Shariah-compliant financial activities endorsed by an approved Shariah board.

In order to qualify for the 5% tax rate on lending and related activities:

1. The applicant must be a bank licensed under the Banking Act (Cap. 19) or a merchant bank approved under Section 28 of the MAS Act (Cap. 186); and
2. The qualifying activities must be structured in accordance with one of the following Shariah concepts:
 - Murabaha
 - Mudaraba
 - Ijara wa Igtina
 - Musharaka
 - Istisna
 - Salam

In order to qualify for the 5% tax rate on fund management and provision of investment advisory services in relation to Shariah-compliant funds, the applicant must be a company holding a licence under the Securities and Futures Act (Cap. 289) to carry on business in fund management or is exempted under that Act from the requirement to hold such a licence.

Sector: Banking and Capital Markets **Date:** May 2008 **Contact:** Paul Lau
Lennon Lee - Singapore

Enhancement and renewal of the tax incentive scheme for Qualifying Debt Securities (QDS)

Further to the proposed renewal of the QDS scheme introduced in the 2008 Budget, the MAS issued a circular on 23 May 2008 regarding exempt income derived from QDS with an original maturity of at least 10 years. This tax exemption will not be applicable to QDS that are redeemable, convertible, callable or exchangeable within 10 years from the date of issue. QDS that are re-opened with a resulting tenure of less than 10 years to original maturity date will also not enjoy the tax exemption.

Sector: Banking and Capital Markets **Date:** May 2008 **Contact:** Paul Lau
Lennon Lee - Singapore

Approved Special Purpose Vehicles (ASPV) scheme

Further to the proposed changes introduced in the 2008 Budget in relation to the ASPV scheme, the MAS issued a circular on 5 May 2008 that provides additional details on the enhancement and extension of the ASPV scheme:

1. The ASPV scheme will be extended from 1 January 2009 to 31 December 2013 (both dates inclusive); and
2. The requirement for the ASPV to issue only QDS has been removed with effect from 16 February 2008. The tranches of debt securities that are non-QDS will be subject to normal tax rules. The removal of this condition is applicable to debt securities issued on or after 16 February 2008 by both existing and new ASPVs.

Sector: All **Date:** Jun 2008 **Contact:** Lennon Lee - Singapore

Tax exemption for foreign-sourced dividends

The MAS announced a relaxation of the tracing rules for foreign-sourced dividends currently exempted from tax under Section 13(8) of the Singapore Income Tax Act.

The tax exemption under Section 13(8) will be available if the dividend is remitted to Singapore within one year from the date of deposit into the custodian account and there is no additional income being generated from the custodian account (other than the incidental interest paid on the sum standing in the custodian account). Such dividends will be treated as if they have been remitted directly from the jurisdiction where the dividends are sourced.

Any interest income generated from the custodian account must be separately identified and brought to tax if it is received in Singapore.

Sector: Insurance **Date:** Apr 2008 **Contact:** Yip Yoke Har
Nur Adila - Singapore

Tax incentive for insurance and reinsurance brokers

The MAS released a circular that provides a tax incentive for insurance and reinsurance brokers. The details of the scheme are summarised below:

Tax incentive

10% concessionary tax rate on qualifying income and activities.

Qualifying income and activities

- Commission and fee income from the provision of insurance broking and advisory services in Singapore by qualifying insurance and reinsurance brokers, to non Singapore-based persons.
- Non-Singapore-based persons refer to persons who:
 - a. do not have a permanent establishment in Singapore and do not carry on a business in Singapore; or
 - b. carry on an operation in Singapore through a permanent establishment in Singapore but do not use funds from its operations in Singapore to finance the premiums, broking and other fees.

Qualifying brokers

- Insurance brokers – direct insurance brokers providing general insurance broking business
- Reinsurance brokers – reinsurance brokers providing general or life reinsurance broking business
- Existing and new brokers registered under the Insurance Act
- Other criteria that will be considered include incremental professional headcount and business plan

Window period for application to MAS

1 April 2008 to 31 March 2013 (both dates inclusive).

Sector: Insurance

Date: May 2008

Contact: Yip Yoke Har
Nur Adila - Singapore

Tax incentive on income derived from Shariah-compliant activities

The MAS released a circular that provides a tax incentive on income derived from Shariah-compliant activities performed by a qualifying insurer. The details of the scheme are summarised below:

Tax incentive

5% concessionary tax rate for 5 years on income derived from writing offshore takaful and retakaful business by a qualifying insurer.

Qualifying criteria

- A company registered under the Insurance Act to carry on insurance business in Singapore; or a person (other than an individual) permitted under the Insurance Act to carry on insurance business in Singapore under a foreign insurer scheme.
- Incremental professional headcount significantly engaged in qualifying activity and the applicant's business plan will be considered.

Qualifying income

- General insurance business - Income derived from underwriting general insurance and reinsurance policies covering offshore risks.
- Life insurance business - Income relating to funds established and maintained for offshore policies.
- Dividends and interest derived from outside Singapore, gains or profits realised from the sale of offshore investments, and interest on Asian Currency Unit deposits derived from the investment of insurance and shareholders' funds which are used to support the offshore specialised general or life insurance business.

Window period for application to MAS

1 April 2008 to 31 March 2013 (both dates inclusive).

Taiwan

Sector: Banking and Capital
Markets
Investment Management

Date: Jun 2008

Contact: Richard Watanabe - Taipei

Proposed rules to relax investment restrictions on investment in China

In a press release announced by the Taiwanese Executive Yuan, the cabinet has approved proposals for regulatory relaxations that aim to open the door to cross-strait capital market opportunities, expand Taiwan capital market scale, and provide diversified investment needs and flexibilities for investors.

The current proposal will allow Taiwan securities/futures firms to invest in China and relax the investment cap limit on funds investing in China stocks and certain red chip stocks. Each of the proposals is scheduled to be effective in one week to two months time and the relevant details will be announced shortly.

Notes

