Russell Bedford

APAC News

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Transnational Games, Tax & Finance

With all eyes on World Cup 2010, we take a look at some similarities between football matches and our work / the finance world.

We begin this issue with news of strong players joining our network. They will strengthen our position as a transnational professional practice in the same way as star players adding value to a premier league team.

In football, exchanges of players and investment in foreign coaches are deployed to lift local standard. In the finance world, bilateral arrangements are used to help both sides. Hong Kong and China has an article on expansion of tax treaty network and closer economic partnership arrangement respectively.

South Korea has emerged as a strong football nation in Asia in recent years. In the tax front, the country has progressed to allow for consolidated tax return. Our Seoul office has an article on this new regime.

Australia, which ranks with South Korea among the 32 qualified teams in the 2010 FIFA event, has certain winning tactics in mind. The Revenue will score goal of its Budget with the proposed Resource Super Profits Tax whereas the reduction in company tax for small businesses is set to win fans. Meanwhile, Malaysia has released a Public Ruling on withholding tax. We have articles separately on these new measures.

A yellow or red card against a player means the need of disciplinary sanction. Our Singapore firm reports a case of sanction where a director failed to exercise due diligence in his duties.

We close this issue with some interesting figures about APAC and the Cup.

Inside this issue:

News of our regional firms

Mercado, Calderon, Jaravata & Co has joined Russell Bedford International as our member firm in the Philippines.

Located in Makati City, the firm is registered with the Philippines' Securities and Exchange Commission as Group A, the highest category of audit firm accreditation. It is also accredited under Group A with the Central Bank of the Philippines.

Highlights:

- *New member firm in the Philippines & Taiwan*
- *Hong Kong adds new audit director*

News

(continued)

The firm's client base covers a broad range of sectors including banking, insurance, manufacturing, real estate, agri-business, shipping and transport and mining.

In Taiwan, Jiang Sheng & Co has also joined us as a member firm.

Head officed in Taipei, the firm has coverage in all major metropolitan areas in Taiwan and has a strong coverage in audit and compliance work, including IPO assistance, due diligence, taxation, corporate services, accounting services and litigation support.

Meanwhile, in Hong Kong, we welcome Ms Kit-man HO as a director of our Hong Kong audit practice. Kit-man brings with her strong assurance experience from a Big 4 firm as well as quality control knowledge from the local regulatory body, the Institution of HK CPA.

HONG KONG

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"…Hong Kong-China treaty… containing the most preferential terms in relation to reduction in withholding tax…"

Hong Kong's expansion of tax treaty network

On 21 June 2010, Hong Kong SAR signed with the United Kingdom a comprehensive agreement for the avoidance of double taxation (CDTA).

This is the 12th CDTA Hong Kong signed with its trading partners – which include Austria, Belgium, Brunei, China, Hungary, Indonesia, Kuwait, Luxembourg, Netherlands, Thailand, Vietnam and now the UK (Note).

The CDTA sets out clearly the allocation of taxing rights between the two jurisdictions and the relief on tax rates on different types of passive income. This will help investors better assess their potential tax liabilities from cross-border economic activities, and foster closer economic and trade links between the two places.

Upon the Hong Kong-UK CDTA coming into force after the completion of ratification procedures, residents from both sides will benefit from the treaty.

For example, Hong Kong residents receiving dividends from UK will see the UK withholding tax reduced from 20% to 15%.

For royalties, the UK withholding tax (currently 20%) will be capped at 3% whereas interest income (currently also 20%) will be exempted from withholding.

Capital gains protection is also available for disposal of UK company shares under certain circumstances.

Hong Kong is actively seeking to sign tax treaties with as many trade partners as possible in order to maintain its position as the regional finance hub.

Particularly worth mentioning is that the Hong Kong-China treaty is regarded as containing the most preferential terms in relation to reduction in withholding tax on passive income (dividend, royalty and interest) and protection from tax on capital gains.

Expanding the Hong Kong tax treaty network will enable Hong Kong retaining its role as the preferred choice of location (for foreign investors) to invest in and (for Chinese investors) to invest out from China.

Note: On 23 June 2010, the SAR signed its 13th CDTA with Ireland.

Under the HK-Ireland treaty, withholding tax on dividend, royalty and interest is reduced to 0%, 3% and 10% respectively

China and Hong Kong Closer Economic Partnership Arrangement (CEPA)

CHINA

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One 27 May 2010, the Chinese central government and the government of the Hong Kong SAR signed Supplement VII of CEPA, which will take effect from 1 January 2011.

On the basis of the CEPA and six other Supplements, this new supplement stipulates 35 market liberalization and trade and investment facilitation measures in 19 sectors.
Under CEPA, Mainland has further eliminated equity restriction, relaxed business geographical scope, and eased market access requirements in 14 service sectors including:

- Medical services,
- Technical testing,
- Analysis and product testing,
- Specialty design,
- Audiovisual,
- Distribution,
- Banking,
- Securities,
- Social services,
- Entertainment,
- Air transport,
- Tourism,
- Qualification examinations for professionals and technicians
- Individually-owned business

Examples of the benefits under Supplement VII include:

- Qualified Mainland enterprises engaging in futures trading are permitted to set up subsidiaries in Hong Kong to carry out business
- Hong Kong healthcare professionals are allowed to provide short-term services in Mainland
- Hong Kong permanent residents are allowed to take qualification examination for real estate valuer in Mainland

The signing of Supplement VII indeed shows the support from the nation to the citizens of the HKSAR. It can also expedite the professional knowledge exchange of both sides.

Enterprises and individuals now may review Supplement VII to seek for further business development opportunities in both Mainland and HKSAR.

Corporations with existing business operation may consider group restructuring to improve efficiency and further development.

Interested parties are suggested to discuss with their advisors on how to make good use of the potential opportunities that are now available.

"…should review Supplement VII to seek for further business development opportunities…"

SOUTH KOREA

Consolidated tax return regime introduced from year 2010

CJAC 천지회계법인 CHEON JI ACCOUNTING CORPORATION

"…submit an application…three months ahead of the commencement date of the first consolidated fiscal year…"

"losses… prior to the adoption of the CTR regime cannot be combined with taxable income…"

"…capital gains/ losses arising from transfer of assets within a Group are deferred for taxation purpose…."

In 2008, the adoption of the Consolidated Tax Return (hereinafter referred as "CTR") regime was finally approved by the Government on ground that the regime would sustain the neutrality of taxation and improve tax efficiency in organizations. Accordingly, a corporate taxpayer may elect to file a consolidated tax return from the fiscal year commencing on or after January 1, 2010

Application deadline

A corporate taxpayer wishing to file a CTR shall submit an application to the National Tax Services (NTS) three months ahead of the commencing date of the first consolidated fiscal year.

Where the first consolidated fiscal year begins during the period between 1 January 2010 and 31 March 2010, a consolidated tax group (hereinafter referred as "Group") shall submit the application within 1 month after the commencing date of the consolidated fiscal year.

Eligibility

A domestic corporation and its wholly-owned subsidiary may apply for the CTR regime. In case where two or more wholly-owned subsidiaries exist, the CTR regime should apply on all the relevant subsidiaries. Corporations in the process of liquidation, and corporations under the partnership taxation are excluded from the CTR regime.

Utilization of tax losses

Tax losses incurred by a consolidated member of the Group prior to the adoption of the CTR regime cannot be combined with the taxable income of other group member(s). Such tax losses can only be offset against the taxable income of the concerned member.

Where the CTR regime is adopted after a corporation has become a wholly-owned subsidiary of another corporation, losses on disposal of assets of the subsidiary can only be offset against the taxable income of the concerned subsidiary for five years from the year of becoming a wholly-owned subsidiary. This avoids the abuse of built-in losses for tax evasion.

Intercompany transactions

A Group is viewed as one economic entity under the CTR regime. Accordingly, capital gains/losses arising from transfer of assets within a Group are deferred for taxation purpose until they are realized 'externally'.

For example, capital gains/losses derived from transferring fixed assets, intangible assets, accounts receivables, etc., are deferred until they are sold to third parties. However, intercompany transactions for inventories are exceptions to this rule.

Major restrictions

As mentioned above, there are restrictions on utilizing tax losses incurred prior to the adoption of the CTR regime and losses arising from asset disposal. Furthermore, for intercompany asset transfer, while the disposal gains/losses are deferred under the CTR regime, if the transaction is not conducted at fair market value, the principle of recalculation in respect of unfair transaction may apply. Under such a scenario, deferral would not be allowed.

Significant tax changes – Resource super profits tax

PERTH AUSTRALIA

Stantons International

In response to the review on Australia's Future Tax System (Henry Review), the Australian Government announced in May 2010 some significant changes to the tax system. Of particular concerns are new measures affecting companies involved in the mining industry.

For a country so dependent on the mining industry, many in the financial markets and mining industries have criticized the Federal Labor Government for planning to introduce the so called Resource Super Profits Tax (RSPT) on mining projects.

The RSPT will apply as from 1 July 2012 to all existing and future non-renewable resource projects.

At tax rate of 40%, the RSPT will be a significant impost on Australian resource entities. According to the Government's estimates, the RSPT will raise some $12 billion in 2012/13 to 2013-14.

The financial impact will be even more significant in subsequent years when all resource projects complete their transition into the RSPT.

"At tax rate of 40%, the RSPT will be a significant impost…"

Detail of how the RSPT will operate is subject to further consultation but the basic framework is as follows:

> ***RSPT liability = RSPT Profit x 40%; where***
> ***RSPT Profit = Assessable revenue – Deductible expenditure.***

Assessable revenue includes receipts from the sale of the sources but excludes receipts from the transfer of ownership of a resource project between owners.

Deductible expenditure includes the cost of extracting resources and getting them to the taxing point (excluding interest and financing costs, payments to acquire an interest in an existing project or resource, income tax, and GST). There will also be a special deduction for a "normal" return to the investor, calculated at the long-term government bond rate.

The proposed taxing point is under consultation. Adopting the approach of the existing PRRT (Petroleum Resource Rent Tax), it would be the point when a saleable product exists.

Streamlined or accelerated capital allowances may be introduced after consultation with the industry. However, the capital base of a project will remain intact despite changes in ownership.

Exploration expenditure will be immediately deductible in determining the RSPT. A new resource exploration rebate will be introduced into the income tax system which will provide a refundable tax offset at the prevailing company tax rate for relevant exploration expenditure in respect of Australian activities.

RSPT will not replace State mining royalties. Instead, a refundable credit will apply in determining the RSPT. Currently, the suggestion is that credit will be

PERTH AUSTRALIA

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"…The starting base is then written off on an accelerated basis…"

available at amount calculated at the existing rate of royalties, scheduled increases and indexation.
Existing resource projects will be brought into the RSPT, with the exception of projects already covered by the PRRT. Upon transition of an existing project into the RSPT, it would 'acquire' a RSPT starting base. The starting base is then written off on an accelerated basis in the first 5 years of the RSPT. The write off will reduce the RSPT Profit and thus provides a cash flow relief to the increased tax burden of the resources companies.

Stop Press: Kevin Rudd stepped down as the Australian Prime Minister on 24 June 2010 after intense conflict over the proposed RSPT.

His successor, Julia Gillard, while of the view that the country deserves its fair share of mining industry revenue, welcomes negotiation with the industry.

MELBOURNE AUSTRALIA

SAWARD DAWSON
chartered accountants

Australia's future tax direction

"…reduction of company tax rate from 30% to 25% in 2013/14…"

The long awaited Henry Review was publicly released on 2 May 2010 followed by the 2010 Federal Budget ten days after. With the theme of 'a stronger, fairer and simpler tax system', the Henry Review has made 138 recommendations, some of which were accepted, others rejected but mostly flagged for future consideration.

One of the most significant reforms arising from the Henry Review is the introduction of a new Resource Super Profits Tax (RSPT) from 1 July 2012 – see separate article in this issue.
Highlights of the other changes announced in the Henry Review and the Budget are as follow.

- For businesses, there will be a reduction of company tax rate from 30% to 29% in 2013/14 and to 28% in 2014/15, with eligible small business companies accessing the tax cuts earlier. Further, depreciation deduction for small businesses will be simplified with an immediate deduction for assets under A$5,000 and a single depreciation pool of 30% for assets over A$5,000.

- The reduction of interest withholding tax rate from 10% to 7.5% by 2013/14 and to 5% by 2014/15.

- On the superannuation front, there will be a gradual increase of employer's superannuation guarantee contribution currently at 9% to 12% by 2019/20. Further, the government has also announced assistance to boost retirement savings for low income earners with the introduction of a new government superannuation contribution from 1 July 2012 up to A$500 for workers with income under A$37,000.
- For individuals, the government continues to roll out the promised tax cuts. As a step towards a simpler 'tick and flick' system of pre-filled tax returns, the government has announced an optional standard

deduction of A$500 from 1 July 2010 (to be increased to A$1,000 in the following year) available for individual taxpayers for work-related expenses and costs of managing their tax affairs.

- A 50% tax discount on up to A$1,000 of interest earned, to improve incentives for individuals to save. The government has also announced changes to the first home savers accounts (FHSA) to allow Australian to own their first home sooner by allowing earlier access to the savings in FHSA.
- Changes announced in relation to Goods and Services Tax (GST) are mostly related to GST administration and there is nothing that significantly changes the operation of GST.

MELBOURNE AUSTRALIA

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"…optional standard deduction of A$500…for individual taxpayers for work related expenses…"

Withholding tax on other income – Long waited Public Ruling

MALAYSIA

RUSSELL BEDFORD MALAYSIA

Withholding tax on other income (Section 109F) came into effect on 1 January 2009. It includes a 'catch-all' provision that applies to unspecified income (see Volume 1 Issue No.1 of our 2009 Newsletter under the headline of Withholding tax "catch all" provisions in Malaysia).

A lot of questions were raised - particularly in determining whether a payment to a non resident would fall within the ambit of this new section given that there is no specific definition on "other income". The examples given during the budget announcement on this proposed legislation, i.e. commission, guarantee fee and introducer fee, have created more concerns among the resident tax payers and non resident recipients.

The long awaited Public Ruling was finally released in April 2010. As guidance, the criteria given in determining whether the payment is regarded as "other income" is:

- the payment is revenue and not capital in nature.
- the payment is not income that falls under paragraphs 4(a) to 4(e) (specific sources of income subject to income tax) and Section 4A (specific types of income subject to withholding tax) of the Income Tax Act, 1967.
- the payment is in the nature of miscellaneous / casual income to the nonresident recipient, which is received outside the ordinary course of trade or vocation.
- the payment is for an isolated transaction and absence of repetition of transactions to indicate the commercial nature of the transaction.

The Public Ruling emphasizes that determination of whether a payment made to a non resident falls under other income [Section 4(f)] depends on facts and circumstances of each case. For example, Mr A from Malaysia wishes to"

"…regarded as "other income"…causal income to the nonresident… outside the ordinary course of business…."

MALAYSIA

(Continued)

"...business income of the recipient and thus, not subject to withholding tax..."

sell a property in Malaysia, a friend from Singapore who works as a teacher introduces a buyer from Singapore to Mr A and finally the deal is closed. Mr A pays his friend a commission and such commission is subject to withholding tax under Section 109F as the commission is a casual income of the nonresident. If the Singapore friend is a property agent, then the commission is business income of the recipient and thus, not subject to withholding tax under Section 109F.

The Public Ruling has also provided guidance (non exhaustive) in respect of documents required during tax audit to substantiate the determination of nature of payment to the nonresident as follows:

- business contract or agreement.
- auditor's confirmation that verifies the income derived by the nonresident recipient is in the ordinary trade or profession of that person.
- copy of the nonresident recipient's audited accounts.
- copy of a notice of assessment of the non recipient.
- copy of a business registration or license of the nonresident recipient.

The documents must be certified as true copies by either the issuing agency or a notary public.
The payer shall also refer to the Double Taxation Agreement (DTA) signed with the country where the nonresident recipient resides to determine whether there are DTA protections.

Although the criteria provided in the Public Ruling serves as a clearer guide in determining whether a payment to nonresident falls within the ambit of Section 109F, the supporting documents required causes the onus of proof on the payer to become heavier.

Directors cannot hide behind specialists

SINGAPORE

STEVEN TAN RUSSELL BEDFORD PAC
Public Accounting Corporation

In May 2010, the High Court in Singapore sent out a clear message that company directors must not abdicate their responsibilities under the pretext of delegation, even if an issue is not in their area of expertise.

Appeal Court Judge V. K. Rajah extended a ban that prohibits a director, Mr C H Ong, from acting as a company director to two years from one year imposed by a District Court last year.

Mr Ong's case has attracted the attention of corporate watchers keen to learn the extent of the liability of independent directors and the scope of their duties.

Mr Ong, the then non-executive chairman and audit committee chairman of a listed air cargo logistics company, approved the release of a misleading announcement to the Singapore Exchange without having sight or knowledge of the contents of the announcement. As the Chairman and independent director, he informed the company secretary that he would agree to any announcement that would be issued by the company so long as it was approved by a fellow director who is a senior lawyer as he had to participate in an official function of a town council on the same day the announcement was to be made.
The District Judge Mr Eddy Tham found that Mr Ong by agreeing beforehand to whatever announcement was to be made as long as a fellow director who is a senior

lawyer approved of it, was clearly derelict in the discharge of his duty.

The fact that Mr Ong was not trained in law but in finance and audit and the presence of two other legally trained officers as well as external legal counsel clearly did not excuse him from abdicating his duty. Mr Ong had to at the very least address his mind to the wordings of the announcement and to scrutinize them with the relevant legal input from his fellow directors as well as external counsel to ensure the announcement would meet the statutory requirement of disclosure. Mr Ong could and should make himself available and contactable to discharge the duty of his office as chairman and independent director.

The Appeal Judge Mr V K Rajah gave his ground for doubling the one-year disqualification order. He said that Mr Ong has committed nothing short of a serious lapse in entirely abdicating his corporate responsibilities.

The gravamen of the charge is that Mr Ong consciously abdicated from his responsibilities; he never asked to see the draft announcement before it was released to the public, and was quite content to delegate his responsibility to another director.

During the appeal hearing, Justice V K Rajah noted that the law does not impose the obligation for directors to get it right all the time but it requires directors to exercise due diligence and to participate if called upon. Directors have to bring to bear their own judgment in evaluating advice received from professionals and not seek shelter behind other specialist directors even if they are not expert in that issue of concern.

SINGAPORE

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"...could and should make himself available and contactable to discharge the duty…"

World Cup and APAC - Interesting numbers

The 2010 World Cup is the 19th FIFA World Cup tournament.

There are 32 qualifying teams.

The 1st Asian team to play in the qualifying round was the Dutch East Indies (1938), now known as Indonesia.

The 1st Asian team to make it to Semi-finals was South Korea – 2002.

The 1st World Cup hosted in Asia was also in 2002 – Japan and South Korea were the co-hosts.

Teams from APAC qualifying for three times or more include:

- South Korea – qualified for 7 consecutive tournaments since 1986 plus first time playing in 1954
- Japan – played consecutively for four tournaments since 1998
- Australia – qualified in three World Cup tournaments – 1974, 2006 and 2010

Most surprise play by Asian team – Korea D.P.R (North Korea) – 1966, reached Quarter-finals by beating Italy 1-0. Failed however to move onto the next round after losing to Portugal by 3-5 despite taking a 3-0 lead in the first 30 minutes of match time.

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