Asia Pacific Real Estate Tax Updates

Welcome to our March 2024 edition of Asia Pacific Real Estate Tax Updates, where we draw your attention to the latest developments relevant to the industry in the region.

We encourage you to get in touch with the country contacts contacts listed, or your usual PwC contact, should you wish to discuss anything further.

Stuart Porter
Asia Pacific Real Estate Tax Leader
+81 80 1145 3474
stuart.porter@pwc.com

China

Preferential Deed Tax policies for corporate transformation and restructuring are extended for three years

- The Ministry of Finance ("MOF") and the State Taxation Administration ("STA") issued the Public Notice on Extending the Deed Tax Policy to Further Support Transformation and Restructuring by Enterprises and Public Institutions ("PN [2023] No.49") on 22 September 2023, extending the reduction/exemption treatment of Deed Tax for the following types of corporate transformation and restructuring in PN [2021] No.17, including: transformation of enterprises and public institutions, merger, spin-off, bankruptcy, asset assignment, debt-to-equity swap, equity (share) transfer.
- The valid period of PN [2023] No.49 is from 1 January 2024 to 31 December 2027.

Preferential Land Appreciation Tax policies for corporate transformation and restructuring are extended for three years

- The MOF and the STA issued the Public Notice on Extending the Land Appreciation Tax ("LAT") Policy for Corporate Transformation and Restructuring ("PN [2023] No. 51") on 22 September 2023, extending the provisional LAT exemption policy on corporate transformation as a whole, merger, spin-off, and investment with real property and continues to adhere to the non-applicability of this exemption policy to real property transfer transactions where either party to the transactions is a real property development enterprise. In addition, the requirements for "investors of the original enterprise to remain unchanged", "investors to be the same as those of the original enterprise" and "investors of the original enterprise to continue to exist" remain unchanged.
- The Public Notice is effective until 31 December 2027.

Major Insights related to Real Estate Industry in the Process of VAT Legislation

- The 5th Session of the 14th NPC Standing Committee reviewed the <Value Added Tax (VAT) Law of the People's Republic of China> ("Draft VAT Law for the Second Round Review") and published it on the NPC official website for public opinions as of 30 September 2023.
- As a typical capital intensive industry, sufficient free cash flow and low financing cost are prerequisite for ensuring the normal operation of the real estate enterprise. Under prevailing VAT regulation, the input VAT generated from loan service is not creditable which would be the financing cost of the enterprises.
- The Draft Law removes loan service from "non-creditable input VAT items" which may have significant impacts on real estate enterprises. We suggest paying further attention to the implementation rules of VAT Law and other VAT regulations for clarification.

Tax Policy of the Pilot Program of Real Estate Investment Trusts in the Infrastructure Sector

The MOF and the STA issued the Public Notice on the Tax Policies of the Pilot Program of Real Estate Investment Trusts ("REITs") in the Infrastructure Sector ("PN [2022] No.3) on 26 January 2022, clarifying relevant tax policies in order to support the pilot program of REITs in the Infrastructure Sector, clarify the Corporate Income Tax ("CIT") treatment and reduce the tax burden at different stage of the establishment of infrastructure REITs.

Main Terms of PN [2022] No.3

PN [2022] No.3 clarifies different tax treatments for different stages of the infrastructure REITs:

1) Before the establishment of infrastructure REITs, the original equity holder transferring the infrastructure assets to the project company in exchange for its equity shall be subject to special tax treatment ("STT") as follows:
   - The tax basis of the infrastructure assets received by the project company shall be determined according to the original tax basis of the infrastructure assets; while the tax basis of the equity in the project company received by the original equity holder shall be determined according to the original tax basis of the infrastructure assets.
   - Neither the original equity holder nor the project company should recognize any gains, and no CIT shall be levied on the transfer.
2) During the establishment of infrastructure REITs, when the original equity holder transfers the equity in the project company to the infrastructure REITs, the CIT payment for the gains arising from assets evaluation is allowed to be deferred until the completion of raising funds and the payment of consideration.
   - Among them, the CIT payment for the gains arising from assets evaluation corresponding to the infrastructure REITs held by the original equity holder in accordance with the requirements of the strategic placement is allowed to be deferred until the actual transfer.
   - The original equity holder subscribes (increases) the share of the infrastructure REITs through the secondary market and should identify the priority disposal strategic placement share in accordance with the first-in-first-out principle.
3) The tax treatment regarding the operation and distribution of infrastructure REITs currently follows the provisions of prevailing tax laws and regulations.

The valid date of PN [2022] No.3 starts from 1 January 2021. Cases occurred before 1 January 2021, in accordance with the PN [2022] No.3 could also follow the Public Notice.

Michael Ma
Partner
+86 (21) 2323 3743
michael.ma@cn.pwc.com

pwc

Hong Kong

Foreign-sourced income exemption regime for passive income

- The Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022 and Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Ordinance 2023 (collectively called "the Amendment Ordinances") came into effected on 1 January 2023 and 2024 respectively. The Amendment Ordinances introduce refinements to Hong Kong's foreign-sourced income exemption ("FSIE") regime. Under the FSIE regime, four types of offshore passive income, namely (1) interest, (2) income from intellectual properties ("IP"), (3) dividends and (4) disposal gains in relation to all types of property (including shares or equity interest) (collectively "in-scope offshore passive income") will be deemed to be sourced from Hong Kong and chargeable to profits tax under certain circumstances.
- This refined FSIE regime should affect Hong Kong holding companies deriving offshore interest income or dividend income.
- For more details, please refer to our News Flashes in relation to the development of the FSIE regime.

Tax certainty enhancement scheme

- The Inland Revenue (Amendment) (Disposal Gain by Holder of Qualifying Equity Interests) Ordinance 2023 applies to (i) gains derived from an eligible onshore equity disposal that occurs on or after 1 January 2024 and (ii) the gains accruing in or after the year of assessment 2023/24. Under the tax certainty enhancement scheme ("Enhancement Scheme"), onshore equity disposal gains that satisfy all the prescribed conditions, including, inter alia, that the investor entity has held at least 15% of the equity interests in the investee entity for a continuous period of at least 24 months immediately prior to the date of disposal of such interests, will be regarded as capital in nature and not chargeable to profits tax.
- There are however specified requirements when the underlying assets are real estate.
- For more details, please refer to our News Flash.

Hong Kong proposes introducing a company re-domiciliation regime

- Since 2021, Hong Kong has already put into place re-domiciliation mechanisms for open-ended fund companies and limited partnership funds to attract existing foreign funds to establish and operate in Hong Kong.
- As a further step to strengthen Hong Kong's position as a global business and financial hub, the Financial Secretary announced in the 2023/24 Budget the introduction of a company re-domiciliation regime to facilitate non-Hong Kong companies to redomicile to Hong Kong. The Financial Services and the Treasury Bureau then conducted a public consultation to solicit views on the key features of the proposed regime outlined in the consultation paper titled *Proposed company re-domiciliation regime in Hong Kong.*
- Subject to the views collected in the public consultation, the relevant legislative amendment instrument is targeted to be submitted to the Legislative Council in 2023/2024.
- For more details, please refer to our News Flash.

Development of BEPS 2.0

- As foreshadowed in the 2023/24 Budget announced in February 2023, Hong Kong will implement the 15% global minimum tax on in-scope multinational enterprise ("MNE") groups and the domestic minimum top-up tax ("DMTT") in Hong Kong ("HKMTT") starting from 2025 onwards.
- On 21 December 2023, the Government published its much anticipated consultation paper on the implementation of the global minimum tax and the HKMTT in Hong Kong. The consultation is open until 20 March 2024, with the expectation that draft legislation will be published in the second half of 2024.
- The proposed legislative framework for the global minimum tax and the HKMTT closely follows the global anti-base erosion rules promulgated by the Organisation for Economic Co-operation and Development. It is proposed that the global minimum tax and the HKMTT will take effect for a fiscal year beginning on or after 1 January 2025.
- For more details, please refer to our News Flash.

The 2024/25 Hong Kong Budget

- The Financial Secretary of Hong Kong has delivered the 2024/25 Budget Speech on 28 February 2024. He has announced the following changes to stamp duty for real estate transactions:
  - Cancellation of all demand-side management measures for residential properties, i.e., no Special Stamp Duty, Buyer's Stamp Duty or New Residential Stamp Duty needs to be paid for any residential property transaction.
  - Stamp duties payable on the transfer of real estate investment trust units and the jobbing business of option market-makers will be waived.

David Kan
Partner
+852 2289 3502
david.kh.kan@hk.pwc.com

India

Income tax updates

- The Indian tax laws are amended annually by the Indian government. Certain noteworthy amendments enacted under the income tax laws impacting the real estate sector are summarised below:
  - Distributions by Real Estate Investment Trusts ("REITs") that are in the nature of capital repayments shall reduce the cost of acquisition of units in the hands of unitholders (including units received on swap of shares).
  - Also, the distributions exceeding the unit issue price shall be taxable as "specified sum" in the hands of the unitholders of REIT. A formula based mechanism has been prescribed for computation of "specified sum".
  - Indian companies were previously required to withhold taxes on interest on securities held by REITs. The tax withholding requirement has been done away from 1 April 2023. This tax amendment would optimise the cash flows between the Indian companies held by REITs.

  More details on tax amendments can be found here.
- Angel tax which provides for tax on the difference between the subscription price received and the fair market value of shares issued is taxable in the hands of the Indian portfolio company. These provisions were earlier applicable only in case of shares issued to residents. The said angel tax is now extended even to shares issued to non-residents.
  - The share valuation guidelines in this regard have been updated from 25 September 2023.

  Listen to our podcast for this update here.

Goods & Service Tax updates

- Recently, the Telangana High Court ruled that the transfer of development rights by landowners to developers under Joint Development Agreements ("JDAs") does not constitute an outright sale of land and attracts Goods & Service Tax ("GST").
  - The controversy on the taxability of development rights under JDAs has remained a vexed issue since the service tax regime. The issue of service tax chargeable on the constructed area that developers provided to landowners in lieu of the development right has also been litigated in the past before High Courts and has even travelled to the Supreme Court. For more details refer here.
- Applicability of GST on corporate and personal guarantee without consideration has been a matter of ambiguity. In this regard, the Government has clarified the following aspects:
  - Personal guarantee provided to the bank/ financial institution without consideration by the director of a company will not be treated as a supply.
  - Corporate guarantees provided to the banks/financial institution on behalf related parties without consideration would qualify as deemed supply and will be subject to GST. A new valuation provision to this effect has been inserted under the GST law, wherein the value of transaction between related parties is deemed to be 1% of the amount of the guarantee offered or actual consideration, whichever is higher.

  While clarification on personal guarantee is a welcome move, GST on corporate guarantee would tend to increase the project funding costs for real estate developers which are generally backed by corporate guarantees. More details in this regard could be found here.
- The Gujarat High Court has read down the notification prescribing a mandatory deemed deduction of one-third of the value of a construction contract towards land as *ultra vires* the provisions and scheme of the GST law. This decision would impact the taxability and valuation of construction contracts including interpretation of valuation norms. More details here.

Regulatory updates

- The Securities and Exchange Board of India ("SEBI"), the regulatory authority for REITs, has made the following announcements:
  - Framework for regulating platforms offering fractional ownership of real estate assets. Such fractional ownership of real estate assets is proposed to be introduced as Micro, Small and Medium REITs ("MSM REITs"). Access the SEBI consultation paper here.
  - To standardise the calculation of net distributable cash flows by REITs, a revised framework has been prescribed that would come in effect from 1 April 2024. The revised framework prescribed for REITs could be found here.
  - The SEBI Regulations governing REITs were also amended to factor the below –

    (i) revised framework for perpetual lock-in for the Sponsor;

    (ii) introduction of self sponsored REIT; and

    (iii) special nomination rights to unitholders in REITs.

Bhairav Dalal
Partner
+91 98338 72610
bhairav.dalal@pwc.com

Japan

2024 Tax Reform Proposals

- The Japanese government released the 2024 Tax Reform Proposals on 14 December 2023, introducing various proposed changes to the existing tax legislation, among which the following may be of particular relevance or interest to the real estate industry:
  - **Earning stripping rules**:

    Under the current earning stripping rules, any non-deductible interest (broadly, in excess of 20% of Adjusted Income as defined) can be carried forward for seven years. Under the 2024 tax reform proposals, it is proposed that the carry forward period for non-deductible interest for fiscal years beginning between 1 April 2022 and 31 March 2025 be extended to ten years.
  - **Size based enterprise tax**

    Under existing laws, a small or medium enterprise ("SME") refers to a company that does not have paid-in capital of more than JPY 100m, or one that is not wholly owned by a company that has paid-in capital of JPY 500m or more. This classification in turn affects the effective tax rate and whether size-based taxation would apply to the company.

    Under the 2024 tax reform proposals, it is proposed that the threshold for size-based taxation be changed such that (i) a taxpayer that is subject to size-based taxation in the previous fiscal year will be subject to size-based taxation in the current year if the total amount of paid-in capital and capital surplus exceeds JPY 1bn (even if its paid-in capital is JPY 100m or less) for fiscal years beginning 1 April 2025; and (ii) a wholly-owned subsidiary of a corporation whose total paid in capital and capital surplus exceeds JPY 5bn, and where the total paid-in capital and capital surplus of the company exceeds JPY 200m for fiscal years beginning 1 April 2026.

    Under the current rules, a Japanese *godo kaisha* ("GK"), which is commonly used as an onshore shareholder in a property owning vehicle, a *tokutei mokuteki kaisha* ("TMK"), typically allocates most of its share capital to capital surplus. As such, a GK is unlikely to have paid-in capital of more than JPY 100 million in practice, such that size-based taxation is generally not expected to apply under current rules, provided it is not wholly owned by a company that has paid-in capital of JPY500 million or more. If the tax reform changes are enacted, the classification may be impacted if the revised rules are triggered.
- More details on the 2024 Tax Reform Proposals can be found here.

Invoice system for consumption tax

- The invoice system for consumption tax has come into effect from 1 October 2023. Under this system, a Japanese company is required to – in addition to having consumption taxpayer status – obtain a "qualified invoice" from its vendor in order to claim consumption tax credit on its expenses.
- From the seller / vendor's perspective, it is required to have qualified invoice issuer status – which requires it to be a registered consumption taxpayer -- in order to issue qualified invoices in respect of its sales.
- More details on the invoice system can be found here.

Elimination of WHT on TMK dividends paid to GK

- With effect from 1 October 2023, dividends paid by a Japanese company to a domestic shareholder which owns more than one-third of the dividend-paying company are no longer subject to withholding tax (20.42%).
- For real estate structures utilising a TMK with a GK as its majority onshore preferred shareholder, the GK should no longer be subject to withholding tax on TMK dividends. The GK will instead report and pay tax on the dividends received when it files its tax return.

Kenji Nakamura

Partner

+81 80 1114 4029

kenji.nakamura@pwc.com

Malaysia

Capital Gains Tax and its implications to the Malaysian Fund Management Industry

- Prior to 1 January 2024, gains on sale of investments such as shares are generally not subject to any tax in Malaysia, other than gains on disposal of real property situated in Malaysia or shares in a real property company ("RPC"). Real Property Gains Tax ("RPGT") would be applicable at rates from 30% to 10% or 0% depending on the ownership period and the profile of the disposer.
- Pursuant to the Finance (No. 2) Act 2023, Capital Gains Tax ("CGT") has now been introduced in Malaysia and will be imposed on gains from the disposal of capital assets by Companies, Limited Liability Partnerships, Cooperatives and Trust Bodies. Individuals will not be subject to CGT.

(i) Foreign sourced capital gains

- Effective from 1 January 2024, the scope of taxable foreign-sourced income received in Malaysia will include gains from disposal of capital assets from outside Malaysia. The foreign gains remitted to Malaysia will be subject to the prevailing income tax rates, currently at 24% for companies.
- The gains are eligible for tax exemption subject to meeting economic substance requirements (i.e., "adequate number" of employees with the necessary qualifications to carry out the specific economic activities in Malaysia are employed and incurred an "adequate" amount of operating expenditure to carry out the specific economic activities in Malaysia).
- Such capital gains from foreign investments may be subject to taxes or withholding taxes in the specific foreign country. Subject to meeting the relevant prescribed requirements, the Malaysian taxpayer is entitled for double taxation relief on any foreign tax suffered on the income in respect of overseas investment.

(ii) Malaysian capital gains

- From 1 March 2024, CGT will be applicable on gain on sale of shares in unlisted Malaysian companies and shares in foreign companies which ultimately have investments in Malaysian real property at the following rates:-

Share Acquisition Date	CGT rate
Before 1 January 2024	Choice of rate: i. 10% on net gain; or ii. 2% on gross sales value
From 1 January 2024	10% on net gain

- In addition, gains from disposal of RPC shares which are held by persons that are subject to CGT will now be subject to CGT instead of RPGT from 1 March 2024.
- "Shares" has been defined to be all or any of the following:

  a. stock and shares in a company;
  b. loan stock and debentures issued by a company or any other corporate body incorporated in Malaysia;
  c. a member's interest in a company not limited by shares whether or not it has a share capital;
  d. any option or other right in, over or relating to shares as defined in paragraphs (a) to (c) above.

- Any capital losses incurred may be used to set off against the gains from disposal of other capital assets. Accumulated unutilised capital losses can be carried forward for 10 years of assessment ("YAs") to be set off against future capital gains from disposal of capital assets and will be disregarded thereafter.
- Exemptions from CGT have been announced for the following although detailed legislation / guidelines are still pending:

  - restructuring within the same group
  - initial public offerings approved by Bursa Malaysia
  - venture capital companies
  - unit trusts*

**Note - On 16 January 2024, the Government announced that unit trusts will be exempted from CGT and income tax on foreign sourced income ("FSI"). The exemption on CGT is effective from 1 January 2024 until 31 December 2028, whilst the exemption from income tax on FSI takes effect from 1 January 2024 until 31 December 2026.*

- Taxpayers would need to file tax returns electronically and pay the relevant CGT within 60 days from the date of each disposal.

Jennifer Chang
Partner
+60 3 2173 1828
jennifer.chang@pwc.com

Philippines

Ease of Paying Taxes Act

Republic Act No. 11976, otherwise known as the "Ease of Paying Taxes Act" ("EOPT") took effect on 22 January 2024. It introduced important amendments to the National Internal Revenue Code of 1997 ("Tax Code") that seek to modernize tax administration, update the tax system and make tax compliance easy and least costly to taxpayers.

The amendments include the following:

- **No more wrong-venue filing and payment**

  Originally, tax returns and taxes can only be filed and paid with Authorized Agent Banks ("AAB") that are within the territorial jurisdiction of the specific Revenue District Office ("RDO") where the taxpayer is registered. Wrong-venue filings were subject to a substantial 25% surcharge.

  Under the EOPT Act, however, tax returns and taxes can now be filed and paid with any AAB regardless of RDO jurisdiction, without being subjected to penalties.

  Taxpayers have the further option of filing tax returns electronically via the electronic filing and payment system ("eFPS") or electronic BIR Forms ("eBIRForms") facility, and of paying taxes electronically through online payment platforms.

- **Simplified withholding tax requirement**

  Under the EOPT Act, the obligation to withhold income taxes arises only when the income becomes payable.

  This abolishes the rule that taxpayers must withhold when the income is paid or becomes payable, whichever comes first.

- **Uniform accrual of value-added tax**

  Similar to sales of goods, the value-added tax ("VAT") on sales of services is now also based on gross sales.

  Before the EOPT Act, the VAT on goods was based on gross sales while VAT on goods was based on gross receipts.

- **Uniform VAT invoicing requirements**

  Similar to purchases of goods, the input VAT on purchases of services should now be also supported by VAT invoices.

  Before the EOPT Act, input VAT from purchases of services were required to be supported by VAT official receipts.

- **Withholding of taxes is no longer a requirement for deductibility**

  Section 34(K) of the Tax Code required income payors to withhold and remit the applicable withholding income tax from their accruals or payments before they the can validly deduct such accruals or payments as expenses in their income tax returns.

  This rule was repealed by the EOPT Act. Hence, the withholding of applicable income taxes is no longer a requirement for the deductibility of expenses for income tax purposes.

- **Classification of taxpayers for tax administration purposes**

  Taxpayers have been classified into micro, small, medium and large taxpayers.

- **Proper taxable period when to utilize excess creditable withholding taxes**

  The EOPT clarified that claims for tax credit of creditable income taxes withheld by customers/clients in a previous period are still creditable in the subsequent taxable year if such creditable withholding taxes were declared in the income tax return where the corresponding income was reported.

Rent Control Act of 2009

Republic Act No. 9653, otherwise known as the "Rent Control Act of 2009", was enacted to protect housing tenants in the lower income brackets and other beneficiaries from unreasonable rent increases.

From 2009 to 31 December 2013, this law prohibited the increase of rent of residential units by more the 7% as long as said units are occupied by the same lessee. This applied only to monthly rentals not exceeding P10,000 in highly urbanized areas and P5,000 in other areas.

However, the effectivity period of the cap has been extended by the government from year to year up to the present.

Recently, the National Human Settlements Board issued National Human Settlements Board Resolution No. 2023-03 approving the continuation of a 4% cap annually for those paying monthly rentals of P10,000 or below. This cap is effective from 1 January 2024 to 31 December 2024.

Malou P. Lim
Partner
+63 2 845 2728
malou.p.lim@pwc.com

South Korea

The Requirement of Reporting on the Details of a Real Estate Fund's operating income, income reservation, and distribution

- According to the tax amendment to be effective from January 2025, an asset management company of a Real Estate Fund ("REF") under the Capital Market Act shall be required to semi-annually report to the relevant tax office the details on REF's operating income, income reservation, and distribution to its beneficiaries.
- If the above requirement is not satisfied, a Trust type REF (currently not subject to income tax) shall not be a qualifying REF and it shall be subject to income tax at the regular corporate income tax at the Trust type REF level starting from 2025.
- Currently, to be a qualifying REF, a Trust type REF should satisfy the following conditions:
  - (i) Trust type REF is established in compliance with the Capital Market Act;
  - (ii) Trust type REF distributes its profit once or more each fiscal period (for this purpose, Trust REF is allowed to not distribute the valuation gains);
  - (iii)Contribution to and distribution from Trust type REF is made in cash or assets expressed in monetary terms

Taejin Park
Partner
+82 2 709 8833
taejin.park@pwc.com

Taiwan

Version 2.0 of the differential house tax rates of residential houses

To reduce the tax burden on individual owner-occupied houses, encourage effective utilization of houses, and rationalize the house tax, the Ministry of Finance ("MOF") proposed to revise the house tax system, i.e., version 2.0 of the differential house tax rates of residential houses. The amended House Tax Act was passed in December 2023, and will be implemented on 1 July 2024.

a) This policy aims to increase the tax burden of taxpayers who do not utilize their houses effectively by raising the tax rate of non-owner-occupied residential houses from the range between 1.5% and 3.6% to the range between 2% and 4.8%.

b) The house tax rate for owner-occupied residential properties whose owner has only one house in the country will be reduced to 1%. This is to reduce the tax burden of the owner of residential houses which are only owner-occupied.

c) The statutory tax rate for inherited co-owned residential properties and rental properties whose rental income are declared and reach the Local Prevailing Rental Standard will also be reduced to the range between 1.5% and 2.4%. This is to encourage house owners to lease their unused properties, and consider the uncontrollable nature of inheriting co-owned houses, thus making houses vacant.

d) The statutory tax rate of residential houses for sale, which are owned by the developer less than 2 years, will be in the range between 2% and 3.6% (the tax rate is 2% to 4.8% if residential houses are held by the developer longer than 2 years). This is to encourage the developer to sell residential houses within 2 years of completion of house construction.

Taiwan's Position on Implementation of OECD Pillar 2 Rules

The MOF issued a newsletter on 30 August 2023 indicating that there is no timeline for implementation of the OECD Pillar 2 rules in Taiwan. Instead, the following steps are proposed:

a) In the short term, the primary focus is to review Taiwan's tax system and tax incentives to achieve the effective tax rate at no lower than 15% (note that the statutory corporate income tax rate is 20%) for MNEs, and reducing compliance costs for MNEs operating in Taiwan. The Ministry of Finance may consider raising the Alternative Minimum Tax rate from 12% to 15% (note that the Alternative Minimum Tax Act was not drafted based on the OECD Pillar 2 rules).

b) In the medium term, implementation of Qualified Domestic Top-up Tax ("QDMTT") may be considered to prevent other jurisdictions from imposing top-up taxes on low-taxed entities based in Taiwan.

c) In the long term, implementation of the Income Inclusion Rule ("IIR") and Undertaxed Payments Rule ("UTPR") of the Global Anti-Base Erosion ("GloBE") rules will be considered, depending on the progress of international implementation of OECD Pillar 2 rules.

Taiwan (*cont'd*)

The Taiwan-Korea tax treaty in effect from 1 January 2024, with capital gains article on indirect transfer of real estate

Under the current real property transfer tax regime, either direct transfer or indirect transfer of Taiwan real estate properties may be subject to income tax.

Further, indirect transfer of Taiwan real estate (i.e., transfer of a controlled onshore/ offshore HoldCo which derives 50% or more of the share value from Taiwan real estate) by an onshore/offshore transferor may be subject to income tax of up to 45%.

Under the capital gains article of the Taiwan-Korea tax treaty, if over 50% of the value of the shares is directly or indirectly derived from Taiwan real estate, capital gains from share sales may be taxable in Taiwan.

Following the above, the Taiwan-Korea tax treaty (and other tax treaties with similar capital gains article) may not be relied upon to mitigate the aforesaid indirect transfer tax

Jessie Chen
Partner
+886 2 2729 6666
jessie.chen@pwc.com

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