# EY Asia-Pacific private equity tax network

## Quarterly top 10 tax topics
## **May 2024**

## Hong Kong

### 1 Hong Kong removed from the European Union's (EU) watchlist on tax co-operation

On 20 January 2024, the EU updated its watchlist. Among several other jurisdictions, Hong Kong was removed from the list as a result of enacting and enhancing its Foreign-sourced Income Exemption (FSIE) regime. This means that the exemption of certain passive offshore income in Hong Kong under the territorial source tax regime would not be regarded as a harmful tax practice.

Hong Kong was included in the EU watchlist in October 2021 and the government had then committed to amend its FSIE regime for passive income. The FSIE regime for foreign-sourced dividend, interest, income derived from the use of intellectual property (IP income) and disposal gain derived from the sale of equity interests was first introduced on 1 January 2023.

When the above specified foreign-sourced income is accrued to and received in Hong Kong by members of multinational enterprise (MNE) groups carrying on a trade, profession and business in Hong Kong, such income would be deemed as arising in or derived from Hong Kong and therefore taxable in Hong Kong. Such income will however be exempt from tax under the FSIE regime if the relevant exception conditions (i.e., economic substance requirement, participation requirement or the nexus requirement) are fulfilled.

Notwithstanding the implementation of the FSIE regime in 2023, the updated Guidance on FSIE regimes promulgated by the EU in December 2022 extended the scope of disposal gains from previously covering disposal gains on equity interests only to all other types of assets.

Given that the updated guidance on FSIE regimes was only issued in December 2022, the FSIE regime introduced and effective from 1 January 2023 was not able to incorporate the requirements specified in the updated guidance.

As such, jurisdictions with ongoing FSIE reforms, including Hong Kong, were kept on the watchlist pending completion of the necessary further legislative amendments.

On 1 January 2024, the refined FSIE regime which extends the scope of foreign-sourced disposal gains to cover all other types of assets, became effective by law. Certain exclusions and reliefs such as excluding disposal gains on assets transacted by a trader in their normal course of business and intra-group transfer relief for disposal of assets within a group are however available under the refined FSIE regime.

The removal of Hong Kong from the EU's watchlist is a welcomed move as it would enhance the reputation of Hong Kong as an international trading and financial center, thereby further promoting its trade and investment.

The exclusion, under the FSIE regime, of disposal gains on assets transacted by a trader in their normal course of business without requiring the trader to have economic substance requirement in Hong Kong is equally welcome. This condition for the exclusion would better preserve the viability of offshore claims in Hong Kong for trading profits made by a trader under section 14 of the Inland Revenue Ordinance (IRO).

In addition, the intra-group transfer relief, under the FSIE regime, for the disposal of assets would facilitate group restructurings that involve transferring of assets within a group.

Falling outside the FSIE regime, the capital-versus-revenue and onshore-versus-offshore nature and, hence, the taxability of such gains and transfers under the normal profits tax rules of Hong Kong will continue to be governed by section 14 of the IRO.

### 2 Hong Kong 2024-25 budget

The Hong Kong 2024-25 budget has the following key announcements:

1. **Profits Tax Deduction and Building Allowances**

- Tax deduction will be provided for expenses incurred in restoring leased premises.
- Under current regime, annual allowances at 4% of the construction costs of an industrial or commercial building can be claimed by taxpayers over a maximum period of 25 years starting from the year of assessment (YOA) in which the building was first used (starting from YOA 1998/99 for commercial buildings constructed prior to YOA 1998/99). For commercial buildings that were constructed before YOA 1998/99, the 25-year period started from YOA 1998/99 and was supposed to be expired by YOA 2023/24 (i.e., 4% annual allowances could no longer be claimed).
- The 25-year time limit for claiming industrial and commercial building allowances will be removed from the year of assessment 2024/25 which taxpayer could continue to claim the 4% annual allowances on buildings that were constructed before YOA 1998/99. In other words, if the buildings are transferred after in use for 25 years, the buildings can still be claimed 4% annual allowances as the 25-year time limit has been removed.

# EY Asia-Pacific private equity tax network

## Private equity thought leadership quarterly top 10 tax topics

### 2 Hong Kong 2024-25 budget (cont.)

2. **Cancellation of demand-side management measures**

- Immediate cancellation of demand-side management measures for residential properties, including Special Stamp Duty (SSD), Buyer's Stamp Duty (BSD) and Ad Valorem Stamp Duty (AVD) at 7.5% under Part 1 of Scale 1. The AVD rate of 7.5% under Part 1 of Scale 1 is to be amended to the same as those of AVD at Scale 2.
- The government will introduce the Stamp Duty (Amendment) Bill 2024 (the Bill) into the Legislative Council to take forward the initiative.

3. **Unified fund exemption regime updates**

- The government will further enhance the preferential tax regimes for funds, single family offices and carried interest, including reviewing the scope of the tax concession regimes, increasing the types of qualifying transactions and enhancing flexibility in handling incidental transactions, all to attract more funds and family offices with potential to establish a presence in Hong Kong.

4. **Two-tiered standard rates**

- Starting from the YOA 2024/25, a two-tiered standard rates regime will be implemented for salaries tax and tax under personal assessment. Net income exceeding HKD5 million will be subject to a 16% standard rate, while the first HKD5 million will continue to be taxed at a 15% standard rate.

In particular, with respect to (3) above, Hong Kong's government is considering new tax rules that would give more favorable treatment to popular alternative investments including private credit and infrastructure. More updates will be provided in due course.

## Singapore

### 3 Singapore budget 2024

The Singapore budget 2024 has the following key announcements for fund management industry:

1. The fund tax exemption schemes for onshore and offshore funds managed or advised by Singapore-based fund managers (SG FM) – also known as the section 13D Offshore Fund Tax Incentive Scheme (section 13D), section 13O Resident Fund Tax Incentive Scheme (section 13O) and section 13U Enhanced-Tier Fund Tax Incentive Scheme (section 13U) - will be extended for another five years i.e., till 31 December 2029 *. This was widely anticipated as the schemes continue to be relevant for Singapore to maintain a competitive edge, among other strong socio-economical-geographical factors.
2. Goods and services tax (GST) and withholding tax exemptions associated with the fund tax exemption schemes will also be similarly extended.
3. Section 13O scheme is now extended to Singapore limited partnerships, in addition to it being currently available to Singapore companies and variable capital companies. At present, Singapore limited partnerships could only apply for section 13U scheme which requires a minimum fund size of SGD50 million. This is a welcome move and will encourage more fund managers to use a Singapore limited partnership as a choice for establishing onshore structure. Further refinements will be necessary to ensure effective administration on tax reporting matters.
4. The substance-based fund tax exemption schemes in Singapore have economic criteria based on minimum spending requirements and minimum fund size requirements, depending on scheme. These will be revised with effect from 1 January 2025. Further details will be rolled out in Q3 2024. The key aspect fund managers should take a note of is possible increment in minimum spending and minimum fund size requirements and related implementation aspects.

** The section 13V Scheme meant for Sovereign Wealth Fund Tax Incentive Scheme (section 13V) will also be extended.*

### 4 Singapore Income Tax Act section 10L

On 4 April 2024, the Monetary Authority of Singapore (MAS) issued Circular No. FDD Cir 04/2024 (Circular) titled, "Guidance for Funds on the Tax Treatment of Gains or Losses from the Sale of Foreign Assets".

This Circular refers to the newly introduced section 10L of the Income Tax Act (section 10L) which has come into effect on 1 January 2024 and the guidance issued by the Inland Revenue Authority of Singapore (IRAS) on 8 December 2023 to explain the income tax treatment of gains or losses from the sale or disposal of any movable or immovable property situated outside Singapore. The MAS Circular should be read with the IRAS guide.

**Summary**

- The MAS Circular grants an automatic exemption from section 10L for section 13O, 13U and 13V funds that submit an Annual Declaration to the MAS and meet the conditions of the scheme.
- For section 13D funds, the economic substance requirement can be met via the investment service agreement with the Singapore fund manager.
- For non-incentivized SPVs controlled by a fund, the economic substance requirement can be met at the level of the fund, provided certain conditions are met.

# EY Asia-Pacific private equity tax network

## Private equity thought leadership quarterly top 10 tax topics

### 4 Singapore Income Tax Act section 10L (cont.)

**Details**

Briefly, foreign-sourced disposal gains received in Singapore by an entity of a relevant group* arising from the sale or disposal of any foreign asset on or after 1 January 2024 will be chargeable to tax in Singapore, unless the entity deriving the gain has adequate "economic substance in Singapore", among other factors.

One way to demonstrate economic substance in Singapore is for the entity's operations (economic activities) to be managed or performed in Singapore by:

a. Its own employees

b. Outsourced to persons that are subject to the direct and effective control of the entity

**Meeting the economic substance requirements for funds**

The MAS Circular has clarified that a fund will be considered to have met the outsourcing rules under the economic substance requirement if:

a. The investment activity (which includes discretionary and non-discretionary investment management, as well as advisory services) has been outsourced to a SG FM.

b. The investment strategy has been documented.

c. The investment service agreement with the SG FM sets out – (i) the duties and responsibilities of the SG FM, and (ii) provision for termination of services of the SG FM.

d. SG FM has set aside dedicated resources to perform its functions and responsibilities.

e. SG FM charges an arm's length fee for its services.

**Automatic meeting of conditions by funds under section 13O, 13U and 13V tax incentive schemes**

So long as a section 13O, U or 13V fund submits an Annual Declaration (AD) to the MAS and meets the qualifying criteria of the relevant scheme, it will be regarded as meeting the economic substance requirement automatically for the year covered by the Annual Declaration. Please note the MAS has issued a new AD form which is due within four months from the end of the fund's financial year.

If your fund does not meet conditions of the scheme for a year it may still meet the economic substance requirement via the investment service agreement, set out above.

**Funds under 13D tax incentive scheme**

As a section 13D fund does not need to submit an AD to the MAS, it will need to assess if it meets the economic substance requirement via the investment service agreement, set out above.

Similarly, managed accounts can meet the economic substance requirement via the AD (if relevant) or via the investment service agreement.

**Non-incentivized SPVs of a fund**

By way of an example, the MAS has clarified that a non-incentivized special purpose vehicle (SPV) of a section 13O, U, V, D fund will be allowed to rely on the economic substance at the level of the fund if the fund:

a. Has effective control over the SPV

b. Derives economic benefits from the activities carried out by the SPV

c. Defines the core investment strategies that the SPV implements

This is in line with the IRAS guidance issued on SPVs.

**An entity is a member of a group if its assets, liabilities, income, expenses and cash flows:*

*i. Are included in the consolidated financial statements of the parent entity of the group*
*ii. Are excluded from the consolidated financial statements of the parent entity of the group solely on size or materiality grounds or on the grounds that the entity is held for sale*

*A group is a relevant group if:*

*i. The entities of the group are not all incorporated, registered or established in a single jurisdiction.*
*ii. Any entity of the group has a place of business in more than one jurisdiction.*

## India

### 5 Protocol amending India-Mauritius tax treaty

India and Mauritius are signatories to the Multilateral Instrument (MLI), which was introduced to implement Base Erosion Profit Shifting (BEPS) action plan related changes to Double Taxation Avoidance Agreement (DTAA). While India had notified India-Mauritius DTAA as a part of list of DTAAs to be amended through MLI, same was not notified by Mauritius. Accordingly, India-Mauritius DTAA was not subject to amendment in line with MLI pursuant to BEPS framework.

Subsequently, Mauritius issued a press release on 23 February 2024 announcing its intent to bilaterally modify its treaty with India to implement the BEPS minimum standards. Pursuant thereto, on 7 March 2024, India and Mauritius signed a Protocol amending India-Mauritius DTAA (2024 Protocol) whereby minimum standards of anti-abuse provisions, i.e., the Preamble and the Principal Purpose Test (PPT), have been introduced in line with BEPS MLI provisions.

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## Private equity thought leadership quarterly top 10 tax topics

## 5 Protocol amending India-Mauritius tax treaty (cont.)

The 2024 Protocol requires both India and Mauritius to notify each other about the completion of the procedures required under their respective laws to implement the amendments. Once the notification has been issued by both the countries, the 2024 Protocol will enter into force on the date of the later of the notifications. The 2024 Protocol shall also enter into effect on the same day (viz. the date of the later of the two notifications) without regard to the date on which the taxes are levied or the taxable years to which taxes relate.

The language of the effective date of 2024 Protocol is ambiguous in terms of when the provisions of the 2024 Protocol may take effect and whether such 2024 Protocol is retrospective in nature. On 12 April 2024, the Income Tax Department clarified by way of social media post that concerns or queries on the 2024 Protocol are "premature at the moment since the Protocol is yet to ratified and notified" and will be addressed wherever necessary.

Based on a plain reading, it appears that the PPT provisions might have retrospective effect and may apply even in respect of concluded transactions where the income thereunder accrues prior to such entry into effect, while a more rational view is that PPT provisions are applicable only with reference to income arising on or after the provisions enters into effect.

In case the 2024 Protocol is retrospectively applied, the tax authorities are likely to examine investments made in previous years and may deny grandfathering benefit on such investments. This may have significant impact to private equity funds (PE Funds) who have claimed tax exemption on exit in the tax return on the basis of prevailing provisions of India-Mauritius DTAA and judicial precedents especially where exit proceeds are already repatriated to its investors. Since the tax authorities have the ability to treat buyers in a share sale transaction as the agent of the seller, the PE Funds who have acquired such grandfathered securities from a Mauritian seller could also be under purview of tax authorities.

In light of the above, parties may have to evaluate impact of above proposal and consider measures for managing tax risk while concluding deals.

## 6 India High Court's decisions on tax rulings

1. **Delhi High Court holds that the Department of Revenue is not empowered to reject assessee's chosen method of share valuation under Angel tax provisions***

In a recent ruling delivered by Delhi High Court in the case of Agra Portfolio Pvt. Ltd [TS-241-HC-2024 (DEL)], it was held that although it is open for the tax authorities to doubt or reject the valuation report adopted by the taxpayer, the statute does not empower the Department of Revenue to adopt a valuation method other than the one chosen by the taxpayer.

**As per 56(2)(viib) of the Income-tax Act, 1961, any share issuance by a privately held Indian company to any investor (whether resident or non-resident) at a premium in excess of it's fair market value is taxable as "other or ordinary income" in the hands of such company.*

2. **Gujarat High Court rules gift tax provisions do not apply on rights issuance**

In Jigar Jashwantlal Shah [TS- 598 – HC – 2023 (GUJ)], the taxpayer, being a director and shareholder in a company subscribed to right shares in respect of its holdings and also subscribed the right shares renounced in his favor by his wife and father (relatives) and third party at a substantial discount to the fair value. As per the gift tax provisions in Section 56(2)(x) of the Income-tax Act, 1961 (previously 56(2)(vii)(c) of the Income-tax Act, 1961), where any person receives any property, other than immovable property for a consideration which is less than fair market value, then the shortfall shall be taxable as income from other sources in the hands of the taxpayer.

The tax authority invoked gift tax provision in respect of all the right shares subscribed. On appeal, the tax authority deleted the addition to the extent of right shares allotted to the extent of own original holding of shares but sustained the gift tax on remaining shares.

This was further appealed by both the parties at the Ahmedabad Tribunal wherein the Tribunal further deleted the gift tax on right shares subscribed on behalf of relatives. The tax authority further appealed the matter to the Gujarat High Court.

The Gujarat High Court held that to apply gift tax provisions, there must be an existence of property before receiving it. The right shares come into existence only after allotment is made by the company. The High Court held that the legislative intent was never to tax fresh issue or fresh allotment of shares of a company and hence gift tax provisions should not apply on right issue of shares.

The principles laid down in this ruling could also be applied to argue non-applicability of gift tax provisions on primary share issuance.

3. **Telangana High Court on period of limitation for initiating withholding tax proceedings on payments made to non-resident**

The Indian tax laws do not prescribe any period of limitation for initiating withholding tax proceedings on payments made to non-residents.

The time limit on payments made to residents was introduced in 2009 and initially period of four years was prescribed which was later extended to seven years.

Various judgements passed before the limit was introduced for residents held that in absence of a specific limitation period, a reasonable period needs to be imputed. Further, Mumbai Tribunal (Special Bench) in the case of DIT v. Mahindra & Mahindra [2009]30 SOT 374 (Mum)(SB) held that the reasonable period of time should be the time limit available for making reassessment of income in the hands of the non-resident payee. The same was upheld by Bombay High Court.

Currently, Telangana High Court in the case of Dr. Reddy's Laboratories Ltd. [TS-583-HC-2023 (TEL)] held that since the statute has consciously not provided for any limitation period in case of payment to non-residents, it is incorrect to read period of limitation into the provision for passing of withholding tax order and such order has to be passed within a reasonable period which would depend on facts and circumstances of each case. However, it highlighted that reasonable period cannot be less than seven years which is prescribed for payment to residents.

# EY Asia-Pacific private equity tax network

## Private equity thought leadership quarterly top 10 tax topics

### 6 India High Court's decisions on tax rulings (cont.)

This ruling may be relevant at the time of negotiating tax indemnity period coverage with sellers in a potential deal involving acquisition of shares of Indian company while obtaining tax insurance.

4. **Delhi High Court rules that representative assessee proceedings on the buyer cannot be made when the original taxpayer (i.e., the seller) is liquidated**

In Cairnhill CIPEF Ltd. [TS-736-HC-2023 (DEL)], the taxpayer (buyer) had purchased shares of an Indian listed company from a Mauritian Entity (seller) during financial year 2015-16. The seller filed its return of income claiming such capital gain as exempt income as per India-Mauritius DTAA and the tax authorities accepted such claim during assessment. The seller company liquidated and had ceased to exist. Later, the Commissioner of Income Tax (CIT) passed an order treating the buyer as a representative assessee of the seller and revised the original assessment order to levy tax on the seller company on the said capital gains by denying treaty benefit.

The buyer challenged the order of CIT and filed an appeal before the Tribunal which ruled in favor of the taxpayer. The tax authority then appealed before the Delhi High Court which held that buyer cannot be regarded as a representative assessee as the seller company was not in existence when revisionary proceedings were initiated. The expression agent in the income tax laws suggests that there is a principle in existence on whose behalf the agent acts, which is not fulfilled in the present case.

Often the PE Funds acquire shares or securities of a portfolio company from another PE Fund which either has limited life or is in the process of liquidation.

This ruling could be relied at the time when tax authorities initiate tax proceedings on the buyer in the capacity of representative assessee of seller entity which is liquidated as on the date when the tax proceedings are initiated on the buyer.

5. **Mumbai Tribunal allows taxpayer to carry forward long-term capital loss as per the Income-tax Act and short-term capital gain exempt as per DTAA in the same assessment year**

In a recent ruling in the case of Indium IV (Mauritius) Holdings Limited [TS-591-ITAT-2023 (Mum)], Mumbai Tribunal allows carry forward of long-term capital loss as per the Act and exemption of short-term capital gain as per India-Mauritius DTAA.

The taxpayer had carried forward long-term capital loss computed under domestic tax law and claimed short-term capital gains as exempt under Article 13 of the India-Mauritius DTAA. In this regard, the tax authorities contended that taxpayer could either choose to be governed under the provisions of domestic tax law or DTAA whichever is beneficial and where exemption is claimed under the India-Mauritius DTAA, long-term capital loss cannot be carried forward and has to be ignored.

However, the Mumbai Tribunal ruled in the favor of the taxpayer by observing that each transaction involving short-term and long-term capital assets are different sources or streams of income. Reliance was also placed on Bangalore ITAT ruling in IBM World Trade Corp [TS-232-ITAT-2012 (Bang)] which was upheld by Karnataka High Court in IBM World Trade Corporation [TS-524-HC-2020 (KAR)], wherein it was held that, "in case of multiple sources of income an assessee is entitled to adopt provisions of the Act for one source of Income while applying the provisions of DTAA for the other source". Further it has relied on co-ordinate bench ruling in Dimension Data [TS-604-ITAT-2018 (Mum)] which relied on IBM ruling and ITAT Special Bench ruling in Montgomery Emerging Markets [TS-33-ITAT-2006 (Mum)] wherein it observed that "long-term capital gains and short-term capital gains are separate sources of income and merely because these are clubbed under the same head of income, their identity as separate sources does not get obliterated".

Thus, the taxpayer was permitted or allowed to carry forward its long-term capital loss while claiming short-term capital gains as exempt under the India-Mauritius DTAA.

## Vietnam

### 7 Vietnam clarifies application of double tax treaty

The General Department of Taxation (GDT) of Vietnam issued Official Letter No. 689/TCT-HTQT on 27 February 2024 (OL No. 689) to clarify the application of the double tax treaty (DTT) for income from the transfer of shares in a Vietnamese company. A DTT application will be rejected if the DTT claimant is not the true beneficial owner of the income. The Vietnamese tax authorities refer to the avoidance provisions set out in Circular 205/2013/TT-BTC dated 24 December 2013 (Circular No. 205) as guiding the implementation of the DTTs for the beneficial-owner test.

Salient points include:

- The DTT claimant must be the true beneficial owner of the income to be a subject of the treaty benefits.
- The beneficial owner must be entitled to own and control income, assets, or rights creating incomes. When determining a beneficial owner, the tax authorities in Vietnam shall consider all elements and circumstance based on the "substance over form" principle because the objective of the DTT agreement is to prevent double taxation and tax evasion. The DTT claimant must not fall into any of the anti-avoidance provisions set out in Vietnamese tax regulations that could exclude a company from being treated as a true beneficial owner. For example:
  - The DTT claimant is a nonresident person obligated to distribute more than 50% of his income to a resident of third State within 12 months of receiving income.
  - The DTT claimant is a nonresident person with no (or almost no) business activity, except for owing assets or rights to create income.
  - The DTT claimant is a nonresident person with business activity, but the quantity of assets, business scale or number of employees are not proportionate to the earned income.

# EY Asia-Pacific private equity tax network

## Private equity thought leadership quarterly top 10 tax topics

### 7 Vietnam clarifies application of double tax treaty (cont.)

- OL No. 689 also provides guidance on determining the real estate ratio that will be based on the provisions of the treaty, relevant Vietnamese laws and Circular No. 205.
- Vietnam tax authorities cooperate and exchange information with other countries and jurisdictions for the administration and enforcement of tax matters.

In addition DTT applications will be refused if the main purpose of the contracts or agreements is tax avoidance.

While the technical points above are not new, OL No. 689 may indicate a change to the current practice of the Vietnamese tax authorities. At present, a tax residency certificate (TRC) is generally sufficient for a non-Vietnamese resident to access the DTT. However, OL No. 689 may result in the Vietnamese tax authorities scrutinizing DTT claims more closely, requesting more detailed supporting information and potentially seeking information from overseas tax authorities on specific taxpayers under exchange of information treaties.

It remains to be seen how OL No. 689 will be interpreted and applied by Vietnamese tax officers in practice, particularly in a funds context.

## Mainland China

### 8 Advanced tax rulings

Guangzhou Nansha and Shanghai have announced relatively detailed measures for advance rulings, while the Nanjing Area of the Jiangsu Free Trade Zone, Dongfang City and Ding'an County of Hainan Province, as well as Qitaihe of Heilongjiang Province have only briefly outlined implementation rules for advance rulings. Tax authorities in Shenzhen, Guangzhou, Ningbo, Qingdao, Xiongan New Area and other regions have also formulated relevant regulations but have not released them to public.

In general, the tax advance ruling regulations in various regions have certain common features when defining the scope of applicable matters, i.e., adoption of a combination of "approved list" and "prohibited list".

*Approved list:*

The tax-related matters stipulated in the current advance ruling regulations (trial) in various regions mainly contain the following conditions:

- Must be expected to occur in the future
- Must have significant economic interests at stake
- Must involve complex issues with specific facts
- Must have a reasonable business purpose
- May not be prohibited by laws and regulations
- May not apply relevant tax laws directly

*Prohibited list:*

Shanghai, Nansha of Guangzhou, and other regions clearly stated in their respective local rules the matters to which an advance ruling does not apply. As the specific measures and local practices vary in different regions, taxpayers should gain deeper understanding of the local policies and prepare comprehensive, accurate documents and proactively communicate with the local tax authorities to improve the efficiency of the application process.

Many regions in Mainland China have issued tax advance ruling regulations (but not all of them released to public), mainly to provide ruling services for complex tax-related matters for large-scale enterprises. Taxpayers with similar needs should proactively communicate with tax authorities to seek greater tax certainty.

It should be noted that obtaining an advance ruling opinion on certain tax matters does not completely remove risks or uncertainties. Taxpayers should pay attention to the effectiveness of the advance rulings. Moreover, whether the tax treatment approved in a ruling opinion is applicable to other scenarios would require further communications and confirmation with tax authorities. In addition, taxpayers should closely monitor the development of advance rulings in their regions to effectively utilize the service to improve tax certainty.

Interested parties should further observe whether the advance tax ruling will be introduced in the new Tax Collection and Administration Law and whether the China State Taxation Administration will respond to taxpayers' demands and issue unified legislation based on the pilot measures implemented in various locations.

## Australia

### 9 Australia released draft legislation on Pillar 2

On 21 March 2024, the Australian Treasury released Exposure Draft (ED) primary legislation and subordinate legislation, in the form of Rules, for Australia's proposed adoption of the Organization for Economic Co-operation and Development (OECD) Global Anti-Base Erosion (GloBE) Pillar Two global and domestic minimum tax rules, for consultation.

The ED primary legislation outlines the key aspects of the global and domestic minimum taxes, including the imposition of top-up tax, through an Income Inclusion Rule (IIR), an Undertaxed Profits Rule (UTPR) and a Domestic Minimum Tax (DMT):

- A global minimum tax by imposing top-up tax through an IIR, applying to fiscal years commencing on or after 1 January 2024


## 9 Australia released draft legislation on Pillar 2 (cont.)

- A UTPR, applying to fiscal years commencing on or after 1 January 2025
- A DMT, applying to fiscal years commencing on or after 1 January 2024

The ED Assessment Bill sets out the necessary framework for the Rules, and the ED Imposition Bill will impose top-up tax in respect of the IIR, UTPR and DMT. The ED Consequential Amendment Bill contains consequential and miscellaneous provisions to facilitate the administration of the top-up tax, including the preparation of three new returns for filing in Australia for in-scope multinational groups (MNE Groups).

The three bills are accompanied by the ED Rules, which propose to implement the domestic framework for the calculations required to determine the top-up tax liability. The Rules are intended to be consistent with the OECD's model rules, commentary and administrative guidance.

# Cayman Islands

## 10 Cayman Islands beneficial ownership framework

In a unified effort to promote a responsible and transparent global financial system, the Cayman Islands updated its 2019 commitment to the United Kingdom (UK), by announcing initiatives to bolster the beneficial ownership framework. These enhancements are scheduled for implementation by the close of 2024 and are instrumental in ongoing commitment to combat illicit financial activities.

Throughout 2024, the Cayman Islands' Ministry of Financial Services and Commerce will engage with key stakeholders to facilitate the roll-out of an advanced beneficial ownership framework, as delineated in the newly enacted Beneficial Ownership Transparency Act, 2023 (the new Act), which was made public on 15 December 2023.

The implementation of this enhanced framework is a significant step toward elevated transparency, aligning with our refreshed pledge to the UK and equipping the Cayman Islands for the upcoming Financial Action Task Force's (FATF) fifth Round of Mutual Evaluations.

Key enhancements under the new Act include the consolidation of beneficial ownership regulations that formerly existed under separate legal frameworks – the Companies Act, the Limited Liability Companies Act, and the Limited Liability Partnership Act – into a unified legislative instrument. This streamlines the beneficial ownership rules, providing clarity and ease of compliance for entities affected by these regulations.

The new Act takes into account increased transparency around beneficial ownership information included in the EU's fifth Anti-Money Laundering Directive and changes to FATF standards.

The new Act provides alternative routes to compliance for certain categories of legal person, which replaced the "exemptions" to maintaining a beneficial ownership register under the previous regime. A legal person will be required to identify and provide appropriate information or particulars relating to the beneficial owners or to identify any alternative route to compliance undertaken by the legal person.

For private equity clients, these changes represent a commitment to high regulatory standards and transparency in the Cayman Islands, potentially increasing the jurisdiction's attractiveness for investment while ensuring compliance with international legal requirements.

# EY Asia-Pacific private equity tax network

## Private equity thought leadership quarterly top 10 tax topics

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