A&M | TAX

A&M's Asia–Pacific Private Capital Tax Top 10 – 2025

Private capital tax in the Asia–Pacific region is progressive and ever-changing. Based upon the latest published news, reports, and announcements, here are A&M's Top 10 tax topics for private capital tax in the Asia–Pacific region for the last quarter, up to December 2025.

India Topics Hot Off the Press

01(a) Recent Update on India's Press Note 3 Regime

In 2020, the Government of India (Government) amended its Foreign Direct Investment (FDI) Policy through Press Note 3 (PN3) whereby investments from countries sharing a land border with India, or where the beneficial owner of such investment is situated in or is a citizen of such country, are permitted only with prior approval from the Government. This amendment impacted investments in India from China, Hong Kong, Macau, and other neighboring countries. The objective was to curb opportunistic takeovers/acquisitions of Indian companies due to the COVID-19 pandemic.

Applications for approval are required to be submitted online in accordance with detailed Standard Operating Procedure (SOP) issued in 2020, which was subsequently updated in 2023. The August 2023 SOP linked beneficial ownership to a 10% shareholding threshold; however, the FDI policy itself does not provide a clear or uniform definition of beneficial ownership. While the SOP prescribes an indicative timeline of up to 12 weeks for granting approval, decisions on PN3 proposals have often taken longer, depending on the nature of investor, sector involved, quantum of investment, etc. Publicly reported data as of April 2024 indicates that most proposals originated from China and that, out of 526 FDI proposals routed through the PN3 framework, 124 were approved, and 201 were rejected, with the balance under review.

Various media/news reports[1] suggest that the Government may now consider allowing investments through the automatic route in nonsensitive and nonstrategic areas such as manufacturing, electric vehicles, and renewable energy, in order to boost India's FDI and enhance its participation in the global supply chain. This has also led to efforts to streamline procedures for clearing FDI applications to ensure decisions are taken within prescribed timelines.

Recently, a high-level committee led by NITI Aayog recommended to either remove existing restrictions on such investments or adopt a calibrated approach to ease such restrictions, including removing the requirement for mandatory prior approval for FDI up to 24%.[2] The Government is currently evaluating NITI Aayog's recommendations and may issue clarificatory guidance or sector-specific relaxations under PN3 in the near term to address procedural issues and provide greater clarity to investors.

01(b) Supreme Court Redefines Tax Treaty Protection

A significant judgment was delivered on January 15, 2026, whereby the Supreme Court of India has redefined the landscape of international taxation by ruling against` Tiger Global in its long-standing dispute over the 2018 Flipkart-Walmart exit. Read the detailed alert.[3] Key highlights are summarized below.

The Core Conflict

Tiger Global (Mauritius-based) claimed tax exemption on its capital gains from selling shares of Flipkart Singapore, citing the India-Mauritius Double Taxation Avoidance Agreement (DTAA) and its "grandfathering" protections for investments made prior to April 2017.

The Verdict: Substance Over Form

The Supreme Court overturned the Delhi High Court's previous pro-taxpayer ruling, establishing several critical precedents:

1. General Anti-Avoidance Rules (GAAR) overrides DTAA: The Court held that GAAR can override treaty benefits if an arrangement is deemed "prima facie" for tax avoidance—even for investments made before 2017.
2. Tax Residency Certificate (TRC) is not a "safe harbor": A TRC is no longer sufficient evidence of residence. Authorities now have the power to "look behind" the certificate to identify the "head and brain" (effective control and management) of the entity.
3. Indirect transfers scrutinized: The Court clarified that grandfathering protections do not automatically extend to indirect transfers (shares of foreign companies deriving value from India) if the structure lacks commercial substance.
4. Burden of Proof: Once the authorities establish a prima facie case of tax avoidance, the onus shifts to the taxpayer to prove a bona fide commercial purpose.

This ruling marks a watershed moment for Private Equity/Venture Capital funds and multinational corporations. It signals a shift from formal compliance to a strict "economic substance" requirement.

Recommended Actions for Private Equity/Venture Capital Funds

1. Immediate Portfolio Audit: Reassess all holding structures and exit strategies to ensure they meet the "economic substance" requirements.
2. Review Governance: Ensure that critical decision-making (the "head and brain") is demonstrably situated within the treaty jurisdiction.
3. GAAR Preparedness: Evaluate both historic and future deals against GAAR, as grandfathering is no longer an absolute shield against anti-abuse provisions.
4. Tax Insurance: Impact on insurance for cross-border exits to mitigate the heightened risk of indirect transfer scrutiny.

This judgment has far-reaching implications for existing and future cross-border investment structures.

Singapore

02 Singapore Transfer Pricing Update: Greater Flexibility for Related-Party Loans

The Inland Revenue Authority of Singapore (IRAS) released the eighth edition of its Transfer Pricing (TP) Guidelines on November 19, 2025, introducing significant clarifications and compliance simplifications for related-party financing arrangements. Read the detailed alert.[4] These changes are particularly relevant for private capital structures and fund managers using Singapore SPVs.

Key highlights of the guidelines include:

1. **Domestic Related-Party Loans**
   For domestic loans entered into or renewed on or after January 1, 2025, IRAS has eased compliance for related-party loans between Singapore entities not in the business of borrowing or lending by refraining from imputing arm's-length interest; instead, IRAS will apply interest-expense restriction to the lender where relevant and will not make TP adjustments or require TP documentation, including for interest-free loans. For loans entered before January 1, 2025 (including subsequent disbursements or maturity extensions), the previous administrative concession using the interest-restriction proxy continues to be recognized for these grandfathered arrangements. Note however that fund finance platforms and treasury centres must still apply arm's-length pricing and maintain documentation.

2. **Inbound Cross-Border Loans**
   Singapore entities not in the business of borrowing or lending that receive interest-free loans from foreign related parties will not face TP adjustments. IRAS will not impute arm's-length interest expense (as no deduction arises on amounts not actually incurred), and no withholding tax applies since no interest is paid to the foreign lender. This formalizes IRAS's longstanding administrative position and provides greater certainty for structuring cross-border fund flows.

3. **Outbound Interest-Free Loans**
   Outbound interest-free loans to foreign related parties will also not attract TP adjustments in Singapore, as no interest income is recognized. However, interest expense incurred by a Singapore lender to fund such loans will be disallowed as a deduction.

The guidelines emphasize the importance of proper characterisation of funding as loan or equity, based on the arrangement's features and circumstances. Annual reviews of related-party loans are encouraged, but changes to loan terms or interest rates are not always required. For cross-border loans, robust governance and periodic review remain best practice.

Overall, these updates enhance structuring flexibility for fund managers and reduce compliance friction for cross-border capital flows. While IRAS has reduced transfer pricing compliance for certain domestic loans, the practical focus shifts to interest deductibility, remittance mechanics for outbound loans, and stronger governance around documentation declarations and strict pass-through costs.

Fund managers should review intra-group financing structures to apply the updated rules for interest-free domestic loans where applicable; ensure proper characterisation and supporting documentation; monitor outbound loans for deduction restrictions and treaty implications; maintain strong governance for cross-border arrangements, documenting annual reviews even when no changes are required.

Japan

03 Rising Owner Succession Deals and Japan's Strengthened Minimum Tax – Key Considerations for 2026 Tax Reform Outline and Beyond

Owner succession-driven M&A continues to accelerate in Japan, where demographic pressures and a persistent shortage of business successors have led to a growing number of owner-managed companies being sold to private equity (PE) funds. At the same time, PE funds—supported by substantial dry powder—are increasingly active in acquiring stable, founder-led businesses. These two trends are increasingly intersecting, and many expect succession related transactions to continue gaining momentum in the coming years.

Against this backdrop, Japan's strengthened Minimum Tax regime has become an important development to monitor. Originally implemented for 2025 income and aimed mainly at ultra-high-net-worth individuals with annual income of around JPY 3 billion and subject to a 22.5% tax rate, the 2026 Tax Reform Outline significantly expands both the scope and rate of the regime. Under the proposal, individuals with annual income exceeding JPY 600 million would be subject to a 30% minimum tax rate. This expansion brings a much broader segment of sellers—particularly those realizing large one-time capital gains in an M&A exit—into potential scope.

Sales to PE funds often generate substantial share transfer gains, and it is not uncommon for sellers' income to exceed the JPY 600 million threshold in the year of exit. Under the prior rules, meaningful impact was largely limited to financial income heavy individuals in the JPY 1 billion–2 billion range. Under the revised framework, the scope could now extend to mid-sized and larger business owners, including minority family shareholders participating in a transaction. Since any additional tax directly reduces net proceeds, sellers may need to revisit valuation expectations, exit timing, and family asset planning.

Importantly, the Minimum Tax focuses on single year spikes in income, making transaction timing and structuring more relevant. Owners may need to consider options such as income smoothing, multi year arrangements, preferred equity, or partial rollovers—subject to feasibility and tax compliance—when planning an exit. For PE buyers, these changes may influence valuation dynamics, after tax incentives, and rollover design in future transactions.

With succession-driven M&A activity rising and the Minimum Tax regime becoming more expansive, both sellers and investors face a pivotal period. Early modeling and careful structuring will be essential for owners, while PE funds may need to adapt their acquisition strategies and post deal alignment mechanisms as a result.

04 Updates to Japan's Permanent Establishment Exemption for Foreign LPs Under the 2026 Tax Reform Outline

The 2026 Tax Reform Outline introduces several revisions to Japan's permanent establishment exemption applicable to foreign limited partners (LPs) investing through Japanese limited partnerships (LPS). The updates include relaxation and clarification of certain requirements, including ownership thresholds and the scope of what constitutes "noninvolvement" in LPS management. These changes form part of Japan's broader policy effort to attract overseas capital and promote growth investment.

Japan's permanent establishment exemption allows foreign LPs to be treated as not creating a taxable permanent establishment in Japan, provided that specific conditions are met. At the same time, aspects of the current framework—such as the default presumption that an LPS may give rise to a permanent establishment and the associated filing and renewal procedures—have often been viewed as unfamiliar or burdensome for some foreign investors. The new revisions aim to ease part of this friction and may enhance predictability for certain larger investors.

That said, the updates do not alter the fundamental structure of the Japanese LPS regime, which remains structurally different from common law partnership models familiar to many overseas investors. As a result, offshore LP vehicles (e.g., Cayman Islands LPS) used as aggregator entities are likely to remain a common route for accessing Japanese investments. For overseas investors, the revised rules may make permanent establishment exemption considerations more workable in selected cases. Nevertheless, careful attention will still be required regarding ownership levels, degree of involvement, and related-party considerations. Overall, the reform signals a modest expansion of structuring options for accessing the Japanese market, while highlighting the continued importance of evaluating alternative investment vehicles on a case-by-case basis.

Australia

05 Taxable Australian Real Property Definitions in the Spotlight

Recent Federal Court decisions (YTL Power, Newmont) in favor of the taxpayer confirmed a wide variety of infrastructure assets are not taxable Australian real property; therefore, those businesses were not subject to Australian tax on exit, contrary to the Australian Taxation Office's (ATO) view.

However, the Australian government is proposing to expand the definition of taxable Australian real property to include all assets "with a close economic connection to Australian land or resources," such that those same businesses (and others) would be subject to 15% withholding tax on sale, and an overall 30% Australian tax on exit. These changes will also extend the principal asset test to a 365-day look-back period and require pre-transaction ATO notification for high-value disposals by foreign residents. The measures, targeted to apply to capital gains tax (CGT) events that occur after the new laws are introduced, have the stated intention of improving tax integrity, aligning with international best practice, and ensuring foreign investors pay their fair share of Australian CGT. To date, no draft legislation has been released.

06 The Equity Funded Distributions Rule – Can the ATO Compliance Approach Help a Franking Integrity Measure Retain Some of Its Integrity?

The ATO's Practical Compliance Guideline (PCG) 2025/3 sets out how compliance resources will be applied to the equity funded distributions rule under Section 207-159 of the Income Tax Assessment Act 1997, which deems certain distributions unfrankable if funded by equity issuances. The rule is broad and aims to prevent arrangements that accelerate franking credits without genuine economic substance, but it places a high evidentiary burden on taxpayers due to tracing requirements and lack of a tax-benefit purpose test. The Final PCG establishes risk zones—"green" for low risk and "red" for high risk—offering some safe harbors for common commercial practices. However, complexity and uncertainty remain, especially in M&A contexts, and taxpayers are advised to document fund uses and seek advice for equity issues tied to distributions. Read the detailed alert.[5]

Malaysia

07 Malaysia Budget 2026: The Rakyat's Budget

Prime Minister Anwar Ibrahim announced the Malaysia Budget 2026 on October 10, 2025 (the 2026 Budget),[6] with emphasis that the government continues its commitment toward building a high-value, innovation-driven, and fiscally disciplined economy, while maintaining an expansionary stance to sustain growth momentum, in alignment with the 13th Malaysia Plan.

A few of the key tax highlights announced in Malaysia Budget 2026 which are applicable to the asset and wealth management sector are outlined below:

BUDGET 2026 TAX PROPOSALS	PROPOSED CHANGES	A&M COMMENTS
Review of Tax Exemption on Income Received From Outside Malaysia (Foreign Sourced Income)	• The tax exemption on dividends from investments and gains from the disposal of capital assets abroad received by resident companies and LLPs is **expanded to cooperative societies and trust bodies.** • This tax exemption on dividends from investments and gains from the disposal of capital assets abroad received will be extended for another four years from January 1, 2027, to December 31, 2030.	This gives policy certainty and long-term planning visibility for entities in Malaysia and will encourage repatriation of foreign income without concerns of facing punitive tax costs.
Tax Incentive for Venture Capital	• New structure: VCC's income will be taxed at 5% **for 10 years** (or remaining fund life) from first SC certification. • At least 20% of the fund investment must be in local venture companies. • Tax incentive is expanded to LLPs and Labuan LPs/LLPs. • First SC certification must be obtained no later than December 31, 2035. • **Venture Capital Management Company (VCMC)** – A tax rate of 10% on income derived from the share of profits, management fees, and performance fees from YA 2025 to 2035. • **Individual Shareholders of VCC** – Exemption of income tax on dividends paid, credited, or distributed to individual shareholders at the first level from YA 2025 to 2035.	This reform is overdue for an update, and this incentive is intended to strengthen Malaysia's VC ecosystem and Malaysia's ability to attract and retain early-stage funding.
Expansion of Income Tax Deduction for Cost of Listing on Bursa Malaysia	• Current tax deduction of up to RM 1.5 million on the cost of listing on Bursa's Main Market, ACE Market, and LEAP Market for technology-based companies and micro, small, and medium enterprises (MSMEs) is extended for **another five years from Year of Assessment (YA) 2026 to YA 2030**. This is also expanded to MSMEs in the energy and utilities sectors.	The extension and expansion of the listing cost tax deduction is a strong incentive for more Malaysian companies to go public, signaling long-term support for capital market development.
Partnership Distributions From LLP(s)	• Previously, profit distributions from LLP received by partners are exempt from tax under Paragraph 12C, Schedule 6, Income Tax Act 1967. • It is proposed that partnership distributions from LLP(s) received by individual partners where exceeding RM 100,000 per annum will be subject to a 2% tax, after allowing for deductions and reliefs. • This will apply to residents and nonresident individuals. • This is effective from YA 2026. If the individual also receives other types of income, the chargeable income from LLP partnership distributions shall be determined based on the following formula: A / B x C = D, whereby A. Profit distributions received (deemed as statutory income of the partner) B. Aggregate income of the partner C. Chargeable income of the partner D. Chargeable income from profit distributions by LLP	Apart from LLP firms, high income individuals using LLPs as investment vehicles for receiving profit distributions would be impacted. Partners of LLPs will need to track and report their profit distributions that exceed RM 100,000, assess how the apportionment formula affects their chargeable income, and prepare to pay for the 2% tax.
Expanded Definition of "Disposal" That Falls Under the Scope of Capital Gains Tax (CGT)	The current definition of "disposal" for CGT provides that "disposal" means "by way of sell, convey, transfer, assign, settle, alienate whether by agreement or by force of law and includes a reduction of share capital and purchase by a company of its own shares." Subsequent to Malaysian Inland Revenue Board's (MIRB) Budget 2026 seminar, it was clarified that for "disposal" of unlisted shares under CGT in Malaysia, the definition for "disposal" has been clarified to expand beyond sale/transfer of shares to include conversion, redemption, wind-up, dissolution, and "other circumstances of cessation of ownership."	The MIRB has now confirmed that "disposal" for CGT will include any situation where share ownership ceases, even if there is no traditional sale of shares. Therefore, any merger, buyback, forced cancellation, or restructuring steps may all trigger Malaysian CGT, even if no cash changes hands and there is not a transaction. Read the detailed alert here.[7]

***Important**: The above is a discussion of the key tax measures announced in the Malaysia Budget 2026. These are subject to final legislation, the enactment of which may lead to a different outcome or result from the statements herein.*

Thailand

08 Cabinet Approves Draft Competitiveness Enhancement for Targeted Industries Act to Mitigate Impact of Top-Up Tax

In response to global tax reform pressures, including the Organisation for Economic Co-operation and Development's (OECD) Pillar Two initiative, Thailand's Cabinet has approved in principle the draft National Competitiveness Enhancement for Targeted Industries Act (Draft Act). The Draft Act is aimed at mitigating the impact of the top-up tax associated with the global minimum tax rules for multinational enterprises (MNE) groups.

The Draft Act offers qualified refundable tax credits that cover expenditures in areas such as research and development, advanced skills training, production efficiency upgrades, and sustainability initiatives. These credits are available to Board of Investment-promoted companies and can be used to offset Pillar Two liabilities. If unused, the credits may be refunded in cash through the Competitiveness Enhancement Fund within a specified period. Appropriate safeguards are also included to revoke improperly granted credits.

Private equity investors and multinational corporations operating in Thailand should closely monitor developments surrounding legislative details, including the criteria and application process for qualifying businesses. Read the detailed alert here.[8]

Vietnam

09 Capital Transfer Tax for Foreign Corporate Sellers Under New Decree No. 320/2025/Nd-Cp Dated December 15, 2025

Vietnam has introduced a significant change to its tax framework with the issuance of Decree No. 320/2025/ND-CP (the New Decree), effective from December 15, 2025. Under this new regime, foreign corporate sellers transferring capital in Vietnamese entities are subject to a flat rate of 2% corporate income tax on gross sale proceeds. This rule applies not only to direct transfers of Vietnamese companies but also to indirect transfers involving offshore holding structures, signaling a clear move toward tightening tax compliance and aligning with global anti-avoidance trends.

The New Decree does not provide guidance on the methodology required to determine the "gross proceeds attributable to Vietnam" in relation to complex, multi-jurisdictional indirect share transfers. Absence of definitive guidance could create room for differing interpretations and potential disputes concerning the tax base.

The New Decree also provides a carve-out for intra-group restructurings, exempting transactions where there is no change in the ultimate parent company and no taxable income is realized. While the provision is generally favorable, the New Decree does not specify the administrative procedures for applying this exclusion (e.g., whether a formal declaration or preapproval is required and supporting documentation necessary to claim such an entitlement). Further guidance on this matter is expected.

Investors are encouraged to review the transaction models, assess the impact on upcoming exits, and ensure that exemption criteria for intra-group reorganizations are fully understood and documented. For a deeper analysis of these changes and practical guidance, read the detailed alert.[9]

10 APAC BEPS Pillar 2 Updates

OECD Releases "Side-by-Side" Package

On January 5, 2026, the OECD Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS) released its Side-by-Side (SbS) package, which aims to provide greater stability, simplicity, and certainty to in-scope MNE groups.

The SbS package introduces four new safe harbors and extends the Transitional CbCR Safe Harbor (TSH) by one year. The new safe harbors address three key areas:

- SbS System: The SbS Safe Harbor and the Ultimate Parent Entity (UPE) Safe Harbor
- Tax Incentives: The Substance-Based Tax Incentives (SBTI) Safe Harbor
- Material Simplifications: The Simplified Effective Tax Rate (ETR) Safe Harbor

For MNE groups operating under a Qualified SbS regime, top-up tax (TuT) under the Income Inclusion Rule (IIR) and the Undertaxed Profits Rule (UTPR) shall be deemed to be zero. However, the Qualified Domestic Minimum Top-Up Tax (QDMTT) will continue to apply.

The United States is recognized as a Qualified SbS regime and has been added to the OECD's Central Record for purposes of the Global Minimum Tax.[10] As a result, neither the IIR nor the UTPR applies to US-headquartered MNE groups for fiscal years commencing on or after January 1, 2026. As of January 5, 2026, no other jurisdiction has been recognized as having a Qualified SbS regime. In practical terms, this means that US-headed groups may be exempt from both the IIR and the UTPR from 2026 forward.

Read our alert.[11]

Fund managers should review their group structures and tax reporting processes in light of the new package, assess the impact of transitional rules and safe harbors, and prepare for compliance ahead of the upcoming 2026 GloBE Information Return filing deadline.

Thailand Advances Pillar Two Implementation Despite Global Uncertainty

Pillar Two has been incorporated into Thailand domestic law through the enactment of the Emergency Decree on Top-Up Tax (B.E. 2567) in December 2024, formally implementing the GloBE rules with effect from January 1, 2025.

In November and December 2025, the Ministry of Finance and the Thai Revenue Department issued a series of secondary regulations to prescribe detailed implementation rules and provide greater operational clarity for taxpayers (e.g., exchange rates, definitions of Acceptable Financial Accounting Standards, qualified and disqualified Refundable Imputation Tax, the criteria and methodology for the Substance-based Income Exclusion, the allocation of residual TuT to Thailand under the UTPR, and the treatment of Constituent Entities, including entities operating in multiple jurisdictions or with special characteristics).

In parallel, additional secondary legislation has progressed through the formal legislative process, with draft measures proposed by the relevant authorities and approved by the Cabinet through Cabinet resolutions (e.g., rules on adjustments to income, expenses, and covered taxes for the purpose of computing TuT and Domestic TuT, the identification of entities not subject to TuT, and rules on business restructuring), pending formal issuance and publication. Further secondary regulations are expected to be issued to address certain outstanding provisions under the main Emergency Decree and to supplement the existing implementation framework.

With the core Pillar Two framework now in place, and with the issuance of secondary regulations substantially completing the implementation framework, MNE groups operating in Thailand should begin shifting from observation to practical preparedness.

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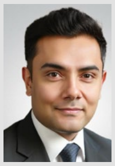

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