A&M | TAX

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.

Japan

01 Japan–Singapore Tax Treaty Under Spotlight: Potential Implications for TMK Structures

A recent Nikkei Asia News article (Article) suggests that there may be some ongoing policy discussions surrounding Japanese Tokutei Mokuteki Kaisha (TMK) structures, specifically in relation to the Singapore–Japan tax treaty. TMKs are well-established vehicles under Japan's Asset Securitization Law, commonly used for real estate and infrastructure investments. In typical fund structures involving Singapore, ~49% of TMK shares are typically held by a Singapore-resident entity, enabling a reduced 5% withholding tax (WHT) on dividends under the Singapore–Japan tax treaty.

The Article suggests that the effective tax rate (ETR) on Japan real estate investments structured through Singapore-parented TMKs may come under review.[1] The focus of the discussion is on the Singapore–Japan tax treaty, which—unlike treaties with jurisdictions such as Hong Kong and the US— does not contain a "pay-through dividend" clause. The omission of the clause allows TMKs to apply a preferential 5% WHT rate on payments made from TMKs to Singapore entities, resulting in a significantly reduced ETR of around 10%–15%, while the TMK does not pay any local corporate income taxes. While the Article refers to this arrangement as a "loophole,", this, in our view, is more a matter of tax policy discussion and change, rather than an indication of taxpayers' abusing the so-called "loophole.". The Article signals that the Japan's tax authorities may consider legislative or treaty-level changes to address the disparity between different tax treaties with Japan.

While there is currently no formal indication or announcements from the Japan's tax authorities regarding any imminent changes, it is possible that the Japan's tax authorities may consider broader challenges to the TMK usage by including domestic law amendments or renegotiation of the Singapore–Japan tax treaty. While there has not been a formal announcement, since this could suggest an increase in the dividend WHT rate applicable to Singapore holding structures investing into TMKs (e.g., to 10% or 20%) or a more adverse outcome such as the disallowance of dividend deductions at TMKs level, these developments should be closely monitored as they may impose a material impact on the ETR profile of Japan real estate investments routed through Singapore and hence, private funds making investments via TMK structures more broadly.

Hong Kong

02 CFA Ruling on Stamp Duty Relief for Intra-Group Transfers

The Hong Kong Court of Final Appeal (CFA) recently ruled in the case of John Wiley & Sons UK2 LLP and Wiley International LLC v. The Collector of Stamp Revenue [2025] HKCFA 11[2] that stamp duty relief for intra-group transfers under Section 45 of the Stamp Duty Ordinance is limited to associated bodies corporate which satisfy the 90% association requirement via issued share capital.

The CFA affirmed this relief does not extend to UK limited liability partnerships (LLPs) because LLPs lack the concept of issued share capital, and hence the relevant parties would not be considered as “associated,”, which is required for the relief to apply.

Section 45 of the Stamp Duty Ordinance was legislated in 1981 (and expanded in 1991) and allows for stamp duty relief on the transfer of Hong Kong stock *“between one **associated body corporate** and another, where in each case the bodies are associated, that is to say, one is beneficial owner of not less than **90 per cent of the issued share capital** of the other … ”*[3]

In the intervening years, there has been a marked increase in the use of modern business entities in global corporate holding structures, including LLPs and US limited liability companies (LLCs), neither of which issue share capital in the traditional sense—investors in such entities typically hold membership interests rather than issued share capital. Following the recent CFA judgement, it appears that LLCs, LLPs, and other similar entities without issued share capital. Following the recent CFA judgement, it appears that LLCs, LLPs, and other similar entities without issued share capital may not be eligible for stamp duty relief under Section 45 when undertaking legitimate intra-group business restructurings in Hong Kong.

As set out in the recent CFA judgment:

- “In Singapore … ad valorem relief was extended to LLPs, whether formed or incorporated in or outside Singapore. The absence of such an exemption in Hong Kong has given rise to the present litigation.”[4]
- “The evidence in support of the leave application to this Court indicated that there were pending before the Collector a significant number of applications for relief on similar grounds to those presented by the present litigation.”[5]
- “Whether Section 45 should be rectified to account for cases such as the present is a matter for the legislature.”[6]

The CFA emphasised that extending Section 45 relief to other forms of legal entity (such as LLPs) would require legislative amendment, not judicial interpretation of the existing legislation.

Multinational groups which use LLPs, LLCs, or other similar entities to hold subsidiaries or immoveable property in Hong Kong should consider this position before undertaking any intra-group transfer.

Singapore

03 MAS Announces New FSI Schemes Under Budget 2025

Singapore's 2025 Budget introduced a suite of enhancements to the Financial Sector Incentives (FSI) framework, aimed at reinforcing the city–state's position as a leading fund management (FM) and capital markets hub. The Monetary Authority of Singapore (MAS) has, on July 3, 2025, released further guidance via Circular No. FDD Cir 05/2025. The FSI will now include two new schemes for fund managers as recommended by the Equities Market Review Group:

- FSI-Fund Management Listing (FSI-FM Listing) Scheme (which provides for an enhanced Concessionary Tax Rate (CTR) of 5% on qualifying income)
- FSI-Fund Management Singapore Equities (FSI-FM SG Equities) Scheme (which provides for a tax exemption of 0% tax rate on qualifying income).

The existing FSI-Fund Management Scheme which provides a Concessionary Tax Rate (CTR) of 10%, will remain and be renamed the "FSI-FM-ST" Scheme.

These new schemes reflect Singapore's strategic intent to attract long-term capital and anchor fund managers locally. While the tax incentives are compelling, the high entry thresholds—particularly around AUM—require fund managers' careful evaluation and assessment.

For a detailed criteria and commencement timeline of the schemes, read the detailed alert here.[7]

Australia

04 Australian Budget 2025/26; Productivity and Economic Roundtables

The 2025/26 Australian Federal Budget (Budget) marked a pivotal moment in the government's approach to foreign investment and tax reform. One of the headline measures was the expansion of capital gains tax (CGT) obligations for foreign residents. The proposed changes include broadening the asset types subject to CGT, introducing a 365-day principal asset test, and requiring pre-disposal notifications to the Australian Tax Office (ATO) for transactions exceeding AUD 20 million. These reforms seek to expand the net of "land rich" assets which would fall under the Australian tax net and would be relevant to investors seeking to acquire quasi-land-rich assets such as data centres and other assets adjacent to land (which are not necessarily freehold or leasehold assets in their own right).[8]

Beyond immediate tax tweaks, the Budget also hinted at deeper structural reform. While modest personal income tax cuts were announced, the broader conversation is shifting toward corporate tax reform and bracket creep mitigation. The government's decision not to index tax thresholds was met with criticism, suggesting a missed opportunity for meaningful reform. However, the upcoming economic roundtables may offer a more ambitious platform to address these issues holistically.

The Economic Reform Roundtable held in August 2025 brought together policymakers, economists, and industry leaders to explore long-term productivity and fiscal sustainability. Key themes included better regulation, AI-driven innovation, and a more dynamic tax system.[9] The Productivity Commission's five-pillar agenda—ranging from net-zero transformation to digital enablement—underscored the need for a tax framework that supports investment, productivity, and competitiveness. There is a discussion to reduce the corporate tax rate from 25% to 20% for smaller businesses whereas larger corporates would still be subject to the headline 30% corporate tax rate. This is still preliminary and subject to further discussion.

05 FIRB Approval – Tailored Conditions Over Standardization

Recent changes to the Foreign Investment Review Board (FIRB) framework reflect a significant shift in how Australia manages inbound capital. As of March 2025, FIRB has moved away from imposing standard tax conditions across the board. Instead, conditions are now tailored to the specific risks and characteristics of each transaction. This change acknowledges that blanket conditions often duplicated existing legal obligations and failed to address nuanced compliance risks. The updated guidance notes suggest a more bespoke approach, particularly for transactions involving sensitive sectors or complex tax arrangements.

This tailored model is part of a broader overhaul aimed at streamlining the foreign investment regime. Under the new FIRB process, it is not anticipated that the structure of the FIRB questionnaire will undergo significant changes. However, the depth of detail and precision required in the responses to the questionnaire will likely need to be changed. Each response provided in the questionnaire will be required to be further tailored keeping in mind the abovementioned ATO sensitivities. This is a shift from the previous approach where responses that were ambiguous or lacked comprehensive detail might have been accepted under the previous "standard" FIRB conditions.

This change underscores the need for a more rigorous and thorough approach when completing the FIRB questionnaire for potential transactions. It is crucial to ensure that all information provided is accurate, detailed, and fully addresses the ATO's areas of concern. This will not only help to facilitate the review process but also reduce the risk of potential complications or delays due to insufficient or unclear information.

China

06 New Tax Credit for Foreign Reinvestment

In June 2025, China's Ministry of Finance (MoF), State Taxation Administration (STA), and Ministry of Commerce jointly issued Public Notice 2 [2025] (PN2) to enhance the existing dividend WHT deferral regime by introducing a new tax credit mechanism. On July 31, 2025, the STA followed up with an official interpretation and further issued Public Notice [2025] No. 18 (PN 18) to provide detailed implementation rules to PN2.

Under this regime, tax credit is available to foreign investors who reinvest profits distributed from a China subsidiary into qualified equity investments (e.g., by way of capital increases, greenfield ventures, or non-affiliated share acquisitions, etc.) within China between January 1, 2025, and December 31, 2028. The core benefits for qualifying reinvestments include deferral of WHT at the time of profit distribution and an additional tax credit (of up to 10% of the reinvestment amount or the applicable lower tax treaty rate) to offset future WHT payable on dividends, royalties, or interest received from the same China subsidiary.

PN2, together with its official interpretations and PN18, set forth a range of technical requirements to access the benefits, covering credit eligibility, timing, currency conversion, partial disposals, and retroactive application.

These nuanced provisions directly impact reinvestment planning and capital repatriation strategies, requiring careful review to ensure compliance.

The introduction of the new tax credit on foreign reinvestment presents a great opportunity to optimize cash flow for companies with China expansion plans and potentially enhance the overall tax efficiency. It also requires careful planning, thoughtful alignment with global tax positions, and robust documentation from day one.

07 VAT on Bond Interest Income

On July 31, 2025, China's MoF and STA jointly released Public Notice [2025] No. 4 (PN 4), updating the Value-Added Tax (VAT) treatment of bond interest income and marking a shift from a longstanding policy. Since the 1990s, government bonds have been VAT-exempt under State Council directives and subsequent MoF/STA circulars; however, PN4 reinstates VAT on interest income from newly issued central and local government bonds, as well as financial bonds (as defined in relevant tax regulations) on or after August 8, 2025.

PN 4 clarifies that interest income from bonds issued prior to August 8, 2025, (including any subsequent tranches or extensions of such bonds) will retain VAT exemption until the bonds mature, ensuring consistency for investors with preexisting holdings.

For foreign institutional investors, PN 4 does not repeal MoF and STA Public Notice [2021] 34 (PN 34). Therefore, foreign investors may continue to enjoy the VAT exemption until year-end of 2025 under PN 34, which specified that foreign institutional investors are exempted from both VAT and Corporate Income Tax (CIT) on interest income from China's domestic bond market, with the exemption valid until December 31, 2025. To date, no official announcement has been made regarding a potential extension beyond 2025.

Investors are advised to keep abreast of developments on exemption of PN 34, if any, and monitor the progress of the new VAT Law in China.

For a detailed overview of PN 4, read the detailed alert here.[10]

India

08 Supreme Court Ruling – Hyatt's Substantive Operational Control Constitutes Permanent Establishment (PE) in India

In a landmark judgment, the Supreme Court (SC) of India held that Hyatt International Southwest Asia Ltd[11] (Hyatt UAE) constituted a Fixed Place PE in India under the India–UAE Double Taxation Avoidance Agreement (DTAA), despite having no formal office or branch in the country.

SC concluded that Hyatt's sustained substantive operational control over Indian hotels, exercised through long-term Strategic Oversight Services Agreement (SOSA), met the "place at the disposal" and business activity tests for a Fixed Place PE.

The judgment also relied on the principles laid down in the SC ruling in Formula One World Championship Ltd,[12] which held that where economic and functional substance exists (i.e., stability, productivity, and dependence), a PE may be constituted.

Key operational elements included:

- Decision-making authority over staffing, pricing, branding, procurement, and HR policies
- Continuous oversight through expatriate personnel visits
- Contractual rights and obligations embedded in a 20-year SOSA
- Fee structures linked to hotel revenues and profitability, evidencing deep operational integration

SC also clarified that profit attribution to a PE is independent of the foreign entity's global profitability, i.e., profits attributable to Indian operations remain taxable in India even where the overseas parent incurs losses.

This judgment reflects a clear shift from a purely physical presence test toward a substance-over-form approach, where actual functions performed and control exercised outweigh formal disclaimers or absence of leased premises.

For foreign enterprises with substantial business operations closely tied to India, it may be prudent to undertake a comprehensive review of your existing business arrangements.

09 Income Tax Bill, 2025

The Income Tax Bill, 2025, (Bill) was introduced with the objective of replacing the six-decade-old Income Tax Act, 1961, and putting in place a simple and streamlined direct tax framework. The proposal included a simplified structure, redefined tax concepts, and measures to reduce litigation without any major change in tax policy.

Following its introduction, a Parliamentary Select Committee (Committee) was tasked with examining the Bill in detail and gathering stakeholder feedback.

The Committee's report recommended alignment of drafting anomalies/ recommendations to remove deviation from Income Tax Act, 1961, which inter-alia included amendments in relation to carry forward and setoff of business losses on account of change in shareholding, clarification with respect to definition of associated enterprise, reinstating benefit of deduction of inter-corporate dividends, etc.

After receiving the Committee Report, the Government has issued a revised version of the Bill retaining core policy objectives and incorporating most of the Committee's recommendations. The Bill is likely to come into effect from April 1, 2026.

Vietnam

10 Vietnam Passes New Corporate Income Tax Law

Vietnam's National Assembly passed the new Corporate Income Tax Law on June 14, 2025, effective from October 1, 2025, applicable for the 2025 fiscal year. This reform is part of Vietnam's broader effort to modernize its tax system, enhance compliance, and attract investment across sectors.

The law introduces significant changes, particularly relevant for foreign investors and private equity firms with cross-border structures or exit strategies involving Vietnam, as follows:

- **Capital gains tax reform:** A deemed rate on gross proceeds applies to capital and asset transfers by foreign corporate sellers. The change is a welcome development toward simplification, especially for indirect transfers where calculating gains and cost bases are complex to determine. However, it may lead to additional tax liabilities even for cases that entail internal corporate restructurings or transfer of assets at loss. In the draft decree guiding the new CIT law, it proposes a 2% rate in case the seller does not directly oversee the target enterprise's operations. However, it lacks a clear definition of the term "does not directly oversee" (e.g., whether the intention is to distinguish between direct and indirect transfers).
- **Offshore investment profits:** Profits from foreign investments (e.g., dividends, earnings from overseas subsidiaries) must now be declared and taxed in Vietnam in the year they are earned, even if not repatriated. This marks a shift from the previous remittance-based approach.
- **Expanded PE definition:** The definition of taxable entities is expanded to include, inter alia, foreign corporates having e-commerce and digital platforms that derive income from Vietnam. These e-commerce and digital platforms are also considered as a PE for Vietnam tax purposes. Accordingly, it could adversely impact the tax treaty relief applications in Vietnam of such e-commerce players.
- **CIT incentives:**
  - Removal of industrial zones from the list of incentivized locations
  - Introduction of tax incentives for encouraged sectors such as AI, semiconductors, green energy, hi-tech and hi-tech-related investment, and R&D centers
  - Consolidation of tax incentives within the CIT law to eliminate overlaps with other legislation
- **Deductible expenses:** Expanded to include ESG and sustainability costs, digital transformation initiatives, public infrastructure co-investments. Expenses lacking proper documentation or sectoral compliance remain nondeductible.

The law introduces stricter compliance requirements and may accelerate tax liabilities for private equity firms with offshore structures. Exit planning and restructuring strategies should be reassessed in light of the new capital gains provisions.

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3. Cap. 117 Stamp Duty Ordinance, July 1, 1981 (revised 1991), Section 45 (2).
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5. Ibid., para. 35.
6. Ibid., para. 36.
7. Neha Shah and Tingyi Ye, "Singapore Tax Alert: Financial Sector Incentive (FSI) – New Fund Management (FM) Listing, Singapore Equities and Basic Tier (BT) Schemes, " Alvarez & Marsal, July 13, 2025.
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9. Australian Government, Treasury, "Economic Reform Roundtable, Consultation period: 27 June to 25 July."
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11. TS-954-SC-2025, Hyatt International Southwest Asia Ltd. v. Additional Director of Income Tax, July 24, 2025.
12. (2017) 15 SCC 602, Formula One World Championship Ltd. v. Commissioner of Income Tax, April 24, 2017 (upholding November 30, 2016, judgment, https://indiankanoon.org/doc/81416512/)

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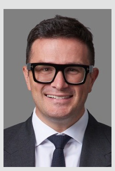

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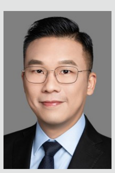

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