



31 December 2022
Volume 14, Issue 4

Inside this issue:

Australia	<i>FBT exemption for certain electric cars</i>	2
China	<i>China's zero-COVID U-turn</i>	2
Hong Kong	<i>Refined Foreign source income exemption ("FSIE") regime</i>	3
India	<i>G20 presidency, implementation of CBDC and, etc.</i>	6
Malaysia	<i>Parliament dissolution and upcoming budget</i>	9
Singapore	<i>Amendments to Financial Reporting Standards</i>	10
Vietnam	<i>Updates on of tax reports/ tax administrative, e-commerce regulations and, etc.</i>	11

Message for 2023

The year of 2022 has been extremely eventful, with mixed developments and outcomes. So are the contents of this edition of our newsletter – with articles covering tax policy, financial reporting standards, Covid-related policy, digitalized settlement, e-commerce, government budget etc. Regardless of how you have fared, we wish to begin the new year with the message from Daniel Ryba, our recently elected global chair of Russell Bedford International, as he wanted to share with you his wishes and thoughts as follows:

"My best wishes for 2023 to all those who had a difficult 2022. May personal and/or work issues, that have been tough, resolve and improve over the next year. Let's not allow difficult times to become the normality of our lives.

My best wishes to those who had a good 2022, that together with their families and friends you can continue sharing good times.

And for those who had a brilliant 2022, I wish you to continue growing and sharing your lives with your loved ones and being close to the people who need you. This is the time to help them and make them feel close to you."

AUSTRALIA

ELECTRIC CARS TO BE EXEMPT FROM FRINGE BENEFITS TAX IN AUSTRALIA

SAWARD DAWSON
chartered accountants

A bill proposing an FBT exemption for certain electric cars was recently passed by parliament and is now awaiting royal assent. The main points to note in relation to this for cars provided as fringe benefits are that they must:

- be classified as a battery electric vehicle, a fuel cell electric vehicle or a plug-in hybrid electric vehicle
- have cost less than the luxury car tax threshold for fuel efficient vehicles (\$84,916 for the 2023 financial year) at the time when first sold
- have been first held and used on or after 1 July 2022.

Used cars are eligible, but information about when they were first sold will be needed to ensure the above conditions are satisfied. As this may be difficult, it is likely that employers will focus on providing new cars.

The FBT exemption will apply to 1 April 2025 for plug-in hybrid electric cars. The government will undertake a review of the exemption within three years to assess whether it will continue.

This exemption will significantly reduce the total cost of an employer providing an electric vehicle to an employee. We expect that this will substantially increase demand for electric vehicles in Australia and is a great incentive to encourage employees to consider a company provided electric vehicle.

"The FBT exemption will apply to 1 April 2025 for plug-in hybrid electric cars."

CHINA

CHINA'S ZERO-COVID U-TURN BRINGS CHAOS BUT HOPES

 **Russell Bedford**
taking you further

All of a sudden, China made a U-turn on its COVID policy during the recent weeks, from the strictest zero-COVID policy to practice of coexistence with the virus. In the past three years, China has been implementing a strict dynamic zero-COVID policy, which has brought serious economic losses and inconvenience to people's lives in China, especially in 2022. In some areas such as Shanghai and Xinjiang, humanitarian disasters occurred during the long lockdown period. The extraordinary anti-zero-COVID protests that broke out in many cities last month have clearly played a part in this U-turn decision. But economic factors may well have been more decisive, according to an observer. Analysts indicate that this year's GDP growth forecast is only 3%, much lower than the expected 5.5%.

"Analysts indicate that this year's GDP growth forecast is only 3%, much lower than the expected 5.5%."

On 7 December 2022, China released a circular on "further optimizing the COVID-19 response", announcing 10 prevention and control measures. Some of the "10 measures" announced are pure common sense, but other changes are radical overhauls to a system that, just a matter of weeks ago, was being resolutely committed to. Infected people with no symptoms will now be allowed to quarantine at home, while most venues including public transportations will now allow people to enter without scanning their health codes and without presenting negative tests.

While people have not had time to celebrate the lift of 3-year binding, a major wave of infections has begun to hit Beijing and Guangzhou. In Beijing, office buildings, shops and restaurants, and streets and roads are nearly empty, but hospitals and pharmacies are overcrowded. Cold and flu medicines and antigen self-testing kits are in high demand and very hard to buy. In our Beijing office, nearly 90 percent of people have stayed at home and had symptoms such as fever, headache, sore throat, body pain, and fatigue since 7 December. It is expected that most of the infected staff will return to the office by early next week.

Recently the World Health Organization warned of “very tough” times ahead for China, as there is a very large population with low levels of immunity, low levels of vaccination among the elderly and an under-resourced hospital system with not enough ICU beds. However, people are optimistic and inspired about the future, hoping to be back to normal life after the hard time. “I would rather believe that it’s just like a cold, treat yourselves at home and don’t worry. Once all of us recover, we will be immune for a certain period and will have a safe busy season”, one of our managers said.

REFINED FOREIGN SOURCE INCOME EXEMPTION (“FSIE”) REGIME – EFFECTIVE 2023

The Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Bill 2022 was passed on 14 December 2022. The Bill is in response to the grey-listing of Hong Kong by the European Union which expressed concerns on our current favourable tax treatment on certain offshore passive income. The law introduces a refined FSIE regime which shall be effective from 1 January 2023.

Covered Income and Covered Taxpayers

Covered Income includes interest, dividend, equity disposal gains and income from intellectual properties (“IP”) that are sourced overseas but received or deemed received by Covered Taxpayers in Hong Kong.

A Covered Taxpayer is an entity of a group that includes at least one entity or permanent establishment (“PE”) that is not located or established in the jurisdiction of the ultimate parent entity of the group (“MNE entity”). It also includes a stand-alone entity in Hong Kong with overseas PE.

Deeming provision

Under the refined FSIE regime, Covered Income will be deemed to be sourced from Hong Kong and chargeable to profits tax if the income is received or deemed received in Hong Kong by an MNE entity carrying on a trade, profession, or business in Hong Kong, unless the MNE entity satisfies the exemption requirement in respect of the concerned Covered Income.

(Continued)

Income received or deemed received in Hong Kong

Foreign sourced income is received or deemed received in Hong Kong when:

- (i) the income is remitted to, or is transmitted or brought into, Hong Kong;
- (ii) the income is used to satisfy any debt incurred in respect of a trade, profession or business carried on in Hong Kong; or
- (iii) the income is used to purchase moveable property brought into Hong Kong.

Exemption requirements

Tax exemption is available to a MNE entity in respect of its Covered Income that satisfies any one of the following requirements:

Applicable requirements (only one needs to be satisfied)	Specified foreign sourced income received in HK			
	Interest	Dividend	Disposal gains	IP income
A. Economic substance requirement	✓	✓	✓	
B. Participation requirement		✓	✓	
C. Nexus requirement				✓

“...Covered Income will be deemed to be sourced from Hong Kong and chargeable to profits tax if the income is received or deemed received in Hong Kong by an MNE entity carrying on a trade, profession, or business in Hong Kong...”

A. Economic substance requirement

The key features are:

- The MNE entity should (i) hire adequate number of employees with necessary qualifications, and (ii) incur adequate amount of operating expenses to carry out economic activities in Hong Kong relating to the specified Covered Income. Rather than laying down thresholds for (i) and (ii), the legislation provides that each case will be considered based on the relevant facts and circumstances.
- The MNE entity may outsource the specific economic activities to a service provider in Hong Kong, subject to the arrangement is remunerated, well documented and monitored.

Reduced substance requirement will apply to a pure equity holding entity, which is an entity that only holds equity interest in other entities and earns dividend, equity disposal gains and income incidental to the acquisition, holding or sale of such equity interests. However, it should be noted that granting of shareholder loan (regardless of whether interest-bearing or interest-free) will jeopardize the taxpayer’s position as a pure equity holding entity.

B. Participation requirement

The key features are:

- The MNE entity must be a Hong Kong tax resident, or if it is a non-resident, it must have a permanent establishment in Hong Kong; and

(Continued)

- The MNE entity must have continuously held not less than 5% entity interests in the concerned investee entity for a period of not less than 12 months immediately before the income accrues.

The participation exemption will be subject to the following anti-abuse rules:

- *Switch-over rule:*
 - For dividend income, the amount of underlying profits out of which the dividend is paid is equal to or greater than the amount of dividend; and the dividend or the underlying profits out of which the dividend is paid is subject to foreign tax of substantially the same nature as Hong Kong profits tax and at applicable rate of at least 15%. A look-through approach of up to five tiers is used to determine whether this condition is satisfied;
 - For disposal gains, the gains are subject to foreign tax of substantially the same nature as Hong Kong profits tax and at applicable rate of at least 15%.
- *Anti-hybrid mismatch rule:*
 - Participation exemption will not apply to the extent that the dividend is deductible by the investee company.
- *Main purpose rule:*
 - Participation exemption will not apply if the Commissioner is of the opinion that one of the main purposes of entering into an arrangement is to obtain a tax benefit.

“For disposal gains, the gains are subject to foreign tax of substantially the same nature as Hong Kong profits tax and at applicable rate of at least 15%.”

C. Nexus requirement

The nexus requirement applies to IP income derived from the use of or the right to use qualifying IP (i.e., patent or copyright subsisting in software). Non-qualifying IP income such as royalty from use of trademarks is not eligible for exemption.

Exempted income for qualifying IP is determined as follows:

Exempted income = Qualifying IP income x Factor; where

- *Factor = $QE \times 130\% / (QE + NE)$; and is capped at 100%*
- *QE means qualifying R&D expenditure incurred in respect of the qualifying IP where the R&D activities were (i) carried out in any location by the MNE entity or a non-associated person; and / or (ii) carried out in Hong Kong by a HK resident associated person.*
- *NE means non-qualifying R&D expenditure incurred in respect of the same qualifying IP but the R&D activities were not carried out in manner specified for QE.*

Foreign tax credit

Where the MNE entity fails the exemption requirement and is subject to Hong Kong profits tax in respect of the Covered Income, the foreign tax paid on the Covered Income (including foreign tax in underlying profit/ income up to 5 tiers for dividend income) will be allowed as credit against the Hong Kong profits tax payable.

Loss sustained from sale of foreign equity interests

Loss sustained from sale of foreign equity interests shall be allowed to set off against the assessable profits derived from Covered Income in the same assessment year that the proceeds of the sale are received in Hong Kong, and, to the extent of amount not so set off, may be carried forward to set off assessable profits from Covered Income in future

HONG KONG

(Continued)

assessment years.

Advance Ruling

To facilitate tax certainty, a MNE entity may apply to the Commissioner of Inland Revenue for a Commissioner’s Opinion (before 1 January 2023) relating to Economic Substance requirement or an Advance Ruling (from 1 January 2013 onwards) relating to any aspects concerning application of the legislation under the refined FSIE regime. The application may cover a maximum of 5 assessment years, the validity of which is subject to no changes in circumstances of the MNE’s operations relating to the Covered Income.

INDIA

Sharp & Tannan

Chartered Accountants

INDIA UPDATES FROM SEPTEMBER 2022 - NOVEMBER 2022

1. India assumes G20 presidency:

On 1 December 2022, India formally assumed the G20 Presidency. G20, or Group of Twenty, is an intergovernmental forum of the world’s 20 major developed and developing economies, making it the premier forum for international economic cooperation. India aims to take the G20 closer to the public, by making it a ‘People’s G20.’ Though the initial focus of G20 was by and large the broad macroeconomic issues, its agenda now extends to trade, climate change, sustainable development, health, agriculture, energy, environment, climate change, and anti-corruption.

2. Pilot launch of CBDC by the Reserve Bank of India (‘RBI’), India’s Central Bank

Payment systems are changing at an accelerating pace. Today, users expect faster, easier payments anywhere and at any time, mirroring the digitalisation and convenience of other aspects of life. India has always fostered innovation and development in payment and settlement systems. RBI has taken several initiatives to bring in technology-based solutions to the banking system. Recently, RBI has run pilot projects to implement the central bank digital currency (‘CBDC’) called as e-Rupee (‘e₹’) in India. e₹ is the digital currency which can be alternatively used for payments and settlements within India and for international/cross-border payments. It is an alternative form of legal tender.

“e₹ is the digital currency which can be alternatively used for payments and settlements within India and for international/cross-border payments.”

Design considerations of CBDC

A. Three important principles in designing the CBDC (i.e., the e₹)

Do no harm principle

- e₹ will not interfere with the banking function of economic stability and their public policy objectives.

Co-existence principle

- e₹ can be used with the existing forms of money.

Innovation and efficiency principle

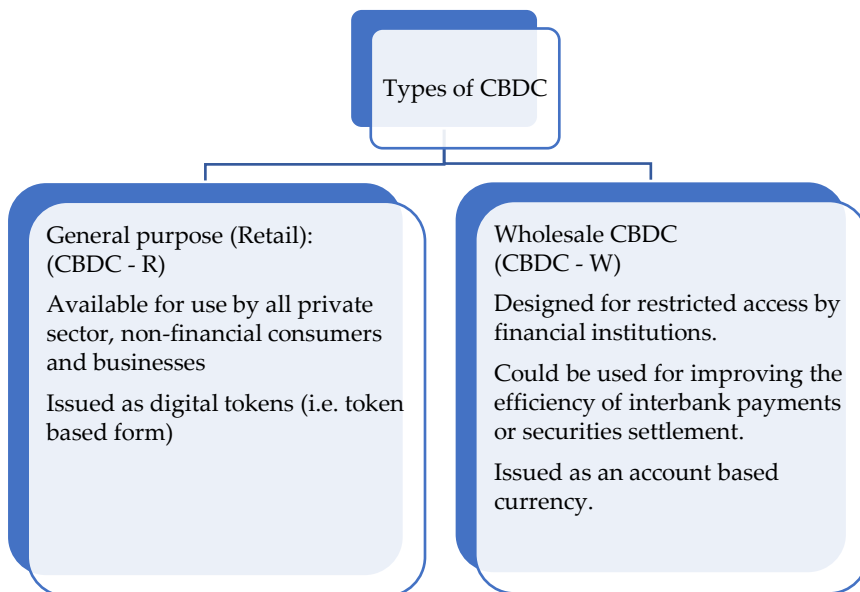
- e₹ will be capable of promoting innovations to boost the payments system.

B. Design of e₹

A well-functioning CBDC requires an extremely resilient and secure infrastructure that can be scalable to support users on a massive scale.

(Continued)

Two broad categories of CBDC are recommended based on the usage and functions performed.



i. e₹ wholesale pilot run

- The first pilot in e₹ wholesale segment ('e₹-W') commenced on 1 November 2022.
- The use case for this pilot is the settlement of secondary market transactions in government securities. The use of e₹-W is expected to make the interbank market more efficient.
- Settlement in central bank money would reduce transaction costs by preempting the need for settlement guarantee infrastructure or collateral to mitigate the settlement risk.

"Users will be able to transact with e₹-R through a digital wallet offered by the participating banks and stored on mobile phones/devices."

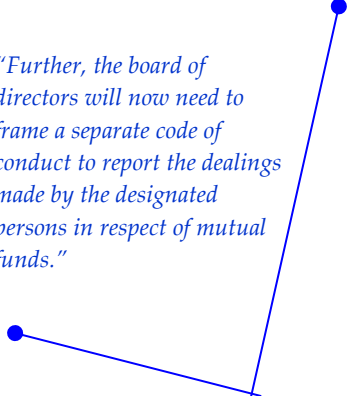
ii. e₹ retail pilot run

- The first pilot in digital rupee-retail segment ('e₹-R') was launched on 1 December 2022.
- It is in the form of a digital token that represents legal tender and is issued in the same denominations that paper currency and coins are currently issued. e₹-R is distributed through banks.
- Users will be able to transact with e₹-R through a digital wallet offered by the participating banks and stored on mobile phones/devices. Transactions can be both person-to-person ('P2P') and person-to-merchant ('P2M').
- Payments to merchants can be made using QR codes displayed at merchant locations.
- The e₹-R would offer features of physical cash like trust, safety, and settlement finality. As in the case of cash, it will not earn any interest and can be converted to other forms of money, like deposits with banks.

The Indian Government has partnered with nine banks in the entire pilot-run process.

(Continued)

“Further, the board of directors will now need to frame a separate code of conduct to report the dealings made by the designated persons in respect of mutual funds.”



3. Capital markets updates from the Securities and Exchange Board of India (the market regulator)

The Securities and Exchange Board of India (‘SEBI’) recently took a few decisions relating to the capital market. Some of the important proposals are discussed below.

- **Disclosure of key performance indicators (‘KPI’) for IPO issuers:** Initial public offer (‘IPO’) issuers will now be mandatorily required to disclose the ‘KPI’ and the ‘price per share’ based on past transactions and past fundraisings. The same will be included in the offer document and price band advertisement. There was no such disclosure requirement to date.
- **Pre-filing of offer document for initial public offer (‘IPO’):** SEBI has approved the proposal to introduce pre-filing of offer document as an alternative mechanism for IPO on the main board of stock exchanges. Further, the document which incorporates SEBI’s initial observations would be available to investors for at least 21 days, thereby, assisting them better in their investment decision-making process. This step will allow the issuers to carry out limited interaction with the stock exchange without disclosing any sensitive information.
- **Process for appointment and removal of independent directors for the first term:**
Listed entities in India need to comply with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, i.e., SEBI (LODR) Regulations. The present SEBI (LODR) Regulations require the appointment, re-appointment, and removal of independent directors through a special resolution. In case the special resolution does not get the required majority then the following thresholds would be tested:
 - a. threshold for ordinary resolution
 - b. threshold for majority of minority shareholders

If the above thresholds are crossed, then the independent directors will be deemed to be appointed. A similar alternative process will be applied for the removal of independent directors of listed entities.

- **Amendment in SEBI (Prohibition of Insider Trading) Regulations 2015, for inclusion of trading in units of mutual funds**
SEBI has notified the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2022. Accordingly, an insider cannot trade in the units of a scheme of a mutual fund when in possession of unpublished price-sensitive information, which may have a material impact on the net asset value of a scheme or may have a material impact on the interest of the unit holders of the scheme.

Further, the board of directors will now need to frame a separate code of conduct to report the dealings made by the designated persons in respect of mutual funds. The code of conduct will be in line with the existing SEBI (Prohibition of Insider Trading) Regulations, 2015.

- **Certain material events are to be disclosed by listed entities to the concerned stock exchange (SE) on an ongoing basis**
 - The existing time limit on requirements for disclosure of material events has been brought down by SEBI due to the wide use of technology and

communication channels. Accordingly following are the reporting timelines by a listed entity to SE

- a) 12 hours: Where the information emanates from the entity itself
- b) 30 minutes – in case the event/information emanates from a board meeting decision
- Verification of market rumours: Top 250 listed entities (by market capitalisation, as at the end of the immediate previous financial year) shall necessarily confirm or deny any event or information reported in the mainstream media, whether in print or digital mode, which may have a material effect on the listed entity.
- Announcements from directors, promoters, etc: Announcement or communication to any form of mass communication media by directors/promoters/key managerial personnel/senior management which is not already made available in the public domain by the listed entity.

(Continued)

4. New e-waste management rules introduced

- a. Keeping up its commitment to promoting ‘clean environment’ and ‘sustainability’ by way of reforms in the environmental and climate regulations, the Government of India recently amended the e-waste management rules.
- b. The new rules will become operational from 1 April 2023 and will apply to all businesses and individuals involved in manufacturing, sales, transfer, purchase, refurbishing, dismantling, recycling, and processing of e-waste, i.e., electrical and electronic equipment.
- c. Every manufacturer, producer, refurbisher and recycler will be required to file periodical returns and electronically upload the relevant data regarding the recycled e-waste on the designated web portal of the government.
 - a. Producers of electronic goods need to ensure at least 60% of their electronic waste is collected and recycled by the end of the financial year (FY) 2024-25 with targets to increase them to 70% by FY 2026-27 and 80% by FY 2028-29.

MALAYSIA - UPDATES ON BUDGET 2023

Budget 2023 was tabled on 7 October 2022 by the then Finance Minister with a total allocation of RM372.3 billion *but Parliament was dissolved three days later to make way for the 15th general election*. With the dissolution of parliament, the budget also known as the Supply Bill 2023 was never debated or approved and will have to be re-tabled by the new government.

The country’s 15th general election which was held on 19 November 2022 resulted in its first ever hung parliament, with none of the three main coalitions, Pakatan Harapan (“PH”), Perikatan Nasional (“PN”) and Barisan Nasional (“BN”) securing enough seats to secure a simple majority, and consequently, to form the next government. The coalitions of PH, PN, BN as well as their counterparts from East Malaysia, Gabungan Parti Sarawak (“GPS”) engaged in negotiations to achieve the necessary collective number of parliamentary seats to form a majority government. As there was no clear resolution, the

“...resulted in its first ever hung parliament...”

MALAYSIA

(Continued)

King stepped in by issuing a call for a unity government. The PH, BN and GPS coalitions ultimately came together to form a federal government with Anwar Ibrahim being sworn in as Malaysia's 10th Prime Minister on 24 November 2022.

The 15th Parliament session, the first under the government led by Prime Minister Anwar Ibrahim will be held on 19 December 2022 and it is now expected that Budget 2023 will be re-tabled sometime in February 2023.

SINGAPORE

AMENDMENTS TO FINANCIAL REPORTING STANDARDS ("FRS") 1 – PRESENTATION OF FINANCIAL STATEMENTS



In December 2022, the Accounting Standards Council of Singapore ("ASC") issued amendments to FRS 1 - Presentation of Financial Statements that aim to improve the information provided by companies on long-term debt with covenants.

The amendments are intended to clarify the requirements on determining whether a liability is current or non-current so as to promote consistency in application. The amendments shall be applied for annual reporting periods beginning on or after 1 January 2024 retrospectively in accordance with FRS 8 - Accounting Policies, Changes in Accounting Estimates and Errors, and earlier application is permitted.

The amendments to FRS 1 may affect the classification of liabilities in situations such as where long-term loans are classified as current due to the lack of an unconditional right to defer settlement or where management's expectations or intentions regarding the settlement of liabilities are considered to determine the classification of the liability. Hence, all entities should reconsider the existing classification of their liabilities and determine if changes are required in light of the amendments.

In summary, the amendments clarify the following:

A. Substantive right to defer settlement must exist at the end of the reporting period

Under the existing FRS 1 requirements, a liability is classified as non-current if the entity has an unconditional right to defer settlement of that liability for at least 12 months after the reporting period.

The word 'unconditional' has been deleted as part of the amendments to FRS 1. The rationale is that rights to defer settlement of a loan are rarely unconditional – they are often conditional on compliance with covenants. If an entity's right to defer settlement of the liability is contingent on the entity complying with specified conditions, the entity has the right to defer settlement of the liability at the end of the reporting period if it complies with those conditions at that date

B. Classification of a liability is unaffected by whether the entity exercises its right to defer settlement

It has been clarified that events happening after the reporting period (until the date the financial statements are authorised for issue) do not impact the classification of the liability

"The amendments shall be applied for annual reporting periods beginning on or after 1 January 2024 retrospectively in accordance with FRS 8..."

that was determined at the end of the reporting period.

If a liability has been determined to be non-current at the end of the reporting period, it continues to be classified as non-current even if management intends or expects the entity to settle the liability within 12 months after the reporting period or even if the entity settles the liability between the end of the reporting period and the date the financial statements are authorised for issue.

Notwithstanding that there is no impact on the classification of the liability as at the end of the reporting period, the entity should ensure appropriate disclosures are made in the financial statements relating to the settlement of the liability subsequent to the end of the reporting period (for instance, in the liquidity risk management note).

(Continued)

UPDATES ON VIETNAM REGULATIONS

Various changes for stricter controls of tax reports/ tax administrative, e-commerce regulations and reporting on offshore loans are outlined below:

Decree 91/2022/ND-CP which amends Decree 126/2020/ND-CP guiding the implementation of the Law on tax administration 2019

Decree 91 took effect on the signing date, i.e., 30 October 2022. One of the notable points under Decree 91 is the change of the rule for provisional corporate income tax ("CIT") payments from 75% to 80%.

80% rule:

Decree 91 noted that the total four provisional quarterly CIT payments must not be lower than 80% of the annual CIT liability ("80% rule"). This contrasts with the previous 75% rule whereby the first three quarterly CIT payments should not be less than 75% of the annual CIT liability.

Any shortfall will be subject to late payment interest, counting from the deadline for payment of the quarter 4 provisional CIT liability. This rule shall also apply to foreign shipping lines making provisional CIT payments on a quarterly basis and finalising CIT on an annual basis.

The change to the 80% rule may be beneficial to some taxpayers and can be applied retrospectively from tax year 2021 if the following conditions are met:

- The taxpayer's provisional CIT paid in the first 3 quarters of tax year 2021 was less than 75% of the total CIT liability for 2021; and
- The re-application of the 80% rule for tax year 2021 would result in the decrease in late payment interest.

Additional points in Decree 91:

- E-commerce platform owners are required to provide information on traders/ organisations/ individuals who conduct the sale/ purchase of goods and/or



"Foreign e-commerce service providers must register their e-commerce activities and coordinate with the competent authorities in preventing illegal transactions..."

(Continued)

provision of services on the e-commerce platform to the tax authorities on a quarterly basis.

- For individuals who receive dividends/bonus in the form of securities which are deposited in the individuals' accounts by 31 December 2022, and whose PIT has not yet been declared and paid on behalf by any applicable entities, the individuals can now perform PIT filings by themselves without any penalties/late payment interest being imposed.
- A new template for the suspension of invoice usage, i.e., Form 04-1/CC is introduced

Decree 85/2021/ND-CP and its effect on the e-commerce regulations in Vietnam

To timely regulate its quickly changing e-commerce market, Vietnam has been updating several regulations in this field. In 2021, the Vietnamese Government issued Decree 85/2021/ND-CP (Decree 85) to amend Decree 52/2013/ND-CP (Decree 52) regarding e-commerce on 25 September 2021, and the new Decree will take effect from the beginning of 2022.

New regulations for foreign traders and organizations

“The new regulations impose further controls over foreign loans of which both short-term and long-term loans to be registered with the SBV.”

1. *Foreign e-commerce service providers must register their e-commerce activities and coordinate with the competent authorities in preventing illegal transactions:* Decree 85 introduces new responsibilities for service providers having websites providing e-commerce services in Vietnam. In particular, they must register their e-commerce activities, and set up representative offices or assign authorized representatives in Vietnam. They are also requested to coordinate with the competent authorities in preventing transactions of goods and services that violate Vietnamese laws.
2. *The trading floor service providers in Vietnam must be responsible for foreign sellers on their floors:* Under Decree 85, if foreign sellers having no presence in Vietnam sell goods on Vietnamese e-commerce trading floors, the trading floor service providers are explicitly responsible for (a) verifying the identity of such sellers; and (b) performing one of the following responsibilities: (i) requesting the foreign sellers to exercise their right to export, and right to import applicable for foreign sellers that have no presence in Vietnam, (ii) organizing the importation of goods according to the purchasers' entrustment, or (iii) requesting the foreign sellers to designate their commercial agents in Vietnam.
3. *The market access conditions for e-commerce services have been specified:* Recently, e-commerce activity has been considered a conditional market access line as prescribed in Annex I-B of the so-called Decree 31/2021/ND-CP guiding the Law on Investment. According to Article 67c that is supplemented by Decree 85, a foreign investor will be able to invest in the form of establishing a business organization, through the means of contributing capital, or by purchasing shares of a company. It should be noted that the foreign investor will have to fulfill all investment conditions under the relevant regulations, such as obtaining the trading license for a foreign-invested e-commerce company and making a notification relating to the economic concentration to competent authorities if the capital contribution or shares purchase constitutes a considerable concentration under Competition Law.

In addition, according to Article 3.2.c of Decree 85, the foreign investors must fulfill the requirements stipulated in Article 67c mentioned above by 1 January 2023.

(Continued)

Coming into effect since early 2022 with many difficulties faced by the foreign investors to register with the MOIT, Decree 85 created new tasks for e-commerce subjects to comply with, while offering more protection to Vietnamese consumers. It is likely that Vietnam will get tougher on its digital economy, so relevant companies should keep a cautious eye on regulatory matters and fulfill their given obligations. We will keep making more updates on other regulations regarding the digital market in Vietnam.

Circular 12/2022/TT-NHNN dated 30 September 2022 of the State Bank of Vietnam (SBV) guiding the management of foreign exchange for the borrowing and repayment of foreign loans

Circular 12/2022/TT-NHNN takes effect from **15 November 2022**, from this date, the following documents expire: Circular 03/2016/TT-NHNN, Circular 05/2016/TT-NHNN, Circular 05/2017/TT-NHNN.

The new regulations impose further controls over foreign loans of which both short-term and long-term loans to be registered with the SBV.

Online report on the performance of borrowing and repayment of offshore loan

Since 15 November 2022, the borrower must access to the SBV's website monthly to make the online report on the performance of short, medium, and long-term offshore loans. Previous regulations only require the submission of medium and long-term loans. Hence, businesses being the borrowers are required to promptly make the registration, update proceeded account to the SBV's website for completing the monthly report as regulations. Borrowers need to notify and/or submit additional documents in following cases:

- (i) Regarding short term offshore loan: Submit "The investment project, plan on offshore loan usage approved by the borrower's competent authorities" on the first withdrawal and "Copy of report screen on the SBV's website with the borrower's confirmation" on withdrawals since the 2nd time applied to multi withdrawals offshore loan and on repayments.
- (ii) Notify to the Bank on the fact that the short-term offshore loan has been extended under the annex agreement to medium long-term loan within 12 months since the first date of withdrawal.
- (iii) (iii) Notify and send related documents within 5 working days from the date of withdrawal of loan proceed or debt repayment in case the withdrawal of loan proceed, debt repayment is not carried out through foreign borrowing and repayment account (FBRA) according to circular 12/2022/TT-NHNN.

"It is likely that Vietnam will get tougher on its digital economy, so relevant companies should keep a cautious eye on regulatory matters and fulfill their given obligations."

For more details of control over offshore loans, please refer to Circular 12/2022/TT-NHNN dated 30/09/2022 by the SBV.

Disclaimer

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

Business consultants with a global perspective



Russell Bedford Asia Pacific Offices & Contacts

Australia - Adelaide

Thomas Green
Tom@leegreen.com.au
www.leegreen.com.au

Australia - Brisbane

James Whitelaw
JamesW@hmgwgroup.com.au
www.hmgwgroup.com.au

Australia - Melbourne

Peter Shields
Peter.Shields@sawarddawson.com.au
www.sawarddawson.com.au

Australia - Perth

Martin Michalik
mmichalik@stantons.com.au
www.stantons.com.au

Australia - Sydney

Mark Edwards
mark.edwards@cambos.com.au
www.camphinston.com.au

Bangladesh

Mohammed Forkan Uddin
forkan@mmrahman.org
www.mmrahman.org

China - Beijing / Shanghai

Romona Zhao
romona_zhao@huaander.com
www.huaander.com

China - Hong Kong / Guangzhou / Shanghai

Jimmy Chung
jimmychung@russellbedford.com.hk
www.russellbedford.com.hk

China - Shanghai

Charles Wang
charles.w@jialiangcpa.cn
www.jialiangcpa.cn

India

Shreedhar T. Kunte
shreedhar.kunte@sharpandtannan.com
www.sharp-tannan.com

Indonesia

Syarief Basir
sbasir@russellbedford.co.id
www.russellbedford.co.id

Japan - Sapporo / Tokyo

Norihito Uryu
n.uryu@audit-hibi.biz
www.audit-hibi.biz/en/service

Japan - Tokyo

Masatoshi Ito
m_ito@shin-sei.jp
https://shin-sei.jp

Korea (South) - Seoul

Minji Park
minji.park@shcpa.co.kr
www.shcpa.co.kr

Malaysia

Loh Kok Leong
lohkl@russellbedford.com.my
www.russellbedford.com.my

Nepal

BM Dhungana
bmdhungana@bnb.com.np
www.bnb.com.np

Pakistan

Rashid Rahman Mir
rsrirlhr@brain.net.pk

Philippines

Ma. Milagros F. Padernal
mfpadernal@mfpadernal.com
www.mfpadernal.com

Singapore

Andrew Lim
andrew@russellbedford.com.sg
www.russellbedford.com.sg

Sri Lanka

Devinda Mendis
devinda@ajco.lk
www.ajco.lk

Taiwan

Arthur Lin
jsgcpa@russellbedford.com.tw
www.russellbedford.com.tw

Thailand

Sansanee Poolsawat
sansanee@proudinpro.co.th
www.proudinpro.co.th/en

Vietnam - Hanoi

Linh Thuy Do
Linh.thuy.do@kctcvietname.com
www.russellbedford.vn

Vietnam - Ho Chi Minh City

Van Anh Thai
van.anh.thai@kctcvietnam.com
www.russellbedford.vn



MEMBER OF THE

FORUM OF FIRMS

Russell Bedford International

3rd Floor, Paternoster House
65 St Paul's Churchyard
London EC4M 8AB
United Kingdom

marketing@russellbedford.com

www.russellbedford.com

Russell Bedford International is a global network of independent firms of accountants, auditors, tax advisers and business consultants.

Ranked as one of the world's top accounting networks*, Russell Bedford International is represented by some 1000 partners, 8000 staff and 350 offices in almost 100 countries in Europe, the Americas, Middle East, Africa, Indian Sub-Continent and Asia-Pacific.

*Ranked by global revenues in International Accounting Bulletin World Surveys. Networks defined in accordance with IFAC Code of Ethics.