Russell Bedford
taking you further

APAC News

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*Continuing with the success story of **Russell Bedford International** in its 40th anniversary year, we are pleased to report that the network has been nominated at the International Accounting Forum Awards for the sixth year in running. The network has been selected as one of four finalists in the prestigious category of 'Network of the Year'.*

Speaking about the network, Van Anh Thai, partner of our Ho Chi Minh City, Vietnam firm, said:
*"Being a member of **Russell Bedford International**, has meant that even when we sleep we can get updates from our network friends on what is happening across every corner of the world. When we had problems with Covid, and additionally with flooding in our country, our partners, friends from all over the world texted us and checked on us. It is not only professional, but also friendship and trust that we built. For me, I am not only happy to be part of the professional group of people, but also I learn so much from our network partners. We always feel part of the Russell Bedford family."*

James Ngai, partner of our Hong Kong firm, agreed and said:
*"Being part of **Russell Bedford International** leads to collaboration opportunities, support and referrals among member firms. This helps to build relationships with professionals in other jurisdictions, and often leads to new clients. Many of my colleagues in Hong Kong, as well as myself, have taken advantage of the professional development opportunities, including training, webinars, and conferences. These all help us stay up to date with industry developments and improve our knowledge and skills in what is an ever-advancing industry."*

AUSTRALIA

NEW STAFF MEMBERS TO JOIN LEE GREEN IN NEW FINANCIAL YEAR

LEE · GREEN
STRATEGIC ACCOUNTANTS

On 1 July, we will have the pleasure of welcoming three new staff members from local firm PT & Co Chartered Accountants to Lee Green.

The combined team will operate as Lee Green from our Adelaide offices, located at 190 Fullarton Road, Dulwich.

This development was considered with our client's benefit at front-of-mind. We are confident that the new members will complement our current team effortlessly with their experience and knowledge in accounting processes, income and indirect taxes, and Self-Managed Super Funds.

"This development was considered with our client's benefit at front-of-mind."

With the two firms already sharing similar cultural values, the new staff team members will contribute greatly to our community-focused initiatives, aligning with our commitment to being more than accounting at Lee Green.

Lee Green Principal, Michael Sweeney is looking forward to the future capabilities of the combined team.

"With a similar approach to client service and continual improvement, Tsepak, Patrick and Dan bring a wealth of experience to the firm and are a great addition to the Lee Green organisation and Russell Bedford International network".

"Having commenced in 1992, PT & Co have worked with clients for more than 30 years and we are looking forward to continuing to provide this personal level of service as well as access to deeper and broader expertise as part of Lee Green" said Tsepak Tsetsang, Principal.

Our teams have already connected and started building great professional relationships through our internal knowledge sharing sessions which we host each month.

With an ever-strong focus on providing successful and strategic services to our clients, we welcome the co-learning opportunities that will arise, and have already transpired, from the addition of these knowledgeable and experienced individuals.

We're very excited to be able to introduce you to our new team members from next month, but we most look forward to the additional support and expertise that we will now be able to extend to our valued clients through our expanded team.

FEDERAL BUDGET

AUSTRALIA

The Federal Labor Government handed down the 2023 -2024 budget on 9 May 2023. The budget is forecast to return to a modest surplus of $4.2 billion on the back of low unemployment, high resource prices and increased immigration. However, after the next 12 months the budget will return to deficit with slowing growth and rising unemployment. The government has held to its election promises in relation to the Stage 3 tax cuts and has not announced any significant structural budget or tax reforms.

Individuals and Investors

Many families will benefit from energy rebates and expanding eligibility for single parenting payments. However, the Low and Middle Income Tax Offset has not been extended and is not available for the 2023 financial year and onwards. The depreciation rate increases from 2.5% to 4% per year for eligible new build-to-rent projects where construction commences after 9 May 2023.

Businesses

The temporary full expensing rules for businesses will end on 30 June 2023. Businesses will no longer be able to write off the full cost of all depreciable assets in the year they are installed and ready for use. However, small businesses with an aggregated turnover less than $10 million will still be able to write off assets less than $20,000 for the year ended 30 June 2024.

"Businesses will no longer be able to write off the full cost of all depreciable assets in the year they are installed and ready for use."

The government confirmed its previous announcement that the eligibility of plug-in hybrid electric cars to be exempt from Fringe Benefits Tax will only apply to arrangements entered into from 1 July 2022 to 31 March 2025.

Aged Care and Disability

The Government has committed to a 15% increase in the wage rates under the three awards covering the aged care sector. It will also invest in a financial sustainability framework for the National Disability Insurance Scheme (NDIS) to ensure that the total costs of the scheme grow at no more than 8% annually by 1 July 2026, with further cuts in the future.

VICTORIAN BUDGET

The Victorian Labor Government introduced a 10-year fiscal repair plan in its budget delivered on 23 May 2023. The budget aims to collect more revenue to pay for the significant debt the government has accumulated as a result of its 'big build' program and measures provided during the Covid pandemic. Some of the increased taxes the government announced as part of the budget are as follows:

Payroll Tax

From 1 July 2023 (until 30 June 2023):

- A payroll tax surcharge of 0.5% to 'wages' (i.e., remuneration for payroll tax purposes) paid in Victoria by businesses with national payrolls of greater than $10

million.

- A further 0.5% payroll tax surcharge (i.e., 1% surcharge in total) for businesses with national payrolls greater than $100 million.

From 1 July 2024:

- An increase in the tax-free threshold from $700,000 to $900,000.
- Phasing out the tax-free threshold for businesses that pay wages of more than $3 million so that the threshold reduces for every dollar over this amount and is then not available to businesses with wages of over $5 million.
- Removal of the payroll tax exemption for 'high-fee' non-government schools.

From 1 July 2025:

- A further increase in the tax-free threshold from $900,000 to $1 million.

"From 1 July 2024, Victorian land transfer duty (stamp duty) on commercial and industrial properties will be abolished and replaced with an annual property tax."

Property Stamp Duty

From 1 July 2024, land transfer duty (stamp duty) on commercial and industrial properties will be abolished and replaced with an annual property tax. Commercial and industrial properties will transition to the new system as they are sold, with the annual property tax to be payable from 10 years after the transaction. The annual property tax for commercial and industrial property will be 1 per cent of the property's unimproved land value.

Land Tax Surcharge

A new COVID-19 debt temporary land tax surcharge will apply in addition to existing land tax from the 2024 land tax year for ten years.

From 1 January 2024 for ten years:

- For taxable landholdings between $50,000 and $100,000 — a $500 flat surcharge will apply.
- For taxable landholdings between $100,000 and $300,000 — a $975 flat surcharge will apply.
- For taxable landholdings over $300,000 (and $250,000 for trusts):
    - a $975 flat surcharge, plus
    - an increased rate of land tax by 0.10 percentage points.

Absentee Owner Surcharge

From 1 January 2024

- The surcharge rate will increase from 2% to 4% for eligible properties.
- The minimum threshold for non-trust absentee owners will decrease from $300,000 to $50,000 (the threshold for land held by an absentee trust remains unchanged at $25,000).

CHINA REGIONAL PREFERENTIAL IIT POLICY

CHINA

In order to strengthen regional development in China, several local governments released preferential IIT policy to attract high-end talents. The following table illustrates the region and key requirements of the policy:

Zone	Applicant	Income	Preferential rate	Working date
Guangdong-HK-Marco GBA	Foreign and local talent	Comprehensive income, business operating income and government subsidy for talent	15%	90 days
Hainan FTP	Foreign and local talent	Comprehensive income, business operating income and government subsidy for talent	2020-2024: 15%; 2025-2034: taxed at progressive tax rate of 3%、10%、15%	183 days
Hengqin Guangdong-Marco Corporation Zone	Foreign and local talent	Comprehensive income, business operating income and government subsidy for talent	Marco resident, not exceed Marco tax rate; Others, 15%	No
Guangzhou Nansha	HK\Marco resident	Comprehensive income, business operating income and government subsidy for talent	Not exceed HK/Marco tax rate	No
Fujian Pingtan Comprehensive Experimental Area	Taiwan resident	Comprehensive income, business operating income, property income	20%	183 days
Shanghai Lingang New Area	Foreign and local talent	Pending	Pending	Pending
Beijing New Area	Foreign talent	Pending	Pending	Pending

From the above summary, it can be seen that the specific content of the preferential IIT policies in each region varies according to the local strategic positioning, resources and planning industries. Therefore, the difficulties and "hidden conditions" that need to be paid attention to in the process of preliminary planning and subsequent implementation are listed as follows:

1. If the entity is eligible for “substantive operation”?

The requirement of "substantive operation" has been clearly stated in the existing preferential individual tax policies in some regions, such as Hainan, Hengqin and Nansha. For the specific requirements of "substantive operation", the standards are detailed from the business and control level of the actual production and operation of the enterprise, such as setting the minimum number of resident employees and the number of days of

“The requirement of ”substantive operation” has been clearly stated in the existing preferential individual tax policies in some regions, such as Hainan, Hengqin and Nansha.”

residence, the location of the company's production and operation, the storage of financial file data and the storage of production and operation activity assets, etc., and comprehensively considering whether the enterprise meets the "substantive operation".

2. If the applicant must pay social insurance to local government?

The current policies in Hainan and Hengqin explicitly require individuals to pay social insurance locally for more than 6 consecutive months (including the month of December of the current year), while other regions depend on specific practical requirements.

3. If only domestic talents are eligible to the IIT benefit?

"The current policies in Hainan and Hengqin explicitly require individuals to pay social insurance locally for more than 6 consecutive months..."

At present, the Hainan FTP and Hengqin policies cover Chinese individuals. For Chinese individuals working in other regions, they can also seek the opportunity to enjoy the 15% tax concession according to the policy and practical situation. For example, under the current preferential policies in the GBA, Chinese individuals who have obtained long-term residency abroad, or Chinese individuals who have obtained Hong Kong resident status through the Hong Kong Immigration Scheme (Gifted Scheme, etc.) have the opportunity to meet the status conditions and enjoy the policy dividends. In the recently released 2022 application guidelines in Nansha, it is also clear that Hong Kong and Macao residents include both permanent residents and non-permanent residents, so individuals who obtain Hong Kong resident status through the Hong Kong Immigration Scheme (gifted, professionals, entrepreneurs, etc.) may also be subject to the Nansha IIT preferential policy. In addition, in addition to the high 15% individual tax incentive, there are currently talent incentive policies without identity restrictions in some regions, such as Hengqin's special talent incentive measures, Nansha's backbone talents, and senior management talent incentives.

4. How to distinguish employee and employer's responsibility?

In general, IIT benefit application is individual's responsivity. The individual taxpayer shall make sure that the applicant document is in complete and authentic. But employer needs to understand the review the document. Also, the tax refund is arranged to be paid to individual's personal domestic bank account whether the refund is applied by annual tax reconciliation filling or government subsidy.

5. Does it impact expatriate's foreign tax credit?

Generally, foreign individuals need to apply for a tax credit in their country of residence for personal income tax paid in China to avoid double taxation. Assuming that an individual benefits by applying for government subsidies separately, they can still claim tax credits in their country of residence according to the "tax paid" without changing their personal income tax records. However, it is important to pay attention to whether the country of origin has taxable requirements for government subsidies obtained, and if so, it may have an impact on the overall tax of the individual (e.g., individuals with U.S. status). For those who enjoy the preferential tax refund through the annual reconciliation filling, the "tax paid" on the final tax record is the actual tax burden after enjoying the incentive, which may affect the calculation of the tax credit of the foreign individual in the original country of residence and generate additional tax burden.

PURCHASE COSTS OF RENEWABLE ENERGY CREDITS

HONG KONG

As part of ESG program or initiative, businesses are increasingly looking at purchase of renewable energy credits (RECs) or carbon credits. In the annual meeting between the representatives of the Inland Revenue Department (IRD) and the accounting profession (represented by the HKICPA), the deduction of purchase costs of RECs was discussed.

Such purchases, insofar as Hong Kong is concerned, are on a voluntarily basis, as a means to reduce carbon footprint or meet the taxpayer's greenhouse gas emission goal. Currently there are no compulsory purchases under the Hong Kong regulatory framework.

The accounting profession has sought the IRD's view on four scenarios:

(i) Deductibility of voluntary purchases

To qualify for deduction, the IRD considers that the purchase costs:

- have to satisfy section 16(1) of the Inland Revenue Ordinance (IRO) as outgoings and expenses to the extent that they were incurred in the production of a taxpayer's chargeable profits; and
- are not disallowed under section 17 of the IRO as capital expenditure.

"As part of ESG program or initiative, businesses are increasingly looking at purchase of renewable energy credits (RECs) or carbon credits."

Accordingly, deduction claim of purchase costs should be considered in conjunction with the taxpayer's profit-making activities as a matter of fact and degree. This brings into the question of whether the expenses were incurred "really incidental to the trade itself" or "for the purpose of earning the profits".

In Hong Kong, the two electricity companies have introduced voluntary REC schemes. Through purchasing RECs, electricity consumers could demonstrate their support for the development of renewable energy (RE) and make use of the RECs to achieve their RE or environmental targets. The RECs purchased did not directly relate to the electricity actually used by the consumers in conducting their business activities. On a specific case-to-case basis, the IRD considers the outcome would be:

- the purchase costs formed part of the electricity expenditure incurred by a company in the ordinary course of its business activities and hence deductible, or
- the purchases merely aimed to demonstrate a company's support towards the development of RE with a view to enhancing its "green image" and hence non-deductible as not sufficiently connected with "for the purpose of earning the profits", and potentially capital in nature as related to image / brand building.

(ii) Allocation of REC purchase costs by group company to HK taxpayer

This refers to situation where a group company purchased RECs for the whole group and then allocated the purchase costs to various companies within the group that are operating in different jurisdictions (including a company operating in Hong Kong) based on certain allocation keys (e.g., size of the company/business, amount of electricity consumption or amount of greenhouse gas emissions).

The IRD is of the view that if the arm's length principle is followed in cost allocation to Hong Kong, the allocated costs would qualify for deduction if the conditions under

HONG KONG

(Continued)

sections 16 and 17 of the IRO were satisfied. Any excessive costs of RECs allocated to the Hong Kong company would not be allowed under regulations relating to transfer pricing.

(iii) application of above tax treatments to costs of compulsory purchases

This refers to purchases by the HK taxpayer in compliance with the relevant regulatory requirements in other jurisdictions. The IRD considered that the tax treatments as discussed in (i) above would apply whether RECs were purchased on a voluntary or compulsory basis. The question remained whether the costs of RECs were revenue in nature and formed part of the costs incurred by a company in the ordinary course of its business activities for the purpose of producing chargeable profits. Each case would be determined on its own facts and circumstances.

"The question remained whether the costs of RECs were revenue in nature and formed part of the costs incurred by a company in the ordinary course of its business activities for the purpose of producing chargeable profits."

(iv) application of the above tax treatments to costs incurred on purchasing carbon credits

These are credits that can be used to offset against or compensate for carbon emissions from business operations/activities. The IRD considered the treatment should be the same as the purchase costs of RECs.

The system of carbon credit varied among jurisdictions. In general, a carbon credit was a permit that allowed the owner to emit a certain amount of carbon dioxide or other greenhouse gases. Some jurisdictions might introduce a "cap-and-trade" program for carbon credits. Under such a program, carbon credits would be issued to companies which would allow them to emit carbon dioxide or equivalent in conducting their business activities up to a certain limit. Companies would be taxed or fined if they produced carbon emission beyond their allowed limit. Companies whose carbon emission was below the allowable limit might sell any excessive carbon credits to other companies which needed extra emission permits through the carbon market. The conditions for deduction under sections 16 and 17 of the IRO as explained in (i) above would apply to the deduction of purchase costs of carbon credits.

INDIA

Sharp & Tannan

Chartered Accountants

UPDATES ON TAX, ACCOUNTING, ESG AND MORE

I. Income-tax Act, 1961

A. Withdrawal of tax benefits on market-linked debentures and debt securities

With effect from 1 April 2023, the gain/loss arising from the sale/transfer/redemption of the following instruments are taxed as short-term capital gain/loss.

- a market-linked debenture or any security,
- any security which has an underlying principal component in the form of debt security and where the returns are linked to the market returns on other underlying securities or indices,
- any security classified or regulated as a market-linked debenture by the Securities and Exchange Board of India ('SEBI').

They would be taxable at the prevailing income tax rates applicable to the entity. Before 1 April 2023, such gains/losses were calculated as short-term/long-term, depending upon the holding period of the concerned asset.

The basic tax rate for long-term capital gains is 20%, whereas the basic tax rate for short-term capital gains is 30%. Thus, there is a withdrawal of tax benefit on the sale of market-linked debentures with effect from financial year ('FY') 2023-24.

B. Extension in the date of manual filing of form 10F by non-residents

Non-residents are required to file form 10F along with tax residency certificate to claim the relaxation (for avoiding double taxation) in respect of their income and income tax chargeable in India and the country of their residence. With effect from 16 July 2022, it was made mandatory to file such Form 10F electronically. The electronic filing facility requires the assessee to mention the permanent account number ('PAN'). However, those assessees who did not have a PAN and who were not required to have it were unable to file the same electronically. To avoid the hardship, the date of electronic filing of form 10F is extended to 30 September 2023 for such non-residents.

Till 30 September 2023, they can file form 10F manually.

II. The Companies Act, 2013

Mandatory maintaining of audit trail of accounting from 1 April 2023

- The Companies Act, 2013 has made it mandatory for companies:
  - to use only such accounting software to maintain their books of account which has a feature of recording the audit trail of every transaction
  - to create an edit log of each change made in books of account along with the date when such changes were made
  - and ensuring that the audit trail cannot be disabled.
- The above provision becomes applicable from 1 April 2023.
- As per rule 11(g) of the Companies (Audit and Auditors) Amendment Rules, 2021 ('the Audit Rules'), the auditors have been cast a responsibility to verify whether the company has used such accounting software for maintaining its books of account.
- However, the audit reporting will be triggered for the financial years commencing on or after 1 April 2022.
- For FY 2022-23, the reporting under the said clause is not applicable. However, if the company has voluntarily adopted the implementation of the software, the auditor will report on it as required under the relevant rules.

"With effect from 1 April 2023, the gain/loss arising from the sale/transfer/redemption of the following instruments are taxed as short-term capital gain/loss."

III. Securities and Exchange Board of India ('SEBI')

A. Environmental, social and governance ('ESG') disclosures for listed companies

With an objective to enhance ESG disclosures, Business Responsibility and Sustainability Report ('BRSR') core shall be introduced by SEBI, containing a limited set of key performance indicators ('KPI') on which the listed entities will

need to obtain a reasonable assurance. The core shall apply initially to the top 150 listed companies for FY 2023-24 and will be gradually extended to the top 1,000 listed companies by FY 2026-27.

B. Introduction of a regulatory framework for ESG rating providers

SEBI has approved the proposal for the introduction of a regulatory framework for ESG rating providers ('ERPs') in the Indian securities market, and related proposals on:

- enhanced transparency in ESG rating rationales,
- measures to mitigate conflict of interest by ERPs,
- facilitating augmentation of transition finance in India, and
- facilitating ESG ratings based on assured data.

This will be done by inserting a fresh chapter into the SEBI (Credit Rating Agencies) Regulations, 1999.

"With effect from 1 July 2023 London Interbank Offer Rate ('LIBOR') will cease to be used in India."

C. Disclosure of material events and information

To enhance transparency and ensure timely disclosure of material events, SEBI has approved certain amendments to its Listing Obligations and Disclosure Requirements ('LODR') regulations. These apply to the listed entities.

- Introduction of a quantitative threshold for determining the 'materiality' of events/information.
- A stricter timeline has been prescribed for disclosure of material events/information for which decision has been taken:
  - in the meeting of the board of directors: within 30 minutes
  - which are emanating from within the listed entity: within 12 hours.
- Market rumours are to be verified and confirmed, denied or clarified, as the case may be, by the top 100 listed entities by market capitalization effective from 1 October 2023 and by the top 250 listed entities with effect from 1 April 2024.
- Disclosure for certain types of agreements binding listed entities.

D. Shareholder empowerment

SEBI has taken certain corporate governance measures (applicable to listed entities) for enabling 'shareholder empowerment.'

- Strengthening the extant mechanism of sale, lease or disposal of an undertaking outside the 'Scheme of Arrangement' framework.
- Periodic shareholders' approval for any director serving on the board to do away with the practice of permanent board seats.
- Listed entities shall be required to fill up the vacancy of Directors, Compliance Officer, Chief Executive Officer and Chief Financial Officer within 3 months from the date of such vacancy, to ensure that such critical positions are not kept vacant.

IV. Reserve Bank of India ('RBI')

A. LIBOR – complete transition

- With effect from 1 July 2023 London Interbank Offer Rate ('LIBOR') will cease to be used in India. In this regard, RBI has issued an advisory to banks and

other RBI-regulated entities, emphasizing the need to take steps to ensure a complete transition away from the LIBOR.

- RBI will continue to monitor the efforts of banks/FIs for ensuring a smooth transition from LIBOR.

- As per RBI's LOBOR transition roadmap, banks and financial institutions will need to:

  - use an alternative reference rate ('ARR'), e.g., daily adjusted MIFOR and modified MIFOR (Mumbai Interbank Forward Outright Rate).
  - undertake a comprehensive review of all direct and indirect LIBOR exposures and put in place a framework to mitigate risks arising from such exposures on account of transitional issues including valuation and contractual clauses.

B. Master direction on IT outsourcing activities

- The banking and financial services sector in India is digitally evolved and uses information technology ('IT') services extensively to support its business models, products and services offered to its customers. The RBI-regulated entities ('RE') outsource their IT activities to third parties (located in India and abroad) which expose them to various risks.

- According to the RBI master direction, all the REs entering into outsourcing IT agreements/contracts should comply with the master direction issued by RBI.

Regulated entities are:

- Banks,
- Non-banking finance companies ('NBFCs'),
- Credit information companies and
- Foreign banks on a 'comply on explain' basis.

- The master direction aims to put a stringent regulatory control and accountability on the IT activities of the REs. This is because the customers, investors and the entities themselves are exposed to significant IT risks.

- The master direction requires an RE to have an IT outsourced policy in place, however, the final responsibility thrusts on its board of directors and senior management.

"The master direction requires an RE to have an IT outsourced policy in place, however, the final responsibility thrusts on its board of directors and senior management."

- It also mandates the RE to oversee and effectively manage the IT services and ensure a high standard of care in carrying out such activities.

- A risk assessment framework should be in place to deal with the processes and responsibilities for the identification, measurement, mitigation, management, and reporting of risks associated with outsourcing of IT services.

- In the case of cloud services, the RE should have an appropriate cloud adoption policy.

JAPAN

JAPANESE TAXATION AND WITHHOLDING INCOME TAX REFUND WHEN JAPANESE RESIDENT SELL REAL ESTATE OWNED IN HAWAII

信成国際税理士法人
SHINSEI INTERNATIONAL TAX CO.

The number of transfers of condominiums in Hawaii owned by Japanese people is increasing, probably due to the refraining from overseas travel due to COVID-19 and the depreciation of the yen due to the rapid exchange rate fluctuations from around last year.

Therefore, this time, we would like to talk about withholding tax when a resident of Japan (non-resident of Hawaii) transfers real estate and the refund procedure of the withholding tax after the transfer.

Here are the tax procedures for the Hawaii State Government that taxpayers who apply for foreign tax credits in Japan should know about capital gains from real estate in Hawaii.

1 Taxation and Refund Procedures by the Hawaii State Government for Residents of Japan

"In the event of a sale of real property in Hawaii, the transferee is liable for federal income tax on the transfer price."

(1) ***Taxation and payment of withholding income tax at the time of real estate transfer***
In the event of a sale of real property in Hawaii, the transferee is liable for federal income tax on the transfer price. In addition, Hawaii state law imposes withholding of state income tax at a rate of 7.25%. The withheld tax must then be paid to the state of Hawaii.

(2) Withholding tax refund procedures
In a situation in which the non-resident transferor's income in Hawaii is solely from the transfer of real estate, the taxpayer is entitled to a refund of the amount of the tax withheld by submitting an application for refund, the **APPLICATION FOR TENTATIVE REFUND OF WITHHOLDING ON DISPOSITIONS BY NONRESIDENT PERSONS OF HAWAII REAL PROPERTY INTERESTS** to the State of Hawaii.

As income tax withholding is calculated by multiplying the transfer amount by the state's withholding tax rate (7.25%), the tax burden is temporarily higher. Therefore, the net transfer amount is calculated by deducting the real estate acquisition costs and transfer-related expenses, and then is multiplied by the applicable tax rate to calculate the amount of tax due (final tax amount). An application is filed with the Hawaii state government for a refund of the difference between the withheld tax at the time of the real estate transfer and the final tax amount.

Japanese income tax law treats this tax refund as miscellaneous income.

2 Taxation at the time of a real estate transfer, and refund procedures

① Real estate transaction
↓
② The transferee pays the (net) transfer price after deducting withholding tax at the rate of 7.25% from the real estate transfer price
↓
③ The transferee of the real property submits **Form N-288** [HAWAII WITHHOLDING TAX RETURN FOR DISPOSITION BY NONRESIDENT PERSONS OF HAWAII REAL PROPERTY INTERESTS] and **Form N-288A (Copy A)** [Statement of Withholding on Dispositions By Nonresident Persons Of Hawaii Real Property Interests] with the Hawaii state government, filing notice of the purchase of the real estate from a non-resident and the withholding tax imposed on the real estate transaction.
↓
④ The real estate transferee pays the withholding tax to State of Hawaii officials.
↓

⑤ The real estate transferee provides the transferor with a **FORM N-288A (Copy B)** [Statement of Withholding on Dispositions by Nonresident Persons of Hawaii Real Property Interests], while **FORM N-288A (Copy C)** is kept as a duplicate by the transferee.

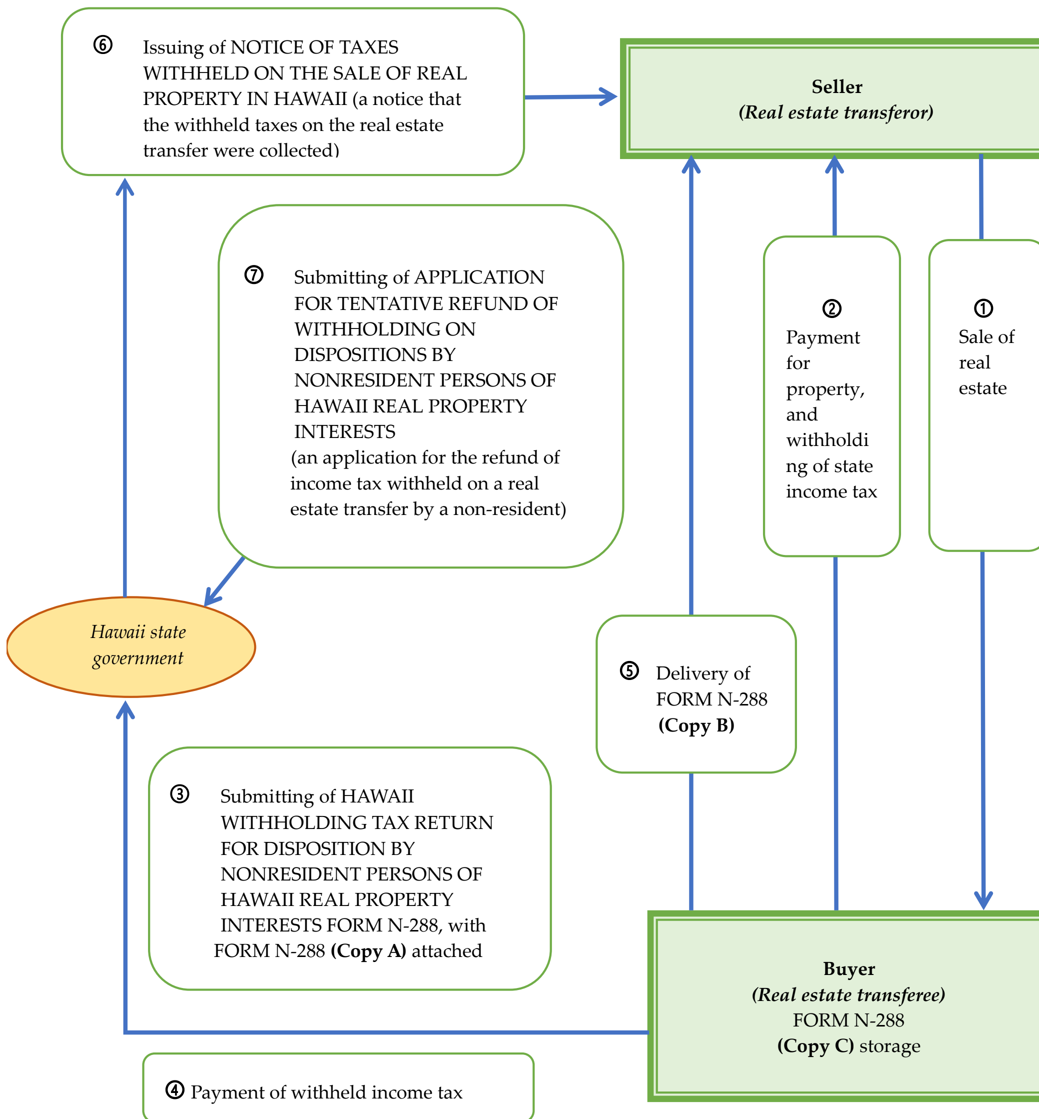
↓

⑥ The Hawaii state government issues a **NOTICE OF TAXES WITHHELD ON THE SALE OF REAL PROPERTY IN HAWAII** (a notice that the withheld taxes on the real estate transfer were collected) to the transferor.

↓

⑦ The transferor of the real estate submits an **APPLICATION FOR TENTATIVE REFUND OF WITHHOLDING ON DISPOSITIONS BY NONRESIDENT PERSONS OF HAWAII REAL PROPERTY INTERESTS** (an application for the refund of income tax withheld on a real estate transfer by a non-resident) to the Hawaii state government for a tax refund.

[Process flow for Hawaii real estate transfers and refunds of withheld income tax paid to the Hawaii state government]



MALAYSIA

INCOME TAX (TRANSFER PRICING) RULES 2023

The Income Tax (Transfer Pricing) Rules 2023 ("TP Rules 2023") have been gazetted on 29 May 2023 and will be effective from the Year of Assessment 2023. The TP Rules 2023 are poised to greatly bolster and fortify the Malaysia Inland Revenue Board's stance on transfer pricing enforcement.

The key highlights of the TP Rules 2023 which replaced the revoked Income Tax (Transfer Pricing) Rules 2012, are as follows:

	Description
Content of contemporaneous transfer pricing documentation ("TPD")	The TP Rules 2023 provide a detailed list of documentation requirements of a Malaysian taxpayer as summarised below: 1. Information of the Multinational Enterprise Group ("MNE Group") a) The MNE Group's worldwide organisational structure; b) Description of the MNE Group's businesses that are relevant to the business of the Malaysian taxpayer; c) Description of the MNE Group's intangible property that are used in or applied in the Malaysian taxpayer's business; d) The MNE Group's financial activities that are connected to the Malaysian taxpayer's business; and e) Financial and tax position of the MNE Group. 2. Business information of the Malaysian taxpayer including its controlled transactions. • The list of information in the TP Rules 2023 is broadly similar to the TPD requirements outlined in the existing Malaysian Transfer Pricing Guidelines. 3. Date on which the TPD is completed; and 4. Any other relevant information, data or documents used by the Malaysian taxpayer in determining an arm's length price.
Selection of transfer pricing method in determining the arm's length price	The selection of most appropriate transfer pricing method does not need to go through the hierarchy of methods like before. Based on the TP Rules 2023, the best method approach is to be applied when selecting the most appropriate transfer pricing method. The Malaysian taxpayer must document the explanation and reasons for choosing a particular transfer pricing method and profit level indicator (if the Transactional Net Margin Method is applied) and the selection must be based on facts and circumstances.
Best available data to be used in preparing a TPD	The arm's length price shall be determined based on the most current reliable information, data or documents that are reasonably available at the point of determining the arm's length price.

	Description
Arm's length range and arm's length price	It is now made clear in the TP Rules 2023 which defined the arm's length range as a range of figures or a single figure falling between the value of **37.5 percentile** to **62.5 percentile** of the data set. Where the transfer price of a controlled transaction falls: (a) within the arm's length range, such price may be regarded to be the arm's length price; or (b) outside the arm's length range, the arm's length price shall be taken to be the median.

MALAYSIA

(Continued)

SINGAPORE

THE INSTITUTE OF SINGAPORE CHARTERED ACCOUNTANTS ("ISCA") ISSUES FINANCIAL REPORTING BULLETIN 10: REAL PROPERTY VALUATION FOR FINANCIAL REPORTING – FAIR VALUE BASED ON THE HIGHEST AND BEST USE

ISCA explain the concepts of 'fair value' and 'market value', and to highlight that the valuation premise required under SFRS(I) 13 is 'highest and best use'.

Impact on Audits and Reviews of Financial Statements/ Financial Information:

If the reported market value is materially different from the fair value under SFRS(I) 13, the reporting entity would not have complied with the financial reporting standards. The consequences of non-compliance are significant especially for public interest entities or when there is an impending merger and acquisition transaction or related party transaction involving a transfer of value from one party to another.

Highest and best use:

The 'highest and best use' takes into account the use of the asset that is physically possible, legally permissible and financially feasible, as summarised in the table below:

Physically possible	Legally permissible	Financially feasible
Takes into account the physical characteristics of the asset that market participants would take into account when pricing the asset (e.g., the location or size of a property).	Takes into account any legal restrictions on the use of the asset that market participants would take into account when pricing the asset (e.g., the zoning regulations applicable to a property).	Takes into account whether a use of the asset that is physically possible and legally permissible generates adequate income or cash flows (taking into account the costs of converting the asset to that use) to produce an investment return that market participants would require from an investment in that asset put to that use.

The reporting entity should remain actively involved in the valuation process, including the communication process between the auditor and the valuer. This is because the reporting entity is ultimately responsible for preparing the financial statements in accordance with the financial reporting standards.

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.

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