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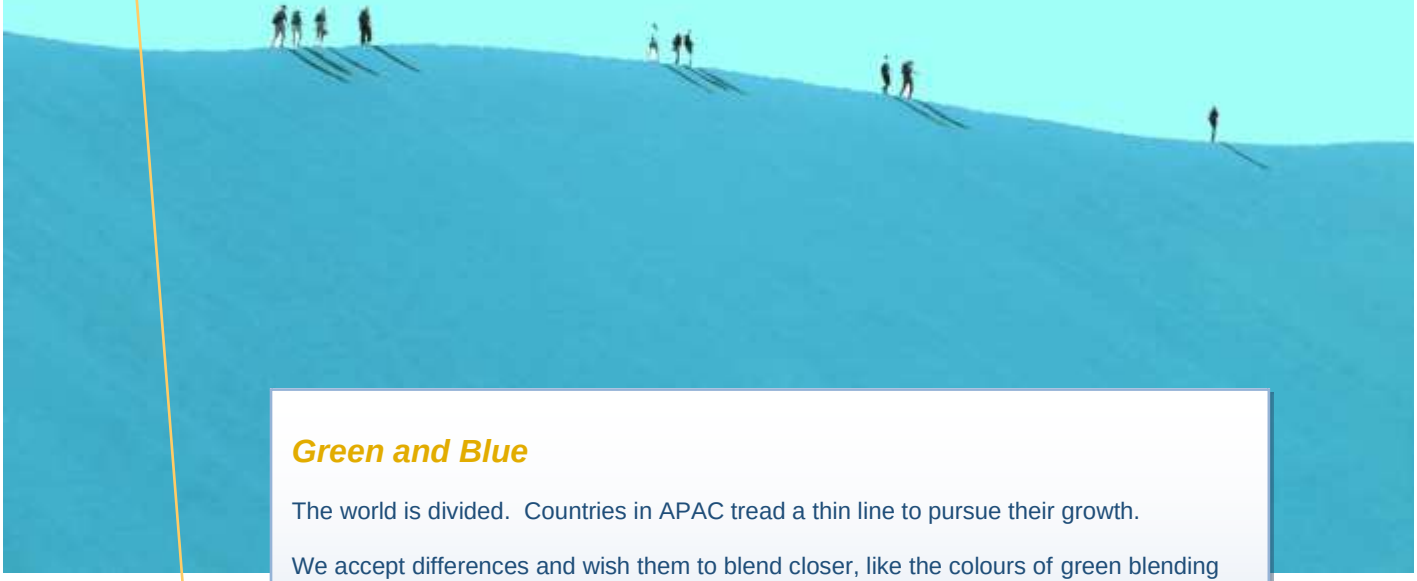

Green and Blue

The world is divided. Countries in APAC tread a thin line to pursue their growth.

We accept differences and wish them to blend closer, like the colours of green blending with blue. Green symbolizes Peace and New Beginnings. Blue represents the Sea and Sky. They create opportunities and open space.

There are Green and Blue articles in this newsletter spinning across: audit oversight cooperation between countries, turnaround wins for taxpayers, initiatives in export trade settlement using local currency, digital lending directives, fund raising through social stock exchange, requirement for e-accounting records, treatment of digital currency transactions, and guidelines on Retail ESG funds.

They are the space and opportunities awaiting us to explore and pursue under the new and old economies. We are heading the same direction and keeping pace.

CHINA

CHINA AND US ENTER INTO AUDIT OVERSIGHT COOPERATION AGREEMENT

China Securities Regulatory Commission (CSRC) and the Ministry of Finance signed an audit oversight cooperation agreement with the US Public Company Accounting Oversight Board (PCAOB) on Friday, 26 August 2022.

The deal, viewed by many as a landmark and long-awaited one, is a breakthrough in the bilateral auditing cooperation between China and the United States and significantly eased market fears over the imminent risk of massive delistings of Chinese companies from the US market. It sets up a cooperative framework that is mutually acceptable and paves the way for future cooperation toward ultimately resolving the years-long China-US audit dispute. For more than a decade, the PCAOB's access to inspect and investigate registered public accounting firms in mainland China and Hong Kong has been obstructed.

Currently, there are more than 30 Chinese accounting firms that are registered with the PCAOB and qualified to provide audit services to more than 200 Chinese companies listed on the US capital markets.

"…we need to inspect and investigate any firm we choose, with no loopholes and no exceptions. But the real test will be whether the words agreed to on paper translate into complete access in practice.""

Since the US Holding Foreign Companies Accountable Act (HFCAA) became law in late 2020, many Chinese companies have been under the threat of forced exit from the US market. Under the HFCAA, beginning with 2021, after three consecutive years of PCAOB determinations that positions taken by Chinese authorities obstructed the PCAOB's ability to inspect and investigate registered public accounting firms in mainland China and Hong Kong completely, the companies audited by those firms would be subject to a trading prohibition on US markets. As of 8 September 2022, 164 Chinese companies had been included in the "pre delisting" list, close to 60% of Chinese stocks in the United States.

While the Chinese side cares the most about whether the implementation of the deal can be carried out on an equal footing and mutually beneficial basis as agreed, the US side concerns more about whether it can be effectively implemented. PCAOB Chair Erica Y. Williams' statement says, "on paper, the agreement signed today grants the PCAOB complete access to the audit work papers, audit personnel, and other information we need to inspect and investigate any firm we choose, with no loopholes and no exceptions. But the real test will be whether the words agreed to on paper translate into complete access in practice."

According to latest news, the PCAOB inspection team has chosen some big Chinese internet companies such as Alibaba (*BABA)*, Jingdong (JD) and Baidu (BIDU) as the first batch of companies to receive audit inspection. The PCAOB is required to reassess its determinations according to the test results by the end of 2022.

"Despite the uncertainties, one thing is certain." A Chinese analyst wrote, "China will not isolate itself from the global financial arena. Deepening financial reform and pushing two-way opening will continue to be major themes underpinning China's next phase of development."

SURPRISING WINS TO TAXPAYERS

HONG KONG

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Taxpayers have emerged as surprising winners of a string of tax appeal cases in the last few months. The Inland Revenue Department has not appealed against the court decisions. They are therefore final.

Offshore trading profits – April 2022 decision

The Court of First Instance ("CFI") decided in the case of Newfair Holdings Ltd v CIR that the Hong Kong tax law (Section 14 of the Inland Revenue Ordinance) does not impose profits tax liability on what an entity is. Instead, tax is imposed based on what the entity does. To elaborate, the CFI considered the interposition of the taxpayer between the customer and the suppliers merely reflected its role within the group, but is not the acts/ operations that gave rise to profits. It is the effecting of the transactions of purchase of merchandise from supplier and reselling the same to customers that generated the profits. The CFI noted and determined that these transactional activities were conducted outside Hong Kong.

Takeaway from this case includes: (i) the CFI held that the use of banking facilities in Hong Kong was incidental to the generation of profits but not a relevant factor to determine the profits as sourced in Hong Kong; and (ii) counsel for the CIR conceded in the hearing that it was not necessary to attribute the source of profits to an alternative place outside of Hong Kong in order for Section 14, the tax charging section, not to apply.

Salaries tax on Restricted Share Awards ("RSA") – July 2022 decision

In the RSA case of Richard Paul Forlee v CIR, the Court of Appeal ("COA") determined that:

- Employment benefit is deemed to be accrued to an employee at the time of grant of the RSA;
- Dividend income derived from shares relating to unvested shares represents investment income to the grantee and is not employment income of the grantee. This is notwithstanding that continuation of employment must be observed in order for the shares to vest;
- The CIR has incorrectly focused on the possibility of forfeiture of the shares to defer the timing of income accrual and to determine the nature (hence taxability) of the dividend income.

"The COA principle has the effect to advance the tax incidence and potentially reduce the tax liability assuming the RSA has a lower fair value at the time of grant than at the time of vest. "

Employers and employees have in the past generally relied on the practice guideline issued by the CIR (in 2008) to treat (i) taxable employment benefits as accrued at the time of vest; and (ii) dividend income prior to the vest as taxable employment income. The guideline has no legal binding force. Accordingly, employers and employees may consider whether to adapt the principle in this COA case or continue with tax reporting based on the 2008 guideline.

The COA principle has the effect to advance the tax incidence and potentially reduce the tax liability assuming the RSA has a lower fair value at the time of grant than at the time of vest. The downside is the tax paid would not be recoverable in the event that the value of shares has fallen at the time of vest or the shares are forfeited prior to vest.

Penalties against directors - August 2022 decision

This Court of Final Appeal ("CFA") decision of CIR v Koo Ming Kown and Murakami Tadar concerns whether penalty assessments can be issued to the directors who signed incorrect profits tax returns on behalf of the company.

HONG KONG

(Continued)

The CFA decision was based on the language of the tax law which provides that (i) profits tax returns are addressed to the business entities and required to be correctly completed and filed by the addressees; and (ii) penalty assessments may be issued to the addressees for non-compliance or for incorrect returns submitted. The CFA annulled the penalty assessments on ground that the directors who signed the concerned returns were not the addressee, despite that the business entity, as the addressee, is only capable to act at the direction of its officers.

We expect that the tax law may be amended in the future to permit penalty assessments be issued to the signatories of incorrect returns. Alternatively, penalty action may be taken against officers of the company for aiding and abetting non-compliance, which is possible under the current tax law but entails a more complex process than the administrative procedures of issuing penalty assessments.

INDIA

UPDATES FROM THE RESERVE BANK OF INDIA ('RBI'), INDIA'S CENTRAL BANK

Sharp & Tannan

Chartered Accountants

a) RBI allows invoicing and payments for international trade in Indian Rupee ('INR')

To promote the growth of global trade with emphasis on exports from India, and to support the increasing interest of the global trading community in INR, RBI has permitted additional arrangements for invoicing, payment, and settlement of exports/imports in INR. To facilitate the settlement in INR, the authorised dealer ('AD') banks will require prior approval from the Foreign Exchange Department of RBI.

Documentation and reporting: The procedure for documentation and reporting will be governed by the existing RBI guidelines and FEMA provisions.

b) Digital lending directives by RBI

India has witnessed tremendous growth in the digital payments' environment recently, especially in the lockdown period, when quick and contactless payments flourished. There was a spurt of digital lending through various mobile applications ('apps') but there was a lack of a regulatory framework. The need was felt to address the risks of the digital lending apps ('DLAs') outsourced by the non-banking financial companies ('NBFCs') and the financial technology ('fintech') companies mainly related to mis-selling, unethical recovery practices, and breach of data privacy and security. In August 2022, the RBI decided to implement a digital regulatory framework classifying the entire digital lending universe into 3 categories.

"There was a spurt of digital lending through various mobile applications ('apps') but there was a lack of a regulatory framework."

Entity type	Regulatory framework
RBI regulated entities (i.e., banks, NBFCs/fintech companies):	RBI's own regulatory framework
Entities regulated by other statutory laws	Framework specified by the respective law
Unregulated entities	Government will curb all type of unregulated lending

The RBI's timely move to bring digital lending under a stringent regulatory framework will strengthen and help positively the growth of India's digital revolution.

SOCIAL STOCK EXCHANGES IN INDIA AND THEIR AUDIT

INDIA

(Continued)

In July 2022, India's securities market regulator, the Securities Exchange Board of India (SEBI) allowed social enterprises to register themselves with the social stock exchanges ('SSE'). This brings the not-for-profit organisations, and for-profit organisations like trusts and educational institutions engaged in social causes, at par with the corporates in raising funds from the public.

India's accounting regulator, i.e., the Institute of Chartered Accountants of India ('ICAI') has published an exposure draft of the accounting standards, which a social auditor is bound to adhere to while conducting an audit. Very soon, we expect the ICAI to release the final social audit standards.

In addition to the framework defined in the exposure draft the social auditors also need to adhere to the 'Code of Conduct' of the ICAI which sets out the fundamental ethical principles of integrity, objectivity, confidentiality, professional behaviour, professional competence and due care.

CORPORATE LAWS

Maintaining a company's books of accounts in electronic mode

The Ministry of Corporate Affairs ('MCA') has made it mandatory with effect from 5 August 2022, for a company to maintain its books of account in electronic mode as mentioned below:

1. The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India, ***at all times*** so as to be usable for subsequent reference.

2. The backup of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a ***daily*** basis.

   Where the service provider is located outside India, the name and address of the person in control of the books of account and other books, papers, etc. in India.

   This information needs to be communicated to the Registrar of Companies annually at the time of filing the financial statement.

"The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India, at all times…"

The new requirement ensures that the books of account are available on a daily basis, in India, and that backups are taken daily to ensure minimal loss of data.

MALAYSIA

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GUIDELINES ON TAX TREATMENT OF DIGITAL CURRENCY TRANSACTIONS

Given the upward trend of investing in digital currencies in Malaysia, the question then arises would be on whether the gains from investing in digital currencies is subject to tax in Malaysia. Although digital currencies have been around for many years, regulators are still trying to grasp the legal and tax aspects of transactions surrounding digital currencies such as Bitcoin, Ethereum etc.

To address this area of taxation, the Inland Revenue Board has recently issued a guidance on the tax treatment of income from digital currencies or digital tokens covering the trading, mining or exchanges of digital currencies. The Malaysian Income Tax Act 1967 does not have a specific taxing provision for digital currencies. The digital currency transactions would fall within the scope of Malaysian income tax if the key activities and business operations are performed in Malaysia or if the business has a presence in Malaysia.

The guidelines indicated that the determination of whether the gain or loss from digital currency transactions is revenue or capital in nature would depend on whether there is a pattern of badges of trade. If one is determined as an active trader of digital currencies, then the net gains would be subject to income tax.

"The digital currency transactions would fall within the scope of Malaysian income tax if the key activities and business operations are performed in Malaysia or if the business has a presence in Malaysia. …"

The guidance on tax treatment for specific transactions involving digital currencies is tabulated below.

Digital currency transactions	Tax treatment
Buying and selling of digital currencies as a business	Proceeds from trading of digital currencies are taxable and the expenses incurred in generating the income are tax deductible
Mining of digital currencies	Profits from mining activities which are carried out with profit seeking motive are subject to income tax
Business transactions in digital currencies	The value of sale and purchase of goods / services of businesses settled in digital currencies as a mode of payment, should be recorded based on the open market value of goods / services in Ringgit Malaysia ("RM")
Salaries and wages of employees paid in digital currencies	The taxability of the salary received by the employee and the deductibility of the salary paid by the employer in digital currencies is based on the value stated in the employment contract
Realisation of investment in digital currencies	Gains from active trading of digital currencies aimed at making profits are treated as revenue transactions and subject to income tax. Meanwhile, gains from realisation of long-term investments in digital currencies are not taxable. The gain or loss is derived from the amount received in exchange of the digital currency and the amount spent to acquire the digital currency (including fees, commissions etc.)
Mere purchase and free distribution of digital currencies	Mere purchase of digital currencies for payment of any goods and services or receipt of digital currencies for free as a promotion or marketing tool or from splitting do not give rise to taxation situations at the time of purchase or receipt.

MALAYSIA

The acquisition cost of digital currency is determined in RM using the First-In-First-Out (FIFO) basis. If the acquisition cost cannot be determined, the digital currency will be valued using fair value i.e., the rate in force on the day of the transaction and based on acceptable and verifiable digital currency exchanges.

This guideline also stipulates the type of records that are required to be kept for tax purposes to substantiate the nature of transaction and the tax treatment.

(Continued)

NEW DISCLOSURE AND REPORTING GUIDELINES FOR RETAIL ESG FUNDS

SINGAPORE

STEVEN TAN RUSSELL BEDFORD PAC

The rising importance of environmental, social and governance ("ESG") matters have increasingly made ESG a priority amongst investors today. Investment fund managers have been selling ESG-related financial products to take advantage of growing consumer demand for socially responsible investing.

To reduce greenwashing risk and enable retail investors to better understand the ESG products they are investing in, the Monetary Authority of Singapore ("MAS") announced on 28 July 2022 new disclosure and reporting guidelines for retail ESG funds.

These changes will take effect on 1 January 2023 and apply to prospectuses of retail ESG funds that are lodged with MAS on or after 1 January 2023. Under the new guidelines, funds that bear ESG-related or similar terms, such as "green" or "sustainable", will have to comply with the terms of the guidelines. The investment portfolio or strategy of the fund will need to reflect the focus claimed by the name of the fund. MAS assesses this by checking if at least two-thirds of the assets of a fund are invested according to the declared investment strategy.

"…funds that bear ESG-related or similar terms, such as "green" or "sustainable", will have to comply with the terms of the guidelines."

Other new requirements include the following:~

- The prospectus should disclose the ESG fund's investment focus, investment strategy, reference benchmark and risks associated with the investments.

- The annual report of an ESG fund should disclose:
  (a) a narrative on how and the extent to which the fund's ESG focus has been met during the financial period, including a comparison with the previous period (if any);
  (b) the actual proportion of investments that meet the fund's ESG focus (if applicable); and
  (c) any action taken by the scheme in attaining the fund's ESG focus.

- Additional information on the following areas should be disclosed where appropriate:
  (a) how the ESG focus is measured and monitored, and the related internal or external control mechanisms that are in place to monitor compliance with the fund's ESG focus on a continuous basis;
  (b) sources and usage of ESG data or any assumptions made where data is lacking;
  (c) due diligence carried out in respect of the ESG-related features of the fund's investments; and
  (d) any stakeholder engagement policies (including proxy voting) that can help shape corporate behaviour of companies that the fund invests in and contribute to the attainment of the fund's ESG focus.

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@hmwgroup.com.au
www.hmwgroup.com.au

Australia - *Melbourne*
Bruce Saward
bruce@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.camphinboston.com.au

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

China - *Beijing / Shanghai*
Guoqi Wang
guoqi_wang@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@aajco.lk
www.aajco.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@ktcvietname.com
www.russellbedford.vn

Vietnam - ***Ho Chi Minh City***
Van Anh Thai
van.anh.thai@ktcvietnam.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

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