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Asia Pacific Quick M&A Tax Guide.

October 2012

Tax

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Introduction

In the last decade, the Asia Pacific region has become an increasing source of growth for investors around the world, often achieved by way of M&A transactions. We have seen M&A activity by investors in Asia Pacific in a number of areas, including in more traditional sectors such as mining, manufacturing and real estate, but now also in areas such as consumer business, healthcare and services.

The emergence of capital-rich strategic Asian investors, often backed by sovereign wealth, has also been a key feature of the last few years, leading to a transformation in the M&A landscape. Our Quick Guide shows trends in both deal volume and deal value in Asia Pacific since January 2008 on a country by country basis.

The increasing sophistication of investors in Asia Pacific has led tax authorities to take a more aggressive stance on the tax treatment of investment structures. Issues involving beneficial ownership and the indirect taxation of capital gains on exit have been key areas of focus around the region and will continue to be important in the foreseeable future. Taxation will continue to be an important consideration for investors, in order to avoid impacting investor returns from M&A activity.

Notwithstanding the continuing turmoil in the Eurozone and its impact on global M&A, it is expected that the level of M&A activity in the region will remain positive especially if the trend to deregulate financial markets in Asia continues.

I hope you find this Asia Pacific Quick M&A Tax Guide informative. Please do consider seeking tax advice from our local M&A tax teams should you require any more detailed information in respect of any of the countries listed herein.

Sincerely,

Danny Po
Asia Pacific Merger & Acquisition Tax Leader

Tax and structuring considerations

		Australia	China	Hong Kong	India	Indonesia
Deal structure	Do tax regulations favour asset or equity deals?	Equity	Equity	Neither	Neither	Equity
	Do tax regulations favour onshore or offshore holding structures?	Onshore	Offshore	Offshore	Offshore	Neither
	Do significant restrictions exist on foreign investment?	✗	✓	✗	✗	✗
	Are tax deductions typically available on acquisition finance costs or other acquisition costs?	Available	Limited	Available	Limited	Limited
	Can PIK (payment in kind) debt be structured?	✓	Maybe	✓	Maybe	Maybe
	Can debt push down strategies be implemented easily?	✓	✓	✗	✓	✗
	Do any thin-cap rules apply?	✓	✓	✗	✗	✗
	Are there any minimum capital requirements?	✗	✓	✗	✓	✓
	How complex is it to increase/decrease capital?	Depends	Depends	Depends	Depends	Depends
Post-deal tax management	What is the headline rate of tax?	30%	25%	16.5%	32.45%	25%
	Can cash be easily remitted overseas?	✓	✗	✓	✓	✓
	What is the domestic withholding tax rate					
	• on dividends to overseas entities?	30%	10%	Nil	Nil	20%
	• on interest payments to overseas entities?	10%	10%	Nil	21.01%/ 5.25%	20%
	• on royalty payments to overseas entities?	30%	10%	4.95%	10.51%	20%
	Is there any tax on offshore dividends received?	✓	✓	✗	✓	✓
	Can NOLs of an acquired company be easily used?	✗	✓	✓	✗	✓
Exit strategy	Is there any tax on capital gains at the onshore vendor's level?	✗	✓	✗	✓	✓
	Is there withholding tax when a company is sold or disposed of?	✗	✓	✗	✓	✓
	Are there any specific tax regulations governing the exit strategy for investment through an offshore vehicle?	✓	✓	✗	✓	✓
	Any substantial sales/turnover taxes on exit?	✗	✓	✗	✓	✓

for the APAC region

Japan	Korea	Malaysia	New Zealand	Philippines	Singapore	Taiwan	Thailand	Vietnam
Equity	Neither	Equity	Neither	Neither	Equity	Equity	Equity	Equity
Onshore	Neutral	Offshore	Onshore	Offshore	Offshore	Offshore	Offshore	Offshore
✗	✗	✓	✗	✓	✗	✓	✓	✓
Available	Limited	Limited	Limited	Limited	Available	Available	Available	Available
✓	✓	✓	✓	✓	✓	Maybe	Maybe	✓
✓	✓	✓	✓	✗	✓	✓	✓	✗
✓	✓	✓	✓	✓	✗	✓	✗	✗
✗	✗	✗	✗	✓	✗	✓	✓	✓
Depends	Easy	Depends	Easy	Depends	Depends	Depends	Depends	Depends
38%	24.2%	25%	28%	30%	17%	17%	23%	25%
✓	✓	✓	✓	✓	✓	Depends	✓	✗
20%	22%	Nil	30%	30%	Nil	20%	10%	Nil
20%	22%	15%	15%	20%	15%	20%	15%	5%
20%	22%	10%	15%	30%	10%	20%	15%	10%
✓	✓	✗	✗	✓	✗	✓	✓	✓
✓	✓	✓	✗	✓	✗	✓	✓	✓
✓	✓	✓	✗	✓	✗	✓	✓	✓
✗	✓	✗	✗	✗	✗	✓	✓	✓
✓	✓	✓	✗	✗	✗	✗	✗	✗
✗	✓	✗	✗	✓	✓	✗	✓	✗

Australia

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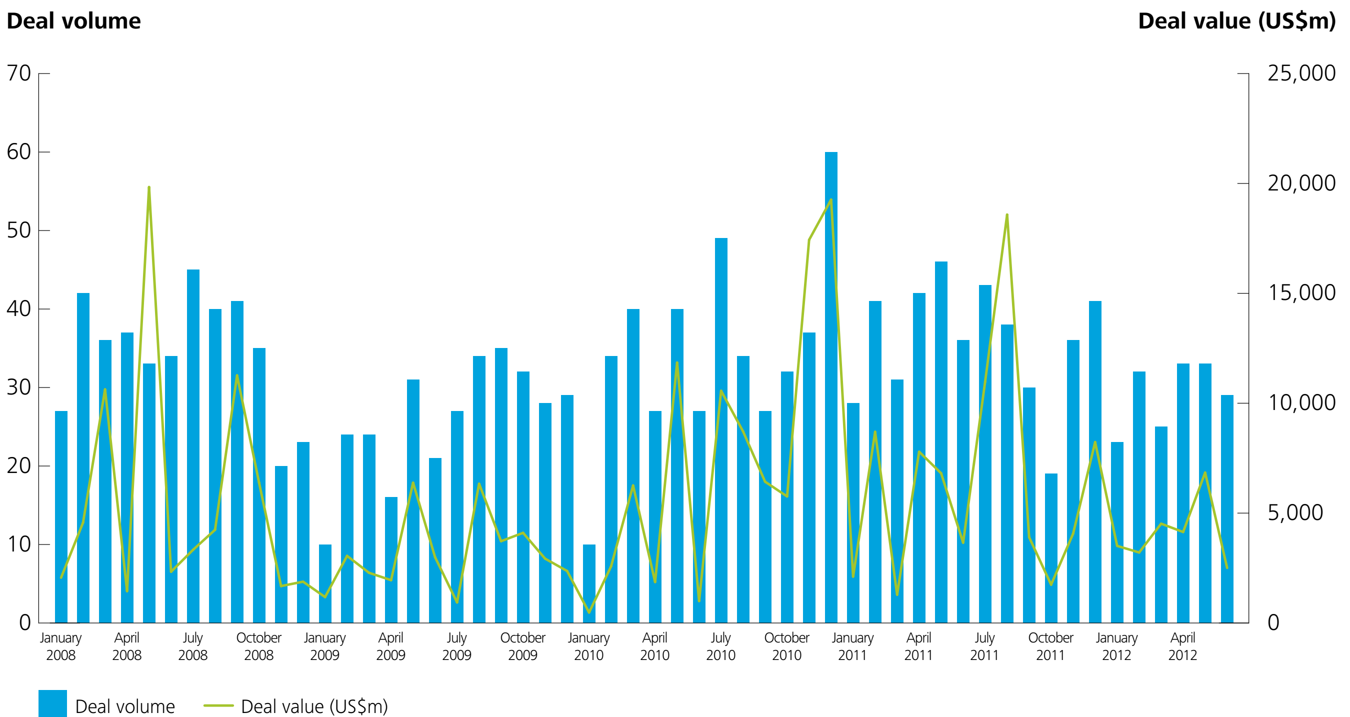
Key facts

GDP (current prices 2011)	US$1,488.22bn	**Major industries**	Mining, industrial
YoY Nominal GDP Growth	2.04%	**2011 announced M&A volume (No.)**	US$78.3bn (433)

	Question	Answer
Deal structure	Do tax regulations favour asset or equity deals?	• Income tax regulations generally do not favour either asset or equity transactions. However, stamp duty regulations favour equity deals due to nil or very low rates of duty on equity transfers.
	Do tax regulations favour onshore or offshore holding structures?	• It is common to have both an offshore and onshore holding structure for acquisitions, but consideration should be given to the location of the offshore holding structure. Onshore holding companies may step up the tax cost of underlying assets via the tax consolidation regime.
	Do significant restrictions exist on foreign investment?	• Acquisition of assets (including shares) by non-residents may be subject to approval by the Foreign Investment Review Board but the process does not usually result in restrictions.
	Are tax deductions typically available on: acquisition finance costs; other acquisition costs?	• Interest deductions are available, subject to various limitations including the thin capitalisation rules (debt to equity ratio is broadly 3:1). Deductions for other costs are limited, often being added to the cost base of the acquired assets. In some cases (e.g. borrowing costs), they may be spread over a period of time.
	Can PIK (payment in kind) debt be structured?	• PIK debt may be structured. Non-cash interest will generally be deductible subject to taxation of financial arrangements, thin capitalisation and transfer pricing considerations.
	Can debt push down strategies be implemented easily?	• A debt push down strategy may be implemented subject to the facts and circumstances. However, such strategies should be supported by sound commercial rational as debt push down strategies have been attacked by Australian revenue authorities for tax avoidance.
	Do any thin-cap rules apply?	• The thin capitalisation rules may proportionally disallow debt deductions incurred where the deductions would exceed $250,000 and the average Australian debt giving rise to the debt deductions is greater than 75% of the value of the entity's total Australian assets excluding non-interest bearing liabilities.
	Are there any minimum capital requirements?	• There are no minimum capital requirements for an Australian company (except for banks and other financial institutions).
	How complex is it to increase/ decrease capital?	• There are no specific regulations restricting the increase or decrease of capital in an Australian company.
Post-deal tax management	What is the headline rate of tax?	• 30%
	Can cash be easily remitted overseas?	• There are currently no foreign exchange controls in Australia. However, cash movements are monitored.
	What is the domestic withholding tax rate:	**On dividends to overseas entities** • Subject to the corporate tax rate of 30%. **On interest payments to overseas entities** • Generally 10%. **On royalty payments to overseas entities** • Subject to the corporate tax rate of 30%.
	Is there any tax on offshore dividends received?	• Subject to the taxpayer's normal tax rate. Exempt if the taxpayer is an Australian company that holds at least 10% of the shares in the foreign company paying the dividends.
	Can NOLs of an acquired company be easily used post acquisition?	• A company may utilise its tax losses only where it satisfies the continuity of ownership test (which it will not satisfy as a result of the acquisition) or the same business test. There is no specific time restriction on the utilisation of tax losses.

	Question	Answer
Exit strategy	Is there any tax on capital gains at the onshore vendor's level?	• Resident companies are generally subject to capital gains tax at 30%.
	Is there withholding tax when a company is sold or disposed of?	• Generally, no withholding tax is applied from the disposal of shares in a company.
	Are there any specific tax regulations governing the exit strategy for investment through an offshore vehicle?	• A non-resident company may be subject to capital gains tax at 30% on the disposal of Australian land or interests (direct or indirect) in an Australian entity whose assets comprise predominantly of Australian land. Also, a non-resident company may be subject to gains at 30% on the disposal of any asset that has been held on "revenue" account and has an Australian source.
	Any substantial sales/turnover taxes on exit?	• There are no sales/turnover taxes on exit, except the capital gains tax mentioned above. Goods and services tax may apply on disposals of assets.
Summary	The Australian government is currently reviewing the venture capital limited partnership regime and more generally tax arrangements applying to collective investment vehicles.	

Australia inbound & domestic M&A activity



Source: mergermarket

China

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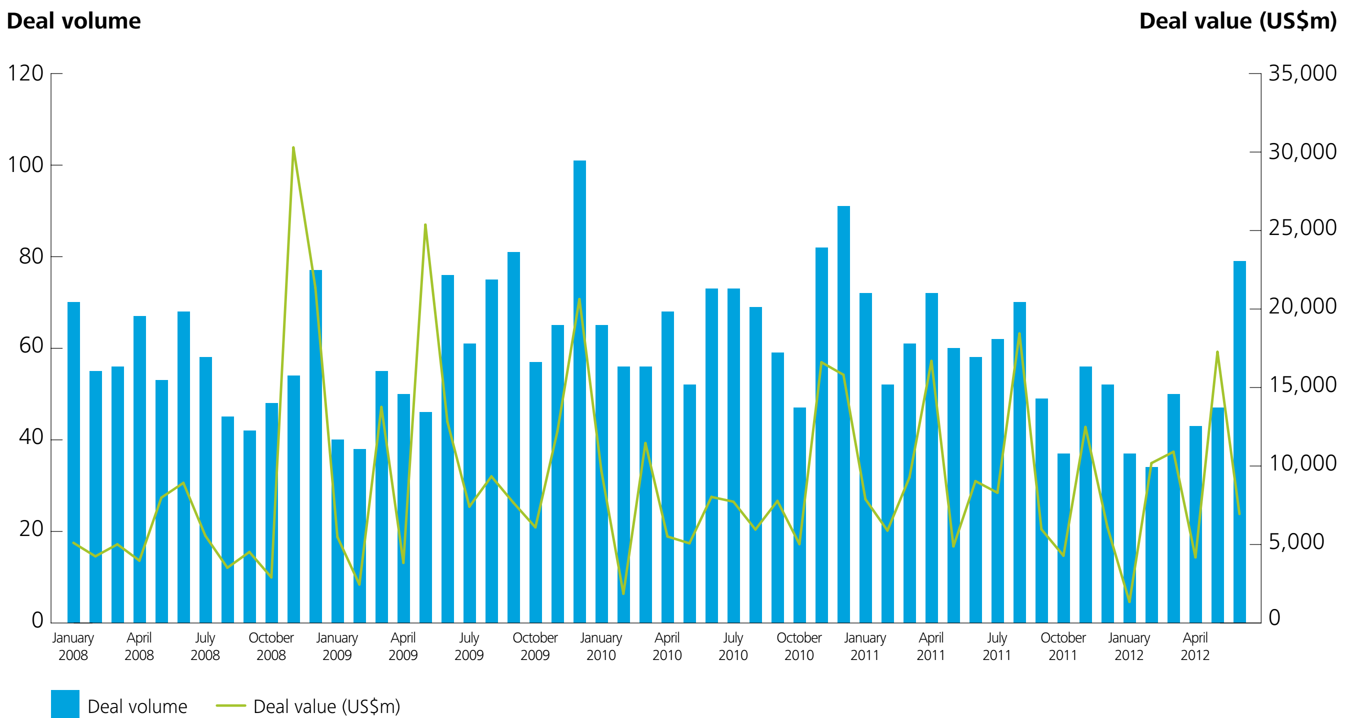
Key facts

GDP (current prices 2011)	US$7,298.15bn	**Major industries**	Mining, machinery
YoY Nominal GDP Growth	9.24%	**2011 announced M&A volume (No.)**	US$109.4bn (712)

	Question	Answer
Deal structure	Do tax regulations favour asset or equity deals?	• Recent relaxations have provided possible exemption for certain turnover taxes on qualified restructuring.
	Do tax regulations favour onshore or offshore holding structures?	• Onshore equity deals require time consuming PRC government approval and may trigger PRC taxes.
	Do significant restrictions exist on foreign investment?	• Certain industries are subject to maximum foreign shareholding limitations or prohibited from foreign shareholding. • Antitrust laws need to be considered.
	Are tax deductions typically available on: acquisition finance costs; other acquisition costs?	• Thin capitalisation rules exist for financial and non-financial enterprises at debt-to-equity ratios of 5:1 and 2:1, respectively. • Under the Enterprise Income Tax Law, it is unclear whether interest on debt incurred to purchase shares is deductible.
	Can PIK (payment in kind) debt be structured?	• PIK debt is difficult to structure. Interest in kind should be treated the same as cash interest.
	Can debt push down strategies be implemented easily?	• They can be implemented. Also special attention to issues such as strict foreign exchange control, debt to equity ratio, thin capitalisation rule, etc. is required.
	Do any thin-cap rules apply?	• Yes.
	Are there any minimum capital requirements?	• Yes.
	How complex is it to increase/ decrease capital?	• Capital increase is straightforward. But capital reduction is difficult and it is subject to the relevant approval authority's pre-approval.
Post-deal tax management	What is the headline rate of tax?	• 25% corporate tax rate. • The headline tax rate may be reduced for entities engaging in certain encouraged industries and upon meeting the prescribed conditions (such as High New Technology Enterprise status).
	Can cash be easily remitted overseas?	• There are foreign exchange controls in the PRC and various reserves against retained earnings that limit the ability to distribute earnings.
	What is the domestic withholding tax rate:	**On dividends to overseas entities** • 10%. **On interest payments to overseas entities** • 10%. A 5% Business Tax and local surcharge will also be imposed. **On royalty payments to overseas entities** • 10%. A 5% Business Tax and local surcharge will also be imposed. These domestic rates may be reduced pursuant to the relevant tax treaty.
	Is there any tax on offshore dividends received?	• Subject to tax at 25%, but foreign tax credit is generally available.
	Can NOLs of an acquired company be easily used post acquisition?	• The carry forward period for NOLs is five years.

	Question	Answer
Exit strategy	Is there any tax on capital gains at the onshore vendor's level?	• Sale of shares is subject to 25% enterprise income tax for domestic corporate sellers.
	Is there withholding tax when a company is sold or disposed of?	• 10% withholding tax for foreign corporate sellers if not established in China. • The withholding tax could be reduced under tax treaties.
	Are there any specific tax regulations governing the exit strategy for investment through an offshore vehicle?	• The indirect disposal of a PRC entity is subject to the reporting requirement under Circular 698.
	Any substantial sales/turnover taxes on exit?	• Asset deal : Yes • Equity deal: subject to Stamp Duty
Summary	China will continue to see a focus on taxing transactions involving non-residents, notably on the indirect transfers of shares in Chinese companies. Challenges to the application of double tax treaty are also expected to remain a topical area, with a tightening of treaty claims. A circular was issued by the State Administration of Taxation in June 2012 to clarify certain aspects of the application of the beneficial ownership concept and provide certain relief for listed companies. We expect more circulars will be issued to provide further guidance in this respect.	

China inbound & domestic M&A activity



Source: mergermarket

Hong Kong

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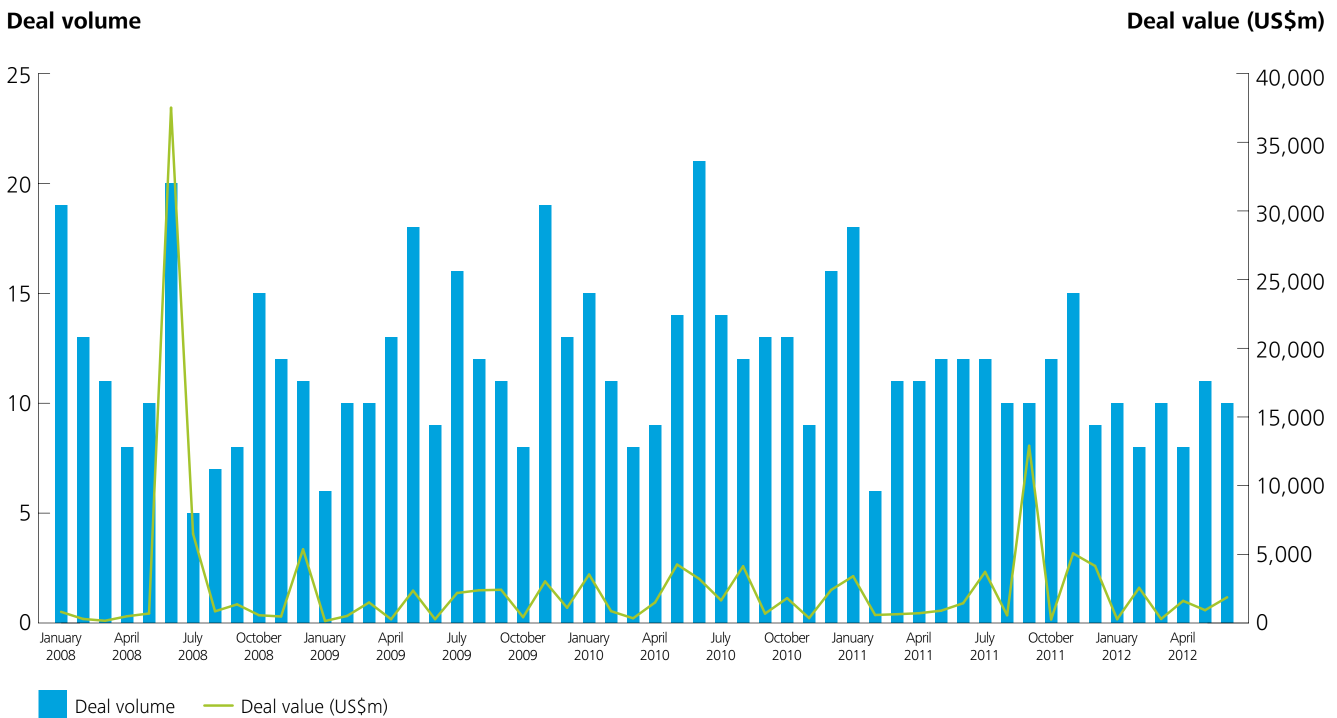
Key facts

GDP (current prices 2011)	US$243.30bn	**Major industries**	Textile & clothing, tourism
YoY Nominal GDP Growth	4.97%	**2011 announced M&A volume (No.)**	US$34.2bn (139)

	Question	Answer
Deal structure	Do tax regulations favour asset or equity deals?	• Neither are particularly favoured, but interest on debt incurred to purchase assets may be deductible, whereas interest incurred to purchase shares is typically non-deductible. • Interest on debt incurred to purchase assets may be deductible whereas interest incurred to purchase shares is non-deductible, if considered as capital in nature. • The issue for asset deal is the ability to transfer easily for legal purpose.
	Do tax regulations favour onshore or offshore holding structures?	• Acquisition of shares in a company whose stock register is in HK may trigger stamp duty.
	Do significant restrictions exist on foreign investment?	• No.
	Are tax deductions typically available on: acquisition finance costs; other acquisition costs?	• For asset deals, interest expense may be tax deductible if the assets being acquired are used to generate taxable income. • Interest expense incurred in acquisition of shares is not tax deductible if considered as capital in nature.
	Can PIK (payment in kind) debt be structured?	• Yes. Interest in kind is treated the same as a cash interest.
	Can debt push down strategies be implemented easily?	• Such strategies can be implemented.
	Do any thin-cap rules apply?	• No.
	Are there any minimum capital requirements?	• No.
	How complex is it to increase/ decrease capital?	• Easy to increase capital. • Difficult to decrease capital. Need to go through certain legal and administrative procedures.
Post-deal tax management	What is the headline rate of tax?	• 16.5% on onshore revenue income.
	Can cash be easily remitted overseas?	• Yes.
	What is the domestic withholding tax rate:	**On dividends to overseas entities** • NIL. **On interest payments to overseas entities** • NIL. **On royalty payments to overseas entities** • 4.95%, provided that the intellectual property for which royalty is paid has never been partly or wholly owned by a person in Hong Kong or the royalty is not paid to an associate, in which case the rate will be 16.5%.
	Is there any tax on offshore dividends received?	• There is no tax on dividends in Hong Kong.
	Can NOLs of an acquired company be easily used post acquisition?	• NOLs can be used in the future indefinitely provided that the sole or dominant purpose of the acquisition is not for the utilisation of tax losses.

	Question	Answer
Exit strategy	Is there any tax on capital gains at the onshore vendor's level?	• No, provided it can be demonstrated that the gains are capital in nature, or non Hong Kong sourced.
	Is there withholding tax when a company is sold or disposed of?	• No.
	Are there any specific tax regulations governing the exit strategy for investment through an offshore vehicle?	• No.
	Any substantial sales/turnover taxes on exit?	• No.
Summary	Hong Kong is the listing jurisdiction of choice for many of China's top companies. While Hong Kong does not allow tax-free reorganization under its law, it is expanding its network of DTAs and may be used by many Chinese companies for outbound investment going forward. Due to its proximity and economic relationship with China, Hong Kong is also a holding jurisdiction of choice to structure investments into China.	

Hong Kong inbound & domestic M&A activity



Source: mergermarket

India

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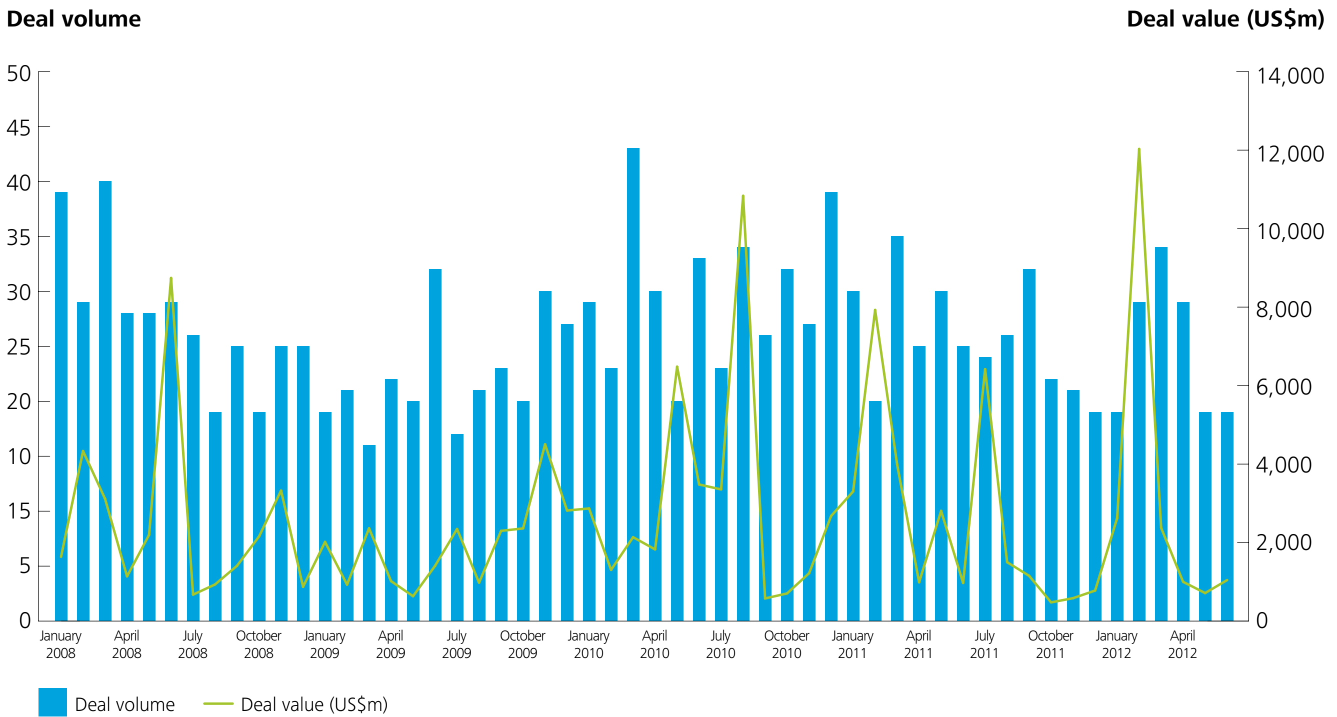
Key facts

GDP (current prices 2011)	US$1,676.14bn	**Major industries**	Textile, chemicals
YoY Nominal GDP Growth	7.24%	**2011 announced M&A volume (No.)**	US$30.7bn (308)

	Question	Answer
Deal structure	Do tax regulations favour asset or equity deals?	• Tax regulations generally do not favour either asset or equity transactions. However, asset deals are typically preferred by investors mainly for the following reasons: - No exposure to historical tax liabilities of the target. - Step up in cost of assets acquired.
Deal structure	Do tax regulations favour onshore or offshore holding structures?	• It is common to structure equity deals via offshore SPVs located in a country having a tax treaty with India. Preferred offshore holding company jurisdictions include Mauritius, Singapore and Cyprus. Careful consideration is however required in relation to beneficial ownership tax issues.
Deal structure	Do significant restrictions exist on foreign investment?	• Foreign investors are prohibited from investing in certain sectors including real estate business and agriculture etc.
Deal structure	Are tax deductions typically available on: acquisition finance costs; other acquisition costs?	• Interest expense is generally tax deductible in case of an asset deal but not tax deductible in case of an equity deal.
Deal structure	Can PIK (payment in kind) debt be structured?	• It is possible, but rarely used. Specific approval from the Reserve Bank of India is required for offshore PIK.
Deal structure	Can debt push down strategies be implemented easily?	• This is usually achieved through a merger. The interest may not be tax deductible in the hands of target entity and prior approval may be required from the Reserve Bank of India.
Deal structure	Do any thin-cap rules apply?	• There are no specific thin capitalization rules under Indian tax legislation.
Deal structure	Are there any minimum capital requirements?	• Under the Companies Act, 1956, the minimum capital requirement for a private company is Rs. 100,000 & Rs. 500,000 for a public company. However, under the foreign direct investment policy, investments in certain specified sectors are subject to minimum capitalization requirement as specified in the regulations.
Deal structure	How complex is it to increase/ decrease capital?	• It is easy to increase the capital of a company. The reduction in capital or the repayment of capital would require the approval of the board of directors, shareholders' approval or court approval depending upon certain criteria.
Tax management	What is the highest marginal tax rate?	• 32.45% for domestic companies. • 42.02% for foreign companies.
Tax management	Can cash be easily remitted outside of the country?	• Prior to remittance, confirmation of the taxability or rate of tax applicable needs to be obtained.
Tax management	What is the domestic withholding tax rate:	**On dividends to overseas entities** • Dividends paid by Indian companies are tax exempt for shareholders provided the company pays dividend distribution tax of approximately 16.22%. **On interest payments to overseas entities** • 21.01% if the debt incurred or the money borrowed by the Indian company was in foreign currency otherwise the corporate tax rate of 42.02% for foreign companies will apply. • This rate is reduced to 5.25% under certain circumstances after 30 June 2012 if the money is borrowed in foreign currency. **On royalty payments to overseas entities** • 10.51%.
Tax management	Is there any tax on offshore dividends received?	• If an Indian company holds 26% or more in an offshore company, any dividends received during the financial year 2012/13 would be taxable at 16.22%. Any offshore dividend received post financial year 2012/13 would be taxed at the normal income tax rates.
Tax management	Can NOLs of an acquired company be easily used post acquisition?	• Restrictions may exist on the ability to set-off brought forward unabsorbed losses in case of a change in shareholding (exceeding 49%) of closely held companies. • Business losses can be carried forward for eight years. Unabsorbed depreciation can be carried forward indefinitely.

	Question	Answer
Exit strategy	Is there any tax on capital gains at the onshore vendor's level?	• Capital gains tax is levied at rates ranging from 10.82% to 32.45%. Long term capital gains (i.e. period of holding of shares exceeding 12 months) would be exempt, if the shares are sold on a recognized stock exchange and subject to Securities Transaction Tax.
	Is there withholding tax when a company is sold or disposed of?	• WHT is levied at a rate ranging from 10.51% to 42.02% on capital gains derived by offshore vendors.
	Are there any specific tax regulations governing the exit strategy for investment through an offshore vehicle?	• The indirect transfer of shares or interest in a foreign company or entity registered or incorporated outside India, deriving directly or indirectly its value substantially from assets located in India shall be subject to tax in India.
	Any substantial sales/turnover taxes on exit?	• Stamp Duty. The applicable rate would vary depending upon the nature and location of the asset
Summary	Discussion ongoing on the re-negotiation of the India-Mauritius tax treaty. The new Direct Taxes Code (DTC) has been proposed, which will be replacing the Income-Tax Act of 1961. The Finance Act 2012 introduced GAAR to be effective from April 2013, whose provisions will need to be considered while structuring acquisitions. Ongoing disputes between tax authorities and foreign investors on applicability of withholding tax on acquisitions will continue to be a key feature.	

India inbound & domestic M&A activity



Source: mergermarket

Indonesia

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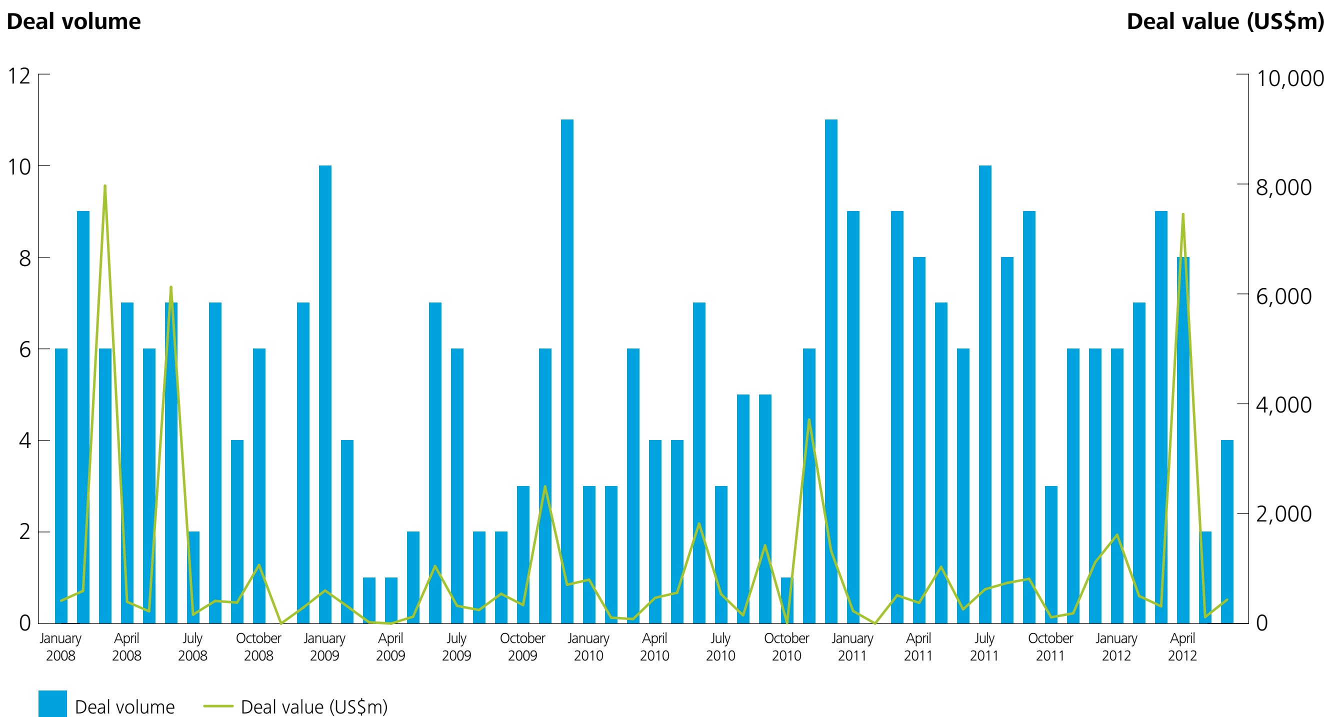
Key facts

GDP (current prices 2011)	US$845.68bn	**Major industries**	Natural gas, textile
YoY Nominal GDP Growth	6.46%	**2011 announced M&A volume (No.)**	US$5.9bn (80)

	Question	Answer
Deal structure	Do tax regulations favour asset or equity deals?	• In practice, most Indonesian M&A deals are structured as share deals, likely driven by the complexities involved in setting up new operations and obtaining licenses in Indonesia.
Deal structure	Do tax regulations favour onshore or offshore holding structures?	• Indonesian Tax Authorities have recently focused on anti-avoidance rules. A complete understanding of various tests related to substance and beneficial ownership issues shall be a critical factor in assessing an efficient tax structure for investing in Indonesia.
Deal structure	Do significant restrictions exist on foreign investment?	• The Indonesian government has issued, from time to time, a list of areas of desired investments as well as a list of fields of business activities which are closed to foreign investment (commonly called the Negative List for Investment).
Deal structure	Are tax deductions typically available on: acquisition finance costs; other acquisition costs?	• Asset acquisitions commonly enjoy tax deductions in Indonesia in relation to various acquisition costs. However, it is typically difficult to claim Indonesian tax deductions for acquisition costs on shares deals.
Deal structure	Can PIK (payment in kind) debt be structured?	• The use of PIK debt may trigger complex tax issues in Indonesia. These include the conversion of debt into equity, the forgiveness of debt, transfer pricing and as well as challenges to the deductibility of interest expense.
Deal structure	Can debt push down strategies be implemented easily?	• While it may be possible to carry out debt push down in Indonesia, it is not a straightforward procedure. There is a need to consider various complex tax issues relating to transfer pricing, VAT, capital gains and interest deductibility prior to implementing such a structure.
Deal structure	Do any thin-cap rules apply?	• The income tax law authorizes the Ministry of Finance to determine the debt-to-equity ratio of companies for tax calculation purposes; however, there has been no specific thin capitalization rules issued by the Ministry. A separate provision under the Income Tax Law requires the taxpayer to adopt the common practice debt/equity ratio in the industry.
Deal structure	Are there any minimum capital requirements?	• There are various minimum capital requirements depending on the type of business activities.
Deal structure	How complex is it to increase/ decrease capital?	• There are certain administrative and legal procedures to be followed. These may require confirmation from various parties (including third parties) in order to decrease capital. An increase of capital is less complex.
Post-deal tax management	What is the headline rate of tax?	• 25%
Post-deal tax management	Can cash be easily remitted overseas?	• A declaration to the government regarding the purpose of the cash remittance is required but generally cash repatriation is not a difficult issue in Indonesia.
Post-deal tax management	What is the domestic withholding tax rate:	**On dividends to overseas entities** • 20% **On interest payments to overseas entities** • 20% **On royalty payments to overseas entities** • 20%
Post-deal tax management	Is there any tax on offshore dividends received?	• An offshore dividend received by an Indonesian taxpayer shall be combined with Indonesian source taxable income and subject to the applicable tax rate in Indonesia.
Post-deal tax management	Can NOLs of an acquired company be easily used post acquisition?	• Generally, various tax attributes of the acquired company (including NOLs) will still be available for the benefit of the acquired company.

	Question	Answer
Exit strategy	Is there any tax on capital gains at the onshore vendor's level?	• Capital gain on exit from an Indonesian investment shall be considered as ordinary taxable income on the Indonesian resident (there is no specific tax regime on capital gains for an Indonesian tax resident).
	Is there withholding tax when a company is sold or disposed of?	• Withholding tax on capital gain will be applicable for a non-Indonesian resident seller on the sale of shares of a non-listed Indonesian company. The capital gain will be calculated on a deemed basis. However, the withholding tax on sale of an Indonesian company may be exempted by virtue of tax treaty protection.
	Are there any specific tax regulations governing the exit strategy for investment through an offshore vehicle?	• In the latest amendment to the Indonesian income tax law, the Indonesian tax authorities introduced additional provisions regarding indirect sales on exit. For a qualifying indirect exit situation, the event shall be subject to tax in Indonesia, calculated on deemed basis.
	Any substantial sales/turnover taxes on exit?	• The deemed capital gain tax on the sale of an Indonesian company by a foreign shareholder could be taxed at 5% of the value of the transaction.
Summary	While M&A activity in Indonesia is strong, the rapidly changing and complicated tax environment does create potential tax risks and challenges for investors. In order to maximize values from M&A transactions in Indonesia, investors should be aware of various Indonesian tax implications relevant to M&A activities. It is also common knowledge that the administration of tax laws in Indonesia may, in certain cases, be subject to interpretation due to the lack of precedents or specific tax regulations.	

Indonesia inbound & domestic M&A activity



Source: mergermarket

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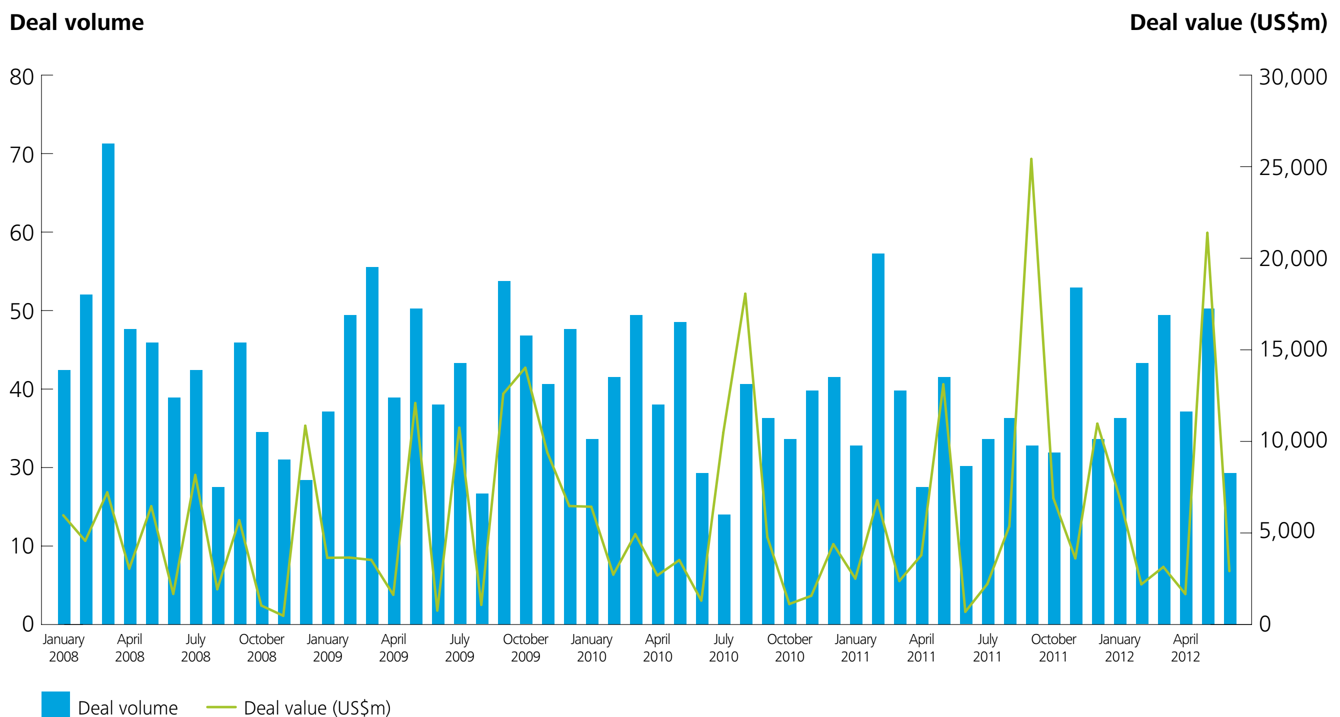
Key facts

GDP (current prices 2011)	US$5,869.47bn	**Major industries**	Motor vechicles, electronics
YoY Nominal GDP Growth	-0.75%	**2011 announced M&A volume (No.)**	US$82bn (377)

	Question	Answer
Deal structure	Do tax regulations favour asset or equity deals?	• Equity deals are preferred as the tax attributes of the target may be preserved. Tax treaties may prevent the taxation of capital gains on the sale of shares.
	Do tax regulations favour onshore or offshore holding structures?	• The acquisition vehicle is typically located onshore since tax consolidation and qualified mergers (i.e. debt push down) are available only to domestic companies.
	Do significant restrictions exist on foreign investment?	• Yes. These include the following sectors: mining, telecommunications, broadcasting, airline, freight transportation.
	Are tax deductions typically available on: acquisition finance costs; other acquisition costs?	• Interest paid to foreign controlling shareholders is deductible subject to, for example, transfer pricing and thin capitalization rules. Other acquisition costs may be capitalized or treated as expenses depending on relatedness to the acquisition.
	Can PIK (payment in kind) debt be structured?	• Payment in kind is generally acceptable. Interest in kind is treated the same as a cash interest, i.e., it is generally deductible subject to limitations such as transfer pricing and thin capitalization rules.
	Can debt push down strategies be implemented easily?	• Usually debt push down can be achieved by a merger or a tax consolidation. Key considerations include the requirement for a tax qualified merger and the obligation to mark to market certain assets.
	Do any thin-cap rules apply?	• Generally Japanese thin capitalization rules restrict deductions for interest attributable to interest-bearing debt from foreign controlling shareholders that exceeds three times the average equity owned by such shareholders, if the total interest-bearing debt also exceeds three times the average total equity.
	Are there any minimum capital requirements?	• There is no minimum capital requirement under the Companies Act.
	How complex is it to increase/ decrease capital?	• In general it is possible for a company to issue new shares by a resolution of board of directors. The company is required to allocate a half amount or more of the cash injected to registered capital in the case of "Kabushiki Kaisha" under the Companies Act.
Post-deal tax management	What is the headline rate of tax?	• 38.0% for the special reconstruction period (generally 3 years from 1 April 2012). • 35.6% after the special reconstruction period.
	Can cash be easily remitted overseas?	• In general cash can be remitted overseas freely but remittance, capital transaction or other foreign exchange transaction of or above a certain amount are subject to after-the-fact reporting to the Bank of Japan.
	What is the domestic withholding tax rate:	**On dividends to overseas entities** • 20% (7% if the paying company is listed). **On interest payments to overseas entities** • 20% **On royalty payments to overseas entities** • 20%
	Is there any tax on offshore dividends received?	• Dividends received from a foreign subsidiary are treated as 95% tax exempt. This is conditional on the Japanese corporation having held at least 25% (or lower rate if prescribed in relevant tax treaties) of the shares for at least 6 months. Otherwise, offshore dividends are fully taxed.
	Can NOLs of an acquired company be easily used post acquisition?	• Generally NOLs can be carried forward for 9 years (7 years for NOLs generated in the years ended 31 March 2008 or earlier) to offset 80% of the current year's taxable income. Restrictions may apply if a tax qualified reorganization takes place or certain triggering events occur.

	Question	Answer
Exit strategy	Is there any tax on capital gains at the onshore vendor's level?	• Capital gains are taxed as ordinary income.
	Is there withholding tax when a company is sold or disposed of?	• There is no withholding tax on a sale of shares between corporations.
	Are there any specific tax regulations governing the exit strategy for investment through an offshore vehicle?	• Nonresident foreign companies with no Japan PE may be subject to a corporate tax of 25.5% (28.05% during the special reconstruction period) on capital gains from the sale of shares when the following rules apply: (i) the 5/25 rule (business transfer rule; may be exempted under relevant tax treaty) and (ii) real estate rich company rule.
	Any substantial sales/turnover taxes on exit?	• No.
Summary	Due to significant changes in business circumstances for Japanese companies, such as the shrinking of the domestic market and fierce competition with Asian companies, Japanese companies will be more and more active in expanding their overseas business including via M&A transactions. On the other hand, the reduction in the effective corporate income tax rate may help increase domestic demand and inbound investment.	

Japan inbound & domestic M&A activity



Source: mergermarket

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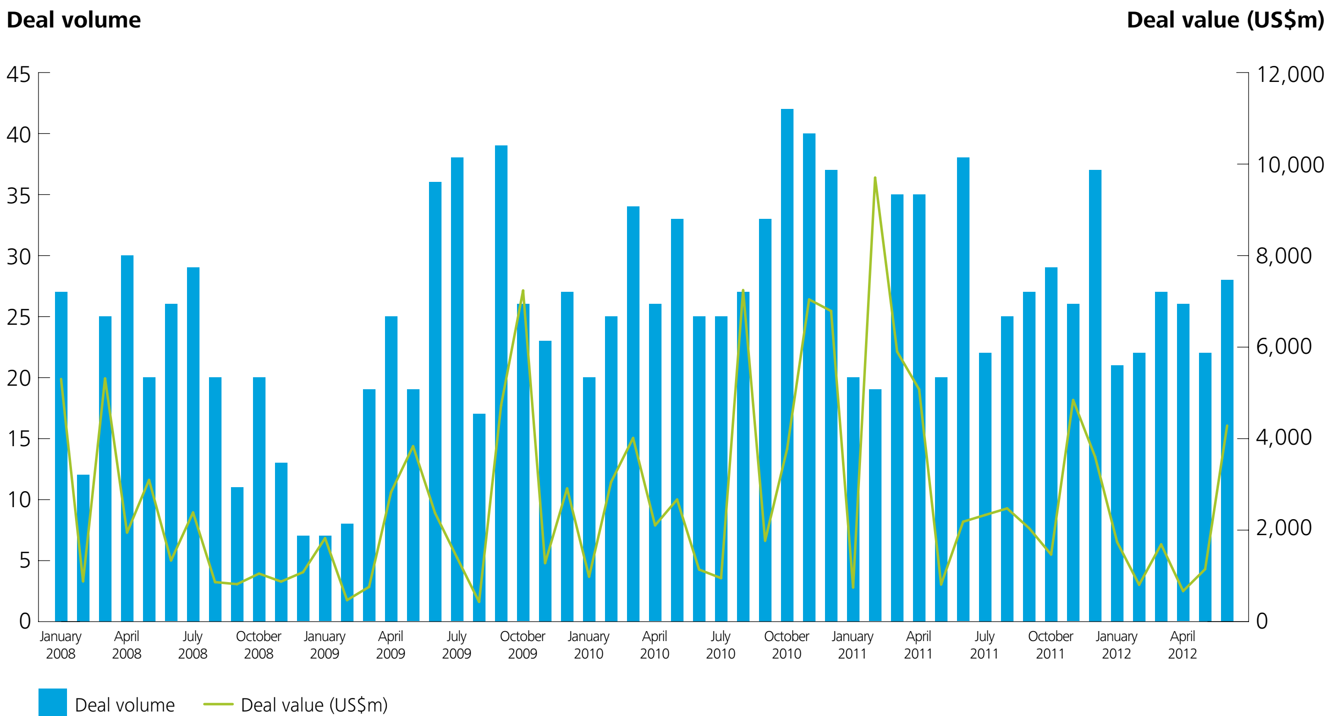
Key facts

GDP (current prices 2011)	US$1,116.25bn	**Major industries**	Electronics, telecommunication
YoY Nominal GDP Growth	3.63%	**2011 announced M&A volume (No.)**	US$37.3bn (333)

	Question	Answer
Deal structure	Do tax regulations favour asset or equity deals?	• There are no special restrictions in implementing either deal structure.
	Do tax regulations favour onshore or offshore holding structures?	• Neutral as it would depend on the holding structure. • Offshore holding companies may suffer significant taxes on capital gains and dividends if they are not the beneficial owners of the income streams received from their Korean investments. The consolidated tax return regime is not available to offshore holding companies.
	Do significant restrictions exist on foreign investment?	• No, in general, there are no specific restrictions on acquisitions, except in the case of • certain designated industries (e.g. telecommunication, electric power, airline industries).
	Are tax deductions typically available on: acquisition finance costs; other acquisition costs?	• Certain other acquisition costs may be capitalized depending on their nature.
	Can PIK (payment in kind) debt be structured?	• Yes. Non-cash interest expense arising from the PIK debt can be deductible. • The borrower may have withholding obligation for tax on interest at the time when the in-kind interest is added to the principal of debt.
	Can debt push down strategies be implemented easily?	• They can be implemented via an upstream/downstream merger between a holding company and a target company. The merger between a holding company and its wholly-owned subsidiary can be structured as a tax-free merger, without the need to satisfy any other requirements. A careful legal review is required before implementation due to the existence of potential breach of fiduciary duty issue.
	Do any thin-cap rules apply?	• Thin capitalization rule applies to borrowings from foreign controlled shareholders (including 3rd party borrowings guaranteed by foreign controlled shareholders) exceeding the 3:1 debt-equity ratio (6:1 debt-equity ratio in case of financial businesses).
	Are there any minimum capital requirements?	• Generally no. If a foreign invested company needs to be registered as a qualified foreign invested company under the relevant law, KRW 100 million or more of capital investment should be made by foreign investors.
	How complex is it to increase/ decrease capital?	• Relatively easy. Capital increase/decrease should be implemented in accordance with legal procedures under the Korean Commercial Code. Capital registration tax will be imposed on a capital increase at 0.48% or 1.44% of the par value of increased capital. In the case of capital decrease, a tax on deemed dividends may be imposed if the consideration in exchange for the shares redeemed exceeds the tax basis of the shares, determined on a per share basis.
Post-deal tax management	What is the headline rate of tax?	• 24.2%
	Can cash be easily remitted overseas?	• Yes, although 10% of the cash dividend payments distributed must be set aside in a legal surplus reserve until the legal surplus reserve is equal to 50% of the share capital. Capital redemption can be done without a tax burden, within the investor's tax basis.
	What is the domestic withholding tax rate:	**On dividends to overseas entities** • 22% **On interest payments to overseas entities** • 22% (15.4% for bonds) **On royalty payments to overseas entities** • 22%
	Is there any tax on offshore dividends received?	• Yes, a dividend received by a Korean company will be taxed at the regular corporate income tax rate.
	Can NOLs of an acquired company be easily used post acquisition?	• The carry over period is 10 years.

	Question	Answer
Exit strategy	Is there any tax on capital gains at the onshore vendor's level?	• Onshore vendor will be subject to the normal corporate income tax mentioned above.
	Is there withholding tax when a company is sold or disposed of?	• Capital gains derived by offshore vendors are taxed at the lesser of 11% of sales proceeds or 22% of gains realized. Capital gains tax can be exempted depending on tax treaties.
	Are there any specific tax regulations governing the exit strategy for investment through an offshore vehicle?	• Due to Korean tax authorities' strict interpretation of tax benefit provision in tax treaties, exits by foreign investors using offshore holding companies are generally challenged.
	Any substantial sales/turnover taxes on exit?	• Securities transaction tax is imposed on the seller at 0.5% of gross sales proceeds (0.3% in case of share transfer made through the stock market). • A buyer should pay deemed acquisition tax ("DAT") where it acquires over 50% of the shares in a non-listed company. DAT is calculated by multiplying the book value of the assets of a target company subject to acquisition tax by 2.2% and then by the buyer's equity ratio.
Summary	Given the euro zone debt crisis, it is expected that Korean companies will aggressively start to dispose of non-core business assets to secure liquidity. Furthermore, there has been a movement to restrict large Korean conglomerates from operating ownership in certain industries suitable to small and medium sized enterprises. Therefore, there may be more opportunities for small and medium size deals. Investors should also be aware of developments in Korean taxation, such as the revisions to the tax law (e.g., more aggressive application of the beneficial ownership principle), unfavorable court decisions regarding the beneficial ownership principle, and other legal and tax challenges to mergers and acquisitions.	

Korea inbound & domestic M&A activity



Source: mergermarket

Malaysia

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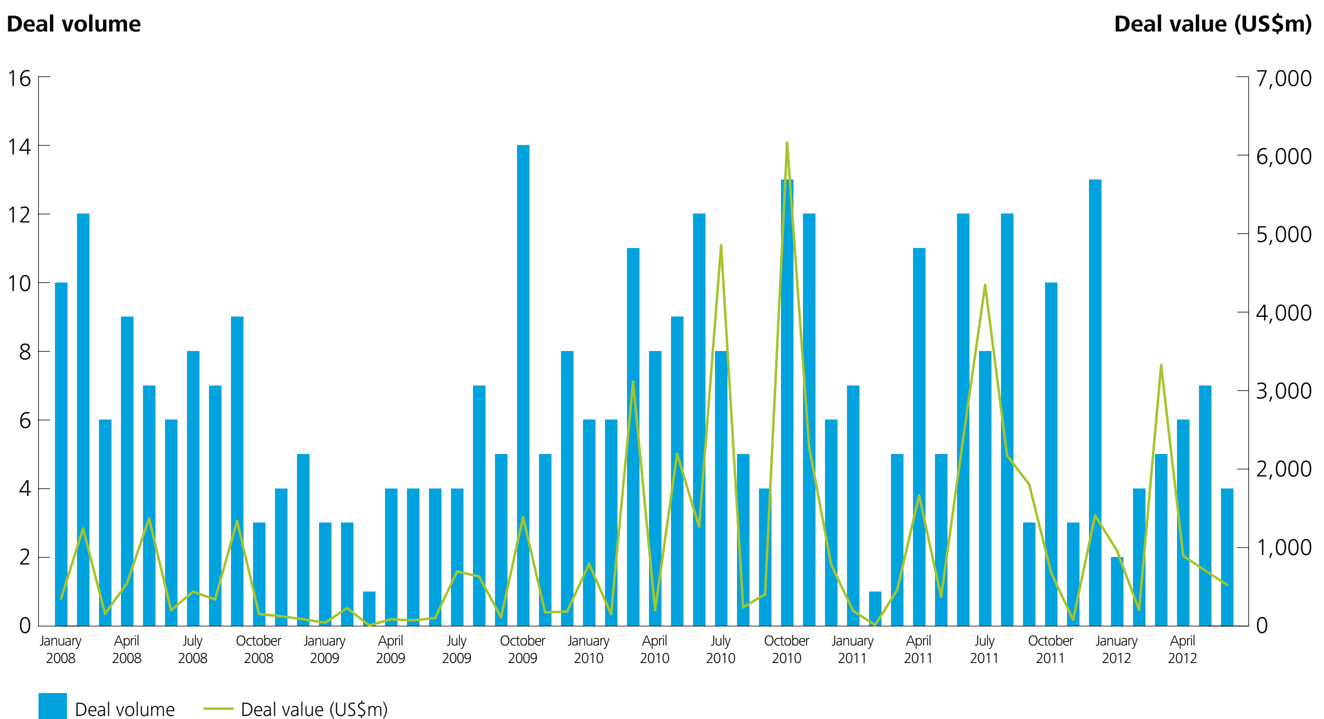
Key facts

GDP (current prices 2011)	US$278.68bn	**Major industries**	Rubber & palm oil processing, oil & gas
YoY Nominal GDP Growth	5.14%	**2011 announced M&A volume (No.)**	US$15.6bn (90)

	Question	Answer
Deal structure	Do tax regulations favour asset or equity deals?	• Under equity deals, profits on the sale of shares are generally not subject to income tax (on the basis that the shares were held for long term investment) whereas income tax at the prevailing rate of 25% may arise from the sale of certain assets (e.g. trading stocks and tax depreciable assets for sale between third parties). Stamp duty of 0.3% is imposed on the buyer under equity deals compared to 3% on transfer of certain assets under asset deals.
	Do tax regulations favour onshore or offshore holding structures?	• It is common to structure equity deals through offshore Special Purpose Vehicles located in countries with a double tax treaty with Malaysia.
	Do significant restrictions exist on foreign investment?	• The regulated sectors in Malaysia are banking, education, oil & gas, freight forwarding and retail trade (hypermarkets). Foreign equity restrictions have been fully lifted in the manufacturing sector since 2003.
	Are tax deductions typically available on: acquisition finance costs; other acquisition costs?	• Under an asset deal, the interest would be deductible if the loan is taken to finance the purchase of assets used or held for the production of gross income. • Under an equity deal, the tax deduction on the interest may be restricted. • Other acquisition costs are generally capital in nature and are not tax deductible.
	Can PIK (payment in kind) debt be structured?	• Yes. Non-cash interest is deductible provided it is incurred. However, this is subject to thin capitalisation and other tax deduction rules. Stamp duty may apply if there is a transfer of certain properties or shares for the repayments.
	Can debt push down strategies be implemented easily?	• The availability of debt push down strategies depends on the ease with which the existing business can be transferred. Stamp duty and income tax implications may arise. Other than tax, there may also be commercial, legal and regulatory issues to consider.
	Do any thin-cap rules apply?	• With effect from 1 January 2009, Section 140A of the Income Tax Act, 1967 empowers the Inland Revenue Board to disallow that portion of the interest charge which relates to the amount of financial assistance between related parties which is excessive in relation to the fixed capital. The rules or guidelines pertaining to these thin capitalization provisions have not been issued to date.
	Are there any minimum capital requirements?	• Under the Companies Act, 1965, a company can be incorporated with a minimum two subscribers holding one share of MYR1 each. In addition, some companies in regulated sectors and companies that have been granted tax incentives are required to have a certain minimum amount of capital.
	How complex is it to increase/decrease capital?	• Application needs to be made to Companies Commission of Malaysia (CCM) and a certain amount of capital duty is to be paid for the increase in the authorized share capital. A capital reduction will require court's approval.
Post-deal tax management	What is the headline rate of tax?	• 25%
	Can cash be easily remitted overseas?	• The Malaysian foreign exchange control regulations have been substantially liberalized. There are no foreign exchange control restrictions on the payment of dividends, interest, royalties and fees.
	What is the domestic withholding tax rate:	**On dividends to overseas entities** • No withholding tax. **On interest payments to overseas entities** • 15% **On royalty payments to overseas entities** • 10%

	Question	Answer
Post-deal tax management (Cont'd)	Is there any tax on offshore dividends received?	• Not taxable unless the recipient is a tax resident company in Malaysia carrying on the business of banking, insurance or sea or air-transport.
	Can NOLs of an acquired company be easily used post acquisition?	• Unabsorbed tax losses and unabsorbed capital allowances in a company can be carried forward following a substantial change in shareholding as long as the company acquired is not dormant when the share transfer takes place.
Exit strategy	Is there any tax on capital gains at the onshore vendor's level?	• No, unless the gains arise from the disposal of real property (in the case of an asset deal) and shares in a Real Property Company (in the case of an equity deal). In this case the gains will be subject to Real Property Gains Tax (RPGT) at 10% if the disposal is made within 2 years and 5% if the disposal is made between 2 years and 5 years from the acquisition date. Disposals after 5 years would not be subject to RPGT.
	Is there withholding tax when a company is sold or disposed of?	• No.
	Are there any specific tax regulations governing the exit strategy for investment through an offshore vehicle?	• See the capital gains tax commentary above. RPGT is imposed on both Malaysian residents and non-residents. The sale of shares of a Malaysian company by an offshore vehicle is subject to stamp duty.
	Any substantial sales/ turnover taxes on exit?	• No.
Summary	Malaysia's market should still see a number of M&A deals despite the economic crisis in the Eurozone according to many experts. The Malaysian government is confident that the stable liquidity conditions and government initiatives under the Economic Transformation Programme (ETP) should offset external weakness and make the country more conducive to M&A activities.	

Malaysia inbound & domestic M&A activity



Source: mergermarket

New Zealand

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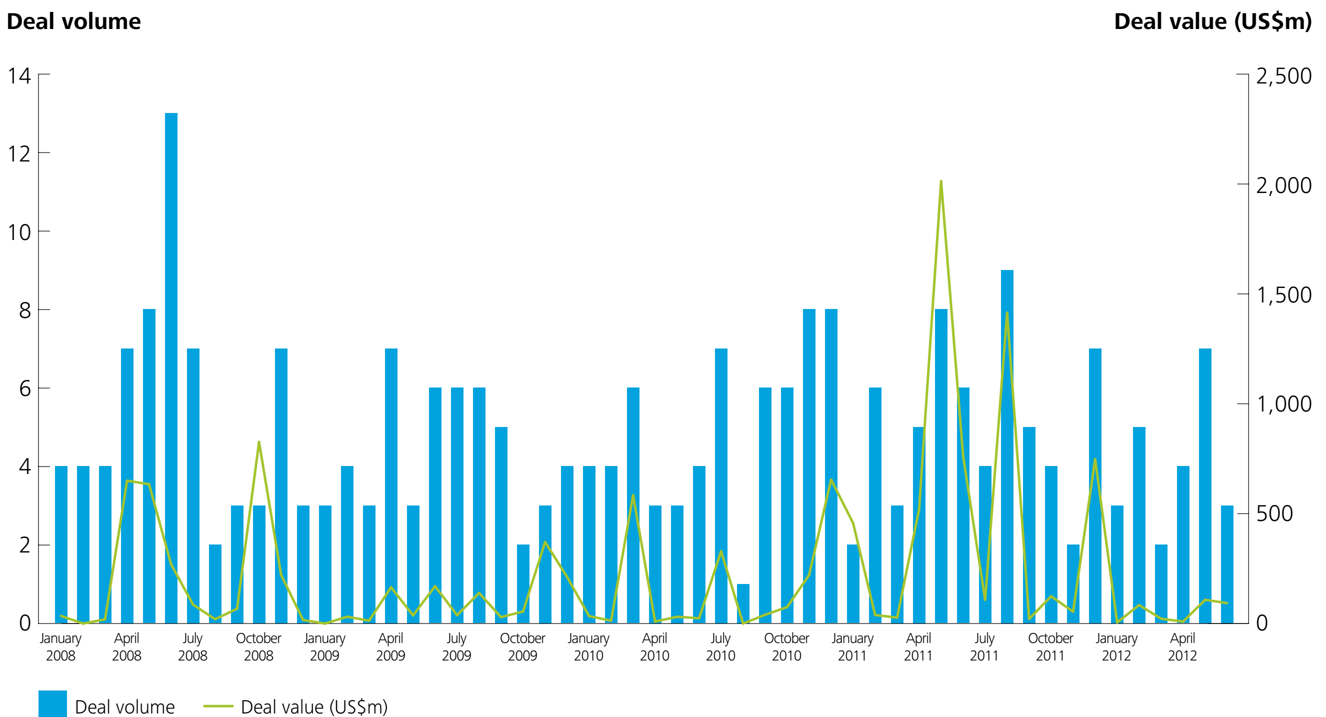
Key facts

GDP (current prices 2011)	US$161.85bn	**Major industries**	Food processing, wood and paper
YoY Nominal GDP Growth	1.44%	**2011 announced M&A volume (No.)**	US$6.3bn (61)

	Question	Answer
Deal structure	Do tax regulations favour asset or equity deals?	• Vendors will generally favour equity deals as proceeds from shares held on capital account will be tax free. • Purchasers will generally favour asset deals which provide for a step up on assets and no contingent tax liability exposure.
	Do tax regulations favour onshore or offshore holding structures?	• An onshore holding company may be preferred as it allows debt push down.
	Do significant restrictions exist on foreign investment?	• No tax restrictions exist however non tax regulatory approval may be required for certain transactions.
	Are tax deductions typically available on: acquisition finance costs; other acquisition costs?	• Acquisition finance costs will be deductible subject to restrictions under thin capitalization. • Other acquisition costs will be subject to the normal deductibility tests and any costs that are capital in nature will not be deductible.
	Can PIK (payment in kind) debt be structured?	• Non-cash interest expense arising from the transaction will be deductible subject to thin capitalization rules, transfer pricing regulations, and the general anti avoidance provision which requires commercially justifiable rationale for the PIK debt.
	Can debt push down strategies be implemented easily?	• Debt push down strategies can be implemented easily in relation to new acquisitions.
	Do any thin-cap rules apply?	• Thin capitalization rules limit interest deductions where the ratio of interest bearing debt to total assets exceeds 60% and 110% of the world wide group's debt to asset ratio. The test is increased to 75% for outbound thin capitalization.
	Are there any minimum capital requirements?	• No.
	How complex is it to increase/ decrease capital?	• It is easy to increase capital and relatively easy to decrease capital subject to meeting the relevant solvency tests under corporate law. • A reduction in capital is prima facie a dividend but can be non-taxable in certain circumstances.
Post-deal tax management	What is the headline rate of tax?	• Corporate income tax rate is 28%.
	Can cash be easily remitted overseas?	• Yes.
	What is the domestic withholding tax rate:	**On dividends to overseas entities** • Dividends that are not fully imputed are subject to withholding tax at 30%. There is effectively no additional tax on fully imputed dividends. **On interest payments to overseas entities** • Generally 15% subject to a reduction by virtue of tax treaty. If the parties are associated, the withholding is treated as a minimum tax such that further tax may be payable. **On royalty payments to overseas entities** • Generally 15% subject to a reduction by virtue of tax treaty. If the parties are associated, the withholding is treated as a minimum tax such that further tax may be payable.
	Is there any tax on offshore dividends received?	• In most cases there is no tax on dividends received from offshore with the exception of dividends not subject to the international tax rules.
	Can NOLs of an acquired company be easily used post acquisition?	• Generally NOL's are not available post acquisition where there has been a change in shareholding of more than 51% (tested at the ultimate human shareholder level).

	Question	Answer
Exit strategy	Is there any tax on capital gains at the onshore vendor's level?	• Capital gains resulting from a share sale will not be taxable if the shares were held on capital account. • Capital gains resulting from an asset sale will be taxable if the asset is revenue account property.
	Is there withholding tax when a company is sold or disposed of?	• No.
	Are there any specific tax regulations governing the exit strategy for investment through an offshore vehicle?	• No.
	Any substantial sales/turnover taxes on exit?	• No.
Summary	We expect an increase in the number of M&A transactions over the coming 12 to 24 months. This is likely to be driven by continued offshore interest in New Zealand land and property and the emergence of greater global M&A activity.	

New Zealand inbound & domestic M&A activity



Source: mergermarket

Philippines

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Key facts

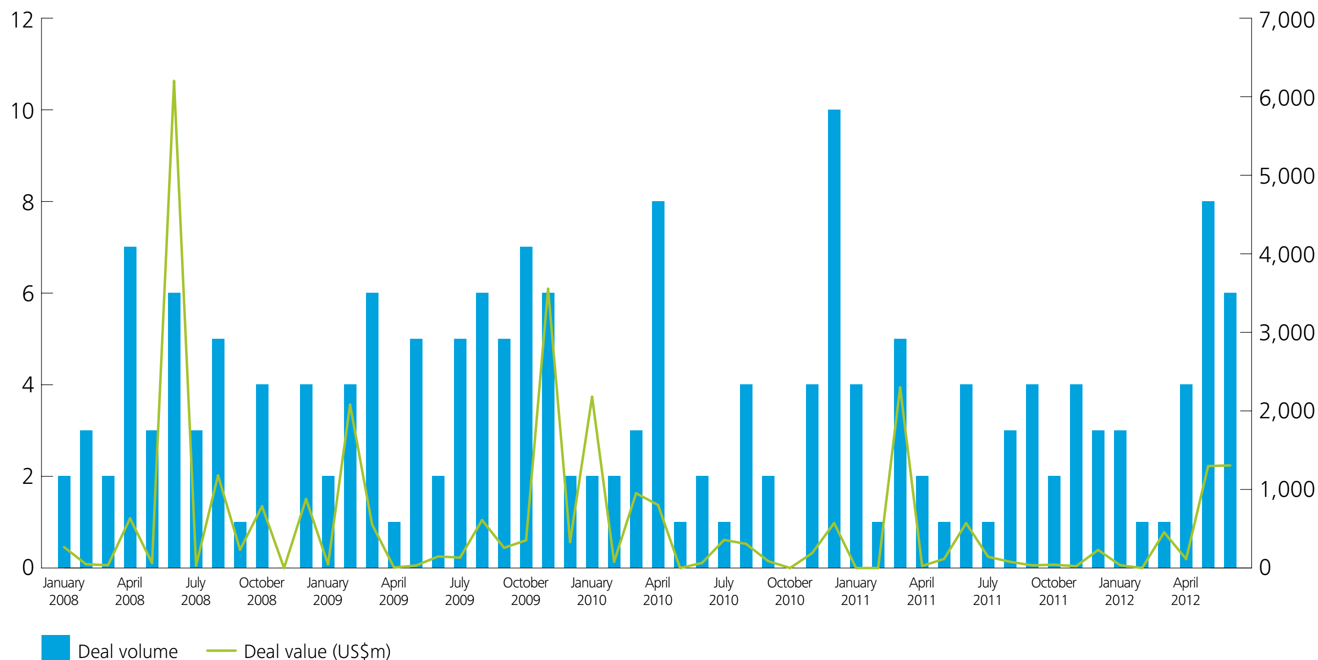
GDP (current prices 2011)	US$213.13bn	**Major industries**	Electronic assembly, garments
YoY Nominal GDP Growth	3.72%	**2011 announced M&A volume (No.)**	US$3.6bn (33)

	Question	Answer
Deal structure	Do tax regulations favour asset or equity deals?	• Philippines tax regulations are neutral when it comes to asset or equity deals.
	Do tax regulations favour onshore or offshore holding structures?	• General, income derived within the Philippines from offshore contract by domestic corporations is subject to income tax at 30 percent and nil for foreign corporations.
	Do significant restrictions exist on foreign investment?	• There is a Foreign Investment Negative List to restrict investment in certain areas.
	Are tax deductions typically available on: acquisition finance costs; other acquisition costs?	• Typically available. There are no thin capitalization rules. However, a 75/25 long term debt-to-equity ratio is implemented by the Philippine Central Bank.
	Can PIK (payment in kind) debt be structured?	• If PIK results in the issues of new shares, there may be Documentary Stamp Tax (DST). Non-cash interest under payment in kind is deductible whether it is accrued or paid.
	Can debt push down strategies be implemented easily?	• Need to consider DST on the debt instrument and withholding tax on dividend and interests to non-resident entity.
	Do any thin-cap rules apply?	• In general, there are no thin capitalization rules. However, a 75/25 long term debt-to equity ratio is implemented by the Philippine Central Bank.
	Are there any minimum capital requirements?	• Under Philippine Corporation laws, the following entities have a minimum capital requirement: (see table below)
	How complex is it to increase/decrease capital?	• There is typically no obstacle to the approval by the Securities and Exchange Commission (SEC) of the increase or decrease of capital.
Post-deal tax management	What is the headline rate of tax?	• 30%.
	Can cash be easily remitted overseas?	• Enterprises seeking to remit profits and dividends or repatriate capital abroad may register the remittance with the Philippine Central Bank following registration with the SEC or Department of Trade and Industry (DTI).
Post-deal tax management (Cont'd)	What is the domestic withholding tax rate:	**On dividends to overseas entities** • 30% final withholding tax which may be reduced to 15% subject to the tax sparing rule. **On interest payments to overseas entities** • 20% final withholding tax. **On royalty payments to overseas entities** • 30% final withholding tax.
	Is there any tax on offshore dividends received?	• Yes, a domestic corporation is subject to income tax on its worldwide sources of income.
	Can NOLs of an acquired company be easily used post acquisition?	• Tax loss carry forwards can be used against income for the following three tax years after the loss is recognized.

Type	Minimum Capital Requirement	Frequency
Foreign Subsidiary and Foreign Branch	USD200,000.00	One-time initial remittance
Regional Operating Headquarters	USD200,000.00	One-time initial remittance
Regional Headquarters	USD50,000.00	Annual remittance
Representative Office	USD30,000.00	One-time initial remittance

	Question	Answer
Exit strategy	Is there any tax on capital gains at the onshore vendor's level?	• Gains from sale of shares are generally subject to capital gains tax at 5% on the first PhP100,000 and 10% in excess of PhP100,000.
	Is there withholding tax when a company is sold or disposed of?	• The sale of shares in a domestic company is generally subject to CGT.
	Are there any specific tax regulations governing the exit strategy for investment through an offshore vehicle?	• There are no specific tax regulations governing the exit strategy for investment through an offshore vehicle.
	Any substantial sales/ turnover taxes on exit?	• For equity deals, capital gains tax at 5% on the first PhP100,000 plus 10% in excess of PhP100,000 and documentary stamp tax (DST) of seventy-five centavos (P0.75) on each two hundred pesos (P200.00), or fractional part thereof, on the par value of Philippine domestic share of stocks sold or transferred. • For asset deals, any gain that may be derived from the transfer of assets is subject to the regular corporate income tax of 30%. The assets may be transferred at book value or above book value but the Philippine tax authorities may raise question on the transfer price. The transfer of assets used in business is subject to 12% VAT. The 12% VAT will be imposed on the gross selling price or gross value in money of the goods or properties transferred. 6% Capital Gains Tax will apply on certain assets.
Summary	**The Philippines has yet to bloom as an established M&A market. However, acquirers/investors remain are interested in the energy, resources and business process outsourcing sectors. Philippines companies may become more attractive targets as the economy appears less affected by world markets than many other Asian countries.**	

Philippines inbound & domestic M&A activity



Source: mergermarket

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Key facts

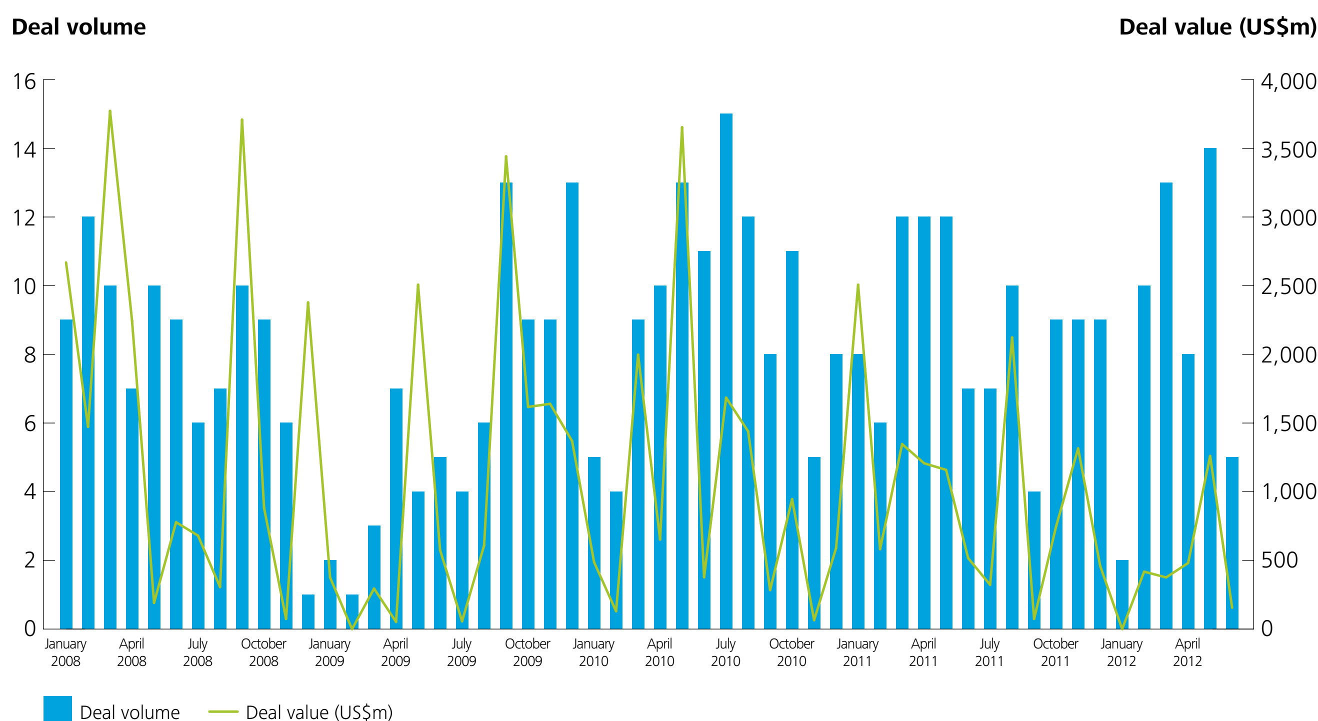
GDP (current prices 2011)	US$259.85bn	**Major industries**	Electronics, chemicals
YoY Nominal GDP Growth	4.89%	**2011 announced M&A volume (No.)**	US$12.4bn (105)

	Question	Answer
Deal structure	Do tax regulations favour asset or equity deals?	• Interest on debt incurred to purchase income-producing assets may be deductible whereas interest on debt incurred to purchase shares is generally non-deductible. Asset deals also allow a step-up in the bases for tax depreciable assets (including self-generated intellectual property rights) to their fair market values if structured properly.
	Do tax regulations favour onshore or offshore holding structures?	• An offshore SPV is generally preferred as professional services (e.g. lawyers, accountants, bankers) related to the financing and acquisition of an onshore vehicle may attract GST at the rate of 7% which may not be creditable as input tax. An offshore SPV may also be preferred in order to provide greater certainty that a gain on exit is not subject to Singapore income tax.
	Do significant restrictions exist on foreign investment?	• No.
	Are tax deductions typically available on: acquisition finance costs; other acquisition costs?	• Interest and borrowing costs will be tax deductible provided that the expenses are incurred in the production of assessable income. As a result, interest incurred on debt contracted to purchase assets may be deductible whereas interest incurred on debt contracted to purchase shares is non-deductible. Other acquisition expenses are generally not tax deductible for the purchaser in Singapore as they will be treated as capital in nature. • A merger and acquisition allowance is available to qualifying M&A deals executed from 1 April 2010 to 31 March 2015 (both dates inclusive) at 5% of the acquisition value. There will be a cap of S$5 million of allowance granted for all qualifying deals executed per Year of Assessment. The allowance however is only available to a Singapore based acquirer on equity deals and subject to meeting qualifying conditions.
	Can PIK (payment in kind) debt be structured?	• Tax deductions should be available on interest incurred for PIK debt contracted to produce taxable income in Singapore.
	Can debt push down strategies be implemented easily?	• Debt push down may be available, if properly structured and subject to general anti-avoidance provisions, either by acquiring assets or by effecting a post-acquisition restructuring by using a loan to finance the transfer of the business of the target to a new or existing Singapore company. There may also be commercial, legal and regulatory issues to consider.
	Do any thin-cap rules apply?	• There are no thin capitalization rules in Singapore. There are however restrictions on the deductibility of interest expenses.
	Are there any minimum capital requirements?	• The minimum issued capital for companies limited by shares is one share. Payment for shares may be made in kind if all parties agree on the value of the in kind consideration.
	How complex is it to increase/decrease capital?	• There are no restrictions on the increase in capital of a company. A reduction of capital is permitted but only in certain circumstances. A reduction of capital is generally subject to solvency requirement, and may in certain circumstances be subject to consent from the company's creditors and court approval.

	Question	Answer
Post-deal tax management	What is the headline rate of tax?	• 17%.
	Can cash be easily remitted overseas?	• Singapore has no significant restrictions on foreign exchange transactions and capital movements. Funds may flow freely into and out of the country.

	Question	Answer
Post-deal tax management (Cont'd)	What is the domestic withholding tax rate:	On dividends to overseas entities • 0% On interest payments to overseas entities • 15% On royalty payments to overseas entities • 10%
	Is there any tax on offshore dividends received?	• Taxable when received or deemed received in Singapore. Exempt if the offshore dividends meet prescribed conditions.
	Can NOLs of an acquired company be easily used post acquisition?	• Unabsorbed losses and capital allowances typically cannot be carried forward and set off against future profits if there is a more than 50% change in the ultimate shareholders of the acquired company.
Exit strategy	Is there any tax on capital gains at the onshore vendor's level?	• Capital gains are not taxable. However, profits on sale of an asset (including shares in a company) may be treated as income in nature. Such profits of an income nature sourced in Singapore will be subject to income tax.
	Is there withholding tax when a company is sold or disposed of?	• There is no withholding tax on the sale/disposal of the shares of a company.
	Are there any specific tax regulations governing the exit strategy for investment through an offshore vehicle?	• No.
	Any substantial sales/turnover taxes on exit?	• In an asset deal, GST may be chargeable on the supply of taxable goods/ services by a GST registered entity unless the transaction can qualify as a transfer of business of a going concern. Seller's stamp duty at ad valorem of rates of up to 16% (depend on the holding period) may be payable on any written agreement or instrument for the transfer of residential property in Singapore.
Summary	Liquidity and valuations will likely be the two main drivers of M&A activities in Singapore. Private equity and strategic buyers will remain as the two main players in the M&A market. These potential buyers, particularly those with healthy balance sheets and a strong war-chest are on the constant look-out for attractive investments.	

Singapore inbound & domestic M&A activity



Source: mergermarket

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Key facts

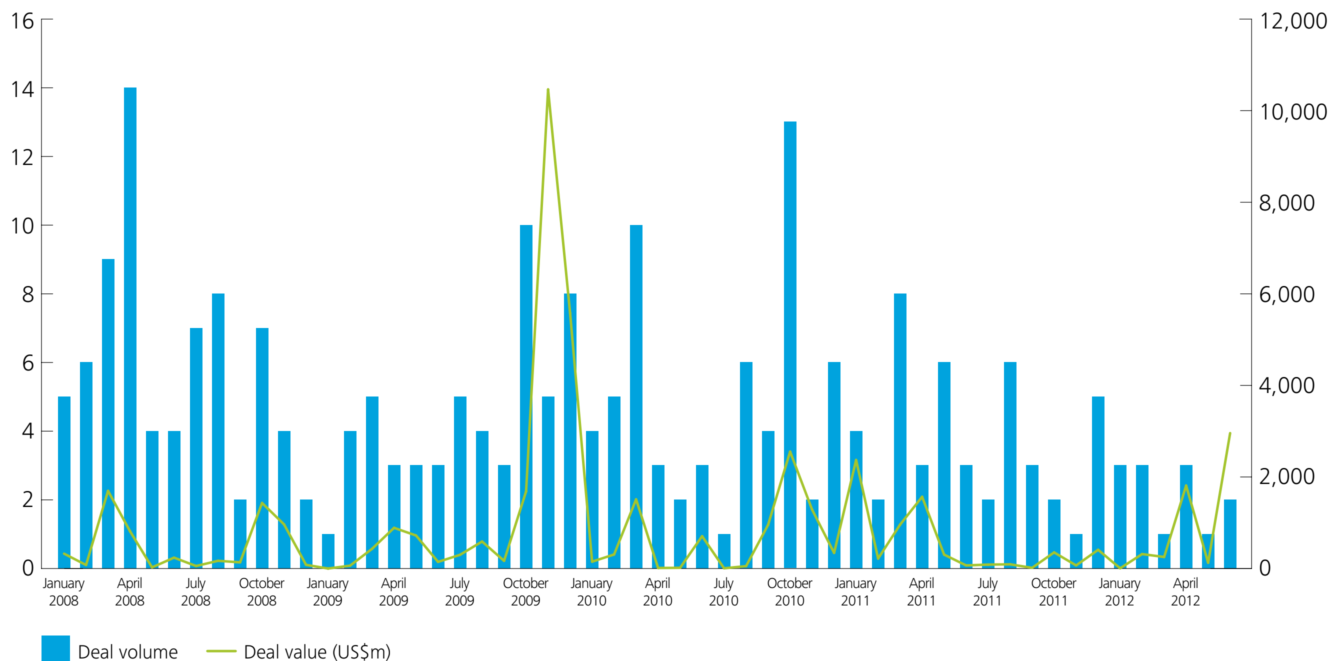
GDP (current prices 2011)	US$466.83bn	**Major industries**	Electronics, petroleum refinery
YoY Nominal GDP Growth	4.04%	**2011 announced M&A volume (No.)**	US$6.5bn (45)

	Question	Answer
Deal structure	Do tax regulations favour asset or equity deals?	• Qualified equity transactions may be afforded tax free treatment if requirements are met.
	Do tax regulations favour onshore or offshore holding structures?	• Onshore holding companies will be subject to a 10% surtax on undistributed earnings. Income tax deductions for operating expenses and interest are not available to onshore holding companies if t he majority of income consists of tax exempt dividend.
	Do significant restrictions exist on foreign investment?	• Investment must be approved by the Taiwan Ministry of Economic Affairs. Chinese investors are only allowed to invest in certain sectors.
	Are tax deductions typically available on: acquisition finance costs; other acquisition costs?	• Deduction should be available if the acquisition is carefully structured.
	Can PIK (payment in kind) debt be structured?	• Taiwan Civil Code seems to allow for PIK-type debt structuring arrangement. However, Taiwan tax law and regulations do not specifically address whether non-cash interest payments on PIK debt would be deductible, so there are some risks.
	Can debt push down strategies be implemented easily?	• Debt push down is usually done through a merger.
	Do any thin-cap rules apply?	• The debt-to-equity ratio generally is 3:1. Interest expense of such an enterprise from related party debt exceeding the stipulated debt-to-equity ratio will not be deductible for tax purposes.
	Are there any minimum capital requirements?	• Certain regulated industries may have minimum capital requirements.
	How complex is it to increase/ decrease capital?	• Increase/decrease of capital should be approved by Taiwan Ministry of Economic Affairs.
Post-deal tax management	What is the highest marginal tax rate?	• 17%.
	Can cash be easily remitted overseas?	• A limit of USD50milion is imposed on inward and outward remittances converted into or out of NTD for any single corporate entity, and USD5million for resident individuals. Additional amounts of inbound and outbound remittances must be pre-approved by the central bank. Corporations and individuals are required to report certain foreign exchange transactions to the central bank through the bank that handles the remittance.
	What is the domestic withholding tax rate:	**On dividends to overseas entities** • 20%. **On interest payments to overseas entities** • A 15% withholding tax applies to interest paid to a nonresident on short-term bills, interest on securitized certificates, interest on corporate bonds, government bonds or financial debentures, as well as interest derived from repurchase transactions with the above bonds or certificates. The rate in all other cases is 20%. **On royalty payments to overseas entities** • 20%.
	Is there any tax on offshore dividends received?	• Subject to the ordinary 17% corporate income tax rate. Withholding paid on such dividend can be claimed as tax credit subject to limitation.
	Can NOLs of an acquired company be easily used post acquisition?	• NOLs of an acquired company can be used if the criteria under Taiwan M&A Laws are met. However, there are limitations.

	Question	Answer
Exit strategy	Is there any tax on capital gains at the onshore vendor's level?	• In general taxed at ordinary 20% withholding tax, unless it is a qualified equity transaction, which may be afforded tax free treatment if requirements are met.
	Is there withholding tax when a company is sold or disposed of?	• In general taxed at ordinary 20% withholding tax, unless it is a qualified equity transaction, which may be afforded tax free treatment if requirements are met.
	Are there any specific tax regulations governing the exit strategy for investment through an offshore vehicle?	• N/A
	Any substantial sales/turnover taxes on exit?	• If qualified equity transactions, there may be a 0.3% security transaction tax. In other cases, there may be a 5% VAT depending on the deal structure.
Summary	**Following the 2012 presidential election, there may be better prospects of getting cross-straits investment protection agreement, DTA and customs related concession. Taiwan may possibly further open up more sectors to Chinese investors. From a tax technical perspective, newly introduced thin cap rules should be observed and further development on the goodwill amortization should be closely monitored for M&A transactions.**	

Taiwan inbound & domestic M&A activity

Deal volume **Deal value (US$m)**



Source: mergermarket

Thailand

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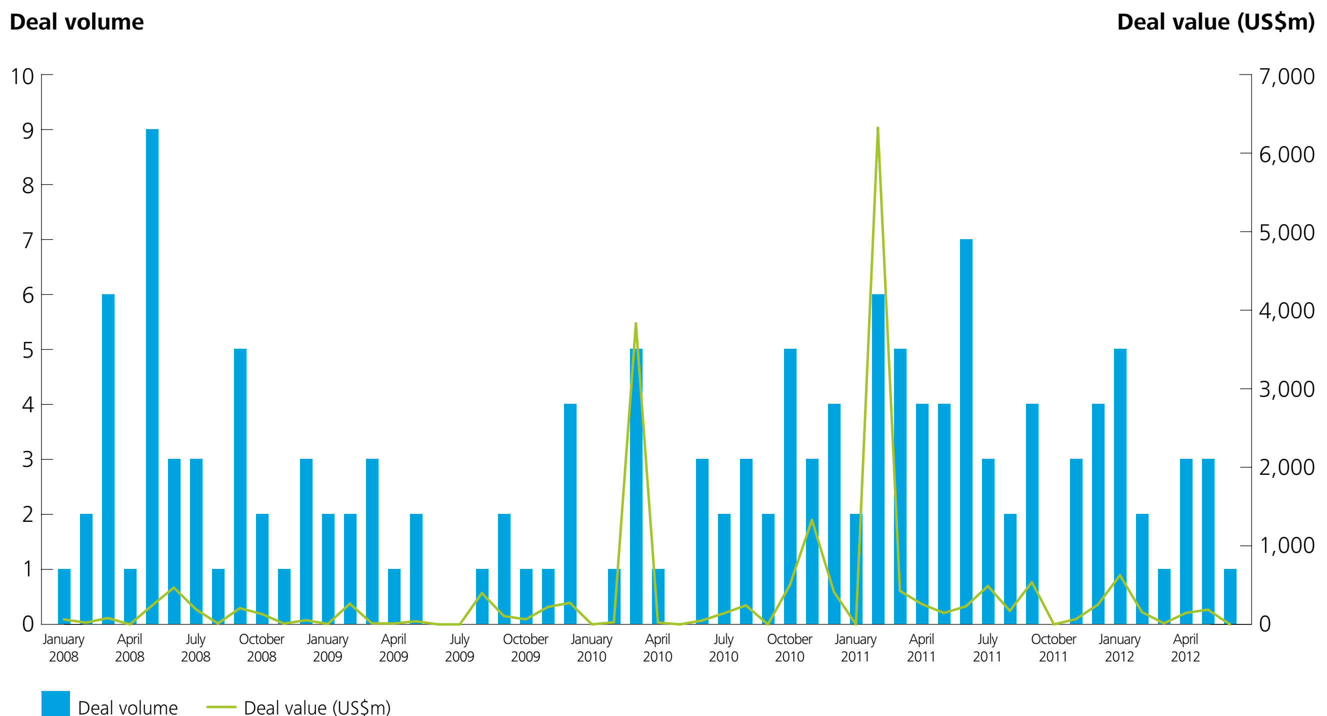
Key facts

GDP (current prices 2011)	US$345.65bn	**Major industries**	Tourism, textile
YoY Nominal GDP Growth	0.07%	**2011 announced M&A volume (No.)**	US$8.9bn (44)

	Question	Answer
Deal structure	Do tax regulations favour asset or equity deals?	• Asset deals are subject to various taxes unless the requirements of an entire or partial transfer of business are met. Equity deals can be tax exempt e.g. under certain tax treaties.
	Do tax regulations favour onshore or offshore holding structures?	• Capital gains are exempt from withholding taxes under certain tax treaties for disposals by offshore entities.
	Do significant restrictions exist on foreign investment?	• Generally a foreign majority owned entity is prohibited from carrying on service, distribution and other business activities unless conditions are met and/or approval is granted. Manufacturing activity is not prohibited.
	Are tax deductions typically available on: acquisition finance costs; other acquisition costs?	• Both are deductible as long as they do not exceed market value and relate specifically to the business' operation.
	Can PIK (payment in kind) debt be structured?	• Technically this is not allowed by law. However, proper steps within the law can be taken to achieve a similar result. • Non-cash interest generally would be deductible if charged at market value.
	Can debt push down strategies be implemented easily?	• Yes, depending on the structure.
	Do any thin-cap rules apply?	• There are no thin-cap rules that apply from an income tax standpoint.
	Are there any minimum capital requirements?	• Depending on the form of entity and business.
	How complex is it to increase/ decrease capital?	• Normally easy to increase/decrease capital from regulatory standpoint. Tax implications should be considered before the implementation of the decrease of the registered share capital.
Post-deal tax management	What is the headline rate of tax?	• The corporate income tax rate is reduced to 23% for 2012, and further reduced to 20% for 2013 and 2014.
	Can cash be easily remitted overseas?	• Yes. Monetary remittance is typically allowed but relevant supporting documents must be maintained as required by the Bank of Thailand.
	What is the domestic withholding tax rate:	**On dividends to overseas entities** • 10%. **On interest payments to overseas entities** • 15%. **On royalty payments to overseas entities** • 15%.
	Is there any tax on offshore dividends received?	• Generally taxable, but tax exemption available under certain conditions.
	Can NOLs of an acquired company be easily used post acquisition?	• Tax losses can be carried forward for five consecutive accounting periods. A Board of Investment promoted company may also be allowed to carry tax losses for an additional five years after the end of the tax holiday period.

	Question	Answer
Exit strategy	Is there any tax on capital gains at the onshore vendor's level?	• A capital gains tax is levied on resident companies (i.e. corporate income tax) at 23% in the year 2012 and 20% in the years 2013 and 2014.
	Is there withholding tax when a company is sold or disposed of?	• In general, a capital gain on a disposal by a non-resident company is subject to withholding tax of 15% unless an exemption applies.
	Are there any specific tax regulations governing the exit strategy for investment through an offshore vehicle?	• VAT at 7% applies on the disposal of assets unless conditions of tax free incentive on entire or partial business transfer/Merger/Amalgamation are met. • The transfer of immovable property (i.e. land and/or building) at the Department of Land is subject to 3.3% Specific Business Tax, 1% withholding tax, and 2% transfer fee. • The disposal of share is subject to 15% final withholding tax unless an exemption applies under tax treaties and 0.1% stamp duty.
	Any substantial sales/turnover taxes on exit?	• VAT at 7% applies on the disposal of assets unless the business transfer, merger, or amalgamation qualifies as a tax free transfer. • A 15% final withholding tax applies on a gain from the disposal of shares by foreign investors unless an exemption applies under the relevant tax treaty.
Summary	The Thai government has announced a number of tax incentives e.g. a corporate income tax rate reduction from 30% to 23% for the fiscal year beginning on or after 1 January, 2012, 20% for the two fiscal years beginning on or after January 2013. Tax exemptions for entire or partial business transfers to enhance M&A transactions and business restructuring in Thailand have also been introduced.	

Thailand inbound & domestic M&A activity



Source: mergermarket

Vietnam

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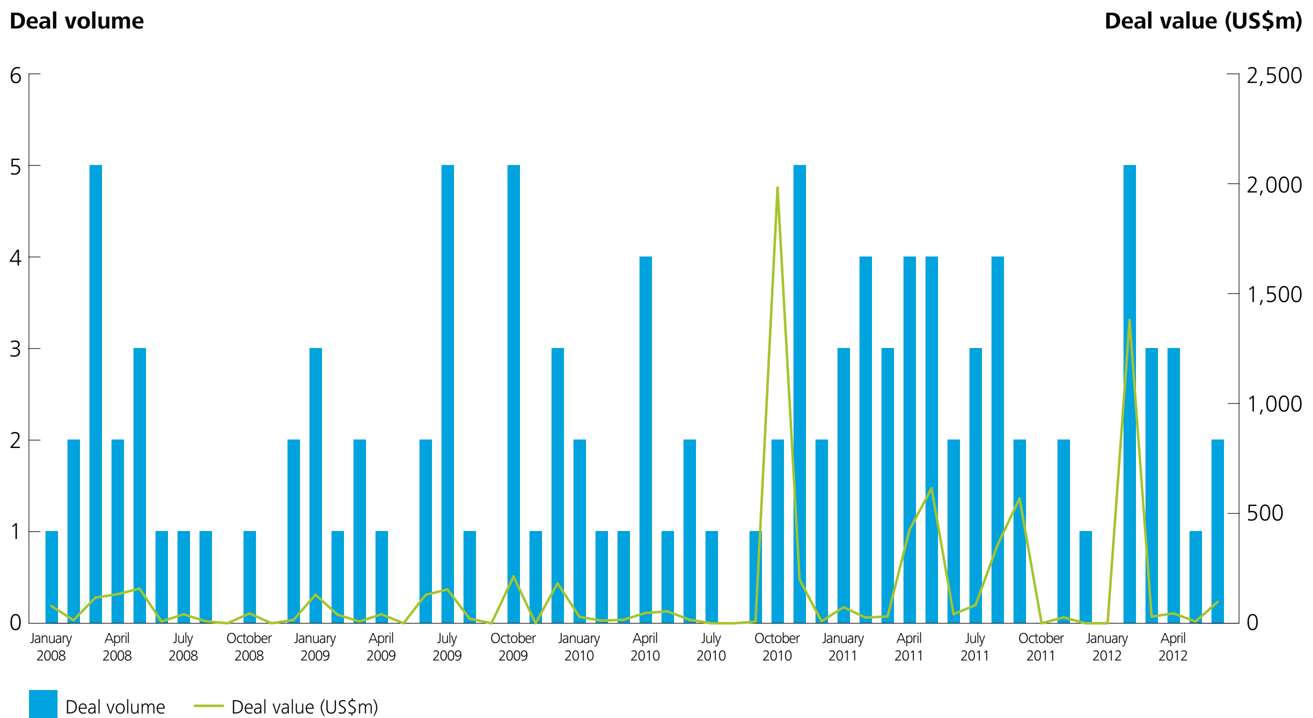
Key facts

GDP (current prices 2011)	US$122.72bn	**Major industries**	Food processing, garment
YoY Nominal GDP Growth	5.89%	**2011 announced M&A volume (No.)**	US$2.2bn (32)

	Question	Answer
Deal structure	Do tax regulations favour asset or equity deals?	• For asset deals, there can be difficulties with land-use rights. • There is also no formal roll-over basis.
	Do tax regulations favour onshore or offshore holding structures?	• Onshore acquisitions will be exposed to capital gains tax if sold.
	Do significant restrictions exist on foreign investment?	• There is a general 49% cap on foreign investment in public companies. Although post WTO accession foreign investment is permitted in a broad range of industries certain sectors remain restricted e.g. the media, post & telecommunications.
	Are tax deductions typically available on: acquisition finance costs; other acquisition costs?	• Foreign loans might need to be registered with the State Bank of Vietnam to claim interest deductions and to allow future foreign remittance of interest and principal. In 2012 individual tax authorities have sought to deny a deduction for acquisition financing costs.
	Can PIK (payment in kind) debt be structured?	• Yes. Non-cash interest expenses on PIK loans used for business purposes will be tax deductible. The interest deduction available is capped at 1.5 times the commercial lending rate, provided that registered capital is fully paid. Interest paid to a non-resident on PIK loans may be subject to withholding tax of 10%, unless reduced under a double tax treaty. Foreign loans have other regulations.
	Can debt push down strategies be implemented easily?	• No.
	Do any thin-cap rules apply?	• Not under tax law. In limited industries there are capital requirements under other regulations, e.g., banking, mining, real estate.
	Are there any minimum capital requirements?	• Not under tax law. In limited industries there are capital requirements under other regulations, e.g., banking, mining, real estate.
	How complex is it to increase/ decrease capital?	• Increasing capital requires regulatory approval. Reducing capital is difficult. For a company with a single shareholder, it is not permitted.
Post-deal tax management	What is the headline rate of tax?	• 25%
	Can cash be easily remitted overseas?	• Paid-in capital must be maintained in Vietnam. • It is difficult to remit cash arising from non-cash charges (e.g., depreciation, amortisation).
	What is the domestic withholding tax rate:	**On dividends to overseas entities** • N/A **On interest payments to overseas entities** • 5%. **On royalty payments to overseas entities** • 10%.
	Is there any tax on offshore dividends received?	• Offshore dividends are taxable at normal corporate tax rates. However, foreign tax credits can be claimed if there is a double tax. The credit relief is limited by reference to the Vietnamese tax arising on the offshore dividends.
	Can NOLs of an acquired company be easily used post acquisition?	• The carry-over period for NOLs is five years.

	Question	Answer
Exit strategy	Is there any tax on capital gains at the onshore vendor's level?	• The sale of shares and capital is generally taxed at 25% of the gain. The sale of shares in a public joint stock company is taxed at 0.1% of the proceeds.
	Is there withholding tax when a company is sold or disposed of?	• The withholding tax carried on sales proceeds is 25%.
	Are there any specific tax regulations governing the exit strategy for investment through an offshore vehicle?	• No.
	Any substantial sales/turnover taxes on exit?	• No turnover taxes are levied on exit by sale of shares but Corporate Income Tax applies on gain (or sale proceeds for sale of securities). If assets are sold VAT applies and there may be a claw-back of import duty/VAT on goods previously exempted on importation.
Summary	There will continue to be interest in areas where domestic consumption will continue to grow strongly in Vietnam. i.e. consumer goods, healthcare, infrastructure. The energy & resources sector will also remain active.	

Vietnam inbound & domestic M&A activity



Source: mergermarket

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