COMPARISON OF ASIA PACIFIC HOLDING COMPANY REGIMES

This analysis provides an indicative guide only and advice from appropriate country specialists should always be sought.
Particular attention should be given to the date at which the information is correct – shown under the country name at the top of each column.

	Australia	China	Hong Kong	Indonesia	Japan	Korea	Malaysia/Labuan
Last updated	January 2018	January 2018	January 2018	January 2018	January 2018	January 2018	January 2018
Establishing HoldCo							
Are advanced rulings available?	Yes	No	Yes[1]	No[2]	Yes	Yes	Yes
Are there restrictions on activities?	No[3]	Yes[4]	No	Yes[5]	No	Yes[6]	No
Are there substance requirements?	Not specifically but transfer pricing, diverted profits tax, Australia's GAAR and proposed new treaty abuse provisions in the multilateral convention to be considered[7]	Yes	No[8]	No[9]	No	No	Malaysia – yes; Labuan – yes
Is capital duty payable?	No	No[10]	No	No[11]	0.7% (generally)	Yes[12]	Malaysia – RM 1,000; Labuan – RM1,000 to RM5,000[13]
Is there a special tax regime for holding companies?	No	No	No	No[14]	No	Yes[15]	Yes[16]
Is there CFC or equivalent legislation?	Yes	Yes[17]	No	Yes[18]	Yes	Yes[19]	No
Number of jurisdictions with active income tax treaties (minimum)	44	101	34[20]	65	69	93	73[21]

	Australia	China	Hong Kong	Indonesia	Japan	Korea	Malaysia/Labuan
Last updated	**January 2018**	**January 2018**	**January 2018**	**January 2018**	**January 2018**	**January 2018**	**January 2018**
What is the corporate tax rate?	30%[22]	25%	16.5%	25%[23]	30.86%/ 34.81% (for the fiscal year beginning on or after 1 April 2017)[24]	27.5%[25]	Malaysia – 24%; Labuan – Labuan trading income is taxed at 3% of net profit or at a maximum amount of RM 20,000, Labuan non-trading income is exempt[26]
Tax treatment of disposal of HoldCo							
Is any tax payable in HoldCo country on disposal of HoldCo shares by a nonresident corporate shareholder?	No, unless HoldCo's assets are primarily comprised of Australian real estate, the HoldCo shares are held on revenue account or a non-resident shareholder holds shares through an Australian PE[27]	Yes[28]	No[29]	Yes[30]	Yes, in certain circumstances and for real estate companies[31]	Yes[32]	Potential exposure to Real Property Gains Tax[33]
Tax treatment of payments by HoldCo							
<u>Dividends</u>							
What is the rate of withholding tax on dividends paid to nonresidents?							
– Non-treaty	30%[34]	10%[36]	Nil	20%	20.42%[38]	22%[39]	Nil
– Treaty	5% – 15[35]	Generally 5% – 10%	Nil	5% – 20%[37]	0% – 20%	0% – 27.5%[40]	Nil

	Australia	China	Hong Kong	Indonesia	Japan	Korea	Malaysia/Labuan
Last updated	January 2018	January 2018	January 2018	January 2018	January 2018	January 2018	January 2018
Interest							
Are there restrictions on interest deductibility?	Yes[41]	Yes[42]	Yes[43]	Yes – 4:1[44]	Yes[45]	Yes[46]	Yes[47]
Is interest on loans to acquire subsidiaries deductible against HoldCo's profits?	Yes – subject to thin cap limits and anti-avoidance rules	Unclear[48]	No	No[49]	Yes[50]	Yes – subject to limitations[51]	Malaysia – no; Labuan – yes for Labuan trading activities, N/A for Labuan non-trading activities[52]
What is the rate of withholding tax on interest paid to nonresidents?							
– Non-treaty	10%	10%	Nil	20%	15.315%/20.42%[55]	0%/15.4%/22%[56]	Malaysia: 15%; Labuan: 0%
– Treaty	0% – 10%[53]	Generally 0% (state-owned banks)/7%/10%	Nil	0% – 15%[54]	0% – 20%	0% – 16.5%	Malaysia: 5% – 15%; Labuan: 0%
Liquidation payments							
Is there withholding tax on liquidation payments?	Yes[57]	Yes[58]	No	Yes[59]	Yes[60]	Yes[61]	No
Taxation of HoldCo income							
Dividends							

	Australia	China	Hong Kong	Indonesia	Japan	Korea	Malaysia/Labuan
Last updated	January 2018	January 2018	January 2018	January 2018	January 2018	January 2018	January 2018
How are dividends taxed?	Exempt/ Taxable at 30%[62]	Domestic dividends - generally exempt from enterprise income tax; foreign dividends - generally subject to 25% enterprise income tax with credit for foreign tax	Exempt	Domestic dividends – generally exempt for Indonesian limited company; foreign dividends – taxable with credit for foreign tax paid[63]	Domestic dividends – dividends received deduction; foreign dividends – 95% exemption[64]	Domestic dividends – taxable but dividends received deduction available; foreign dividends – taxable with credit for foreign tax paid[65]	Malaysia – single tier corporate tax system for domestic dividends, foreign dividends exempt; Labuan – Labuan trading income taxed at 3% or a maximum amount of RM20,000, Labuan non-trading income exempt[66]
Does the foreign subsidiary have to meet any substance requirements for any exemption in HoldCo jurisdiction to apply?[67]	No[68]	N/A	No	No	No (for double tax relief purposes)	No	No
Does the foreign subsidiary have to pay tax in its own jurisdiction for any exemption in HoldCo jurisdiction to apply?[69]	No[70]	No, subject to the CFC rules	No	No	No (for double tax relief purposes)	No	No
What is the required holding period?	N/A	N/A[71]	N/A	N/A	6 months	N/A	N/A
What is the required percentage ownership?	At least 10% of the participation interest	N/A	N/A	25% (for tax exemption for domestic dividends)	25%[72]	N/A	N/A

	Australia	China	Hong Kong	Indonesia	Japan	Korea	Malaysia/Labuan
Last updated	**January 2018**	**January 2018**	**January 2018**	**January 2018**	**January 2018**	**January 2018**	**January 2018**
How are gains on the sale of a subsidiary taxed?	Exempt/ Proportionately taxable at 30%[73]	Taxable at 25%	Exempt[74]	Taxable as ordinary income if the subsidiary is not listed on the Indonesian Stock Exchange[75]	Taxable at the relevant corporate tax rate	Taxable at the relevant corporate tax rate[76]	Malaysia – capital gain not subject to income tax. Potential RPGT implications; Labuan – Labuan trading income taxed at 3% or a maximum RM20,000, Labuan non-trading income exempt, potential RPGT implication if the Labuan company is holding shares in RPCs[77]
Are capital losses deductible?	Yes[78]	Yes	No	Yes	Yes	Yes	No[79]
Is relief available for the write-down in value of subsidiaries?	No	No[80]	No[81]	No	No[82]	No	No[83]
Does the foreign subsidiary have to meet any substance requirements for any exemption in HoldCo jurisdiction to apply?[84]	Yes[85]	N/A	No	No	No	No	No
Does the foreign subsidiary have to pay tax in its own jurisdiction for any exemption in HoldCo jurisdiction to apply?[86]	No	No, subject to the CFC rules	No	No	No	No	No

	Australia	China	Hong Kong	Indonesia	Japan	Korea	Malaysia/Labuan
Last updated	**January 2018**	**January 2018**	**January 2018**	**January 2018**	**January 2018**	**January 2018**	**January 2018**
What is the required holding period?	Continuous 12 month period in the 2 years before disposal	N/A	N/A	N/A	N/A	N/A	N/A
What is the required percentage ownership?	At least 10% of the voting power	N/A	N/A	N/A	N/A	N/A	N/A
Is joint taxation for groups available?	Yes[87]	No	No	No	Yes	Yes[88]	No

	Mauritius	New Zealand	Philippines	Singapore	Taiwan	Thailand	Vietnam
Last updated	January 2018	January 2018	January 2018	January 2018	January 2018	January 2018	January 2018
Establishing HoldCo							
Are advanced rulings available?	Yes	Yes	No[89]	Yes	Yes[90]	No[91]	Yes
Are there restrictions on activities?	Yes[92]	No	No	No	No[93]	Yes[94]	Yes[95]
Are there substance requirements?	Yes[96]	No/Yes[97]	No[98]	Depends[99]	Yes[100]	No[101]	No
Is capital duty payable?	No[102]	No	Yes[103]	Standard SGD 300 registration fee plus SGD 15 name approval fee[104]	0.025% of authorised capital	Yes[105]	No
Is there a special tax regime for holding companies?	No	No	No	No	No	No[106]	No
Is there CFC or equivalent legislation?	No	Yes[107]	No	No	No[108]	No	No
Number of jurisdictions with active income tax treaties (minimum)	43	40	41	83	32[109]	61	70
What is the corporate tax rate?	Maximum 3%/15%[110]	28%	30%	17%[111]	17%[112]	20%[113]	20%
Tax treatment of disposal of HoldCo							
Is any tax payable in HoldCo country on disposal of HoldCo shares by a nonresident corporate shareholder?	No[114]	No, unless shares are held on revenue account[115]	Yes[116]	No[117]	Yes, in certain circumstances[118]	Yes/No[119]	Yes[120]

	Mauritius	New Zealand	Philippines	Singapore	Taiwan	Thailand	Vietnam
Last updated	**January 2018**	**January 2018**	**January 2018**	**January 2018**	**January 2018**	**January 2018**	**January 2018**
Tax treatment of payments by HoldCo							
Dividends							
What is the rate of withholding tax on dividends paid to nonresidents?							
– Non-treaty	Nil	0%/15%/30%[121]	15%/30%[122]	Nil	20%[123]	10%[124]	Exempt[126]
– Treaty	Nil	0%/5%/15%	5% – 25%	Nil	5% – 15%	5% and 10%[125]	Exempt[127]
Interest							
Are there restrictions on interest deductibility?	Yes[128]	Yes[129]	Yes[130]	Depends[131]	Yes[132]	No[133]	Yes[134]
Is interest on loans to acquire subsidiaries deductible against HoldCo's profits?	Yes[135]	Yes - subject to thin capitalisation rules	Yes	Depends[136]	Depends[137]	Depends[138]	Yes[139]
What is the rate of withholding tax on interest paid to nonresidents?							
– Non-treaty	0%/15%[140]	0%/15%[141]	20%[142]	15%[143]	20%	15%	5%
– Treaty	0%-15%	0%/10%/15%	0% – 25%	0% – 15%	7% – 15%	0%/10%/15%	0% – 10%[144]
Liquidation payments							
Is there withholding tax on liquidation payments?	No	Yes[145]	Yes[146]	No	Yes[147]	Yes[148]	No

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	Mauritius	New Zealand	Philippines	Singapore	Taiwan	Thailand	Vietnam
Last updated	January 2018	January 2018	January 2018	January 2018	January 2018	January 2018	January 2018
Taxation of HoldCo income							
Dividends							
How are dividends taxed?	Maximum 3%/15%[149]	Exempt/Taxable at 28%[150]	Domestic dividends – exempt; foreign dividends – charged to income tax at 30%	Taxable with credit for foreign WHT and underlying tax (first tier subsidiaries only)/Exempt[151]	Taxable on gross dividend/ Exempt[152]	Exempt from corporate income tax/50% reduction[153]	Taxable with credit for foreign tax paid[154]
Does the foreign subsidiary have to meet any substance requirements for any exemption in HoldCo jurisdiction to apply?[155]	No	No	No	No	Yes[156]	No	No
Does the foreign subsidiary have to pay tax in its own jurisdiction for any exemption in HoldCo jurisdiction to apply?[157]	N/A	No	No	No[158]	No	Yes[159]	No
What is the required holding period?	N/A	N/A	N/A	N/A	N/A	3 months/6 months[160]	N/A[161]
What is the required percentage ownership?	N/A[162]	Generally N/A[163]	N/A	N/A	N/A	25%[164]	N/A
Gains on disposal of participations							
How are gains on the sale of a subsidiary taxed?	No capital gains tax[165]	Not taxed unless shares are held on revenue account[166]	Taxable[167]	No capital gains tax, provided gains are capital in nature[168]	Taxable/Exempt[169]	Taxable at the standard corporate income tax rate[170]	Taxable at corporate income tax rate of 20%[171]

	Mauritius	New Zealand	Philippines	Singapore	Taiwan	Thailand	Vietnam
Last updated	January 2018	January 2018	January 2018	January 2018	January 2018	January 2018	January 2018
Are capital losses deductible?	No[172]	No, unless shares are held on revenue account[173]	Yes[174]	No	Yes[175]	Yes[176]	No
Is relief available for the write-down in value of subsidiaries?	No	No	No[177]	No[178]	No	No	No
Does the foreign subsidiary have to meet any substance requirements for any exemption in HoldCo jurisdiction to apply?[179]	No	No	N/A	No	Yes[180]	N/A	No
Does the foreign subsidiary have to pay tax in its own jurisdiction for any exemption in HoldCo jurisdiction to apply?[181]	No	No	N/A	No	No	N/A	No
What is the required holding period?	N/A	N/A	N/A	Depends[182]	N/A	N/A	N/A
What is the required percentage ownership?	N/A	N/A	N/A	Depends[183]	N/A	N/A	N/A
Is joint taxation for groups available?	No	Yes[184]	No	No[185]	Only for financial institutions	No	No

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Notes

[1] **HK:** There are restrictions on the scope of rulings that may be given by the Commissioner. A ruling will only be given for a contemplated transaction with full particulars set out. However, advance rulings will not be provided in certain cases, e.g. where the matter on which a ruling is sought involves the imposition or remission of a penalty, whether a tax return or other information provided by a taxpayer is correct or not, etc. The Commissioner also has discretion to decline to make a ruling when he is required to determine or establish a question of fact, make assumptions on future events, when the subject matter is an objection or appeal, etc.
[2] **IND:** Advance agreements between the tax authority and a taxpayer for a proposed transaction are not currently available. However, at the taxpayer's request, the tax authority may issue a private ruling to confirm or clarify the tax treatment based on the prevailing tax law and regulations and the taxpayer's specific circumstances. The tax office has no obligation to respond to the taxpayer's request. Although a ruling cannot be used as a legal basis for any specific treatment, in the event of a tax audit, it would be advisable for a taxpayer to have a private ruling rather than no ruling.
[3] **AUS:** The Australian government has introduced a Diverted Profits Tax (DPT) which targets schemes that shift profits out of Australia and allows the Australian Taxation Office (ATO) to impose a penalty rate of tax at 40% on the relevant diverted profit. The government states that the DPT is directed at "complex global structures", and is intended to encourage greater openness with the ATO and speedier dispute resolution. The DPT is effective from 1 July 2017 and applies to significant global entities (group income greater than or equal to A$1 billion).
In broad terms, the DPT applies where it is reasonable to conclude that a principal purpose of a scheme involving a related party cross border transaction is to obtain an Australian tax benefit or/and a foreign tax benefit, and the foreign tax liability in relation to the scheme is less than 80% of the Australian tax benefit. Such a scheme could involve income that is recognised offshore (instead of in Australia) or expenses that are recognised in Australia, where this would not be the case in the absence of the scheme.
[4] **CHI:** Investment companies set up by foreign investors cannot be involved in manufacturing activities directly, they could engage in financing activities with the approval from the China Banking Regulatory Commission. The investment here refers to a particular type of investment in China. Some industries are restricted or prohibited for foreign investments.
[5] **IND:** Certain business sectors are closed to foreign investment or open only with certain conditions. The list of business activities which are closed or restricted (the "negative list") is adjusted periodically by the Indonesia Investment Coordinating Board (BKPM).
[6] **KOR:** Holding companies are governed by legislation such as the Monopoly Regulation and Fair Trade Act and the Financial Holding Companies Act, in accordance with which certain requirements must be met. A financial holding company cannot hold participations in a non-financial subsidiary and vice versa.
[7] **AUS:** There are no substance requirements; however, Australian corporations law requires a proprietary company to have at least one director who ordinarily resides in Australia.
Further, Australian taxation law requires certain companies to lodge general purpose financial statements (GPFS) with the Australian Taxation Office (ATO) if the company: i) is a significant global entity (group income greater than or equal to $1 billion); ii) is an Australian resident, or a foreign resident that operates an Australian permanent establishment; iii) lodges an Australian income tax return; and iv) does not file GPFS with the corporate regulator, the Australian Securities and Investments Commission (ASIC). Where all of the gateway tests are satisfied, the relevant entity must lodge GPFS to the ATO. This measure applies to income years commencing on or after 1 July 2016 and could affect companies such as Australian subsidiaries of multinational groups or groups currently exempted from lodging accounts with the ASIC under the grandfathered large proprietary exemption.
In addition, Australia's transfer pricing rules, DPT, general anti-avoidance rule and proposed new treaty abuse provisions in the multilateral convention will need to be considered, which will generally require an analysis of "substance".
In relation to prevention of treaty abuse, Australia has chosen to adopt the Principal Purpose Test (PPT). Broadly, PPT will deny treaty benefits to a person if the person's principal purpose is to take advantage of the treaty unless it is established that granting that benefit in the circumstance would be in accordance with the object and purpose of the relevant provisions of the treaty.
[8] **HK:** While there are no substance requirements to determine the Hong Kong tax position of HoldCo, substance is required before the Inland Revenue Department issues a tax resident certificate for treaty application.

[9] **IND:** There are no specific substance requirements for holding companies; they are treated as regular legal entities. As such, no specific substance requirements exist but there must be at least two shareholders at all times. The management of a limited liability company in Indonesia consists of two boards: the Board of Commissioners (supervisory board) and the Board of Directors (executive board). Minimum capital requirement depends on the type of business. In addition, if the holding company is a PMA (the only type of company permitted for foreign investors), the company must make a periodical activity report to the BKPM. In practice, from a license/regulatory perspective, a holding company will be required to perform certain allowable business activities - a pure holding company is not possible.

[10] **CHI:** China does not levy capital duty, however the initial and any additional registered capital is subject to 0.05% stamp duty.

[11] **IND:** Indonesia does not have capital duty, the closest equivalent is stamp duty. A nominal amount of stamp duty (less than US$1) may be required to legalise certain legal documents. Various registration fees may also apply.

[12] **KOR:** Capital registration tax of 0.48% on the nominal value of the paid-in capital is levied when a company registers its incorporation or capital increase. If the company is incorporated in a prescribed metropolitan area, the capital registration tax is 1.44%.

[13] **MAL/LAB:** The new Companies Act 2016 which replaced the Companies Act 1965 and generally came into force on 31 January 2017, does not state any capital duty is payable. An incorporation fee of RM 1,000 is imposed on a local company; rates ranging from RM5,000 to RM70,000 apply to a foreign company, in accordance with the Companies Regulations 2017.

[14] **IND:** Indonesia does not have a separate tax regime for holding companies, although dividends received by a resident company from another resident company are exempt from tax, provided that the dividends are paid from retained earnings and the recipient owns at least 25% of the payer.

[15] **KOR:** A more favourable Dividends Received Deduction (DRD) regime is available to a qualified holding company.

[16] **MAL/LAB:** Under the Malaysian Income Tax Act 1967 (MITA), an investment holding company (IHC) is defined as a company whose activities consist mainly of the holding of investments and which derives not less than 80% of its gross income from such investments (excluding gross income derived from a source which itself consists of a business of holding an investment). Generally, the deduction of expenses for an IHC will be restricted. However, this does not apply to IHCs listed on the Malaysian stock exchange. Investment income of resident public listed IHCs will be treated as business income and allowable expenses (direct and common expenses) will be restricted to the amount of gross income from that source. Each source of income will constitute a separate source of income and the adjusted loss in respect of each source is not deductible against other sources of income. Generally, common expenses will be allocated based on the gross income of each source of income. However, in either case, unabsorbed losses and capital allowances cannot be carried forward. See note on "Effective corporate tax rate" for the tax regime applicable to a Labuan entity.

[17] **CHI:** Resident companies must include in their taxable income any undistributed profits of CFCs when the election not to repatriate cannot be supported by a reasonable business rationale. To be a CFC, the company must be incorporated in a country or region where the effective tax rate does not exceed 12.5%.

[18] **IND:** The Ministry of Finance has issued a specific regulation on CFC rules. An Indonesian resident company directly or indirectly owning at least 50% of the registered capital of a foreign company (either alone or together with other resident taxpayers) must include a deemed dividend from that company in its tax return where no dividends were repatriated to the Indonesian company, otherwise the Ministry of Finance will do so. This applies only if the foreign company is not quoted on a stock exchange. The dividend is deemed to be derived in the fourth month following the deadline for filing the tax return in the offshore country or seven months after the offshore company's tax year end if the country does not have a specific tax filing deadline.

[19] **KOR:** Generally, when a Korean resident holds directly or indirectly at least 10% of the shares in a foreign company and the effective rate of tax of the foreign company has been 15% or less for the past three years, the Korean resident may be deemed to have received a dividend equal to the "deemed distributable retained earnings" multiplied by the shareholding ratio, even though there has been no actual distribution of such retained earnings to the Korean resident. This rule is subject to certain exceptions and limitations.

[20] **HK:** As at 8 December 2017, 38 double tax agreements have been signed of which 34 are effective. Three further agreements will apply in Hong Kong as from 1 April 2018. Actual effective dates may differ between the contracting parties and reference should be made to the relevant agreement.

[21] **MAL/LAB:** Labuan is generally covered by Malaysia’s tax treaties, although it is specifically excluded from the definition of Malaysia in certain treaties (e.g. treaties with Australia, Chile, Germany, India, Indonesia, Japan, Luxembourg, Netherlands, Seychelles, South Africa, Spain, Sweden and the UK). The precise wording of the relevant treaty must be reviewed.

[22] **AUS:** The effective corporate tax rate for companies with annual turnover less than A$10 million is 27.5% for the 2016-17 income year. This threshold will increase to A$25 million for the 2017-18 income year and then to A$50 million for the 2018-19 to 2026-27 income years. For companies whose turnover meets the relevant thresholds, the

rates are further progressively reduced to 27% (2024-25 income year), 26% (2025-26 income year) and 25% (2026-27 income year).
The government has introduced a bill into parliament that progressively extends the lower corporate tax rate to all corporate entities. It is also currently proposed that a 27.5% tax rate will apply for companies with annual turnover less than A$100 million for the 2019-20 income year. This threshold will increase to A$250 million for the 2020-21 income year, A$500 million for the 2021-22 income year, $1 billion for the 2022-23 income year and to all corporate tax entities from 2023-24 income year. The rates will progressively reduce to 27% for the 2024-25 income year, 26% for the 2025-26 income year and 25% from the 2026-27 income year.
In addition, the government has proposed amendments to limit the entities' subject to the lower corporate tax rate from 2017-18 to 2023-24 income years. The proposed law stipulates that a company can claim the lower rate if it has aggregate turnover less than the relevant threshold for a particular income year and no more than 80% of its income is "passive" (e.g. interest income, royalty income, portfolio dividend income or rental income).

[23] **IND:** The corporate tax rate is applied to taxable income. Resident corporate taxpayers with revenue up to IDR 50 billion receive a 50% reduction in the corporate tax rate imposed on the taxable income for gross revenue up to IDR 4.8 billion. A 5% tax rate reduction applies to companies listed on the Indonesian Stock Exchange, subject to certain criteria.

[24] **JAP:** The effective tax rate for a company located in Tokyo whose share capital exceeds JPY 100 million (i.e. a company subject to factor-based enterprise tax) is 30.86% for the fiscal year beginning on or after 1 April 2016 and 30.86% for the fiscal year beginning on or after 1 April 2017. For a company whose share capital is JPY 100 million or less, the effective corporate tax rate is 34.81% for the fiscal year beginning on or after 1 April 2016 and 34.81% for the fiscal year beginning on or after 1 April 2017.

[25] **KOR:** For fiscal years beginning on or after 1 January 2018, the rate, including local income surtax, is 11% on the first KRW 200 million of taxable income; 22% on taxable income exceeding KRW 200 million up to KRW 20 billion; 24.2% on taxable income exceeding KRW 20 billion up to KRW 300 billion; and 27.5% on taxable income exceeding KRW 300 billion.

[26] **MAL/LAB:** For Labuan, the tax rate on Labuan trading income is 3% of net profits per the audited accounts, subject to a maximum of RM 20,000, upon election. The election must be submitted to the Inland Revenue Board within three months from the commencement of a year of assessment (YA). A Labuan entity may alternatively make an irrevocable election for its income from Labuan business activities to be taxed under the MITA. The election must be made within three months after the beginning of the basis period for a YA.

[27] **AUS:** Broadly, non-resident investors should not be subject to Australian capital gains tax (CGT) in respect of any capital gain arising from the sale of shares in HoldCo (unless HoldCo's assets principally comprise Australian real property). Where HoldCo's shareholders have an associate-inclusive interest of at least 10% in HoldCo (for a 12 month period within two years), any capital gain arising from the sale of shares in HoldCo may be subject to Australian CGT where the market value of HoldCo's shares is principally attributable (directly or indirectly) to Australian real property. Furthermore, upstream disposals of non-resident companies might also be subject to CGT in certain circumstances if the underlying assets principally comprise Australian real property. Revenue gains arising to non-resident investors from the sale of shares in an Australian company continue to be taxable in Australia (subject to the availability of treaty protection and/or income source rules). The Australian Taxation Office has released its view in relation to the availability of treaty protection and the application of source rules to revenue gains (TD 2011/24 & TD 2011/25). Broadly, treaty protection may be available to non-resident investors who hold HoldCo shares indirectly through a foreign limited partnership. In relation to source, the ATO will take a substantive approach and the place of contract may not be determinative.
For contracts executed from 1 July 2016 till 30 June 2017, a 10% non-final withholding tax on gross proceeds payable (by purchasers) to foreign resident vendors on disposals of taxable Australian property which includes land rich holding companies (i.e. companies whose assets principally comprise real property) with a contract price equal to or about A$2 million.
For contracts executed from 1 July 2017, the withholding rate for foreign tax residents is increased to 12.5% and the withholding threshold is reduced to A$750,000.
As the withholding is non-final, the entitlement to a credit arises in respect of a taxpayer's income tax assessment for the income year (with a tax refund available if it is determined that no income tax liability arises). The vendor must lodge an income tax return to claim the credit. If the asset (e.g. shares in an Australian HoldCo) is not an indirect Australian real property interest (i.e. HoldCo is not a land rich entity), the non-final withholding tax does not apply if an "interest declaration" is provided to the purchaser by the vendor confirming that the asset is not an indirect real property interest.

[28] **CHI:** 10% withholding tax on the gain from the share transfer (may be exempt under a relevant tax treaty). Stamp duty of 0.05% of transaction price payable by transferor and transferee.

[29] **HK:** Provided HoldCo's shareholder is not carrying on a business in Hong Kong, or the gain is "capital" in nature or sourced outside Hong Kong.

[30] **IND:** Withholding tax equal to 5% of the gross proceeds is payable, subject to the provisions of a relevant tax treaty; 0.1% of the gross proceeds if HoldCo is listed on the Indonesian Stock Exchange.

[31] **JAP:** Taxable capital gains may arise in two circumstances:
(1) "Specially related shareholders": in principle, where a foreign company with no PE in Japan disposes of shares in a Japanese resident company (i.e. JPN holding company), the capital gains generated from the transaction should not be subject to Japanese corporation tax. However, where the foreign company qualifies as a "Specially related shareholder" of the Japanese resident company (typically where there is a more than 50% shareholding relationship), and disposes of the shares in the Japanese company under certain conditions, the capital gains on disposal are subject to Japanese corporation tax. The conditions (known as the "5%25% rules") are as follows:
i) the foreign company owns 25% or more of the shares in the Japanese company at any time during the preceding three years from the final day of the fiscal year in which the disposal took place; and
ii) the foreign company disposes of 5% or more of the outstanding shares in the Japanese company during the tax year in which the disposal took place.
If these conditions are satisfied, any capital gain should be subject to Japanese corporate tax at a rate of 23.4% for the fiscal year beginning on or after 1 April 2017 (24.43%, including 4.4% surtax) and 23.2% for the fiscal year beginning on or after April 2018 (24.22%, including 4.4% surtax).
(2) Real estate rich Japanese companies: special taxation rules apply to capital gains that arise from the transfer of "shares in a Japanese company related to real estate" or a "beneficial interest of specific trust related to real estate" (i.e. "real-estate rich companies"). Where the ratio calculated in the formula below is 50% or more, and the shareholder owns more than 5% (2% in the case of a non-listed company) of shares in the real-estate rich company, capital gains on the disposal of shares in the company are subject to Japanese corporate tax at 23.4% for the fiscal year beginning on or after 1 April 2017 (24.43%, including 4.4% surtax) and 23.2% for the fiscal year beginning on or after April 2018 (24.22%, including 4.4% surtax). This formula is: aggregate amount of real estate assets at fair market value (e.g. land, buildings)/the total amount of assets owned.

[32] **KOR:** Generally, capital gains on the disposal of shares of a Korean company derived by a non-resident seller without a Korean PE are subject to tax of the lower of 11% of sales proceeds or 22% of realised gains. The tax must be withheld by the buyer. Certain disposals of publicly-traded shares are exempt from the tax and exemption may often also be available under the terms of a relevant tax treaty. Special rules apply to the disposal of real estate-rich companies.

[33] **MAL/LAB:** Not subject to income tax provided the gain is classified as "capital" rather than "income". There could be Real Property Gains Tax (RPGT) implications if HoldCo is regarded as a real property company (RPC) for RPGT purposes. RPGT is imposed on gains arising from the sale of shares in a RPC. The applicable effective rates of RPGT are 30% for disposals within three years, 20% for disposals in the 4th year, 15% for disposals in the 5th year and 5% for disposals in the 6th and subsequent years.

[34] **AUS:** Withholding tax is only payable to the extent the dividend is unfranked (i.e. paid out of untaxed profits). Dividends from foreign companies can be flowed through Australian companies free of Australian income and withholding taxes.

[35] **AUS:** The withholding rate under Australia's treaties generally varies between 0% – 15% depending on the country of residence of the recipient and applies only to the unfranked portion of the dividend. Exceptions apply, e.g. Fiji, Kiribati – 20%, Thailand 15% – 20%, Philippines – 25%.

[36] **CHI:** As a measure to further promote foreign investment in China, the government has vowed to apply a temporary exemption from the withholding tax if the distributed profits are directly reinvested into encouraged investment projects. The detailed implementation rules are not yet finalised.

[37] **IND:** In order to benefit from tax treaty relief, all of the following general tests must be satisfied: i) there is a relevant economic motive for establishment of the entity; ii) the entity's business activities are managed by its own management and the management has sufficient authority to carry out transactions; iii) there are fixed and non-fixed assets, sufficient and adequate to carry on business activities required for the purposes of the tax treaty partner jurisdiction other than the assets that generate income from Indonesia; iv) the entity has employees with specific expertise in the relevant business field, in sufficient and adequate numbers; and v) there are activities or active business other than only receiving income in the form of dividend, interest and/or royalty income originating from Indonesia.
In addition, if a foreign taxpayer receives income for which the article in the relevant tax treaty stipulates a beneficial owner requirement, the following conditions must also be satisfied: i) for an individual foreign taxpayer, it does not act as an agent or nominee; or ii) for a corporate foreign taxpayer, it does not act as an agent, nominee or conduit, which must fulfil the following provisions: a) has control to use or enjoy funds, assets or rights that bring in income from Indonesia; b) not more than 50% of its income is used to fulfil obligations to other parties; c) bears the risks of the assets, capital and/or its liabilities that it owns; and d) does not have an obligation, written or unwritten, to provide part or all of the income received from Indonesia to another party.

The DGT-1 Form also requires the foreign taxpayer to indicate whether or not one of the principal purposes of the arrangement or transaction is to obtain benefit under the tax treaty, contrary to the object and purpose of the treaty.

[38] **JAP:** 20% plus 2.1% surtax.

[39] **KOR:** 20% withholding tax, plus 10% local income surtax, bringing the effective rate to 22%.

[40] **KOR:** The maximum withholding tax rate specified under Korea's treaties is 27.5%, although in practice the lower domestic rate would apply.

[41] **AUS:** Thin capitalisation legislation applies to entities that are broadly: i) foreign controlled, or ii) control foreign companies. Thin capitalisation legislation applies to deny interest deductions where, broadly, total average debt exceeds 60% of the total average value of the assets (reduced by certain non-debt liabilities and investments in associates) of the entity, i.e. the debt:equity ratio is broadly 1.5:1. Alternatively, an arm's length test may be available, which results in a notional amount of interest-bearing debt that represents what the Australian entity could reasonably be expected to obtain on arm's length terms, having regard to certain factual assumptions and relevant facts. An outbound entity may also use the worldwide gearing test which can allow, in certain circumstances, gearing of Australian operations of up to 100% of the gearing of the entity's worldwide group.

A ruling issued by the Australian Taxation Office (ATO) indicates that the ATO may also seek to apply transfer pricing legislation to limit the deductibility of interest on intercompany debt, even where gearing levels are within the prescribed thin capitalisation limits.

On 24 November 2017 the government released draft legislation introducing hybrid mismatch rules in accordance with the OECD's recommendations under BEPS Action 2. Interested stakeholders had until 22 December 2017 to submit comments. The law is expected to apply to payments made on or after the day six months after royal assent is received.

The government has also stated that it proposes to develop a targeted integrity rule which goes beyond the scope of the OECD solution as well as further consultation on the recent OECD recommendation concerning the branch mismatch rules. The targeted integrity rule aims to prevent inbound investors using synthetic tax structures to achieve effective double non-taxation or low taxation outcomes. The branch mismatch rules aim to address the double non-taxation outcomes arising where there are differences in the taxation treatment of dealings within the same legal entity (e.g. dealings between a head office and a foreign branch). It is anticipated that there will be a release of separate exposure draft legislation in due course in relation to the proposed targeted integrity rule and branch mismatch rules.

[42] **CHI:** Debt:equity ratio 2:1 (5:1 for financial institutions) applies to related party loans.

[43] **HK:** Although there are no thin capitalisation limits, there are other strict rules regarding deductibility of interest.

[44] **IND:** From Fiscal Year 2016, a 4:1 debt-to-equity ratio applies to limit the amount of tax-deductible borrowing costs arising from debt. Any borrowing cost on debt which exceeds this ratio will not be tax deductible for corporate income tax purpose. The rule applies to both related and third-party debt, whether from foreign or domestic sources. Certain potential exemptions are available.

[45] **JAP:** Restrictions on interest deductibility apply as follows: i) thin capitalisation rules – the thin cap ratio is generally 3:1; and ii) where a company's interest expenses paid to foreign related parties exceed 50% of the Japanese company's adjusted income ("earnings stripping rule"), the portion exceeding 50% is not deductible for Japanese corporate tax purposes. However, there are two de minimis exceptions provided where net interest payments to foreign related parties for the fiscal year do not exceed either: a) JPY 10 million; or b) 50% of total interest expenses.

[46] **KOR:** Thin capitalisation rules and a limitation on interest expense deduction apply as follows: i) thin capitalisation rules – where a domestic subsidiary or branch borrows amounts in excess of 200% of equity (600% for certain financial institutions) from a foreign controlling shareholder (head office in the case of a branch), the interest relating to the excess portion of the loan is not deductible for Korean tax purposes. This rule also applies to loans from third parties guaranteed by the foreign controlling shareholder; ii) limitation on interest expense deduction – if the net interest expense paid to foreign related parties exceeds 30% of the adjusted taxable income, the excess is non-deductible for Korean tax purposes. Adjusted taxable income is calculated by adding depreciation expenses for fixed assets and net interest expenses to taxable income. The disallowed interest is the greater of the amounts calculated under i) and ii).

Where a Korean company pays income related to hybrid financial instruments to a foreign related party, the payment is not deductible for Korean tax purposes if the income received by the foreign related party is not taxed within a certain period in the foreign jurisdiction.

[47] **MAL/LAB:** Earnings Stripping Rules (ESR) are to be introduced as from 1 January 2019. These replace the thin capitalisation rules, which were incorporated into legislation but which did not enter into force because their application had previously been deferred until 1 January 2018 and are now abolished. The ESR would be in line with the OECD

recommendations under BEPS Action 4 to address tax leakages due to excessive interest deductions on loans between related companies. Under the rules, interest deductions on loans between companies in the same group would be limited based on a ratio that is yet to be determined.
Claims for interest and other deductions are not permitted to the extent that they relate to exempt income; therefore, interest on a loan to purchase an investment generating exempt dividend income would not be deductible.

[48] **CHI:** May depend on the practice of the local tax bureaus.

[49] **IND:** Interest paid on a loan to acquire a shareholding of more than 25% is not deductible as any dividend received from such a shareholding would be non-taxable. However, the non-deductible interest can be capitalised into the acquisition cost of the shares.

[50] **JAP:** Where Holdco receives dividends from domestic companies and applies for the dividends received deduction, the interest expense allocated to the underlying shares on which the dividends are paid will not be deductible (other than for dividends paid within a consolidated tax group or a 100% resident company group).

[51] **KOR:** Where a domestic company receives dividends from a domestic subsidiary and applies for the Dividends Received Deduction (DRD), the DRD may be reduced by a proportion of the interest expense calculated by comparing the ratio of the acquisition value of shares in the subsidiary to the total assets of the domestic company.

[52] **MAL/LAB:** For Malaysia, claims for interest and other deductions are not permitted to the extent that they relate to exempt income; therefore, interest on a loan to purchase an investment generating exempt dividend income would not be deductible.

[53] **AUS:** Generally the treaty rate of withholding is 10% with some exceptions (e.g. 0% for interest paid to Finnish, French, Japanese, New Zealand, Norwegian, South African, UK and US resident unrelated financial institutions). Under a new treaty with Chile, a 5% rate is available for interest payments to such financial institutions. A domestic law exemption from interest withholding tax can apply in certain circumstances (e.g. publicly offered debentures).

[54] **IND:** In order to benefit from tax treaty relief, all of the following general tests must be satisfied: i) there is a relevant economic motive for establishment of the entity; ii) the entity’s business activities are managed by its own management and the management has sufficient authority to carry out transactions; iii) there are fixed and non-fixed assets, sufficient and adequate to carry on business activities required for the purposes of the tax treaty partner jurisdiction other than the assets that generate income from Indonesia; iv) the entity has employees with specific expertise in the relevant business field, in sufficient and adequate numbers; and v) there are activities or active business other than only receiving income in the form of dividend, interest and/or royalty income originating from Indonesia.
In addition, if a foreign taxpayer receives income for which the article in the relevant tax treaty stipulates a beneficial owner requirement, the following conditions must also be satisfied: i) for an individual foreign taxpayer, it does not act as an agent or nominee; or ii) for a corporate foreign taxpayer, it does not act as an agent, nominee or conduit, which must fulfil the following provisions: a) has control to use or enjoy funds, assets or rights that bring in income from Indonesia; b) not more than 50% of its income is used to fulfil obligations to other parties; c) bears the risks of the assets, capital and/or its liabilities that it owns; and d) does not have an obligation, written or unwritten, to provide part or all of the income received from Indonesia to another party.
The DGT-1 Form also requires the foreign taxpayer to indicate whether or not one of the principal purposes of the arrangement or transaction is to obtain benefit under the tax treaty, contrary to the object and purpose of the treaty.

[55] **JAP:** Notes 15.315% (i.e. 15% plus 2.1% surtax); loans 20.42% (i.e. 20% plus 2.1% surtax). Original issue discount is not generally treated as interest (subject to any treaty override).

[56] **KOR:** The rate of withholding tax on interest paid to a non-resident without a Korean PE is 22% under domestic tax legislation. However, interest on bonds issued by the national government, local government or a domestic company is subject to a lower rate of 15.4%. A tax exemption is available for interest received by non-residents on certain foreign currency denominated bonds.

[57] **AUS:** To the extent distributions do not represent a return of paid up share capital, they are treated as dividends and subject to withholding tax at the appropriate rate.

[58] **CHI:** The portion of the liquidation income equivalent to shareholder's retained earnings and reserves is treated as dividend income. Any excess over the cost of the investment is treated as a gain from the share transfer.

[59] **IND:** If the liquidation payment to shareholders exceeds the paid-in capital, the excess is treated as a dividend.

[60] **JAP:** A certain part of a liquidation payment is generally treated as a deemed dividend.

[61] **KOR:** Upon liquidation, the value of property distributed to shareholders in excess of the acquisition cost of the shares of the liquidated company is treated as a deemed dividend. If the shareholder is a non-resident without a Korean PE, the deemed dividend would be subject to withholding tax.

[62] **AUS:** Broadly, where HoldCo receives a dividend from a foreign subsidiary in which it has a total participation interest of at least 10%, such dividends are not assessable in Australia and no tax credit is available (unless income was previously taxed under the CFC rules). Where dividends are taxable, credit is available for foreign dividend withholding tax only. The 'at least 10% participation interest' test promotes a substance over form approach in relation to the availability of the exemption (e.g. returns on legal form equity which is in substance debt would no longer benefit from the exemption). Distributions through interposed partnerships and trusts can also benefit from the exemption. On 24 November 2017 the government released draft legislation introducing hybrid mismatch rules in accordance with the OECD's recommendations under BEPS Action 2. The draft legislation includes a proposed exception to the abovementioned dividend exemption where a proposed hybrid mismatch arises (i.e. where the foreign subsidiary is entitled to a foreign income tax deduction in respect of the distribution). The law is expected to apply to payments made on or after the day six months after royal assent is received.
All other dividends should be taxable for HoldCo at the corporate tax rate (excluding dividends paid from subsidiary members of the tax consolidated group).
[63] **IND:** Dividends paid out of retained earnings derived or received by an Indonesian resident company from a shareholding of at least 25% in an Indonesian limited liability company are exempt from tax at the shareholder level. Domestic dividends received that do not satisfy the above criteria are subject to withholding tax, which is withheld by the payer of the dividends. Foreign dividends are taxable with credit for the foreign tax paid, limited to the amount of Indonesian tax otherwise payable on the relevant foreign income.
[64] **JAP:** Exemption available under the domestic dividends received deduction depends broadly on percentage ownership and holding period with adjustment for allocated interest (other than for dividends paid within a consolidated tax group or a 100% resident company group). Under the foreign dividend exemption rule, dividends received from subsidiaries situated outside Japan are 95% exempt from Japanese corporate taxes, subject to a minimum shareholding threshold. In general, the Japanese parent company must own directly at least 25% of the shares in the foreign subsidiary paying the dividend and hold those shares continuously for at least six months immediately prior to the date of declaration of the dividend. Indirect foreign tax credits in respect of underlying corporate taxes are not available and withholding taxes on dividends that qualify under the above foreign dividend exemption rule are treated as non-deductible expenses and not available for a direct foreign tax credit. In particular cases, direct dividends paid by foreign companies which have been subject to the Japanese CFC rules within the last 10 years or which received dividends from second tier foreign subsidiaries which have been subject to the Japanese CFC rules within the last two years may be fully exempt from corporate tax and any withholding tax on dividends is deductible.
[65] **KOR:** Dividends received from domestic subsidiaries: generally taxable but Dividends Received Deduction (DRD) available of 30% – 100% depending on the percentage ownership. A more favourable DRD regime is available to a qualified holding company.
Dividends received from foreign subsidiaries: generally taxable but direct and indirect foreign tax credits (FTCs) are available subject to a number of requirements and limitations. Unused FTCs can be carried forward for five years. Certain tax treaties provide more favourable treatment with respect to indirect FTCs.
[66] **MAL/LAB:** Malaysia has a single tier corporate tax system, under which tax on a company's profit is a final tax. Dividends distributed are exempt from tax in the hands of shareholders. For Labuan, see the note on "Effective corporate tax rate" for the tax regime applicable to a Labuan entity in respect of its income from Labuan business activities.
[67] In many countries, whilst there may not be specific requirements for the subsidiary to be subject to a certain level of tax or meet specified substance criteria, CFC or equivalent legislation may apply to effectively tax income received by the subsidiary in the holding company's country of residence. The precise circumstances must be carefully considered.
[68] **AUS:** Foreign subsidiary income may be subject to CFC rules.
[69] In many countries, whilst there may not be specific requirements for the subsidiary to be subject to a certain level of tax or meet specified substance criteria, CFC or equivalent legislation may apply to effectively tax income received by the subsidiary in the holding company's country of residence. The precise circumstances must be carefully considered.
[70] **AUS:** Foreign income taxes paid on income attributed under the CFC rules may be creditable to HoldCo.
[71] **CHI:** The exemption does not apply to dividends received in respect of the shares of public listed and traded Chinese companies held for less than 12 months.
[72] **JAP:** Subject to override by the terms of individual tax treaties. Some treaties reduce the ownership requirement to 10% or 15%.
[73] **AUS:** For the participation exemption to be available, a direct shareholding carrying at least 10% of the voting power is required for a period of 12 months in the preceding 24 month period. The capital gains tax reduction is then based on the active foreign business asset percentage of the foreign company. The exemption is wholly available

where the active foreign business asset percentage is at least 90%, there is a proportionate exemption where the active foreign business asset percentage is between 10% and 90% and no exemption is available if the active foreign business asset percentage is less than 10%. A participation exemption gain can be on-distributed to non-residents via a conduit foreign income account without Australian dividend withholding tax.

[74] **HK:** The exemption is available provided the gain is regarded as "capital" rather than "revenue" in nature or the gain is sourced outside Hong Kong.

[75] **IND:** Final tax of 0.1% of the gross proceeds if the subsidiary is listed on the Indonesian Stock Exchange.

[76] **KOR:** Generally taxable at the relevant corporate tax rates. For fiscal years beginning on or after 1 January 2018, the rate, including local income surtax, is 11% on the first KRW 200 million of taxable income; 22% on taxable income exceeding KRW 200 million up to KRW 20 billion; 24.2% on taxable income exceeding KRW 20 billion up to KRW 300 billion; and 27.5% on taxable income exceeding KRW 300 billion.

[77] **MAL/LAB:** In Malaysia, not subject to income tax provided the gain is classified as "capital" rather than "income". There could be Real Property Gains Tax (RPGT) implications if the subsidiaries are regarded as real property companies (RPCs) for RPGT purposes. RPGT is imposed on gains arising from the sale of shares in a RPC. The applicable effective rates of RPGT are 30% for disposals within three years, 20% for disposals in the 4th year, 15% for disposals in the 5th year and 5% for disposals in the 6th and subsequent years. For Labuan, please refer to the note on "Effective corporate tax rate" above for the tax regime applicable to a Labuan entity in respect of its income from Labuan business activities. There could also be RPGT implications in Labuan, as set out above.

[78] **AUS:** Allowable capital losses are available for offset against any taxable capital gains, depending on the active foreign business asset percentage (e.g. where the active foreign business asset percentage of the foreign company is at least 90%, no portion of the capital loss will be allowed). Capital losses cannot be offset against ordinary income.

[79] **MAL/LAB:** Not applicable for Labuan as the capital loss is part of the net audited profits.

[80] **CHI:** Write-downs are generally not deductible except in very limited situations (e.g. where the investee has accumulated huge losses and discontinued operations for a definite period without a recovery plan).

[81] **HK:** A deduction may only be available in limited circumstances i.e. the unrealised loss represents provision for diminution in value of the shares which are trading stock and sourced in Hong Kong.

[82] **JAP:** Write-down in value of subsidiaries is not deductible in principle. However, if the value of shares has decreased by at least 50% and the value is not expected to be recovered as of the end of the fiscal year, relief for the write-down in value may be allowed.

[83] **MAL/LAB:** Not applicable for Labuan as the write-down is part of the net audited profits.

[84] In many countries, whilst there may not be specific requirements for the subsidiary to be subject to a certain level of tax or meet specified substance criteria, CFC or equivalent legislation may apply to effectively tax income received by the subsidiary in the holding company’s country of residence. The precise circumstances must be carefully considered.

[85] **AUS:** For any exemption to be available, a direct shareholding carrying at least 10% of the voting power is required for a period of 12 months in the preceding 24 month period. The capital gains tax reduction is then based on the active foreign business asset percentage of the foreign company. This test includes assets of foreign subsidiary and downstream entities to the extent HoldCo has a total participation interest >10%. The exemption is wholly available where the active foreign business asset percentage is at least 90%, there is a proportionate exemption where the active foreign business asset percentage is between 10% and 90% and no exemption is available if the active foreign business asset percentage is less than 10%. The gain can be on-distributed by HoldCo via a conduit foreign income account without Australian dividend withholding tax.

[86] In many countries, whilst there may not be specific requirements for the subsidiary to be subject to a certain level of tax or meet specified substance criteria, CFC or equivalent legislation may apply to effectively tax income received by the subsidiary in the holding company’s country of residence. The precise circumstances must be carefully considered.

[87] **AUS:** Tax consolidation (fiscal unity) regime.

[88] **KOR:** Tax consolidation is available for a domestic parent company and its 100% (directly and indirectly) owned domestic subsidiaries.

[89] **PHI:** The Philippine tax authority will not accept requests for rulings based on hypothetical or future transactions.

[90] **TAI:** Only when certain criteria are met.

[91] **THA:** In practice, the Revenue Department will not respond to requests for advance rulings but only to requests for rulings on historic transactions or pricing decisions, i.e. APAs, which may take up to two years. In practice, the minimum time for a private letter ruling is six months and it also may take up to two years.

[92] **MAU:** Category 1 (GBC1) and Category 2 (GBC2) Global Business Companies are not permitted to engage in activities where the business is conducted in Mauritius, unless authorisation is obtained from the MRA. GBC2 are also not permitted to engage in banking or financial services; carrying out the business of holding or managing or otherwise dealing with a collective investment fund or scheme as a professional functionary; providing registered office facilities, nominee services, directorship services, secretarial services or other services for corporations; and providing trusteeship services by way of business.
[93] **TAI:** Advance permission is required to operate in certain industries but a pure holding company would not have any restrictions on its activities.
[94] **THA:** There are a number of restricted business activities that fall under the Foreign Business Act which does not include ownership in local and foreign entities. This should be checked and confirmed through appropriate local legal counsel.
[95] **VIET:** Only one foreign owned HoldCo (for domestic investment) has been licensed in Vietnam to date. This was under the former law. Guidelines on the establishment of foreign owned domestic holding companies under the current law (effective 1 July 2015) are yet to be issued. Outbound investment has the further restriction that an offshore investment licence is required. In summary, the establishment of foreign owned HoldCos in Vietnam at present is very difficult in practice.
[96] **MAU:** GBC1 entities are required to comply with the basic substance requirements set out by the FSC in order to secure their GBL1 licence. The basic substance requirements are as follows: i) the corporation has or shall have or at least two directors resident in Mauritius, who are appropriately qualified and of sufficient calibre to exercise independence of mind and judgment; ii) the corporation maintains or shall maintain its principal bank account in Mauritius at all times; iii) the corporation is keeping and maintaining or shall keep and maintain its accounting records at its registered office in Mauritius at all times; iv) the corporation prepares or proposes to prepare its statutory financial statements in Mauritius and has or proposes to have those statements audited in Mauritius; v) the corporation directors' meetings include or shall include at least two directors from Mauritius; and vi) for a corporation which is authorised or licensed as a collective investment scheme, closed end fund or external pension scheme must be administered from Mauritius.
GBC1 are also required to satisfy the FSC's enhanced requirements for determining whether a corporation is managed and controlled from Mauritius, namely that at least one of the following criteria is met: i) the corporation has or shall have office premises in Mauritius; ii) the corporation employs or shall employ on a full time, basis at administrative/technical level, at least one person who is resident in Mauritius; iii) the corporation's constitution contains a clause whereby all disputes arising out of the constitution shall be resolved by way of arbitration in Mauritius; iv) the corporation holds or is expected to hold within the next 12 months, assets in Mauritius (excluding cash held in a bank account and shares/interests in another corporation holding a Global Business License) which are worth at least USD 100,000; v) the corporation's shares are listed on a securities exchange licensed by the FSC; or vi) the corporation has or is expected to have yearly expenditure in Mauritius which can be reasonably expected from any similar corporation which is controlled and managed from Mauritius.
In the 2017/2018 budget, it was announced that a GBC1 would be required to fulfil at least two of the enhanced requirements. However, the date from which the new condition would apply has not been confirmed.
[97] **NZ:** New Zealand companies require at least one director that either lives in New Zealand, or in an "enforcement country" and who is a director of a company that is registered in that enforcement country. Australia is currently the only eligible enforcement country.
[98] **PHI:** The majority of directors must be Filipino residents.
[99] **SING:** Companies are required to have one shareholder and one director who must be "ordinarily resident" in Singapore. A foreign-owned pure investment holding company with no activities in Singapore may face difficulty in obtaining a Certificate of Residence from the Inland Revenue Authority of Singapore (IRAS).
[100] **TAI:** The holding company must have a physical office and commence its business within six months of being established.
[101] **THA:** Public companies must have at least 15 shareholders and at least half of the board of directors must be Thai residents. A limited company must have at least three shareholders at all times. If the number of shareholders is less than three, the limited company may be dissolved by order of the court.
[102] **MAU:** No registration duty/transfer tax is applicable on the transfer of shares in a GBC1 company whose assets do not include any freehold or leasehold immovable property in Mauritius.
[103] **PHI:** Documentary stamp tax is imposed on the original issue of shares at the rate of P1 on each P200, or fractional part thereof, of the par value of the shares. If there is no par value, the documentary stamp tax is based upon the actual consideration for the share issue.
[104] **SING:** Applies to the incorporation of a public/private company limited by shares. For the incorporation of a public company limited by guarantee or a public accounting corporation, the registration fee is SGD 600.
[105] **THA:** Stamp duty of THB 5 per share certificate applies on the issue of new shares.

[106] **THA:** For domestic shareholdings: a Thai listed company or a Thai limited company (holding at least 25% of the voting shares) is exempt from corporate income tax on dividends received from another limited company provided that the interest has been held for at least three months before and three months after the date of payment of the dividend without cross-shareholding. For shareholdings in foreign subsidiaries: the Thai holding company is exempt from corporate income tax on dividends paid out of net profit which is subject to 15% headline tax rate in the country in which the foreign subsidiary is located (irrespective of whether the host country has tax exemption or reduction). The Thai holding company must have held at least 25% of the voting shares for at least six months before receiving the overseas dividends.

[107] **NZ:** Broadly, a New Zealand resident with an income interest of 10% or more in a CFC has attributed CFC income from that CFC where the active business test is not met. Broadly, to the extent that passive income is greater than 5% of total income, attribution of passive income will be required. An exemption from attribution applies for certain Australian resident CFCs which meet certain criteria.

[108] **TAI:** In July 2016, the Taiwan Income Tax Act was revised to introduce CFC rules, requiring a company to report investment income of its CFCs meeting certain conditions under the equity method when filing its income tax return. To avoid double taxation, actual distributions of earnings from those CFCs would not be recognised as taxable income by the company when distributed. On 22 September 2017, Taiwan's Ministry of Finance issued Regulations Governing Application of the Controlled Foreign Company to facilitate the calculation of taxable income from CFCs by corporate tax payers. However, as at 18 December 2017, the effective date to implement the CFC rules has not been announced by the Executive Yuan.

[109] **TAI:** Proposed income tax agreements signed with China (PRC) during 2015 and the Czech Republic on 12 December 2017 are still awaiting discussion by the Legislative Yuan of Taiwan and the governmental authorities in China (PRC) and the Czech Republic.

[110] **MAU:** A flat tax rate of 15% applies to both domestic and foreign source income. However, a company holding a Category 1 Global Business Licence (a GBC 1 company), is entitled to claim a credit for the greater of the actual foreign tax incurred or a deemed foreign tax credit equivalent to 80% of the Mauritius tax payable, resulting in a maximum effective tax rate of 3% on foreign income. In light of recent changes in the international tax landscape, amendments are expected to the local tax regime.

[111] **SING:** 75% of the first SGD 10,000 of chargeable income and 50% of the next SGD 290,000 of chargeable income is exempt from tax. A 50% corporate tax rebate (capped at SGD 25,000) is available for the assessment year 2017. A 20% corporate tax rebate (capped at SGD 10,000) is available for the assessment year 2018.

[112] **TAI:** A 10% advance tax is payable on any earnings of the holding company that remain undistributed by 31 December of the following year. An alternative minimum tax (AMT) applies, at a rate between 12% and 15% (The Executive Yuan is authorised to determine the exact rate within this range based on the economic situation. The current AMT rate is 12%.) Specific tax-exempt items must be added back to taxable income for purposes of calculating AMT. For business enterprises, the significant provisions include: (1) AMT base – the following items need to be added back to taxable income for AMT calculation purposes: i) income that is exempt in accordance with the income tax holiday approved before the Statute for Upgrading Industries (SUI) which expired on 31 December 2009 and various laws; ii) income from the disposal of Taiwanese securities; iii) income from offshore banking units of financial institutions; and iv) income that may be exempt under any newly enacted laws or regulations; (2) Threshold amount – broadly, business enterprises can claim an exemption of NTD 0.5 million when calculating AMT, so only business enterprises with income over NTD 0.5 million will be subject to AMT.

On 1 September 2017, Taiwan's Ministry of Finance announced a proposed income tax reform package that would overhaul the income tax system. The proposals include: i) an increase in the corporate income tax rate from 17% to 20%, accompanied by a reduction in the rate of the corporate surtax from 10% to 5% and ii) an increase in the withholding tax rate on dividends from 20% to 21%. However, as at 18 December 2017, the proposed income tax reform is still awaiting discussion by the Legislative Yuan of Taiwan.

[113] **THA:** The standard corporate income tax (CIT) rate is 20%. Reduced CIT rates (0%/10%/15%/20%) may apply depending on the level of taxable profit provided that certain conditions are met e.g. qualification as an SME etc.

[114] **MAU:** No tax is applicable on the transfer of shares in a Mauritian entity provided that the entity does not hold any immovable property in Mauritius.

[115] **NZ:** Currently, no capital gains tax in New Zealand. However gains on disposals of shares could be taxable as income if HoldCo's shares are held on revenue account (i.e. shares acquired for the purposes of disposal, business of dealing in shares, etc.).

[116] **PHI:** The net gain on the disposal of HoldCo shares which are not listed and traded on the local stock exchange by a non-resident corporate shareholder is subject to capital gains tax at the rate of 5% on the first P100,000 and 10% on the excess.

[117] **SING:** Gains of a capital nature are not taxable under Singaporean legislation, whereas gains of an income nature are subject to income tax at the prevailing corporate income tax rate if the gains are sourced in Singapore or received/deemed received in Singapore. The determination of whether a gain is income or capital in nature is complex

and must take into account all the facts of a particular case. However, there is upfront certainty that gains from the disposal of shares by a company during the period 1 June 2012 to 31 May 2022 (both dates inclusive) will be treated as capital in nature and thus not taxable in Singapore if both of the following conditions are satisfied: i) the divesting company holds a minimum ordinary shareholding of 20% in the company whose shares are being disposed of; and ii) the divesting company maintains the minimum 20% shareholding in the investee company for a minimum period of 24 months immediately prior to the disposal. Where HoldCo's shareholder is a foreign corporation not carrying on a business in Singapore and which does not have a presence in Singapore, the gain from the disposal of shares in HoldCo, if regarded as income, would likely be regarded as non-Singapore source income and therefore should not be subject to Singapore income tax.

[118] **TAI:** A foreign entity with a fixed business place or business agent in Taiwan is subject to the capital gains tax regime. A foreign entity without a fixed business place or business agent in Taiwan is not subject to the capital gains tax regime.

[119] **THA:** If the shares are sold to a party in Thailand then any gain resulting from the sale (sale proceeds less original cost of shares) would be subject to 15% withholding tax, subject to relief under a relevant tax treaty. If the shares are sold to another non-resident party with no taxable presence in Thailand, then Thailand tax law has no mechanism in place to tax the gain from the sale.

Stamp duty applies on the share transfer document at the rate of 0.1% of the sale price or paid-up registered value of the shares, whichever is greater. The transferor is normally liable to the stamp duty. However, stamp duty would only apply if the share transfer document were executed in or brought into Thailand. Where the share transfer document is executed outside of Thailand and brought into Thailand, the first holder of the share transfer document in Thailand would be responsible for the stamp duty. It should be noted that Thailand's judicial system will not recognise the instrument related to the transfer of shares if the duty is not properly accounted for.

[120] **VIET:** The capital transfer is subject to tax at the Vietnamese CIT rate of 20%, subject to relief under an applicable tax treaty.

Amending draft legislation would instead impose tax at 2% on the transfer price. If approved, the new legislation is expected to apply as from 1 January 2019.

[121] **NZ:** The domestic rate of withholding tax on fully imputed dividends is 0% for a dividend paid to a non-resident where the non-resident has a 10% or more voting interest in the company. In most other cases the non-resident withholding tax rate will be 15% unless the dividend is unimputed, in which case a 30% rate applies. In some cases a supplementary dividend can be paid to effectively negate the cash impact of the withholding tax. The withholding rate under New Zealand's tax treaties will be either 0%, 5% or 15% depending on the country of residence of the recipient and whether the relevant criteria are met.

[122] **PHI:** Dividends received by a non-resident corporate shareholder are subject to 30% final tax but if the country of residence of the non-resident recipient allows a 15% tax credit, the tax may be reduced to 15%.

[123] **TAI:** On 1 September 2017, Taiwan's Ministry of Finance announced a proposed income tax reform package that would overhaul the income tax system. The proposals include an increase in the withholding tax rate on dividends from 20% to 21% when a preferential tax treaty rate is not available. However, as at 18 December 2017, the proposed income tax reform is still awaiting discussion by the Legislative Yuan of Taiwan.

[124] **THA:** From a regulatory perspective, dividends can be distributed only when the company has positive cumulative statutory retained earnings. Upon each dividend distribution, the company must appropriate to a profit reserve fund (i.e. legal reserve) at least 5% of the dividend distributed until the profit reserve fund reaches 10% of the registered share capital. The fund set aside is not available for distribution to shareholders until dissolution or liquidation of the company.

[125] **THA:** 5% withholding tax rate is provided for in the treaty with Taiwan, if certain conditions are met.

[126] **VIET:** 5% on dividends paid to non-resident individual shareholders.

[127] **VIET:** 5%-15% on dividends paid to non-resident individual shareholders, depending on the terms of the relevant treaty.

[128] **MAU:** Interest incurred on capital employed exclusively in the production of gross income is allowed as deduction against the gross income. However, even if this condition is satisfied, the Mauritius Revenue Authority may not allow deduction for interest expense where the interest is payable to a non-resident who is not chargeable to tax on the amount of the interest or the interest is not likely to be paid in cash within a reasonable time.

[129] **NZ:** Thin capitalisation rules apply to limit the deductibility of interest on debt of a foreign controlled New Zealand entity or a foreign taxpayer in New Zealand to the extent that the ratio of interest bearing debt to assets of the entity's New Zealand group exceeds the greater of: i) 60% or ii) 110% of the ratio of debt to assets of the company's worldwide group. The ambit of foreign control includes groups of non-residents who "act together" in the ownership of a New Zealand company. The thin capitalisation rules also apply to New Zealand residents that have an income interest in a controlled foreign company (CFC) (subject to certain exemptions) or a non-portfolio foreign investment fund (non-portfolio FIF). The debt:asset ratio for "outbound" thin capitalisation is 75%. Following consultation on interest limitation reforms arising from BEPS Action 4 and instead of an EBITDA rule, in December 2017, the New Zealand Government introduced a bill which includes new rules requiring related party loans between a non-resident

lender and a New Zealand borrower to be priced using a restricted transfer pricing approach. Under these proposals, specific rules and parameters are applied to determine the credit rating of New Zealand borrowers at a high risk of BEPS; and any features that are not typically found in third-party debt are to be removed when calculating the amount of interest that will be deductible. Also included in the bill are measures to further strengthen the thin capitalisation rules, including a proposal that debt percentages be based on an entity's assets net of its "non-debt liabilities". These amendments are proposed to apply to income years starting on or after 1 July 2018.

[130] **PHI:** Interest expense is deductible but subject to a ceiling. The allowable deduction for interest expense is reduced by an amount equal to 33% of the interest income subject to final withholding tax and no deduction is allowed for interest paid to certain related parties. Thin capitalisation rules apply only to certain regulated industries.

[131] **SING:** Interest and other borrowing costs are not deductible to the extent they relate to exempt income; therefore, interest incurred on a loan to purchase shares generating exempt dividend income is *prima facie* not deductible.

[132] **TAI:** Interest expense of a profit-seeking enterprise (PSE) from related party debt exceeding the stipulated debt:equity ratio is not deductible for tax purposes. The disallowed interest expense is not available to be carried forward to subsequent years and is not recharacterised as a dividend. The debt:equity ratio generally is 3:1. The ratio does not change depending on the scale of the business or industry, although companies in the financial industry, such as banks, financial holding companies, insurance companies, securities firms, etc., are excluded from the application of the thin capitalisation rules.

[133] **THA:** If a taxpayer is seeking to obtain a Board of Investment certificate to promote a business activity, a debt:equity ratio of 3:1 must be in place when applying for the promotion certificate. This does not affect the deductibility of the interest for corporate income tax purposes since there are currently no thin capitalisation rules in Thailand. However, if the interest paid is proved to be unrelated to the business, the Revenue officer may treat it as non-deductible if there is no reasonable justification and substantiating documentation. Furthermore, in the case of a loan used to acquire an asset, any interest accrued before the asset is in a ready-to-use state must be capitalised and depreciated.

[134] **VIET:** There are currently no thin capitalisation rules in Vietnam, however there are some main bases for interest restrictions. The interest rate is capped at 150% of the interest rate announced by the State Bank as at the date of the loan if borrowing from entities which are not credit institutions or economic organisations. Payments of: (i) interest on loans for contribution to charter capital which is not yet fully paid up, as per the schedule for capital contribution set out in the enterprise charter, (ii) loan interest during the investment process that has been included in investment value and (iii) interest on loans serving execution of contracts for petroleum exploration and extraction are not deductible. From 1 May 2017, the tax deductibility of interest on loans is capped at 20% of EBITDA. From 1 May 2017, the tax deductibility of interest on loans is capped at 20% of EBITDA. A draft tax regulation (which has not yet been issued), would introduce a 5:1 debt:equity thin capitalisation rule for the production industry and 4:1 for other industries.

[135] **MAU:** Applicable for investment holding/trading companies investing overseas.

[136] **SING:** Interest and other borrowing costs are not deductible to the extent they relate to exempt income; therefore, interest incurred on a loan to purchase shares generating exempt dividend income is *prima facie* not deductible.

[137] **TAI:** Interest and other expenses are not deductible to the extent that those expenses relate to tax-exempt income.

[138] **THA:** Not clearly stated under Thai tax law. There is a position where it can be considered as deductible for corporate income tax purposes if the holding company can justify that the interest element results in a benefit to the HoldCo. Appropriate substantiating documentation should be maintained. The interest may not be utilised as an expense if there is no associated taxable income.

[139] **VIET:** Provided that the charter capital of HoldCo is contributed in full.

[140] **MAU:** Withholding tax at 15% applies to interest payable by a company holding a domestic license to a non-resident. The 0% rate applies to interest payments made by a GBC1 entity to a non-resident, provided the payments are made out of foreign source income.

[141] **NZ:** The tax treaty rate is 15% or 10% depending on the country of residence of the recipient. However, the rate of non-resident withholding tax on qualifying payments of interest to non-associated parties can be 0% where the payment of interest is made by an approved issuer under the Approved Issuer Levy (AIL) regime, provided a 2% levy is paid. From 30 March 2017, the non-resident withholding tax (NRWT) rules in relation to interest arising on related party debt have been strengthened to ensure that NRWT applies to non-resident financial arrangement income. Broadly such income could arise where there is a mismatch between the amount of interest taken as a deduction and the interest payments made to the non-resident which are subject to NRWT.

[142] **PHI:** 20% withholding tax rate applies to interest payments to non-resident foreign companies.

[143] **SING:** Reduced treaty rates available only if the interest is i) not derived by the non-resident from any trade or business carried on in Singapore; and ii) not effectively connected with a permanent establishment in Singapore.
[144] **VIET:** The France/Vietnam treaty has no interest article and as such, the other income provision of the treaty provides that only the country of residence can tax the interest, resulting in a zero rate of withholding tax.
[145] **NZ:** To the extent distributions do not represent a qualifying return of capital (or in some cases certain capital gains), they are treated as dividends subject to withholding tax at the appropriate rate.
[146] **PHI:** 30% final withholding tax on the excess of the liquidation proceeds over the cost of the investment in HoldCo.
[147] **TAI:** The excess of any liquidation payment over the original investment is treated as a dividend and subject to dividend withholding tax.
[148] **THA:** Proceeds in excess of the registered paid-in share capital plus share premium, if any, are subject to 15% withholding tax (as opposed to the 10% withholding tax that applies to dividends paid out to shareholders), unless relief is available under a relevant tax treaty.
[149] **MAU:** Dividend income received from Mauritius resident companies is exempt from tax. Dividends received from foreign source will be taxed at the standard tax rate of 15% in Mauritius. However, a company holding a GBC 1 licence would be entitled to claim foreign tax credit against its Mauritius tax payable on the grossed up dividend income received at the higher of actual foreign tax suffered (withholding tax and underlying tax) or 80% deemed FTC.
[150] **NZ:** Domestic dividends derived from a member of a wholly owned New Zealand group are exempt. Most foreign dividends received by New Zealand resident companies are exempt. Foreign dividends derived by a company resident in New Zealand are not exempt if the dividends arise from fixed-rate shares, or the dividends are tax-deductible for the foreign company or the dividends arise from certain non-attributing portfolio Foreign Investment Funds (FIFs).
[151] **SING:** If no foreign tax credit is provided for in the relevant tax treaty, the company can rely on unilateral provisions in Singapore legislation that allow credit for foreign withholding tax. Credit for underlying tax is also available, subject to the condition that the company is resident in Singapore and owns at least 25% of the shares of the payer. Foreign-source dividends received by a resident company are tax exempt provided generally that the dividend has been subjected to tax in the foreign jurisdiction and at the time the dividend is received in Singapore, the headline rate of tax in the foreign jurisdiction is at least 15%. Foreign dividends that do not satisfy these criteria may nevertheless qualify for exemption under certain prescribed scenarios and with approval from the tax authorities.
[152] **TAI:** Dividends received from foreign subsidiaries are included in corporate taxable income and subject to 17% corporate income tax. Credit is available for any foreign tax paid, up to certain limits.
[153] **THA:** Full CIT exemption is subject to the condition that either: (i) HoldCo owns at least 25% of the shares with voting rights (with no cross-ownership of shares) for at least three months before and after the dividend is paid, (ii) the dividend distribution is from a listed company or (iii) the dividend distribution is from an investment promotion company and is paid during or within six months after the expiration of the tax exemption period. In all other cases which meet the conditions and requirements as stipulated in the Thai Revenue Code, 50% of the dividend income received is subject to CIT at 20%. The dividend tax exemption or reduction applies if HoldCo is incorporated under the law of Thailand.
[154] **VIET:** Credit for foreign tax is limited to the amount of Vietnamese tax that would be payable on the income.
[155] In many countries, whilst there may not be specific requirements for the subsidiary to be subject to a certain level of tax or meet specified substance criteria, CFC or equivalent legislation may apply to effectively tax income received by the subsidiary in the holding company's country of residence. The precise circumstances must be carefully considered.
[156] **TAI:** If the foreign subsidiary wishes to apply the provisions of a tax treaty with Taiwan, it must meet the necessary substance requirements. The Ministry of Finance has issued Assessment Rules on the Eligibility for Income Tax Treaty Benefits which request the applicants to provide a tax residence certificate and beneficial owner documentation.
[157] In many countries, whilst there may not be specific requirements for the subsidiary to be subject to a certain level of tax or meet specified substance criteria, CFC or equivalent legislation may apply to effectively tax income received by the subsidiary in the holding company's country of residence. The precise circumstances must be carefully considered.
[158] **SING:** For exemption of dividend income, there are conditions to be met which include the payment of tax locally or an exemption from local tax owing to the local tax authority granting a tax incentive to the subsidiary for carrying out substantive activities in the local jurisdiction.

[159] **THA:** For the Thai holding company to be exempt from tax on dividends received from a foreign subsidiary, the foreign subsidiary must pay the dividends out of profits which have been subject to tax at a headline rate of at least 15%.
[160] **THA:** For the corporate income tax exemption on domestic shareholdings, the required holding period is three months before and three months after the date the dividend is paid. For foreign shareholdings, the required holding period is six months before the date of payment of the dividend.
[161] **VIET:** Within six months after obtaining tax finalisation reports or documents of equal validity under laws of the investment-receiving countries, investors must remit all profits and other income generated from their investment projects back to Vietnam, unless the profit is used for overseas investment as defined in the law on investment regulation.
[162] **MAU:** A minimum 5% holding is required for claiming credit for underlying tax.
[163] **NZ:** 10% in the case of certain Foreign Investment Funds (FIFs) as noted under "How are dividends taxed?".
[164] **THA:** HoldCo must own at least 25% of shares with comparable voting rights and no cross-ownership.
[165] **MAU:** Any gain on the disposal of shares in an investee company by a GBC1 entity is exempt. Profits derived by a domestic company from the sale of shares held for less than six months may be subject to corporate tax at 15%.
[166] **NZ:** No capital gains tax in New Zealand. However gains on disposals of shares could be taxable as income if HoldCo's shares are held on revenue account (i.e. shares acquired for the purposes of disposal, business of dealing in shares, etc).
[167] **PHI:** The sale of shares in a domestic corporation not traded through the local stock exchange (LSE) is subject to a final tax of 5% on the first P100,000 of the net capital gain and 10% on the excess. If the shares are listed and traded through the LSE, stock transaction tax applies at a rate of half of 1% of the gross selling price or gross value in money of the shares or stocks sold. Gains on the disposal of shares in a foreign corporation by a local holding company are added to the gross income of the HoldCo and subject to corporate tax at 30%. Stamp tax is payable for the subsequent transfer of shares or stocks at the rate of P0.75 on each P200 or fractional part thereof of the par value of the stock. If there is no par value, the documentary stamp tax is equivalent to 25% of the documentary stamp tax paid upon the original issue of the stock.
[168] **SING:** Determining whether gains are capital or revenue in nature depends on the specific facts and circumstances of each case and can result in disagreements between the taxpayer and the Singapore tax authorities. However, there is upfront certainty that gains from the disposal of shares by a company during the period 1 June 2012 to 31 May 2022 (both dates inclusive) will be treated as capital in nature and thus not taxable in Singapore if both of the following conditions are satisfied: i) the divesting company holds a minimum ordinary shareholding of 20% in the company whose shares are being disposed of; and ii) the divesting company maintains the minimum 20% shareholding in the investee company for a minimum period of 24 months immediately prior to the disposal.
[169] **TAI:** Capital gains on the sale of a foreign subsidiary are subject to 17% corporate income tax. Capital gains on the sale of a domestic subsidiary, which is a company limited by shares, may be subject to AMT, currently 12%.
[170] **THA:** Gains can be offset by brought forward tax losses for corporate income tax purposes.
[171] **VIET:** The taxable income equals the disposal proceeds less the cost of the investment and any transfer costs.
Amending draft legislation would instead impose tax at 2% on the transfer price. If approved, the new legislation is expected to apply as from 1 January 2019.
[172] **MAU:** For domestic companies whose business activity is to trade in share, losses arising on the disposal of shares held for a period of less than six months are allowable for tax purposes.
[173] **NZ:** No capital gains tax in NZ. However losses on disposals of shares could be deductible if HoldCo's shares are held on revenue account (i.e. shares acquired for the purposes of disposal, business of dealing in shares, etc).
[174] **PHI:** Deductible only to the extent of capital gains arising from similar transactions.
[175] **TAI:** Capital losses are deductible provided that the participations do not qualify as Taiwan securities exempt from Taiwan general corporate income tax. To qualify as an exempt security, the participation must be in a company limited by shares, whose shares are issued in accordance with Taiwan Company Law and authenticated by a qualified bank or trust company.
[176] **THA:** Gains can be offset by HoldCo's brought forward tax losses (losses may be carried forward for no more than five consecutive accounting periods). Capital losses are deductible for corporate income tax purposes if a justifiable reason for doing so that is acceptable by the tax authority can be provided.
[177] **PHI:** An impairment loss is deductible only upon the actual sale of the subsidiary.
[178] **SING:** Unless the write-down relates to shares held on revenue account and FRS 39 tax treatment applies (i.e. taxation/deduction of marked-to-market gains/losses).

[179] In many countries, whilst there may not be specific requirements for the subsidiary to be subject to a certain level of tax or meet specified substance criteria, CFC or equivalent legislation may apply to effectively tax income received by the subsidiary in the holding company's country of residence. The precise circumstances must be carefully considered.
[180] **TAI:** If the foreign subsidiary wishes to apply the provisions of a tax treaty with Taiwan, it must meet the necessary substance requirements.
[181] In many countries, whilst there may not be specific requirements for the subsidiary to be subject to a certain level of tax or meet specified substance criteria, CFC or equivalent legislation may apply to effectively tax income received by the subsidiary in the holding company's country of residence. The precise circumstances must be carefully considered.
[182] **SING:** For gains on disposal of shares made by HoldCo during the period from 1 June 2012 to 31 May 2022 (both dates inclusive) to be treated as capital in nature and thus not taxable in Singapore, HoldCo must maintain a minimum 20% shareholding in the investee company for a minimum period of 24 months immediately prior to the disposal. In other situations, the normal tax rules (i.e. revenue or capital in nature) apply. In other situations, there is no specific required holding period for revenue v capital distinction which is a "facts and circumstances" test.
[183] **SING:** For gains on disposal of shares made by HoldCo during the period from 1 June 2012 to 31 May 2022 (both dates inclusive) to be treated as capital in nature and thus not taxable in Singapore, HoldCo must maintain a minimum 20% shareholding in the investee company for a minimum period of 24 months immediately prior to the disposal. In other situations, the normal tax rules (i.e. revenue or capital in nature) apply. In other situations, there is no specific required holding period for revenue v capital distinction which is a "facts and circumstances" test.
[184] **NZ:** Tax consolidation regime, or offset of losses by election or by subvention payment where greater than 66% common ownership.
[185] **SING:** Each company is required to file a separate tax return. However, a loss transfer system of group relief allows current year unutilised losses, unutilised capital allowances and unutilised donations to be transferred from one qualifying company to be offset against the taxable profits of another qualifying company within the same group, subject to conditions.