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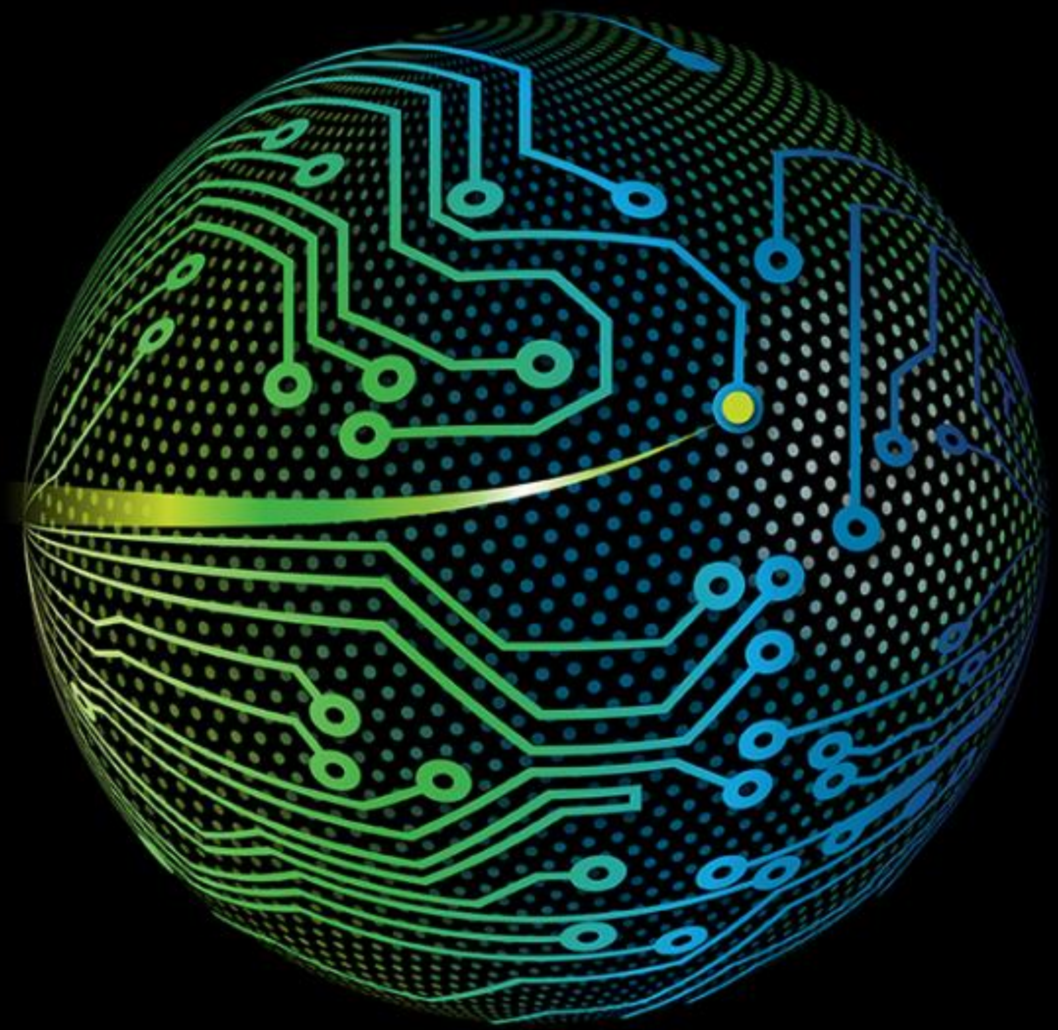

Real Estate Tax Update

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Real Estate Tax Update Panellists:

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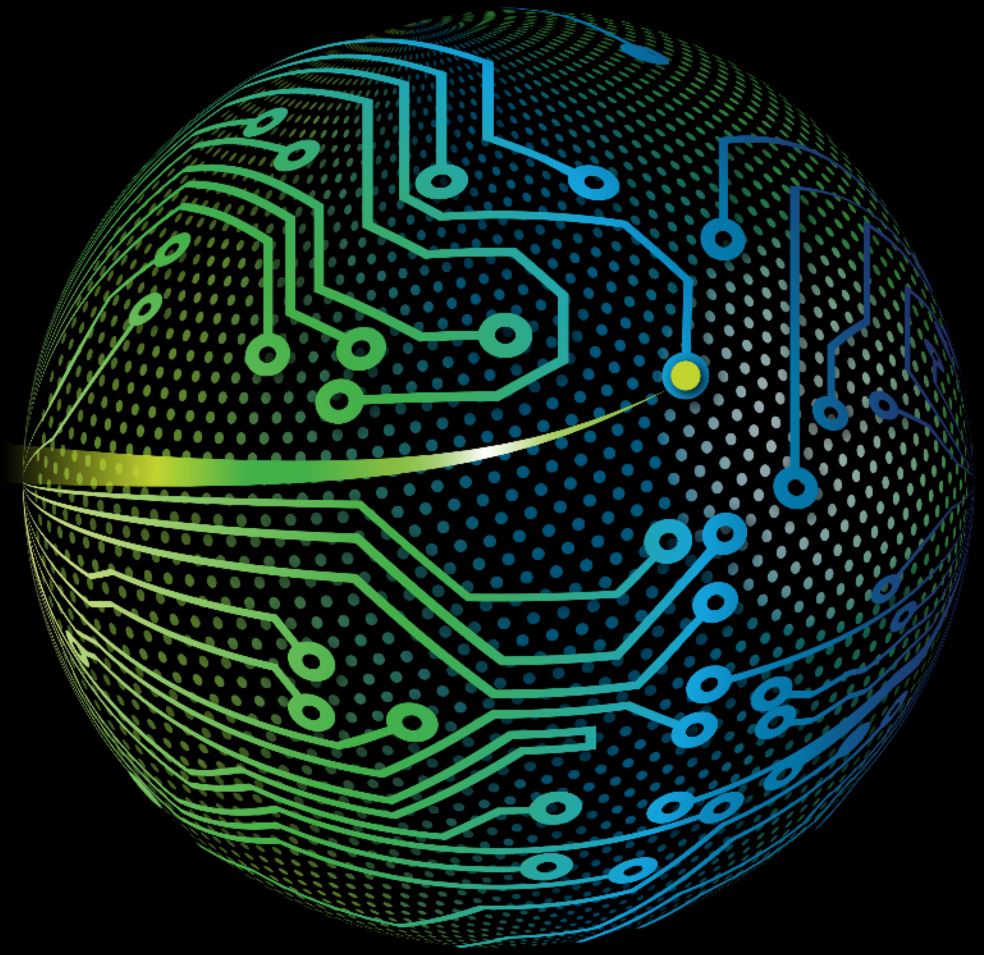
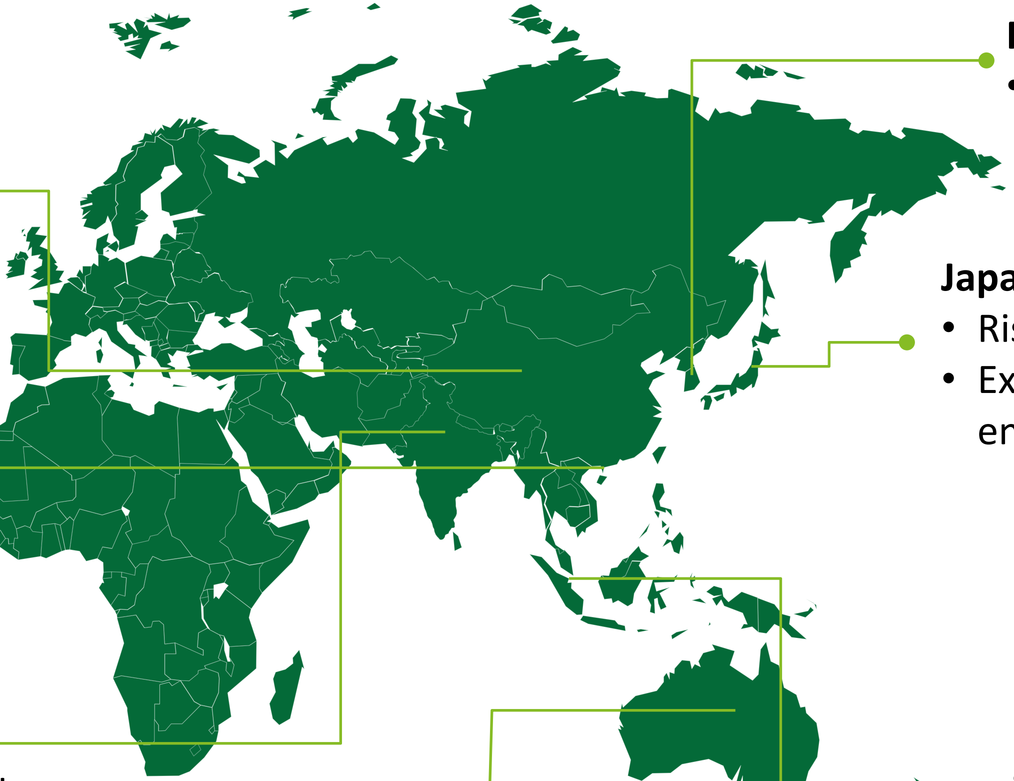
Regional real estate tax update



Real estate tax updates

Asset class specific tax updates

Key regional real estate tax updates



Republic of Korea
- Korean Tax Law reform

China
- Financial crisis on residential developers
- Uptake on C-REIT structures

Japan
- Rising tax audits and controversies
- Expanded scope of factor-based enterprise tax

Hong Kong
- 2024/25 Budget Measures, including stamp duty updates

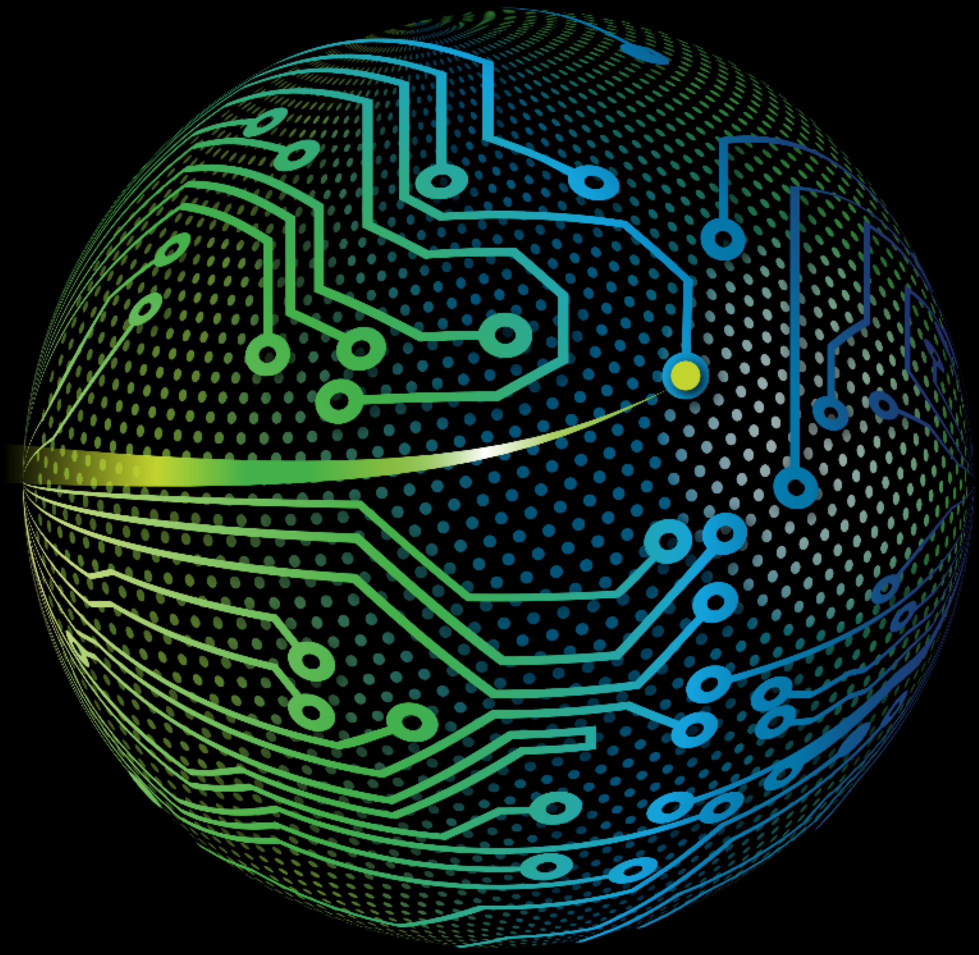
India
- Rising popularity in student-housing and data warehousing
- Dispute on Singapore Certificate of Tax Residency

Singapore
- Taxation of gain from disposal of foreign asset—S10L
- Moratorium on data centres lifted

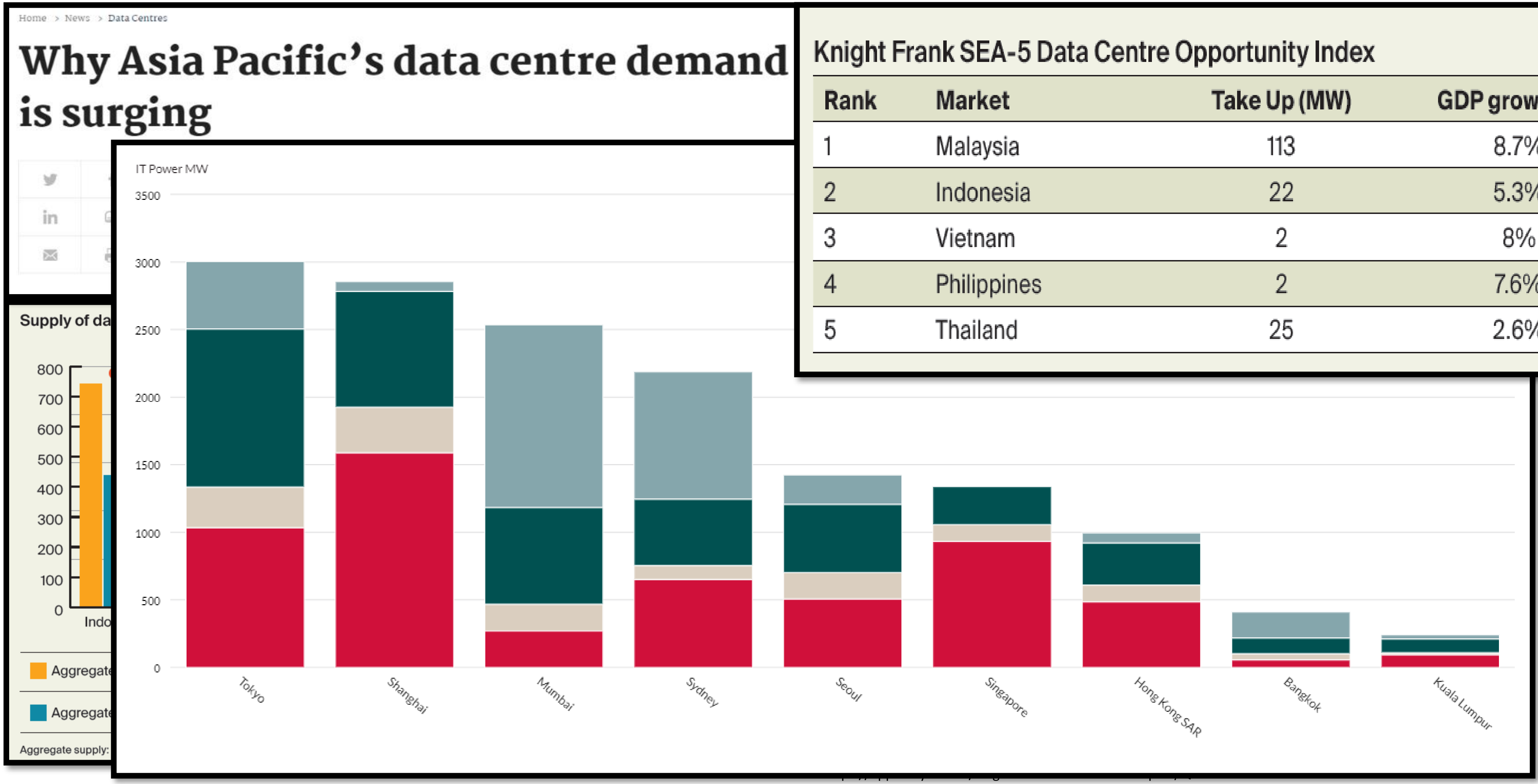
Australia
- New thin capitalisation rules
- 15% WHT for build-to-rent

Asset specific updates

Data centres



The surging popularity of Asia Pacific as data centre locations



Knight Frank SEA-5 Data Centre Opportunity Index

Rank	Market	Take Up (MW)	GDP growth (%)
1	Malaysia	113	8.7%
2	Indonesia	22	5.3%
3	Vietnam	2	8%
4	Philippines	2	7.6%
5	Thailand	25	2.6%

Data centres across Asia Pacific

Data centres	
Malaysia	• Digital ecosystem acceleration scheme • Tax incentives status update
India	• State or district-level concessions • Exemption from stamp duty and electricity duty • Concessional property tax rates
Vietnam	• No special tax incentive/concession • State land leases are now paid on an annual basis instead of an upfront lump-sum payment
Singapore	• Four-year moratorium ended in July 2023 • Pioneer Certificate Incentive—5%/10% reduced tax rate • Data Center Carbon Footprint Assessment (DC-CFA) program
Australia	• Clean building Managed Investment Trust (MIT) tax concessions to extend to data centres starting 1 July 2025 • Research & Development (R&D) tax incentive
Japan	• Home to the third largest number of data centres, after the United States, and China • Special depreciation for information processing equipment
Korea	• No special tax treatment for data centres • BUT incentive comes in the form of discount of electric facility levy instead of tax concession

Hong Kong	• No special data centre tax incentives but low corporate tax and no Goods and Services Tax (GST)
China	• Cash trap issues remain • QFLP, real estate funds/C-REITs, public fund, asset-backed securities
Taiwan	• Change to indirect transfer taxes

Secondary issues arising from data centre projects

ESG

- Deductibility of ESG related expenses (e.g., acquisition of carbon credits or expenses incurred to participate in carbon credit projects)

M&A

- Extended scope of due diligence
- Ability to preserve tax incentives and green Key Performance Indicators (KPIs)

Green financing

- Green financing/ sustainability-linked loan
- Expenses incurred to achieve KPIs

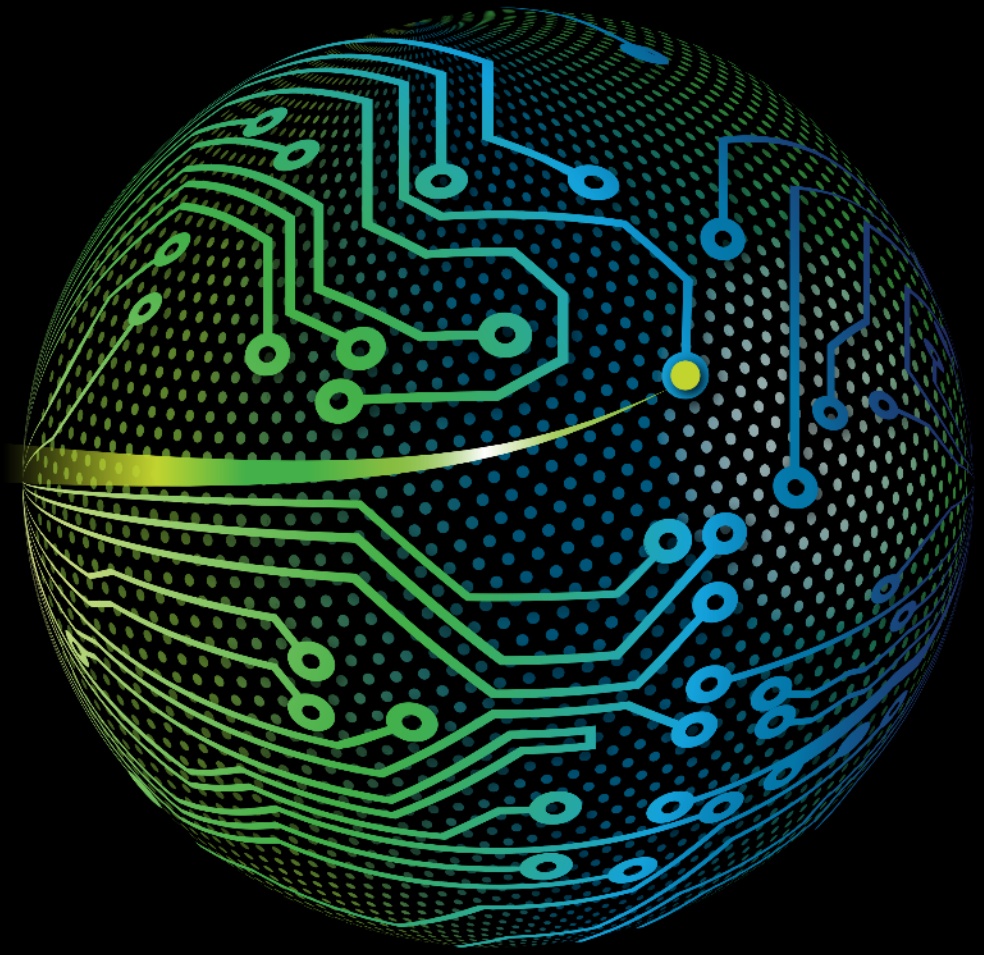
Malaysia

Restructuring

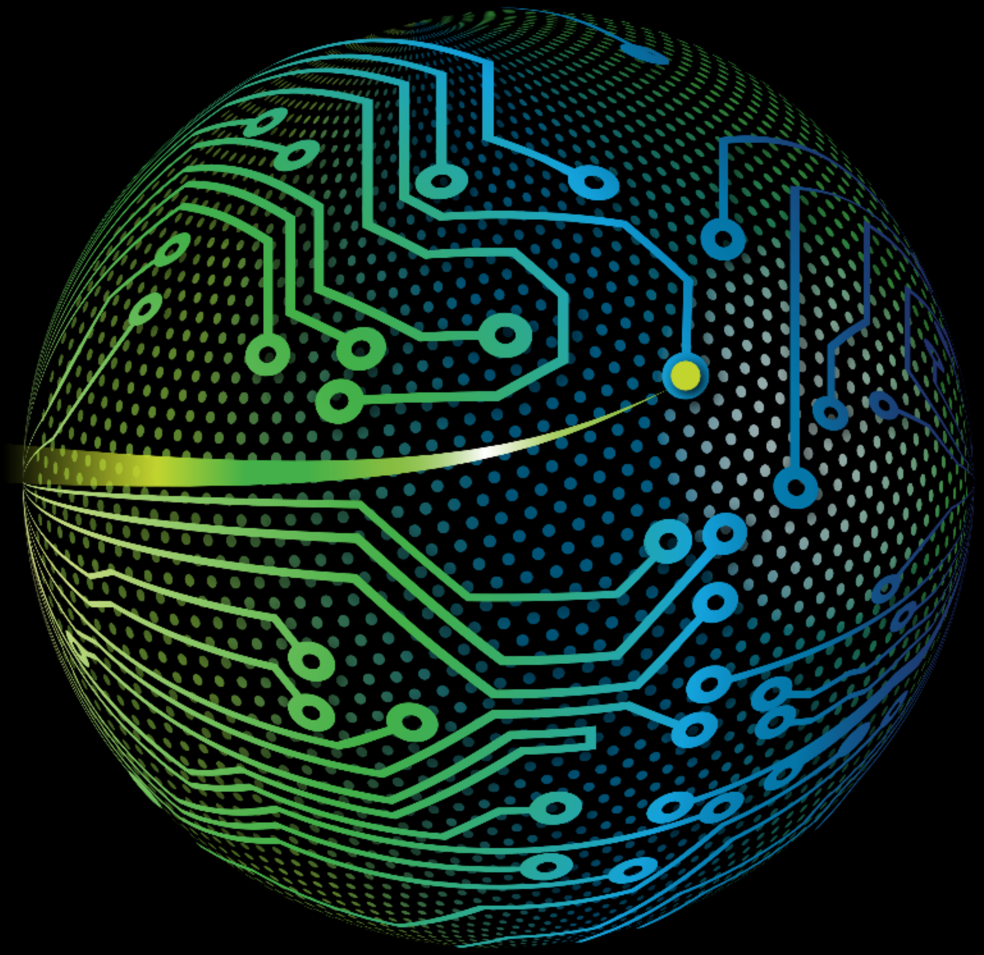
- Indirect transfer taxes/indirect CGT

Malaysia
Singapore
Hong Kong
Taiwan

Appendix A
Regional Real Estate Tax Update



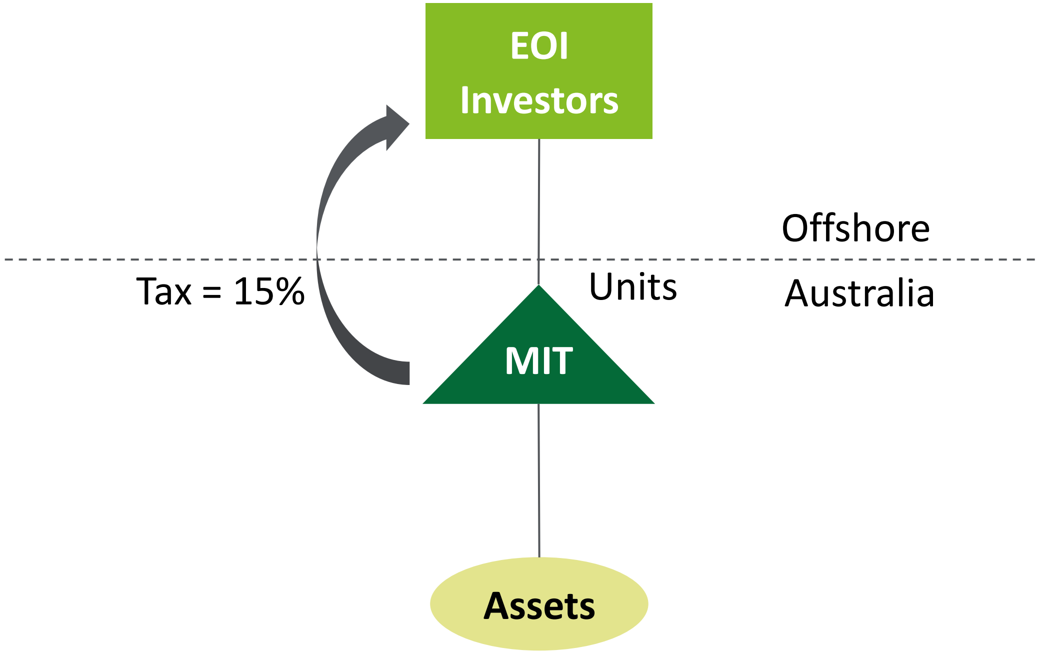
Australia



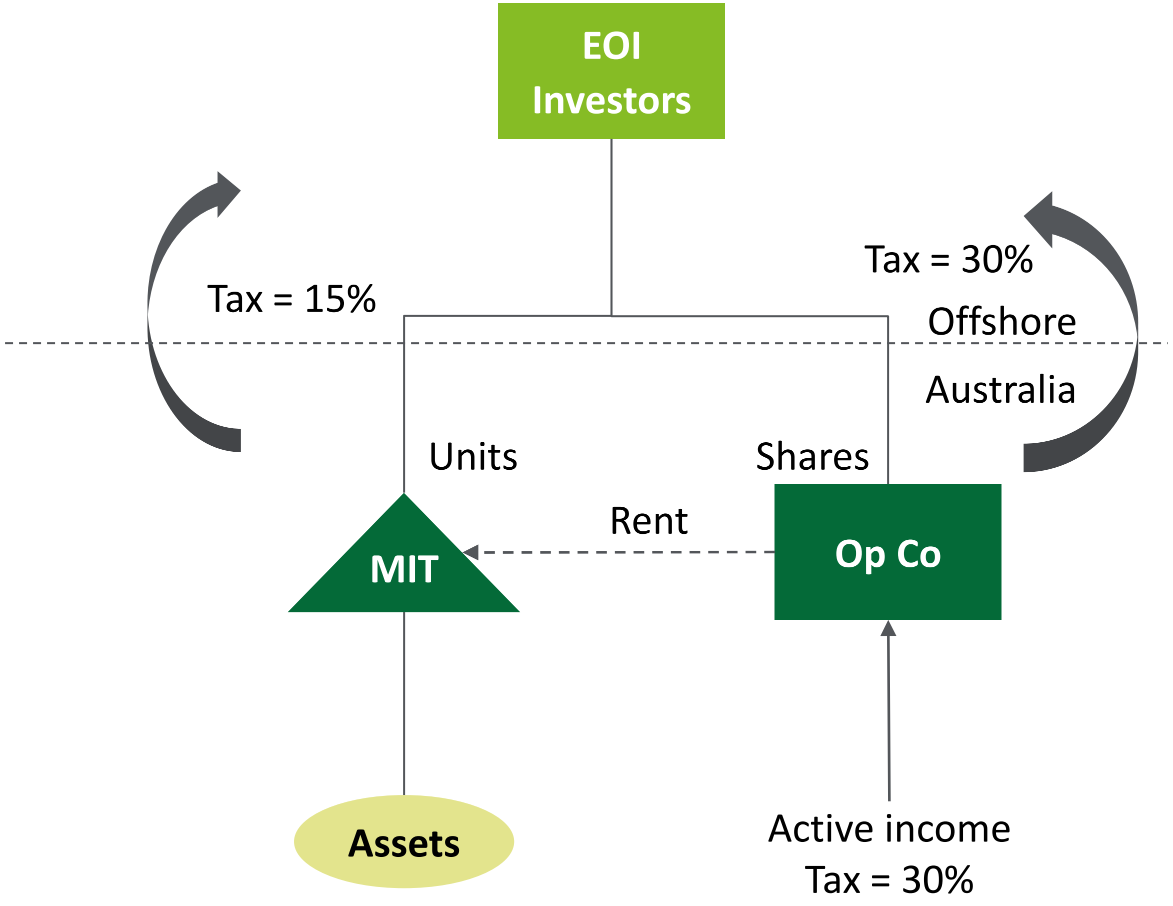
Inbound structuring real estate

Inbound fund structures

Managed Investment Trust (MIT) structure



Stapled structure



Proposed new rules debt limitation

Proposed debt limitation rules

Purpose and status

Rationale	• Closer alignment with OECD
Purpose	• Existing “thin capitalisation” balance sheet test (to be replaced) • New earnings-based test
Status	• Pending
Proposed start date	• 1 July 2023

Overview of reform

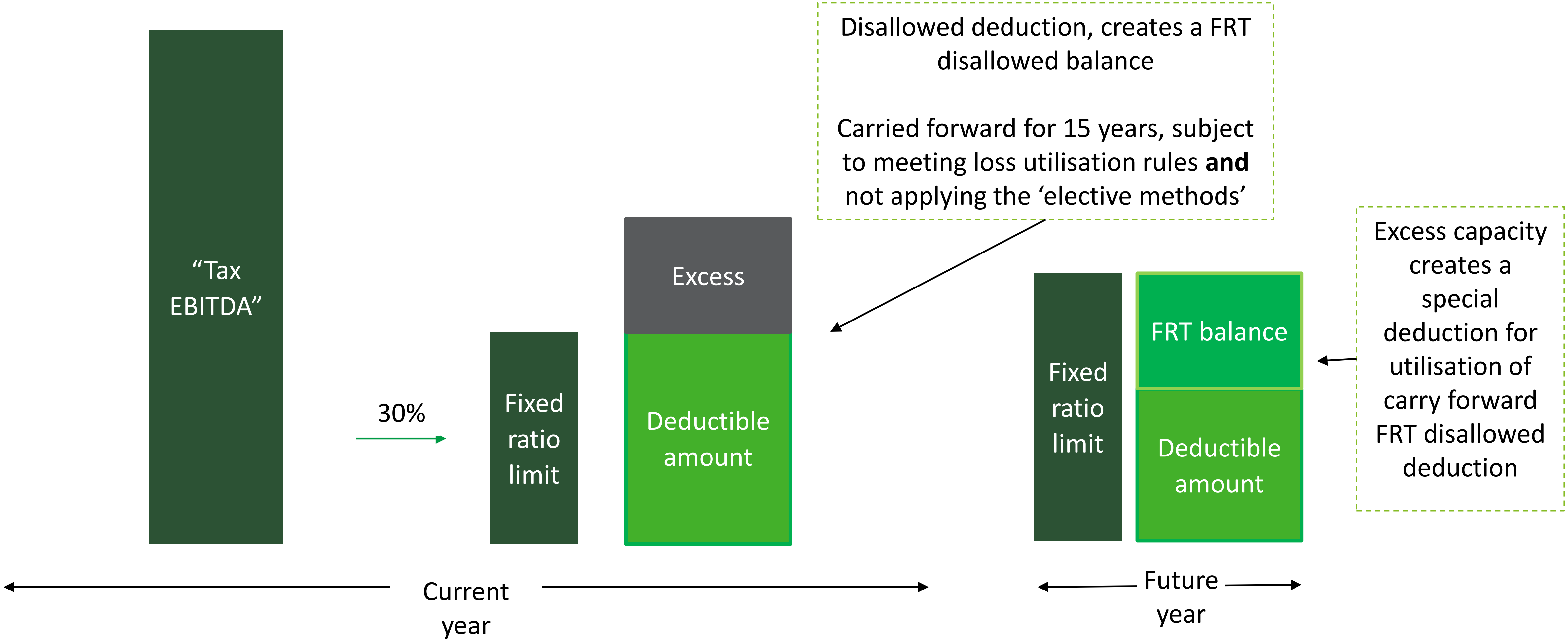
Safe Harbour Debt Test	→	Fixed Ratio (30% x Tax EBITDA) Test
Arm's Length Debt Test	→	Third Party Debt Test
Worldwide Gearing Test	→	Group Ratio Test
		Debt Deduction Creation rules

Proposed debt limitation rules

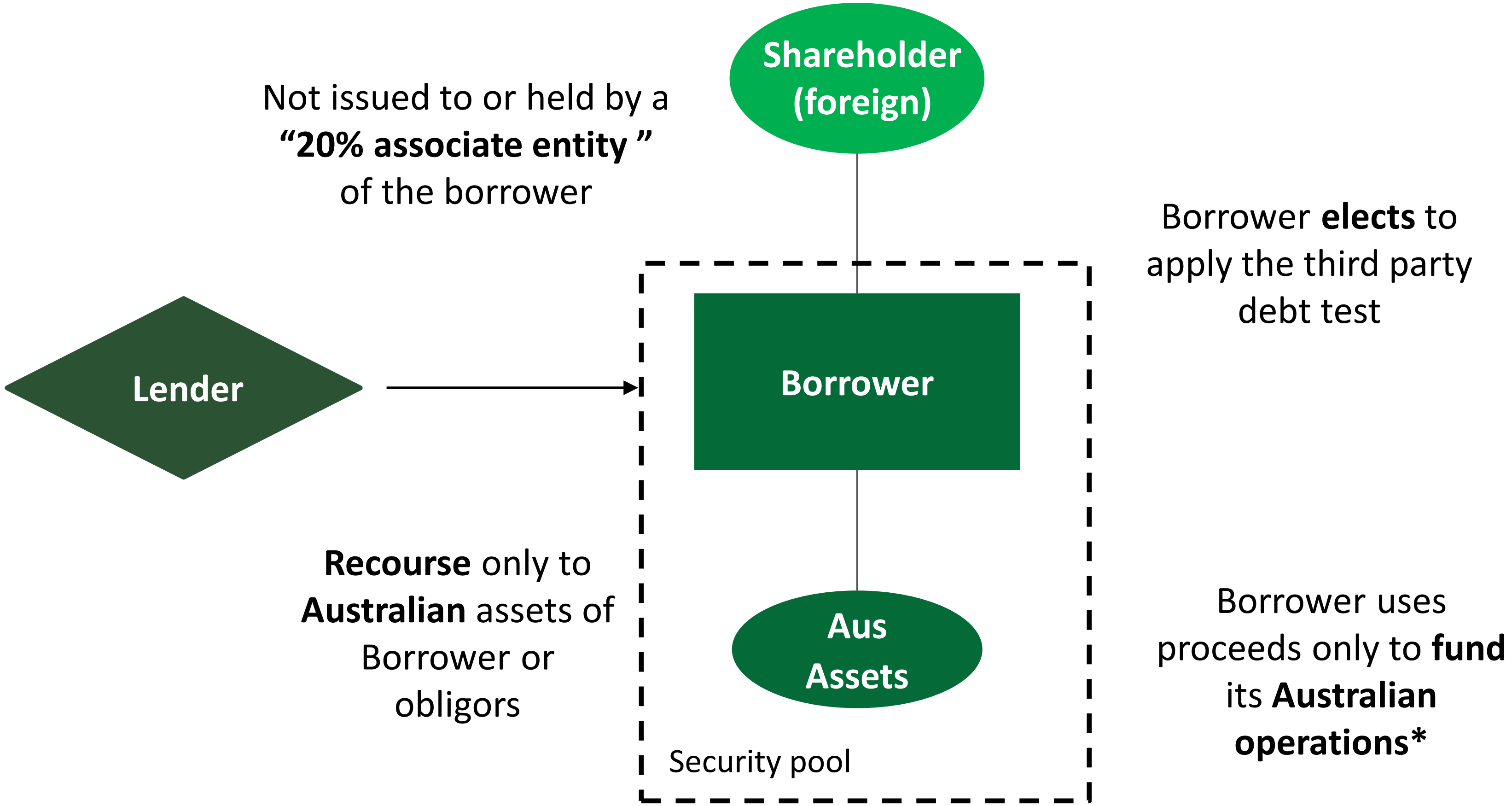
Purpose and status

Test	Considerations
Fixed ratio test (FRT)	• 30% of Tax EBITDA • Denial not permanent • Cannot carry forward "excess" if elect out of FRT
Group ratio test (GRT)	• Potentially beneficial to Australian entities with global group consolidated interest to EBITDA ratio above 30% • No carry forward for disallowed deductions (disadvantage compared to FRT) • Issues with accounting consolidation requirements
Third party debt test	• All deductions under eligible third party debt are deductible • No carry forward of disallowed deductions
Debt creation rules	• Anti-avoidance measure • No purpose test • Transitional rule for financial arrangements entered before 22 June 2023

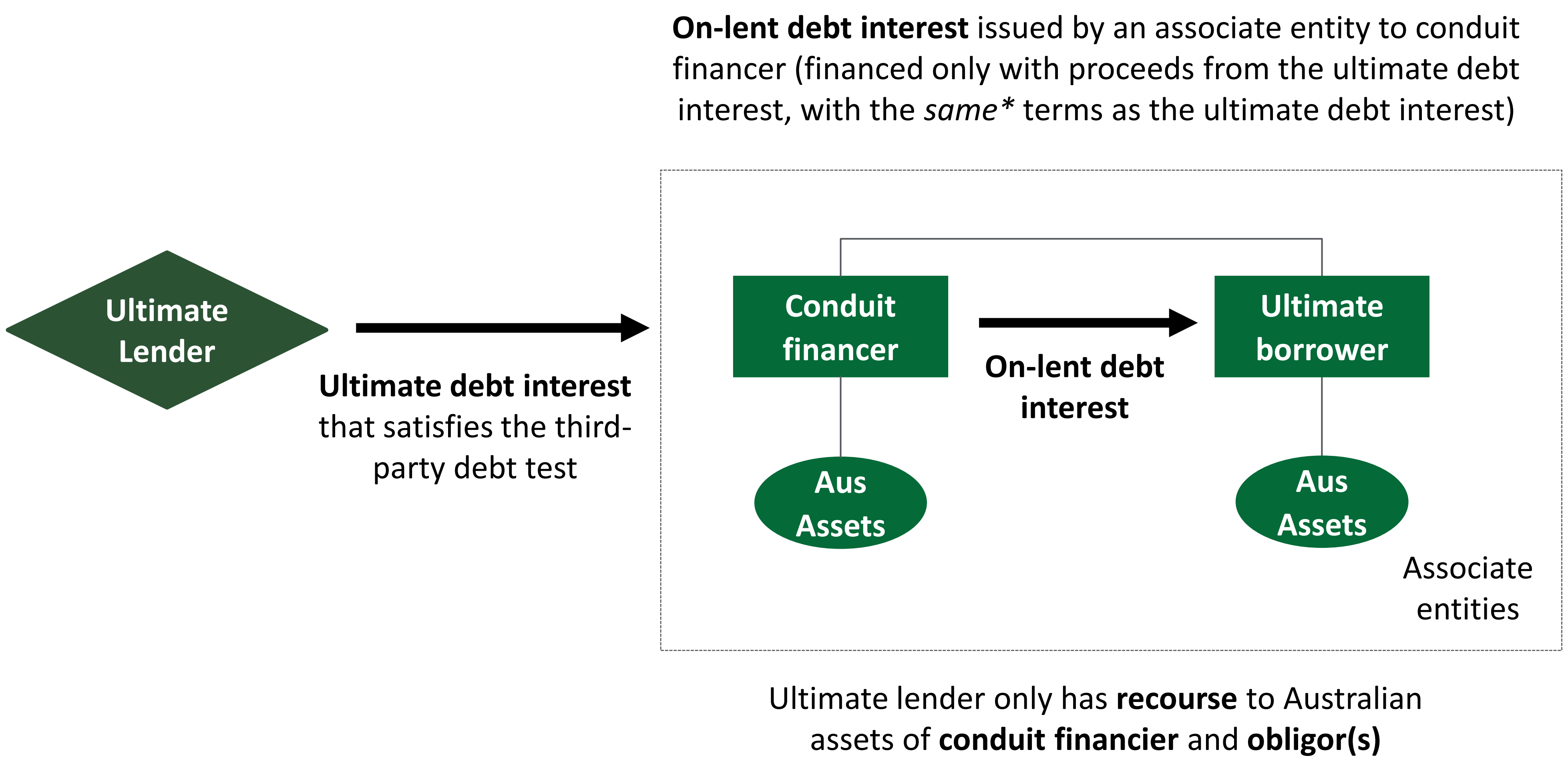
Fixed ratio test



Third party debt test



Third party debt test



Build-to-rent proposed 15% tax rate

“Build-to-rent” sector

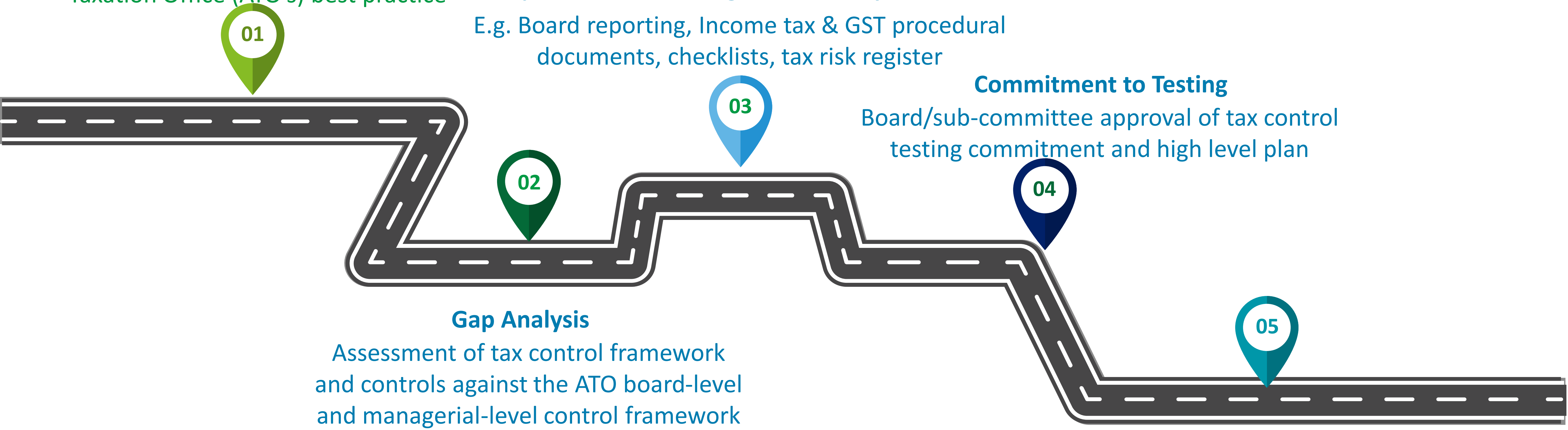
Proposals

Australian Government announcement 28 April 2023	• 15% MIT withholding tax rate for “build-to-rent” (BTR) residential projects • Capital works tax deduction depreciation rate increased from 2.5% to 4% per year for new BTR projects
Status	• Pending (awaiting draft legislation)
Proposed start date	• 1 July 2024

Tax authority and regulator activity

Tax governance journey

Stage 1	Stage 2	Stage 3



01 – Tax Governance Framework
Board approved aligned to Australian Taxation Office (ATO's) best practice

02 – Gap Analysis
Assessment of tax control framework and controls against the ATO board-level and managerial-level control framework

03 – Supporting policies and procedures that align to the 7 key controls
E.g. Board reporting, Income tax & GST procedural documents, checklists, tax risk register

04 – Commitment to Testing
Board/sub-committee approval of tax control testing commitment and high level plan

05 – Testing of tax controls
Testing of tax risk management framework and controls by reference to ATO guidance

Tax authority and regulator activity

Tax authority activity

ATO reviews of AMITs and MITs

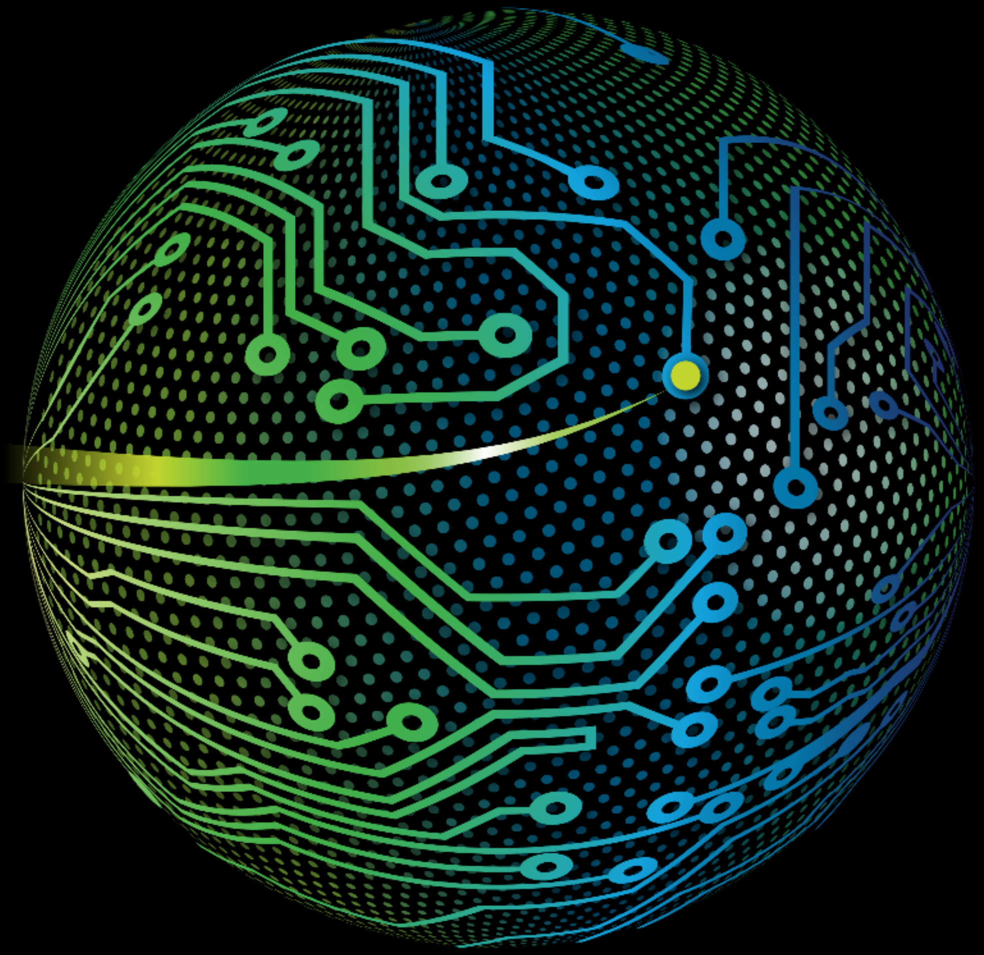
- Third party data governance (1 July 2024 deadline)
- GST Governance, Data Testing, and Transaction Testing
- GST assurance programs for largest entities

Foreign Investment Review Board

Tax conditions and the role of the ATO

- If the Treasurer considers that tax conditions need to be applied to an investment to protect the national interest, 'standard' tax conditions may be imposed
- If a proposed investment is considered to have a significant or particular tax risk, then 'additional' tax conditions may also be imposed
- Potential increased tax scrutiny

China



Common Investment Structures—China

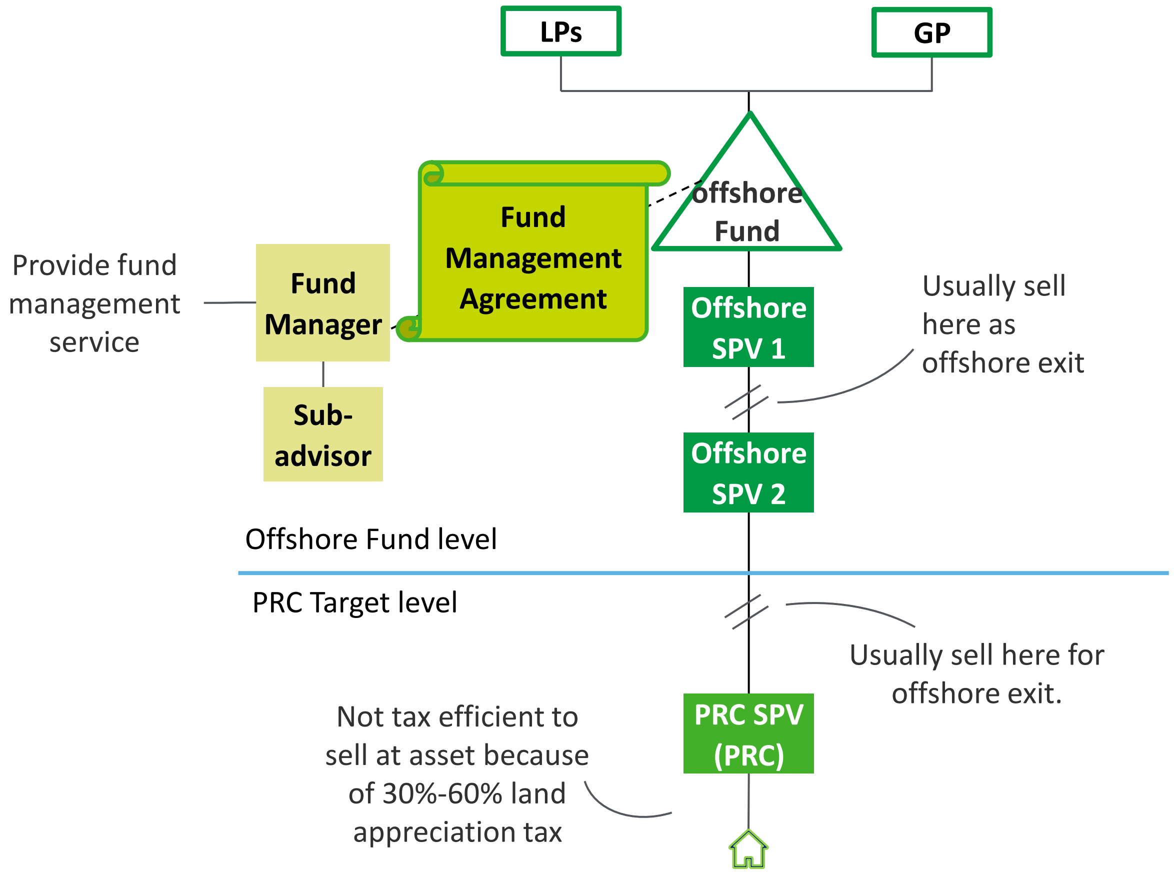
Real Estate Investments—Common Offshore Fund Structure

General Tax Implications

- No direct China Tax Implications on fund investors
- 10% capital gain tax on transfer at PRC SPV
- 10% capital gain tax on Indirect transfer if exit at offshore SPV
- An offshore fund structure would facilitate offshore debt financing. However, if the investment involves PRC real estate development, debt push down into China would be **restricted**

Potential concern of cash trap in China

- A PRC corporate is required to set aside statutory reserve equal to 10% of annual after-tax profit per year until the accumulatively reaches 50% of registered capital
- Declare dividend is limited by the availability of accumulative retained earnings (after the reserve)
- Other repatriation strategies should be explored for repatriating the cash out of the PRC



Latest Progress of Investment in PRC Real Estate

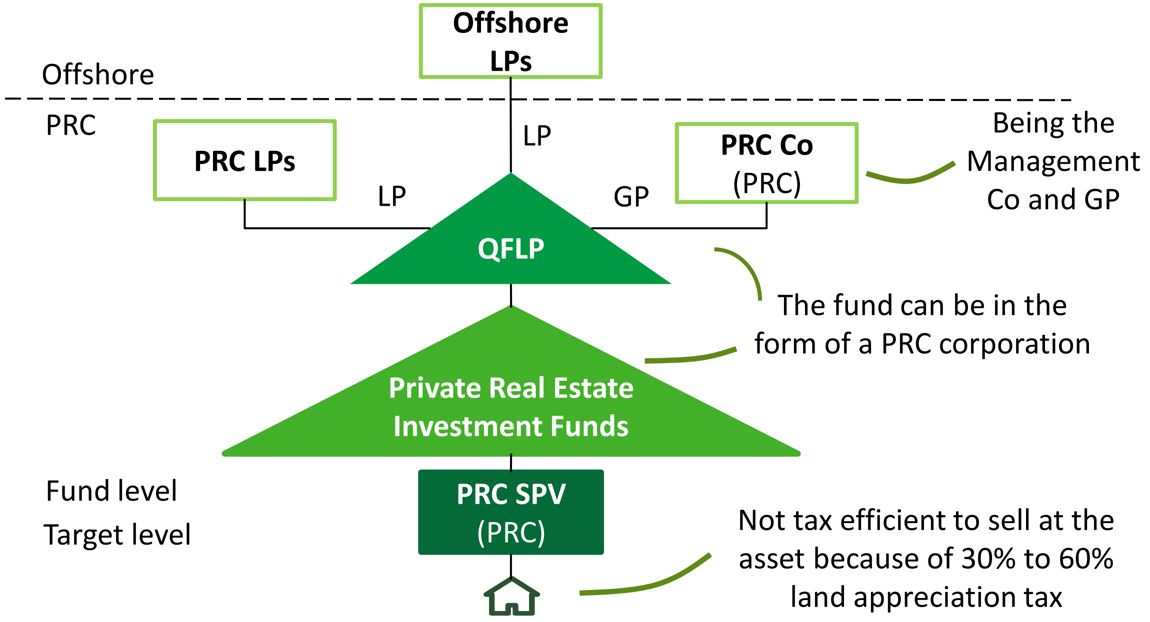
Private Real Estate Investment Funds and QFLP

Private Real Estate Investment Funds Pilot Filing Guidelines

- In February 2023, the Asset Management Association of China (AMAC) released the Guidelines for the Pilot Filing of Private Real Estate Investment Funds (for Trial Implementation) (which will take effect from March 1, the "Guidelines").
- Within the current regulatory framework, the AMAC will open a new filing category for "private real estate investment funds" and adopt differentiated regulatory policies.
- The investment scope of a Pilot Fund covers the main types of real estate properties, including：
  - **Specific residential properties** (i.e., stock commercialized residential property, government-subsidised housing, and market-oriented rental housing)
  - **Commercial premises** (i.e., office buildings, shopping malls, hotels)
  - **Infrastructure projects**
- **Leverage Ratio**: The Guidelines allow for a reasonable leverage ratio for a Pilot Fund, while the total assets of the Pilot Fund shall not exceed 200% of its net assets.
- **Debt Investment Ratio:** The Guidelines state that Pilot Funds may provide loans or guarantees for an invested enterprise, but such activities shall be subject to certain conditions.

Future approach - QFLP Future + Real Estate Investment Funds?

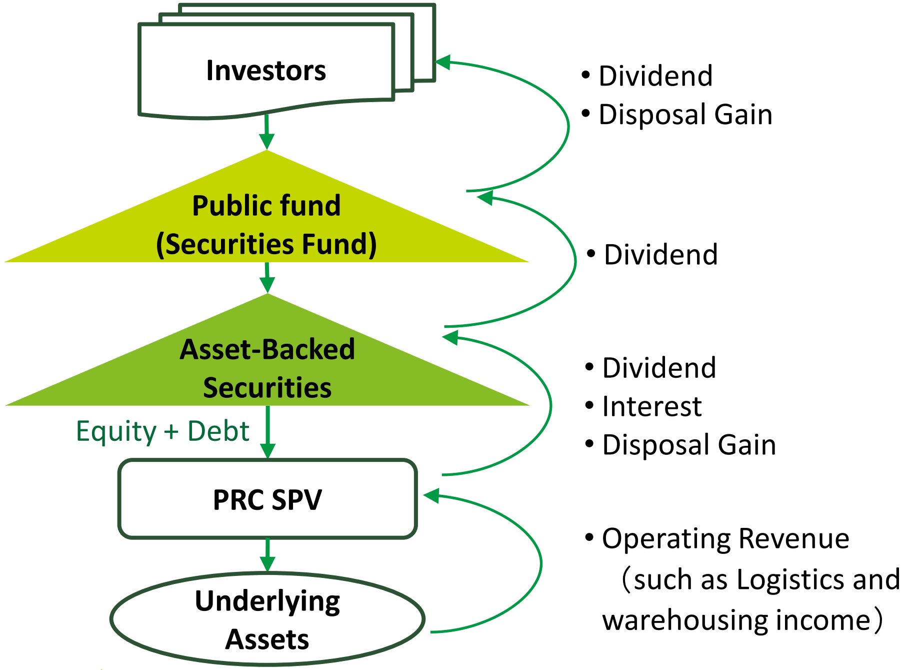
- **Current situation:** QFLP Funds are explicitly prohibited from investing in real estate enterprises and local government financing platforms.
- **Future trends:** Recently, the China Securities Regulatory Commission (CSRC) is actively working with relevant departments to **expand the channels for QFLP** and other institutional funds to invest in real estate private equity funds. Foreign investors are encouraged to invest in real estate private investment funds by QFLP.
- QFLP + Real Estate Funds? – way to resolve cash trap issue?



Latest Progress of Investment in PRC Real Estate

China Real Estate Investment Trusts (C-REITs)

Structure: Public fund + single infrastructure ABS



C-REITs broadens channels for investment in PRC real estate by learning from the mature international REIT market.

More flexible exit channels for investment in PRC real estate.

Exit approach for foreign investors?

Public Real Estate Investment Trusts regime in China (C-REITs)

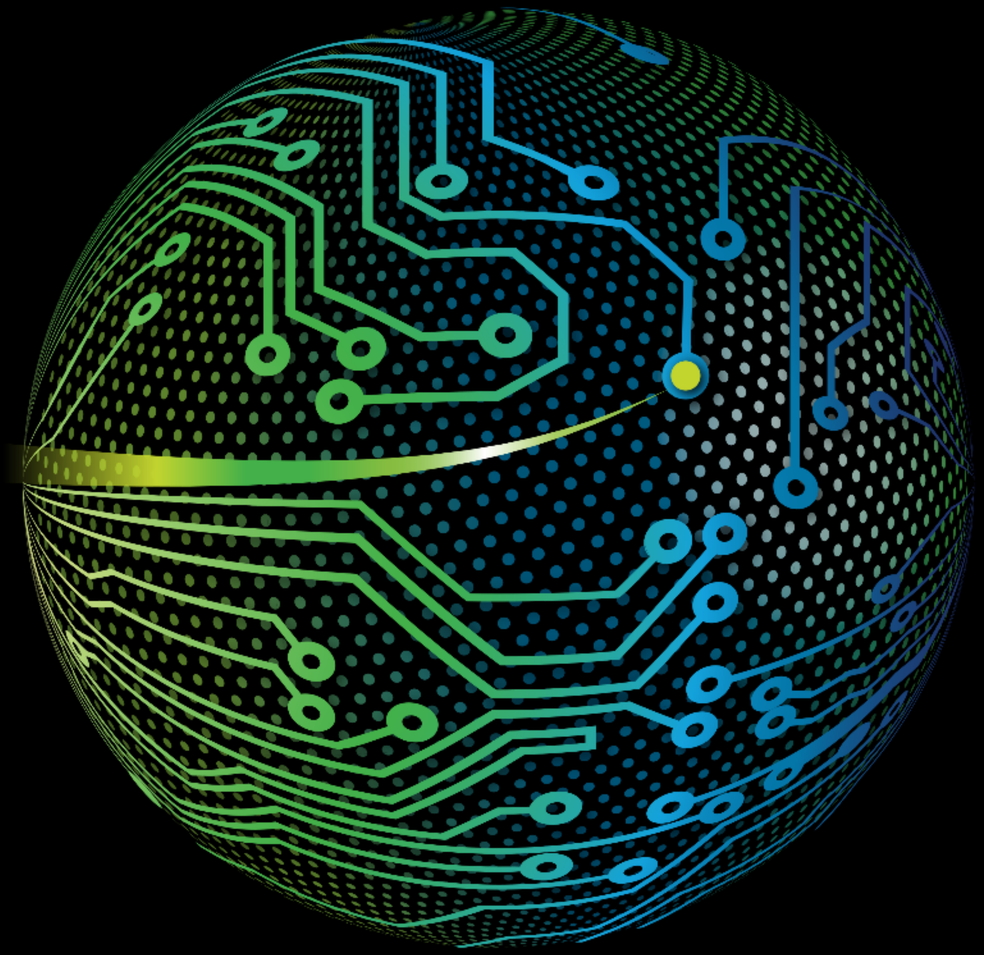
- China launched an infrastructure C-REITs pilot program in 2021.
- Purpose: By learning from the mature international REIT market, the aim is to effectively free up capital for reinvestment, reduce the corporates' debt liabilities and provide a new financial product which broadens public investors' investment channels.
- The current underlying investment types of C-REITs focus on infrastructure. The investment scope of C-REIT includes the following projects：

✓ **Transportation infrastructure (8)**	✓ **Warehousing and logistics infrastructure(3)**
✓ **Energy/ESG infrastructure (3+2)**	✓ **Industrial parks (9)**
✓ **Affordable rental housing (4)**	✓ **Potentially Commercial buildings and IDC**

- **As of the end of 2023**, more than 29 REITs were issued/publicly listed with total market cap of RMB96 Billion (approx.. USD13.7Billion), most of issuers are domestic SOEs but there are cases with private companies/foreign investors as issuers. (Typical one GLP, DNE, **ESR's** REITs shall be issued shortly)

	Tax Implication
Issuers	• Issuers: Provided tax incentive rules to defer the issuers' income tax burden at issuing
Investors	• Invest at mutual fund level: no significant tax implications
ABS	• Trans-parent for corporate income tax purposes
Project SPV	• Is taxed as normal enterprises • Thin-capped considerations for ABS' debt and equity investments

India



Upcoming trends in India

- Real estate, key for Indian economy, undergoing rapid evolution and growth in recent years
- Key driver for residential sales in 2024—affordability and the income outlook of consumer
- Major builders opting for pricing adjustments

The need is to look ‘**elsewhere’—innovation of business models**

Student Housing

Data Warehousing

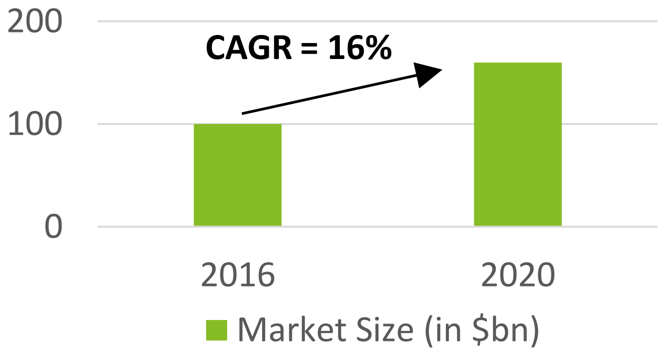
Student housing

Resurgence trend

- Post-pandemic, student housing rentals have been steadily rising by **10—15% YoY**, reaffirming the scaling demand for quality student homes.
- Student relocation ~ 11 million vs. 7.5 million onsite accommodation—untapped market potential

India is the world's third largest education market

Market Size (in $bn)

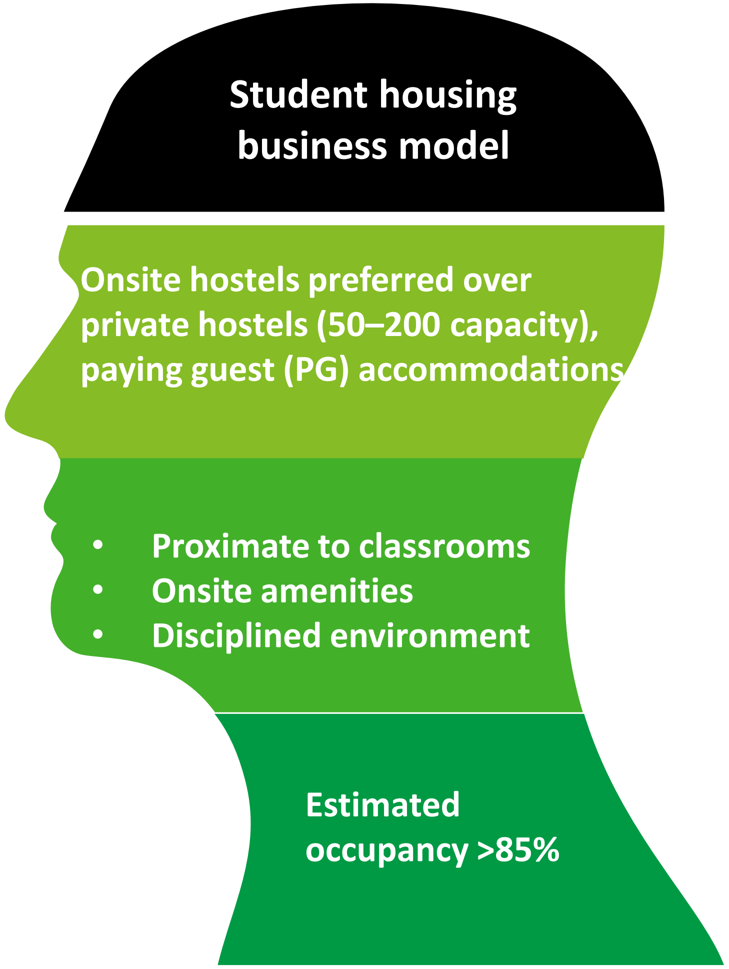


Attractive demographics and growth potential

- India has world's largest population of young people aged between 15 and 24 at ~249mm
- Higher education Gross Enrolment Ratio (GER) of 26% vs. 39% in China and 47% in Brazil, indicates strong growth potential
- Size of the student housing market in India in the private sector, as of FY19: expected to be ~6.7mm beds (~$5.3bn NOI potential) which is estimated to increase at 8% per year till 2025

Attractive returns with limited risks

- Long-term contracts with universities include clauses like take or pay, inflation linked rental escalation guarantee with further protection for changes in minimum wages, exclusivity, right of first offer for new developments on campus and non-compete
- Levered equity return for a 5-year hold at 20%+ (monetary terms)



Data warehousing

Financial
- Land and infra
- Power

Non-financial
- FSI relaxation
- Compliances

Digital Data Protection Bill 2022 introduced by the Ministry of Electronics and Information Technology (MEITy)

Data Center

Strong incentive structure

Data center: Real estate sub-sector

Established data center policies

- India has the 14th highest Data Centers—**151**
- Mumbai has the highest share of data centre capacity in India at **50%** followed by Chennai at **14%**
- As of 2022, India's Data Center capacity is at 637 MW, which is expected to be **1318 MW by 2024**
- Hyperscale Cloud Revenue for India **$5.6 billion**

- **500 acres** of land acquired for construction of data centers
- India's data center stock as of Nov 2022—10.3 million square feet, predicted to **double** by 2025

- While in general, India levies 18% Goods & Services Tax (GST), International invoices being raised in India attract **0% GST**.
- Local clients are eligible for **ITC** which reduces their net tax liability

Japan

Market trend and tax audit update

Real estate market trend in Japan

- Based on recent discussion with the potential clients, it appears development of warehouse and data centers are increasing.
- In the market, a record 10 private REITs (unlisted open-end REIT) began operations in 2023. Due to individual income tax incentive, REITs are growing in popularity.
- Rents for residential properties in the metropolitan area also continue to rise.
- Typical real estate investment structures in Japan (i.e., broadly (a) TK-GK for small-medium sized properties, and (b) TMK for relatively large sized properties and development projects) have not changed. Hybrid type structure (i.e., using TK-GK as TMK's onshore shareholders) is also used.

Tax audit update

- Generally, tax audits and controversy are returning to pre-COVID-19 levels in FY2023. The tax authorities were conducting even more tax audits in FY 2023 than in FY 2022 and should conduct further in FY2024.
- In relation to real estate investment vehicles (**SPCs**), although we do not consider there has been any actual cases which the treaty application was denied based on Principle Purposes Test so far, the Japanese tax authorities also conduct withholding tax audit (including application of relevant tax treaties) for SPCs regularly.
- As the MLI has already applied to treaties in many relevant countries (e.g., Singapore, HK and Korea etc.), we feel substance should be monitored stricter by the tax authorities and this should have potential impact for Japanese real estate structures.

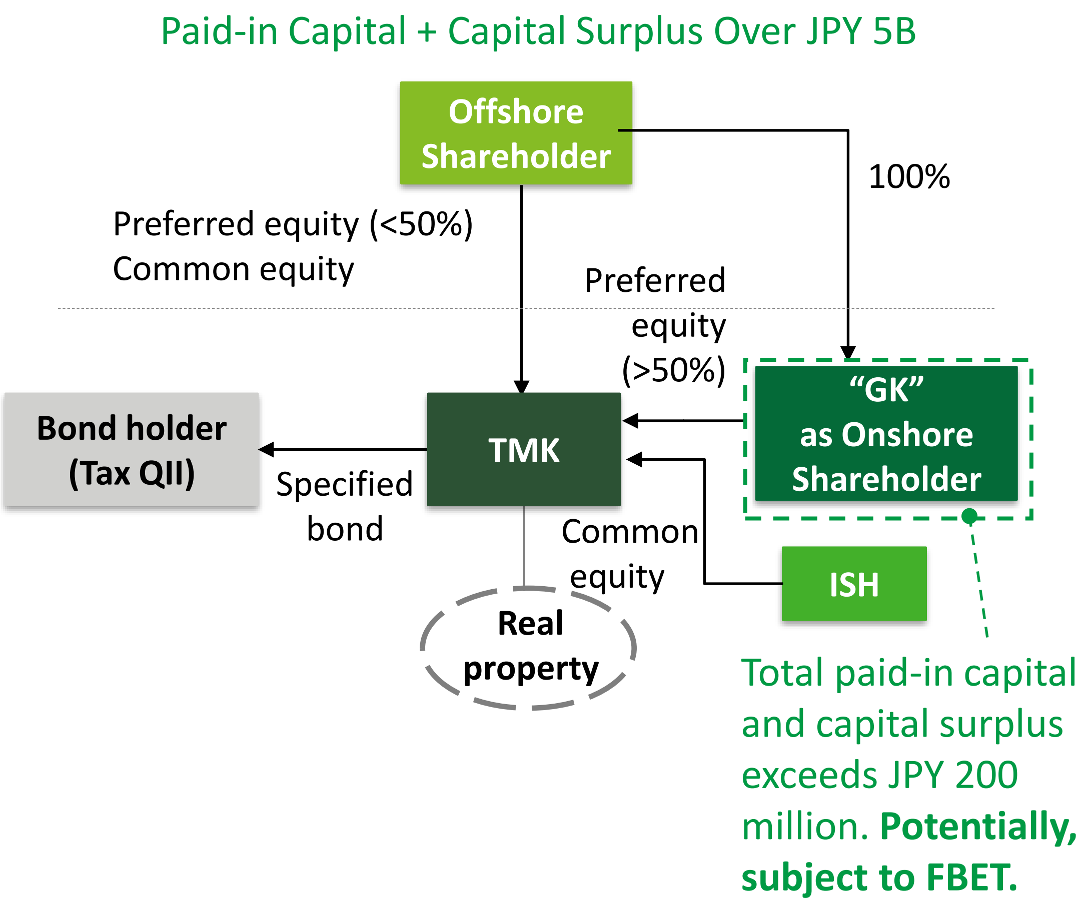
2024 tax reform

Factor-based enterprise tax

Expansion of scope of target companies

- The 2024 tax reform proposals include expanding the scope of factor-based enterprise tax (**FBET**)—refer Appendix 1.
- Although some interpretations remain unclear based on the draft tax laws, it is considered that the expansion should also affect foreign subsidiaries which meet the following conditions (refer Appendix 2 for details):
  1. paid-in capital is JPY 100 million or less and total paid-in capital and capital surplus exceeds JPY 200 million; and
  2. 100% owned by a company whose total paid-in capital and capital surplus exceeds JPY 5 billion (excluding companies whose paid-in capital is JPY 100 million or less).
- Under the current law, if subsidiary has paid-in capital of JPY 100 million or less, it would not be subject to FBET. In practice, majority of GKs (Japanese LLC type vehicle) could avoid FBET by injecting majority cash as capital surplus and maintaining paid-in capital of less than JPY 100 million. Such method should be no longer available under the new rule.

TMK Structure (simplified case)



Factor-based enterprise tax

Expansion of scope of target companies

- Please note that the FBET applicable subsidiary will have a reduced income levy, but subject to a capital levy and a value-added levy. Whether in aggregate the company would have a larger or smaller tax liability would depend on the company's specific attributes. Highly profitable companies may see a decrease in enterprise tax while companies with significant amount of capital may see an increase.

- The new rule will be applied for fiscal years beginning on or after 1 April 2026 but there are some transitional measures as shown in Appendix 2.

Earning Stripping rules and Salary Increase Tax Credit

Earning Stripping rules—temporary extension of carry-over of excess interest expense

- Under the current earning stripping rules, the deduction of net interest payments in excess of 20% of adjusted taxable income is disallowed. The disallowed interest payment incurred in the past 7 years are deductible in a fiscal year up to a certain threshold.
- With global interest rates increasing, some companies are seeing their interest expense rise and are being limited in their deduction due to the earning stripping rules.
- Corresponding to such proposal, the 2024 tax reform includes that the carry-forward period of disallowed interest payment related to the fiscal years beginning between 1 April 2022 and 31 March 2025 will be extended to 10 Years.
- Generally, a GK entity used for the TMK structure and funded with debt should be subject to the earning stripping rules and this revision should also be relevant for such entity.

Salary Increase Tax Credit

- The salary tax credit is intended to encourage companies to increase their employees' salaries and is calculated as a percentage of the increase of a company's current year salaries over the prior year amount. In principle, the amount of the credit is capped at 20% of the company's corporate tax liability.
- Over recent years, the qualifying conditions for the salary tax credit have been amended, with each revision reflecting the current administration's economic policies and goals. The 2024 tax proposal has also included such element as shown in Appendix 3-1 to 3-3.
- The revision should be relevant to asset management companies who have employees rather than SPCs.

Hong Kong

Regional tax updates related to real estate industry

2024—25 Budget Updates

Stamp duty for residential properties

- The Budget proposed to remove all demand-side management measures for residential properties, including Buyer's Stamp Duty (BSD) (which is applicable to non-Hong Kong permanent resident buyers), New Residential Stamp Duty (NRSD) (which is generally applicable to buyers that own other residential property in Hong Kong) and Special Stamp Duty (SSD) (which is applicable to those who dispose of his/her residential property within 2 years after acquisition), with immediate effect.

- It ends the demand-side management measures for residential properties which have lasted for over 13 years. This means that stamp duty on sale of immovable property in Hong Kong would only be subject to ad valorem stamp duty ranges from HKD100 to 4.25% of the consideration or value of the property, no matter the buyer is a Hong Kong or non-Hong Kong resident, with or without another residential property on hand.

Stamp duty for real estate investment trust (REIT)

- To further enhance market competitiveness, the Budget proposed to waive stamp duties payable on the transfer of REIT units.

Regional tax updates related to real estate industry

2024—25 Budget Updates

Commercial/industrial building allowances

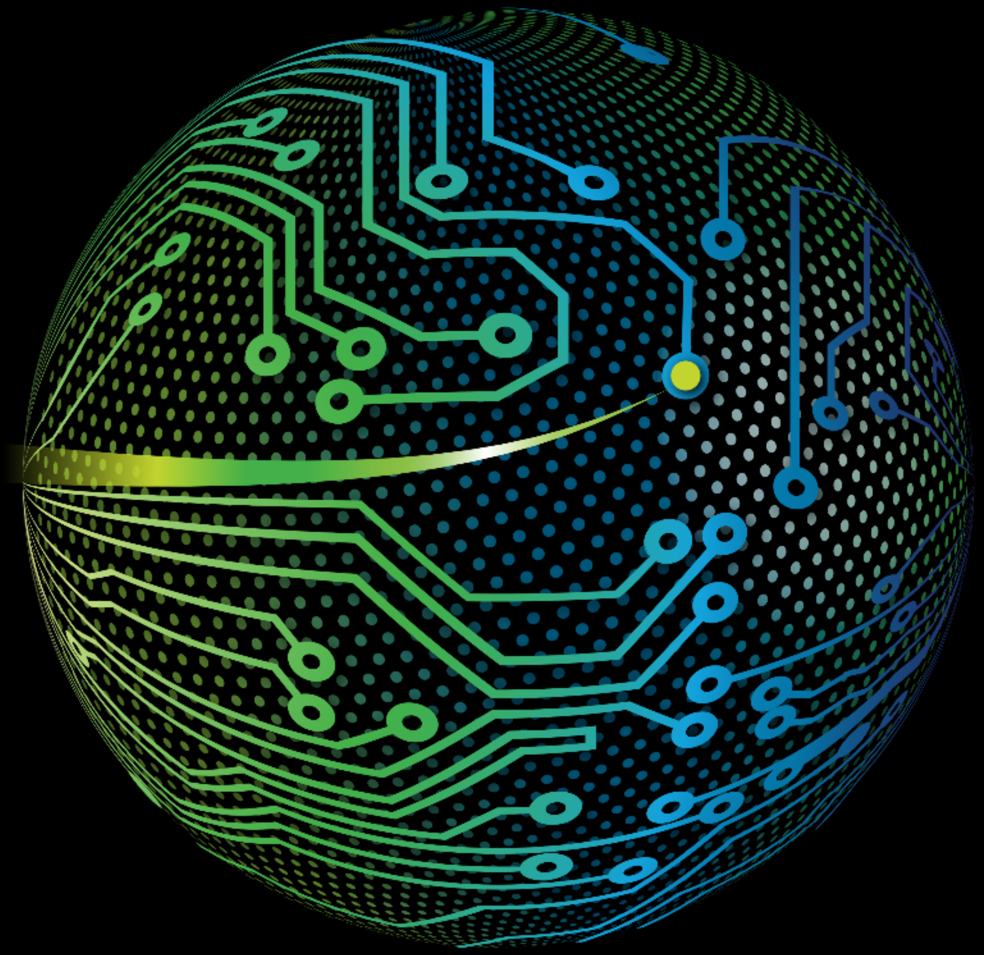
- The Budget proposed to remove the time limit for claiming commercial building allowance (CBA) and industrial building allowance (IBA), with effect from the year of assessment 2024/25. Currently, there is a 25-year time limit for claiming CBA and IBA. For example, when an old commercial building (pre 1998/99) is sold after in use for 25 years, the buyer would not be entitled to any CBA while the seller would be subject to a balancing charge.

- In other words, no capital expenditure could be deducted for a commercial/industrial building or structure that had been in use for over 25 years. The industry had previously raised this concern to the Government and requested the removal of the time-limit.

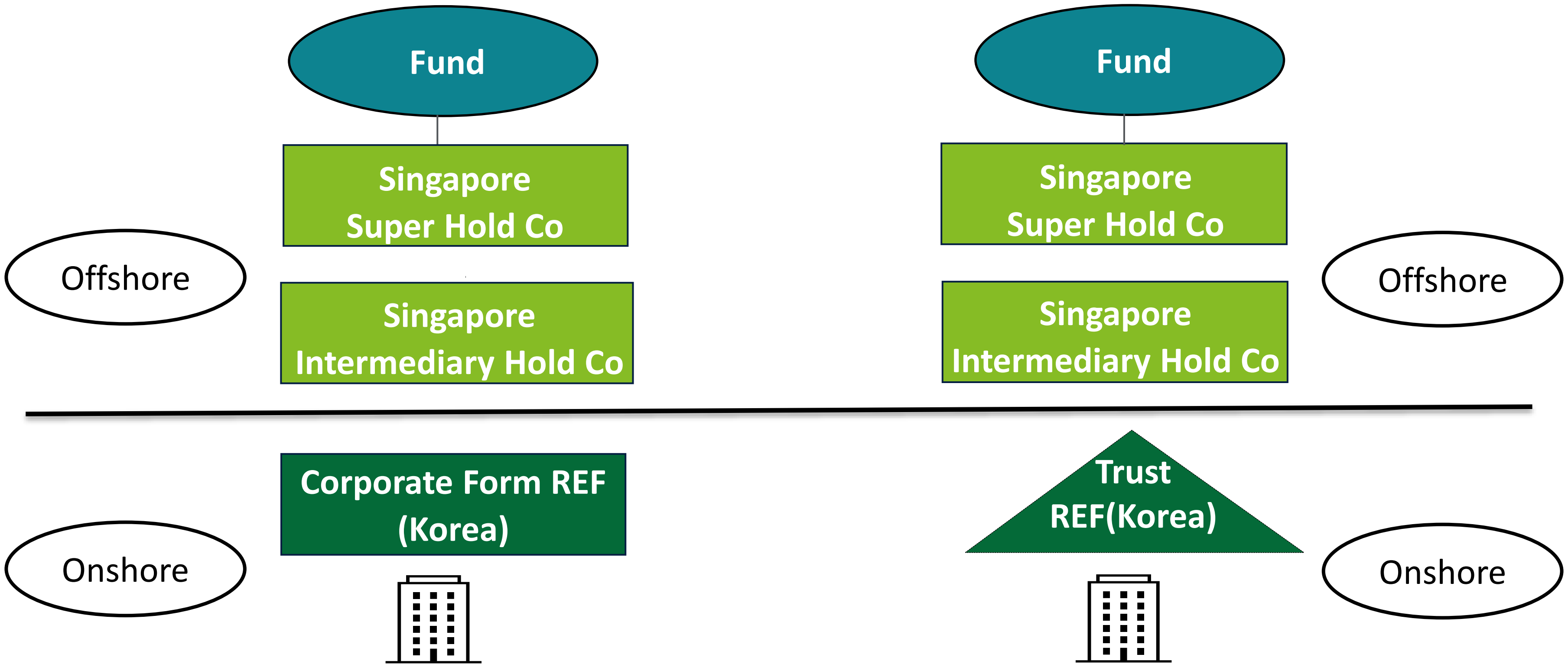
Tax deduction for reinstatement costs

- The Budget proposed to allow tax deduction for expenses incurred in reinstating the condition of the leased premises to their original condition. The new deduction will take effect from the year of assessment 2024/25. It is good news for businesses operating in leased properties as they are generally required to reinstate the properties after the lease term and the reinstatement costs could be significant. However, such costs are currently not tax deductible.

South Korea



Common investment structures in Korea



Note: All entities are 100% owned, unless indicated otherwise.

Korean tax implications and tax considerations

Summary of Comparison LLC REF and Trust REF

	Items	LLC REF	Trust REF
Tax Aspects	Corporate Income Tax on Lease Income	• Non-taxable, if 90% or more of the distributable income is declared as dividends	• Non-taxable
	Various real estate taxes	• No difference	
	Profit Repatriation—Dividend Payment	• 15% (or 10%) under Korea-Singapore treaty	• 15% under the Korea Singapore tax treaty
	Profit Repatriation—Exit via Share/Trust Certificate transfer	• Taxable at the lesser of 11% of sales price or 22% of capital gain and up to 27.5% for RERC • Seller subject to Security Transfer Tax (STT) of 0.35% • In case of share deal at exit, a potential buyer will be subject to deemed acquisition tax (i.e., 2.2% of book value)	• 15% under the Korea Singapore tax treaty • No STT • No deemed acquisition tax by a potential buyer
	Debt financing	• Generally same, up to 200% of net asset value under the CMFIBA but its limit can be increased	
	Summary	• There would not be any significant differences between LLC REF and Trust REF other than any income repatriation from Trust REF will be subject to 15% withholding tax, whereas income from LLC REF will be subject to 15% (or 10%) dividend withholding tax rate or CGT tax rate depending income flow.	

Summary of Comparison LLC REF and Trust REF

	Items	LLC REF	Trust REF
Legal Aspects	Legal consideration	• Yuhan Hoesa under the Korean Commercial Code • Need to register LLC REF with the Financial Supervisory Services (FSS)	• Need to register Trust REF with the FSS
	Funding requirement	• Minimum capital of KRW 100 million • Borrowings is generally limited to 200% of net asset value but such limit can be increased upon investors' meeting (up to 70% of value of real property)	• Not applicable • Same as LLC REF
	Other consideration	• Need AMC • Cannot sell properties within 1 year from acquisition • Excessive dividends is allowed	• Same as LLC REF
	Major set up procedure	• Investors execute the Articles of Incorporation and complete capital contribution • Registration of establishment • Registration with FSS	• Enter into the trust agreement • Trustee issues beneficiary certificates to Investors • Registration with FSS

Korean tax implication—Acquisition

Setting up the LLC REF

Capital Registration Tax

- As a general rule, capital registration tax (including local education surtax) is imposed on the paid-in capital of a company at 0.48% at the time of initial incorporation as well as subsequent capital increase. The tax rate increases three-fold (i.e., 1.44%), if a company is established in the Seoul Metropolitan Area (SMA).
- However, under the CMFIBA, LLC REF does not need to register its capital amount and thus, capital registration tax should not apply at the time of initial capital injection as well as subsequent capital increases. However, a minimum flat amount of KRW 135,000 will be imposed on LLC REF at the time of the court registration of the establishment of LLC REF.

Tax Registration of Business Places

- Under the Value Added Tax Law (VATL), a company should file an application for tax registration for each place of business to each competent tax office, within 20 days from the commencement date of its business. In case of real estate lease business, as the location of real estate property is treated as the place of business for VAT purposes, the location of Property should be registered as a place of business.

Property Acquisition

Acquisition Tax

- Korea generally imposes a 4.6% acquisition tax (including agricultural & fishery surtax and local education surtax) on the acquisition costs of the real estate when such real estate is acquired. If the acquired real estate is located in the SMA, the acquisition tax rate increases to 9.4% (i.e., the heavy acquisition tax rate).
- With respect to the acquisition tax on constructed properties, Korea generally imposes a 3.16% acquisition tax (i.e., Initial Acquisition) but it also subject to heavy acquisition tax rate when the building is located in the SMA.
- However, the heavy acquisition tax rate will not be applied to the properties acquired by LLC REF through December 31, 2024 in accordance with the Article 180-2 of Tax Incentive Limitation Law.
- In case of constructed properties, the acquisition date would be earliest date of i) the approval date for the use of buildings, ii) temporary approval date for the use of buildings and iii) the date from which actually uses buildings.
- The acquisition tax return should be filed within 60 days of the acquisition date together with the tax payment. However, since the court registry requires the receipt of acquisition tax payment if LLC REF registers its title to the real properties with the court registry, acquisition tax should be filed and paid before the court registration.

Korean tax implication—Operations

Corporate Income Tax (CIT)

As LLC REF is considered as a domestic company under the CIT Law (CITL), it is obligated to file its annual taxable income and pay income tax at the normal CIT rate of 9% - 24% to the competent tax office within 3 months from the end date of each tax year.

The Korean CIT rate brackets are as follows:

Annual Tax Base	Tax Rates (with local surtax)
Up to KRW 200 million	9% (9.9%)
KRW 200 million—20 billion	19%(20.9%)
Over KRW 20 billion—300 billion	21%(23.1%)
Over KRW 300 billion	24%(26.4%)

- However, even if LLC REF has taxable income from the operation of property, there should be no substantial CIT burden as a result of Dividends-Paid-Deduction (DPD) rule, which will be discussed below.
- Also, the annual return for local income surtax should be filed to the competent local Governments, separately from CIT returns. Local income surtax is calculated as 0.9% - 2.4% of the taxable income of CIT return. (i.e., 10% of the corporate income tax amount). If a company has more than two business places, the company has to allocate the local income surtax to each office based on a proportional basis, and the allocated amount should be filed and paid within 4 months from the end date of each fiscal year.

Corporate Income Tax (CIT)

- Further, a domestic company with a fiscal year exceeding 6 months should file an interim CIT return for a period of 6 months from the starting date of each fiscal year, and pay the interim CIT computed based on either (i) a half of the annual CIT amount for the preceding year, or (ii) the amount computed according to the books and records for the first 6 months period. The interim tax return should be filed within 2 months from the end of the first 6 months (i.e., end of August for a calendar year company). However, in case where interim CIT payable amount (i.e., a half of previous CIT amount) would be less than KRW 300 thousands, interim CIT should be exempt.

DPD Rule

- Under the CITL, LLC REF is entitled to a DPD benefit under which the dividend distributions are deductible from its taxable income if 90% or more of the distributable income is declared as dividends in a given year. Therefore, where LLC REF declares the dividends in the amount equal to at least the taxable income and provided that the declared dividend is 90% or more of the distributable income, there should not be a substantial CIT burden for the LLC REF.

- The DPD benefit is available even if LLC REF does not have enough cash to pay the dividends declared. However, LLC REF should pay to the competent tax office the withholding tax on the declared dividends by 3 months after the dividend declaration date if such declared dividend is not actually paid to shareholders within the 3 months period. (Note that this is not applicable to Korean corporate shareholders as an LLC REF has no withholding obligations in relation to the dividend payout to Korean entities.)

Corporate Income Tax (CIT)

Thin Capitalisation Rules

- We understand that any borrowings will occur in Korea and secured by the property rather than related party loans or loan guarantees.
- Please note that according to the thin capitalisation rule under the International Tax Coordination Law (ITCL), where a domestic company borrows loans from a foreign controlling shareholder (FCS) or 3rd party loans guaranteed by an FCS and the amount of such loans exceeds 200% of the equity amount invested by such shareholder, the interest expense on the exceeding amount may not be deducted from taxable income of the domestic company for CIT purposes. In addition, the disallowed amount of interest expense arising from loans from the FCS is treated as dividend payments to the controlling shareholders, not as interest payments to the shareholders for withholding tax purposes.
- When applying the thin capitalisation rule, an FCS of a domestic company is defined as one of the following:
  - A foreign shareholder directly or indirectly having at least 50% of the voting shares of the domestic company;
  - A foreign company whose voting shares is at least 50% owned by the foreign shareholder in above (1); or
  - A foreign shareholder who has common interest with the domestic company or who can determine, in substance, significant or whole part of business policy of the domestic company.

Corporate Income Tax (CIT)

Thin Capitalisation Rules (cont'd)

- Under the thin capitalisation rule, the interest expense attributable to the shareholder loan amount exceeding 200% of equity amount invested by the shareholders will be disallowed and added to the taxable income of LLC REF. In addition, such denied interest expense will be viewed as dividends to the beneficial owner of the shareholder loan. This test should be done at each year-end and the conclusion may be subject to change depending on the foreign exchange revaluation of the foreign shareholder loan at year-end.

- Under the CITL, it is unclear whether the disallowed interest expense treated as dividends under the thin capitalisation rule can also be regarded as dividends for DPD rule purposes under the CITL. However, there is an old tax ruling (Beobin-3269, 2008.11.05) stating that the disallowed interest expense treated as dividends under the thin capitalisation rule can also be viewed as dividends by a Project Financing Vehicle (PFV) for DPD rule purposes when the PFV has borrowings from its shareholder. Based on this ruling, it appears that the disallowed interest expense treated as dividends under the thin capitalisation rule could be treated as dividends by LLC REF for DPD rule purposes.

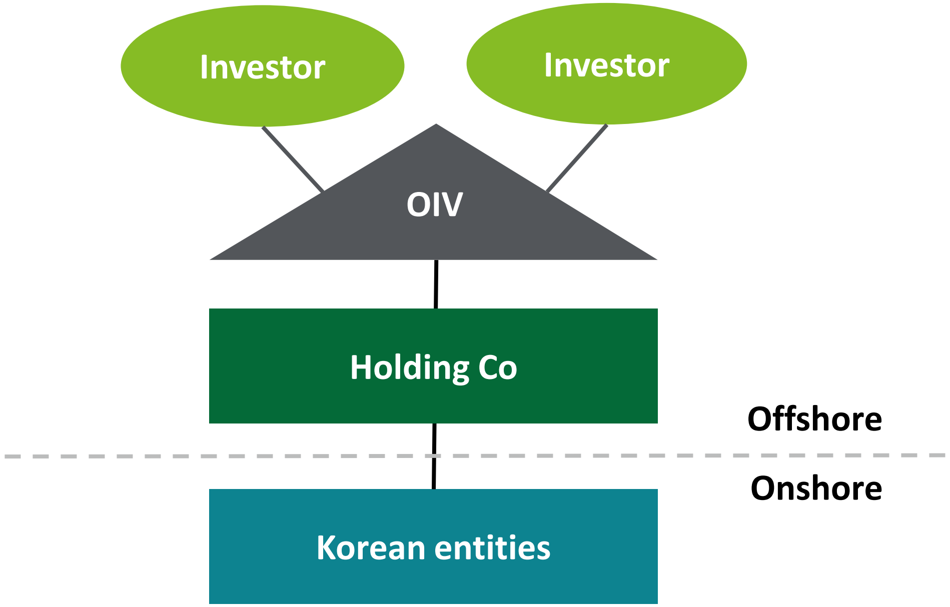
Corporate Income Tax (CIT)

30% interest deduction rule

- The Korean tax law was revised to introduce net interest deduction rule (effective from FY 2019) for the borrowings from FCS which is limited to 30% of the adjusted taxable income. Please note that this rule would not be applicable to the case of 3rd party loans guaranteed by FCS. Further, the excess amount would not be subject to secondary tax adjustment.
- The adjusted taxable income will be calculated by adding depreciation expense on fixed assets and net interest expense to the Korean company's taxable income. In applying the existing thin-cap rule (2:1 ratio) and 30% interest deduction rule, a Korean company should apply the rule which would result in larger denial of interest.

Offshore Investment Vehicle (OIV) regime

OIV regime



Summary of OIV regime

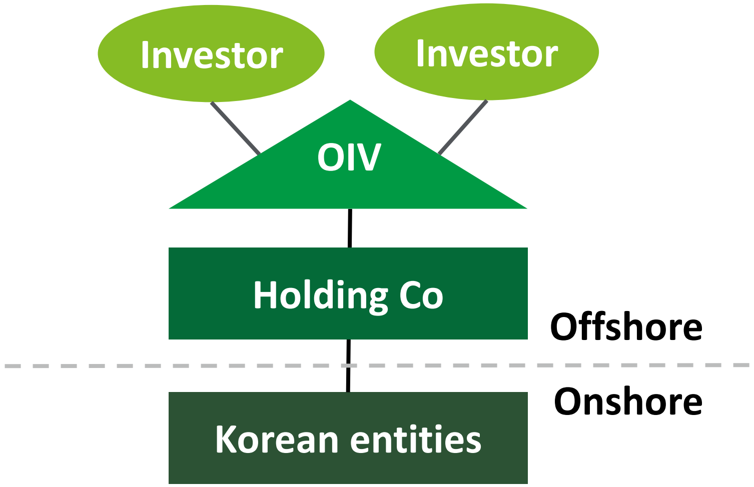
The Korean OIV regime has been in existence for a few years now. Due to recent revisions that clarified the treatment of private equity funds as “flow through” vehicles rather than as beneficial owners themselves, the Korean tax authorities have mostly come to accept the OIV taxation regime in practice.

Most PE funds and other similar investors now mostly model that a blended OIV “flow through” tax rates based on the tax residency of the ultimate investors (LPs) will likely be applicable for Korean investments rather than the tax rate that would be attributable to the fund itself. Note, that if the fund entity is liable to tax in its country of residence and was not set up for tax avoidance, a look-through approach may still apply.

OIV regime

Definition of an OIV

1. An OIV is defined as an organisation that is established outside of Korea where it solicits money from investors and manages the fund by acquiring, disposing of, or investing in valuable assets, including but not limited to purchases and sales of such assets and the distribution of its profits to the investors.
2. Funds generally clearly fall within the definition of an OIV and should therefore not be regarded as the beneficial owners of any income stream.



Exceptions to applying the OIV regime approach

1. If the fund entity is liable to tax in its country of residence and was not set up for tax avoidance, a look-through approach will not apply and instead the fund entity will be regarded as the beneficial owner
2. The fund does not disclose the information of investors. (In such a case, no DTT will apply, i.e., 22% will apply)
3. The fund entity (offshore investment vehicle) is treated as a beneficial owner under the relevant DTT (does not currently exist under the treaty network)

OIV regime

Practical considerations

As such, advanced preparation is necessary and would require the following information such as:

	Required documents
Beneficial Owner (Ultimate LP)	• Application for Reduced Withholding Tax Rate with detailed information such as name, type of entity, address, etc. • **Certificate of Tax Residency (COTR)**
Overseas Investment Vehicle (OIV)	• Report of Overseas Investment Vehicle with accompanying documentation

Given that obtaining a COTR can take time and LPs often are reluctant to provide additional information

Funds targeting Korean investments have begun informing the LPs up front that the documentation will be needed and may collect the information in advance of any OIV filing for dividends, interest or capital gains on exit

More detail requirements to be provided during our Operation Tax Webinar next week.

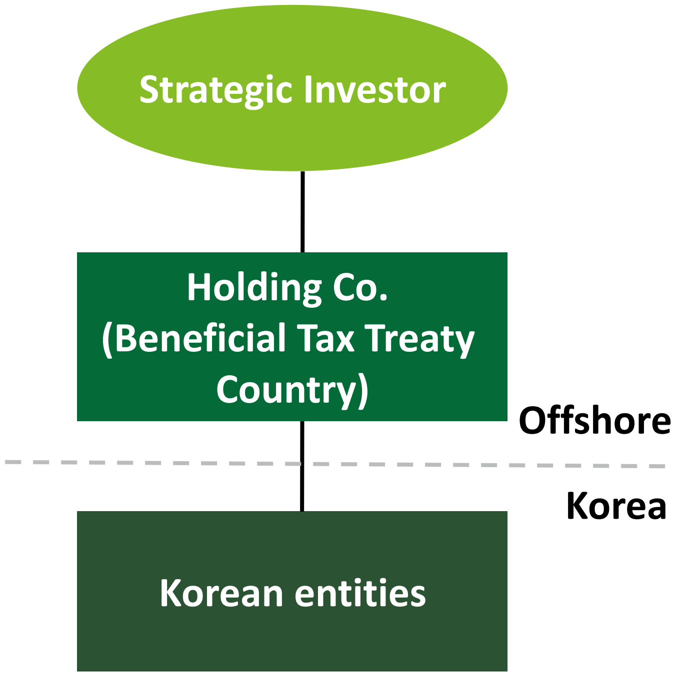
Note: In cases where the documentation is not available at the time of an original filing, an amended filing may be possible but should be stipulated in closing documents (SPA).

Beneficial Ownership/MLI Principle Purpose Test

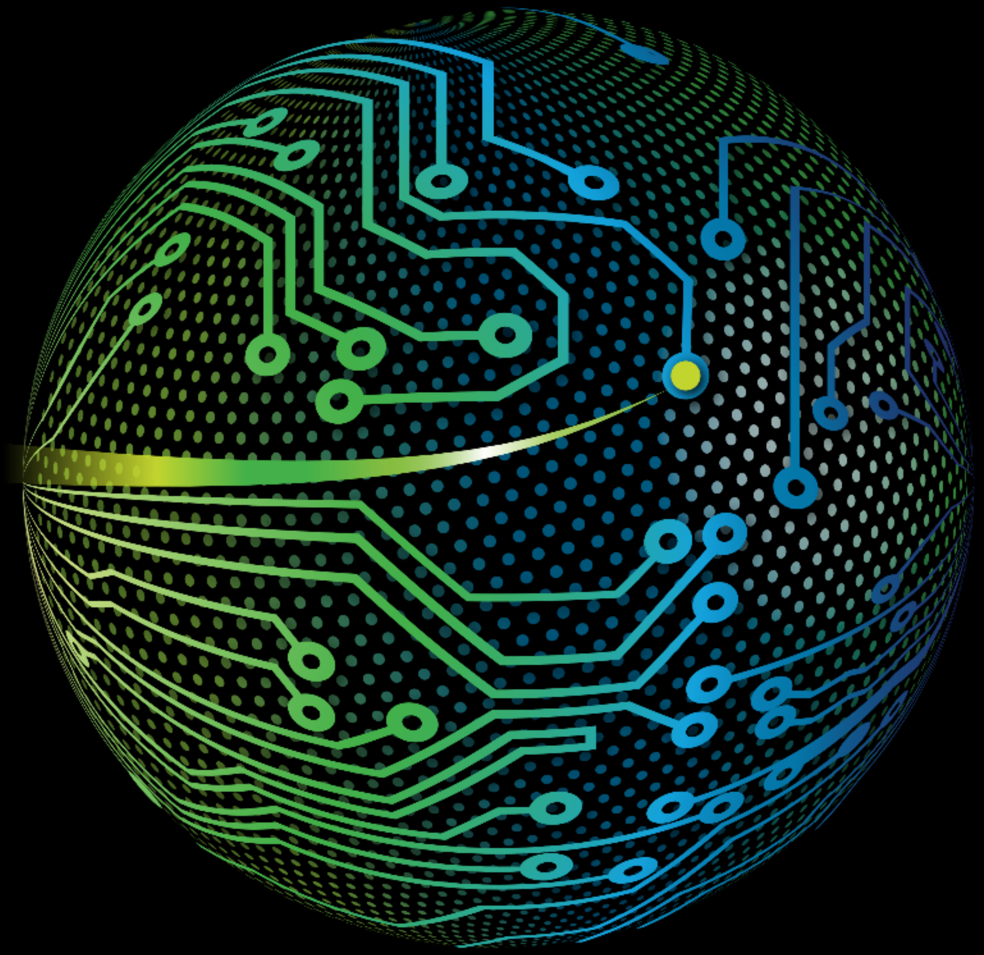
Existing structures/significant substance

- For investments not qualifying for OIV treatment or other strategic investments, the tax authorities continue to focus on beneficial ownership to deny treaty benefits by reviewing the following factors:
  - Business purpose
  - Liable to tax
  - Substance
  - Channeling/Conduit Payments
  - Entity type
  - Tax avoidance intent

- Effective 1 September 1 2020, the Multi-Lateral Instrument (MLI) for Korea entered into force which effectively amends 32 of Korea's CTAs depending on the MLI position of both contracting states.
- While Korea reserved the application of most MLI articles to the CTAs while opting for the application of Article 6, Article 7, Article 16 and Article 17 in certain circumstances, Korea did opt to adopt the principal purpose test or PPT (paragraph 1 of Article 7) which would deny a benefit under a CTA if it is reasonable to conclude under all relevant facts and circumstances that obtaining such benefit was **one** of the principal purposes of any transaction unless granting that benefit would be in accordance with the object and purpose of a CTA.



Singapore



Flowchart—Whether Section 10L of the ITA applies