# Asia region funds passport – the state of tax

## Background

The Asia Region Funds Passport (ARFP) is an initiative among participating countries in the Asia-Pacific region to provide a multilaterally agreed framework to facilitate the cross border distribution of managed fund products across the Asia region. This initiative is expected to benefit participating countries through borderless accessibility to a wider investor pool.

As of 30 June 2016, representatives from Australia, Japan, Korea, New Zealand and Thailand have signed the Memorandum of Cooperation (MoC). The MoC sets out the internationally agreed rules and cooperation mechanisms underpinning the passport.

One of the key concerns and possibly the most challenging roadblock to a successful cross-border initiative is tax neutrality. The desire to achieve a level playing field for fund marketing has to come with tax neutrality (i.e. domestic and foreign funds offered to investors in the same jurisdiction should be subject to similar tax treatments and without any major tax discrimination). Given the diverse local tax regulations in participating economies, achieving alignment on an agreed tax framework is likely to be a challenge. It could also be this reason that a tax framework was notably absent in the MoC.

## Tax analysis

In this regard, EY analysed in each of nine economies the potential tax implications of common domestic fund vehicle or vehicles versus foreign funds which may be marketed in these economies under the ARFP regime. The analysis took into consideration taxation at the following four levels:

1) Fund level
2) Investor level
3) Investment level
4) Fund manager level

Please refer to Appendix A for the analysis. The analysis has been made based on prevailing tax law, practice and regulations in each country. In certain situations, the comments could be speculative where a change in the current legislation (either regulatory or tax or both) may be required to facilitate the fund passporting.

<u>Observations</u>

Based on the preliminary tax analysis carried out across the nine economies, we list down our observations:

1) While there seems to be consensus that the absence of a permanent establishment (PE) created by either the passported fund or the foreign fund manager or both would generally limit adverse tax implications for either the passported fund or foreign fund manager or both, the challenge would be to align the rules and guidelines on what would constitute a PE.

2) There are obvious differences in local tax rules. It is not practical to expect the alignment of tax treatment of funds in different economies under the ARFP regime. Instead, a reasonable task could be alignment within each participating economy of the tax treatment of domestic versus passported funds.

3) In economies in which there are likely to be mismatches in tax treatment between domestic and passported funds, we look forward to the local authorities revisiting and changing the rules to achieve tax neutrality for resident investors.

# Asia region funds passport

Tax summary for key economies as at 12 July 2016

# Australia

| | Domestic fund – managed investment trust[1] | Foreign fund – flow through[2] | Foreign fund – non-flow through[2] |
|---|---|---|---|
| Fund level | Flow through to investors[3] | Flow through to investors[3, 4] | Australian-sourced income (excluding gains not relating to taxable Australian property assets) – subject to tax at normal corporate tax rate[4] |
| Investor level – resident | Individuals – taxed on income and capital gains at marginal tax rates<br><br>Corporates – taxed on income and capital gains at corporate tax rates | Individuals – taxed on income and capital gains at marginal tax rates[5]<br><br>Corporates – taxed on income and capital gains at corporate tax rates[5] | Individuals – taxed on distributions at marginal tax rates[5]<br><br>Corporates – taxed on distributions at corporate tax rates[5] |
| Investor level – nonresident | Individuals and corporates – generally subject to withholding tax on Australian-sourced income and capital gains tax may apply on certain direct or indirect taxable Australian property assets<br><br>Non-Australian-sourced income – no tax. | Individuals and corporates – generally subject to withholding tax on Australian-sourced income[4]<br><br>Non-Australian-sourced income – no tax, provided the fund or the investor does not have a permanent establishment (PE) in Australia | Individuals and corporates – taxed on distributions from Australian-sourced profits[4]<br><br>Where distributions are from non-Australian-sourced profits, no tax if investor does not have a PE in Australia |
| Investment level | Australian-sourced – taxed at investor level or trustee (see above)<br><br>Foreign-sourced – maybe subject to withholding tax at source and investors may qualify for relief for foreign taxes paid | Australian-sourced – taxed at investor level or trustee (see above)<br><br>Foreign-sourced – maybe subject to withholding tax at source | Australian-sourced – maybe subject to Australian withholding tax<br><br>Foreign-sourced – maybe subject to withholding tax at source |
| Fund manager level | Subject to corporate income tax | No tax unless the manager has a PE in Australia | No tax unless the manager has a PE in Australia |

[1] The Government announced on 3 May 2016 the proposed introduction of a new “look through” corporate collective investment vehicles (CIV) regime from 1 July 2017 and limited partnership CIV regime from 1 July 2018.
[2] The entity classification of the offshore fund for Australian tax purposes is important since it determines whether tax is payable at the entity level.
[3] In limited circumstances, tax may be imposed on trustee.
[4] Tax exemption under investment manager regime (IMR) may apply.
[5] This may qualify for relief for foreign taxes paid or companies may be entitled to a non-portfolio foreign equity distribution exemption.
* The above is intended to provide a general reference to the expected Australia tax implications as at the date of this document. The comments are not binding on the respective tax authorities and there can be no assurance that the authorities will not take a position contrary to the above comments. No investment decision should be based solely on the above comments without further analysis. The above does not consider specific exemptions, concessions, specific foreign investment country analysis and accordingly, potential tax treaty reliefs have not been considered.

# Japan

| | Domestic fund | | Foreign fund |
|---|---|---|---|
| | Listed investment corporations (Toushi Houjin (TH) or Japan-REIT, thereafter JREIT) | Investment trusts (Toshi Shintaku (TS)) | |
| Fund level | Subject to national and local taxes on income and capital gains, distributions to investors can be deductible (subject to conditions) | Not subject to tax at fund level | Japan-sourced income and capital gains (depending on the type of investments) – subject to income tax or withholding tax |
| Investor level – resident | Individuals and corporates – taxed on distributions and capital gains | Individuals and corporates – taxed on distributions and capital gains | Individuals and corporates – taxed on distributions and capital gains |
| Investor level – nonresident | Individuals and corporates: Distributions are subject to withholding tax, subject to tax treaty.<br><br>Capital gains are generally exempt as long as the investor does not hold more than 5% of the total shares of JREIT. | Individuals and corporates: Distributions are subject to withholding tax, subject to treaty relief.<br><br>Capital gains derived from TS units are generally exempt. | Individuals and corporates: Distributions are not subject to Japanese withholding tax.<br><br>Capital gains derived from foreign fund units are exempt. |
| Investment level | Japan-sourced – maybe subject to withholding tax on dividends and interest<br><br>Foreign-sourced – maybe subject to withholding tax at source | Japan-sourced – maybe subject to withholding tax on dividends and interest<br><br>Foreign-sourced – maybe subject to withholding tax at source | Japan-sourced – maybe subject to withholding tax on dividends and interest<br><br>Foreign-sourced – maybe subject to withholding tax at source |
| Fund manager level | Subject to corporate tax at a rate depending on the amount of stated capital for 1 April 2016 onwards | Subject to corporate tax at a rate depending on the amount of stated capital for 1 April 2016 onwards | No tax unless the manager has a PE in Japan |

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# Korea

| | Domestic fund – trust | Foreign fund |
|---|---|---|
| Fund level | Flow through to investors | Not subject to tax if no PE in Korea |
| Investor level – resident | Individuals: Income derived and distributed is subject to withholding tax at 15.4% on taxable net asset value (NAV).[1]<br><br>Corporates: Income derived and distributed is subject to marginal corporate tax rate. | Individuals: Income derived and distributed is taxed at 15.4%, except for gains on disposal of shares of company type funds, which are subject to capital gains tax at 22%.<br><br>Corporates: Income derived and distributed is subject to marginal corporate tax rate. |
| Investor level – nonresident | Individuals and corporates – Korean-sourced income and distributions – subject to withholding tax | Individuals and corporates – no tax |
| Investment level | Korean-sourced – taxed at investor level (see above)<br><br>Foreign-sourced – maybe subject to withholding tax at source | Korean-sourced – maybe subject to withholding tax<br><br>Foreign-sourced – maybe subject to withholding tax at source |
| Fund manager level | Subject to corporate tax | No tax unless the manager has a PE in Korea |

[1] Taxable NAV represents the increase or decrease of taxable income (e.g., capital gain or loss arising from the trading of listed shares, foreign exchange translation gain or loss, etc., which shall not be treated as taxable income under the domestic tax rules) post the proportionate cost allocation difference.

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# Malaysia

| | Domestic fund – unit trust | Foreign fund |
|---|---|---|
| Fund level | Subject to corporate income tax but most income received by unit trusts is exempt from tax | Not subject to tax if no PE in Malaysia |
| Investor level – resident | Individuals and corporates – no tax on distributions from unit trusts | Individuals and corporates: Distributions from funds are considered as foreign-sourced income and not subject to tax. |
| Investor level – nonresident | Individuals and corporates – no tax on distributions from unit trusts | Individuals and corporates – no tax on distributions from unit trusts |
| Investment level | Malaysian-sourced, including dividend – no withholding tax at source<br><br>Foreign-sourced – maybe subject to withholding tax at source | Malaysian-sourced dividend – no withholding tax at source<br><br>Other Malaysian-sourced income – maybe subject to withholding tax at source<br><br>Foreign-sourced – maybe subject to withholding tax at source |
| Fund manager level | Subject to corporate income tax | No tax unless the manager has a PE in Malaysia |

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# New Zealand

| | Domestic fund – unit trust as portfolio investment entity (PIE) | Foreign fund |
|---|---|---|
| Fund level | Under the PIE regime, the fund needs to calculate and pay tax on behalf of investors (excluding resident corporates). | Not subject to tax if no PE in New Zealand (NZ). |
| Investor level – resident | Individuals – provided the appropriate amount is paid by the PIE on individual investors' behalf, no further tax on distributions received from the PIE<br><br>Corporates – subject to corporate tax rate on their share of the PIE's taxable income and no further tax on distributions received from the PIE | Individual and corporates – taxed under foreign investment fund (FIF) rules |
| Investor level – nonresident | Individuals and corporates: The PIE shall pay tax on behalf of non-resident investors. There is no further tax on distributions received from the PIE | Individuals and corporates: no tax. |
| Investment level | NZ-sourced – taxed at fund level as proxy for investors (see above)<br><br>Foreign-sourced – maybe subject to withholding tax at source | NZ-sourced – maybe subject to withholding tax<br><br>Foreign-sourced – maybe subject to withholding tax at source |
| Fund manager level | Subject to corporate income tax | No tax unless the manager has a PE in NZ |

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# Philippines

| | Domestic fund – managed investment trust (MIT) | Foreign fund – MIT or undertakings for collective investments in transferable securities (UCITS) |
|---|---|---|
| Fund level | Flow through to investors[1] | For MIT - flow through to investors<br><br>For UCITS – not subject to tax if no PE in Philippines |
| Investor level – resident[2] | Individuals[3] and corporates – subject to applicable final withholding tax (FWT) unless exempt or already subject to withholding tax. | Individuals[3] and corporates – subject to applicable FWT[4] unless exempt or already subject to withholding tax |
| Investor level – nonresident | Individuals and corporates – taxed[4] on Philippine-sourced income<br><br>Preferential tax treaty rates may be availed of subject to the filing of a tax treaty relief application with the tax authorities. | Individuals and corporates – taxed on Philippines-sourced income<br><br>Preferential tax treaty rates may be availed of subject to the filing of a tax treaty relief application with the tax authorities. |
| Investment level | Philippine-sourced – taxed at investor level (see above)<br><br>Foreign-sourced – maybe subject to withholding tax at source | Philippine-sourced – taxed at investor level (see above)<br><br>Foreign-sourced – maybe subject to withholding tax at source |
| Fund manager level | Subject to corporate income tax | No tax unless the manager has a PE in the Philippines |

[1] Tax implications depend on the type of investment and whether the investor is a corporate or individual.
[2] Tax implications for resident investors depend on the kind of investments and whether the investor is a corporate or individual.
[3] Taxation of individual citizen is considered. For resident aliens, similar rules should apply except that they should only be taxed on Philippine-sourced income whilst resident citizens are taxed on a worldwide basis.
[4] The rate of FWT differs depending on the profile of the investors (e.g. whether resident or non-resident citizen or alien, etc.).
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# Taiwan

| | Domestic fund – securities investment trust fund | Foreign fund – UCITS |
|---|---|---|
| Fund level | Flow through to investors | No tax if no Taiwan-sourced income |
| Investor level – resident | Individuals – taxed on distributions at progressive tax rates and capital gains from disposal of unit trusts are generally exempt<br><br>Corporates – subject to corporate tax on distributions and alternative minimum tax on gains on disposal of units | Individuals – subject to alternative minimum tax on distributions and capital gains from disposal of the units<br><br>Corporates – subject to corporate tax on distributions and gains on disposal of units |
| Investor level – nonresident | Individuals and corporates – subject to withholding tax at source on distributions | Individuals and corporates – no tax |
| Investment level | Taiwan-sourced – taxed at investor level (see above)<br><br>Foreign-sourced – maybe subject to withholding tax at source | Taiwan-sourced – Security capital gain tax exempted. Taxable on income via withholding tax at source. Income derived from other transactions than Taiwan listed equity trades (ex. bond interest, stock lending income, roll-over of foreign exchange forward, derivatives, etc.) would trigger income tax return filing requirements.<br><br>Foreign-sourced – maybe subject to withholding tax at source |
| Fund manager level | Subject to corporate income tax | No tax if the manager has no Taiwan-sourced income |

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# Thailand

| | Domestic fund – mutual fund | Foreign fund |
|---|---|---|
| Fund level | Flow through to investors | Not subject to tax if no PE in Thailand |
| Investor level – resident | Individuals and corporates – subject to tax at applicable rates. | Individuals – taxed on income remitted to Thailand<br><br>Corporates – subject to corporate tax at applicable rate |
| Investor level - nonresident | Individuals and corporates – no tax. | Individuals and corporates – no tax |
| Investment level | Thailand-sourced – taxed at investor level (see above)<br><br>Foreign-sourced – maybe subject to withholding tax at source | Thailand-sourced – maybe subject to withholding tax<br><br>Foreign-sourced – maybe subject to withholding tax at source |
| Fund manager level | Subject to corporate income tax | No tax unless the manager has a PE in Thailand |

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# Singapore

| | Domestic fund – designated unit trust (DUT) | Domestic fund – enhanced-tier trust fund (ETTF) | Foreign fund |
|---|---|---|---|
| Fund level | Generally flow through to investors | Subject to tax but exempt on qualifying income | Not subject to tax if no PE in Singapore |
| Investor level – resident | Individuals – no tax<br><br>Corporates – taxed on distributions (except for income taxed at DUT level) and gains on disposal if revenue in nature | Individuals – no tax<br><br>Corporates – no tax on distributions but taxed on gains on disposal if revenue in nature | Individuals – no tax<br><br>Corporates – no tax on foreign sourced income unless remitted into Singapore and revenue in nature |
| Investor level - nonresident | Individuals and corporates – no tax | Individuals and corporates – no tax | Individuals and corporates – no tax |
| Investment level | Singapore-sourced – taxed at investor level (see above)<br><br>Foreign-sourced – maybe subject to withholding tax at source | Singapore-sourced – taxed at fund level (see above)<br><br>Foreign-sourced – maybe subject to withholding tax at source | Singapore-sourced – maybe subject to withholding tax<br><br>Foreign-sourced – maybe subject to withholding tax at source |
| Fund manager level | Subject to corporate income tax | Subject to corporate income tax | No tax unless the manager has a PE in Singapore |

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None.



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