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***Lee Green's 30<sup>th</sup> Anniversary Celebration***

Lee Green commenced in 1989 and will be celebrating its 30th Anniversary at an event being held in Adelaide on Saturday November 2nd. This is the weekend following the RBI Conference in Sydney and

we invite all our colleagues from the APAC region who are able to be in Adelaide on that day to come and help us celebrate.

If you are able to attend, please RSVP to Tom Green (Tom@leegreen.com.au) or Michael Sweeney

(MichaelS@leegreen.com.au) to reserve your place.

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As another financial year comes to a close in Australia, it is interesting to take a few moments and reflect on the previous rollercoaster 6 months we have had in both the Australian economy and Federal politics.

A quick snap shot of the key economic indicators as released by the RBA as of 7 May 2019 are as follows:

- Official cash rate 1.5% although the RBA announced a reduction of 0.25 on 4 June bring the rate to a historic low of 1.25%
- Inflation – 1.3%
- Australia’s economic growth – 2.3% (although only a quarterly change of 0.4% as of March 2019)
- G7 (Canada, France, Germany, Italy, Japan, UK and US) GDP growth rate – 1.8%
- Unemployment rate – 5.0% (5.1% as of April)
- Employment growth – 2.4%
- Wage growth – 2.3%
- AUD to USD – \$0.70
- Current population 25,396,680

The last 6 months have seen a volatile share market where the All Ordinaries Index

increased from about 5,500 in December 2018 to about 6,600 in May 2019, which is currently 6,461 at the time of writing. The major banks appear to have led the charge despite the Banking Royal Commission.

The March 2019 quarter has seen the largest goods and services surplus on record at \$13.6bn which has helped decrease Australia’s current account deficit (in seasonally adjusted terms) by \$3.4bn to be \$2.9bn. Large export growth has been driven by rising prices for metal ores and minerals.

Australia’s net foreign debt liability position currently sits at \$1,099.5bn, although our net foreign equity asset position increased to be \$133.3bn at 31 March 2019.

The reduction to the official cash rate is the first rate cut since August 2016 as the RBA tries to head off a further slowing of the economy which would further threaten higher unemployment and keep inflation lower for longer. There is a good deal of economic commentary that expects a further rate cut in August 2019, and if not another before Christmas with possible further cuts throughout 2020. Whether

these rate cuts will be enough to stimulate a slowing economy to the extent needed remains to be seen. The biggest question for borrowers is whether the banks will pass on all or some of the rate cuts.

Falling house prices, particularly across Melbourne and Sydney, has perhaps made buying a home a little easier for those who have been able to access funding under more stringent lending criteria following the Royal Commission. And finally, no change in Federal Government (regardless of your political persuasion) has perhaps provided the majority of small business, retirees and investment property owners with some relief and certainty (at least for the next 3 years) as to the impact on their tax and investment structures and planning they have already invested and committed to.

There is a mix of good and bad and concern and ongoing volatility in all of the above. An interesting time for a newly elected Government to practice what it preaches regarding economic management. A projected budget surplus for 2019 doesn’t hurt, but how much and for how long are the ongoing questions

*“Large export growth has been driven by rising prices for metal ores and minerals.”*

## AUSTRALIA

(Continued)

that will plague the Government, Treasury and the RBA with ongoing projections to manage Australia's key economic fundamentals. What will the next 6 months hold? Time of course will only tell. It would appear, however, that slow wages growth, a slowing economy and reduced savings are all

contributing to some of the concerns. The 'R' word (recession) isn't being used much just at the moment, and with over 25 years of annual growth, Australia can still be said to be the lucky country.

## CHINA'S NEW IIT RULES FOR EXPATRIATES

## CHINA



Russell Bedford  
taking you further

China's new Individual Income Tax (IIT) Law became effective at the beginning of 2019, with milestone significance. It was reported that the total IIT decreased by 30.7% year-on-year in the first five months.

To provide further clarity on the IIT treatments for non-PRC-domiciled individuals under the new IIT Law and its Implementation Rules, the Ministry of Finance (MOF) and the State Administration of Taxation (SAT) jointly issued two new public notices regarding the "Determination of Duration of Residency for Individuals Without Domicile Inside the PRC" (Public Notice 2019 No. 34) and the "Determination of Source of Income, Taxable Income and Tax Liability for Individuals Without Domicile

Inside the PRC" (Public Notice 2019 No. 35). The rules were promulgated on 14 March 2019 and have taken effect nationwide retrospectively from 1 January 2019.

Public Notice 2019 No. 34 relaxes the tax exemption period for non-PRC-domiciled individuals. Under the new IIT law and its Implementation Rules, a non-PRC-domiciled individual who spent 183 days or more in a given tax year (Qualified Year) in the PRC will be considered a PRC tax resident. However, as long as such non-PRC-domiciled individual is present in the PRC for not more than six (previously five) consecutive Qualified Years, his/her income sourced from offshore and not paid or borne by any PRC entities will

not be subject to PRC IIT. This six-year period shall be deemed broken if the non-PRC-domiciled individual, in any Qualified Year, has a single trip of over 30 days outside the PRC. According to the Notice, consecutive years of residence shall be calculated from 1 January 2019, and the years before 2019 will no longer be included in the calculation. The Notice also provides guidelines for determining one full day that a non-PRC-domiciled individual spends in the PRC. The new rule is that a non-PRC-domiciled individual will be deemed to have stayed for one day in the PRC only if he/she is physically present in the PRC for 24 hours on that day. This differs from the old rule, under which, part of a day (less than 24 hours)

*"...a non-PRC-domiciled individual will be deemed to have stayed for one day in the PRC only if he/she is physically present in the PRC for 24 hours ..."*

## CHINA

(Continued)

will be counted as one day for calculating the number of days he/she stayed in the PRC.

Public Notice 2019 No. 35 provides further guidance on determination of China-sourced income and calculation of PRC IIT of non-PRC-domiciled individuals. It provides that China-sourced income is the income derived by the

individual during the actual course of working (the number of working days) in PRC and PRC IIT payable will then be calculated based on such China-sourced income. To some extent, Public Notice 2019 No. 35 abandoned the judgment of whether an expatriate has "domicile" or not, and adopted a more objective and

quantifiable "days of stay" standard to determine the tax obligations of non-resident individuals and non-PRC-domiciled individuals.

The following table summarises the IIT obligation of non-PRC-domiciled individuals under different scenarios:

| Accumulative days spent in PRC   | Income derived during period of working in PRC |                                     | Income derived during period of working outside of PRC |                                     |
|--|--|-------------------------------------|--|-------------------------------------|
|  | Paid or borne by domestic employers            | Paid or borne by overseas employers | Paid or borne by domestic employers                    | Paid or borne by overseas employers |
| No more than 90 days in a tax year (ordinary persons)                            | Yes  | No                                  | No   | No                                  |
| No more than 90 days in a tax year (senior management)                           | Yes  | No                                  | Yes  | No                                  |
| More than 90 days but less than 183 days in a tax year (ordinary persons)        | Yes  | Yes                                 | No   | No                                  |
| More than 90 days but less than 183 days in a tax year (senior management)       | Yes  | Yes                                 | Yes  | No                                  |
| Less than six consecutive years of each more than 183 days of residence in China | Yes  | Yes                                 | Yes  | No                                  |
| After six consecutive years of each more than 183 days of residence in China     | Yes  | Yes                                 | Yes  | Yes                                 |

*"...China-sourced income is the income derived by the individual during the actual course of working... in PRC ..."*

At the same time, MOF and SAT jointly issued "Notice on Preferential Policies of Individual Income Tax in the Greater Bay Area of Guangdong, Hong Kong and Macao" (Caishui [2019] No. 31).

According to the Notice, Guangdong Province and Shenzhen city shall provide subsidies to high-end talents and talents of shortage from overseas (including those from Hong Kong, Macao and

Taiwan) working in the Greater Bay Area, based on the difference of IIT burdens between the Mainland and Hong Kong and the subsidy is exempted from IIT.

## HONG KONG AND CAMBODIA SIGN TAX PACT



Due to the US-China trade war, many businesses in Hong Kong and the Asia-Pacific region are looking at relocating their manufacturing bases from China to less tariff costly jurisdictions in Southeast Asia like Cambodia.

On June 26, 2019, The Hong Kong Inland Revenue Department announced that the Secretary of Financial Services and the Treasury, Mr. James Lau, on behalf of the Hong Kong Special Administrative Region Government, signed a comprehensive avoidance of double taxation agreement (CDTA) with Cambodia that same day.

This agreement will promote further bilateral investment and trade between the two jurisdictions.

The CDTA with Cambodia will be the 41st agreement that Hong Kong has signed with its trading partners. This agreement sets out the allocation of taxing rights between the two jurisdictions and will help investors better assess their potential tax liabilities from cross-border economic activities.

Mr. Lau said, "Cambodia was Hong Kong's 38th

largest trading partner in 2018. We have all along treasured our economic and trade ties with Cambodia and I have every confidence that this agreement will encourage more bilateral investments and bring our co-operation to a new level."

The Hong Kong-Cambodia CDTA will prevent double taxation. Any tax paid in Cambodia by Hong Kong companies in accordance with the CDTA will be allowed as a credit against the tax payable in Hong Kong on the same income, however, subject to the provisions of the tax laws of Hong Kong, if any. Similarly, the tax paid in Hong Kong by Cambodian companies will be allowed as a deduction from the tax payable on the same income in Cambodia.

The Hong Kong-Cambodia CDTA also provides the following tax relief arrangements:

- (a) Cambodia's withholding tax rates for Hong Kong residents on dividends, interest, royalties, and fees for technical services will be reduced from the current level of 14 percent to 10

percent;

- (b) Hong Kong airlines operating flights to and from Cambodia will be taxed at Hong Kong's corporation tax rate, instead of being subject to tax on income in Cambodia; and
- (c) Hong Kong residents deriving profits from international shipping transport in Cambodia will enjoy a 50 percent reduction in tax on income in Cambodia in respect to the profits subject to tax there.

The Hong Kong-Cambodia CDTA has also incorporated an article on exchange of information between the two countries. This will enable Hong Kong to fulfil its international obligations on enhancing tax transparency and help the respective tax authorities track down any acts of tax evasion.

The Hong Kong-Cambodia CDTA will come into force after the completion of ratification procedures by both jurisdictions. In the case of Hong Kong, it will be implemented by way of

*"...will promote further bilateral investment and trade between the two jurisdictions ..."*

## HONG KONG

(Continued)

an order to be made by the Chief Executive in Council under the Inland Revenue Ordinance. The order is subject to negative vetting by the Legislative Council.

As Hong Kong is continuing to negotiate with trading and investment partners to expand its Comprehensive Double Taxation Agreement

network, it will be interesting to see which country will be next.

## MALAYSIA



### TAXATION OF ELECTRONIC COMMERCE

Taxation of digital businesses has always been an issue of concern for the taxman especially on how income derived from e-commerce is to be taxed and which jurisdiction has the right to tax the income. With these challenges, the Inland Revenue Board of Malaysia (“IRBM”) has introduced the Taxation of Electronic Commerce Transactions guidelines to provide guidance on income tax treatment in respect of such transactions.

E-commerce transaction has been defined in the

guidelines as *“any sale or purchase of goods or services, conducted over any networks by methods specifically designed for the purpose of receiving or placing of orders. The goods services are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted on-line. An e-commerce transaction can be between enterprises, households, individuals, governments and other private organisations.”*

Some of the common e-commerce business models are online trading/service

providers, apps store, online advertising, cloud computing, payment services and digital currency/token.

In Malaysia, there are no specific provisions under the Income Tax Act 1967 governing the e-commerce transactions. Generally, the IRBM adopts the principle of neutrality where both the e-commerce transactions and conventional transactions are subjected to the same tax treatment i.e. income tax is imposed on the income of any person accruing in or derived

*“...both the e-commerce transactions and conventional transactions are subjected to the same tax treatment ...”*

**(Continued)**

from Malaysia. Therefore, for e-commerce transactions, income is deemed derived from Malaysia if it is associated with any activities in Malaysia regardless of whether that income is received in Malaysia or

otherwise. The derivation of income provision also applies to a non-resident person who derives income from e-commerce transactions in relation to special classes of income and royalty. Such income of

non-resident person is subject to tax in Malaysia through the withholding tax mechanism.

| Type of income to a non-resident person | Description  | Examples   |
|---|--|--|
| <b>Special classes of income</b>        | Any amount paid in consideration of advice given, or assistance or services rendered in connection with the management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme in relation to e-commerce transactions  | <ul style="list-style-type: none"> <li>• Transaction fee for every successful sale if such services by the non-resident person are performed in Malaysia</li> </ul>  |
| <b>Royalty</b>                          | Any amount paid for the use of or the right to use of software, any transmission through satellite, payment in respect of total or partial forbearance, the use of or the right to use of know-how or information concerning technical, industrial, commercial or scientific knowledge, experience or skill and the use or the right to use licenses with regard to some or all of the part of the radio frequency spectrum. | <ul style="list-style-type: none"> <li>• Fee for the use of a social media platform which allows the payer to create its own advertisement campaign e.g. Facebook and Google</li> <li>• Licensing fee for use of software (e.g. accounting software)</li> <li>• Subscription fee for the use of an online selling platform.</li> </ul> |

*" ... income is deemed derived from Malaysia if it is associated with any activities in Malaysia regardless of whether that income is received in Malaysia ..."*



In August 2018, the Monetary Authority of Singapore (“MAS”) accepted all the recommendations by the Singapore Corporate Governance Council (“Council”) and issued the revised Singapore Code of Corporate Governance (“Code”) to encourage companies to innovate, grow and strengthen investor confidence in our capital markets. SGX Listing Rules (Mainboard and Catalist) (“SGX LR”) has also been amended by Singapore Exchange (“SGX”) to clarify the

expectations under comply-or-explain regime to ensure that companies provide meaningful disclosures to their stakeholders.

This fact sheet provides a summary of the salient changes to assist Singapore public-listed companies in identifying key areas where they may be impacted.

*When will the Code be effective?*

Annual reports covering financial years commencing from 1

January 2019. A longer transition period of 3 years will be provided for changes in the SGX LR relating to the composition of Board of Directors (“Board”), in order to provide public-listed companies in Singapore with more time to make Board composition changes.

*To what extent are the changes mandatory to be implemented?*

*“ ... to encourage companies to innovate, grow and strengthen investor confidence in our capital markets ...”*

| Mandatory   | Comply-or-Explain regime  |   | Non-mandatory   |
|---|---|---|---|
| <p><b>Shifting important requirements or baseline market practices of the Code to SGX LR for those require mandatory compliance such as:</b></p> <ul style="list-style-type: none"> <li>9-year rule for independent directors (“IDs”): Two-tier shareholders’ vote by                             <ol style="list-style-type: none"> <li>all shareholders; and</li> <li>all shareholders excluding directors/CEO (and associates)</li> </ol> </li> <li>At least one-third of board to comprise IDs</li> </ul> | <p><b>Core Principles</b></p> <p>Over-arching and non-disputable statements which embody the fundamentals of good corporate governance are expected to be complied with</p> | <p><b>Core Provisions</b></p> <p>Actionable steps guiding compliance with substance of the Principles</p> | <p>Practice Guidance and best practice examples to the Code</p> |

*What are the key changes to the Code?*

| Changes to              | The Code  | SGX LR  |
|-------------------------|---|---|
| <b>1. Board Matters</b> | <ul style="list-style-type: none"> <li>• IDs to make up a majority of the Board where the Chairman is not independent</li> <li>• Non-Executive Directors (“NEDs”) to make up a majority of the Board</li> <li>• Chairman and Chief Executive Officer (“CEO”) are separate persons to ensure appropriate balance of power, increased accountability, and greater capacity of the Board for independent decision making</li> <li>• Definition of Chairman independent to include close family ties between he/she with the CEO (i.e. a familial relationship between two parties which extends beyond immediate family members and could influence the impartiality of the Chairman) as determined by the Nominating Committee</li> <li>• Disclosure of Board diversity policy and progress made towards implementing the Board diversity policy, including objectives, in the Company’s annual report</li> <li>• The Board to put in place an appropriate culture, values and ethical standards of conduct at all levels of the Company, and to set the right tone from the top</li> </ul> | <ul style="list-style-type: none"> <li>• Amended shareholding threshold in relation to determining director independence to be revised from 10% to 5%</li> <li>• Subject to appointment of IDs who have served beyond 9-year to a two-tier shareholders’ vote to be approved by the majority of,               <ul style="list-style-type: none"> <li>i. all shareholders; and</li> <li>ii. all shareholders excluding directors/CEO (and associates)</li> </ul> </li> <li>• Subject director to core tests of independence: -               <ul style="list-style-type: none"> <li>i. Director employed by the Company or its related corporations during past 3 years</li> <li>ii. Director’s family member employed by the Company or its related corporations during past 3 years</li> </ul> </li> <li>• At least 1/3 of the Board are IDs</li> <li>• Disclose whether Chairman and CEO are related</li> <li>• Establishment of Nominating Committee (“NC”), Audit Committee (“AC”) and Remuneration Committee (“RC”) with Terms of Reference (“ToR”)</li> <li>• Disclosure of names of NC, AC and RC, and their respective ToR, authority and activities</li> <li>• Disclosure of key information about the directors (appointment or re-appointment)</li> <li>• Amended to require directors whom do not have prior experience of a public-listed company, are mandated to go through training</li> </ul> |

(Continued)

*“...to put in place an appropriate culture, values and ethical standards of conduct at all levels of the Company, ...”*

(Continued)

*"...discloses, and clearly communicates to employees, the existence of a whistle-blowing policy and procedures for raising concerns..."*



| Changes to                         | The Code  | SGX LR  |
|------------------------------------|---|---|
| 2. <b>Remuneration Matters</b>     | <ul style="list-style-type: none"> <li>• Disclosure of link between directors' remuneration and value creation</li> <li>• Increases the disclosure threshold for remuneration bands to no wider than S\$100,000 from S\$50,000 previously for employees who are substantial shareholders of the Company, or are immediate family members of a director, the CEO or substantial shareholder of the Company, in the annual report</li> </ul>  |   |
| 3. <b>Accountability and Audit</b> | <b>Audit Committee ("AC")</b> <ul style="list-style-type: none"> <li>• Publicly discloses, and clearly communicates to employees, the existence of a whistle-blowing policy and procedures for raising concerns about possible improprieties in financial reporting or other matters safely for independent investigation and appropriate follow up</li> <li>• Review the adequacy, effectiveness, independence, scope and results of External Audit ("EA") and Internal Audit ("IA") functions</li> <li>• AC does not comprise former partners or directors of the Company's existing auditing firm or auditing corporation: (a) within a period of two years commencing on the date of their ceasing to be a partner of the auditing firm or director of the auditing corporation; and in any case, (b) for as long as they have any financial interest in the auditing firm or auditing corporation</li> </ul> | <b>Audit Committee ("AC")</b> <ul style="list-style-type: none"> <li>• Establish independent and adequately resourced IA function</li> </ul>  |
|                                    | <b>Risk Management and Internal Controls</b> <ul style="list-style-type: none"> <li>• Disclosure of the assurance obtained from CEO and other key management personnel on the adequacy and effectiveness of the Company's risk management and internal control systems</li> </ul>   | <b>Risk Management and Internal Controls</b> <ul style="list-style-type: none"> <li>• Disclosure of material weaknesses</li> <li>• Disclosure of the Board's comment on the adequacy and effectiveness of risk management and internal control systems</li> </ul> |

**(Continued)**

*“ Maintain current corporate website to communicate and engage with stakeholders”*

| Changes to  | The Code  | SGX LR   |
|---|---|--|
| <p><b>4. Managing Stakeholders Relationships and Engagement</b></p> | <ul style="list-style-type: none"> <li>• Disclosure of directors' attendance at general meetings of shareholders in the Company's annual report</li> <li>• Publish the Company's minutes of general meetings of shareholders on its corporate website as soon as practicable</li> <li>• Establish and communicate dividend policy to shareholders</li> <li>• Arrangement is put in place to identify, engage and manage relationship with material stakeholder groups</li> <li>• Disclosure of the Company's strategy and key areas of focus in the management of stakeholder relationships in its annual report</li> <li>• Maintain current corporate website to communicate and engage with stakeholders</li> </ul> | <ul style="list-style-type: none"> <li>• Expressly disclose reason for not declaring dividend together with the announcement of the financial statements of the Company</li> </ul> |

### Disclaimer

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

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