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**Study on the ASEAN Interest
Withholding Tax Structure**

Final Report (Output 4B)

Presented to WG-AFT in Bangkok on 7 March 2019



ABSTRACT

With a view to furthering the economic policy objectives outlined in the ASEAN Economic Community Blueprint 2025, the Working Group of the ASEAN Forum on Taxation resolved to comprehensively consider the economic and strategic benefits of enhancing ASEAN Member States' integration in the context of withholding tax policy, specifically with a view to promoting the broadening of the investor base in ASEAN debt issuance.

To that end, and at the request of WG-AFT, Deloitte has completed a detailed study of the potential economic and strategic benefits of such integration.

This Report documents the aforementioned study. It considers the current state of the ASEAN debt capital markets and analyses the current withholding tax structure within the Community; it then goes on to identify factors that affect debt investment volumes, and also identifies and recommends measures and policy enhancements that may increase access to funding to help stimulate regional economic productivity.

This Report is presented to WG-AFT on behalf of ASEAN for detailed consideration, and with a view to assisting and furthering the objectives outlined in the AEC Blueprint 2025.

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ACKNOWLEDGEMENTS

Matthew Lovatt	Senior Manager Deloitte Singapore	Author and Project Team Leader
Michael Velten	Partner and Head of APAC Financial Services Tax Deloitte Singapore	Project oversight
Ric Simes	Consultant Deloitte Access Economics Sydney	Economics team leader
Sara Ma	Associate Director Deloitte Access Economics Melbourne	Economic modelling and analysis team manager and author of Part F of this Report
John O'Mahony	Partner Deloitte Access Economics Sydney	Oversight of economic analysis
Christine Ma	Senior Analyst Deloitte Access Economics Canberra	Economic modelling and analysis
Helena Luo	Analyst Deloitte Access Economics Sydney	Economic modelling and analysis

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PART A: INTRODUCTION

A.1	Background to the Study	3
A.2	Terms of Reference	4
A.3	Methodology	5
A.4	Structure of this Report	6
A.5	Scope and assumptions	7
A.6	Status of Recommendations	7
A.7	Glossary	8

PART B: EXECUTIVE SUMMARY

B.1	Overview	15
B.2	Member State-by-Member Analysis	15
B.3	Comparative Analysis	16
B.4	Economic Impact Analysis	17
B.5	Best Practices and Proposed Legal and Policy Infrastructure	17
B.6	Recommendations derived from the Study	18
B.7	Suggested next steps	19

PART C: ACCESS TO DEBT FINANCE AND REVIEW OF THE INTEREST WHT STRUCTURE BY MEMBER STATE

C.1	Overview	23
C.2	Brunei Darussalam	23
C.3	Cambodia	26
C.4	Indonesia	29
C.5	Laos	32
C.6	Malaysia	35
C.7	Myanmar	39
C.8	Philippines	42
C.9	Singapore	45
C.10	Thailand	48
C.11	Vietnam	51
C.12	Consolidated overview of the intra-Community treaty network	54
C.13	Conclusions	55

PART D: COMPARATIVE ANALYSIS OF THE COUNTRY SURVEY RESPONSES

D.1	Overview	61
D.2	Incidence of debt financing	61
D.3	Present level of development of local debt capital markets	61

D.4	Impact of regulatory factors	62
D.5	Local ownership restrictions	62
D.6	Impact of incentive regimes	63
D.7	Impact of form and documentation	64
D.8	Domestic tax policy factors	65
D.9	International tax policy factors	67
D.10	Administrative processes	69
D.11	Tax collection indicators	70
D.12	Conclusions	70

PART E: ADDITIONAL STAKEHOLDER INPUT

E.1	Business Survey responses	75
E.2	Advisor Survey responses	76

PART F: ECONOMIC ANALYSIS OF POLICY CHANGE

F.1	Role of foreign debt in investment in the economy	79
F.2	Potential effects of interest WHT	83
F.3	Approach to the economic modelling	87
F.4	Stylised impacts of improving tax refund procedures	90
F.5	Conclusions	95

PART G: SYNTHESIS AND CONSIDERATION OF BEST PRACTICES

G.1	Overview	99
G.2	Learnings from Europe: Background	99
G.3	Learnings from Europe: Recommendations	101
G.4	Best practices	103
G.5	Legal and policy infrastructure	109

PART H: RECOMMENDATIONS

H.1	Core Recommendations	117
H.2	Additional Recommendations	118
H.3	Status of Recommendations and suggested next steps	118

PART I: EVALUATION

I.1	Overview	121
I.2	Scope of the Study	121

I.3	Methodology	122
I.4	Business Survey	123
I.5	Additional recommendations	123

PART J: BIBLIOGRAPHY

J.1	Legislation and regulations	127
J.2	Books	127
J.3	Journals	127
J.4	Reports	128
J.5	Articles	130
J.6	Databases and datasets	130
J.7	Other sources	131

PART K: ABOUT DELOITTE

K.1	Deloitte	135
K.2	About Deloitte Asia Pacific	135
K.3	About Deloitte Singapore	135
K.4	About Deloitte Access Economics	135

APPENDIX 1:	COUNTRY SURVEY, FORM OF QUESTIONNAIRE	139
APPENDIX 2:	COUNTRY SURVEY, CONSOLIDATED AND ENRICHED RESPONSES	151
APPENDIX 3:	BUSINESS SURVEY, FORM OF QUESTIONNAIRE	161
APPENDIX 4:	BUSINESS SURVEY: ANONYMISED RESPONSES	165
APPENDIX 5:	INTEREST WHT TABLES	175
APPENDIX 6:	COMPUTABLE GENERAL EQUILIBRIUM MODELLING	181
APPENDIX 7:	PROPOSED IMPLEMENTATION SCHEDULE	187

INDEX OF TABLES AND FIGURES

Chart C.2.9: Overview of Brunei interest WHT rates _____	25
Chart C.3.8: Overview of Cambodia interest WHT rates _____	28
Chart C.4.8: Overview of Indonesia interest WHT rates _____	31
Chart C.5.6: Overview of Laos interest WHT rates _____	34
Chart C.6.9: Overview of Malaysia interest WHT rates _____	38
Chart C.7.6: Overview of Myanmar interest WHT rates _____	41
Chart C.8.7: Overview of Philippines interest WHT rates _____	44
Chart C.9.7: Overview of Singapore interest WHT rates _____	47
Chart C.10.8: Overview of Thailand interest WHT rates _____	50
Chart C.11.8: Overview of Vietnam interest WHT rates _____	53
Figure C.12.2: Graphic depiction of the ASEAN tax treaty network _____	55
Chart F.1.4: External debt in ASEAN Member States in 2016 _____	80
Chart F.1.7: External debt as a proportion of GDP in middle-income, developing and/or ASEAN countries in 2016 _____	81
Chart F.1.9: Inbound FDI from ASEAN Member States and non-ASEAN countries in 2017 _____	82
Table F.1.9: Bilateral flows of FDI between Member States in 2017 _____	82
Figure F.2.1: Stylised example of foreign debt investment and interest WHT payment in the context of debt securities _____	84
Table F.3.3: Dimensioning the economic modelling of improved tax refund processes _____	88
Table F.3.7: Direct economic benefits (inputs into the CGE model), in 2019 terms _____	90
Chart F.4.4: GDP impacts over time from improved tax refund procedures in ASEAN-6 economies (left-hand legend: USD millions; right-hand legend: % of GDP) _____	91
Chart F.4.5: Employment impacts over time from improved tax refund procedures in ASEAN-6 economies (left-hand legend: FTE jobs; right-hand legend: % of national workforce) _____	92
Chart F.4.6: Impact on industry output over time from improved tax refund procedures in six ASEAN economies (% of industry output) _____	93
Chart F.4.9: Individual country GDP impacts over time from improved tax refund procedures (% of GDP) _____	94
Chart F.4.10: Individual country employment impacts over time from improved tax refund procedures (% of national workforce) _____	95
Table Appendix 5(1): Payments of interest on vanilla debt to sovereign recipients _____	175
Table Appendix 5(2): Payments of interest on vanilla debt to financial institution recipients _____	176
Table Appendix 5(3): Payments of interest on vanilla debt to corporate recipients _____	177
Table Appendix 5(4): Payments of interest on public debt to all recipients _____	178

Deloitte. PART A: INTRODUCTION



PART A: INTRODUCTION

A.1 Background to the Study¹

A.1.1 The AEC Blueprint 2025 was adopted by the ASEAN Leaders at the 27th ASEAN Summit on 22 November 2015 in Kuala Lumpur, Malaysia. The blueprint comprises five interrelated and mutually reinforcing characteristics, namely:

- (I) A highly integrated and cohesive economy.
- (II) A competitive, innovative, and dynamic ASEAN.
- (III) Enhanced connectivity and sectoral co-operation.
- (IV) A resilient, inclusive, people-oriented, and people-centric ASEAN.
- (V) A global ASEAN.

A.1.2 Tax co-operation serves as one of the key elements of characteristic (II) of the blueprint, to support regional competitiveness in ASEAN by addressing the issue of fiscal barriers. The ASEAN Member States have committed to undertaking several ongoing and future measures, including:

- (a) concerted efforts to support the completion and improvement of the tax treaty network of the ASEAN community (the "**Community**") so as to help address double taxation; and
- (b) working towards the enhancement of the Community's interest WHT structure to promote the broadening of the investor base in ASEAN debt issuance.

Those tax co-operation initiatives have been carried over into the blueprint from the AEC Blueprint 2015, and are of high priority.

A.1.3 At the Second ASEAN Finance Ministers' and Central Bank Governors' Meeting on 4 April 2016 in Vientiane, Laos, ASEAN Finance Ministers and ASEAN Central Bank Governors endorsed six broad taxation strategies, and tasked the ASEAN Working Group on the ASEAN Forum on Taxation ("**WG-AFT**") to consider the practical details of the strategies, including potential implementation timelines.

A.1.4 The Consolidated Strategic Action Plan 2016-2025 for ASEAN Taxation Co-operation ("**CSAP**") documents the plan designed to achieve those objectives, and the plan is on track towards being fully endorsed by all Member States. Under the CSAP, the following targets and milestones have *inter alia* been agreed by the Member States:

¹ This section materially restates the *Background* section of the TOR, and reflects only minor editing changes to provide for consistency with the terms used in this Report.

Strategy	Policy actions/ initiatives	2016-2017	2018-2019	2020-2021	2022-2025	End Goals
(II) Work towards the enhancement of the WHT structure, where possible, to promote the broadening of the investor base in ASEAN debt issuance.	To build a proper WHT structure amongst Member States.	Quantifiable targets				Comprehensive study and, to the extent possible, co-operation on improving WHT structures among ASEAN Member States (the " Study ").
		Conducting a study of Member States' WHT structure to promote the broadening of investor base in ASEAN debt issuance.	Evaluate implementation of WHT structure among ASEAN Member States based on the Study.			
		Proposed milestones				
		Resume and complete study on existing WHT structure in ASEAN Member States, and discuss an action plan in line with the Study.	Work towards improving the WHT rates under treaties that ASEAN Member States have with each other, based on the Study.			

A.1.5 In 2017, the Member States agreed to commission the Study on the Community WHT structure. Terms of Reference published in May 2018 (the "**TOR**") (materially restated in paragraph A.2 below) outlined the key objectives, deliverables and timelines for the Study, in line with the strategy, policy actions, quantifiable targets, proposed milestones and end goals identified in the CSAP.

A.2 Terms of Reference²

A.2.1 The Study is intended to comprehensively cover the economic and strategic benefits, and impact of, enhancing the Community WHT structure, with a focus on how such enhancement could broaden the investor base in ASEAN debt issuance and achieve greater economic integration within the Community.

A.2.2 The objectives of the Study stated in the TOR are:

- (a) To identify the state of the existing WHT structure in Member States, including the WHT rates in bilateral tax treaties among Member States.
- (b) To assess the economic and strategic benefits of enhancing and improving the WHT structure within ASEAN, *inter alia* by broadening the investor base in ASEAN debt issuance and achieving greater economic integration. This shall include but not be limited to:
 - (i) consulting and engaging the business community and other relevant private sector stakeholders to obtain feedback; and
 - (ii) assessing the potential economic impact upon Member States, both individually and collectively

(the "**Policy Objective**").
- (c) To make recommendations about how to enhance and improve the WHT structure.

² This section materially restates the *Objectives* section of the TOR, and reflects only minor editing changes to provide for consistency with the terms used in this Report.

- (d) To propose a timeline for the implementation of such proposals by Member States, with such implementation timelines taking account of differing levels of Member States' tax systems (and first taking account of the ASEAN-5 moving first, if considered necessary or appropriate).

A.3 Methodology

A.3.1 This report (the "**Report**") documents the analysis and conclusions of the Study.

A.3.2 The methodology employed in completing the Study involved two distinct elements:

- (a) qualitative analysis to identify the prevalence of debt financing and the current interest WHT structure of the Community, and to identify possible fiscal barriers to ASEAN integration; and
- (b) stylistic economic modelling of the possible impact of measures designed to address such barriers.

The overall methodology was agreed between Deloitte and WG-AFT in a Project Inception Report dated 21 October 2018.

A.3.3 The qualitative component of the Study commenced with the design of a Country Questionnaire by Deloitte Singapore, and the draft questionnaire was subsequently provided to the administrative division of WG-AFT and Deloitte Access Economics for review and comment.³ WG-AFT confirmed its satisfaction with the form of questionnaire and the questions it contained; Deloitte Access Economics requested the inclusion of a small number of additional questions to help inform the economic analysis component of the Study that it was engaged to complete.

A.3.4 The Country Questionnaire was subsequently sent to tax professionals at the principal Deloitte office in each of the Member States for completion. Information received by Deloitte Singapore in response to the questionnaire was largely complete, but was found by the project team (the "**Project Team**") to in some cases be incomplete or of questionable accuracy. Responses were therefore collated and then verified by the Project Team against, and enriched using, publicly-available information sources. (Further information on this enrichment process can be found in Part I of this Report.)

A.3.5 At the same time that the foregoing verification and enrichment process was being completed, the Project Team reviewed the available literature to help inform the qualitative analysis. It was identified that bond markets increase the pool of money available to borrowers and spreads credit risk across a wide range of investors; and it was thus determined that in order to provide a comprehensive analysis, it would be necessary to consider the impact of interest WHT from two perspectives:

- (a) in the context of vanilla debt arrangements; and also
- (b) in the context of more complex debt securities arrangements.⁴

A.3.6 The qualitative analysis in this Report was subsequently produced by critically analysing the Community *status quo* as reported in the available literature and taking account of the empirical (and in many cases anecdotal) evidence derived from the responses to the Country Survey, in addition to considering issues of international tax policy and best practices identified from across the international community.

A.3.7 Whilst drafting the qualitative analysis, the Project Team also drafted the Business Questionnaire, which was subsequently circulated to a pool of Deloitte's international and ASEAN-regional financial institution

³ We understand from Member States that the form of Country Questionnaire was not provided by the administrative division of WG-AFT to Member States' domestic administrations for review and comment.

⁴ Forbes, *Understanding The \$41 Trillion U.S. Bond Market* (11 October 2018); available at: <https://www.forbes.com/sites/kevinmcpartland/2018/10/11/understanding-us-bond-market/#4a09df941caf> (retrieved 21 December 2018).

clients.⁵ The Business Survey sought anecdotal evidence of stakeholders' ASEAN business objectives in order to corroborate the findings herein, and to also assess how any changes proposed could affect such objectives. The initial approach to the Business Survey was of limited success due to stakeholders' concerns regarding the actual/perceived commercial sensitivity of the information sought. Following consultation with the Chair of WG-AFT, the form of Business Questionnaire was revised and a second survey was completed by procuring responses from international tax professionals who attended two Financial Services Tax Conferences hosted by Deloitte Asia Pacific in Singapore on 25 February 2019 and in Hong Kong on 1 March 2019. The response rate to this second approach was also low; however, the collection of responses received in respect of the two different survey methodologies helped corroborate the conclusions reached throughout this Report.

- A.3.8 The quantitative component of the Study commenced immediately following the commissioning of the Study by WG-AFT, and was undertaken by Deloitte Access Economics contemporaneously with Deloitte Singapore working on the qualitative component. The two subject matter groups of the Project Team collaborated to understand the direction that the conclusions of each of the two components were taking on a real-time basis, to ensure continued consistency in terms of approach.
- A.3.9 Following its production, the economic analysis undertaken by Deloitte Access Economics was combined with the draft qualitative analysis to produce a single output, which was then reviewed and critiqued to produce an early draft of this Report.
- A.3.10 A first discussion draft of this Report was presented to WG-AFT for initial comment in December 2018, and a second draft was presented in January 2019. Certain Member States fed-back comments on one or both of those two drafts. This final version of this Report was presented to WG-AFT for consideration by the ASEAN Secretariat in early March 2019. An oral presentation to explain the Report and the conclusions from the Study occurred at a meeting of WG-AFT in Bangkok on 7 March 2019.

A.4 Structure of this Report

- A.4.1 This **Part A** of the Report explains the background to the commissioning of the Study, the scope of the TOR, and the approach taken by the Project Team to meet the stated objectives. The remainder of this Report is structured in the following manner.
- A.4.2 **Part B** contains an Executive Summary of the issues considered, the conclusions reached and recommendations made.
- A.4.3 **Part C** contains a Member State-by-Member State analysis of:
 - (a) the types of debt finance currently visible within each domestic market;
 - (b) a consideration of the level of development of that market based on empirical evidence collated by the Asian Development Bank ("**ADB**");
 - (c) a consideration of each Member State's treatment of interest expense, the prevalence of interest WHT and related administrative procedures; and
 - (d) the current bilateral tax treaty framework.

Consideration of these issues takes account of the diverse data points collected through the Country Survey. A copy of the form of Country Survey can be found attached as **Appendix 1**, and a copy of the enriched responses to the Country Survey can be found attached as **Appendix 2**.

⁵ The pool size comprised approximately twenty-five large and mid-size international and ASEAN-regional financial institution clients. (In this context, the term ASEAN-regional is used to refer to a financial institution originating in a Member States principally engaged in regional activities.)

- A.4.4 To identify key themes that the broader analysis must take into account, **Part D** contains a comparative analysis of the Country Survey responses and considers factors that affect:
- (a) debt capacity of borrowers, access to debt finance and the extent to which debt is used as a source of finance within the Community; and
 - (b) the manner and extent to which interest WHT is currently applied by Member States.
- A.4.5 **Part E** describes the stakeholders consulted to obtain business input and also considers the business input received. A copy of the form of Business Survey can be found attached as **Appendix 3**, and anonymised responses to the Business Survey can be found attached as **Appendix 4**. Part E also contains a summary of key themes and issues which *inter alia* takes account of the subjective input of professional tax advisors from across the Deloitte network. An overview of the Community's current interest WHT structure (which is of relevance to the analysis generally) is presented in **Appendix 5**.
- A.4.6 **Part F** describes the approach taken to analysing the potential impact of measures intended to improve Member States' tax relief and refund processes, and it also contains the results of the economic impact assessment completed as part of the Study (described in paragraph A.3.8 above). Further information about the approach to economic modelling can be found in **Appendix 6**.
- A.4.7 A synthesis of the issues considered throughout this Report and potential improvements can be found in **Part G**.
- A.4.8 **Part H** contains both core and additional recommendations intended to achieve the Policy Objective stated in the TOR, based on all of the analysis completed throughout the Study. **Appendix 7** contains a Proposed Implementation Schedule with respect to the core Recommendations.
- A.4.9 An evaluation of the methodology employed to complete the Study and to deliver this Report in accordance with the TOR can be found in **Part I**.
- A.4.10 **Part J** contains a bibliography of sources cited and other materials considered for the purposes of completing the analysis documented in this Report.
- A.4.11 Finally, **Part K** contains some limited information about Deloitte, which (as noted) WG-AFT has engaged to produce this Report.

A.5 Scope and assumptions

It is beyond the scope of the Study and thus this Report to consider the extent to which debt volumes impact economic growth. However, as the Policy Objective specifically refers to broadening the ASEAN investor base, it is assumed for the purposes of the analysis herein that higher debt volumes and/or greater diversity in investment than are currently being experienced within the Community is a desirable economic objective. On that basis, it is postulated that the impact of interest WHT is expected to increase with such higher debt volumes; and this Report is presented taking account of that context.

A.6 Status of Recommendations

- A.6.1 The Recommendations in this Report comprise high-level suggestions of measures intended to help realise the Policy Objective. The breadth of the TOR has meant that the Project Team has been required to define a clear scope in order to complete the Study and to produce a cogent Report.
- A.6.2 The Project Team respectfully requests that WG-AFT and the Member States treat the completion of the Study, the production of this Report and the presentation of the Recommendations herein as first steps in identifying pertinent issues that require action to realise the Policy Objective and in identifying and developing measures to address such issues. It is clear that many of the issues identified in this Report would require specific detailed consideration, and the Project Team suggests that additional phases to the

Study are considered with a view to determining more specifically how relevant measures could be framed and drafted within the broad parameters identified.

A.7 Glossary

A.7.1 In this Report:

2009 ECWG Report	has the meaning ascribed in paragraph G.2.2 of this Report.
ACMF	means the ASEAN Capital Markets Forum.
ADB	means the Asian Development Bank.
Advisor Survey	means a series of questions incorporated into the Country Questionnaire which sought the subjective opinions of Deloitte tax specialists in each Member State concerning possible measures to work toward achieving the Policy Objective.
AEC Blueprint 2015	means the ASEAN Economic Community Blueprint adopted by the leaders of the Member States on 20 November 2007.
AEC Blueprint 2025	means the ASEAN Economic Community Blueprint 2025 adopted by the leaders of the Member States on 22 November 2015, which builds on the ASEAN Blueprint 2015.
ASEAN	means the Association of South East Asian Nations.
ASEAN-5	means Indonesia, Malaysia, Philippines, Singapore and Thailand.
ASEAN-6	means Brunei, Indonesia, Malaysia, the Philippines, Singapore, and Thailand.
ASEAN Secretariat	means the Secretariat of the Association of South East Asian Nations.
BEPS	means Base Erosion and Profit Shifting.
BEPS Action Item 4	means Action Item 4 (<i>Limiting Base Erosion Involving Interest Deductions and Other Financial Payments</i>) of the BEPS Project.
BEPS Action Item 6	means Action Item 6 (<i>Preventing the Granting of Treaty Benefits in Inappropriate Circumstances</i>) of the BEPS Project.
BEPS Project	means the OECD/G20 Base Erosion and Profit Shifting Project.
BMS	means Bursa Malaysia Securities.
Brunei	means Brunei Darussalam.
BP	means each of the best practices enumerated in paragraph G.4.3 of this report, and together the " BPs ".
BSP	means <i>Bangko Sentral ng Pilipinas</i> .
Business Questionnaire	means the business questionnaire attached as Appendix 3.

Business Survey	means the survey completed in pursuance of the Study and for the purposes of this Report, as described in paragraph A.3.7 of this Report.
CGE	means computable general equilibrium (further information in respect of which can be found in Appendix 6).
Circular 205	means Vietnam Ministry of Finance, Circular 205/2013/TT-BTC (24 December 2013).
CNH	means offshore Chinese renminbi.
Community	means the community comprising the ASEAN Member States.
Country Questionnaire	means the country questionnaire attached as Appendix 1.
Country Survey	means the survey completed in pursuance of the Study and for the purposes of this Report, as described in paragraphs A.3.3 and A.3.4 of this Report.
CSAP	means the Consolidated Strategic Action Plan 2016-2025 for ASEAN Taxation Co-operation.
CSX	means the Cambodian Stock Exchange.
DAE-RGEM	Means Deloitte Access Economics' Regional General Equilibrium Model, as more particularly described in paragraph F.3.5 <i>et seq.</i> of this Report and Appendix 6.
Deloitte	has the meaning ascribed in paragraph K.1 of this Report.
Deloitte Access Economics	has the meaning ascribed in paragraph K.4 of this Report.
Deloitte Asia Pacific	has the meaning ascribed in paragraph K.2 of this Report.
Deloitte Global	has the meaning ascribed in paragraph K.1 of this Report.
Deloitte Network	has the meaning ascribed in Part K of this Report.
Deloitte Singapore	has the meaning ascribed in paragraph K.3 of this Report.
EU	means the European Union.
EBITDA	means earnings before interest, tax, depreciation and amortisation.
EMEA	means Europe, Middle East and Africa.
EUR	means Euro (currency).
FDI	means foreign direct investment.
First Giovannini Group Report	has the meaning ascribed in paragraph G.2.2 of this Report.
FTC	means foreign tax credit.
FTE	means full-time employment (equivalent).

GBP	means United Kingdom pounds sterling.
GDP	means gross domestic product.
Giovannini Group	has the meaning ascribed in paragraph G.2.2 of this Report.
GTAP 9	means version 9 of the Global Trade and Analysis Project, as further described in paragraph F.3.5 of this Report.
IHQ	means international headquarters.
IDX	means the Indonesian stock exchange.
Laos	means the Lao People's Democratic Republic.
LMA	means the EMEA Loan Market Association.
LSX	means the Laos Stock Exchange.
Member State	means each of the member states of ASEAN, being Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore Thailand and Vietnam (and collectively the " Member States ").
MLI	means the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, which is being used <i>inter alia</i> to facilitate OECD's members' and BEPS Associates' implementation of BEPS Action Item 6 measures.
MTN	means medium term note.
OECD	means the Organisation for Economic Co-operation and Development.
OECD Model Convention	means the Model Tax Convention on Income and on Capital published and/or updated by the OECD from time-to-time.
OTC	means over-the-counter (and used to describe financial markets operating on that basis).
PER-10	means Indonesian tax regulation PER-10/PJ/2017.
PER-25	means Indonesian tax regulation PER-25/PJ/2018.
PDEx	means Philippine Dealing & Exchange Corporation.
Policy Objective	means the policy objective outlined in the TOR and restated in paragraph A.2.2 hereof; <i>viz.</i> to enhance and improve the WHT structure as and between Member States with a view to broadening the investor base in ASEAN debt issuance and achieving greater economic integration.
Proposed Implementation Schedule	has the meaning ascribed in paragraph H.1 of this Report, with reference to Appendix 7.
QDS	means Qualifying Debt Securities.
Recommended Best Practices	has the meaning ascribed in paragraph G.4.4 of this Report.

Recommended Legal Framework	has the meaning ascribed in paragraph G.5.1 of this Report.
Repo	means repurchase agreement.
Report	means this document concerning matters to enhance the Interest WHT Structure of ASEAN.
RN	means each of the recommendations made in Part H of this Report, and together the " Recommendations ".
Second Giovannini Group Report	has the meaning ascribed in paragraph G.2.2 of this Report.
SGX	means Singapore Exchange Ltd.
Study	means the study completed pursuant to the TOR which is the subject of this Report.
tax treaty	means a bilateral tax treaty for the elimination of double taxation.
TBX	means the Thailand Bond Exchange.
TOR	means the <i>WG-AFT Terms of Reference for Proposed Study under Strategy 2 of the CSAP</i> , as materially restated in paragraph A.2 of this Report.
UN	means the United Nations.
UN Model Convention	means the Model Taxation Convention Between Developed and Developing Countries published and/or updated by the UN from time-to-time.
UNCTAD	means the United Nations Conference on Trade and Development.
unilateral relief	is described in paragraph D.9.2 of this Report.
USD	means United States dollar.
VSX	means the Vietnam Stock Exchange.
WG-AFT	means the Working Group of the ASEAN Forum on Taxation.
WHT	means withholding tax.
WHT structure	means the legislative, regulatory and policy infrastructure that exists within (a) each of the Member States, and (b) within ASEAN, which provides for the source-based taxation of outbound cross-border payments and the application of related withholding agent obligations, comprising both relevant domestic measures and bilateral/multilateral tax and mutual assistance treaties.
YSX	means the Yangon Stock Exchange.

A.7.2 Reference to a **Chart, Table** or **Figure** followed by an alphanumeric identifier is to the chart, table or figure in the paragraph of this Report with the corresponding alphanumeric identifier.

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Deloitte. PART B: EXECUTIVE SUMMARY



PART B: EXECUTIVE SUMMARY

B.1 Overview

B.1.1 ASEAN has identified the Policy Objective of enhancing and improving the WHT structure as and between Member States with a view to broadening the investor base in ASEAN debt issuance and achieving greater economic integration.

B.2 Member State-by-Member Analysis *conclusions from Part C of this Report*

B.2.1 The existing literature generally supports the general conclusion that: at lower levels of economic development commercial banks tend to dominate the provision of debt finance, whereas at higher levels of economic development debt capital markets tend to become more active and promote economic development through facilitating and diversifying stakeholders' access to finance.

B.2.2 There is a wide variance in the level of development of Member States' debt capital markets, but a common theme across the Community is the existence of less-than-optimal liquidity (due to the existence of limited secondary markets). Bank loans in many cases remain the main source of debt financing.

B.2.3 Many domestic law interest WHT exemptions more-commonly apply to debt securities than to vanilla debt. Domestic law exemptions are also commonly limited to narrow categories of instruments, often including government securities. In consequence, corporate borrowers in lesser developed Member States are less likely to obtain foreign debt finance which benefits from WHT exemption, which typically translates to a higher cost of finance for those potentially in greatest need.

B.2.4 Exemptions are commonly intended to eliminate the interest WHT disincentive to foreign investors of investing in government securities in a way that could affect governments' ability to raise funds. The same logic applies to eliminating interest WHT in respect of private sector debt; though in such context the fiscal impact of reduced tax collections must be evaluated against the realisable economic benefits of a relevant policy change. The immediate and long-term implications of an exemption must be considered in determining its scope.

B.2.5 The AEC Blueprint 2015 targeted completion of the network of bilateral tax treaties between Member States by 2010 to the extent possible, and the AEC Blueprint 2025 retains this measure. Currently, the intra-Community network is 77.8% complete; it is relatively well-established from the perspectives of the more developed Member States, but less so from the perspectives of the lesser-developed Member States (and particularly the non-ASEAN-5). In the latter case, it is likely that actual and prospective investment volumes with the lesser-developed Member States have not been sufficiently large for there to be political momentum to negotiate treaties. In view of that, and as tax treaties are *inter alia* intended to reduce investment costs by addressing double taxation, supranational efforts to further develop the ASEAN treaty network would provide Member States with support in non-core policy areas that are of importance in terms of creating an attractive investment climate that supports economic growth and development through market access.

B.2.6 Complex administrative procedures to obtain tax reliefs invariably translate into real-terms costs for borrowers. Whilst provision for double tax relief commonly exists across the Community, the availability of relief is practically restricted in many cases by unclear and/or cumbersome administrative procedures which undermine the policy objective of the measures. Consequently, not only is it necessary to identify and endorse effective WHT measures, it is also necessary to deploy effective and efficient administrative procedures that ensure that relief can be obtained as a practical matter.

B.2.7 Streamlining tax (including WHT) measures is in-line with a number of Member States' governments' stated policy objectives, so there is intra-Community recognition of such problems, which may translate into political momentum to endorse and implement suitable measures to achieve the Policy Objective.

B.3 Comparative Analysis *conclusions from Parts D and E of this Report*

- B.3.1 Taking steps to ease soft barriers to obtaining debt finance whilst also optimising the cost of finance (for example by reducing in-built costs like interest WHT) should contribute to economic development and closer economic integration within the Community.
- B.3.2 Addressing WHT inefficiencies is not itself a panacea and any optimisation measures proposed in this Report must necessarily be factored into the wider policy objectives and measures endorsed by ASEAN.
- B.3.3 Beneficial effects like those ASEAN is seeking to realise could be brought about by implementing narrow, targeted measures aimed at realising efficiencies within the Community whilst managing the impact *vis-à-vis* the rest of the world. Such measures could involve targeted incentive regimes.
- B.3.4 Debt is counted toward regulatory capital in many cases, which makes it possible to speculate that increasing access to debt finance *by inter alia* optimising financing costs through reducing WHT could have positive spin-off benefits for the development of financial institutions and thus Member States' debt capital markets.
- B.3.5 It can be speculated that local ownership requirements have a deleterious impact on financing costs due to debt financing being necessary in circumstances in which foreign equity ownership could be more tax and costs efficient for investors. Specifically considering the economic effects of local ownership measures on the tax efficiency of inbound investments could be worthy of consideration as part of the tax policy work being undertaken in connection with the AEC Blueprint 2025.
- B.3.6 Lenders tend to be agnostic in terms of domestic interest WHT rates and treaty rates because, whatever those rates are, the tax costs are typically passed on to borrowers either through the inclusion of gross-up obligations in relevant conditions or through pricing the cost into the interest rate payable.
- B.3.7 Steps could be taken to help control the negative effects of interest WHT on the cost of financing by advocating the development of standard form documentation across the Community, to try and standardise optimisation measures. It would naturally make most sense for the ACMF to lead any such initiatives.
- B.3.8 Domestic tax policy is perhaps the most material issue relevant to the application of WHT, as WHT is inherently a manifestation of the source basis of taxation. The simplest way of addressing double taxation in the debt capital markets brought about by WHT is to eliminate WHT on interest by way of exemption (either generally or in certain defined circumstances, *e.g.* in the intra-Community context only). This could be achieved in a manner that does not preclude the effect of anti-avoidance measures by reducing interest WHT rates to nil in only defined circumstances.
- B.3.9 Whilst the intra-Community tax treaty network is not complete, unilateral relief measures are available in a variety of Member States, which nevertheless provide a technical basis for taxpayers to obtain some measure of relief from double taxation in many cases. However, the value of such relief can be so low that lenders choose not to claim it and instead default to passing the cost on to borrowers.
- B.3.10 However, the value of FTCs and unilateral relief often limits the economic value of such reliefs, and lenders often consequently forego claiming tax credit relief and default to passing the cost on to borrowers because the effort required to obtain relief is commercially disproportionate to the marginal tax benefit of actually claiming relief. Administrative procedures have a significant impact on the efficacy of tax relief, and complex procedures translate into real-terms financial costs for borrowers due to excise-taxation-like effects.
- B.3.11 The practicalities of obtaining tax relief in many of the Member States are onerous and, in many cases, such practicalities contribute to excise-taxation-like treatment of borrowers. Consequently, any package to improve the WHT structure within ASEAN must necessarily include measures to improve and streamline the administrative procedures relevant to obtaining tax relief.

- B.3.12 Whilst the response rate in respect of the Business Survey was low, respondents tended to agree that eliminating/otherwise addressing the excise-taxation effects identified would contribute to achieving the Policy Objective.

B.4 Economic Impact Analysis *conclusions from Part F of this Report*

- B.4.1 Overall, the stylised economic modelling completed as part of the Study indicates that improving interest WHT relief and refund processes in Member States could increase GDP in the ASEAN-6 by more than USD 310 million per year after 10 years of implementation, and could create almost 18,000 FTE jobs per year after the same time period. While this is a relatively small share of total economic activity and workforce size (less than 0.01%), it nonetheless represents a substantial gain in dollar and worker terms. This suggests that there is indeed merit to rationalising and streamlining WHT administrative procedures.
- B.4.2 The variations in financial and economic characteristics across the different Member States (which affect the relative size of estimated benefits in each economy) are relevant considerations in determining how to implement any process improvements in the various jurisdictions.

B.5 Best Practices and Proposed Legal and Policy Infrastructure *conclusions from Part G of this Report*

- B.5.1 Having first identified WHT inefficiencies almost two decades ago, the EU has completed a great deal of work to identify the root causes of the problems and to devise measures to address them.
- B.5.2 As the EU experience provides valuable insight with respect to what might be done in ASEAN to work toward achieving the Policy Objective, and due to the commonality of the issues identified, there is merit to taking account of the best practices identified by the European Commission and using them to help shape an approach for ASEAN.
- B.5.3 It is suggested that the best practices (BPs) listed below, which comprise practices identified by the European Commission and practices identified throughout the analysis documented by this Report, are taken forward by WG-AFT for consideration with a view to achieving the Policy Objective of improving the WHT structure *inter alia* to broaden the investor base in ASEAN debt issuance and achieve greater economic integration.

Recommended Legal Framework

- BP 1:** Exempt interest WHT on defined transactions to eliminate fiscal distortions to investment decisions and access to finance.
- BP 2:** In other cases, standardise the grant of relief at source.
- BP 3:** Verify compliance with eligibility requirements through audit.

Other Recommended Best Practices

- BP 4:** Standardise relief claims and processes across the Community with a view to establishing a regional claims procedure.
- BP 5:** Standardise relief and refund documentation across the community.
- BP 6:** Allow alternative proofs of investors entitlement to tax relief to certificates of residence issued by the relevant tax authority
- BP 7:** Permit all financial intermediaries established within ASEAN to offer WHT agency services in all Member States.
- BP 8:** Allow completion of the whole of the filing and refund processes online.

- BP 9:** Align limitation periods for relief and refund claims across Member States to an objectively reasonable period of time.
- BP 10:** Provide refunds quickly and at most within six months of lodgement of a valid claim.
- BP 11:** Designate a single point of contact at each Member State's tax authority for taxpayers to contact.
- BP 12:** Make information and documentation available in electronic format, accessible from a single portal.

B.6 Recommendations derived from the Study conclusions from Parts H and I of this Report

B.6.1 The following Recommendations (RNs) are made in this Report with a view to implementing measures to realise ASEAN's Policy Objective.

Core Recommendations

- RN 1:** That Member States implement the Recommended Legal Framework summarised in paragraph B.5.3 above. This Recommended Legal Framework is intended to comprise a minimum standard necessary to work toward achieving the Policy Objective – the other RNs and BPs 4 through 12 have been formulated in a less prescriptive manner to enable the Member States to take account of subjective differences and their relative levels of development.
- RN 2:** In connection with implementing the Recommended Legal Framework:
 - (i) that BP1 be implemented by way of relief at source and a combination of interest WHT exemption that applies:
 - (A) based on that satisfaction of economic conditions agreed by the Member States;
 - (B) generally in respect of related-party loans; and
 - (C) with reference to debt instruments and/or categories of debt agreed by the Member States; and
 - (ii) that BP2 be implemented by way of relief at source and that relief be given by Member States by way of credit, with the quantum of such credit(s) in each Member State being determined by the corresponding Member State.
- RN 3:** That implementation of RN1 and RN2 be achieved through Member States negotiating, adopting and executing a multilateral convention, with the organisational aspects and negotiation process facilitated by the ASEAN Secretariat. Whilst it is acknowledged that implementation in this manner could be arduous and would require comprehensive multilateral negotiations, it would be the most impactful and expeditious way to help establish the recommended legal and policy infrastructure.
- RN 4:** Following Member States' execution of such a multilateral convention, that the ASEAN Secretariat leads efforts to encourage Member States' deployment of the remaining Recommended Best Practices (*viz.* BP4 through BP12) identified in paragraph B.5.3 above.
- RN 5:** That Member States review and reconsider their approaches to thin capitalisation and BEPS Action Item 4 measures, preferably on a co-ordinated basis facilitated by the ASEAN Secretariat in pursuance of CSAP measure 55, and potentially with agreed measures being incorporated into the RN 3 multilateral convention.
- RN 6:** The Proposed Implementation Schedule in Appendix 7 be considered.

B.6.2 To take account of the differing level of development of the Member States and the complexity of some of the measures raised, it is suggested that the Proposed Implementation Schedule incorporates two waves, with the ASEAN-5 moving first, and the remaining Members States being given longer to implement. Due to the potential to realise synergies from co-ordinating action with other actions being taken by the ASEAN Secretariat and WG-AFT in connection with CSAP Element B5, it is suggested that provision for additional time is incorporated into the early stage of the Proposed Implementation Schedule.

Additional (non-core) Recommendations

B.6.3 The following two additional non-core Recommendations are also made. Due to the non-core nature of these Recommendations (in the context of the immediate Policy Objective), and their wider policy implications, they have not been included in the Proposed Implementation Schedule.

RN 7: When considering the measures recommended in this Report, WG-AFT and Member States should consider implementing those measures in the context of WHTs in general, and not just with respect to interest WHT; as doing so could be expected to lead to the realisation of a number of synergies.

RN 8: To the extent it is relevant to do so, Member States should review and reconsider their application of local ownership requirements to align their policy approaches with ASEAN's work to increase regional investment volumes and to liberalise markets.

B.6.4 Those two recommendations are not core recommendations necessary to realise the immediate Policy Objective, but they are considered to be material to ASEAN's wider work under the CSAP. Considering them in conjunction with the other Recommendations in this Report could lead to the realisation of synergies in terms of both policy approach and implementation.

B.7 Suggested next steps

B.7.1 As noted in paragraph A.6.2 above, many of the issues identified in this Report will require specific detailed consideration, and the Project Team suggests that additional phases to the Study are considered with a view to determining more specifically how relevant measures could be framed and drafted within the broad parameters identified. At a high-level, subsequent phases of the Study and the work WG-AFT could include:

- (a) Detailed discussion of the issues identified in this Report within WG-AFT and working to obtain Member States' 'in principle' agreement to addressing specified issues to develop a statement of intent.
- (b) Development of more specific proposals to address the issues identified herein within the broad framework of the parameters suggested herein (*i.e.* to consider at a more granular level how the high-level proposals herein may be constructed).
- (c) Development of and drafting appropriate measures at a granular level (*i.e.* a technical component to develop, draft, evaluate, debate and refine specific measures).
- (d) Member States' consideration of the subjective challenges of implementing relevant measures and WG-AFT-led discussions regarding implementation with a view to facilitating a consensus approach to implementation.

B.7.2 We suggest that WG-AFT considers what next steps to take after it has had an opportunity to consider this Report and once it has discussed the Recommendations herein widely with the Member States.

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**PART C: ACCESS TO DEBT FINANCE AND REVIEW OF
THE INTEREST WHT STRUCTURE BY MEMBER STATE**



PART C: ACCESS TO DEBT FINANCE AND REVIEW OF THE INTEREST WHT STRUCTURE BY MEMBER STATE

C.1 Overview

- C.1.1 This part of the Report considers the extent to which debt is currently prevalent within each of the Member States, with reference to the existing literature and also by taking account of the Country Survey responses.
- C.1.2 The approach taken has been to consider both vanilla debt (including bank loans) in addition to other forms of debt financing; using an assessment of the state of development of each Member State's debt capital market to assess the availability of debt capital to local borrowers.⁶
- C.1.3 The analysis applies the postulate from paragraph A.5 above, that the impact of interest WHT will be proportionate to the volume of debt to which it applies, such that identifying the availability, forms and use of debt capital will help identify the extent of potential benefits arising from optimising the intra-Community WHT structure.

C.2 Brunei Darussalam

- C.2.1 In recent decades Brunei's economy has been largely driven by the extractive industries, but the Brunei government aims to diversify the economy to gradually reduce the country's dependence on those industries. It has been suggested that the diversification targeted will create new opportunities across the financial sector (in particular) both for banks and in the capital market.⁷
- C.2.2 The ADB has recently reported that Brunei's domestic capital market is currently less advanced than its banking sector, but that the capital market has significant growth-potential; not least because the country has been a pioneer in issuing short-term *sukuk* and is able to leverage its Islamic traditions, political stability, and favourable international ties to evolve into an Islamic financing hub.⁸
- C.2.3 Issuance of short-term *sukuk* by the Brunei Government is relatively well-established, but the issuance of longer-term instruments has been limited, with the result that there has been inadequate price discovery to facilitate issuances by private issuers.⁹ In addition, the lack of other forms of money market instruments,¹⁰ the lack of listing provision for debt securities listings,¹¹ a dependency on the OTC market for issuance of government securities, a lack of standard procedures, and the lack of necessary technical infrastructure,¹² generally suggests that Brunei's debt capital remains nascent, with the result that domestic borrowers remain largely dependent upon bank debt as a source of debt financing.

⁶ For example, it is clear from the literature that an active market for government debt is invariably a prerequisite for the development of a market for private sector debt. Insights can therefore be reached regarding the structure and availability of private sector debt capital by considering not only the availability of vanilla debt, but by also considering the state of advancement of each Member State's debt capital market. See paragraph A.5 of this Report.

⁷ Asian Development Bank, *ASEAN+3 Bond Market Guide 2017: Brunei Darussalam* (2017); at section I.A.

⁸ *op. cit.* note 7; at sections I.A and I.B.

⁹ For example, as of 2017, there had been only one corporate issuance of *sukuk* (in 2006) which had been issued to finance a major capital investment project. See: Asian Development Bank, *ASEAN+3 Bond Market Guide 2017: Brunei Darussalam* (2017); at section III.B.

¹⁰ *op. cit.* note 7; at section III.C.2.

¹¹ *op. cit.* note 7; at section III.I.

¹² *op. cit.* note 7; at sections III.J and IV.B.1.

- C.2.4 The Country Survey responses support that conclusion, as it was reported that debt finance is commonly used and that many sectors which will need to develop to support Brunei's diversification aims typically exhibit high-leverage operating models as a result of high working capital requirements.¹³
- C.2.5 Debt finance visible within the Brunei market is ostensibly provided by domestic lenders due to limited market penetration by foreign lenders.¹⁴ Non-resident lenders and investors are not restricted from participating in the Brunei market, but there is a requirement for a local bank account to be opened prior to investments in Brunei securities, which may affect market access.¹⁵ Anecdotally, to the extent debt is provided to Bruneian borrowers by foreign lenders, it is most commonly observed to be provided by lenders established in Singapore.¹⁶
- C.2.6 Debt issued to Bruneian borrowers is typically issued through term facilities which commonly incorporate security features like mortgages, charges over other assets and guarantees.¹⁷ There is no standard form of facility agreement used within the market, suggesting limited to no standardisation/co-ordination of stakeholders.¹⁸
- C.2.7 The Bruneian tax treatment of debt finance provides for the general tax deductibility of interest expense and no thin capitalisation or other restriction measures apply.¹⁹
- C.2.8 Interest WHT is not charged on payments from Bruneian borrowers to Bruneian lenders, but WHT is generally applicable at the rate of 2.5% on payments of interest to non-Brunei tax resident lenders, subject to the availability of relief under the terms of an applicable tax treaty.²⁰ An exemption from interest WHT applies to certain qualifying investors in debt securities under the terms of the Securities Markets Order 2013.²¹
- C.2.9 Brunei currently has 18 tax treaties in force and one further tax treaty yet to take effect. Six of those treaties have been entered with other Member States but, to date, Brunei has not yet entered tax treaties with Myanmar, the Philippines or Thailand.²² Chart C.2.9 below contains a summary of applicable interest WHT rates.

¹³ Brunei Country Survey, responses 1, 3 and 5.

¹⁴ Brunei Country Survey, responses 6, 7, 8 and 9.

¹⁵ *op. cit.* note 7; at sections II.K.2. and II.L.2.

¹⁶ Brunei Country Survey, response 12.

¹⁷ Brunei Country Survey, responses 18 and 20(a).

¹⁸ Brunei Country Survey, response 23.

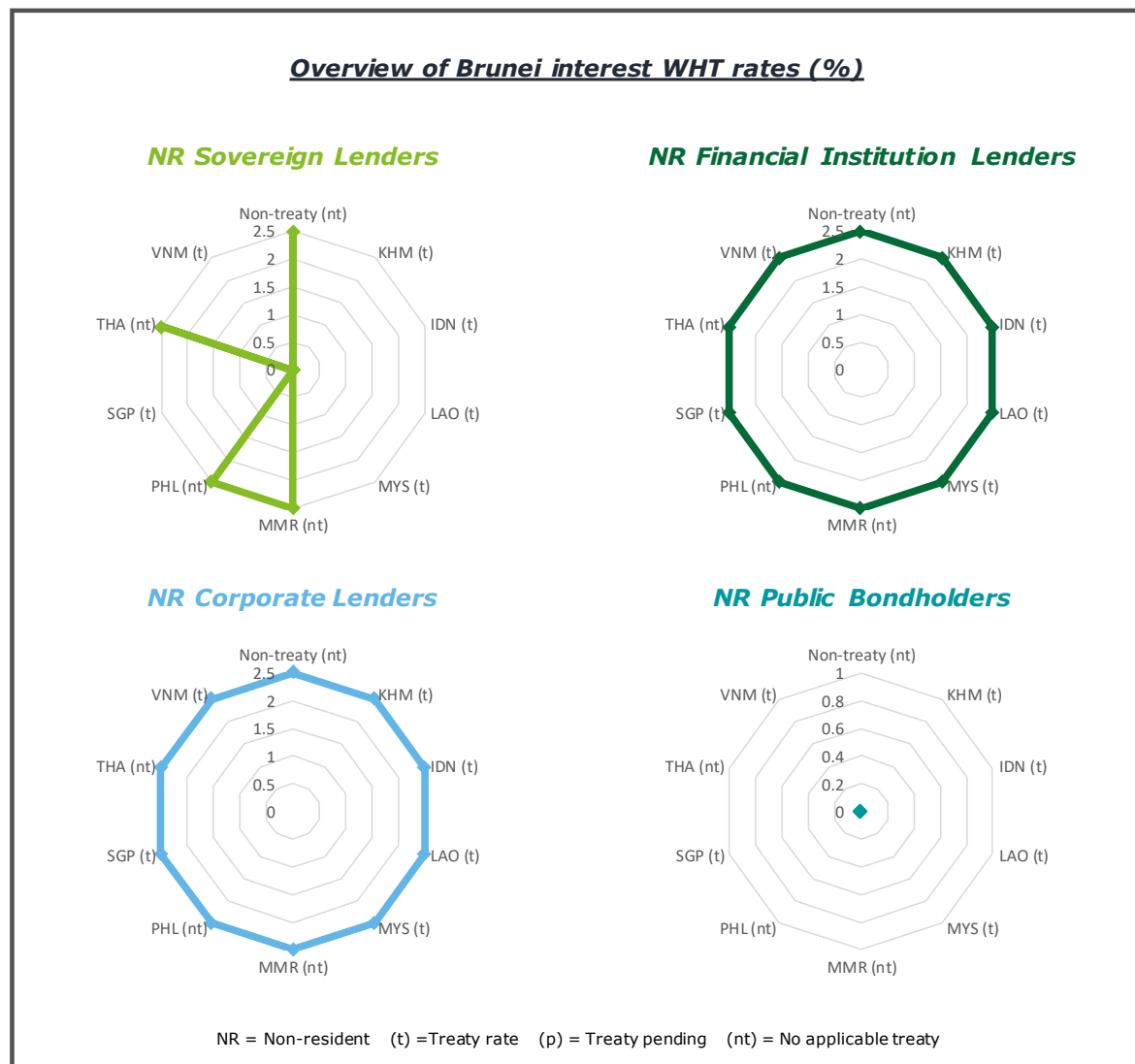
¹⁹ Brunei Country Survey, response 31, 32 and 34.

²⁰ Brunei Country Survey, responses 37, 38, 39, 40, 41 and 54. The rate had been 15% prior to 1 April 2017. Country Survey response 43 notes that no discernible impact has been observed in the short time since the change. Also see Deloitte International Tax Source, International Tax: Brunei Highlights 2018, available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-bruneihighlights-2018.pdf> (retrieved 19 December 2018).

²¹ Pursuant to section 269 thereof.

²² Tax Analysts, taxnotes® as at 11 December 2018.

Chart C.2.9: Overview of Brunei interest WHT rates



Source: Deloitte (2019)

- C.2.10 The terms of the country's tax treaties typically follow the OECD Model Convention, and relief is typically given against Brunei tax by way of exemption.²³ Brunei has not expressed a clear intention regarding whether it might incorporate specific BEPS Action Item 6 recommendations into its tax treaties.²⁴
- C.2.11 It was reported through the Country Survey that clear administrative procedures exist in Brunei for claiming relief under the terms of an applicable tax treaty, provided relevant documentation (including a certificate of residence of the recipient) is in order.²⁵ Refunds of tax withheld can typically be recovered within four to six months of an application for relief being made.²⁶
- C.2.12 Whilst the reclaim process is reportedly clear, the need to make an application for relief and the relatively long lead time to obtain repayment may explain the Country Survey response that lenders do not typically

²³ Brunei Country Survey, response 57.

²⁴ Brunei Country Survey, response 62.

²⁵ Brunei Country Survey, responses 58 and 64.

²⁶ Brunei Country Survey, response 57.

seek to reclaim interest WHT tax and thus treat it as a cost of finance; with the likely result that such cost is passed on to Bruneian borrowers through the interest obligation.²⁷

- C.2.13 The ADB's research suggests that the development of the local debt capital market is ultimately necessary to improve debt volumes in Brunei, and as the domestic interest WHT tax rate burden is somewhat limited (and in many cases will be fully relieved), it can be concluded that taking steps to eliminate interest WHT in Brunei and/or streamline documentation processes is less likely to materially impact Bruneian debt volumes (relative to how such measures could affect other Member States).
- C.2.14 Whilst eliminating interest WHT and/or simplifying recovery procedures and refund timelines would undoubtedly help optimise the ultimate cost of finance to borrowers,²⁸ the incremental benefits may not be as pronounced as in other Member States (namely those with higher WHT rates). Economic benefits from achieving the Policy Objective are perhaps more likely to take the form of spin-off benefits than direct increases in investment values in Brunei.²⁹

C.3 Cambodia

- C.3.1 Debt instruments are not yet issued in Cambodia by either the Government or the corporate sector.³⁰ One of the Cambodian Government's stated policy objectives is to develop the financial sector and, to that end, the Government's focus has been on developing a government securities market and the issuance of government bonds which will, *inter alia*, stimulate a market for private issuances.³¹ The Cambodian Stock Exchange ("**CSX**") has been operating since 2010, but it does not currently provide a platform for the listing of debt securities (though this is contemplated for the future).³²
- C.3.2 The Cambodian Government's focus on the post-civil war development of the country's physical infrastructure presents diverse opportunities for stakeholders to invest in large infrastructure projects and primary industries;³³ such projects and industries often exhibit high-leverage operating models due to high initial capital costs and/or high working capital requirements,³⁴ thus increasing the availability of debt could be expected to be advantageous to the Cambodian economy by facilitating the financing of transformational projects.
- C.3.3 Debt is a commonplace mode of financing in Cambodia but it is clear from the present lack of a debt capital market that the principal form of debt comprises bank loans and vanilla debt; *i.e.* term and revolving facilities.³⁵
- C.3.4 The Country Survey reported that debt finance is typically provided by domestic lenders due to limited market penetration by foreign lenders.³⁶ Non-resident lenders and investors are not restricted from participating in the Cambodian market, but an investor identification must be obtained from the authorities prior to execution of investments in Cambodian securities. Proceeds denominated in Cambodian riels must

²⁷ Brunei Country Survey, response 66.

²⁸ Brunei Country Survey, responses 71, 72, and 73.

²⁹ See paragraph F.4 of this Report.

³⁰ Asian Development Bank, *ASEAN+3 Bond Market Guide: Cambodia* (2018); at section III.B.

³¹ *op. cit.* note 30; at section I.A.

³² *ibid.*

³³ Royal Government of Cambodia, *National Strategic Development Plan 2014-2018*.

³⁴ Cambodia Country Survey, responses 1, 3 and 5.

³⁵ Cambodia Country Survey, responses 1 and 18.

³⁶ Cambodia Country Survey, responses 6, 7, 8 and 9.

be converted into foreign currency prior to repatriation.³⁷ To the extent debt is provided by foreign lenders, it is most commonly seen being provided from within the Community by lenders established in Singapore, or by lenders established in China.³⁸

- C.3.5 The responses to the Country Survey suggest that security practices are limited, with security usually being taken over land or by way of guarantee.³⁹ There is no standard form of facility agreement used within the market, which is suggestive of limited to no standardisation/co-ordination of stakeholders.⁴⁰
- C.3.6 The Cambodian tax treatment of debt finance provides for the general tax deductibility of interest expense and no thin capitalisation or other restriction measures apply.⁴¹
- C.3.7 Interest WHT (as distinct from income tax) on vanilla debt is charged on payments from Cambodian borrowers to Cambodian lenders at the rate of 15%.⁴² In addition, WHT is generally applicable at the rate of 14% on payments of interest by non-CSX-listed companies to non-Cambodia tax resident lenders,⁴³ and at the rate of 7% on certain payments of interest by CSX-listed companies to non-Cambodia tax resident lenders,⁴⁴ in each case subject to the availability of relief under the terms of an applicable tax treaty. Interest payable in respect of government bonds is exempted from WHT.
- C.3.8 Cambodia currently has only 5 tax treaties in force and a single further tax treaty yet to take effect. Four of those treaties in force have been entered with other Member States and a fifth, that with Indonesia, is yet to take effect. To date, Cambodia has not yet entered tax treaties with Indonesia, Laos, Malaysia, Myanmar or the Philippines.⁴⁵ The terms of the country's tax treaties typically follow the OECD Model Convention,⁴⁶ and relief is typically given against Cambodian tax by way of credit.⁴⁷ Of the 5 treaties with other Member States, 3 of them (including the Indonesia treaty yet to take effect) reduce the interest WHT rate below the domestic rate.⁴⁸ The lowest available (non-exemption) rate is 10%, that being the rate applicable in respect of interest payable to lenders established in Singapore or Thailand. Chart C.3.8 below contains a summary of applicable interest WHT rates.

³⁷ *op. cit.* note 30; at sections II.K.2. and II.L.2.

³⁸ Cambodia Country Survey, response 12.

³⁹ Cambodia Country Survey, responses 20 and 21.

⁴⁰ Cambodia Country Survey, response 23.

⁴¹ Cambodia Country Survey, responses 31, 32 and 34.

⁴² Cambodia Country Survey, response 37.

⁴³ Cambodia Country Survey, responses 37, 38, 39, 40, 41 and 54. Also see Deloitte International Tax Source, International Tax: Cambodia Highlights 2018, available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-cambodiahighlights-2018.pdf> (retrieved 19 December 2018).

⁴⁴ *op. cit.* note 30; at section VI.F.2. and VI.G.2.

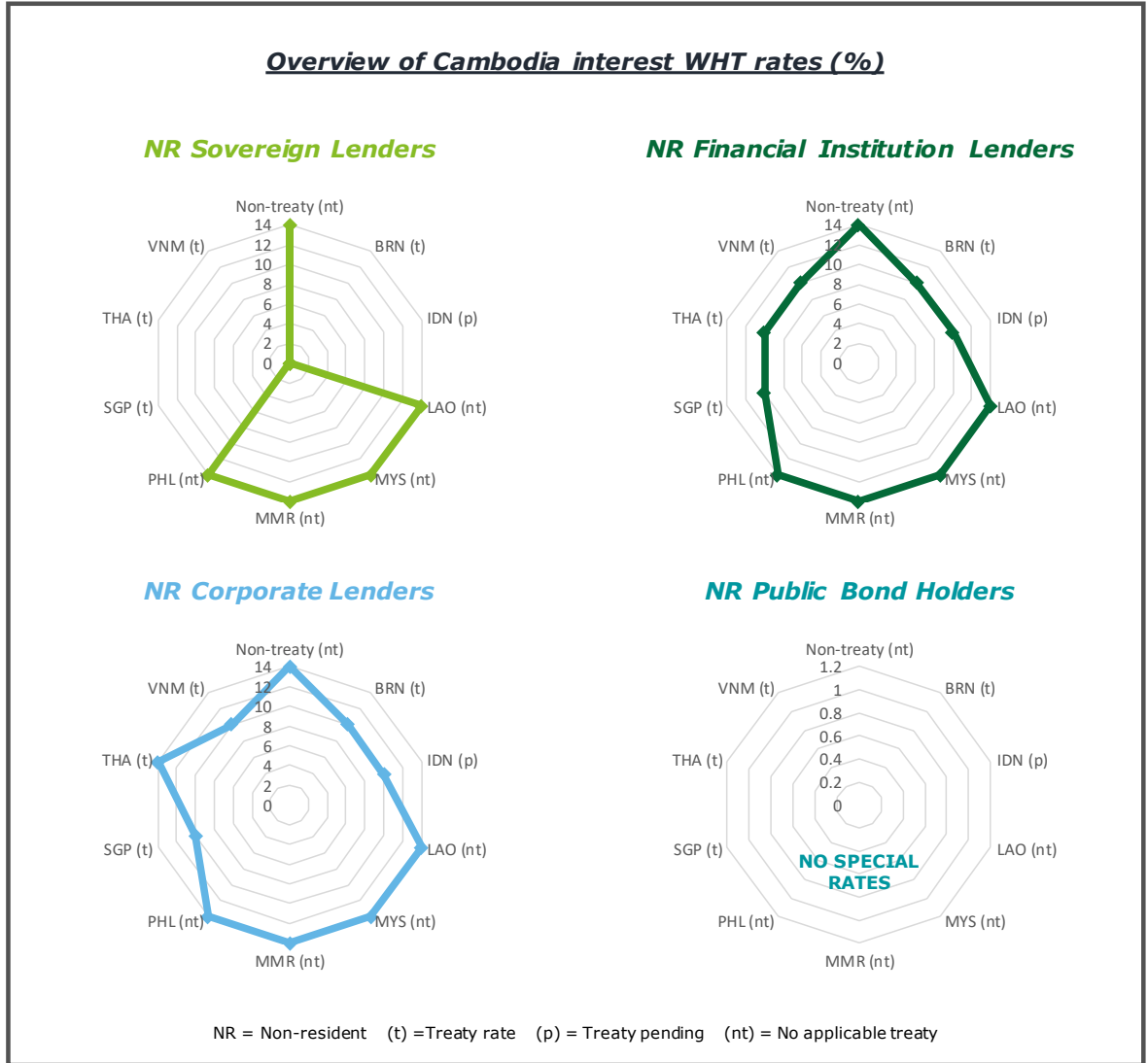
⁴⁵ *op. cit.* note 22.

⁴⁶ Cambodia Country Survey, response 56.

⁴⁷ Cambodia Country Survey, response 57.

⁴⁸ See Appendix 5 (*Overview of Current Interest WHT Structure*) to this Report.

Chart C.3.8: Overview of Cambodia interest WHT rates



Source: Deloitte (2019)

- C.3.9 Cambodia has not expressed an intention to incorporate BEPS Action Item 6 recommendations into its existing treaties, but the small number of treaties currently concluded by the country means that there is significant scope for such measures to be included in newly-negotiated treaties.⁴⁹
- C.3.10 It was reported through the Country Survey that whilst reduced (treaty) rates of interest WHT are technically available in some cases,⁵⁰ the administrative procedures to claim relief are not clear and typically cumbersome,⁵¹ that the local tax authority is generally resistant to granting relief, and actually obtaining relief can take in excess of twelve months.⁵² In consequence, it is commonplace for foreign

⁴⁹ Cambodia Country Survey, response 62.

⁵⁰ Cambodia Country Survey, response 42.

⁵¹ Cambodia Country Survey, responses 42 and 58.

⁵² Cambodia Country Survey, responses 64, 65.

lenders to insist on the inclusion of gross-up provisions in loan documentation to ensure that returns are not eroded.⁵³

- C.3.11 The cost of debt finance in Cambodia is thus seemingly typically high, and reducing or eliminating Cambodian interest WHT in appropriate instances could potentially decrease the cost of borrowing from lenders in Cambodia in a way that could prompt greater access to, and uptake of, debt finance locally. Notwithstanding that, the ADB has also identified a number of other factors that would need to be addressed in order for Cambodian borrowers to obtain greater access to debt finance.⁵⁴

C.4 Indonesia

- C.4.1 The Indonesian debt capital market is well-developed and both the Indonesian Government and corporates issue a variety of debt securities, of both conventional and *Shari'ah* varieties.⁵⁵
- C.4.2 Foreign debt finance is commonly available and, of the combined USD 49.6 billion worth of government debt securities outstanding as of 30 December 2016, 37.6% (or USD 18.65 billion) were held by foreign institutional investors.⁵⁶ Whilst the Indonesian Government is the main issuer of debt securities, substantial issuances by the private sector are reportedly common.⁵⁷
- C.4.3 The maturity of the debt capital market means that borrowers in Indonesia have a range of debt financing options available, and that such finance is not simply limited to bank loans and vanilla debt. Bonds, *sukuk* and asset-backed securities are commonly listed on the Indonesian stock exchange ("**IDX**"), treasury bills, commercial paper and repos are also commonly available,⁵⁸ and corporate issuances via MTN programmes are common;⁵⁹ a relatively-high degree of market liberalism also means that foreign financing is widely available. Significant investors in the market include banks, insurers, funds, foreign institutional investors and retail investors.⁶⁰ Non-resident lenders and investors are not restricted from participating in the Indonesian market, but an investor identification is required prior to investment in Indonesian securities.⁶¹ Anecdotally, lenders located in Singapore, Japan, China, Hong Kong and South Korea provide material debt financing into the market.⁶² Vanilla debt commonly takes the form of term and revolving facilities.⁶³
- C.4.4 Security arrangements are also relatively well-developed, with arrangements typically involving a combination of receivership, administration, curatorship, charges over land and other assets and guarantees.⁶⁴ Security arrangements typically need to take account of local regulatory requirements.⁶⁵

⁵³ Cambodia Country Survey, response 66.

⁵⁴ These include the absence of adequate price discovery, the need for a real-time gross settlement system, improved corporate governance, conversion to recognised accounting standards and greater transparency more generally across tax processes. *op. cit.* note 55; at section IX.A.

⁵⁵ Asian Development Bank, *ASEAN+3 Bond Market Guide 2017: Indonesia* (2017); at section I.A.

⁵⁶ *ibid.*

⁵⁷ *op. cit.* note 55; at section III.B.

⁵⁸ An Indonesia Annex to the Global Master Repurchase Agreement standard form repo framework agreement has been published by the International Capital Market Association, which is indicative of the demand for such framework.

⁵⁹ Indonesia Country Survey, response 18. Also see: *op. cit.* note 55; at section III.B.4.

⁶⁰ *op. cit.* note 55; at section III.M.2.

⁶¹ *op. cit.* note 55; at section III.L.2.

⁶² Indonesia Country Survey, response 12.

⁶³ Indonesia Country Survey, response 18.

⁶⁴ Indonesia Country Survey, responses 20, 21 and 22.

⁶⁵ Indonesia Country Survey, response 22.

- C.4.5 Debt instruments may be traded in Indonesia across a number of platforms, but the ADB has recently reported that trading remains largely concentrated in the OTC market due to the tendency for high-volume low-frequency trading of debt instruments.⁶⁶
- C.4.6 The Indonesian tax treatment of debt is more complex than in some of the other Member States, in that whilst Indonesian law permits tax deductions for interest expense it also contains thin capitalisation rules (which restrict interest on debt exceeding four times equity) and other restrictions that affect the tax deductibility of interest payments, to disincentivise the disproportionate use of debt for tax avoidance purposes (by eroding the tax base).⁶⁷
- C.4.7 Interest WHT (as distinct from income tax) on vanilla debt is charged on payments from Indonesian borrowers to Indonesian lenders at the rate of 15% and in respect of certain debt securities at a concessionary rate of 10% (which is reported to be further reduced to 5% until 2020);⁶⁸ in addition, WHT is generally applicable at the rate of 20% on payments of interest to non-Indonesia tax resident lenders,⁶⁹ in each case subject to the availability of relief under the terms of an applicable tax treaty. Interest payable in respect of foreign currency denominated government bonds and *sukuk* has been exempted from WHT since 2016, which is a material relaxation due to the dominance of Indonesian Government-issued debt within the market.
- C.4.8 Indonesia currently has 66 tax treaties in force and a further 2 tax treaties yet to take effect. Seven of those treaties have been entered with other Member States but, to date, Indonesia has not yet entered tax treaties with Cambodia or Myanmar.⁷⁰ The terms of the country's tax treaties typically follow the UN Model Convention,⁷¹ and relief is typically given against Indonesia tax by way of credit.⁷² All 7 treaties with other Member States reduce the interest WHT rate below the domestic rate. The lowest available (non-exemption) rate is 10%; that being the rate applicable in respect of interest payable to lenders established in Laos, Malaysia and Singapore.⁷³ Chart C.4.8 below contains a summary of applicable interest WHT rates.

⁶⁶ *op. cit.* note 55; at section I.A.

⁶⁷ For example, Circular of the Director General of Taxes Number SE-46/PJ4/1995 (5 October 1995) contains rules that permit or restrict interest deductions by reference to the monthly average balance of taxpayers' deposits and other savings. See *inter alia* Indonesia Country Survey, response 34.

⁶⁸ Indonesia Country Survey, response 37.

⁶⁹ Indonesia Country Survey, responses 37, 38, 39, 40, 41 and 54. Also see Deloitte International Tax Source, International Tax: Indonesia Highlights 2018, available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-indonesiahighlights-2018.pdf> (retrieved 19 December 2018).

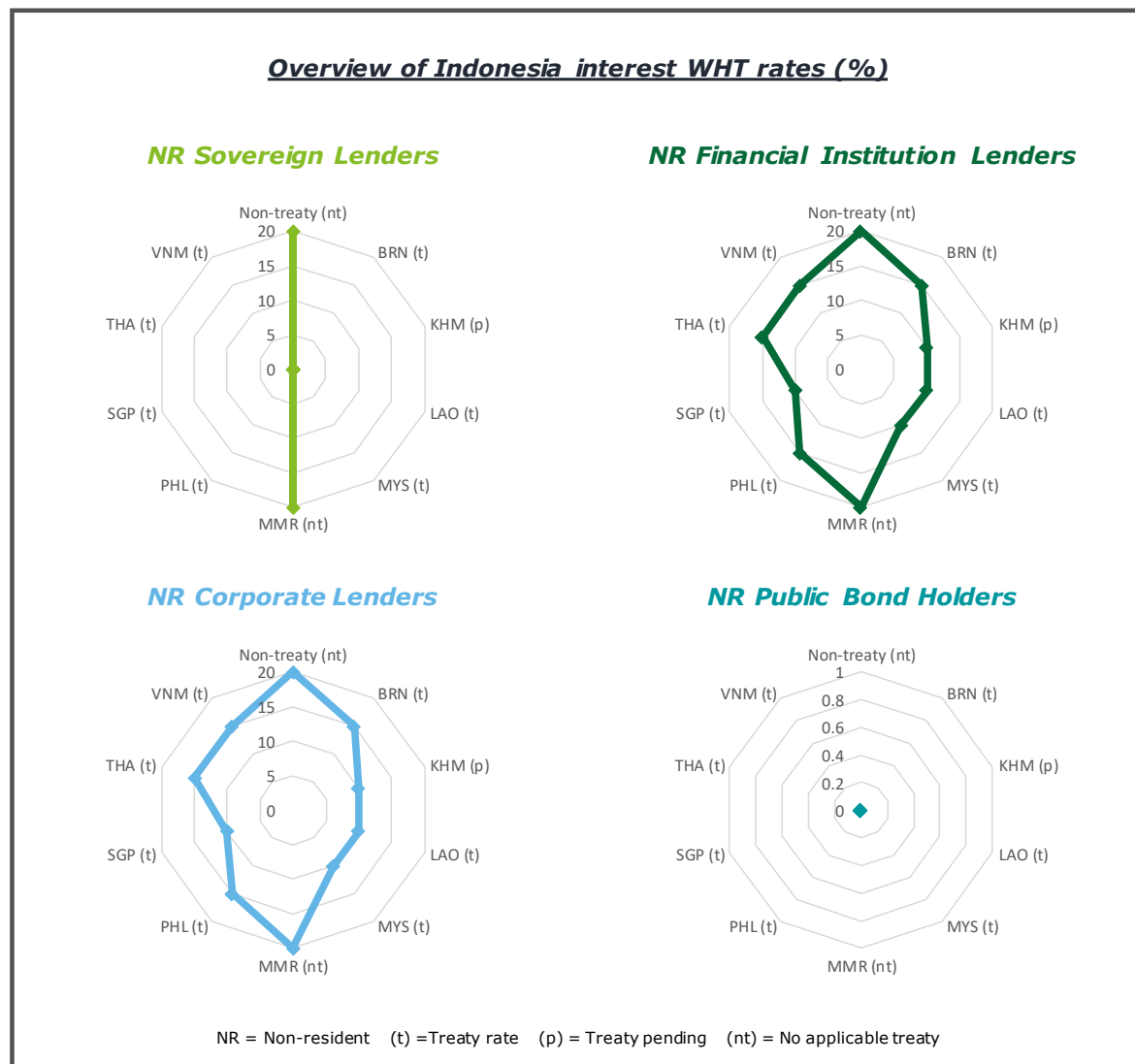
⁷⁰ *op. cit.* note 22.

⁷¹ Indonesia Country Survey, response 56.

⁷² Indonesia Country Survey, response 57.

⁷³ See Appendix 5 (*Overview of Current Interest WHT Structure*) to this Report.

Chart C.4.8: Overview of Indonesia interest WHT rates



Source: Deloitte (2019)

- C.4.9 The Indonesian Government has expressed an intention to incorporate simplified limitation of benefits provisions into its treaties in connection with the BEPS Action Item 6 recommendations.⁷⁴
- C.4.10 Perhaps most notable in the context of Indonesia's approach to providing relief from interest WHT is the administration's approach to the beneficial ownership requirements commonly found in the interest article in many of Indonesia's tax treaties (and, in fact, in many bilateral tax treaties globally). Such article typically contains an anti-conduit measure which requires a non-resident recipient of interest payments from Indonesia to have the beneficial entitlement to the receipt thereof (before relief may be granted). In August 2017, Indonesia's Directorate General of Taxation published a regulation that set out prescriptive minimum economic substance requirements which a recipient must satisfy before being considered beneficially entitled to the relevant receipt and thus entitled to treaty relief ("**PER-10**").⁷⁵ PER-10 has been

⁷⁴ Indonesia Country Survey, response 62.

⁷⁵ Directorate General of Taxation Regulation Number (*Peraturan Direktur Jenderal Pajak Nomor*) PER-10/PJ/2017. It should be noted that this regulation replaced a previous regulation, Directorate General of Taxation Regulation Number PER-61/PJ/2009 and, whilst it did not introduce minimum substance requirements for the first time, it did make such requirements more prescriptive.

considered by many international tax practitioners to significantly go beyond the beneficial ownership measures proposed by the OECD in its BEPS Action Item 6 recommendations, and arguably made it difficult for foreign debt financiers other than financial institutions to obtain the benefit of treaty relief, in a way that could impact the tax cost of debt financing. PER-10 was replaced by an updated regulation from 1 January 2019 ("**PER-25**"),⁷⁶ albeit whilst this newer regulation streamlines relevant administrative procedures, it retains the prescriptive technical substance requirements of PER-10.

- C.4.11 Whilst PER-10 and PER-25 are *prima facie* justifiable domestic anti-treaty shopping measures, the main criticism with respect to their application arises from the related administrative procedures. The Country Survey responses reported (at least prior to the enforcement of PER-25) that such administrative procedures were both unclear and cumbersome.⁷⁷ The ADB similarly reported feedback from foreign investors that a lack of standardisation of documentation to be submitted to tax authorities often affected the practical availability of relief.⁷⁸ In addition, it has also been reported that the Indonesian tax authority is generally resistant to refunding excess tax withheld at source, and in cases in which refunds may be obtained the lead time to actual repayment is often more than twelve months.⁷⁹ It is hoped that the simplified procedures under PER-25 ease the difficulties previously reported.
- C.4.12 Whilst the Country Survey reported the existence of market-standard precedent facility documentation in Indonesia (which should in principle help standardise market practices and streamline administration),⁸⁰ it may also be inferred that inefficient administrative procedures are likely to affect the realisation of such benefits.
- C.4.13 It can be postulated that the greater the availability and uptake of debt finance, the greater the impact of interest WHT and related administrative procedures, and thus the greater the impact of sub-optimal procedures. This may go some way to explaining the empirical and anecdotal evidence in respect of Indonesia, and may also suggest that eliminating the need to claim relief and/or rationalising administrative procedures could have positive effects (in Indonesia specifically) beyond what the corresponding tax collections could otherwise produce; this is corroborated by the results of the economic analysis explained in Part F of this Report.⁸¹

C.5 Laos

- C.5.1 Government securities have been issued in Laos (albeit in limited volume) since 1994 and over the past two decades the Lao Government has largely established the technical and regulatory infrastructure necessary to support the development of an early-stage debt capital market.⁸² Notwithstanding foundational infrastructure having been in place for some time, corporate bonds and commercial paper are not yet visible in the market.⁸³ The ADB attributes such absence *inter alia* to insufficient price discovery data arising from limited government issuances, a lack of liquidity and the lack of a primary market-making function.⁸⁴ In practice, corporate debt therefore remains subject to the availability of bank loans and vanilla

⁷⁶ Directorate General of Taxation Regulation Number (*Peraturan Direktur Jenderal Pajak Nomor*) PER-25/PJ/2018.

⁷⁷ Indonesia Country Survey, response 64.

⁷⁸ *op. cit.* note 55; at section IX.A.5; where it is stated that the lack of a standard set of tax documentation means that both investor and custodian or broker have to issue, accept, and maintain a multitude of forms and formats, despite the fact that such documents all serve the same purpose.

⁷⁹ Indonesia Country Survey, response 65.

⁸⁰ Financial Services Authority Regulation Number (*Peraturan Otoritas Jasa Keuangan Nomor*) 42/POJK.03/2017.

⁸¹ See paragraph F.5.1 below.

⁸² Asian Development Bank, *ASEAN+3 Bond Market Guide 2017: Lao People's Democratic Republic* (2017); at sections I.A. and III.C.

⁸³ *op. cit.* note 82; at sections III.C. and III.D.

⁸⁴ *op. cit.* note 82; at section IX.A. and X.B.

debt (though facilitating the issuance of corporate bonds is a priority development for the Lao authorities, so commentators hope that this will change in the short term).⁸⁵

- C.5.2 The Country Survey responses highlighted that whilst loan finance is widely available in Laos, domestic lenders tend to be materially responsible for the provision of such finance due to the limited presence of foreign lenders within the market.⁸⁶ This is likely partly due to the fact that foreign debt finance must be specifically approved by the Bank of the Lao PDR (which is a somewhat objectively high compliance burden).⁸⁷ Anecdotally, to the extent foreign debt finance exists within the market, it is most commonly observed to be provided from the Philippines (albeit this is perhaps surprising as Laos' tax treaty with Singapore is one of the only two treaties that the country has in force which provides a reduction to the domestic interest WHT burden).^{88, 89}
- C.5.3 The responses to the Country Survey suggest that local security practices are limited, with security usually being taken by way of bank or other guarantees.⁹⁰ There is no standard form of facility agreement used within the market,⁹¹ suggesting a lack of standardisation/co-ordination of stakeholders.
- C.5.4 The Lao tax treatment of debt finance provides for the general tax deductibility of interest expense and no thin capitalisation or other restriction measures apply.⁹²
- C.5.5 Interest WHT (as distinct from income tax) on vanilla debt is charged on payments from Lao borrowers to Lao lenders at the rate of 10%.⁹³ In addition, WHT is generally applicable at the rate of 10% on payments of interest in respect of debt and debt securities not listed on the Laos Stock Exchange ("**LSX**"), subject to the availability of relief under the terms of an applicable tax treaty.⁹⁴ Interest payable in respect of both government and corporate debt securities listed on the LSX is exempted from WHT.⁹⁵
- C.5.6 Laos currently has 11 tax treaties in force and a further 2 tax treaties yet to take effect. Seven of those treaties have been entered with other Member States; to date, Laos has not yet entered tax treaties with Cambodia or the Philippines.⁹⁶ Laos' tax treaties typically follow the UN Model Convention,⁹⁷ and relief is typically given against Lao tax by way of credit.⁹⁸ The treaty with Singapore is the only treaty with another Member State which reduces the interest WHT burden below the domestic 10% rate (it provides for a 5%

⁸⁵ *op. cit.* note 82; at section III.E.

⁸⁶ Laos Country Survey, responses 6, 7, 8 and 9.

⁸⁷ Laos Country Survey, response 67. See also: *op. cit.* note 82; at section II.K.2.

⁸⁸ Laos Country Survey, response 12.

⁸⁹ Laos/Singapore 2014 Income Tax Agreement, Article 11 the second such treaty is with Belarus.

⁹⁰ Laos Country Survey, responses 20 and 21.

⁹¹ Laos Country Survey, response 23.

⁹² Laos Country Survey, responses 31, 32 and 34.

⁹³ Laos Country Survey, response 37. Also see Deloitte International Tax Source, International Tax: Laos Highlights 2018, available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-laoshighlights-2018.pdf> (retrieved 12 December 2018).

⁹⁴ Laos Country Survey, responses 38, 39, 40 and 41.

⁹⁵ *op. cit.* note 82; at section VI.G.2.

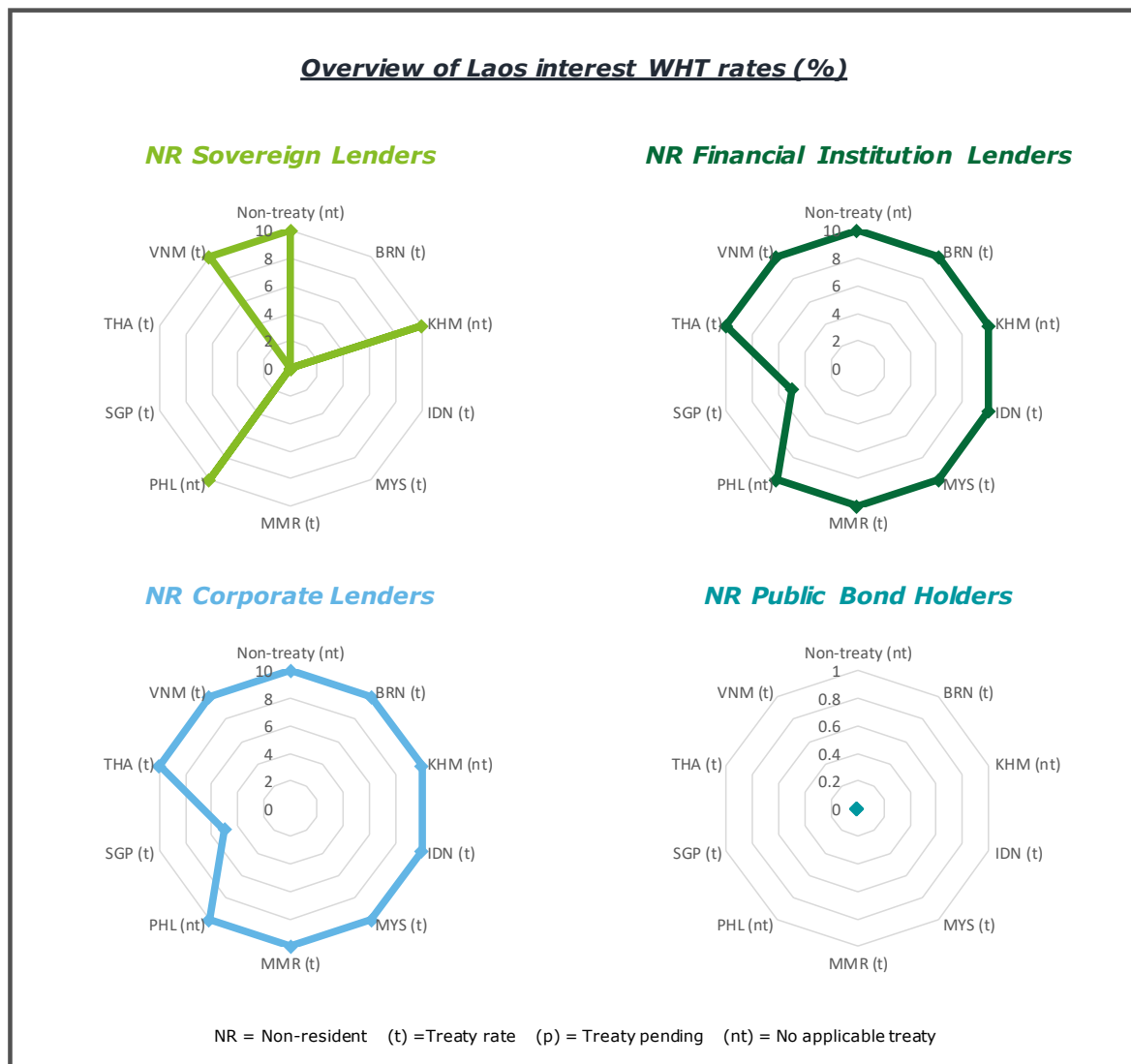
⁹⁶ *op. cit.* note 22.

⁹⁷ Laos Country Survey, response 56.

⁹⁸ Laos Country Survey, response 57.

rate of WHT).⁹⁹ Chart C.5.6 below contains a summary of applicable interest WHT rates. Laos has not expressed an intention to incorporate BEPS Action Item 6 recommendations into its existing treaties, but it is possible that it will agree to do so at the request of counterparty states who have expressed such intentions.¹⁰⁰

Chart C.5.6: Overview of Laos interest WHT rates



Source: Deloitte (2019)

C.5.7 It was reported through the Country Survey that tax treaty relief is technically available in relevant cases, and that the Lao tax authority is generally not inclined to challenge claims provide documentation is order;¹⁰¹ for this reason many lenders do reportedly seek relief.¹⁰² However, the Country Survey responses also highlighted practical difficulties to obtaining relief due to cumbersome and slow administrative

⁹⁹ Laos/Singapore 2014 Income Tax Agreement, Article 11. See Appendix 5 (Overview of Current Interest WHT Structure) to this Report.

¹⁰⁰ Laos Country Survey, response 62.

¹⁰¹ Laos Country Survey, response 42 and 64.

¹⁰² Laos Country Survey, response 66.

procedures and ambiguous documentation requirements,¹⁰³ which suggests that claiming relief is an esoteric exercise that requires specialist assistance, which may in turn imply modest costs of recovery. This may explain the Country Survey response that it is commonplace for foreign lenders to insist on the inclusion of gross-up provisions in loan documentation to ensure that returns are not eroded as a practical matter.¹⁰⁴

- C.5.8 The foregoing factors perhaps suggest that the cost of debt finance in Laos is moderately high, and that reducing or eliminating interest WHT between Member States could therefore decrease the local cost of borrowing. Notwithstanding that, like with respect to other less-developed Member States, the ADB has also identified a number of other material factors that would need to be considered in order for Lao borrowers to obtain greater access to debt finance.¹⁰⁵

C.6 Malaysia

- C.6.1 The ADB has noted that the Malaysian bond market is the largest local currency bond market within ASEAN and one of the most developed bond markets in the wider Asia Pacific region.¹⁰⁶ Such status is *inter alia* attributable to the facts that Malaysia is a leader in Islamic banking and has established a strong Islamic capital market (which accounts for 57% of the global *sukuk* market as of March 2015),¹⁰⁷ and that Malaysian policy bodies and regulatory authorities take a lead role globally in innovating new Islamic securities structures and in developing the wider Islamic capital market.¹⁰⁸

- C.6.2 Bonds, *sukuk* and other *Shari'ah*-compliant products and asset-backed securities are commonly listed on Bursa Malaysia Securities ("**BMS**"), and treasury bills, commercial paper and repos are also commonly available;¹⁰⁹ furthermore corporate issuances via MTN programmes are common and securities lending arrangements and derivatives are also common.¹¹⁰ Instruments vary from investment-grade to unrated on the risk spectrum.¹¹¹ A high degree of market liberalism also means that foreign financing is widely available, and the Country Survey reported that foreign lenders are not concentrated in specific locations (suggesting a good deal of diversification).¹¹² Over one-third of all ringgit bond issuances in 2014 were in respect of *sukuk*.¹¹³ At the end of 2015, 30% of Malaysian government bonds outstanding were held by foreign investors.¹¹⁴ Significant investors in the market include pension funds, insurers, asset managers and retail investors.¹¹⁵ Vanilla debt commonly takes the form of term and revolving facilities.¹¹⁶

¹⁰³ Laos Country Survey, responses 42 and 58.

¹⁰⁴ Laos Country Survey, response 24.

¹⁰⁵ These include the absence of adequate price discovery, enhanced liquidity, a primary market-making function and conversion to recognised accounting standards. See: *op. cit.* note 82; at sections IX and X.

¹⁰⁶ Asian Development Bank, *ASEAN+3 Bond Market Guide 2016: Malaysia* (2016); at section I.

¹⁰⁷ *op. cit.* note 106; at sections I and VIII.A.

¹⁰⁸ *op. cit.* note 106; at section III.B.

¹⁰⁹ A Malaysia Annex to the Global Master Repurchase Agreement standard form repo framework agreement has been published by the International Capital Market Association, which is indicative of the demand for such framework.

¹¹⁰ *op. cit.* note 106; at sections IV.I and IV.J.

¹¹¹ Malaysia Country Survey, response 18. Also see: *op. cit.* note 106; at sections III.B, III.C and III.D.

¹¹² Malaysia Country Survey, response 12.

¹¹³ *op. cit.* note 106; at section VIII.A.

¹¹⁴ *ibid.*

¹¹⁵ *op. cit.* note 106; at section III.M.2.

¹¹⁶ Malaysia Country Survey, response 18.

- C.6.3 Security arrangements are also well-developed, with such arrangements typically involving a combination of mortgages, charges over land and other assets, guarantees and financial guarantee insurance.¹¹⁷
- C.6.4 Debt instruments may be traded in Malaysia on BMS or OTC, but trading remains largely concentrated in the OTC market due to debt securities and *sukuk* typically being traded in high volume and in limited frequency.¹¹⁸
- C.6.5 The maturity of the capital market means that Malaysian borrowers in principle have a range of debt financing options available and that debt finance is not simply limited to vanilla debt. However, the ADB has noted that bond issuances tend to be dominated by large companies and that few lower-rated medium-sized companies are visible in the market ostensibly due to investors' risk aversion.¹¹⁹ Hypothetically, optimising returns (including by eliminating tax costs) could therefore augment the local risk/reward dynamics in a way that could lead to greater market access for smaller stakeholders.
- C.6.6 The Malaysian tax treatment of debt finance provides for the tax deductibility of interest expense incurred for the purposes of earning income and no thin capitalisation rules apply.¹²⁰ As Malaysia does not tax capital gains, interest expense incurred to acquire capital assets is not deductible; thus interest will typically be restricted by reference to the extent to which such expenditure is incurred for non-trade/non-business purposes.¹²¹
- C.6.7 Interest WHT is generally applicable on payments of interest to non-Malaysia tax resident lenders at the rate of 15%,¹²² subject to the availability of relief under the terms of an applicable tax treaty. However, interest in respect of debt securities and interest-equivalent amounts derived from government bonds and *sukuk* are in many cases exempted from tax due to the application of various domestic law exemptions.¹²³
- C.6.8 Under the Labuan Business Activity and Tax Act 1990, entities established in the Labuan region of Malaysia and conducting trading or business activities there are granted preferential tax treatment – such treatment is intended to encourage the economic development of eastern Malaysia through the development of the Labuan International Business and Financial Centre, to operate as a mid-shore/gateway location that can facilitate efficient access to the wider Malaysian market. As part of the package of tax optimisation measures offered by the Malaysia government, taxpayers engaging in defined target sectors (including banking and insurance) in Labuan *inter alia* benefit from an income tax exemption which enables them to pay interest to non-Malaysian tax residents free from WHT.¹²⁴

¹¹⁷ Malaysia Country Survey, responses 20, 21 and 22. See also: *op. cit.* note 106; at section III.P.

¹¹⁸ *op. cit.* note 106; at section IV.A.

¹¹⁹ *op. cit.* note 106; at section IX.A.2.

¹²⁰ Malaysia Country Survey, responses 31 and 32.

¹²¹ Malaysia Country Survey, responses 34.

¹²² Malaysia Country Survey, responses 37, 38, 39, 40 and 41. Also see: Deloitte International Tax Source, International Tax: Malaysia Highlights 2018, available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-malaysiahighlights-2018.pdf> (retrieved 12 December 2018)

¹²³ *op. cit.* note 106; at section VI.G.2.

¹²⁴ LexisNexis, *Practical Guidance – Malaysia: Tax aspects of Labuan entities*, available at https://www.lexisnexis.com/ap/pg/malaysiacorporate/document/424698/5M1P-R341-F0GK-P0PV-00000-00/Tax_aspects_of_Labuan_entities (retrieved 19 December 2018). In connection with the OECD's review of the Labuan regime and to better align it with the intended economic development objectives, the Malaysian government has recently modified the Labuan Business Activity and Tax Act to incorporate additional economic substance requirements. The new measures are effective from 1 January 2019 and are intended to help ensure that foreign investors are only able to access the regime if the economic substance developed in Labuan is sufficient to justify tax treatment that is more advantageous than under Malaysia's otherwise applicable Income Tax Act 1967.

C.6.9 Malaysia currently has 81 tax treaties in force and a further 1 tax treaty yet to take effect. Eight of those treaties have been entered with other Member States and, to date, Cambodia is the only Member State with whom a tax treaty has not been entered.¹²⁵ The terms of Malaysia's tax treaties typically follow the OECD Model Convention,¹²⁶ and relief is typically given against Malaysia tax by way of credit.¹²⁷ Of the eight treaties with other Member States, six contain provision for an interest WHT rate lower than the Malaysian domestic rate.¹²⁸ The lowest available (non-exemption) rate is 10%; that being the rate applicable in respect of interest payable to lenders established in Brunei, Indonesia, Laos, Myanmar, Singapore and Vietnam. The Malaysian Government has expressed an intention to incorporate the principal purpose test into its treaties in connection with the BEPS Action Item 6 recommendations.¹²⁹ Chart C.6.9 below contains a summary of applicable interest WHT rates.

¹²⁵ *op. cit.* note 22.

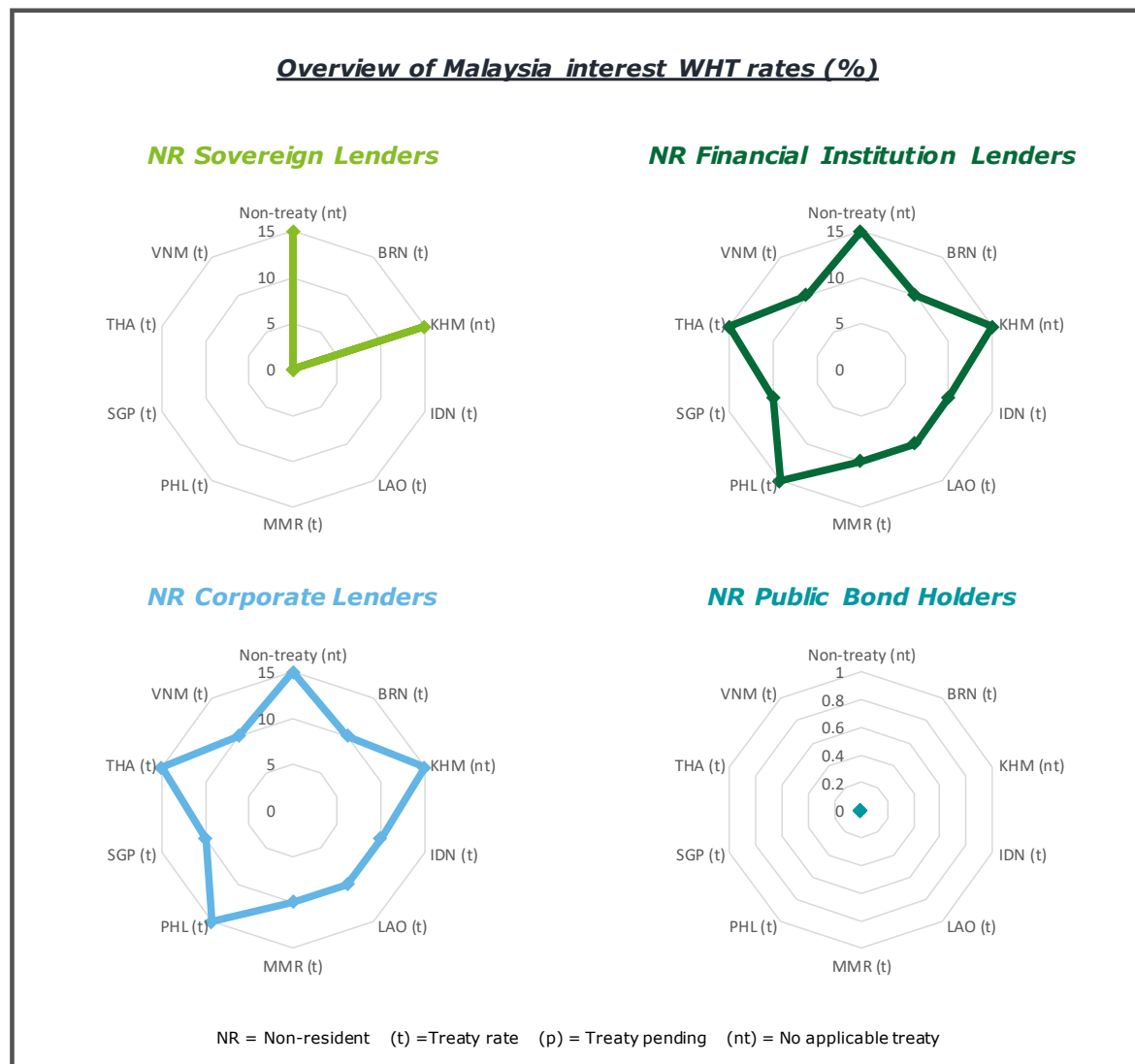
¹²⁶ Malaysia Country Survey, response 56.

¹²⁷ Malaysia Country Survey, response 57.

¹²⁸ See Appendix 5 (*Overview of Current Interest WHT Structure*) to this Report.

¹²⁹ Malaysia Country Survey, response 62.

Chart C.6.9: Overview of Malaysia interest WHT rates



Source: Deloitte (2019)

- C.6.10 Whilst clear administrative treaty relief requirements reportedly exist, it was reported through the Country Survey that stakeholders nevertheless consider the administrative procedure for treaty relief in Malaysia to be somewhat unclear (which could conceivably be a result of disparate custom and practice and/or inconsistent application of documentation requirements),¹³⁰ and that obtaining a refund in relevant cases can be difficult and will typically take more than twelve months.¹³¹ Interestingly, however, it was reported that gross-up provisions are not commonly observed in facility documentation, albeit this may simply suggest a jurisdictional preference to factor potentially irrecoverable tax into the cost of finance (*i.e.* the interest rate) rather than to address the issue through gross-up provisions.¹³²
- C.6.11 The breadth of the exemptions referred to in paragraph C.6.7 above perhaps suggests that the foregoing practical difficulties may be most acute in the simple loan context (in contrast to the debt securities context), which may in turn suggest that such difficulties are experienced disproportionately by smaller stakeholders who do not have the organisational strength to raise funds through the capital markets. Streamlining

¹³⁰ Malaysia Country Survey, response 58.

¹³¹ Malaysia Country Survey, responses 57, 64 and 65.

¹³² Malaysia Country Survey, response 24.

procedures and/or reducing interest WHT to address the administrative and financial costs of claiming relief could therefore conceivably improve market access for smaller stakeholders.

C.7 Myanmar

- C.7.1 Myanmar has experienced a number of challenges throughout recent history which have together negatively impacted the rate of the country's economic development relative to that of its geographical neighbours.
- C.7.2 The Myanmar Government has made significant legislative changes within the past five years, which have led to the partial liberalisation of the banking sector (enabling foreign banks to access the Myanmar market for the first time) and which also provided a foundation for the establishment of the Yangon Stock Exchange ("YSX") in December 2015 and the development of a domestic capital market.
- C.7.3 The Myanmar Government began issuing bonds in 1993 and the Central Bank of Myanmar has also been issuing such bonds to both public and private investors since late 2009; however, debt has not been widely available within the country due to the lingering existence of a cash economy *inter alia* due to the absence of strong local banks, protectionist measures affecting the provision of financial services by non-residents, and the absence of both an OTC market and a defined corporate bond market.¹³³ The result has been that debt volumes in Myanmar have generally been comparatively low as compared with other Member States;¹³⁴ however the Myanmar Government hopes that its gradual liberalisation of the economy (which is in progress) and increased access to debt will provide a stimulus for economic growth.¹³⁵ Significant regulatory developments are nevertheless considered necessary before such growth can be realised.¹³⁶ Anecdotally, sources of debt commonly observed in the market comprise Singapore from within ASEAN and China and Japan from outside of the Community.¹³⁷ Such debt commonly takes the form of term and revolving facilities.¹³⁸
- C.7.4 Myanmar's tax law was revised in 2014, but in practical terms the implementation of that law is fragmented and remains a work in progress, which leads to taxpayers invariably needing to navigate ambiguous custom and practice. Technically, interest expense is generally accepted as being deductible for the purposes of computing taxable income.¹³⁹ The Country Survey responses indicated that the tax law neither includes thin capitalisation provisions nor other restrictions on the deductibility of interest expense.¹⁴⁰

¹³³ Asian Development Bank, *ASEAN+3 Bond Market Guide 2016: Myanmar* (2018); at section A.

¹³⁴ See paragraph F.1.7 and Chart F.1.7 below.

¹³⁵ Myanmar Directorate of Investment and Corporate Administration, *Long-term Foreign Direct Investment Promotion Plan in Myanmar, Final report* (not dated), at Part I-10, Paragraph 33; available at <https://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/fdipp.pdf> (retrieved 19 December 2018).

¹³⁶ For example, whilst foreign lenders and investors are formally able to participate in the market, doing so remains subject to obtaining regulatory approval of the Directorate of Investment and Company Administration, which operates as a soft barrier to market entry. *op. cit.* note 133; at section II.K.2.

¹³⁷ Myanmar Country Survey, response 12.

¹³⁸ Myanmar Country Survey, response 18.

¹³⁹ Myanmar Country Survey, response 31.

¹⁴⁰ Myanmar Country Survey, responses 32, 33 and 34.

- C.7.5 Interest WHT is not charged on payments from Myanmar tax resident borrowers to Myanmar lenders,¹⁴¹ but WHT is generally applicable at the rate of 15% on payments of interest to lenders established outside Myanmar, subject to the availability of relief under the terms of an applicable tax treaty.¹⁴²
- C.7.6 Myanmar currently has 8 tax treaties in force and a further 1 tax treaty yet to take effect. Five of those treaties have been entered with other Member States but, to date, Myanmar has not yet entered tax treaties with Brunei, Cambodia, Indonesia or the Philippines.¹⁴³ The terms of the Myanmar's tax treaties largely follow the OECD Model Convention,¹⁴⁴ and relief is typically given against Myanmar tax by way of credit.¹⁴⁵ Of the five treaties with other Member States, all of them reduce the interest WHT rate below the domestic rate.¹⁴⁶ The lowest available (non-exemption) rate is 8%; that being the rate applicable in respect of interest payable to financial institution lenders established in Singapore. Chart C.7.6 below contains a summary of applicable interest WHT rates. Myanmar has not indicated an intention to incorporate BEPS Action Item 6 measures into its treaties, but the small number of treaties currently concluded means that there is significant scope for such measures.¹⁴⁷

¹⁴¹ Myanmar Country Survey, response 37. See: Notification (47/2018) of the Ministry of the Planning and Finance of the Republic of the Union of Myanmar.

¹⁴² Myanmar Country Survey, responses 37, 38, 39, 40, 41 and 54. Also see Deloitte International Tax Source, International Tax: Myanmar Highlights 2018, available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-myanmarhighlights-2018.pdf?nc=1> (retrieved 19 December 2018).

¹⁴³ *op. cit.* note 22.

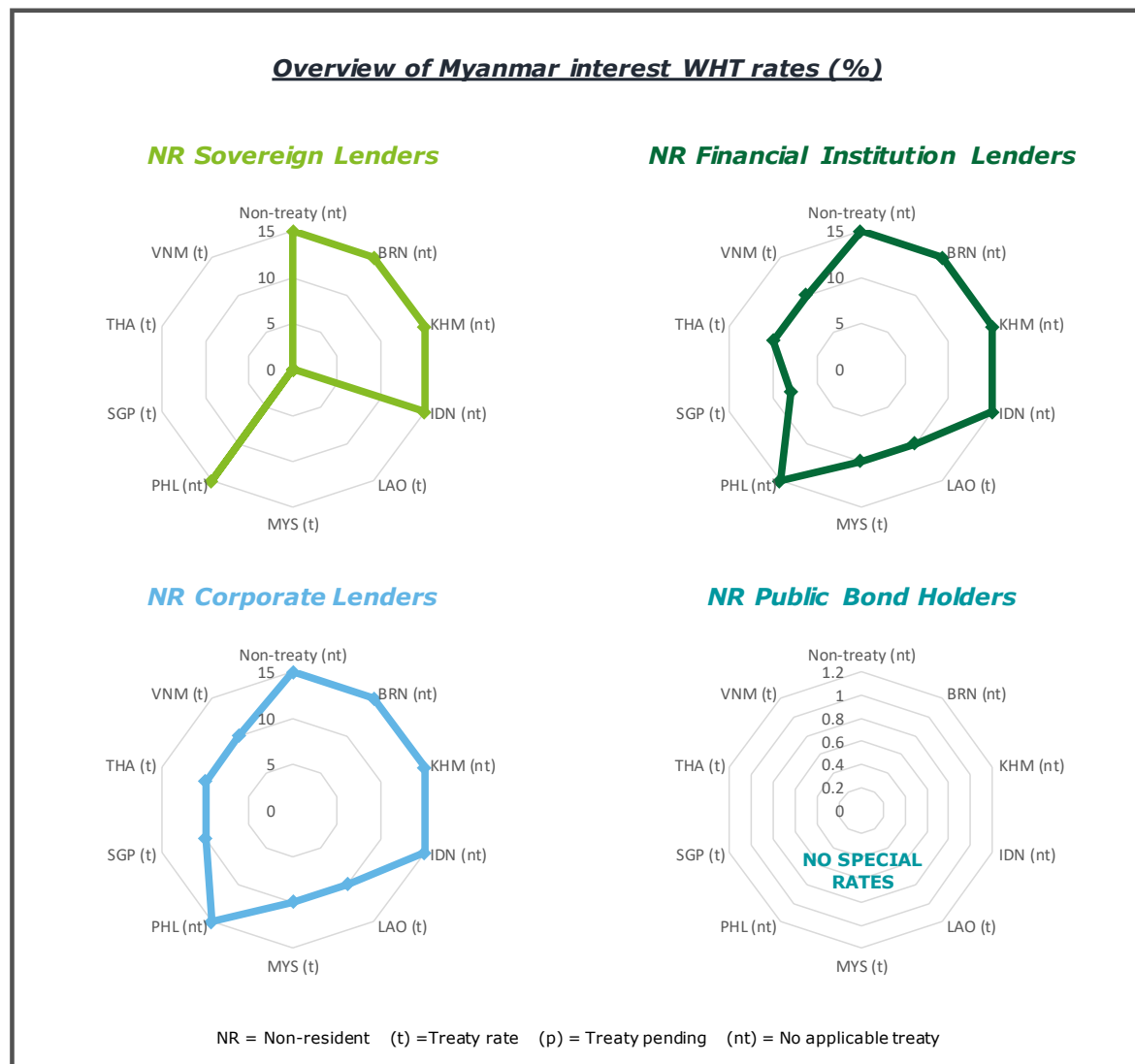
¹⁴⁴ Myanmar Country Survey, response 56.

¹⁴⁵ Myanmar Country Survey, response 57.

¹⁴⁶ See Appendix 5 (*Overview of Current Interest WHT Structure*) to this Report.

¹⁴⁷ Myanmar Country Survey, response 62.

Chart C.7.6: Overview of Myanmar interest WHT rates



Source: Deloitte (2019)

- C.7.7 It was reported through the Country Survey that whilst tax treaty relief is technically available in relevant cases,¹⁴⁸ the administrative procedures to claim relief are both unclear and cumbersome,¹⁴⁹ that the local tax authority is generally resistant to granting relief, and that where a refund may fall due it is commonly practically impossible to obtain.¹⁵⁰ In consequence of this, (to the extent debt finance can in fact be obtained,) lenders often seemingly require the inclusion of gross-up provisions in loan documentation to ensure that returns are not eroded.¹⁵¹
- C.7.8 Anecdotally, the cost of debt finance in Myanmar is typically high due to the limited existence and material set-up costs of financial services businesses, and reducing or eliminating interest WHT between Member States could potentially decrease the cost of borrowing from in Myanmar ASEAN lenders in a way that could prompt greater access to, and uptake of, debt finance in way that is in line with the Myanmar Government's

¹⁴⁸ Myanmar Country Survey, response 42.

¹⁴⁹ Myanmar Country Survey, responses 42 and 58.

¹⁵⁰ Myanmar Country Survey, responses 64, 65.

¹⁵¹ Myanmar Country Survey, response 66.

economic stimulus objectives. However, for such measures to be effective technical and regulatory infrastructure must first be developed to attract debt volumes that may benefit from such policy.¹⁵²

C.8 Philippines

- C.8.1 In the Philippines the bond market is well-established but dominated by government issuances. Whilst the volume of corporate issuances remains small relative to the value of government bond issuances, the ADB has recently reported that the volume of corporate issuances has been growing rapidly in recent years.¹⁵³ It can be thus inferred that whilst Philippines borrowers remain materially dependent upon the availability of vanilla debt, other modes of debt financing are emerging.
- C.8.2 Non-resident lenders and investors are not restricted from participating in the Philippines' market,¹⁵⁴ but non-residents investing in the domestic market are generally advised to register inward foreign exchange remittances with the *Bangko Sentral ng Pilipinas* ("**BSP**") to ensure full and immediate repatriation of corresponding returns.¹⁵⁵ Non-resident issuances of debt securities on the Philippine Dealing & Exchange Corporation ("**PDEX**") does however require BSP approval.
- C.8.3 Bonds, treasury bills, commercial paper, corporate notes, securitised bonds and certificates of deposit are currently visible within the market.¹⁵⁶ MTN programmes may in principle be launched but few to no programmes have in fact been launched.¹⁵⁷ Repos are also available but the market for such instruments is in the early stages of development;¹⁵⁸ and the Philippines Government has also launched initiatives to explore Islamic financing options.¹⁵⁹ PDEX has in the past operated a securities lending platform, but that is currently inactive.¹⁶⁰ The secondary market for debt securities is organised and is based upon listing or enrolment and trading on PDEX.¹⁶¹ Vanilla debt commonly takes the form of term and revolving facilities.¹⁶² The Country Survey reported that Singapore, China, Japan and the US are material sources of debt finance in the Philippines.¹⁶³
- C.8.4 Security arrangements typically take the form of mortgages and charges over assets and guarantees.¹⁶⁴ Guarantee insurance facilities are also available.¹⁶⁵

¹⁵² The ADB has identified the following focus areas: an adequate price discovery mechanism, the need for a real-time gross settlement system, improved corporate governance, conversion to recognised accounting standards and greater transparency more generally across tax processes. See: *op. cit.* note 133; at section IX.A.

¹⁵³ Asian Development Bank, *ASEAN+3 Bond Market Guide 2017: Philippines* (2017); at sections I.A. and III (Introduction).

¹⁵⁴ *op. cit.* note 153; at section II.K.2.

¹⁵⁵ *op. cit.* note 153; at sections II.K.2 and II.L.2.

¹⁵⁶ Philippines Country Survey, response 18. *op. cit.* note 153; at sections III.B and III.C.

¹⁵⁷ *op. cit.* note 153; at sections III.B.4.

¹⁵⁸ *op. cit.* note 153; at section G.

¹⁵⁹ *op. cit.* note 153; at section VIII.A.

¹⁶⁰ *op. cit.* note 153; at section H.

¹⁶¹ *ibid.*

¹⁶² Philippines Country Survey, response 18.

¹⁶³ Philippines Country Survey, response 12.

¹⁶⁴ Philippines Country Survey, response 20.

¹⁶⁵ *op. cit.* note 153; at section III.P.

- C.8.5 The Philippines tax treatment of debt finance provides for the deductibility of interest expense.¹⁶⁶ No formal thin capitalisation rules exist, but interest deductions will typically be denied by the tax authority if leverage exceeds 75%.¹⁶⁷
- C.8.6 Interest WHT (as distinct from income tax) on vanilla debt is charged on payments from Philippines borrowers to Philippines lenders at the rate of 20%.¹⁶⁸ In addition, WHT is generally applicable at the rate of 20% on payments of interest by Philippines borrowers to foreign lenders at the rate of 20%,¹⁶⁹ subject to the availability of relief under the terms of an applicable tax treaty.
- C.8.7 The Philippines currently has 43 tax treaties in force. Five of those treaties have been entered with other Member States but, to date, the Philippines has not entered tax treaties with Brunei, Cambodia, Laos or Myanmar.¹⁷⁰ The terms of the treaties concluded typically follow the OECD Model Convention, and relief is typically given against Philippines tax in the form of a tax credit.¹⁷¹ All five treaties with other Member States reduce the interest WHT rate below the domestic rate.¹⁷² The lowest available (non-exemption) rate is 10%; that being the rate applicable in respect of interest payable to financial institution lenders established in Thailand. Chart C.8.7 below contains a summary of applicable interest WHT rates. The Philippines' Government has not expressed an intention to incorporate BEPS Action Item 6 measures into its treaties.¹⁷³

¹⁶⁶ Philippines Country Survey, response 31 and 32.

¹⁶⁷ Philippines Country Survey, response 33.

¹⁶⁸ Philippines Country Survey, response 37. Also see Deloitte International Tax Source, International Tax: Philippines Highlights 2018, available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-philippineshighlights-2018.pdf> (retrieved 13 December 2018).

¹⁶⁹ Philippines Country Survey, responses 38, 39, 40 and 41.

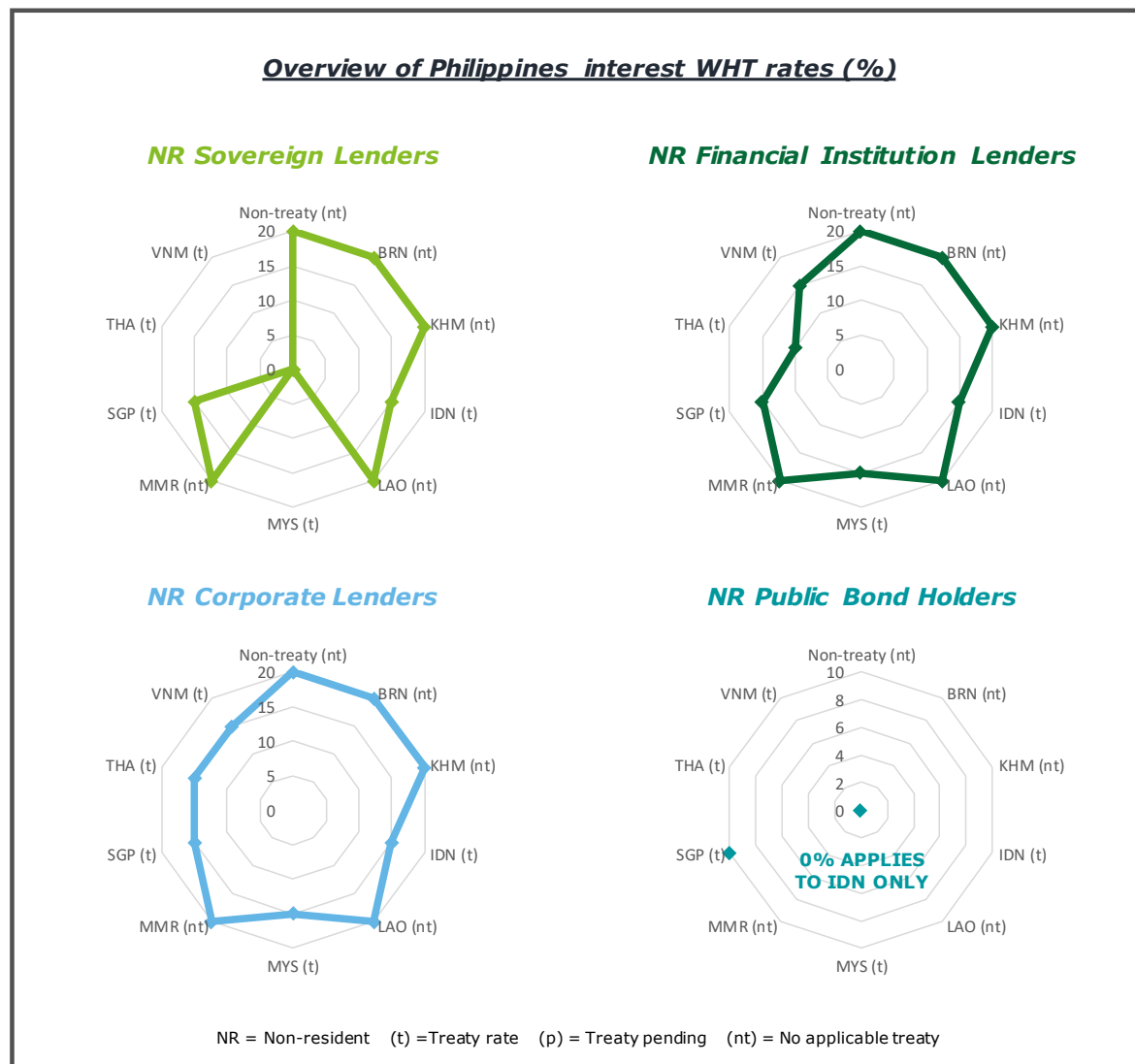
¹⁷⁰ *op. cit.* note 22.

¹⁷¹ Philippines Country Survey, responses 56 and 57.

¹⁷² See Appendix 5 (*Overview of Current Interest WHT Structure*) to this Report.

¹⁷³ Philippines Country Survey, response 62.

Chart C.8.7: Overview of Philippines interest WHT rates



Source: Deloitte (2019)

C.8.8 It was reported through the Country Survey that tax treaty relief is technically available in relevant cases,¹⁷⁴ and that the administrative procedure to claim relief requires the use of specified forms and is both simple and clear.¹⁷⁵ However, it was also reported that the local tax authority is generally resistant to granting relief and that, where a refund may fall due, it will typically take longer than twelve months to obtain.¹⁷⁶ It was further reported that lenders typically do try to recover WHT notwithstanding the practical difficulties,¹⁷⁷ and that WHT costs are not overtly passed on to borrowers through the inclusion of gross-up provisions in facility documentation (though this may suggest mean that such cost is recovered through pricing/interest rates).¹⁷⁸

¹⁷⁴ Philippines Country Survey, response 42.

¹⁷⁵ Philippines Country Survey, responses 42, 58 and 59.

¹⁷⁶ Philippines Country Survey, responses 64 and 65.

¹⁷⁷ Philippines Country Survey, response 66.

¹⁷⁸ Philippines Country Survey, response 24.

C.8.9 Whilst raising debt finance in the Philippines through a range of instruments is becoming increasingly common, the ADB has highlighted that the volume of corporate fixed-income securities listed and traded on PDEX is low and that such instruments currently have much lower turnover ratios compared with government securities.¹⁷⁹ This suggests that whilst there is growth within the domestic capital market, raising debt finance from the market is likely to be less accessible to SMEs than it is to larger enterprises. It can thus be inferred that there remains a local dependency upon the availability of vanilla debt and bank loans, and the evidence suggests that the cost of borrowing using such facilities may be comparatively high, *inter alia* due to the likelihood of interest WHT being priced into supplies by lenders (see above). Reducing the need for relief and optimising administrative processes could therefore modestly benefit Philippines borrowers' access to debt capital.

C.9 Singapore

C.9.1 Singapore has one of the most developed and open capital markets in Asia and the country's debt market, which includes a strong and growing Islamic finance market, provides diverse sources of funding for Singapore and foreign corporates, international organisations and governments.¹⁸⁰ The international nature of the market is reflected in the multicurrency nature of issuances launched. USD-denominated issuances dominate the market, but the ADB has reported that significant issuances also occur in other major currencies, including AUD, CNH, EUR and GBP.¹⁸¹ There are no market entry or pre-registration requirements and no exchange controls that may restrict market access.¹⁸² The strength and liberalism of the market provides both Singapore and foreign (including ASEAN) regional borrowers with diverse debt financing options.

C.9.2 Bonds, treasury and statutory board bills, MTN programmes,¹⁸³ *sukuk* and other *Shari'ah*-compliant products are visible within the market, and repos and securities lending arrangements are also commonly available.¹⁸⁴ The market utilises a wide range of instruments including fixed- and floating-rate notes, asset-backed securities and diverse structured products.¹⁸⁵ Significant investors in the market include primary and secondary dealers, pension funds, insurers, asset and investment managers and also retail investors.¹⁸⁶ Vanilla debt commonly takes the form of term and revolving facilities.¹⁸⁷ The Country Survey reported that lenders from the United States provide a material source of debt finance within the country.¹⁸⁸ Consistent with Singapore being a gateway into the ASEAN markets, the Country Survey responses did not identify lenders from other Member States as material sources of debt finance with the Singapore markets.

¹⁷⁹ *op. cit.* note 153; at section IX.A.2.

¹⁸⁰ Asian Development Bank, *ASEAN+3 Bond Market Guide 2016: Singapore* (2016); at section I.A.

¹⁸¹ *op. cit.* note 180; at sections I.A. and III.B.

¹⁸² *op. cit.* note 180: Singapore (2016); at section II.L.2.

¹⁸³ It is understood that in the Singapore market commercial paper issuances have been largely replaced by MTN programmes. *op. cit.* note 180; at section III.C.2.

¹⁸⁴ *op. cit.* note 180; at sections III.B. and III.C.

¹⁸⁵ *op. cit.* note 180; at section III.B.

¹⁸⁶ *op. cit.* note 180; at section III.M.2.

¹⁸⁷ Singapore Country Survey, response 18.

¹⁸⁸ Singapore Country Survey, response 12. It is interesting to note that Singapore and the United States currently have no tax treaty in place to mitigate the 15% rate of interest WHT applicable under Singapore domestic law on interest payments to non-resident lenders; this result may therefore suggest significant use of domestic law exemptions from WHT.

- C.9.3 Local security arrangements are well-developed, with such arrangements typically involving a combination of receivership, administration, mortgages, charges over land and other assets, guarantees and financial guarantee insurance.¹⁸⁹
- C.9.4 Debt securities may be listed on Singapore Exchange Ltd ("**SGX**"), but the bulk of primary issuances and secondary trades occur in the OTC market,¹⁹⁰ and SGX tends to focus more on the retail sector.¹⁹¹
- C.9.5 The Singapore tax treatment of debt finance provides for the tax deductibility of interest expense incurred for the purposes of earning income, and no thin capitalisation rules apply.¹⁹² As Singapore does not tax capital gains, interest expense incurred to acquire capital assets is generally not deductible; common interest expense will typically be restricted by reference to the extent to which such expenditure is incurred for non-business purposes under the so-called 'Total Assets Method'.¹⁹³ As a result of the existence and application of this measure, the legislature and local tax authority have not proposed implementing BEPS Action Item 4 measures.
- C.9.6 Interest WHT is generally applicable in respect to payments of interest to non-Singapore resident lenders at the rate of 15%, subject to the availability of relief under the terms of an applicable tax treaty, and legislative provisions specify certain circumstances in which interest paid shall be deemed to have a Singapore source such that it is subject to WHT.¹⁹⁴ Interest payable in respect of 'Qualifying Debt Securities' ("**QDS**") benefits from an exemption from WHT; such securities include Singapore Government securities and corporate bonds issued in accordance with regulations and arranged by certain licensed Singapore financial institutions.
- C.9.7 Singapore currently has 85 tax treaties in force and a further 5 tax treaties yet to take effect. Tax treaties currently exist between Singapore and all other Member States.¹⁹⁵ The terms of Singapore's tax treaties typically follow the OECD Model Convention, but some of the country's older treaties also incorporate aspects of the UN Model Convention.¹⁹⁶ Relief is typically given against Singapore tax by way of credit.¹⁹⁷ The nine treaties with the other Member States provide for reduced interest WHT rate of 0%, 5%, 8% and 10%, with the actual rate applicable depending upon the characteristics of the recipient (for example, the treaty with Myanmar provides for the application of an 8% rate on Singapore-source interest payment to Myanmar financial institutions).¹⁹⁸ Chart C.9.7 below contains a summary of applicable interest WHT rates. The Singapore Government has expressed an intention to incorporate the principal purpose test into its treaties in connection with the BEPS Action 6 recommendations.¹⁹⁹

¹⁸⁹ Singapore Country Survey, responses 20, 21 and 22. *op. cit.* note 180; at section III.P.

¹⁹⁰ *op. cit.* note 180; at section III.J.1.

¹⁹¹ *op. cit.* note 180; at section III.J.3.

¹⁹² Singapore Country Survey, responses 31 and 32.

¹⁹³ Singapore Country Survey, response 34.

¹⁹⁴ Singapore Country Survey, responses 37, 38, 39, 40 and 41. Also see Deloitte International Tax Source, International Tax: Singapore Highlights 2018, available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-singaporehighlights-2018.pdf> (retrieved 19 December 2018).

¹⁹⁵ *op. cit.* note 22.

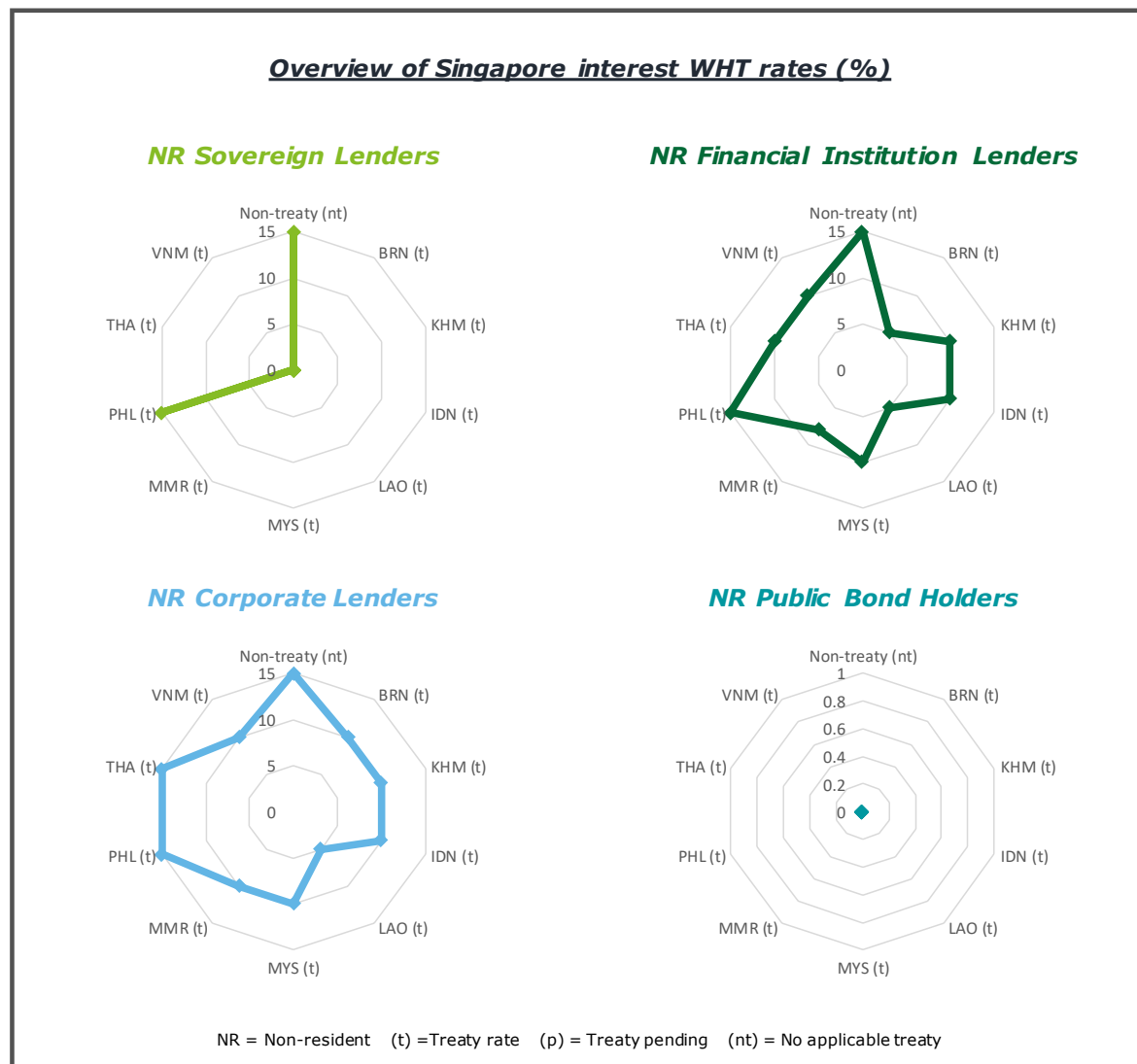
¹⁹⁶ Singapore Country Survey, response 56.

¹⁹⁷ Singapore Country Survey, response 57.

¹⁹⁸ Singapore/Myanmar tax treaty of 1999; Article 11.

¹⁹⁹ Singapore Country Survey, response 62. The principal purpose test will apply to all treaties covered by the MLI. See OECD, Signatories and Parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI Positions): <http://www.oecd.org/tax/treaties/beps-ml-signatories-and-parties.pdf> (retrieved 19 December 2018). Other Member States that have signed the MLI comprise Indonesia and Malaysia.

Chart C.9.7: Overview of Singapore interest WHT rates



Source: Deloitte (2019)

- C.9.8 Claims for tax treaty relief make use of a clear and streamlined e-filing procedure; in addition, the local tax authority is generally not inclined to challenge a claim provided it is in order, and refunds validly claimed are typically received within one month from submission of a claim.²⁰⁰
- C.9.9 In summary, the Singapore market provides borrowers with strong access to debt capital and efficient administration conceivably mitigates negative impacts on cross-border debt flows. Whilst interest WHT does apply in respect of payments to non-resident lenders, a large tax treaty network and the application of various exemptions help ensure an attractive investment climate. The Country Survey reported that local facility documentation typically contains gross-up provisions to pass the WHT cost on to borrowers,²⁰¹ so reducing interest WHT would inherently give rise to cost savings that would benefit Singapore borrowers; however, it is questionable how much incremental benefit could be realised by the Singapore state and Singapore borrowers from WHT optimisation measures, as a result of the existing relative strength of the market. Productivity and other spin-off benefits could possibly arise from a reduction of WHT, but it would

²⁰⁰ Singapore Country Survey, responses 42, 64 and 65.

²⁰¹ Singapore Country Survey, responses 24 and 25.

need to be carefully and closely considered in Singapore whether the projected benefits of a policy change would be proportionate to the corresponding loss of tax collections.

C.10 Thailand

- C.10.1 The Thai bond market is well-established but dominated by government issuances; however the ADB has observed that corporate issuers have increasingly used bonds to raise capital since the late 1990s and that in recent years there has been a gradual increase in corporate issuances as a proportion of total issuances, which is indicative of a growing marketplace for corporate debt.²⁰² In February 2016, corporate issuances accounted for around 18% of all bonds and notes outstanding by value.²⁰³ The Country Survey responses suggest that there is perhaps a lack of liquidity in the market due to the existence of a mediocre secondary market for corporate debt;²⁰⁴ they also suggest that bank loans continue to be the main source of debt finance to the private sector.²⁰⁵
- C.10.2 Non-resident lenders and investors are not restricted from participating in the Thai market, though transactions concerning local currency must comply with foreign exchange regulations (creating a comparative barrier as compared with foreign currency issuances).²⁰⁶
- C.10.3 Bonds, treasury bills, medium- and long-term notes, bills of exchange, commercial paper and both vanilla and more exotic structured bonds and derivatives are visible within the market,²⁰⁷ and vanilla debt commonly takes the form of term and revolving facilities.²⁰⁸ There are also limited markets for bilateral and private repos, securities lending, and interest rate futures.²⁰⁹ Thailand is in the early stages of developing an Islamic bond market,²¹⁰ and the securities regulator is understood to be evaluating the introduction of a framework for MTN programmes.²¹¹ Trading is conducted either OTC or on the Thailand Bond Exchange ("**TBX**"), a specialist debt capital market operated by the Stock Exchange of Thailand. Most transactions occur OTC, and the TBX has been focusing on serving retail investors.²¹² The volume of trading of debt securities on TBX is low and in 2016 the ABD reported that trades on TBX accounted for less than 3% of total volume (suggesting that investors are mostly institutional investors engaged in the OTC market).²¹³ Major investors include domestic pension funds, asset managers, mutual funds, commercial banks, insurers, and other corporate investors.²¹⁴
- C.10.4 Security arrangements typically take the form of receivership, administration, mortgage and charges over shares and other assets and guarantees.²¹⁵

²⁰² Asian Development Bank, *ASEAN+3 Bond Market Guide 2016: Thailand* (2016); at sections I.A and I.B.

²⁰³ *op. cit.* note 202; at section III.D.

²⁰⁴ Thailand Country Survey, response 10.

²⁰⁵ Thailand Country Survey, responses 1, 6, 7, 8 and 9.

²⁰⁶ *op. cit.* note 202; at sections II.K.2. and II.L.2.

²⁰⁷ Thailand Country Survey, response 29. *op. cit.* note 202; at sections III.B. and III.C.

²⁰⁸ Thailand Country Survey, response 18.

²⁰⁹ *op. cit.* note 202; at sections IV.G, IV.H and IV.I.

²¹⁰ *op. cit.* note 202; at section VIII.A.

²¹¹ *op. cit.* note 202; at section IX.B.4.

²¹² *op. cit.* note 202; at sections II.D. and III.J.

²¹³ *op. cit.* note 202; at section III.J.

²¹⁴ *op. cit.* note 202; at section III.M.

²¹⁵ Thailand Country Survey, responses 20 and 21.

- C.10.5 The Thai tax treatment of debt finance provides for the deductibility of interest expense.²¹⁶ No formal thin capitalisation rules exist, but interest deductions will typically be denied in certain sectors if leverage exceeds 75% or 87.5%.²¹⁷
- C.10.6 An advance interest WHT (as distinct from but creditable against income tax) is charged on payments from Thai borrowers to Thai corporate lenders in connection with vanilla debt at the rate of 1%.²¹⁸ In addition, WHT is generally applicable at the rate of 15% on payments of interest by Thai borrowers to foreign lenders,²¹⁹ subject to the availability of relief under the terms of an applicable tax treaty. Interest on Thai government bonds payable to non-residents benefits from a domestic law exemption.²²⁰
- C.10.7 Like some of the other Member States,²²¹ Thailand also applies exemptions from interest WHT to encourage investment into certain high-priority economic sectors; for example, the International Headquarters ("IHQ") scheme is intended to help position Thailand as a regional headquarters location for multinational groups, and an incentivised rate of taxation and exemption from interest WHT is offered to eligible taxpayers who commit to performing centralised group support functions like borrowing, lending and treasury management from Thailand.²²²
- C.10.8 Thailand currently has 60 tax treaties in force and a further 4 tax treaties yet to take effect. Eight of those treaties have been entered with other Member States but, to date, Thailand has not entered a treaty with Brunei.²²³ The terms of the treaties concluded typically follow the UN Model Convention, and relief is typically given against Thai tax in the form of a tax credit.²²⁴ Of the eight treaties with other Member States, all of them reduce the interest WHT rate below the domestic rate provided that the interest is paid to a financial institution of the other contracting state (with the exception of the treaty with Myanmar, which excludes the requirement that the counterparty be a financial institution).²²⁵ The lowest available (non-exemption) rate is 10%; that being the rate applicable to lenders who are financial institutions (and non-financial institutions in the case of Myanmar only) in any of the eight relevant states. Chart C.10.8 below contains a summary of applicable interest WHT rates. As of the 4 December 2018, the Thai Government had notified the OECD of its intention to sign the MLI but it had not set out its positions in respect of which BEPS Action Item 6 measures might be incorporated into its tax treaties.²²⁶

²¹⁶ Thailand Country Survey, response 31.

²¹⁷ Thailand Country Survey, responses 32 and 33. See Appendix 2 (*Country Survey, Consolidated and Enriched Responses*) to this Report for further details.

²¹⁸ Thailand Country Survey, response 37. Also see: Deloitte International Tax Source, *International Tax: Thailand Highlights 2017*, available at <https://www2.deloitte.com/content/dam/Deloitte/cn/Documents/international-business-support/deloitte-cn-ibs-thailand-int-tax-en-2017.pdf> (retrieved 2 January 2019).

²¹⁹ Thailand Country Survey, responses 38, 39, 40 and 41.

²²⁰ *op. cit.* note 202; at section VI.G.7.

²²¹ See paragraph C.6.8 above in respect of Malaysia, for example.

²²² Deloitte, *Taxation and Investment in Thailand 2017*; available at: <https://www2.deloitte.com/content/dam/Deloitte/cn/Documents/international-business-support/deloitte-cn-ibs-thailand-tax-invest-en-2017.pdf> (retrieved 23 February 2019); at page 6.

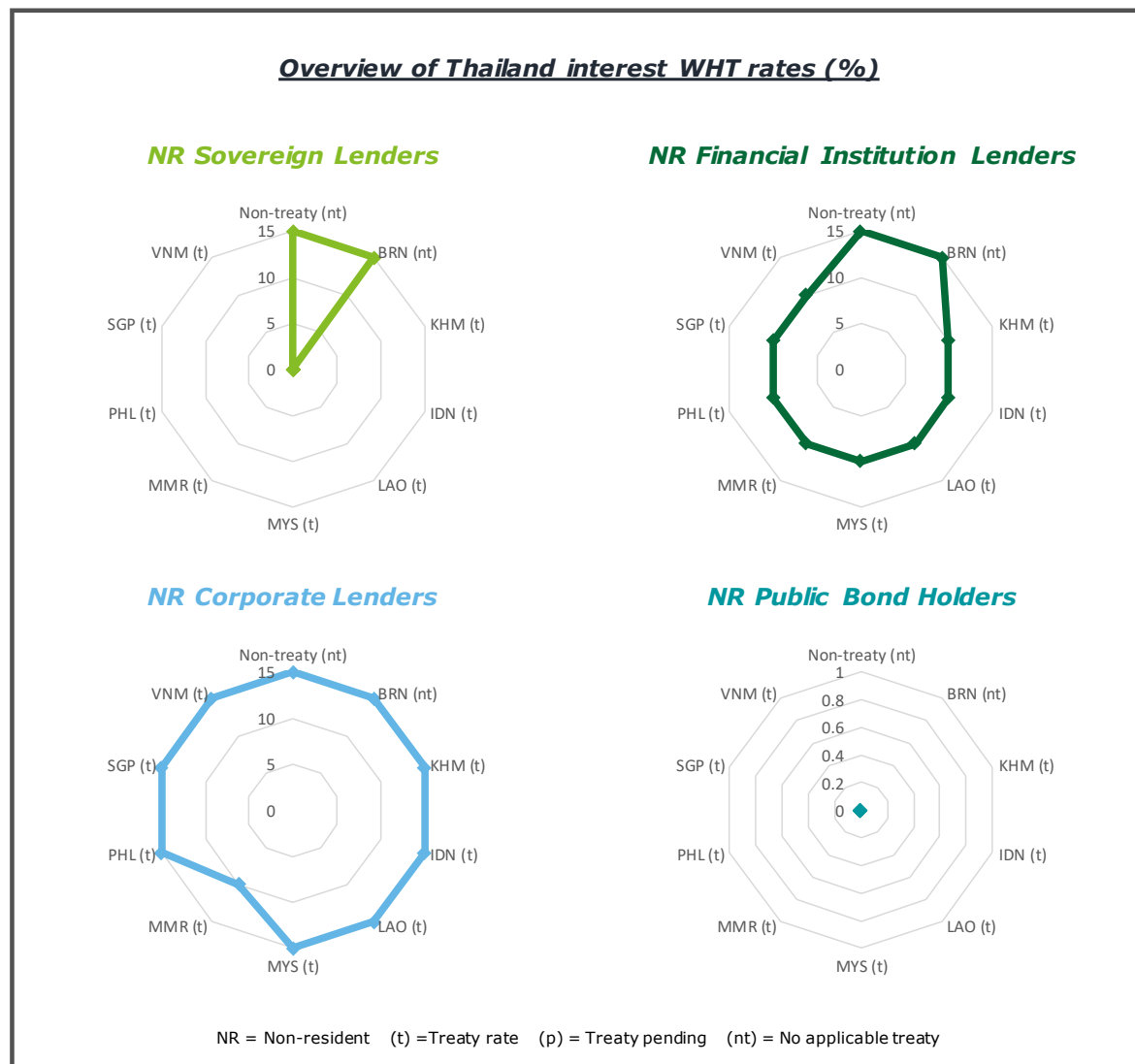
²²³ *op. cit.* note 22.

²²⁴ Thailand Country Survey, responses 56 and 57.

²²⁵ See Appendix 5 (*Overview of Current Interest WHT Structure*) to this Report.

²²⁶ Organisation for Economic Co-operation and Development, *Signatories and Parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion And Profit Shifting*, Status as of 4 December 2018; available at <http://www.oecd.org/tax/treaties/beps-ml-signatories-and-parties.pdf> (retrieved 14 December 2018).

Chart C.10.8: Overview of Thailand interest WHT rates



Source: Deloitte (2019)

C.10.9 It was reported through the Country Survey that whilst tax treaty relief is technically available in relevant cases,²²⁷ there is no established administrative procedure governing how relief should actually be claimed,²²⁸ leaving borrowers uncertain of their withholding obligations and potentially having to withhold at the domestic rate to preclude a default. From lenders' perspectives, such risk is commonly mitigated through the inclusion of gross-up provisions in loan documentation, passing the WHT costs on to the borrowers and impacting the cost of debt finance locally.²²⁹ In addition to the high cost of debt finance, few corporate investors operate in the local bond market limiting potentially alternative sources of finance.²³⁰

²²⁷ Thailand Country Survey, response 42.

²²⁸ Thailand Country Survey, responses 42 and 58.

²²⁹ Thailand Country Survey, responses 24 and 25.

²³⁰ *op. cit.* note 202; at sections IX.A.1 and IX.A.2.

C.11 Vietnam

- C.11.1 The ADB considers the Vietnam bond market to be mature for its age and as compared with other regional markets.²³¹ Like some of the other nascent regional markets, the Vietnam market is dominated by government issuances (in excess of 90% of bonds are issued by the public sector).²³² The Country Survey responses reported that foreign debt finance is widely available to local borrowers,²³³ though statistics show a modest number of corporate bond issuances and such volumes are insufficient to have displaced bank loans and other vanilla debt as the principle source of debt finance available locally.²³⁴
- C.11.2 Non-resident lenders and investors are not restricted from participating in the Vietnam market, though certain steps must be undertaken by investors before they are able to make investments into debt securities issued by a public company.²³⁵ Certain limits do however apply to some investments in corporate bonds (specifically those with equity conversion features); and non-residents will generally be required to satisfy additional requirements (as compared with residents) before being able to execute transactions.²³⁶ Consequently, there is some evidence of barriers to market access from the perspective of foreign stakeholders. Public offerings are more common than private placements due to sustained disruption in the market for private placements dating back to 2010.²³⁷
- C.11.3 Bonds and notes, treasury bills, commercial paper and repos of government bonds are visible within the market, as is securities lending.²³⁸ Whilst the range of instruments commonly seen in the market is perhaps more limited than in some of the other regional markets, such concentration is likely simply a reflection of the youth of the market and its focus on regional demand. Vanilla debt commonly takes the form of term and revolving facilities.²³⁹ Anecdotally, much foreign debt finance provided to Vietnam borrowers comes from Singapore.²⁴⁰
- C.11.4 Security arrangements typically involve a combination of receivership, administration, mortgages, charges over land and other assets, and guarantees and financial guarantee insurance.²⁴¹
- C.11.5 Debt securities may be traded in the OTC market or on the Vietnam Stock Exchange ("**VSX**");²⁴² and whilst such securities are largely traded in the OTC market, the proportion of debt trading on VSX (as compared with off VSX) has been gradually increasing.²⁴³ Significant investors in the market include commercial banks

²³¹ Asian Development Bank, *ASEAN+3 Bond Market Guide: Viet Nam, October 2018* (2018); at section I.A.

²³² *op. cit.* note 231; at section I.D.

²³³ Vietnam Country Survey, responses 1 and 6.

²³⁴ *AsianBondsOnline* (ADB); <https://asianbondsonline.adb.org/data-portal/> (retrieved 14 December 2018).

²³⁵ Vietnam Country Survey, responses 8 and 9. *op. cit.* note 231; at section II.J.2.

²³⁶ *op. cit.* note 231; at section II.L.

²³⁷ *op. cit.* note 231; at section 1.B.2

²³⁸ *op. cit.* note 231; at sections III.B, III.C and IV.I.

²³⁹ Vietnam Country Survey, response 18.

²⁴⁰ Vietnam Country Survey, response 12.

²⁴¹ Vietnam Country Survey, responses 20, 21 and 22.

²⁴² At the time of writing, the Hanoi Stock Exchange and the Ho Chi Minh Stock Exchange were anticipated to shortly merge to create the VSX. The expectation is that share trading will be moved to the legacy Ho Chi Minh Stock Exchange platform whilst bond and derivative trading will be moved to the legacy platform in Hanoi. *op. cit.* note 231; at section IX.B.3.

²⁴³ *op. cit.* note 231; at section I.D.

and domestic life insurance companies; there is little market penetration by foreign investors though it has been observed that recently volumes have been increasing.²⁴⁴

- C.11.6 The Vietnam tax treatment of debt finance provides for the tax deductibility of interest expense and no thin capitalisation rules apply. However, Vietnam has expressed an intention to implement an interest restriction in connection with BEPS Action Item 4 recommendations, which will limit deductibility to the extent interest expense exceeds 20% EBITDA (though, at present, it is not clear whether this would be a general restriction or whether it would only apply to related party loans).²⁴⁵
- C.11.7 Interest WHT is generally applicable on payments of interest to non-resident lenders at the rate of 5%, subject to the availability of relief under the terms of an applicable tax treaty. Interest payable in respect of government bonds is exempted from WHT.²⁴⁶
- C.11.8 Vietnam currently has 71 tax treaties in force and a further 6 tax treaties yet to take effect. A treaty has been entered with each of the other Member States.²⁴⁷ The terms of Vietnam's tax treaties typically follow the OECD Model Convention,²⁴⁸ and relief is typically given against Vietnam tax by way of credit.²⁴⁹ Of the nine treaties with other Member States, none of them contain provision for an interest WHT rate lower than the domestic rate; though this appears to be due to a domestic tax policy decision to apply a low rate of 5% under domestic law, enacted subsequent to the agreement of many relevant treaties.²⁵⁰ Chart C.11.8 below contains a summary of applicable interest WHT rates. The Vietnam Government has expressed an intention to incorporate the principal purpose test into its treaties in connection with the BEPS Action Item 6 recommendations.²⁵¹

²⁴⁴ *op. cit.* note 231; at section III.N.2.

²⁴⁵ Vietnam Country Survey, response 34.

²⁴⁶ *op. cit.* note 231; at section VI.H.4.

²⁴⁷ *op. cit.* note 22.

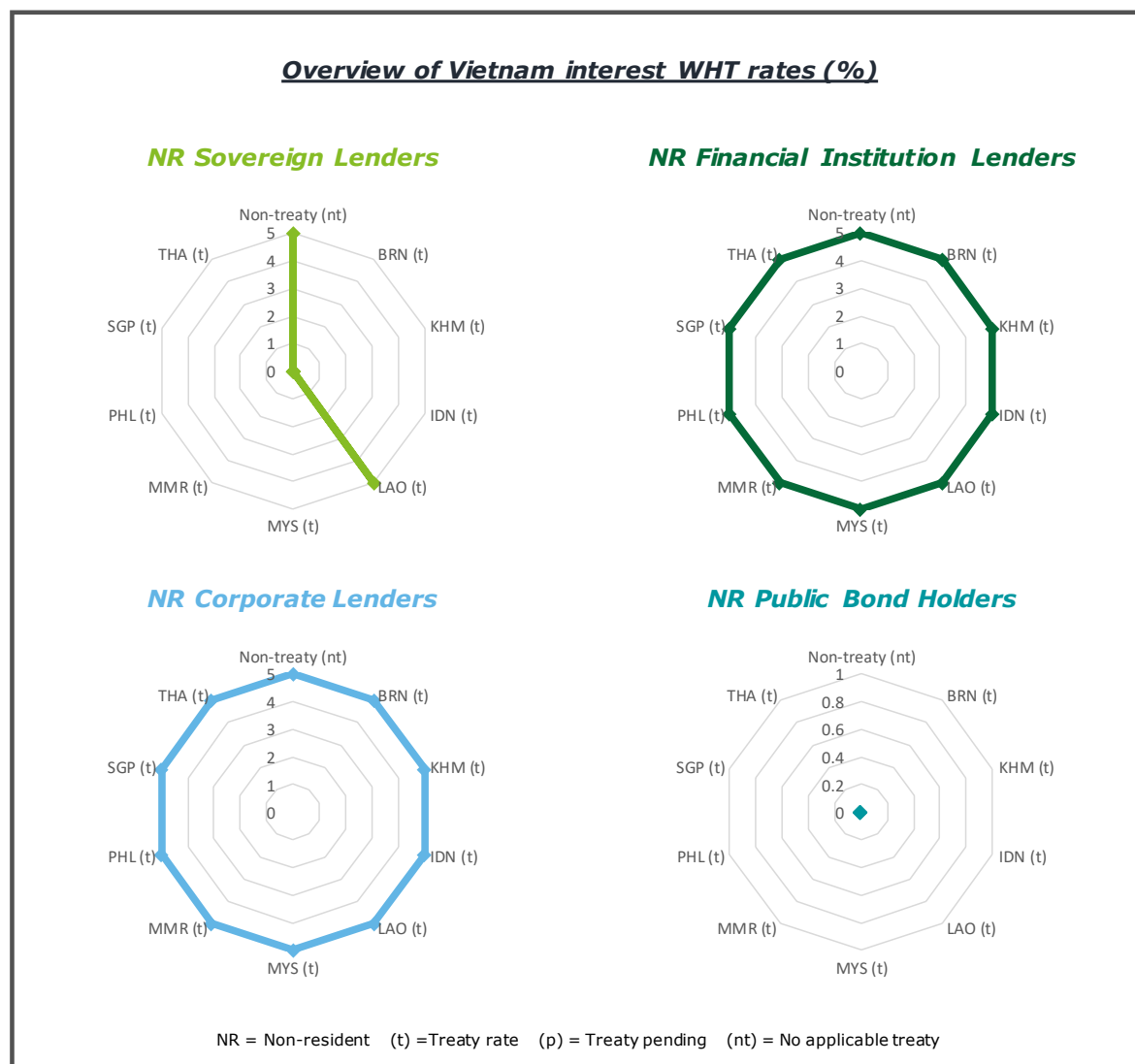
²⁴⁸ Vietnam Country Survey, response 56.

²⁴⁹ Vietnam Country Survey, response 57.

²⁵⁰ See Appendix 5 (*Overview of Current Interest WHT Structure*) to this Report.

²⁵¹ Vietnam Country Survey, response 62.

Chart C.11.8: Overview of Vietnam interest WHT rates



Source: Deloitte (2019)

- C.11.9 In 2014, the Vietnamese Ministry of Finance published a circular that sets out minimum economic substance requirements which a recipient must satisfy before being considered beneficially entitled to the receipt and thus entitled to relief under the terms of one of Vietnam's tax treaties ("**Circular 205**").²⁵² Circular 205 specifies a substance-over-form approach to determine whether or not the recipient of Vietnam-source payments is economically entitled to those receipts such as to be eligible for treaty relief, or whether arrangements are otherwise objectively considered to have been intended to procure such relief. Factors requiring consideration include obligations to distribute receipts to a third person within twelve months and a requirement for the recipient to be engaged in substantive business activities. From a practical perspective, foreign lenders should be relatively unaffected by the requirements of Circular 205 as a result of the low domestic interest WHT rate; WHT costs are in any case typically passed on to borrowers.
- C.11.10 Whilst claims for treaty relief in respect of Vietnam-source interest should not typically be necessary due to the low domestic rate, it is nevertheless noted for completeness that the Country Survey responses

252

Vietnam Ministry of Finance, Circular 205/2013/TT-BTC (24 December 2013).

reported that a clear process exists to obtain treaty relief in relevant cases,²⁵³ but that such process is cumbersome and that where a refund is validly due, the tax authority is nevertheless generally resistant to make payment and that the lead time to recovery typically extends beyond twelve months.²⁵⁴ This helps corroborate the foregoing observation that there is likely to be a price impact for borrowers arising in connection with the domestic law liability.

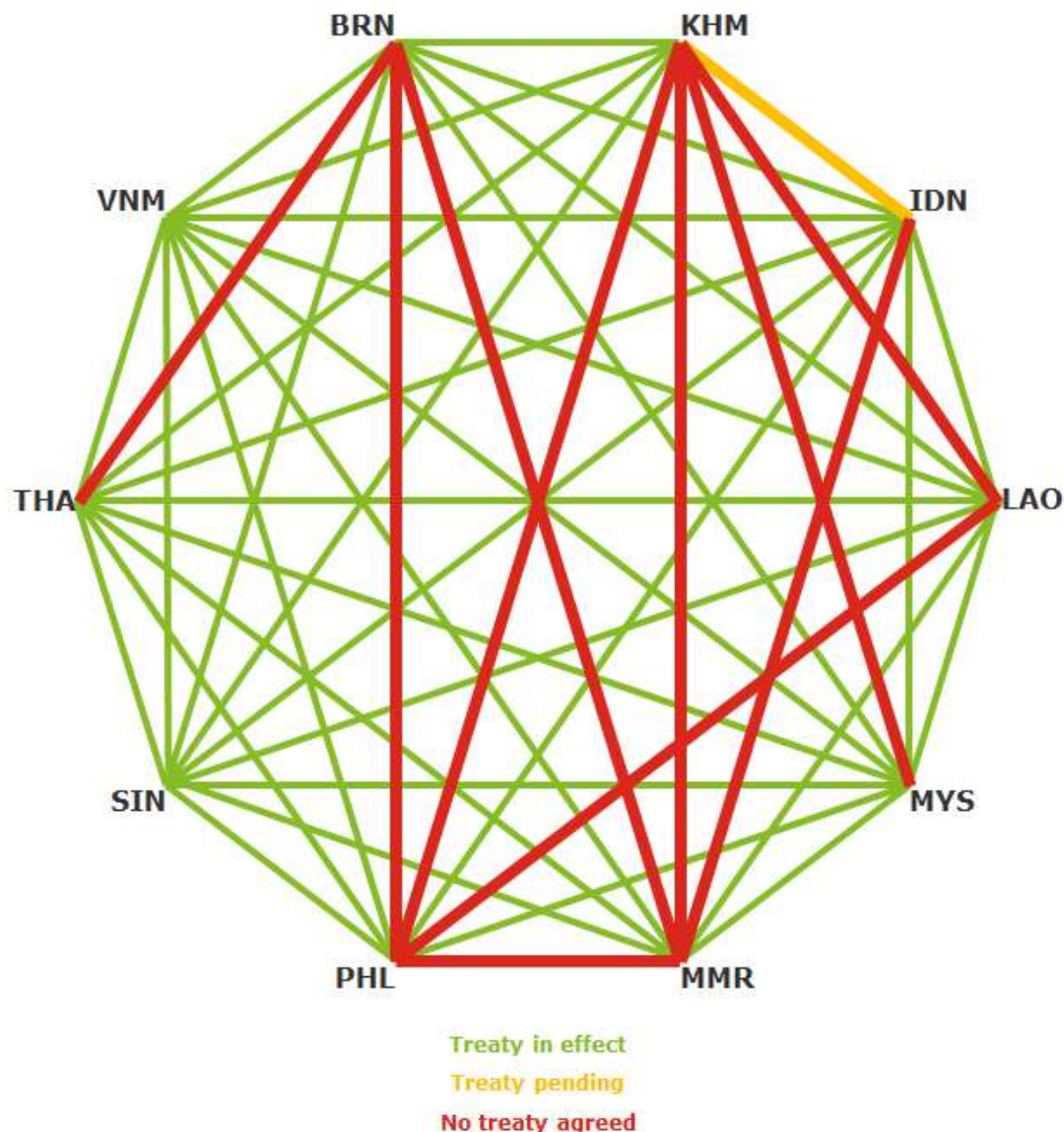
C.12 Consolidated overview of the intra-Community treaty network

- C.12.1 The following diagram graphically summarises the current status of the Community's bilateral double tax treaty structure: a green line between two Member States indicates that a tax treaty has been agreed between those jurisdictions and is currently in effect; an orange line between two Member States indicates that a tax treaty has been agreed between jurisdictions but is not yet in effect; and a red line between two Member States indicates that a tax treaty has not been agreed between those jurisdictions.
- C.12.2 Of the 45 possible bilateral tax treaty relationships that may exist between Member States, 35 such treaties have in fact been concluded (represented in by green and orange lines in the diagram) and 10 treaties are yet to be concluded (represented by red lines in the diagram). At a very simplistic level, the ASEAN treaty network could thus be described as being 77.8% complete. The gaps in the network principally relate to Brunei, Cambodia, Laos, Myanmar and the Philippines (only one of whom is a member of the ASEAN-5).

²⁵³ Vietnam Country Survey, response 42. Also see Deloitte International Tax Source, International Tax: Vietnam Highlights 2018, available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-vietnamhighlights-2018.pdf> (retrieved 19 December 2018).

²⁵⁴ Vietnam Country Survey, responses 42, 64 and 65.

Figure C.12.2: Graphic depiction of the ASEAN tax treaty network



Source: Deloitte (2019)

C.13 Conclusions

C.13.1. The following conclusions are drawn from the analysis in this part of the Report and relevant literature:

- (a) The existing literature generally supports the general conclusion that: at lower levels of economic development commercial banks tend to dominate the provision of debt finance, whereas at higher levels of economic development debt capital markets tend to become more active and promote economic development through facilitating and diversifying stakeholders' access to finance.²⁵⁵
- (b) There is a wide variance in the level of development of Member States' debt capital markets, but a common theme across the Community is the existence of less-than-optimal liquidity due to the

²⁵⁵ World Bank, *World Development Indicators 2017* (2017) Washington DC, at page 87; available at <https://openknowledge.worldbank.org/handle/10986/26447> (retrieved 2 January 2019).

existence of limited secondary markets. Bank loans in many cases remain the main source of debt financing.²⁵⁶

- (c) Many domestic law interest WHT exemptions more-commonly apply to debt securities than to vanilla debt. Domestic law exemptions are also commonly limited to narrow categories of instruments, often including government securities. In consequence, corporate borrowers in lesser developed Member States are less likely to obtain foreign debt finance which benefits from WHT exemption, which typically translates to a higher cost of finance for those potentially in greatest need.
- (d) Exemptions are commonly intended to eliminate the interest WHT disincentive to foreign investors of investing in government securities in a way that could affect governments from raising funds. The same logic applies to eliminating interest WHT tax in respect of private sector debt; though in such context the fiscal impact of reduced tax collections must be evaluated against the realisable economic benefits of a relevant policy change. The immediate and long-term implications of an exemption must be considered in determining its scope.
- (e) The AEC Blueprint 2015 targeted completion of the network of bilateral tax treaties between Member States by 2010 to the extent possible,²⁵⁷ and the AEC Blueprint 2025 retains this measure.²⁵⁸ Currently, the intra-Community network is 77.8% complete; it is relatively well-established from the perspectives of the more developed Member States, but less so from the perspectives of the lesser-developed Member States. In the latter case, it is likely that actual and prospective investment volumes with the lesser-developed Member States have not been sufficiently large for there to be political momentum to negotiate treaties. In view of that, and as tax treaties are *inter alia* intended to reduce investment costs by addressing double taxation,²⁵⁹ supranational efforts to further develop the ASEAN treaty network would provide Member States with support in non-core policy areas that are of importance in terms of creating an attractive investment climate that supports economic growth and development through market access.
- (f) Whilst provision for double tax relief commonly exists across the Community, the availability of relief is practically restricted in many cases by unclear and/or cumbersome administrative procedures which undermine the policy objective of the measures. Consequently, not only is it necessary to identify and endorse effective WHT measures, it is also necessary to deploy effective and efficient administrative procedures that ensure that relief can be obtained as a practical matter. The impact of such optimisation measures is considered in detail in Part F of this Report.
- (g) Streamlining tax (including WHT) measures is in-line with a number of Member States' governments' policy objectives, so there is intra-Community recognition of such problems, which may translate into political momentum to endorse and implement suitable measures.²⁶⁰

²⁵⁶ BlackRock®, Viewpoint: Addressing Market Liquidity, A Perspective on Asia's Bond Markets (January 2017); available at: <https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-addressing-market-liquidity-a-perspective-on-asias-bond-markets-2017.pdf> (retrieved 14 December 2018).

²⁵⁷ Association of Southeast Asian Nations, *ASEAN Economic Community Blueprint* (2008) ASEAN Secretariat, at section B5/paragraph 58 (page 23).

²⁵⁸ Association of Southeast Asian Nations, *ASEAN Economic Community Blueprint 2025* (2015) ASEAN Secretariat, at section B5/paragraph 35 (page 17).

²⁵⁹ Organisation for Economic Co-operation and Development, *Model Tax Convention on Income and on Capital (Condensed Version)*, 21 November 2017, at Introduction, paragraph 1 (page 9).

²⁶⁰ For example, see: reform measure 4 of the Thai Ministry of Finance's, *Capital Market Master Plan 2009*, available at: http://www2.mof.go.th/webmanage/ps_releases/21/fpo_E.pdf (retrieved 14 December 2018), which states: "This measure aims to make the tax system more efficient to transactions, improve fairness, and provide tax incentives for transactions that the state would like to promote for the development of capital market. Taxation areas to streamline

C.13.2. Those conclusions are carried forward and considered further and supplemented in the subsequent Parts of this Report. Specific recommendations concerning measures intended to help address some of the issues identified are set out Part G.

include those related to mergers and acquisitions, investments in debentures, elimination of double taxation on dividends, equalize tax incentives on direct investment and investment through intermediaries, transfer of investments in provident funds, public savings funds, life insurance premiums, Islamic bonds, securities borrowing and lending of the Bank of Thailand, and venture capital." Also see: Asian Development Bank, ASEAN+3 Bond Market Guide 2017: Philippines (2017); at section I.B: "The Philippines is committed to regional discussions that would allow the domestic bond market to expand its reach...Tax Treaty Implementation: While tax treaty implementation has been underway to enforce treaty obligations between bound states, the authorities are seeking to streamline the process to be responsive to the needs of a fast-paced and dynamic marketplace without comprising the taxing authority's verification requirements for the application of preferential treaty rates."

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**PART D: COMPARATIVE ANALYSIS OF THE
COUNTRY SURVEY RESPONSES**



PART D: COMPARATIVE ANALYSIS OF THE COUNTRY SURVEY RESPONSES

D.1 Overview

- D.1.1 This part of the Report contains a consideration and comparative analysis of the Country Survey responses.
- D.1.2 As many of the Country Survey responses have already been considered in Part C above, the principal focus of the following analysis is on other Country Survey responses which have not been considered in that foregoing analysis. The following analysis is intended to identify further key considerations rather than to further critique the conclusions previously reached.

D.2 Incidence of debt financing

- D.2.1 The Country Survey responses provide anecdotal evidence that debt finance is a widely-used source of funding in each of the Member States and that the extent to which debt financing is used typically varies by sector of the economy.²⁶¹ Perhaps unsurprisingly, the Country Survey responses confirmed the expectation that primary and secondary sectors of the economy typically exhibit high-leverage operating models due to high investment capital costs and high working capital requirements.²⁶²
- D.2.2 The foregoing observations are of limited utility in terms of directly considering the implications of augmenting the Community's WHT structure, but they are helpful in that they corroborate the implicit assumption within the Policy Objective that increasing access to debt finance should help stimulate infrastructure projects and capital-intensive primary and secondary activities that otherwise compete for scarce equity investment (see paragraph A.5 above). It is therefore reasonable to conclude that taking steps to ease soft barriers to obtaining debt finance whilst also optimising the cost of finance (for example by reducing in-built costs like interest WHT) should contribute to economic development and closer economic integration.
- D.2.3 It is worthwhile noting that the cost of debt financing is likely to have been particularly acute in recent years due to low interest rates having led investors to pool greater investment capital into equity (*i.e.* by crediting an investor-preference for equity thereby limiting debt capital available, thus requiring issuers to accept more disadvantageous terms as a condition of obtaining debt financing)²⁶³ and to greater volatility with respect to portfolio debt.^{264, 265}

D.3 Present level of development of local debt capital markets

- D.3.1 The Country Survey responses concerning the current level of development of Member States' debt capital markets have been discussed at length in Part C of this Report and shall not be repeated here at length. It is noteworthy, however, that it has been concluded (in paragraph C.13.1(b) above) that bank loans remain

²⁶¹ Country Survey, responses 1.

²⁶² Country Survey, responses 2, 3, 4 and 5.

²⁶³ Asian Development Bank, *Asian Economic Integration Report 2018: Toward Optimal Provision of Regional Public Goods in Asia and the Pacific* (2018) at page 60, column 1.

²⁶⁴ Asian Development Bank, *Asian Economic Integration Report 2017: The Era of Interconnectedness: How Can Asia Strengthen Financial Resilience?* (2017), at page 54, Column 2. See also: Asian Development Bank, *Asian Economic Integration Report 2016: What Drivers Foreign Direct Investment in Asia and the Pacific?* (2016), at page 68, column 1.

²⁶⁵ This is consistent with observations that there has recently been a structural shift in terms of Southeast Asian development from debt to equity; see: (i) Asian Development Bank, *Asian Economic Integration Report 2018: Toward Optimal Provision of Regional Public Goods in Asia and the Pacific* (2018) at page 50, column 1 and page 60, column 1; (ii) Association of Southeast Asian Nations and the United Nations Conference on Trade and Development, *ASEAN Investment Report 2018: Foreign Direct Investment and the Digital Economy in ASEAN* (2018) ASEAN Secretariat, at Overview, page XVII to XIX; and (iii) United Nations Conference on Trade and Development, *World Investment Report 2018: Investment and New Industrial Policies* (2018) United Nations, at pages 46 and 47.

the predominant source of debt finance available to ASEAN borrowers. In summary: the Country Survey responses reported that debt finance is widely available to individual corporate borrowers,²⁶⁶ and that much vanilla debt available tends to be provided by domestic banks rather than by foreign banks.²⁶⁷

- D.3.2 To supplement the foregoing comments, the Country Survey responses noted that major overseas banks do operate in all of the Member States through a combination of physical branches and online presence.²⁶⁸ However, it was also reported that in many cases, domestic restrictions and/or inadequate presence practically restricts the availability of foreign debt finance to prospective borrowers (as compared with domestic sources of finance).²⁶⁹ It has been observed that foreign debt finance actually provided to local borrowers is most commonly provided from within ASEAN by lenders established in Singapore, and that other material sources of debt outside the Community comprise China, Japan and the United States.²⁷⁰
- D.3.3 Whilst Part C of this Report has focused on the state of the debt capital market in each of the Member States individually, the state of the market at both a regional and an international level is also a material factor that will impact if and how debt financing is available to ASEAN borrowers locally.
- D.3.4 It is beyond the scope of the Study to consider the state of the ASEAN debt capital market in minute detail, and attention is drawn to the ACMF and its work toward increasing the integration of Member States' capital markets in pursuit of the objectives outlined in the AEC Blueprint 2025.²⁷¹ In that context, the reader should note that addressing WHT inefficiencies is not a panacea and that any optimisation measures proposed in this Report must necessarily be factored into the wider policy objectives and measures endorsed by ASEAN.
- D.3.5 It is worthwhile highlighting that even if policy measures to eliminate WHT generally are not favoured by Member States due to the impact on revenue collections or otherwise, beneficial effects like those ASEAN is seeking to realise could be brought about by implementing narrower, more-targeted measures aimed at realising efficiencies within the Community whilst managing the impact *vis-à-vis* the rest of the world. For example, limiting interest WHT measures to the Community context could improve intra-Community access to each Member States' capital markets in line with the ACMF's objectives.

D.4 Impact of regulatory factors

- D.4.1 The Country Survey asked respondents for limited input on the regulatory attitude towards debt finance in each of the Member States. The responses perhaps unsurprisingly suggested that debt is commonly counted toward regulatory capital, taking account of necessary risk weightings.²⁷²
- D.4.2 The information obtained through the Country Survey does not provide a basis to make any specific/discrete conclusions. As a general matter, however, confirmation of debt being counted for regulatory capital purposes makes it possible to speculate that increasing access to debt finance (by *inter alia* optimising the cost of debt through reducing WHT) could in principle have positive spin-off benefits for the development of financial institutions and thus the capital markets.

D.5 Local ownership restrictions

- D.5.1 Questions were included within the Country Survey to identify the extent to which local ownership requirements continue to exist within the Member States. Local ownership requirements are protectionist

²⁶⁶ Country Survey, responses 6 and 8.

²⁶⁷ Country Survey, responses 7 and 9.

²⁶⁸ Country Survey, response 11.

²⁶⁹ Country Survey, responses 7 and 9.

²⁷⁰ Country Survey, response 12.

²⁷¹ See: http://www.theacmf.org/ACMF/webcontent.php?content_id=00001 (retrieved 17 December 2018).

²⁷² Country Survey, responses 13 and 14.

measures which exclude or circumscribe foreign ownership in certain sectors; for example, to ensure that foreign enterprises are not able to influence control over certain sectors (often core economic sectors and/or where there may be political sensitivities), or to ensure that wealth from scarce resources accrues to the state and/or domestic owners rather than to foreign stakeholders.

- D.5.2 Local ownership requirements often require companies to be owned by domestic shareholders to a certain extent,²⁷³ and such requirements have been highlighted to negatively affect inbound investment decisions.²⁷⁴ In the present context, it is notable that such measures can affect the gearing of domestic companies by favouring equity finance from resident shareholders and debt finance from non-resident investors (which may be subject to more onerous WHT provisions).²⁷⁵
- D.5.3 The Country Survey reported a range of minimum local ownership requirements in continued existence, with majority shareholdings (*i.e.* minimum 50% plus 1 share, or 51%) held by local owners being required in certain sectors in a number of the Member States.²⁷⁶
- D.5.4 As a result of the conclusions reached in Part C of this Report and paragraph D.8 below (specifically the conclusion that cross-border debt financing within ASEAN may in certain cases be higher than it could otherwise be due to interest WHT being economically borne by borrowers), it can be speculated that local ownership requirements have a deleterious impact on financing costs due to debt financing being necessary in circumstances in which foreign equity ownership could be more tax and costs efficient.
- D.5.5 A detailed consideration of local ownership requirements is outside of the scope of the current Study, but more specifically determining the economic effects of local ownership measures on the tax efficiency of inbound investments could be worthy of consideration as part of the broader tax policy work being undertaken in connection with the AEC Blueprint 2025.

D.6 Impact of incentive regimes

- D.6.1 The Country Survey responses highlighted a smattering of tax incentive regimes across the Member States that eliminate or reduce interest WHT in certain defined cases, to the extent motivated by other policy objectives; reference was drawn, for example, to Malaysia's exemption of interest WHT granted to Labuan entities (as defined in relevant legislation), to Thailand's international headquarters regime (which contains an exemption from interest WHT on qualifying debt finance), and Singapore's finance and treasury centre regime (which contains an exemption from interest WHT where loans are entered in connection with qualifying activities/services).²⁷⁷
- D.6.2 It is clear from the existence of such regimes that the respective Member States' governments accept that interest WHT exemptions are helpful to achieve targeted policy aims, but there is little evidence from the

²⁷³ It is notable, however, that there is some evidence of such measures gradually being relaxed. For example, such liberalisation in Laos and Myanmar is referenced in United Nations Conference on Trade and Development, *World Investment Report 2018: Investment and New Industrial Policies* (2018) United Nations, at page 81.

²⁷⁴ ASEAN Integration Monitoring Office and the World Bank, *ASEAN Integration Monitoring Report* (2013) World Bank Printing & Multimedia Department, at page 121 (Chapter 4, *Key Findings*, fifth indent).

²⁷⁵ In practice such requirements can be technically satisfied but practically mitigated through the use of nominee shareholder structures. See, for example: Hasan F, *Economic loss and the practice of nominee arrangements* (2016) The Jakarta Post, January 11; available at: <https://www.thejakartapost.com/news/2016/01/11/economic-loss-and-practice-nominee-arrangements.html> (retrieved 17 December 2018).

²⁷⁶ Country Survey, responses 15. See also: ASEAN Integration Monitoring Office and the World Bank, *ASEAN Integration Monitoring Report* (2013) World Bank Printing & Multimedia Department, table 4.5 on page 146 – however, whilst this demonstrates the issue raised, the reader should note that the data should be treated with some caution due to its age.

²⁷⁷ Country Survey, responses 16 and 17.

Country Survey responses of a more general acceptance of the benefits of exemption outside of the narrowly-defined policy contexts (albeit that does not mean that there is a lack of such an acceptance).

D.6.3 One particularly interesting incentive regime highlighted in the Country Survey responses is Singapore's QDS regime referred to in paragraph C.9.6 above, which exempts interest payable in respect of QDS from interest WHT.

D.6.4 QDS are defined for the purposes of the Singapore regime as including:

"bonds, notes, commercial papers, certificates of deposits and [Additional Tier 1 capital] instruments..., which are arranged in accordance with regulations made for this purpose—...by any financial sector incentive (standard tier) company or financial sector incentive (capital market) company..."²⁷⁸

Thus essentially, debt securities will constitute QDS if the arranger is a licensed Singapore bank (or licensed Singapore subsidiary of a non-Singapore bank) which performs the functions prescribed in the relevant regulations (and in the manner so prescribed).

D.6.5 Unlike the other incentive regimes highlighted through the Country Survey (such as Thailand's IHQ scheme referred to in paragraph C.10.7 above), the exemption under the QDS regime applies on a cross-industry sector basis, meaning that Singapore effectively provides a broad domestic law exemption that can facilitate the issuance of a wide range of debt financing in a cost effective manner. From a policy perspective, this is justified from a domestic perspective by the direct and indirect economic spin-offs arising from the greater engagement of the licensed financial institutions locally (for example, increased activity leading to increased employment).

D.6.6 Perhaps with the exception of incentives granted by Malaysia to taxpayers engaged in activities in Labuan, the Country Survey responses did not identify other similarly wide-ranging schemes within the Community which ostensibly focus on wide-scale economic spin-offs rather than direct effects. Given the conclusions reached elsewhere in this Report, there could be benefit to Member States considering the localisation and implementation of similar regimes; particularly given the potential application in the context of high-value syndicated loans evidenced by loan notes, which is a common form of debt finance in large infrastructure projects. This is considered further in Part G (and specifically paragraph G.5).

D.7 Impact of form and documentation

D.7.1 It is apparent from the Country Survey responses that local measures in certain Member States to standardise debt financing documentation may exist, but that the extent of such standardisation is limited and ostensibly arises from practice adopted in the course of organic growth of the financial sector rather than any co-ordinated action to realise efficiency enhancements.²⁷⁹ The EMEA Loan Market Association ("**LMA**") and its documentation work is an interesting example of the latter type of co-ordinated action from which best practice may be identified.

D.7.2 The LMA's key objective is to improve liquidity, efficiency and transparency in EMEA; and by establishing widely accepted market practice, it seeks to promote the syndicated loan as one of the key debt products available to borrowers.²⁸⁰ The LMA produces standard form facility documentation precedents which embody market practice, and which are commonly used across Europe. The rationale for the development

²⁷⁸ Section 13(16) of Singapore's Income Tax Act.

²⁷⁹ Country Survey responses 23.

²⁸⁰ See: <https://www.lma.eu.com/about-us> (retrieved 17 December 2018).

and use of such documents is that "[s]tandardisation of the 'boiler plate' areas of the documents allows lenders and borrowers to focus on the more important commercial aspects of individual transactions."²⁸¹

- D.7.3 The LMA's precedent facility documentation contains tax gross-up provisions much like what the Country Survey responses reported are commonly used across ASEAN.²⁸² The use of such provisions requiring borrowers to accept the economic cost of interest WHT is therefore not uncommon, and not peculiar to the Community context.
- D.7.4 A second aspect of the LMA's precedent documentation, which has not been observed across ASEAN is the inclusion of a qualifying lender concept which, broadly, is a standardised process by which a lender is to confirm to specific borrowers that they may pay interest to it (the lender) free from interest WHT.
- D.7.5 The qualifying lender concept achieves this by placing lenders under an obligation to complete all necessary or desirable administrative procedures to procure the borrower being able to pay interest free from WHT and, if the lender then fails to do so, the gross-up provisions in the loan agreement are de-activated so as to ensure that WHT costs are not passed on to the borrower due to the lender's inaction/default.²⁸³
- D.7.6 It is not known to what extent such provisions are commonly used in facility agreements within ASEAN, but the organic growth of market practice and the seemingly limited forms of debt finance available within Member States could suggest that the regional market may not have developed to the point where such sophisticated mechanisms are included in loan documentation to borrowers' favour.
- D.7.7 Steps could be taken to help control the negative effects of interest WHT on the cost of financing by advocating the development of standard form documentation across the Community which takes account of such measures. Naturally, it would make most sense for the ACMF to lead any such initiatives. As discussed *inter alia* in paragraph D.10 below, however, such work could only realise benefits if administrative processes are also streamlined.

D.8 Domestic tax policy factors

- D.8.2 Domestic tax policy is perhaps the most material issue relevant to the application of WHT, as such taxes are inherently a manifestation of the source basis of taxation.
- D.8.3 It is accepted as a matter of international custom that a country has a sovereign right to tax income that has its source in that country;²⁸⁴ for that reason, national WHT policy is invariably a politically-sensitive topic.²⁸⁵ However, double taxation can arise where a country imposes tax on such basis and another jurisdiction imposes tax on the same income on another basis.
- D.8.4 Double taxation often arises where a taxpayer from a jurisdiction which imposes tax on a worldwide/residence basis makes investments or engages in activity in a jurisdiction which imposes tax on a territorial/source basis. This is a very common situation in the case of debt financing due to the fact that many large multinational banks reside in countries with worldwide tax systems and borrowers are often established in countries with source-based systems and/or which impose interest WHT. Consequently, international and domestic law provisions are commonly required to ensure that taxpayers are able to obtain some measure of relief, either by way of a tax deduction in respect of the foreign tax, a tax credit in respect of the foreign tax or exemption from taxation in the state of residence to take account of the foreign tax.

²⁸¹ See: <https://www.lma.eu.com/documents-guidelines> (retrieved 17 December 2018).

²⁸² See for example: section 12 of the LMA standard Single Currency Term Facility Agreement LMA.ST.09, 18 July 2017.

²⁸³ *ibid.*

²⁸⁴ Arnold B. J. and McIntyre M. J, *International Tax Primer*, 2 ed. (2002) Kluwer Law International, at page 21.

²⁸⁵ European Commission, *Commission staff working document: The Economic Impact of the Commission Recommendations on WHT Relief Procedures and the FISCO Proposals* (24 June 2009) EC Internal Market and Services DG, at section 1.4.

D.8.5 The Member States have a mix of both territorial (*i.e.* source-based) and worldwide (*i.e.* residence-based) tax systems. Cambodia, Indonesia, Myanmar, the Philippines, Thailand and Vietnam have worldwide tax systems, whereas Brunei, Laos, Malaysia and Singapore have territorial or partial territorial systems (for example some also tax foreign-source income on a remittance basis). However, even though those former six Member States impose tax on a worldwide basis, all of them incorporate source-based principles into their tax system insofar as they all impose WHT on interest (and certain other payments) under domestic law. Because of the different bases of taxation and also the hybrid nature of some of the Member States' tax systems, it is thus common for double taxation to arise on transactions between a party in a Member State and a counterparty established in a different state.

D.8.6 In the specific context of debt financing, it has been remarked that:

"Some [jurisdictions] favour residence taxation of investment income over source taxation on the ground that a WHT at source may operate in some circumstances as an excise tax on the payer, whereas a residence tax generally operates as an income tax on the payee. As an example of this excise-tax effect of source taxation, consider a foreign lending bank that requires the borrower to make interest payments to it net of any WHT in the source country. In such circumstances, the borrower is likely to view the WHT as an additional cost of borrowing. In fact, market pressures may have required the bank to lower its interest rate in order to impose the net-interest-payment requirement on the borrowers. A few studies conducted in the 1980s strongly suggested that foreign lenders typically do pass on withholding taxes to the borrower..."²⁸⁶

As concluded elsewhere in this Report, the Country Responses support the conclusion that interest WHT is in fact passed on to borrowers within ASEAN in many cases,²⁸⁷ and the excise-taxation to which the authors refer is observable to a great extent within the current ASEAN market. What the authors go on to say is therefore of specific interest:

"In theory, zero rates of withholding simplify administration and promote business efficiency by allowing intercompany transfers to be made without tax consequences."²⁸⁸

The authors additionally refer to tax credits being made available by way of relief in certain cases, and this is considered in separately paragraph D.9 below. It is also important to note that the authors further highlight that zero-rates "*promote tax avoidance schemes and, in the absence of complex anti-avoidance rules, they may provide unintended tax benefits*";²⁸⁹ whilst this remains a valid observation, it is interesting to note that that the statement pre-dates the work of the OECD in the context of the BEPS Project and addressing the misuse of tax treaties (such that the international community has recently developed standards to help address such concerns).²⁹⁰

D.8.7 The authors of the foregoing extract specifically identify the simplest way of addressing double taxation brought about by WHT (which has also been alluded to at various points in this report): eliminating WHT. There would be two principal ways to achieve this:

- (a) by repealing relevant statutory provisions; and
- (b) by reducing WHT rates to nil, either generally or with reference to specific situations and/or upon satisfaction of specified requirements (*i.e.* by legislating exemptions).

²⁸⁶ *op. cit.* note 284; at page 26.

²⁸⁷ Country responses 24 and 25.

²⁸⁸ Note 286 *supra*.

²⁸⁹ *ibid.*

²⁹⁰ Organisation for Economic Co-operation and Development/G20 Base Erosion and Profit Shifting Project, *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6: 2015 Final Report* (2015) OECD.

In the latter case, reducing WHT to a rate other than nil would help mitigate the extent of double taxation, but it would not eliminate it entirely; it is therefore reasonable to conclude that the benefit of reducing interest WHT to rates other than nil is likely to be marginal absent other measures such as eliminating or otherwise streamlining relevant administrative procedures.

- D.8.8 The material difference between the two foregoing modes of action is that whilst the first mode would be relatively simple from a legislative perspective, the second mode (whilst being more complicated from a legislative perspective because of an inherent need to retain detailed rules on statute books) would be more conducive to Member States retaining or otherwise legislating anti-avoidance provisions designed to preclude the application of a zero rate in abusive situations.
- D.8.9 Measures to eliminate WHT along the lines suggested albeit in a manner that is consistent with anti-avoidance concerns are considered further in Part G below. By way of summary, a multilateral convention between Member States is recommended, to fill gaps currently existing in the intra-Community treaty network, to agree common measures and to standardise approaches to exemption and residual relief. Such a convention should help achieve such objectives in the most impactful and expedient manner.

D.9 International tax policy factors

- D.9.1 It has been remarked that "[t]he objective of international tax principles is to ensure that income is fully taxed once (not more, not less) and is not taxed twice."²⁹¹
- D.9.2 If an exemption from WHT is not favoured by Member States, the excise-taxation effect referred to in paragraph D.8 above could potentially be addressed if the jurisdiction in which the recipient lender is resident provides a full credit for the tax suffered in the source jurisdiction. It has been noted that in such cases that the lender "*is likely to treat the source tax no differently than it would a domestic WHT imposed by the residence country*" (*i.e.* in much the same way as an income tax/corporate income tax).²⁹² Such credits are commonly provided in one of two ways:
- (a) firstly, many tax treaties contain provisions for the jurisdiction of residence to provide relief from double taxation by way of foreign tax credits ("**FTC**"), and such provisions commonly trigger the eligibility of an affected taxpayer to claim relief under specific domestic law provisions that grant FTCs which can then be offset against taxable income (thereby reducing the second tax liability); and
 - (b) secondly, many countries also grant "**unilateral relief**" (*i.e.* relief that is wholly-derived from domestic law provisions) to relieve double taxation in circumstances in which no relevant tax treaty exists (such relief is economically similar to FTCs, but has a basis in domestic law rather than in international law).

Where countries do not provide for unilateral relief by way of credit, they may instead exempt the foreign-source income from tax (such as in the manner described above) or they may allow the foreign tax as a deduction against the income charged to tax. Economically, exemption is the most advantageous mode of relief to a taxpayer (as it completely eliminates double taxation), and deduction is the least advantageous mode of relief (as it only partially eliminates double taxation).

- D.9.3 Turning to *status quo* within the Community, the Country Survey responses reported that:²⁹³

²⁹¹ Rohatgi R, Basic International Taxation (2002) Kluwer Law International, at page 12; citing Stef van Weeghal, The Improper Use of Tax Treaties, at page 33.

²⁹² Note 286 *supra*.

²⁹³ Country Survey responses 51.

- (a) all of the Member States provide FTCs where a relevant tax treaty provides a basis to grant double tax relief;
- (b) at least six Member States provide for complete exemption of foreign-source income in certain cases;²⁹⁴
- (c) six of the Member States also provide unilateral relief by way of credit under domestic law where no relevant tax treaty exists;²⁹⁵ and
- (d) one country (the Philippines) provides unilateral relief by way of deduction under domestic law where no relevant tax treaty exists.

It was generally reported that where credit relief (by way of FTCs or unilateral relief) is available, such relief must be actively claimed, and that the quantum will commonly be limited to the lower of the foreign tax paid and the corresponding domestic tax on the same gross income (such that the effective tax rate on cross-border interest payments would, broadly, be the higher of the foreign WHT rate and the domestic income tax rate).²⁹⁶ It was also determined through the Country Survey that (so far as the respondents were aware) none of the Member States has announced an intention to change the manner in which double tax relief is given within the next five years (*i.e.* by the end of 2023).²⁹⁷

- D.9.4 A key conclusion that can be drawn from the foregoing analysis is that whilst the intra-Community tax treaty network is not complete (see Figure C.12.2 above), unilateral relief measures are available in a variety of Member States which nevertheless provide a technical basis for taxpayers to obtain relief from double taxation. Consequently, it is not correct to state that the incomplete state of the tax treaty network inherently produces double taxation effects (such effects may however arise based upon the locations of the counterparties to a particular loan relationship).
- D.9.5 What the analysis does bring into focus is the prevailing practical need for reliefs across the Community and the need for taxpayers to rely on such reliefs to mitigate tax distortions; and with that being the case, the importance of both the administrative processes that must be completed by taxpayers to actually obtain relief and related practical issues, which translate into a real-terms cost of relief.
- D.9.6 Furthermore, during the course of completing the Business Survey and in contrast to the full credit mechanism referenced in paragraph D.9.2 above, one international bank respondent noted that it is common for the quantum of tax credit relief to be determined with reference to net interest income, meaning that in the context of back-to-back financing arrangements (for example where a lender itself obtains funding from the money markets to finance a loan; this being a very common operating model), FTCs and unilateral relief actually available may in fact have little economic value, further reinforcing the contention that entering relevant markets inherently involves a WHT burden which lenders invariably pass on to borrowers (affecting the cost of and therefore access to finance). For this reason, facility documents used by many lenders worldwide contain provisions which specify that tax credits actually obtained by lenders may only be passed on to borrowers at the relevant lender's discretion; and in actuality such benefits, if any, are not passed on to borrowers.

²⁹⁴ Comprising Brunei, Laos, Malaysia, Myanmar, Singapore and Vietnam.

²⁹⁵ Comprising, Brunei, Laos, Myanmar, Singapore and Vietnam.

²⁹⁶ Country Survey responses 52. This is not unusual; for example, it has been remarked that "*Credit countries invariably do not pay tax refunds when their taxpayers pay a foreign tax at an effective rate that is higher than the domestic effective tax rate.*" See: Arnold B. J. and McIntyre M. J, International Tax Primer, 2 ed. (2002) Kluwer Law International, at page 36 and 39 *et seq.*

²⁹⁷ Country Survey responses 53.

D.10 Administrative processes

D.10.1 It is apparent from the Country Survey responses and the discussion of tax relief and refund procedures in Part C of this Report that the practicalities of obtaining tax relief in many of the Member States are onerous and that, in many cases, such procedures contribute to excise-taxation-like treatment of borrowers described above (on the basis that they equate with increases in borrowing costs due to the incremental financial and time cost incurred). Consequently, any package to improve the WHT structure within ASEAN must necessarily include measures to improve and streamline the administrative procedures relevant to obtaining tax relief.

D.10.2 Similar excise-taxation effects from administrative processes have been experienced in Europe, where it was noted in 2010 that:

*"Under the bilateral double taxation treaties that EU Member States have with each other, [such] Member States generally agree to reduce source country withholding taxes on securities income, in order to share taxing rights between the two treaty partner countries. Some [EU] Member States even apply a reduced WHT or exemption on securities income paid to investor under their domestic law where certain conditions are met. However, the procedures to reduce the WHT rates at the payment stage or to claim refunds of tax withheld are often so complicated and varied that investors do not bother claiming relief or refunds and may even be discouraged from investing abroad."*²⁹⁸

D.10.3 In 2016 the European Commission reported in the following terms that such problems continue to persist within Europe:

"Out of the 26 [EU] Member States (MS) which responded to the Commission's consultations on national barriers to free movement of capital, 14 identified burdensome withholding tax (WHT) relief as a particular issue. To avoid double taxation of cross-border investment, most bilateral taxation treaties among MS provide for WHT Refund. Yet, in practice, it is often too complex and costly for investors to effectively claim and receive relief..."

"The WHT issue is a key element of the Commission's initiative to build a Capital Markets Union (CMU)..."

*"The [European] Council has stressed several times that it is crucial to remove tax barriers in order to achieve financial integration in the EU. The Council's conclusions of 10 November 2015 strongly supported the CMU Action Plan, notably by stressing the need for "pragmatic solutions to longstanding obstacles such as double taxation linked to current WHT arrangements"."*²⁹⁹

D.10.4 As a result of such similar issues having been (and continuing to be) experienced in Europe, the EU institutions have completed a great deal of work concerning how to improve the administrative aspects of obtaining WHT relief, so as to address excise-taxation-like treatment that has often been observed to arise in the contexts of debt financing and in the debt capital markets.

²⁹⁸ European Commission, *Simplified WHT Relief Procedures* (2010) Directorate General of the Internal Market and Services; Frequently Asked Questions, MEMO/09/ Brussels, October 2009; available at https://ec.europa.eu/info/system/files/booklet-fisco-09022010_en.pdf (retrieved 18 December 2018).

²⁹⁹ European Commission, *Non-paper on the WHT for discussion at the Expert Group on barriers to free movement of capital* (28 September 2016) Directorate General for Financial Stability, Financial Services and Capital markets Union, available at <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=28783&no=6> (retrieved 18 December 2018); with reference to: *Questionnaire on barriers to free movement of capital, sent to EU Member States on 4 June 2015, and consultation with EU Member States on their priorities for the work of the Expert Group on barriers to free movement of capital* (16 October 2015).

D.10.5 Part F of this Report considers *inter alia* the economic benefits of augmenting the interest WHT structure and simplifying the administrative aspects of claiming WHT reliefs, and concludes that the positive direct and indirect effects of taking such steps are likely to outweigh the corresponding negative impact upon WHT collections.³⁰⁰ Part G then *inter alia* considers conclusions and recommendations arising out of the EU's analysis, and also considers the potential application of relevant recommendations within ASEAN and how such equivalent measures may be implemented within the Community.

D.11 Tax collection indicators

D.11.1 For completeness, it is noted that the Country Survey included additional questions asking respondents to identify the value of each Member State's total income tax collections, corporate income tax collections and interest WHT collections for the years 2012 to 2017, to facilitate a determination of how sensitive Member States' government funding requirements could be to measures designed to reduce intra-Community interest WHT rates.

D.11.2 Respondents to the Country Survey reported that sufficiently granular data was not readily available to respond to the relevant questions, and it was determined that sufficiently complete and/or comparable data was not available from within datasets maintained by principal international institutions to complete any meaningful analysis.³⁰¹

D.12 Conclusions

D.12.1 The following conclusions are drawn from the foregoing analysis in this Part and supplement the conclusions reached in Part C of this Report:

- (a) Taking steps to ease soft barriers to obtaining debt finance whilst also optimising the cost of finance (for example by reducing in-built costs like interest WHT) should contribute to economic development and closer economic integration within the Community.
- (b) Addressing WHT inefficiencies is not itself a panacea and any optimisation measures proposed in this Report must necessarily be factored into the wider policy objectives and measures endorsed by ASEAN.
- (c) Beneficial effects like those ASEAN is seeking to realise could be brought about by implementing narrow, targeted measures aimed at realising efficiencies within the Community whilst managing the impact *vis-à-vis* the rest of the world. Such measures could involve targeted incentive regimes.
- (d) Debt is counted toward regulatory capital in many cases, which makes it possible to speculate that increasing access to debt finance *by inter alia* optimising financing costs through reducing WHT could in principle have positive spin-off benefits for the development of financial institutions and thus Member States debt capital markets.
- (e) It can be speculated that local ownership requirements have a deleterious impact on financing costs due to debt financing being necessary in circumstances in which foreign equity ownership could be more tax and costs efficient for investors. Specifically considering the economic effects of local ownership measures on the tax efficiency of inbound investments could be worthy of consideration as part of the tax policy work being undertaken in connection with the AEC Blueprint 2025.

³⁰⁰ See paragraph F.2.1 below.

³⁰¹ Databases searched comprise: OECD.Stat, <https://stats.oecd.org/> (retrieved 18 December 2018); ASEANStatsDataPortal, <https://data.aseanstats.org/> (retrieved 18 December 2018); International Monetary Fund, International Financial Statistics (IFS) and Government Financial Statistics (GFS), <http://data.imf.org/?sk=edcb50d2-9c8a-4d3d-8b4f-190d2e4be644> (retrieved 18 December 2018); World Bank Open Data, <https://data.worldbank.org/> (retrieved 18 December 2018).

- (f) Steps could be taken to help control the negative effects of interest WHT on the cost of financing by advocating the development of standard form documentation across the Community, to try and standardise optimisation measures. It would naturally make most sense for the ACMF to lead any such initiatives.
- (g) Domestic tax policy is perhaps the most material issue relevant to the application of WHT, as WHT is inherently a manifestation of the source basis of taxation. The simplest way of addressing double taxation in the debt capital markets brought about by WHT is to eliminate WHT on interest by way of exemption (either generally or in certain defined circumstances, *e.g.* in the intra-Community context only). This could be achieved in a manner that does not preclude the effect of anti-avoidance measures by reducing interest WHT rates to nil in defined circumstances.
- (h) Whilst the intra-Community tax treaty network is not complete, unilateral relief measures are available in a variety of Member States, which nevertheless provide a technical basis for taxpayers to obtain relief from double taxation in many cases.
- (i) However, the value of FTCs and unilateral relief often limits the economic value of such reliefs, and lenders often consequently forego claiming tax credit relief and default to passing the cost on to borrowers because the effort required to obtain relief is commercially disproportionate to the marginal tax benefit of actually claiming relief.
- (j) The practicalities of obtaining tax relief in many of the Member States are onerous and, in many cases, such practicalities clearly contribute to excise-taxation-like treatment of borrowers highlighted earlier in this Report. Consequently, any package to improve the WHT structure within ASEAN must necessarily include measures to improve and streamline the administrative procedures relevant to obtaining tax relief.

D.12.2 The economic effects of certain of those conclusions are considered in Part F of this Report. Recommendations concerning measures proposed to help address the issues identified are explained in Part G.

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Deloitte. PART E: ADDITIONAL STAKEHOLDER INPUT



PART E: ADDITIONAL STAKEHOLDER INPUT

E.1 Business Survey responses

- E.1.1 In addition to completing the Country Survey, the Study also entailed the completion of a short Business Survey to obtain independent perspectives on the current ASEAN WHT structure, how it affects business decisions and how proposed measures may augment such decisions in the future.
- E.1.2 For the reasons explained in the evaluation in Part I of this Report, the Business Survey was completed in two phases:
- (a) firstly, by Deloitte Singapore directly requesting the opinions of around twenty five south-east Asia and global financial institutions; and
 - (b) secondly, by holding a survey at Deloitte Asia Pacific's 2019 Financial Services Conferences, held in Singapore on 25 February 2019 and in Hong Kong on 1 March 2019.

Overall, the survey response rates were low; notwithstanding that, the responses are helpful in that they tend to corroborate the conclusions reached elsewhere in this Report.

- E.1.3 The responses to the Business Survey can be found in Appendix 4; the following observations can be drawn from the responses:
- (a) Lenders tend to be agnostic in terms of domestic interest WHT rates and treaty rates because, whatever those rates are, the tax costs are typically passed on to borrowers either by way of gross-up obligations or through pricing the cost into the interest rate. This corroborates the conclusions in paragraph D.8 above that the imposition of interest WHT typically leads to excise-taxation-like effects and that interest WHT is an ineffective method of taxing lenders (as the tax mostly affects borrowers through inflating financing costs).
 - (b) The excise taxation effects arise in both related party and non-related party contexts (in the case of the former, likely due to transfer pricing requirements to engage at arm's length).
 - (c) An effective debt capital market is dependent *inter alia* upon the existence of a simple approach to interest WHT which gives taxpayers certainty of tax treatment (which can in turn be used to inform commercial decisions).
 - (d) Administrative procedures are confirmed a significant impact on the efficacy of tax relief at a practical level, and complex procedures translate into real-terms financial costs for borrowers due to the excise-taxation-like effects identified.
 - (e) Tax relief in the form of tax credits is often not an effective way to address the excise taxation effects as the value of such credits is often inadequate relative to the time, financial and operational costs of obtaining relief. This market dynamic is implicitly acknowledged in facility documentation, in that lenders will typically require discretion as to whether to pursue credit relief, with neither positive nor negative action having an impact on the lender (which is generally required to bear the tax cost as a result of gross-up obligations). See paragraph D.9.6 for further discussion of this point.
 - (f) It is practically and commercially onerous for lenders to disclose their books and accounts in a way that is often necessary to obtain tax relief, and this is another reason why relief tends not to be claimed by the lender and is instead passed on to the borrower as a cost of finance.
 - (g) On the whole, the respondents considered interest WHT to be a material negative factor to debt financing volumes and that addressing the excise-taxation effects identified herein would contribute to ASEAN achieving its Policy Objective.

E.2 Advisor Survey responses

- E.2.1 Subjective opinions of professional advisors on ways to improve the Community interest WHT structure were additionally sought as part of the Country Survey.
- E.2.2 Tax advisors surveyed in one Member State (Indonesia) were of the opinion that reducing or eliminating interest WHT between Member States would encourage growth to a large extent; advisors in a further six Member States (Brunei, Laos, Myanmar, the Philippines, Singapore and Thailand) considered that such action would encourage growth to a moderate extent.³⁰²
- E.2.3 Opinions were more conservative when asked to what extent those advisors' views would change if proposed optimisation measures were limited to an intra-Community context, as advisors in half of the Member States (Brunei, Cambodia, Laos, Malaysia, and Vietnam) considered that such action would only encourage growth to a small extent; though it is perhaps notable that only one of those Member States is a member of the ASEAN-5 – perhaps suggesting support for more liberal reform amongst tax specialists in the lesser developed Member States.³⁰³
- E.2.4 Advisors in five Member States (Brunei, Cambodia, Myanmar, Singapore and Vietnam) were of the opinion that interest WHT costs only impact investment returns and/or drive foreign inbound debt finance decisions to a small extent; and advisors in one Member State (Laos) considered that such costs do not impact investment decisions at all. Those opinions are perhaps not surprising given the conclusion elsewhere in this Report that interest WHT costs are typically passed on to borrowers. It can thus be speculated that the fiscal barriers discussed herein therefore impact potential borrowers' access to capital more than they drive lenders' investment decisions.³⁰⁴
- E.2.5 In addition to augmenting the intra-Community interest WHT structure to address the issues identified and to try and realise the benefits discussed, professional advisors surveyed also recommended consideration of transfer pricing rules and developing Member States' capability to negotiate advance pricing agreements/advance thin capitalisation requirements to help ensure the arm's length nature of assumptions of debt finance.³⁰⁵ The role of thin capitalisation requirements (and indeed other interest deduction limitations) in any reform proposals is considered in Part G of this Report.

³⁰² Country Survey responses 71.

³⁰³ Country Survey responses 72.

³⁰⁴ Country Survey responses 73.

³⁰⁵ Country Survey responses 74.



**PART F: ECONOMIC ANALYSIS OF
POLICY CHANGE**



PART F: ECONOMIC ANALYSIS OF POLICY CHANGE

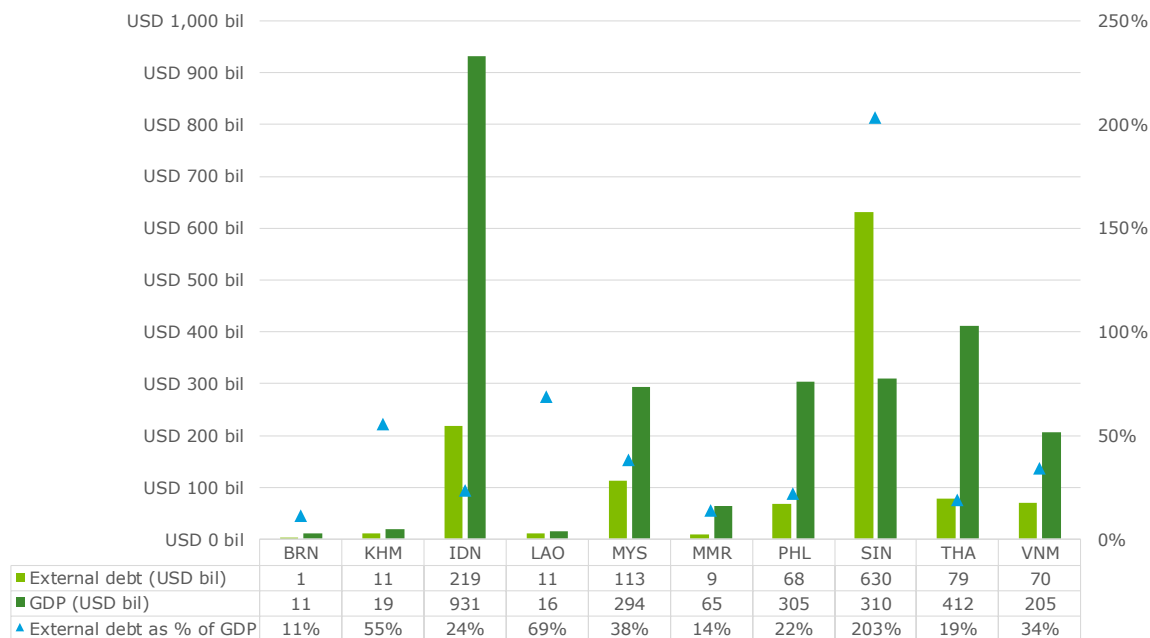
F.1 Role of foreign debt in investment in the economy

- F.1.1 From an economic perspective (and as discussed in the earlier parts of this Report), debt markets play an important role in the economy by providing a channel for economic agents – including companies (incorporated and unincorporated), governments and individuals – to raise capital to finance their productive activities. In particular, while companies may fund their investments and growth by issuing either equity or debt, debt is an important funding option as issuing equity inherently requires existing shareholders to forego part of their interest in the ownership of the issuer. Paragraph D.2 above discusses the empirical evidence concerning the incidence and forms of debt financing within the Community.
- F.1.2 When issuing new equity is not possible/preferred and domestic sources of debt capital are difficult to access or are otherwise insufficient to meet a borrower's financing needs, foreign debt may be a necessary source of capital to fund productive investments. This may especially be the case in capital-scarce economies such as those with underdeveloped financial markets, and where the marginal product of capital is likely to be higher than the world interest rate, inducing stakeholders in such economies to source borrowings from international debt markets.³⁰⁶
- F.1.3 From an investor's perspective, debt markets provide a variety of investment options; including certificates of deposit, corporate bonds and government bonds (to which capital can be productively deployed). Foreign debt markets can provide investors with greater choice in the risk/return profile of available investments (as compared with domestic markets), and assist with diversifying investments to minimise portfolio risk. However, notwithstanding such diversification benefits, relatively low interest rates over recent years have generally led investors to allocate more investment capital into equity rather than debt investments (see paragraph D.2 above for a further discussion of this point).
- F.1.4 The extent to which each of the ASEAN Member States rely on foreign debt (including both vanilla debt and debt securities) as a source of capital varies: Chart F.1.5 below illustrates the external debt in each Member State in 2016, defined as total foreign loans, deposits and debt securities (creditor value).³⁰⁷

³⁰⁶ Pattillo C. A, Poirson H. and Ricci L. A, *External debt and growth* (2002) International Monetary Fund.

³⁰⁷ For this analysis, the level of external debt used includes the amount of foreign loans and deposits (measured by the total of cross-border loans from foreign-located banks and official bilateral and multilateral loans), combined with the amount of foreign-owned debt securities (measured by the amount of debt securities held by non-residents): Joint External Debt Hub, *Comparator Tables Metadata* (2013); http://www.jedh.org/jedh_metadata-comparator.html (retrieved 2 January 2019). This external debt figure does not include any trade credits (measured by the officially-supported trade credits of the nonbank sector) – since the subsequent economic analysis examines interest WHT and trade credit generally does not have an explicit interest payment like other debt instruments, they are not as relevant for the purposes of this study. See: Fitzpatrick A. and Lien B, *The Use of Trade Credit by Businesses* (2013, September) Retrieved from RBA Bulletin – September Quarter 2013: <https://www.rba.gov.au/publications/bulletin/2013/sep/5.html>.

Chart F.1.4: External debt in ASEAN Member States in 2016



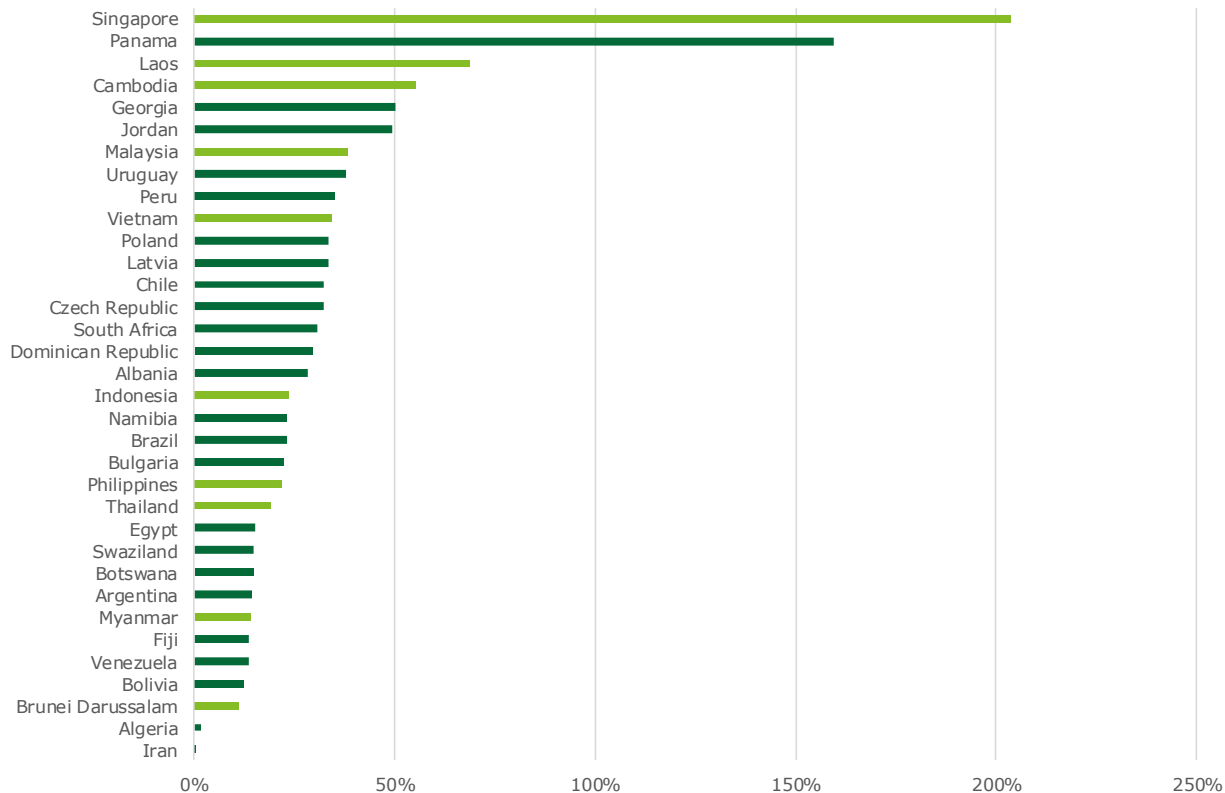
Sources: World Bank (2018) and ASEAN Statistics Division (2018)

Note: Country abbreviations as follows: BRN = Brunei Darussalam; KHM = Cambodia; IDN = Indonesia; LAO = Laos PDR; MYS = Malaysia; MMR = Myanmar; PHL = Philippines; SIN = Singapore; THA = Thailand; VNM = Vietnam

- F.1.5 In 2016, Singapore had the highest level of external debt in US dollar terms amongst the Member States, at around USD 630 billion or more than 200% of GDP. This relatively-high level of external debt reflects Singapore's open capital markets and role as a regional financial centre in Asia, which means the country represents a conduit for significant volumes of foreign debt flows into ASEAN (see paragraph C.9 above for a discussion of this). Indonesia and Malaysia had the second- and third-highest levels of external debt amongst the Member States, at USD 219 billion (24% of GDP) and USD 113 billion (38% of GDP) respectively. This is consistent with Indonesia's relatively well-developed debt capital market, including commonly available sources of foreign debt finance (discussed in paragraph C.4 above), and the maturity of Malaysia's bond markets which provide borrowers with a range of debt financing options (discussed in paragraph C.6 above).
- F.1.6 Another measure of the extent to which the Member States rely on foreign debt as a source of capital is the share of total investment in each economy that is comprised of external debt. On the basis of this indicator, Singapore remains the country with the largest amount of foreign debt at around 7.5 times the amount of total investment in the domestic economy in 2016. The other Member States with external debt that exceeded total domestic investment in 2016 were Cambodia (external debt was 2.4 times the amount of total investment), Malaysia (where it was 1.5 times) and Vietnam (where it was 1.3 times).³⁰⁸
- F.1.7 Use of external debt as a source of capital in Member States is reasonably consistent with that of other middle-income and/or developing countries from outside the Asia-Pacific region. Generally, external debt levels are between 10% and 50% of GDP in these other economies, as illustrated in Chart F.1.7, and typically represents up to 1.5 times of the amount of total investment.

³⁰⁸ The ratio of external debt to total investment uses external debt figures presented in Chart F.1.5 and investment statistics from the International Monetary Fund's World Economic Outlook Database (2018), <https://www.imf.org/external/pubs/ft/weo/2018/02/weodata/index.aspx> (retrieved 16 January 2019)

Chart F.1.7: External debt as a proportion of GDP in middle-income, developing and/or ASEAN countries in 2016

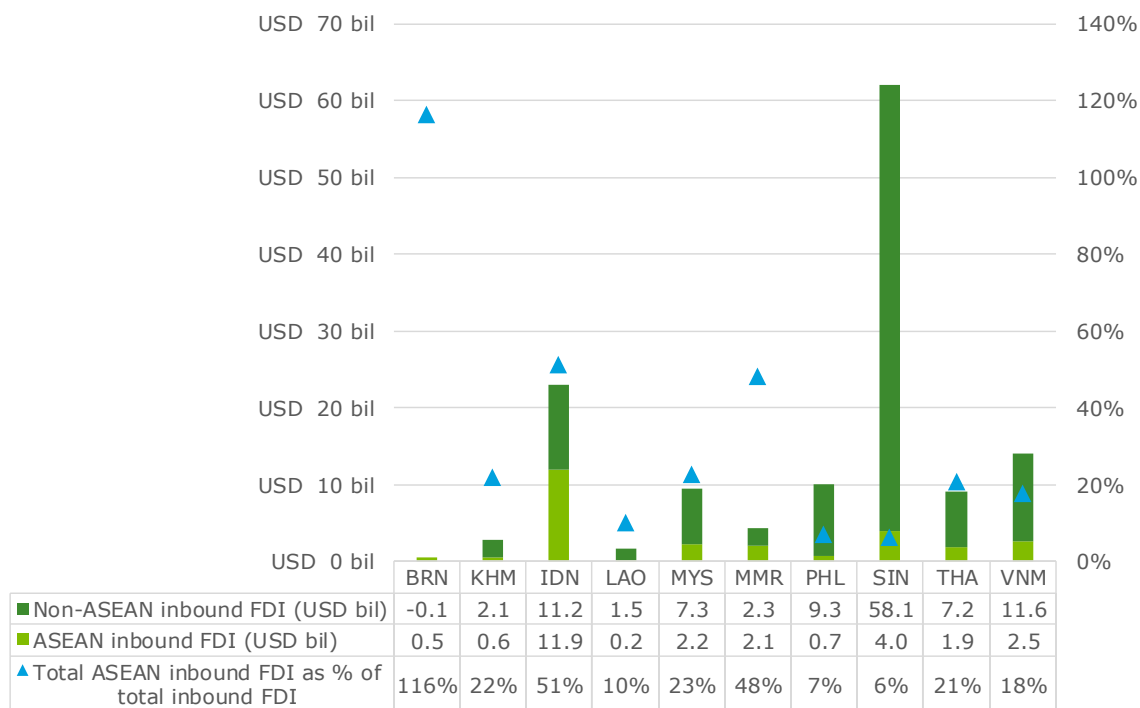


Source: World Bank (2018)

- F.1.8 There may be variations in the extent to which each Member State relies upon other Member States as a source of foreign debt investment as compared with obtaining capital from foreign investors in non-Member States. This could depend on the strength of regional financial interlinkages.³⁰⁹ In completing the Study, it was determined that no publicly-available data is readily available regarding the size of bilateral foreign debt stocks or flows between Member States. However, bilateral flows of FDI can provide an indication of the strength of financial links between Member States and their relative reliance on foreign investment from non-Member States (even though FDI represents equity, rather than debt, investments).
- F.1.9 Chart F.1.9 shows that Indonesia had the largest amount of inbound-FDI flows amongst Member States in USD terms in 2017, at USD 11.9 billion, representing 51% of total inbound-FDI from overseas sources. The majority of Indonesia's FDI from other Member States comes from Singapore (Table F.1.9, and consistent with findings from the Indonesia Country Survey (which are discussed in paragraph C.4.2 above)). Myanmar also receives around half of its inbound-FDI from other Member States, with the majority of its USD 2.1 billion of ASEAN-source inbound-FDI also coming from Singapore (discussed in paragraph C.7.3 above).

³⁰⁹ See: ASEAN Integration Monitoring Office and the World Bank, *ASEAN Integration Monitoring Report (2013)* World Bank Printing & Multimedia Department, at page 125 (Chapter 4, *Key Findings*, seventeenth indent); where it is stated: "Singapore has been the main source of intra-ASEAN investment, contributing to the level of 60 percent of intra-ASEAN FDI annually [during 2000 through 2011]".

Chart F.1.9: Inbound FDI from ASEAN Member States and non-ASEAN countries in 2017



Source: ASEAN Statistics Division (2018)

Note: Country abbreviations as follows: BRN = Brunei Darussalam; KHM = Cambodia; IDN = Indonesia; LAO = Laos PDR; MYS = Malaysia; MMR = Myanmar; PHL = Philippines; SIN = Singapore; THA = Thailand; VNM = Vietnam

Table F.1.9: Bilateral flows of FDI between Member States in 2017

		Recipient country									
		BRN	KHM	IDN	LAO	MYS	MMR	PHL	SIN	THA	VNM
Source country	BRN		4	-3		0	15	1	1	2	18
	KHM			0		4	1	0		14	3
	IDN	1	1			397	2	5	257	3	18
	LAO		1	0		0				5	0
	MYS	487	145	1,366	12		151	16	1,773	41	115
	MMR			1		-1		0	274	0	0
	PHL		1	15	1	58			301	-6	12
	SIN	48	178	10,728	1	1,430	1,294	683		1,853	2,086
	THA		146	-256	149	201	419	13	1,296		280
	VNM		127	23	8	78	211	0	22	1	
	Total ASEAN	535	604	11,873	171	2,166	2,091	719	3,958	1,913	2,531
Non ASEAN	-75	2,129	11,190	1,524	7,281	2,250	9,331	58,059	7,188	11,569	

Source: ASEAN Statistics Division (2018)

Note: Country abbreviations as follows: BRN = Brunei Darussalam; KHM = Cambodia; IDN = Indonesia; LAO = Laos PDR; MYS = Malaysia; MMR = Myanmar; PHL = Philippines; SIN = Singapore; THA = Thailand; VNM = Vietnam

F.1.10 Overall, the foregoing findings suggest that:

- (a) There is variation in the amount of external debt financing used by each of the Member States, with the regional financial centre of Singapore having the highest amount of external debt. This is corroborated by the discussion and anecdotal evidence referenced in Part C of this Report. Indonesia has the next largest amount of external debt, whilst Laos, Cambodia, Malaysia and Vietnam have relatively high ratios of external debt to GDP and/or total investment.
- (b) There is variation in the extent to which each of the Member States is financially interconnected (based on FDI flows). Indonesia and Myanmar have the greatest reliance on other Member States for FDI (noting Brunei's very high reliance is affected by its small base of FDI), with Singapore being the source of the majority of this FDI.

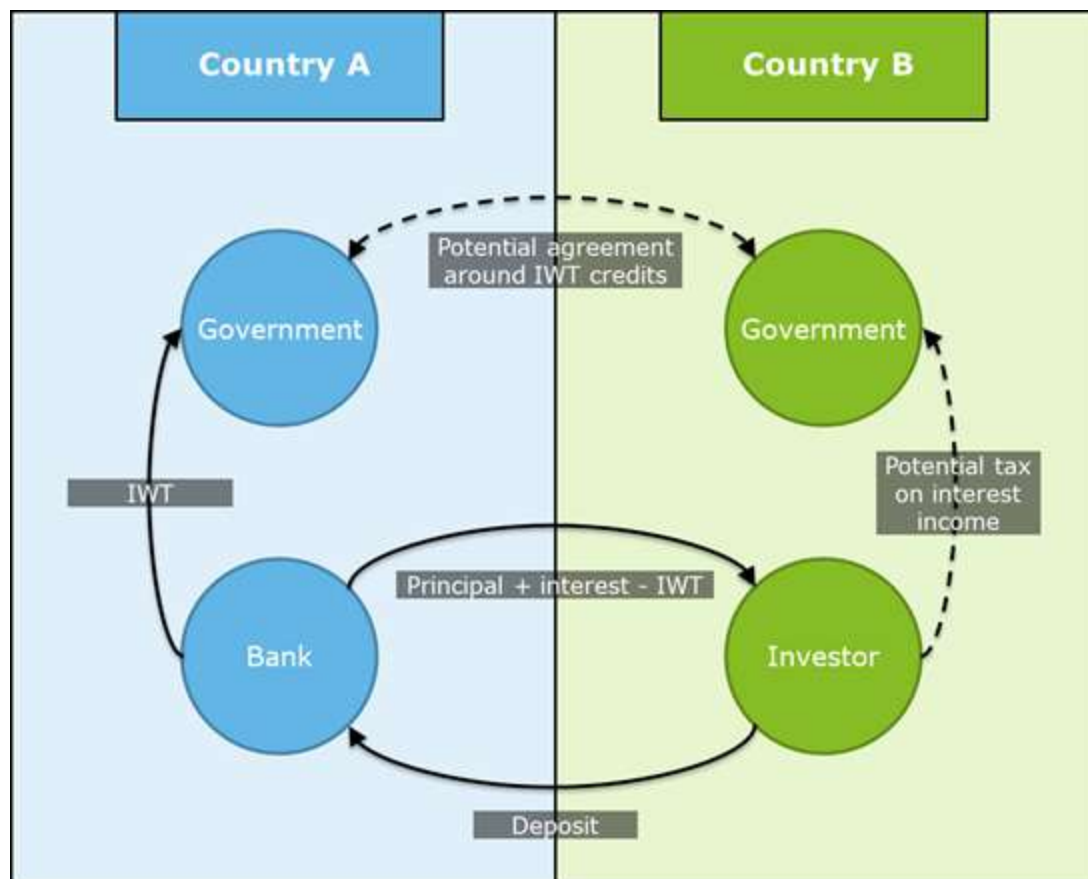
F.2 Potential effects of interest WHT

F.2.1 Interest WHT is a tax on the interest received by foreign investors in debt instruments, whereby the local payer of interest withholds a certain amount of tax on this interest from the foreign investor, which is collected by the national government. Figure F.2.1 illustrates a stylised (somewhat epitomic) example of this process in the context of debt securities (note that the treatment would be somewhat simpler in the case of a vanilla debt):

- (a) From the perspective of Country A, a foreign investor from Country B deposits funds with a local bank in Country A.
- (b) After maturity, the local bank returns the principal with interest to the foreign investor from Country B. However, the local bank which pays the interest will withhold a certain amount of tax on this interest from the foreign investor, and will instead pay the tax to the national government in Country A.³¹⁰
- (c) At the same time, the investor from Country B is deemed to have earned foreign interest income by the government of Country B. In the absence of a treaty between the two countries regarding the taxation arrangements (and in the absence of domestic law provision for unilateral relief), the investor from Country B could potentially pay tax twice on the same income – once in Country A by way of interest withholding tax and again in Country B on the foreign interest income. However, a treaty between the two countries may enable the investor to claim relief from the double tax paid for the interest WHT paid by the bank in Country A on the investor's behalf. As discussed in greater detail at paragraph D.9 above, the manner and extent of relief may vary between treaties agreed between countries.

³¹⁰ It is noted that Figure F.2.1 illustrates a theoretical example because, as discussed in paragraph D.8.1D.8.6 above, in practice the WHT cost is commonly passed on to the borrower through the inclusion of gross-up provisions in facility agreements and the terms and conditions of securities in a way that practically simulates an excise tax, or otherwise recovered by the lender through the interest rate.

Figure F.2.1: Stylised example of foreign debt investment and interest WHT payment in the context of debt securities



Source: Deloitte Access Economics

- F.2.2 Assuming for immediate purposes only that WHT is not passed onto the borrower, there are several ways in which interest WHT and its associated dynamics can affect investor decisions concerning foreign debt investments. For instance, the fact that a non-resident investor may need to pay both interest WHT to a foreign government and income tax to their local government is an example of juridical double taxation. This occurs when an investor is taxed twice on the same income under the domestic law of two different states in the same time period.³¹¹ Being taxed more than once can distort investors' decision making by disincentivising foreign investment flows, as such taxation may decrease the net returns received by the investor from foreign income in situations where investors are not made whole (through gross-up provisions, etc.). In actuality, for the reasons explained in paragraph D.8.6 above, this incremental cost often translates into an increased cost of debt finance due to investor recovery mechanisms *vis-à-vis* the borrower.
- F.2.3 As explained in paragraph D.8 of this Report, double taxation can arise when one jurisdiction taxes based on residence and another jurisdiction taxes based on source. It is difficult for a country to adopt a single taxation principle (either the residence or source basis, as discussed in D.8.5) as doing so can be politically or economically undesirable.³¹² If residence-based taxation is adopted internationally, countries that import capital will have a large reduction in tax collections; whereas a purely source-based tax system could potentially distort investments towards low-tax jurisdictions and may encourage excessive tax competition

³¹¹ Organisation for Economic Co-operation and Development, *Model Tax Convention on Income and on Capital* (Condensed Version), 21 November 2017 (2017) https://dx.doi.org/10.1787/mtc_cond-2017-en (retrieved 2 January 2019).

³¹² Zee H. H, *Taxation of financial capital in a globalized environment: The role of withholding taxes* (1998) National Tax Journal 587-599.

between countries. A mix of residence and source concepts can be seen across the Member States in that six Member States have worldwide tax systems but impose WHT which inherently has a source basis (as evidenced by higher-than-zero rates of WHT under domestic law and under relevant treaties; see paragraph D.8 above).

- F.2.4 The effects of double taxation may in principle be mitigated with tax credit agreements or treaties between countries, which enable foreign investors to wholly or partly offset their tax obligations in different jurisdictions. For example, an empirical study spanning a wide sample of countries and completed in 2010 found that the existence of a double tax treaty increases the stock of inbound FDI by an average of 27%, with a short-run increase of 10%.³¹³ In addition to the investor tax relief provided for by a double tax treaty, the research also noted the importance of such treaties in promoting information exchange between countries, which could potentially reduce tax evasion. It has also previously been estimated that a double tax treaty with the United States could be expected to result in a 22% increase in the stock of inbound FDI from US investors to developing countries, with this effect most apparent for 'middle income' developing countries (which the article reported includes Member States such as Thailand, Malaysia and the Philippines).³¹⁴ It can be therefore be concluded that scope currently exists to realise incremental benefit within ASEAN (in terms of improving intra-Community capital flows).
- F.2.5 As explained in paragraph D.9 above, bilateral tax treaties with a variety of Member States currently exist, and these do in principle enable foreign investors to obtain relief from double taxation. However, even where tax treaties exist to reduce double taxation, it has been observed that barriers exist which may prevent foreign investors from fully realising the benefits intended to mitigate the potentially distortionary effects of interest WHT. Compliance costs are invariably incurred by investors seeking to claim tax relief (where, for example, claims must first be made to access treaty rates of tax); similarly, resources (time and financial) must also be expended to complete refund procedures (where, for example, relief is not available at source and must be obtained through a reclaim procedure). However, if compliance costs associated with obtaining relief are too large, disincentives against foreign debt investment may subsist, even though a relevant double taxation treaty may exist.
- F.2.6 Research has highlighted that in many cases where bilateral tax arrangements exist, foreign investors do not receive a full tax credit and/or may experience timing distortions in receiving relief by way of credit; *i.e.* cash flow disincentives due to having to fund WHT liabilities pending payment of a refund.³¹⁵ For example, an investor may not receive relief until they file a tax return in their country of residence, which may not be processed until months after the initial tax has been withheld. Responses to the Country Survey suggest that processes for obtaining tax relief and refunds in many Member States are onerous (see Part C and paragraph D.10).³¹⁶ Also see paragraph D.9.6 above.

³¹³ Barthel F, Busse M. and Neumayer E, *The impact of double taxation treaties on foreign direct investment: evidence from large dyadic panel data* (2010) *Contemporary Economic Policy* 366-377.

³¹⁴ Neumayer E, *Do double taxation treaties increase foreign direct investment to developing countries?* (2007) *The Journal of Development Studies* 1501-1519.

³¹⁵ Smailes A, *Interest WHT reduction: Does absence make the heart grow fonder?* (2015) Retrieved from *eJournal of Tax Research*: <http://www.austlii.edu.au/au/journals/eJTR/2015/19.pdf>.

³¹⁶ In this context and elsewhere in this Report, the term 'relief' is used to refer to the benefit of reduced (treaty) rates of WHT and/or foreign tax credits or other relevant form of domestic law relief with a basis in the *Elimination of Double Taxation* provision (or similar) of a relevant treaty (as incorporated into domestic law), as the context requires; whereas the term 'refund' is used to refer to situations in which the relevant domestic law requires WHT to withheld at the domestic rate and for relief to be claimed after the event by way of recovery of the excess tax paid over the treaty rate from the relevant tax authority.

- F.2.7 Recent analysis of tax agreements in the EU found that obtaining a WHT refund is typically a costly and complex process, and the European Commission estimated that as of January 2016 the total annual cost of WHT refund procedures within the EU is EUR 8.4 billion per year.³¹⁷ Of this total cost:
- (a) EUR 1.21 billion comprises costs directly related to investors complying with tax refund procedures, such as staff time and application expenses;
 - (b) EUR 1.16 billion comprises opportunity cost associated with the time taken to complete refund processes, since investors are unable to use funds not yet refunded for other productive purposes (it was reported that several EU member states took years to pay out refunds); and
 - (c) EUR 6.03 billion comprises tax relief foregone, as it was determined that some investors do not claim tax refunds to which they are entitled, due to the complexity of the refund procedures relative to the financial benefit.³¹⁸
- F.2.8 The EU's experience is considered in detail in paragraphs G.2 and G.3 of this Report. In addition to the effects of double taxation and credit arrangements, interest WHT rate levels are also patently likely to have an impact on foreign debt investment as: even with frictionless double taxation arrangements (e.g. relief at source and zero compliance costs), the tax rate itself will impact investor decisions and/or affect borrower financing costs, particularly where the WHT rate is higher than the income tax rate in the investor's jurisdiction of residence; introducing a comparative increase to the investor's effective tax rate (and in cases where costs are passed back to borrowers, disincentivise assumption and/or issuance of debt).
- F.2.9 A relatively high rate of WHT on interest paid to foreign investors will reduce the net return to those investors, thereby discouraging foreign debt investments compared with more profitable alternatives. In other contexts, it may increase the cost of finance to borrowers to a point that foreign debt finance becomes unaffordable.³¹⁹ Previous research has found that the foreign capital stock in Canada responds with unit semi-elasticity to the tax-adjusted cost of this capital, whereby a 1 percentage point increase in the effective cost of capital because of a higher WHT rate would lead to a 1% decrease in the capital stock.³²⁰ In a meta-study examining the effects of tax rates on FDI, a 2011 study found a median tax semi-elasticity of 2.49, whereby a 1 percentage point increase in the tax rate results in a 2.49% decrease in FDI.^{321, 322}
- F.2.10 The complexity of withholding taxes is another relevant consideration in foreign investors' decisions, as a taxation and financial system that is too complicated may disincentivise foreign debt investment. Foreign

³¹⁷ European Commission, *Accelerating the capital markets union: addressing national barriers to capital flows* (2017, Mar 24); <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A147%3AFIN> (retrieved 2 January 2019).

³¹⁸ European Commission, *Non-paper on the WHT for discussion at the Expert Group on barriers to free movements of capital* (2016, Sep 28); <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=28783&no=6> (retrieved 2 January 2019).

³¹⁹ See for example: Kamil S. and Mansor M. F, *Determinants of Capital Structure: Evidence from Financial Companies in Malaysia* (2014) *Advances in Environmental Biology*, 8(9) Special 2014, Pages: 389-394.

³²⁰ McKenzie K. J, *An Analysis of the Economic Effects of Withholding Taxes on Cross-Border Income Flows for Canada* (2008) Advisory Panel on Canada's System of International Taxation.

³²¹ See: Feld L. P, and Heckemeyer J. H, *FDI and taxation: a meta-study* (2011) *Journal of Economic Surveys* 233-272. The converse of this semi-elasticity being greater than 1 in magnitude is that a decrease in the tax rate results in proportionately larger increase in FDI; as such, a reduction in the tax rate results in a net increase in tax revenue.

³²² The previous studies on FDI are useful for contextualising the potential impact of lower tax rates on foreign investment flows and stocks, providing relevant insights based on a range of countries and datasets. However, the results from these studies cannot be directly applied to modelling a scenario on the economic impacts of reducing interest WHT rates due to significant differences between FDI and debt investments (and, in particular, those subject to interest WHT). Further research that specifically examines the dynamics of interest WHT rates and debt investments would be required to undertake such modelling, including because of the apparent non-existence of relevant primary data sets.

investors who are not familiar with tax rates and requirements in other countries may need to expend more resources to understand local regulations, or may altogether choose not to invest (perhaps in favour of similar and/or more profitable alternatives). A 2017 study found that 20% of international experts surveyed (out of a sample of 94 jurisdictions) cited tax compliance as the biggest challenge when investing into the Asia-Pacific region, and ranked Vietnam as having the fifth most complex tax system in the world.³²³

- F.2.11 With respect to debt finance, there are many circumstances in which interest (and interest-equivalent) income subject to WHT may arise (see Country Survey responses 29 for examples), and tax rates can vary significantly because of arrangements and treaties between different countries.³²⁴ For example, while Indonesia's interest WHT rate is 20% under domestic law, Indonesia has almost 70 tax treaties which contain provisions for lower tax rates of 5% to 15%, and under each treaty there may be up to three different tax rates which apply depending upon the identity of the counterparty.³²⁵ As discussed in paragraph C.4 above, Indonesia's approach to beneficial ownership is also more complex than some other Member States' and such additional factors add additional levels of complexity.

F.3 Approach to the economic modelling

- F.3.1 Economic modelling can provide an indication of the potential impacts of changes to WHT policy, and in agreement with WG-AFT such modelling of the impacts of interest WHT has been undertaken with respect to the ASEAN-6 (*i.e.* Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam) by Deloitte Access Economics as part of the Study.

- F.3.2 In view of the complexity of interest WHT structures and the range of policy changes that could possibly affect foreign debt investment, Deloitte Access Economics adopted a stylised approach to modelling the potential economic impacts of changing interest WHT policy. So that the stylised modelling is as relevant as possible to the current tax landscape within ASEAN, it has been dimensioned upon a scenario of improving interest WHT refund procedures (which, as explained in Part C and paragraph D.10 of this Report, is a significant issue, including in Member States, which translates into real terms costs), such that the cost of complying with these refund processes is eliminated.

- F.3.3 In order to model that scenario, it is necessary to understand the extent to which improved refund procedures would reduce compliance costs for foreign investors in each of the ASEAN-6. The costs of refund procedures for withholding taxes estimated in the EU by the European Commission in 2017 are used as the basis for the analysis. However, as those estimates relate to the effects for EU member states based on intra-EU investment flows, adjustments must be made to translate them into comparable benefits for ASEAN-6 Member States to dimension the economic modelling:

- (a) The estimated costs associated with tax refund procedures within the EU (in EUR) have been standardised by calculating the proportion of those costs as a share of total loans, deposits and debt securities in the EU.³²⁶ The yearly compliance cost of EUR 8.4 billion as at January 2016 represented 0.09% of intra-EU loans, deposits and debt securities in the comparable time period of 2015. Approximately 0.07% was due to foregone tax relief and around 0.01% represented each of the direct procedural costs and opportunity costs.
- (b) As a reduction in the cost of complying with tax refund processes between ASEAN Member States would only affect the intra-ASEAN debt market, the size of that intra-ASEAN investment for each

³²³ TMF Group, *The Financial Complexity Index 2017* (2017) TMF Group.

³²⁴ Refer to Appendix 5 by way of example.

³²⁵ For example, the WHT rate applied to interest payments to Laos, Malaysia, Singapore and Thailand (subject to conditions) is 10%; a rate of 15% is applied on payments to Brunei, Philippines and Vietnam, and the full 20% is applied on payments to Cambodia and Myanmar.

³²⁶ World Bank, *Joint External Debt Hub* (2018); <http://databank.worldbank.org/data/source/joint-external-debt-hub/preview/on> (retrieved 2 January 2019).

of the Member States being modelled was identified. Total foreign loans, deposits and debt securities were sourced from the World Bank's Joint External Debt Hub, with the latest available data for debt being dated 2016.³²⁷ The proportion of intra-ASEAN FDI was used as a proxy for the share of this total debt investment comprising intra-ASEAN activity, illustrated in Chart F.1.9.³²⁸

- (c) The 0.09% yearly compliance cost for tax refund processes in intra-regional debt markets from the EU study was applied to the estimated intra-ASEAN debt figures for each ASEAN-6 Member State, separated into the three components (*i.e.* direct procedural costs, opportunity costs and tax relief foregone). Rows (iv), (v) and (vi) in Table F.3.3 (shaded grey) list the estimated costs associated with each of the three components, and represent the potential benefits from procedural improvements to eliminate such compliance costs for each of the ASEAN-6. The results are used to dimension the inputs for the economic modelling.

Table F.3.3: Dimensioning the economic modelling of improved tax refund processes

	IDN	MYS	PHL	SIN	THA	VNM
(i) Total foreign loans, deposits and debt securities (creditor value) (USD million)	219,420	113,163	67,662	630,288	79,240	70,196
(ii) Proportion of FDI from other ASEAN Member States	51%	23%	7%	6%	21%	18%
(iii) Estimated intra-ASEAN loans, deposits and debt securities (USD million)	112,960	25,944	4,839	40,224	16,658	12,601
(iv) Procedural costs from tax refund process (USD million)	14.8	3.4	0.6	5.3	2.2	1.6
(v) Opportunity costs from tax refund process (USD million)	14.2	3.3	0.6	5.0	2.1	1.6
(vi) Foregone tax relief from tax refund process (USD million)	73.7	16.9	3.2	26.2	10.9	8.2

Sources: World Bank Joint External Debt Hub (2018), ASEAN Statistics Division (2018), European Commission (2017)

Note: Country abbreviations as follows: IDN = Indonesia; MYS = Malaysia; PHL = Philippines; SIN = Singapore; THA = Thailand; VNM = Vietnam

- F.3.4 Based on the results, a computable general equilibrium ("**CGE**") model has been used to consider how improvements in tax refund procedures would result in broader economic benefits for the ASEAN-6. CGE models comprise a class of economic model that has been widely used in analysing trade and tax policies.³²⁹ A general equilibrium model possesses the following features:

³²⁷ *ibid.*

³²⁸ ASEAN Statistics Division, *Flows of Inward Foreign Direct Investment (FDI) by Host Country and Source Country (in million USD)* (2018); <https://data.aseanstats.org/fdi-by-hosts-and-sources> (retrieved 2 January 2019).

³²⁹ See: (i) Polaski S, *Winners and losers: the impact of the Doha round on developing countries* (2006) Carnegie Endowment for International Peace; (ii) Hertel T, Walmsley T. and Itakura K, *Dynamic effects of the 'new age' free trade agreement between Japan and Singapore* (2001) *Journal of Economic Integration* 446-484; and (iii) Decreux Y and Fontagné L, *Economic Impact of Potential Outcome of the DDA II: Economic Analysis in Support of Bilateral and Multilateral Trade Negotiations* (2011).

- (a) All sectors in the economy are explicitly represented and the size of each sector is based on readily available data from statistics agencies.
- (b) The flows of inputs and outputs between sectors, and to end consumers, is represented to capture linkages between sectors in the economy.
- (c) Account is taken of limited labour and capital in the economy, such that increased output in one sector necessarily comes at the expense of output elsewhere in the economy that relevant resources would have otherwise produced (unless the increase in output is caused by an increase in productivity).
- (d) There model accounts for unemployment.
- (e) Firms can increase investment (and therefore capital) in response to an increase in returns on investment.

Those features mean that general equilibrium models present realistic and complete models of the real economy because they account for all sectors in the economy, and the employment and output in each sector; furthermore, they are also well placed to demonstrate the changes in total output (GDP) and employment resulting from a particular policy change in the economy.

F.3.5 The modelling undertaken for the purposes of the Study and this Report uses the Deloitte Access Economics' Regional General Equilibrium Model ("**DAE-RGEM**"): a multi-country, multi-sector general equilibrium model of the global economy. DAE-RGEM is underpinned by version 9 of the Global Trade and Analysis Project ("**GTAP 9**") database (which is a fully-documented, publicly-available database containing complete input-output production functions, macroeconomic data and bilateral trade information for 140 countries and 57 industries) as the starting point for the ASEAN-6 in 2011. The GTAP database was developed specifically for use in modelling the impacts of trade policy. More details on the model can be found in Appendix 6.

F.3.6 The benefits associated with improving interest WHT refund procedures in the ASEAN-6 Member States have been modelled as follows:

- (a) The reductions in procedural costs and opportunity costs associated with improved refund processes are modelled as a productivity change for labour employed in the financial services sector. The financial services sector includes economic activity associated with engaging in or facilitating financial transactions, such as creating, liquidating and changing ownership of financial assets. Improved refund processes would mean that less time and fewer resources within this sector are required for interest WHT refund administration and compliance, and it is assumed that those resources are capable of being devoted to more productive uses elsewhere within the economy.³³⁰
- (b) The reduction in tax relief foregone (or correspondingly, the increase in tax refunded to investors) is modelled as an increase in foreign investment into the economy. It is assumed that foreign investors will choose to reinvest the additional income that they receive from tax refunds in the same jurisdiction into which the original investment was made. However, there are several points of uncertainty of which to take note that would affect the actual change in foreign investment following an improvement in interest WHT refund procedures:
 - (i) There would likely be an increase in foreign debt investment above the amount of previously foregone tax relief that is assumed to be reinvested, as the elimination of compliance costs could encourage investors to more generally move away from other investment types and towards foreign debt investments.

330

Note 311 *supra*.

- (ii) At the same time, the extent to which borrowers respond to greater foreign debt investment by a reduced reliance on other sources of capital (such as domestic debt or equity sources) is unclear. Any offsetting reduction in such other sources of borrowing would mean that the net increase in investment in the economy could be lower than envisaged.

As those uncertainties are two-sided, the central assumption adopted in the CGE modelling is that the amount of tax relief previously foregone that is subsequently refunded is equal to the increase in foreign investment to the economy. As the above dynamics have not been captured in the modelling, the estimated results below should be interpreted as stylised indications of orders of magnitude.

F.3.7 As the CGE modelling examines the economic benefits from the scenario of improved tax refund procedures from 2019 onwards, the compliance costs estimated in Table F.3.3 above are transformed into 2019 USD terms to be used as inputs to the model. Those inputs, presented in Table F.3.7, represent the direct economic benefits associated with eliminating the cost of complying with tax refund processes. In total, the productivity improvement in the financial services sectors across the ASEAN-6 is computed to be USD 57 million per annum in 2019 dollars, while the increase in foreign investment is computed to be USD 145 million per annum in 2019 dollars. The model simulation has been run for 10 years from 2019 to 2028, with a view to capturing differences in short-term versus long-term dynamics within the ASEAN-6.

Table F.3.7: Direct economic benefits (inputs into the CGE model), in 2019 terms

	Improved productivity (USD mil)	Increased investment (USD mil)	Total* (USD mil)	Total (% of 2019 GDP)
Indonesia	30.1	76.5	106.6	0.009%
Malaysia	6.9	17.6	24.5	0.006%
Philippines	1.3	3.3	4.6	0.001%
Singapore	10.7	27.3	38.0	0.010%
Thailand	4.4	11.3	15.7	0.003%
Vietnam	3.4	8.5	11.9	0.006%
Total six ASEAN economies	56.8	144.5	201.2	0.009%

Source: Deloitte Access Economics

* Note: total of improved productivity and increased investment is calculated for scale purposes, so that the subsequently estimated GDP impacts can be compared in size relative to the direct economic benefit. However, the sum of these two different benefits has no real economic interpretation.

F.4 Stylised impacts of improving tax refund procedures

F.4.1 As a result of the improvements to interest WHT refund procedures, GDP in the ASEAN-6 could increase by a total of USD 192 million (in 2019 dollars) in 2019, or year 1 of the introduction of the improved processes such as those described in Part G of this Report. This represents 0.006% of GDP across the ASEAN-6 in 2019, as illustrated in Chart F.4.4 below. By 2028 (or year 10 following the introduction of the improved processes), the annual GDP impact is expected to have increased to USD 311 million, or 0.009% of GDP (in 2028) across the ASEAN-6.

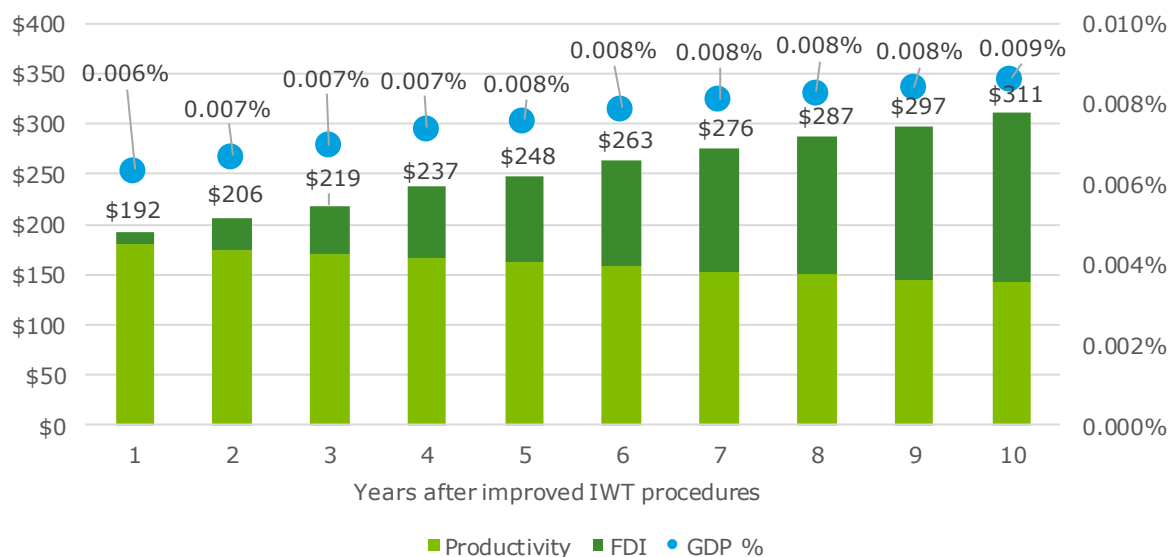
F.4.2 Although the productivity improvement associated with improved tax refund processes is expected to be smaller than the increase in investment (see Table F.3.7 above), the positive GDP impact of the productivity component is initially expected to be larger than that of the investment component. In year 1, the ASEAN-6's total GDP would be expected to increase by USD 180 million as a result of productivity improvements, compared to an increase of USD 12 million from an increase in foreign investment (see Chart F.4.4 below). The GDP impact of the increased foreign investment would be expected to rise over

time, whilst the productivity benefits would decline slightly over time. By year 10, GDP could be expected to increase by USD 142 million across the ASEAN-6 as a result of productivity improvements, compared to USD 169 million from additional investment.

F.4.3 The benefits associated with a more productive financial services sector (as described in paragraph F.3.6 above) would flow through the economy to have an impact on overall GDP relatively quickly. Once workers in the financial services sector adopted the new (less burdensome) interest WHT refund procedures, they could devote less time to complying with tax regulations and processing refunds. This would lead to a lower price for the provision of financial services, which could be passed onto other sectors in the economy that use financial services in their production processes (such as manufacturing, trade and communications). This could encourage more lending and borrowing, and would support further growth in industries across the economy.

F.4.4 In contrast, the benefits associated with additional foreign investment would start relatively small and increase over time; this is because it would take time for investment to be spent on the construction of productive capital (for instance, a rail network takes years to be constructed and become operational). While capital is being developed, there could be expected to be some economic benefits – particularly in the construction, professional services and manufacturing sectors, which are key inputs into the production of capital. However, only once new investments are fully transformed into productive capital would the full benefits be realised throughout the economy as businesses can only then draw on such improvements in their production of goods and services (e.g. businesses can only use the aforementioned rail network to transport their goods and services once it has been constructed and made operational).

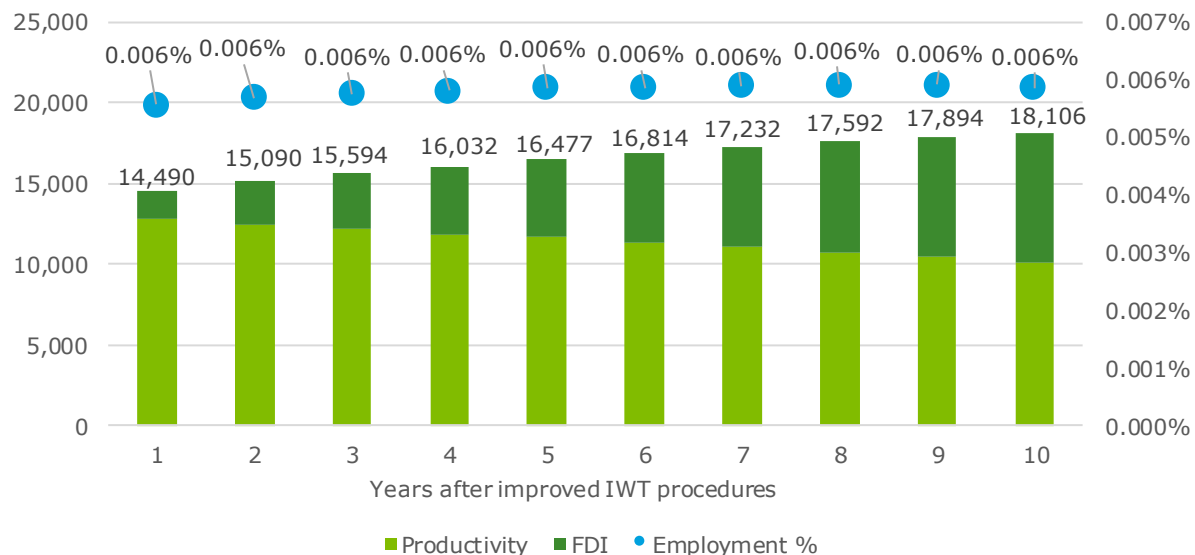
Chart F.4.4: GDP impacts over time from improved tax refund procedures in ASEAN-6 economies (left-hand legend: USD millions; right-hand legend: % of GDP)



Source: Deloitte Access Economics
 Note: Total impacts across the ASEAN-6

F.4.5 Improving interest WHT refund procedures should also lead to more jobs in the ASEAN-6. Assuming immediate implementation of improvement measures, employment is projected to increase by 14,490 FTE jobs in year 1, representing 0.006% of the total workforce across the ASEAN-6 in 2019. By year 10, the annual employment impact could be expected to increase to 18,106 FTE jobs, or 0.006% of total employment in the ASEAN-6 in 2028 (Chart F.4.5).

Chart F.4.5: Employment impacts over time from improved tax refund procedures in ASEAN-6 economies (left-hand legend: FTE jobs; right-hand legend: % of national workforce)



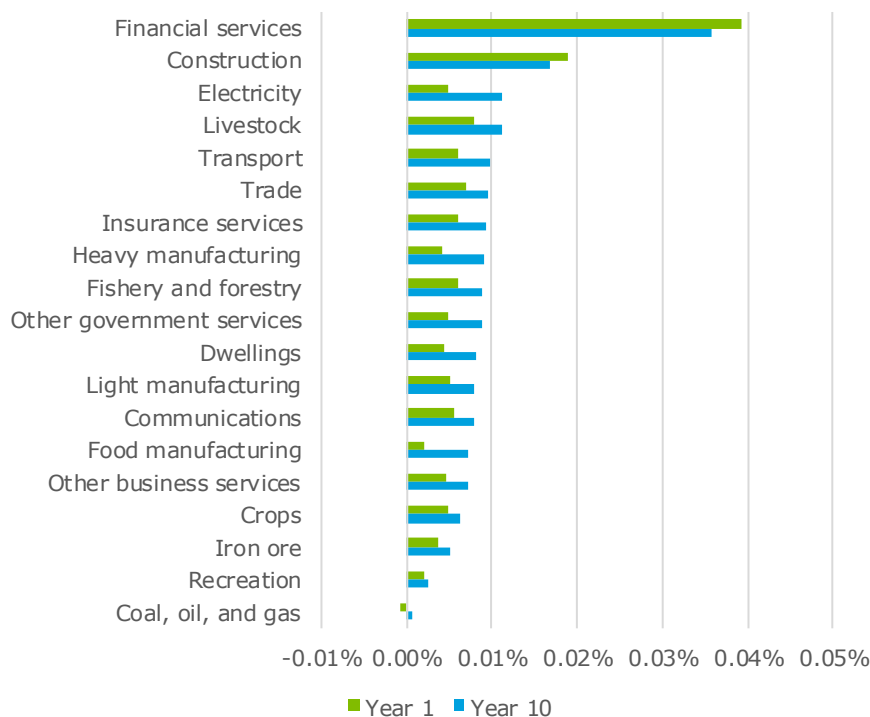
Source: Deloitte Access Economics
 Note: Total impacts across the ASEAN-6

F.4.6 Overall across the ASEAN-6 economies, improved tax refund processes could also lead to a structural shift in the industry composition of output over time. The financial services sector would experience the largest benefit compared to other industries, as the productivity improvement would directly occur in that sector of the economy. Output in the financial services sector has been projected to increase by 0.039% in year 1 (see Chart F.4.6 below). However, the benefits would not be confined to the financial services sector, with other sectors in the economy also being expected to benefit. Benefits would be derived from a number of different channels, including the relative importance of investment by sector and the extent to which various sectors utilise financial services.³³¹

- (a) The construction sector would benefit as a result of increased investment as it is generally a key input in capital creation processes; the benefits have been projected to be relatively larger in year 1 as investments would be in the process of being transformed into productive capital.
- (b) The communications, trade and heavy manufacturing sectors have been projected to benefit as a result of lower costs for financial services (as a result of the productivity improvement), as they would use financial services as a key input.
- (c) Other sectors have been projected to expand more broadly as the economy expands (following the lower compliance costs) and households would have more income to spend on a range of other goods and services. The impact would grow larger by year 10 as economic activity would be supported by greater capital stock.

³³¹ One channel that has not been examined is each sector's reliance on foreign debt specifically as a source of capital. Accounting for this could affect the sectoral variation in results; for example, the impact on output associated with dwellings would likely be lower if we were to more directly estimate the role that foreign debt and interest WHT play in this sector.

Chart F.4.6: Impact on industry output over time from improved tax refund procedures in six ASEAN economies (% of industry output)



Source: Deloitte Access Economics
 Note: Total impacts across the ASEAN-6

F.4.7 The GDP and employment impacts would vary between the ASEAN-6 Member States because:

- (a) the size of the productivity improvement and increased investment associated with improved tax refund processes would differ across the six individual ASEAN economies (see Table F.3.8); and
- (b) each economy has different industry structures and linkages and a different level of development (see Part C of this Report).

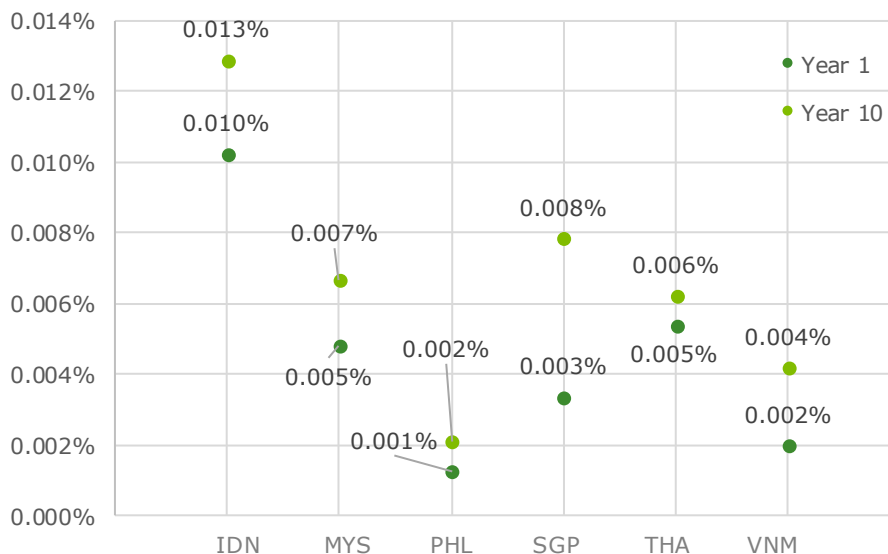
For example, the GDP impacts resulting from improved interest WHT refund processes for individual ASEAN-6 Member States are illustrated in Chart F.4.9 below. The Indonesian economy would be expected to see the greatest benefits from improved refund procedures, with a 0.010% increase in GDP in year 1 rising to 0.013% by year 10.

F.4.8 Some countries, such as Thailand and the Philippines, would experience larger GDP impacts relative to the size of their direct economic benefit associated with the improved processes. For instance, the projected direct benefit in Thailand represents 0.003% of its GDP in 2019 (as described in Table F.3.8). However, as shown in Chart F.4.9 below, the GDP impact in Thailand's economy would be expected to be higher, at 0.005% in year 1, because financial services in Thailand are used as a key input into the production of other sectors of the Thai economy, including manufacturing and trade. Indeed, over 50% of financial services output in Thailand for firm use are expected to be used by these two industries. Consequently, productivity improvements in the financial services sector would reduce the cost of borrowing and doing business for businesses in those industries and would facilitate a large degree of flow-on activity elsewhere in the economy.

F.4.9 In contrast, for the more developed ASEAN-6 Member States (such as Singapore and Malaysia) there would be a more limited degree of flow-on activity throughout the rest of the economy. For example, in Singapore, while the direct economic benefits from improved refund processes represent 0.010% of the economy in

2019 (see Table F.3.8 above), GDP would only be expected to increase by 0.003% in year 1 (see Chart F.4.9 below). The input-output production functions of the economic model indicate that over a third of financial services in Singapore are used by the Singapore financial services sector itself, with relatively little being used by other sectors of the economy. Consequently, the benefits from lower costs for the supply of financial services is confined to the financial services sector itself, and the benefits realised by other sectors in the economy are relatively smaller.

Chart F.4.9: Individual country GDP impacts over time from improved tax refund procedures (% of GDP)

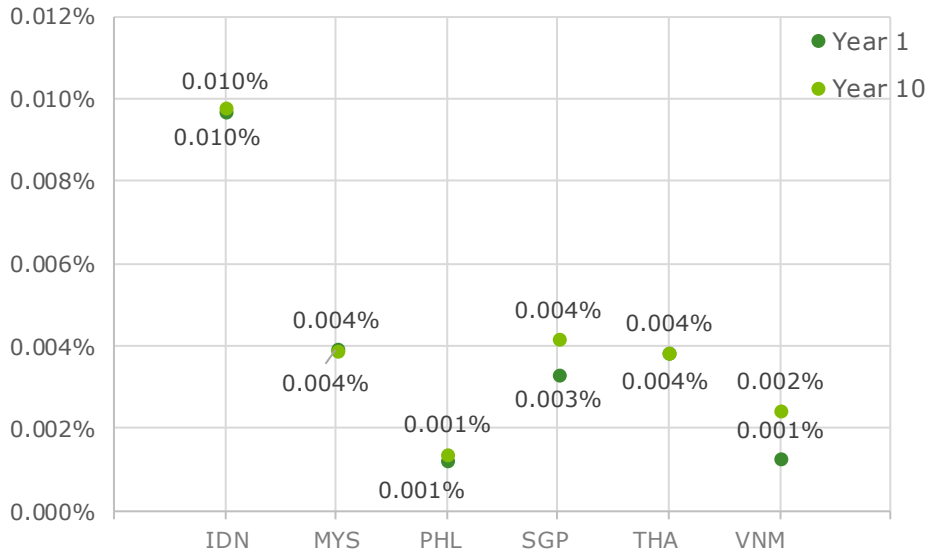


Source: Deloitte Access Economics

Note: Country abbreviations as follows: IDN = Indonesia; MYS = Malaysia; PHL = Philippines; SIN = Singapore; THA = Thailand; VNM = Vietnam

F.4.10 The variations in employment impacts across the ASEAN-6 are of similar relative magnitudes, as illustrated in Chart F.4.10 below. Indonesia would also experience the largest rise in employment as a result of the improved interest WHT refund procedures, with a 0.010% increase in employment in year 1.

Chart F.4.10: Individual country employment impacts over time from improved tax refund procedures (% of national workforce)



Source: Deloitte Access Economics

Note: Country abbreviations as follows: IDN = Indonesia; MYS = Malaysia; PHL = Philippines; SIN = Singapore; THA = Thailand; VNM = Vietnam

F.4.11 It should be reiterated that the economic scenario modelled and explained in this Report is a stylised representation of the potential benefits associated with improving interest WHT refund procedures, such that compliance costs are eliminated. This stylised modelling is not intended to estimate the precise benefits that would arise from implementing any particular policies, but rather it provides an indication of the potential magnitude of benefits available from improvements to WHT refund processes more broadly. Determining the economic impacts of a particular policy change would require greater and more specific consideration of how to dimension this change within the CGE model, and the dynamics that would need to be captured by the model following the actual intended policy change.

F.5 Conclusions

F.5.1 Overall, the stylised economic modelling completed as part of the Study indicates that improving interest WHT relief and refund processes in Member States could increase GDP in the ASEAN-6 by more than USD 310 million per year after 10 years of implementation, and create almost 18,000 FTE jobs per year after the same time period. While this is a relatively small share of total economic activity and workforce size (less than 0.01%), it nonetheless represents a substantial gain in dollar and worker terms. This suggests that there is indeed merit to rationalising and streamlining administrative procedures in a manner such as that proposed in Part G of this Report.

F.5.2 The variations in financial and economic characteristics across the different Member States, which affect the relative size of estimated benefits in each economy, are relevant considerations in determining how to implement any process improvements in the various jurisdictions. The reader should note that this is one factor taken into account for the purposes of implementing the recommendations made in Part H of this Report on a phased basis, to take account of the varying levels of development of the ASEAN-5 as compared with the other Member States.

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PART G: SYNTHESIS AND CONSIDERATION OF BEST PRACTICES



PART G: SYNTHESIS AND CONSIDERATION OF BEST PRACTICES

G.1 Overview

- G.1.1 It has been concluded earlier in this Report that whilst legal provisions and tax treaties are in many cases in place to relieve interest WHT liabilities, the practical aspects of claiming relief often hamper the effectiveness of such reliefs and thus cause interest WHT to become a real terms cost. It has also been concluded that such real terms costs are typically passed on to borrowers in a way that causes WHT to operate like an excise tax, which directly affects the cost of debt financing and thus investment decisions, and that reducing or eliminating such costs should have positive economic impacts in terms of productivity enhancements and improved regional investment flows.
- G.1.2 This Part of the Report considers the conclusions reached from a comparative perspective, and discusses measures that could be further considered and/or implemented to address the issues identified.
- G.1.3 It is notable that conclusions substantially similar to those reached earlier in this Report have been reached in Europe by the European Commission. The Commission's analysis pre-dates this Study, and produced a number of recommendations; some of which have been implemented and have been observed to have produced positive impacts. In view of this, this Part begins with a review of material aspects of the European Commission's analysis, recommendations and actions, and subsequently considers how actions taken in Europe may be augmented and supplemented so that they could be appropriate to be deployed in ASEAN.

G.2 Learnings from Europe: Background

- G.2.1 The European Commission has completed a great deal of work to try and quantify the negative economic effects of interest WHT in the European capital markets.
- G.2.2 Given the similarity of the European Commission's objective and ASEAN's current Policy Objective, it is apposite to summarise and state the Commission's material conclusions and its proposed measures and their impacts, thus:
- (a) In the early 2000s, the European Commission asked the Giovannini Group of over 110 financial markets experts (the "**Giovannini Group**") to complete a review of clearing and settlement arrangements within the EU.
 - (b) The Giovannini Group published a report on its findings in 2001 (the "**First Giovannini Report**") and a second report in 2003 (the "**Second Giovannini Report**").³³² Fifteen barriers to the integration of EU securities post-settlement systems were identified in and across those two reports.
 - (c) European Commission commentary to the First Giovannini Report summarised that the report *inter alia* concluded (in the context of securities trading) that:

"[A]t-source relief procedures are the best [mode of tax relief] because of the optimized cash flow they offer to investors[.]

"[I]n order to make relief procedures simpler, paper-form certificate[s] of residence should be replaced by alternative means to prove the investors' entitlement to tax relief, such as self-certification and know-your-customer (KYC) rules. Furthermore

³³² The Giovannini Group, *Cross-border Clearing and Settlement Arrangements in the European Union*, November 2001, available at https://ec.europa.eu/info/system/files/first_giovannini_report_en.pdf (retrieved 19 December 2018); and The Giovannini Group, *Second Report on EU Clearing and Settlement Arrangements*, April 2003, available at: https://ec.europa.eu/info/system/files/second_giovannini_report_en.pdf (retrieved 19 December 2018).

intermediaries should be allowed to make use of modern technology to pass on investors' information to the withholding agents in electronic format.

"[T]he efficiency of at-source relief procedures could be improved and many of the existing problem[s] could be solved by shifting withholding responsibilities to intermediaries...

"[E]ven though relief at source is the preferred relief method, there is a clear need also for efficient refund procedures."³³³

The First Giovannini Report also specifically commented that:

"National tax authorities are not always sufficiently focused on the needs of foreign investors and as tax procedures can be complex and raise interpretation questions, easy access to national tax authorities is essential."³³⁴

- (d) The Second Giovannini Report emphasised the optimisation benefits of shifting WHT responsibilities to intermediaries, and drew attention to the fact that (at the relevant time) the majority of EU member states restricted WHT responsibilities to domestic entities, thus disadvantaging foreign intermediaries which were not able to offer WHT relief at source due to significant additional costs being attributable to requirements to use a domestic agent or representative to discharge WHT obligations. As this was considered to be inconsistent with the EU's Single Market and its foundation upon national treatment, the report recommended that all financial intermediaries established within the EU be permitted to offer WHT agency services in all Member States so as to ensure a level playing-field between domestic and foreign stakeholders.³³⁵ That recommendation appears to have specifically focused the attention of the European Commission on the wider economic impacts of EU member states' WHT policies and related administrative processes.
- (e) It was reported that at a subsequent meeting of the Giovannini Group in 2007 *"many of the speakers underlined that a substantial part of the transaction costs related to post trading are caused by the present fiscal compliance barriers relating to post-trading and that the present fiscal compliance procedures are burdened by huge costs for the industry, the investors as well as for the tax administrations and Governments."*³³⁶
- (f) A working group was subsequently established within the European Commission's Directorate General of Internal Market and Services to conduct an economic impact assessment of fiscal compliance barriers, similar to the economic impact analysis component of the current Study. The Commission's working group published its economic impact assessment in June 2009 (the "**2009 ECWG Report**").³³⁷
- (g) The 2009 ECWG Report identified the following three main cost implications of inefficient tax administration processes:

³³³ European Commission, *The Economic Impact of the Commission Recommendation on WHT Relief Procedures and the FISCO Proposals* (24 June 2009) EC Directorate General of Internal Market and Services; available at https://ec.europa.eu/info/system/files/booklet-fisco-09022010_en.pdf (retrieved 18 December 2018); at page 3.

³³⁴ *op. cit.* note 332, first-referenced source; at page 53.

³³⁵ *op. cit.* note 332, second-referenced source; at page 11.

³³⁶ *op. cit.* note 333; at paragraph 1.3/page 4.

³³⁷ *ibid.*

"The current reclaim procedures in [the] form of different paper forms and documents. The costs related to present reclaim procedures are assumed to account on average for 2% of the refundable amount and are estimated to a value of €1.09 billion annually.

"Foregone tax relief due to high thresholders. Many (small) investors do not actually claim their tax refunds due to the current high costs. The assumed amount of foregoing tax relief is estimated to €5.47 billion annually.

"Opportunity cost due to delayed claims and payments of tax refunds. The current delayed refunding is estimated to amount to an opportunity cost of €1.84 billion annually."³³⁸

(h) The 2009 ECWG Report went on to conclude that:

"The [s]tudy estimate[s] that [...] improved tax procedures would increase EU GDP by €3.4 billion or 0.028% per year compared to a situation where no tax relief at source or quick procedures are available (or more than €37 billion over a 10 year period with an annual assumed 2% growth rate of real GDP).

"This figure is highly sensitive to the assumptions used in the estimation process. Different, yet highly plausible and consistent, assumptions could yield higher estimates than the given numbers. Moreover, additional components like the reduction of deadweight loss associated with lower effective tax rates or a positive effect on the total factor productivity would further increase the estimated figures. However, because some [EU] Member States have already implemented procedures that comply with [the working group's recommendations], parts of the positive growth effects could already be realised.

"Also, it should be kept in mind that the analysis is confined to the potential benefits for investors...[A]n inclusion of the reduced costs for intermediaries as well as the positive consequences for national tax authorities (which would face some initially non-recurring transformation costs, but significantly higher benefits in the long run) would further raise the estimated impact of European GDP. The same would be the case if the static analysis were was extended to also comprise dynamic effects (e.g. an increase in the share of cross-border holdings due to the removed fiscal barriers)."³³⁹

Whilst the foregoing metrics are not directly comparable to ASEAN's current context (*inter alia* due to their age and the differing composition of the EU market),³⁴⁰ they are interesting in that they help corroborate the conclusions reached in this Report, including the results of the economic impact analysis described in Part F. Using the European Commission's experience and conclusions as a basis, it can therefore be further noted that interest WHT and inefficient and inconsistent administrative procedures do indeed have a remarkable economic impact and, as explained in Part F above, that the benefit to eliminating WHT and/or rationalising and streamlining related administrative measures could be material over the medium- to long-term.

G.3 Learnings from Europe: Recommendations

G.3.1 The economic impacts identified in the 2009 ECWG Report prompted the European Commission to publish a formal Recommendation under the Treaty Establishing the European Community in which it recommended that EU member states implement the following improvement measures, which were based on the working group's observations of best practices from across the (then 27) member states of the EU:

³³⁸ *op. cit.* note 333; at paragraph 7.5/page 60.

³³⁹ *op. cit.* note 333; at paragraph 7.6/page 61.

³⁴⁰ See paragraph F.3.3.

- (a) the grant of relief at source rather than by way of subsequent refund, subject to all necessary documentation being available to enable the withholding agent to verify the investor's eligibility for relief;
- (b) the use of alternative proofs of an investors entitlement to tax relief to certificates of residence issued by a relevant tax authority to reduce administrative lead times;
- (c) standardisation and acceleration of refund procedures, which could incorporate:
 - (i) the designation of a single point of contact at the relevant tax authority;
 - (ii) common documentation formats;
 - (iii) permission for information agents and/or withholding agents to submit refund applications to tax authorities on investors' behalf; and
 - (iv) refunding relevant amounts within an objectively reasonable period of time;
- (d) making information and documentation available in electronic format; and
- (e) verification of compliance with eligibility requirements through audit.³⁴¹

It should be noted that a formal Recommendation of the European Commission is a non-binding, soft law instrument, and that such an instrument appears to have been used to take account of national sensitivities with respect to the sovereignty of tax measures.³⁴²

G.3.2 The extent of EU member states' implementation of those recommendations was recently reviewed by the European Commission, and in 2015 it was found the WHT frictions identified in the 2009 ECWG Report largely persisted: it was found that of the 26 EU member states that responded to the Commission's consultations on national barriers to the free movement of capital in 2014/2015, 14 identified WHT relief as a particularly problematic and pervasive issue.³⁴³

G.3.3 In that context, in 2016 the European Commission concluded that "[w]ithout a concerted effort by [the EU member states], the aforementioned barriers are likely to persist".³⁴⁴ Given the context, it is reasonable to read that statement as an implicit acceptance of the soft law approach taken (*i.e.* the Commission's formal Recommendation) as having been of limited success. In its update report, the Commission went on to restate best practices that were contained in the 2009 ECWG Report and also supplemented those with the following, particularly notable, best practices based on more recent observations of Finnish, Slovenian, Croatian and Irish administrative procedures respectively:

- (a) to allow completion of the whole refund process online;

³⁴¹ European Commission, Commission Recommendation of 19.10.2009 on WHT relief procedures COM(2009)7924 final; available at https://ec.europa.eu/info/system/files/booklet-fisco-09022010_en.pdf (retrieved 18 December 2018).

³⁴² *op. cit.* note 333; at paragraph 1.4.

³⁴³ Directorate-General for Financial Stability, Financial Services and Capital Markets Union, *Non-paper on the withholding tax for discussion at the Expert Group on barriers to free movement of capital* (28 September 2016) European Commission; at Introduction, citing Questionnaire on barriers to free movement of capital, sent to EU member states on 04/06/2015 and consultation of EU member states on their priorities for the work of the Expert Group on barriers to free movement of capital (16/10/2015); available at: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=28783&no=6> (retrieved 20 December 2018).

³⁴⁴ *ibid*; at 'Persisting Problems'.

- (b) to provide a reasonable limitation period for claims and to effectively provide refunds within a short period of time and in any case within six months;
- (c) to restrict the scope of WHT; and
- (d) to exempt interest on certain types of financial instruments from WHT.³⁴⁵

The reader's attention is drawn to the discussion in paragraph D.8 of this Report with respect to the latter two of those best practices.

G.3.4 By way of further endorsement of such measures, in 2017 a working group at the European Commission published a non-binding *Code of Conduct on Withholding Tax*,³⁴⁶ which restated the best practices referenced above and which listed the problems each proposed measure was intended to address along with possible implementation measures (albeit such implementation measures were very high-level in nature). It remains to be seen whether that Code of Conduct will be any more successful than the earlier (2009) formal Recommendation of the Commission; however, given its similarly soft law nature, it can be speculated that the Code of Conduct may not provide the impetus necessary to encourage the concerted effort that the European Commission has identified as being necessary within the short- to medium-term.

G.4 Best practices

G.4.1 WHT-related barriers to debt financing and investment are global phenomena and not simply ASEAN regional challenges. Having first identified such issues almost two decades ago, the EU has completed a great deal of work to identify the root causes of the problems and to devise measures to address them. Such learning can also be supplemented with observations regarding administrative procedures actually deployed by certain EU member states, and the approach taken to date by the EU itself is also instructive.

G.4.2 As the EU experience provides valuable insight with respect to what might be done in ASEAN to work toward achieving the Policy Objective, there is merit to taking account of the best practices identified by the European Commission and using them to help shape an appropriate approach for ASEAN (albeit in a way that is sensitive to the differing composition of the two blocs).

G.4.3 On that basis, it is suggested that the best practices listed below (which comprise practices identified by the European Commission and practices identified throughout the analysis throughout this Report) (each a "BP" and together the "BPs") are taken forward by WG-AFT for consideration:

	Measure	Rationale
BP1:	Exempt interest WHT on defined transactions to eliminate fiscal distortions to investment decisions and access to finance.	It is clear that interest WHT is not an effective way to tax lenders as it has been found that the economic cost is typically passed on to borrowers in a way that gives rise to excise-taxation-like effects. ³⁴⁷ Exempting interest payments from WHT in appropriate cases would improve/decrease the cost of finance for borrowers and thus improve access to debt finance.

³⁴⁵ *ibid*; at 'Existing solutions and good practice in the Member States'.

³⁴⁶ Directorate-General Taxation and Customs Union, *Code of Conduct on Withholding Tax* (2017) European Commission; available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/code_of_conduct_on_withholding_tax.pdf (retrieved 20 December 2019).

³⁴⁷ See paragraphs D.8 and E.1.3 of this Report.

		<p>Exemption is recommended to a broad degree as tax credit relief does not give rise to equivalent outcomes due to the often limited value of such relief and a greater dependency upon administrative procedures (which have been identified as having a significant impact on the efficacy of tax relief).³⁴⁸ Exempting interest in respect of appropriate types of debt should therefore create the greatest possible contribution of any proposed action to the achievement of the Policy Objective. The potential scope of such an exemption is considered in paragraph G.5 below.</p>
<p>BP2:</p>	<p>In other cases, standardise the grant of relief at source and remove onerous up-front administrative requirements (<i>i.e.</i> provide for relief being taken automatically in appropriate cases, and eliminate the need for claims to be made to the relevant tax authority).</p>	<p>Where exemption is not applied then, from an economic perspective, tax credits would continue to be the most advantageous form of relief practically available.³⁴⁹ However, as complex administrative procedures have been shown to have a significant impact on the efficacy of credit relief, relevant administrative requirements should be eliminated to the greatest extent possible and, to the extent such procedures remain necessary, efforts should be taken to ensure that they are streamlined.³⁵⁰</p> <p>Standardising relief at source would help achieve this objective, as granting relief at source in combination with removing up-front administrative requirements would facilitate access to relief. If Member States are particularly concerned with the prospect of a complete removal of up-front requirements, a simplified approach to up-front compliance requirements could instead be adopted (see BP4 below); the UK's Double Taxation Treaty Passport Scheme is an interesting example of such an approach,³⁵¹ and it is notable that Indonesia</p>

³⁴⁸ See paragraphs D.10 and E.1.3 and Part F of this Report.

³⁴⁹ Exemption is generally most effective at addressing double taxation, followed by credit relief. Deduction is generally the least effective at addressing double taxation, as by its nature it constitutes only a partial relief from double taxation.

³⁵⁰ *ibid.*

³⁵¹ Under this scheme, an eligible lender makes an application to Her Majesty's Revenue & Customs to be awarded passport holder status. The lender will then provide a borrower with its passport number, and the rate at which income tax should be withheld, which may be a zero rate under one of the UK's tax treaties. HMRC then reviews an application made by the borrower citing the lender's passport number and, if the conditions of the scheme are satisfied, it will issue a direction for the borrower to apply relief at source. This enables the borrower to then make all interest payments under the cleared loan agreement with relief applied at source; and precludes the need for a discrete claim for relief being necessary by the lender with respect to each interest payment. For further detail, see: Her Majesty's Revenue & Customs, *Double*

		has recently taken steps to streamline up-front procedures in a similar manner whilst at the same time addressing its treaty shopping concerns through the publication of PER-25 (which has significantly streamlined the procedures previously applicable under PER-10). ³⁵²
BP3:	Verify compliance with eligibility requirements through audit.	Replacing up-front administrative processes with audit of <i>ex post facto</i> positions taken by taxpayers in respect of relief would help address the impact that administrative processes can have upon the efficacy of relief. Such audit processes would counterbalance tax avoidance concerns arising from a removal of up-front requirements whilst at the same time ensuring the efficient availability of relief at source to the greatest extent possible. Audit processes would provide tax authorities with a way to ensure taxpayers' eligibility for and correct use of reliefs, and penalties could be used to help enforce taxpayer compliance and to disincentivise abuse.
BP4:	Standardise relief claims and processes across the Community with a view to establishing a regional claims procedure.	<p>Even if BP1, BP2 and BP3 were implemented in the manner suggested, more limited streamlined administrative processes to access relief and/or to obtain refunds could be remain necessary (see for example the reference the UK's Double Taxation Treaty Passport Scheme referred to in the context of BP2 above and described in footnote 351). Standardising such remaining processes across Member States would leverage facilitate taxpayer education and help eliminate information asymmetries.</p> <p>By standardising processes, taxpayers familiar with processes in one Member State should have confidence that they are able to take a similar approach in other Member States in a way that would simplify business decisions and facilitate the execution of investments. It would also mean that precedent documentation in respect of investments in one Member State may be used by taxpayers as a source of reference when applying for relief or refund in another</p>

Taxation Treaty Passport Scheme: Terms and Conditions and Guidance (6 April 2017); available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/606556/Double_Taxation_Treaty_Passport_Scheme_-_Terms_and_Conditions_and_Guidance.pdf (retrieved 20 December 2018).

		Member State, thus helping to streamline the satisfaction of relevant obligations; consequently, taxpayers and intermediaries should be better able to complete claims themselves and thus without the need to engage local agents/representatives (in turn also helping to reduce the costs of obtaining relief).
BP5:	Standardise relief and refund documentation across the Community.	Standardising relevant documentation would help maximise the benefits realisable from the implementation of BP4.
BP6:	Allow alternative proofs of investors entitlement to tax relief to certificates of residence issued by the relevant tax authority.	<p>Allowing alternative proofs of investors' entitlement to tax would help address the time and other resource costs of obtaining relief and would help streamline residual up-front administrative processes by eliminating the potential for administrative delays otherwise arising from applications for certificates of residence.</p> <p>Permitting the use of alternative proofs would be intended to enhance access to relief and should not permit taxpayers to obtain relief in circumstances in which they may not otherwise be able to obtain a certificate of tax residence.³⁵³</p> <p>Alternative proofs could include self-certification and information collected by financial intermediaries in satisfaction of anti-money laundering and know your customer (KYC) requirements. Consistent with BP3, audits and civil penalties could be used to help ensure that adequate safeguards exist to counter potential abuse.</p>
BP7:	Allow completion of the whole of the filing and refund processes online. ³⁵⁴	Taking steps to help standardise front-end platforms and enable online filings would help streamline submission procedures and manage taxpayers' compliance costs. Digitising filing and refund processes would also support deployment of BP4 and BP5.

³⁵³ See paragraph G.2.2(c) above.

³⁵⁴ A fully electronic system named *MyTaxPortal* is currently in use in Singapore with good effect. This could be used as a regional precedent to build-out the use of similar systems in other Member States. See: Inland Revenue Authority of Singapore, *How to e-file*, at: <https://www.iras.gov.sg/irashome/Other-Taxes/Withholding-tax/Filing-and-Paying-Withholding-Tax/How-to-e-file/> (retrieved 20 December 2018).

<p>BP8:</p>	<p>Permit all financial intermediaries established within ASEAN to offer WHT agency services in all Member States.³⁵⁵</p>	<p>Agency services generally facilitate a taxpayer's outsourcing of complex (or otherwise unwanted) WHT reclaim/refund procedures to outside services providers; however, the practical requirement for a local presence to file hardcopy forms, make payments in cash, etc. often means that there is an inherent bias to engaging domestic services providers (who can easily attend to such practical requirements) over non-domestic services providers (who will often have no local presence and so need to engage a local agent at incremental cost in order to be able to satisfy the relevant requirements).</p> <p>Standardising submission of relief and refund claims online (see BP 7 above) and permitting all financial intermediaries established in ASEAN to offer relevant agency services would help ensure a level playing-field between domestic and foreign stakeholders by allowing withholding agents (including banks and other financial institutions) to apply relief consistently and directly in a way that could eliminate incremental agency fees (which otherwise constitute additional costs of borrowing). As such, if taxpayers choose to outsource claims notwithstanding a simplification of procedures under BP2, the related costs should not be influenced by whether the agent operates in one Member State as opposed to another.</p>
<p>BP9:</p>	<p>Align limitation periods for relief and refund claims across Members States to an objectively reasonable period of time.³⁵⁶</p>	<p>Aligning limitation periods would help eliminate administrative differences between Member States and information asymmetries between stakeholders. Such measure would be intended to make relief more accessible to taxpayers.</p> <p>For example, in the absence of such alignment, if taxpayers who are used to investing in one Member State know that they have three years to make a claim in that Member State, those investors may reasonably expect to have a similar amount of time to make an equivalent claim in</p>

³⁵⁵ This would give effect to the equivalent recommendation in the Second Giovannini Report. *op. cit.* note 332, second-referenced source.

³⁵⁶ The EU experience suggests 6 years, though this might need to be aligned with ASEAN Member States' tax enquiry deadlines to be workable from a practical perspective. Further work would be needed in this regard.

		another Member State; such that when they invest in that second Member State, a risk of non-recovery arises from the taxpayers' lack of knowledge of the local practice and/or requirements. Alignment of limitation periods would help eliminate such issues and would also support deployment of common processes and documentation in connection with BP4 and BP5. ³⁵⁷
BP10:	Provide refunds quickly and at most within six months of lodgement of a valid claim.	Accelerating refund claims would help minimise cash flow barriers to investment and would directly address the problems reported through the Country Survey arising from long recovery times and the prospect of double taxation as a result of non-recovery of advance payments notwithstanding the technical availability of relief. ³⁵⁸
BP11:	Designate a single point of contact at each Member State's tax authority. ³⁵⁹	Designating a single point of contact at each Member State's tax authority (which may be a single department or group of people, such as a helpline) would help streamline interactions initiated by taxpayers and by ensuring that assistance can be obtained by approaching a single resource. It would also help ensure that tax authorities are able to obtain information from taxpayers on a timely basis by introducing clarity around where information should be provided to. The measure should also help improve taxpayer education as taxpayers will know how to reach the tax authority if they are unable to find answers amongst published materials. ³⁶⁰
BP12:	To make information and documentation available to taxpayers in electronic format, accessible from a single portal.	Centralising taxpayer-facing information repositories would aid stakeholder access to accurate and complete information to help resolve general technical and procedural enquiries. It would also help eliminate information asymmetries and provide tax authorities with a basis for real-time communication of updates and

³⁵⁷ See also: paragraph F.2.10

³⁵⁸ Country Survey responses 64 and 65.

³⁵⁹ This is based on best practice observed in the UK by the EU; see European Commission, *Non-paper on the WHT for discussion at the Expert Group on barriers to free movement of capital* (28 September 2016) Directorate General for Financial Stability, Financial Services and Capital markets Union, available at <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=28783&no=6> (retrieved 19 December 2018); at *Figure 1*; citing the Large Business Double Taxation Treaty Helpline of Her Majesty's Revenue & Customs in the UK.

³⁶⁰ See paragraph G.3.1.

		<p>developments that affect relief/refund processes.</p> <p>Implementing this best practice would entail each Member State establishing its own online portal (conceivably hosted within its tax authority's online domain), though those domestic portals could also potentially be linked to those of the other Member States.³⁶¹</p>
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G.4.4 Detailed work would be necessary to determine how Member States should collaborate with a view to implementing BP1 through BP12 (together the "**Recommended Best Practices**"). In addition, certain other steps would be necessary to ensure that the necessary domestic and international legal and policy infrastructure exists to support their implementation (this latter issue is considered immediately below – please refer to paragraph G.5.2).

G.4.5 An early draft of this report suggested supplementing BP4 through the deployment of a standard tax identification number to relevant persons across ASEAN with a view to helping to standardise and streamline administrative procedures and to facilitate regional market access. Whilst such action could potentially help achieve the realisation of BP4 and the other BPs in a manner that is consistent with CSAP measure 56 (*Explore the possibility of global taxpayers' identification number [sic] to improve tax collection and enhance monitoring of transactions*),³⁶² the Project Team believes further specific consideration of the incremental advantages of this measures would be necessary to determine whether those advantages could justify the impact on Member States' existing administrative infrastructure.

G.5 Legal and policy infrastructure

G.5.1 The reader may note that BP1 through BP3 together form a policy framework on which the other Recommended Best Practices could be built; namely: exemption of defined transactions, with relief at source being available in respect of non-exempt transactions provided eligibility requirements can be proven to be met, all enforced through audit processes (the "**Recommended Legal Framework**"). Exemption to a defined extent is highly recommended as it is the most impactful way to eliminate frictions arising from administrative procedures that would remain in the context of non-exemption; particularly where such exemption is applied at source.

G.5.2 This Recommended Legal Framework is intended to comprise a minimum standard necessary to work toward achieving the Policy Objective. Having established that framework upon which the other Recommended Best Practices can be built, it is critical to consider a number of specific related issues, viz:

- (a) the scope of the proposed interest WHT exemption;
- (b) how relief should be given in respect of non-exempt transactions; and
- (c) how those measures could all be given normative effect.

Each of those issues is individually considered below. The remainder of the BPs (BP 4 through BP 12) have been formulated in a less prescriptive manner to provide each of the Member States with greater flexibility

³⁶¹ *ibid.*

³⁶² Association of South East Asian Nations, *ASEAN Economic Community 2025 Consolidated Strategic Action Plan* (2017); available at: <https://asean.org/storage/2017/02/Consolidated-Strategic-Action-Plan.pdf> (retrieved 20 December 2018).

to consider and (if ultimately endorsed) implement the measures in a way that is sensitive to their current legal, policy and operational infrastructure and thus their relative levels of development.

The scope of the proposed interest WHT exemption

- G.5.3 As noted in paragraph D.8 of this Report, exemption is generally the best way to eliminate fiscal barriers to investment and to control cost impacts on debt finance, as exemption eliminates distortionary tax effects that may not be eliminated by other means. When combined with relief at source, exemption can also eliminate the need to engage in administrative procedures which have been highlighted to be a material source of inefficiency.
- G.5.4 For those reasons, it is reasonable to conclude that the wider and the more holistic a relevant exemption, the greater the potential economic spin-off benefits; and conversely, that crafting an exemption more narrowly will have a lesser impact. One issue of which to be mindful however, is that a broad exemption may give rise to greater tax avoidance concerns due to it being easier for taxpayers to structure transactions to benefit from exemption in a way that was not intended (see paragraphs D.8.6 to D.8.8 above). Thus, any exemption implemented would need to be sufficiently-broadly defined to achieve the Policy Objective but must also be accompanied by appropriate anti-avoidance controls to ensure that it is not the subject of misuse (which inherently narrow its application and thus counterbalance too broad a scope).
- G.5.5 To identify an appropriate scope for the proposed exemption, it is appropriate to reconsider the Policy Objective; *viz.* to enhance and improve the WHT structure as and between Member States with a view to broadening the investor base in ASEAN debt issuance and achieving greater economic integration. It is notable that there is nothing in that stated objective which would imply that any contemplated exemption must be restricted to an intra-Community context.
- G.5.6 Three alternative formulations of exemption can thus be contemplated:
- (a) Procuring that all ASEAN-issued debt and debt securities benefit from exemption from interest WHT upon satisfaction of specified economic conditions; for example, provided the issuance of debt securities is arranged by a financial institution appropriately-licensed in a Member State (*e.g.* similar to Singapore's QDS scheme).
 - (b) Defining the exemption so that it only exempts interest WHT on an intra-Community basis, such that only lenders within Member States may benefit from it, with non-ASEAN lenders then being subject to relief under BP2-related residual credit measures. Such 'intra-Community exemption' could be formulated in one of two ways:
 - (i) On a general basis, with a view to eliminating all cost distortion effects intra-Community by putting all cross-border interest payments on the same footing as domestic payments. This could achieve the Policy Objectives to a broad degree but could lead to unfettered base erosion in the Member States in which borrowers are located, and would likely only garner support amongst Member States if the value of the economic spin-off benefits were in all cases certain to exceed the loss of income tax collections (*i.e.* if the situation referred to in paragraph G.2.2(h) above were certain to be achieved in all Member States individually). Member States would certainly need to carefully consider/reconsider their approach to thin capitalisation and/or their positions on BEPS Action Item 4 EBITDA (or other profit-based) limitations, to ensure that disproportionate income tax benefits cannot be derived from non-arm's length or otherwise excessive interest expenditure.
 - (ii) On a related-party-only basis, to limit exemption so that it may only apply where there is no transfer of ultimate beneficial ownership of funds. This could help facilitate efficient resource allocation. It would also lead to a degree of base erosion in the Member State of the borrower, but the relative limitation as compared with the first formulation above should help control negative base erosion effects; though Members States should still

consider thin capitalisation and/or their BEPS Action Item 4 measures to manage negative impacts. Such a combination of measures should help balance the integration benefits with the national benefits.

The suggestion in indent (ii) is based on the fact that exemption would inherently have base erosion implications, and that whilst it is possible to address such effects using anti-avoidance rules, it would also make sense to carefully craft the scope of any exemption to restrict the scope of base erosion *ab initio*. Taking account of that, it is necessary to consider how an appropriately restricted scope of application should be framed. A related party approach would help taxpayers deploy loan capital within the group without enabling tax arbitrage opportunities involving otherwise arm's length transactions. The second of the two options is recommended in ASEAN's case for that reason. It is also worthwhile noting that the approach described is similar to that encapsulated in the EU's Interest and Royalties Directive,³⁶³ which has been in place since 2003 and which allows related companies in different EU member states to advance and receive loan capital across borders without interest WHT distortions, subject to the application of appropriate anti-avoidance measures (so there exists a real world application of this construction which continues to achieve an analogous policy objective in the EU).

- (c) Defining the application of the exemption by reference to specific categories of debt and/or specified instruments; with interest payable with respect to non-qualifying debt and debt securities then being subject to BP2 residual credit measures.

G.5.7 It is notable that those three formulations of exemption need not be mutually exclusive. In fact it is recommended that if the Members States endorse the conclusions of this Report and resolve to implement the Recommended Legal Framework, that BP1 be implemented in a way that integrates those three measures, as that would *prima facie* result in a broad exemption targeted to effectively achieve the Policy Objective, albeit in a manner that is sensitive to potential anti-avoidance concerns. The combined measure would thus:

- (a) provide for the deployment of an economic-incentive-based approach to debt issuance that would encourage international banks to strengthen their ASEAN regional operations;
- (b) eliminate fiscal barriers as between Member States, to facilitate capital flows and greater intra-Community access to each Member State's debt capital market; and

³⁶³ European Council Directive 2003/49/EC of 3 June 2003 *on a common system of taxation to interest and royalty payment made between associated companies of different Member States* (as amended). The reader may find the opening recitals to the Directive of interest in that they explain the legislative intent in the following manner, which bears a striking similarity with ASEAN's current Policy Objective: "*Whereas: (1) In a Single Market having the characteristics of a domestic market, transactions between companies of different Member States should not be subject to less favourable tax conditions than those applicable to the same transactions carried out between companies of the same Member State. (2) This requirement is not currently met as regards interest and royalty payments; national tax laws coupled, where applicable, with bilateral or multilateral agreements may not always ensure that double taxation is eliminated, and their application often entails burdensome administrative formalities and cash-flow problems for the companies concerned. (3) It is necessary to ensure that interest and royalty payments are subject to tax once in a Member State. (4) The abolition of taxation on interest and royalty payments in the Member State where they arise, whether collected by deduction at source or by assessment, is the most appropriate means of eliminating the aforementioned formalities and problems and of ensuring the equality of tax treatment as between national and cross-border transactions; it is particularly necessary to abolish such taxes in respect of such payments made between associated companies of different Member States as well as between permanent establishments of such companies. (5) The arrangements should only apply to the amount, if any, of interest or royalty payments which would have been agreed by the payer and the beneficial owner in the absence of a special relationship. (6) It is moreover necessary not to preclude Member States from taking appropriate measures to combat fraud or abuse.*"

- (c) contain a mechanism for each Member State's government to specifically exempt government debt and securities, and potentially other categories of debt and debt instruments, so as to provide for funding to be channelled into priority sectors and activities at the national-level.

Combining those three measures should conceivably preclude transient use of the Community debt capital markets in a way that does not produce optimal economic spin-off benefits, whilst at the same time optimising the intra-Community effects. The proliferation of the other Recommended Best Practices would help ensure that extra-Community stakeholders who do not benefit from exemption are nevertheless not disincentivised from lending/investing into the Community due to the frictions that currently exist.

How relief should be given in respect of non-exempt transactions

- G.5.8 It is inherent to BP2 that residual tax credit relief be granted at source and without pre-clearance requirements. The reader may recall from paragraph G.2 of this Report that granting relief on such basis was a key finding of the First Giovannini Report in the early 2000s. It was also reported through the responses to the Country Survey that at least four of the Member States already provide relief on this basis.³⁶⁴
- G.5.9 International tax treaties most commonly provide for relief by way of credit, and it was reported through the Country Survey responses that credit relief is also presently the lowest common denominator in terms of Member States' approaches to the provision of treaty relief.³⁶⁵
- G.5.10 In view of that, it is recommended that in implementing BP2, Member States provide relief by way of tax credit. As for the quantum of such credit, it is recommended that each Member State be left to independently determine the WHT rate it chooses to apply *in rem*, in accordance with the principal of fiscal sovereignty (though Member States should note the comments in paragraph E.1.3(a) above that lenders tend to be agnostic to treaty rates due to resulting tax liabilities generally being passed on to borrowers – thus keeping rates to a low level would maximise the resulting economic spin-off benefits).

How the measures could be given normative effect

- G.5.11 As ASEAN is an intergovernmental organisation and not a formal political union with its own legislature like the EU, it is not possible for ASEAN to promulgate hard law designed to implement the Recommended Legal Framework. Consequently, implementing the framework will depend upon co-ordinated action of the Member States, facilitated by the ASEAN Secretariat.
- G.5.12 Two alternatives can be identified with respect to how to proceed:
 - (a) Seeking political endorsement of the Recommended Legal Framework and the remaining Recommended Best Practices, and then deferring to each of the Member States to implement the measures. This would entail execution of protocols to existing tax treaties between Member States, the negotiation of new treaties to complete the intra-Community tax treaty network (*i.e.* to the extent certain Member States have not concluded a treaty with other Member States – see Figure C.12.2), and/or the promulgation of domestic legislation to provide a legal basis for the new exemption(s) and relief under each Member State's domestic law.
 - (b) Alternatively, seeking the Member States' entry into a multilateral convention that binds them to implement the Recommended Legal Framework as a matter of international law, and for the ASEAN Secretariat to then co-ordinate additional action to encourage deployment of the remaining Recommended Best Practices. This would entail execution of a single multilateral treaty by all Member States binding them to the same terms, which each Member State would need to ratify to give it legal effect within its domestic law. (As noted elsewhere in this Report, BPs not forming

³⁶⁴ Namely Laos, Malaysia, Singapore and Thailand. Country Survey responses 58.

³⁶⁵ See paragraph D.9.2 above. Only Brunei typically provides a more advantageous position (*viz.* exemption) in its tax treaties. See Brunei Country Survey response 57.

part of the Recommended Legal Framework have been formulated in a less prescriptive way to provide Member States with greater control over if and how they should be implemented).

- G.5.13 Taking account of the EU's soft law approach to addressing the issues identified in this Report (considered in paragraph G.3 above), it can be concluded that the first of those two implementation options may not produce the political impetus necessary to achieve the Policy Objective within an objectively reasonable timeframe (noting that the EU first began considering similar issues almost two decades ago and has still yet to achieve co-ordinated action). As such, it seems most reasonable to conclude that a multilateral convention would be a better way to implement the proposals.
- G.5.14 With respect to that option, the negotiation of such a convention would necessitate a ten-way negotiation between all Member States. The process could therefore be expected to be involved, and it would undoubtedly benefit from central co-ordination by the ASEAN Secretariat; reaching political agreement could be expected to take a good deal of time and resources. In addition, feedback received from one Member State in respect of an early draft of this Report suggested that it would be a challenge to develop a multilateral convention to cater to the unique circumstances and needs of each Member State. Recent experience at the OECD in the context of the negotiation of the MLI, however, raised similar issues to those and the apparent success of the ongoing MLI implementation suggests that if strong political will exists to work toward resolving the common issues identified, reaching agreement on the terms of an appropriate convention should be feasible; though allowances would inevitably need to be made during the discussion, development and negotiation processes to take account of the different interests and states of development of the Member States. It is also noteworthy that:
- (a) a multilateral convention would make it possible to expeditiously complete the ASEAN tax treaty network in satisfaction of CSAP measure 53 (*Concerted efforts to support the completion and improvement of the network of bilateral tax agreements to address the issues of double taxation...*) in an effective and efficient manner; and
 - (b) BEPS Action Item 6 measures could be incorporated into any such convention to help address tax avoidance concerns such as those highlighted in paragraph G.5.4 above, and in accordance with CSAP measure 55 (*Discuss measures to address the issue of base erosion and profit shifting to ensure fiscal health*).

Consequently, potential synergies could be realised by proceeding in the manner proposed as a multilateral convention could also incorporate additional measures designed to address various aspects of CSAP Element B5 (*Taxation Co-operation*).^{366, 367}

- G.5.15 Should ASEAN wish to consider this option in greater detail, it is best advised to discuss the procedural aspects with the OECD, with a view to learning from best practices that have been identified through the MLI negotiation process.
- G.5.16 With respect to reaching the necessary political consensus, it would be reasonable to speculate that obtaining the agreement of the more developed Member States and/or those which have comparatively higher interest WHT collections may be a material issue;³⁶⁸ as those jurisdictions could see an immediate decrease in interest WHT collections and are less likely to realise tangible economic spin-off benefits in the shorter term (see paragraph F.4.9 above). However, as that is perhaps an inevitable consequence of economic integration, this should not be insurmountable.

³⁶⁶ Association of South East Asian Nations, *ASEAN Economic Community 2025 Consolidated Strategic Action Plan* (2017); available at: <https://asean.org/storage/2017/02/Consolidated-Strategic-Action-Plan.pdf> (retrieved 20 December 2018).

³⁶⁷ One Member State suggested to the Project Team that an equivalent result could be sought using the mutual agreement procedures under existing treaties; however, given the inherent bilateral nature of such mechanisms, the Project Team does not consider this to be a practical option.

³⁶⁸ It was not possible to obtain this data through the Country Survey; see responses 68, 69 and 70.

G.5.17 During the course of inviting feedback in respect of an early draft of this Report, one Member State emphasised the challenges of implementing the Recommended Legal Framework by way of multilateral convention and instead suggested recommending that WG-AFT seek a political mandate to seek implementation of the recommended measures by way of bilateral negotiations. Whilst that feedback is well-received, that is effectively the approach that has been taken by the European Commission in the European context that is described in paragraph G.5.13 above, which can be objectively considered to have had limited success. Consequently, whilst it is acknowledged that implementation by way of multilateral convention will certainly be challenging, it is also suggested that such approach would likely be the most impactful and expeditious mode of implementation. Specific consideration of the granular terms of a suitable instrument could constitute a future work-stream of WG-AFT's work to achieve the Policy Objective.

Deloitte. PART H: RECOMMENDATIONS



PART H: RECOMMENDATIONS

H.1 Core Recommendations

H.1.1 To conclude the substantive part of this Report, it is respectfully suggested that WG-AFT considers the following recommendations (each an "RN", and together the "Recommendations") to address the issues identified in this Report and with a view to progressing its work toward the achievement of the Policy Objective:

RN 1: That Member States implement the Recommended Legal Framework. This Recommended Legal Framework is suggested to comprise the minimum necessary to work toward effectively achieving the Policy Objective. (The subsequent RNs and BPs 4 through 12 have been formulated in a less prescriptive manner to enable the Member States to take account of subjective differences and their relative levels of development.)

RN 2: In connection therewith:

- (i) that BP1 be implemented by way of relief at source and a combination of interest WHT exemption that applies:
 - (A) based on that satisfaction of economic conditions agreed by the Member States;
 - (B) generally in respect of related-party loans; and
 - (C) with reference to debt instruments and/or categories of debt agreed by the Member States; and
- (ii) that BP2 be implemented by way of relief at source and that relief be given by Member States by way of credit, with the quantum of such credit(s) in each Member State being determined by the corresponding Member State.

RN 3: That such implementation be achieved through Member States negotiating, adopting and executing a multilateral convention, with the organisational aspects and negotiation process facilitated by the ASEAN Secretariat. Whilst it is acknowledged that implementation in this manner could be arduous and would require comprehensive multilateral negotiations, it would be the most impactful and expeditious way to help establish relevant legal and policy infrastructure.

RN 4: Following Member States' execution of such a multilateral convention, that the ASEAN Secretariat leads efforts to encourage Member States' deployment of the remaining Recommended Best Practices (*viz.* BP 4 through BP12).

RN 5: That Member States review and reconsider their approaches to thin capitalisation and BEPS Action Item 4 measures, preferably on a co-ordinated basis facilitated by the ASEAN Secretariat in pursuance of CSAP measure 55, and potentially with agreed measures being incorporated into the RN 3 multilateral convention.

Proposed time frames by which Member States are suggested to have implemented those recommendations (together "RN 6") are listed in Appendix 7 (the "Proposed Implementation Schedule").

H.1.2 To take account of the differing level of development of the Member States and the complexity of the some of the measures raised, it is suggested that the Proposed Implementation Schedule incorporates two waves, with the ASEAN-5 moving first, and the remaining Members States being given longer to implement. Such phased implementation takes account of the fact that the gaps in the intra-Community tax treaty network principally attach to the non-ASEAN-5 (see Figure C.2.12), and that additional time may be required for such countries to adapt to and prepare for relevant measures.

- H.1.3 Due to the potential to realise synergies from co-ordinating action with other actions being taken by the ASEAN Secretariat and WG-AFT in connection with CSAP Element B5, it is suggested that additional time is incorporated into the early stage of the Proposed Implementation Schedule.

H.2 Additional Recommendations

Two additional non-core recommendations are made in the evaluation of the Study in Part I below, and are restated here for completeness:

RN 7: When considering the measures recommended in this Report, WG-AFT and Member States should consider implementing those measures in the context of WHTs in general, and not just with respect to interest WHT; as doing so could be expected to lead to the realisation of a number of synergies.

RN 8: To the extent it is relevant to do so, Member States should review and reconsider their application of local ownership requirements to align their policy approaches with ASEAN's work to increase regional investment volumes and to liberalise markets.

Due to the non-core nature of RN 7 and RN 8, and their wider policy implications, they have not been included in the Proposed Implementation Schedule.

H.3 Status of Recommendations and suggested next steps

- H.3.1 The foregoing Recommendations are intended comprise suggestions of impactful measures to help realise the Policy Objective. The breadth of the TOR has meant that the Project Team has been required to define a clear scope in order to complete the Study and to produce a cogently constructed Report.

- H.3.2 The Project Team respectfully requests that WG-AFT and the Member States treat the completion of the Study, the production of this Report and the presentation of the Recommendations herein as first steps in identifying pertinent issues that would require action in the context of the Policy Objective and in identifying and developing measures to address such issues. It is clear that many of the issues identified in this Report would require specific detailed consideration, and the Project Team suggests that additional phases to the Study are considered with a view to determining more specifically how relevant measures could be framed and drafted within the broad parameters identified. At a high-level, subsequent phases of the Study and the work WG-AFT could include:

- (a) Detailed discussion of the issues identified in this Report within WG-AFT and working to obtain Member States' 'in principle' agreement to addressing specified issues (*i.e.* to develop a statement of intent).
- (b) Development of more specific proposals to address the issues identified within the broad framework of the parameters suggested herein (*i.e.* to consider at a more granular level how the high-level proposals herein may be constructed).
- (c) Development of specific proposals and to help focus the development of appropriate measures at a granular level and to prepare for implementation (*i.e.* a technical component to develop, draft, evaluate, debate and refine specific measures).
- (d) Member States' consideration of the subjective challenges of implementing relevant measures and WG-AFT-led discussions regarding implementation with a view to facilitating a consensus approach to implementation.

Deloitte. PART I: EVALUATION



PART I: EVALUATION

I.1 Overview

- I.1.1 This Part of the Report contains a brief evaluation of the scope of the Study and the methodology employed to complete it and to deliver this Report.
- I.1.2 The comments contained herein are intended to furnish the reader with additional information to help the formation of an independent assessment of the strength of the conclusions reached herein and the Recommendations made.

I.2 Scope of the Study

- I.2.1 The reader will note that the Study and this Report focus upon the impact of interest WHT upon ASEAN regional investment. However, the quantifiable target specified in the TOR (see paragraph A.2 above) is to conduct "*a study of Member States' WHT structure to promote the broadening of investor base in ASEAN debt issuance*" and there is nothing in that stated target which specifically limits the consideration to interest WHT.
- I.2.2 WHTs applicable to the payments of dividends and royalties are *prima facie* not relevant to the issuance of debt, and so the initial proposal to complete the Study presented to WG-AFT by Deloitte Singapore (in response to the former's public invitation to tender) focused the scope of the Study on interest WHT; to help target the deliverables' focus on measures to promote the broadening of the investor base in ASEAN debt issuance, and to right-size costs with the project budget.
- I.2.3 That does not mean, however, that there is no merit to considering the regional economic benefits to eliminating double taxation and other fiscal barriers in respect of dividends, royalties and other amounts (such as services fees), which may similarly be subject to WHT in certain cases. In fact, analogies can be drawn between debt volumes and the impacts of interest WHT on the one hand, and the following factors and tax policies (in each case) on the other:
- (a) equity fundraising within ASEAN (including FDI) and the impacts of dividend WHT;
 - (b) development and the holding/exploitation of intellectual property and other intangible assets within ASEAN and the impacts of royalty WHT; and
 - (c) development of the services sectors within ASEAN and the impact of services WHT.
- I.2.4 It is reasonable to posit that similar inefficiencies to those identified in this Report are highly-likely to exist in the context of such other WHTs (as such WHTs have a similar basis in source taxation, full relief is not generally available, and because where relief is available complex administrative procedures are likely to affect its efficacy), and that eliminating or improving such inefficiencies could potentially have positive benefits *inter alia* upon the development ASEAN equity capital markets, intellectual property creation and the development of the services sectors respectively within the Community. Corroborating evidence for this can in fact be drawn from the EU context, where the Interest and Royalties Directive applies similar rules to both interest and royalties,³⁶⁹ and where the Parent-Subsidiary Directive applies to dividends in an analogous manner,³⁷⁰ in reflection of the fact that similar economic disincentives arise in the stated circumstances which require similar corrective action.

³⁶⁹ European Council Directive 2003/49/EC of 3 June 2003 *on a common system of taxation to interest and royalty payment made between associated companies of different Member States* (as amended).

³⁷⁰ European Council Directive 90/435/EEC of 23 July 1990 *on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States* (as amended, *inter alia* by European Council Directive 2003/123/EC of 22 December 2003 *amending Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States*).

- I.2.5 As inefficiencies in the context of different types of WHTs is likely to be similar (for example, inefficiencies in respect of interest WHT relief are likely to be similar to inefficiencies in respect of dividend WHT relief due to the existence of common administrative procedures), there is likely to be synergy in implementing the Recommendations made in this Report not only in the context of interest WHT but also contemporaneously in the context of other types of WHT. Such synergies could include greater alignment of relief and refund procedures across different categories of payments in addition to implementation synergies (in that measures across taxes could be integrated into a single deliverable in the nature of the multilateral convention forming the basis of RN 3).
- I.2.6 Such a wider strategy would furthermore be consistent with Element A2 of the CSAP (*Trade in Services; inter alia to enhance Member States' competitiveness in services*) and Element A4 of the CSAP (*Financial Integration, Financial Inclusion, and Financial Stability; inter alia to strengthen financial integration to facilitate intra-ASEAN trade and investment by...having more connected capital markets*).
- I.2.7 On a separate note, due to the potential distortionary effects of local ownership requirements highlighted in paragraph D.5 of this Report, it is also separately recommended that (to the extent it is relevant to do so) Member States should also review and reconsider their application of local ownership requirements to align their policy approaches with ASEAN's work to increase regional investment volumes and to liberalise markets. (See the additional recommendations in paragraph H.2 above.)

I.3 Methodology

- I.3.1 The Project Team consider the methodology employed in undertaking the Study (and described in paragraph A.3 of this Report) to have been robust.
- I.3.2 One notable aspect is that (as explained in paragraph A.3) some of the Country Survey responses received by the Project Team were incomplete and in some cases appeared inaccurate. In view of that those concerns:
- (a) the Project Team verified the responses against publicly-available information (in each case with reference to more than a single source) and, where responses were determined to have been incorrect, they were corrected; and
 - (b) to the extent responses could not be independently verified/corrected in the foregoing manner, the Project Team discussed the specific issues in detail with Deloitte tax specialists in the relevant Member State to obtain an accurate response.

The output of the foregoing enrichment process comprises the table of consolidated and enriched responses appended to this Report as Appendix 2.

- I.3.3 The need for the enrichment process described can be attributed to one of two factors (or perhaps a combination of such factors):
- (a) ambiguous drafting of certain questions in the Country Questionnaire; and/or
 - (b) respondents' misunderstanding of certain questions and/or such respondents having insufficient knowledge or professional experience to provide an accurate response.

Whilst the former cannot be completely ruled-out, the Project Team is of the view that the second of those two factors had the greatest impact upon information collation process. This conclusion takes account of the high degree of diligence applied in the drafting the form of the Country Questionnaire and multiple levels of consultation before the form of questionnaire was finalised. This does not mean that the reliability of the results of the Country Survey should be called into question for the following reason.

- I.3.4 In the course of discussions between the Project Team and Member States tax professionals held in connection with the enrichment process, it was observed that more esoteric debt-related measures (which are typically observed in jurisdictions with more-developed tax systems) and thus the questions in the form

of the questionnaire pertaining to such issues were least understood by those professionals practising in Member States with less-developed tax systems. The Project Team thus concluded that the limited depth of knowledge of the complex tax measures in certain Member States is simply a reflection of the state of development of each relevant Member State's tax system.

- I.3.5 Whilst the verification and enrichment of the Country Survey responses had not been anticipated in the methodology outlined in the Project Inception Report delivered to WG-AFT prior to commencement of the Study, it was ultimately determined to be necessary step to ensure the strength of the analysis.
- I.3.6 The Project Team is of the view that the need to complete the enrichment process was an inevitable and necessary step to account for the subjective nature of the initial Country Survey responses, and that the need to undertake that process should be considered to be an inherent part of the information gathering and verification process, and not a flaw in the methodology.

I.4 Business Survey

- I.4.1 It was found that the original proposed form of the Business Survey directly addressed a number of matters which the majority of potential respondents considered to be too commercially sensitive to provide responses to. The Project Team attempted to pre-empt this concern by offering assurances to respondents that specific information would be kept confidential and that summary responses would not be attributed. However such assurances were ostensibly insufficient to obtain meaningful information. Two high-level responses were received to the initial form of survey, both from regional banks established in ASEAN. In addition, the Project Team leader also hosted a call with three senior tax professionals from a large international financial institution originating in Europe which is also active within ASEAN.
- I.4.2 In view of the challenges experienced, the Project Team proposed an alternative approach to completing the Business Survey to the Chair of WG-AFT. The agreed modified approach comprised:
- (a) Redrafting the form of Business Questionnaire with a view to addressing stakeholders' concerns regarding the commerciality sensitivity of the information sought (both the original and revised forms of the Business Questionnaire can be found in Appendix 3).
 - (b) Taking a pragmatic approach to augmenting the pool of respondents by digitalising the Business Questionnaire and seeking stakeholders' completion of the survey at Deloitte Asia Pacific's 2019 Financial Services Conference, held in Singapore on 25 February 2019 and in Hong Kong on 1 March 2019.
- I.4.3 The response rate in the second of those surveys was similarly small, with only four anonymous responses being received.
- I.4.4 Notwithstanding the limited responses to the Business Survey, the responses are remarkable in that they exhibit a high degree of consistency which tends to corroborate the observations and conclusions reached in this Report. Consequently, whilst the Project Team considers that a higher response rate would have provided an optically more representational view of the business community with respect to the issues, the Project Team is of the view that the information obtained through the Business Survey provides useful empirical confirmation of the practical impact of the issues identified.

I.5 Additional recommendations

- I.5.1 The following recommendations are made in addition to the recommendations made in Part H of this Report, in order to take account of the additional conclusions in this Part:
- (a) When considering the measures recommended in this Report, WG-AFT and Member States should consider implementing those measures in the context of WHTs in general, and not just with respect to interest WHT; as doing so could be expected to lead to the realisation of a number of synergies (particularly in the context of administrative procedures).

- (b) To the extent it is relevant to do so, Member States should review and reconsider their application of local ownership requirements to align their policy approaches with ASEAN's work to increase regional investment volumes and to liberalise markets.

I.5.2 Those two recommendations are not core recommendations necessary to realise the immediate Policy Objective, but they are considered to be material to ASEAN's wider work under the CSAP. Considering them in conjunction with the other Recommendations in this Report could lead to the realisation of synergies in terms of both policy approach and implementation. Please refer to paragraph H.2 above.

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PART J: BIBLIOGRAPHY

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Deloitte. PART K: ABOUT DELOITTE



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APPENDIX 1: COUNTRY SURVEY, FORM OF QUESTIONNAIRE



APPENDIX 1: COUNTRY SURVEY, FORM OF QUESTIONNAIRE

- A. The form of Country Questionnaire was drafted by Deloitte Singapore. Following production of a first draft of the document, that draft was presented to both WG-AFT and Deloitte Access Economic for review and feedback.
- B. WG-AFT approved the form of Country Questionnaire and Deloitte Access Economics requested the inclusion of a small number of additional questions. Such questions were incorporated into the questionnaire prior to it being distributed to Deloitte tax professionals across ASEAN for completion.
- C. The final form of Country Questionnaire circulated for completion can be found appended below.

ASEAN INTEREST WHT STRUCTURE STUDY

STATE:

PART A: INCIDENCE OF DEBT FINANCING

▶ 1 Is debt finance a commonly used source of funding in your jurisdiction? Yes No (select option)

▶ 2 Does the extent of debt financing used typically vary across sectors? Yes No (select option)

▶ 3 What sector(s) do you typically see having high leverage models (i.e. high debt volumes)? (select all that apply)

Agriculture, forestry and fishing	<input type="checkbox"/>
Mining and quarrying	<input type="checkbox"/>
Manufacturing	<input type="checkbox"/>
Electricity, gas, steam and air conditioning supply	<input type="checkbox"/>
Water supply, sewerage, waste management and remediation activities	<input type="checkbox"/>
Construction	<input type="checkbox"/>
Wholesale and retail trade	<input type="checkbox"/>
Transportation and storage	<input type="checkbox"/>
Accommodation and food services activities	<input type="checkbox"/>
Information and communication	<input type="checkbox"/>
Financial and insurance activities	<input type="checkbox"/>
Real estate activities	<input type="checkbox"/>
Professional, scientific and technical activities	<input type="checkbox"/>
Administrative and support services activities	<input type="checkbox"/>
Public administration and defence	<input type="checkbox"/>
Education	<input type="checkbox"/>
Human health and social work activities	<input type="checkbox"/>
Arts, entertainment and recreation	<input type="checkbox"/>
Other services activities	<input type="checkbox"/>

▶ 4 What sector(s) do you typically see having low leverage models (i.e. low debt volumes)? (select all that apply)

Agriculture, forestry and fishing	<input type="checkbox"/>
Mining and quarrying	<input type="checkbox"/>
Manufacturing	<input type="checkbox"/>
Electricity, gas, steam and air conditioning supply	<input type="checkbox"/>
Water supply, sewerage, waste management and remediation activities	<input type="checkbox"/>
Construction	<input type="checkbox"/>
Wholesale and retail trade	<input type="checkbox"/>
Transportation and storage	<input type="checkbox"/>
Accommodation and food services activities	<input type="checkbox"/>
Information and communication	<input type="checkbox"/>
Financial and insurance activities	<input type="checkbox"/>
Real estate activities	<input type="checkbox"/>
Professional, scientific and technical activities	<input type="checkbox"/>
Administrative and support services activities	<input type="checkbox"/>
Public administration and defence	<input type="checkbox"/>
Education	<input type="checkbox"/>
Human health and social work activities	<input type="checkbox"/>
Arts, entertainment and recreation	<input type="checkbox"/>
Other services activities	<input type="checkbox"/>

▶ 5 In your view, why do those industries respectively have high and low volumes of debt? (maximum 120 characters)

PART B: PRESENT LEVEL OF DEVELOPMENT OF LOCAL DEBT CAPITAL MARKETS

▶ 6 How available is local primary debt capital to local individual borrowers? (select option)

Widely available	<input type="checkbox"/>
Limited availability due to domestic restrictions	<input type="checkbox"/>
Limited availability due to existence of few lenders	<input type="checkbox"/>
Not available due to domestic restrictions	<input type="checkbox"/>
Not available due to absence of lenders	<input type="checkbox"/>

▶ 7 How available is foreign primary debt capital to local individual borrowers? (select option)

Widely available	<input type="checkbox"/>
Limited availability due to domestic restrictions	<input type="checkbox"/>
Limited availability due to existence of few lenders	<input type="checkbox"/>
Not available due to domestic restrictions	<input type="checkbox"/>
Not available due to absence of lenders	<input type="checkbox"/>

▶ 8 How available is local primary debt capital to local corporate borrowers? (select option)

Widely available	<input type="checkbox"/>
Limited availability due to domestic restrictions	<input type="checkbox"/>
Limited availability due to existence of few lenders	<input type="checkbox"/>
Not available due to domestic restrictions	<input type="checkbox"/>
Not available due to absence of lenders	<input type="checkbox"/>

▶ 9 How available is foreign primary debt capital to local corporate borrowers? (select option)

Widely available	<input type="checkbox"/>
Limited availability due to domestic restrictions	<input type="checkbox"/>
Limited availability due to existence of few lenders	<input type="checkbox"/>
Not available due to domestic restrictions	<input type="checkbox"/>
Not available due to absence of lenders	<input type="checkbox"/>

▶ 10 Is there a local secondary market for locally-issued debt? (select option)

Strong market	<input type="checkbox"/>
Mediocre market	<input type="checkbox"/>
Limited market	<input type="checkbox"/>
No market	<input type="checkbox"/>

▶ 11 Do major overseas banks operate in your jurisdiction (e.g. through a physical, online presence, branches, rep offices, etc.)? (select option)

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

▶ 12 (a) Do you most commonly see overseas lenders lending into your jurisdiction from another ASEAN Member State, or from outside ASEAN? (select option)

From another ASEAN Member State	<input type="checkbox"/>
From outside ASEAN	<input type="checkbox"/>

(b) If from another ASEAN Member State, which ASEAN state do you most often see the lender operating from? (select option)

Burma	<input type="checkbox"/>
Cambodia	<input type="checkbox"/>
Indonesia	<input type="checkbox"/>
Laos	<input type="checkbox"/>
Malaysia	<input type="checkbox"/>
Myanmar	<input type="checkbox"/>
Singapore	<input type="checkbox"/>
Philippines	<input type="checkbox"/>
Thailand	<input type="checkbox"/>
Vietnam	<input type="checkbox"/>

(c) If from outside ASEAN, which non-ASEAN state do you most often see the lender operating from? (maximum 60 characters)

PART C: IMPACT OF REGULATORY FACTORS

▶ 13 What is the regulatory attitude towards debt finance? (select option)

Accepted	<input type="checkbox"/>
Encouraged	<input type="checkbox"/>
Incentivised	<input type="checkbox"/>
Tolerated	<input type="checkbox"/>
Not permitted	<input type="checkbox"/>

▶ 14 (a) What restrictions on debt financing apply to regulated activities? (select option)

No limitations	<input type="checkbox"/>
Limited to percentage of regulatory capital (please specify)	<input type="checkbox"/>
Restrictions on related-party debt	<input type="checkbox"/>

(b) Please specify percentage of regulatory capital (if relevant) (please insert a number to a maximum of 1 decimal place)

PART D: IMPACT OF CONTENT REQUIREMENTS / OWNERSHIP RESTRICTIONS

▶ 15 (a) Does your jurisdiction impose local ownership/content requirements in respect of foreign direct investment (i.e. equity)? (select option)

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(b) If yes, which sectors are such requirements applicable to?

- | | |
|---|--------------------------|
| Agriculture, forestry and fishing | <input type="checkbox"/> |
| Mining and quarrying | <input type="checkbox"/> |
| Manufacturing | <input type="checkbox"/> |
| Electricity, gas, steam and air conditioning supply | <input type="checkbox"/> |
| Water supply, sewerage, waste management and remediation activities | <input type="checkbox"/> |
| Construction | <input type="checkbox"/> |
| Wholesale and retail trade | <input type="checkbox"/> |
| Transportation and storage | <input type="checkbox"/> |
| Accommodation and food services activities | <input type="checkbox"/> |
| Information and communication | <input type="checkbox"/> |
| Financial and insurance activities | <input type="checkbox"/> |
| Real estate activities | <input type="checkbox"/> |
| Professional, scientific and technical activities | <input type="checkbox"/> |
| Administrative and support services activities | <input type="checkbox"/> |
| Public administration and defence | <input type="checkbox"/> |
| Education | <input type="checkbox"/> |
| Human health and social work activities | <input type="checkbox"/> |
| Arts, entertainment and recreation | <input type="checkbox"/> |
| Other services activities | <input type="checkbox"/> |

(select all that apply)

(c) If yes, what is the minimum percentage equity holding that must be held by local tax resident persons (across all sectors)?

(please insert a number to a maximum of 1 decimal place)

PART E: IMPACT OF INCENTIVE REGIMES

▶ 16 (a) Are there any sector-specific incentives or otherwise to encourage/discourage raising debt capital?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(select option)

(b) If yes, please provide a high-level summary of the relevant incentive(s) and its (their) material characteristics

(maximum 120 characters)

(c) If yes, is the incentive only available to domestic lenders/intended to encourage local lending?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(select option)

▶ 17 (a) Is an exemption from interest withholding tax available in respect of specific local incentive regimes (e.g. Financing and Treasury Centre regimes)

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(select option)

(b) If yes, please explain which incentive regime(s) the exemption applies to (max. 120 characters)

(maximum 120 characters)

PART F: IMPACT OF FORM AND DOCUMENTATION

▶ 18 What are the principal forms of debt capital available locally (e.g. senior, mezzanine, junior, MTN, listed)?

- | | |
|----------------------------|--------------------------|
| Senior | <input type="checkbox"/> |
| Mezzanine | <input type="checkbox"/> |
| Junior | <input type="checkbox"/> |
| Commercial paper | <input type="checkbox"/> |
| Medium term notes (MTN) | <input type="checkbox"/> |
| Intercompany balances | <input type="checkbox"/> |
| Term facility | <input type="checkbox"/> |
| Revolving facility | <input type="checkbox"/> |
| Listed corporate bond | <input type="checkbox"/> |
| N/A (debt not commonplace) | <input type="checkbox"/> |

(select all that apply)

▶ 19 (a) What market is favoured in your jurisdiction for listing corporate debt?

Domestic exchange	<input type="checkbox"/>
Other ASEAN exchange (please specify)	<input type="checkbox"/>
Non-ASEAN exchange (please specify)	<input type="checkbox"/>

(select option)

(b) Please specify which exchange(s) (if relevant)

(maximum 60 characters)

▶ 20 (a) What type of collateral/security requirements are typically incorporated into facility documentation?

- | | |
|--------------------------|--------------------------|
| Mortgage | <input type="checkbox"/> |
| Share charge | <input type="checkbox"/> |
| Charge over other assets | <input type="checkbox"/> |
| Guarantee | <input type="checkbox"/> |
| Other (please specify) | <input type="checkbox"/> |

(select all that apply)

(b) Please specify the other form(s) of security typically required (if relevant)

(maximum 120 characters)

▶ 21 (a) How is debt security typically enforced?

Receivership	<input type="checkbox"/>
Administration	<input type="checkbox"/>
Call on guarantee	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>

(select all that apply)

(b) Please specify the other mode(s) of enforcement (if relevant)

(maximum 120 characters)

▶ 22 (a) Are family, or parent company or other guarantees commonly required from borrower affiliates?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(select option)

(b) If yes, do these collateral/security requirements typically differ between local arrangements and those with a cross border counterparty?

Yes (please specify)	<input type="checkbox"/>
No	<input type="checkbox"/>

(select option)

(c) If yes, please explain the typically differences

(maximum 120 characters)

▶ 23 (a) Is there any local market standard form of facility documentation (e.g. LMA/Loan Market Association standard form documents)

Yes (please specify)	<input type="checkbox"/>
No	<input type="checkbox"/>

(select option)

(b) If yes, please specify the standard form such documentation takes

(maximum 120 characters)

▶ 24 Do you typically expect to see tax gross-up provisions in facility documentation entered into by local borrowers?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(select option)

▶ 25 Is it local market standard for any interest WHT cost to be passed on to the borrower?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(select option)

▶ 26 Is debt factoring a commonly used mode of financing?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(select option)

▶ 27 Is cash pooling often seen in your jurisdiction?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(select option)

▶ 28 In practice, do you see cash pool headers in your jurisdiction?

Common	<input type="checkbox"/>
Not common	<input type="checkbox"/>
Never	<input type="checkbox"/>

(select option)

▶ 29 Does WHT apply to payments made in connection with interest rate swaps and other derivatives?

Deposits	<input type="checkbox"/>
Bonds	<input type="checkbox"/>
Interest rate swaps	<input type="checkbox"/>
Repos	<input type="checkbox"/>
Sukuk and other Islamic debt instruments/arrangements	<input type="checkbox"/>
Other investments	<input type="checkbox"/>

(select all that apply)

▶ 30 Does IWHT apply to discounts on purchase price in respect of receivables securitisation arrangements?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(select option)

PART G: DOMESTIC TAX POLICY FACTORS

▶ 31 Is interest incurred by taxpayers generally deductible for purposes of computing net taxable income/gains?

Yes, generally deductible	<input type="checkbox"/>
Yes, deductible up to prescribed limits	<input type="checkbox"/>
No	<input type="checkbox"/>

(select option)

▶ 32 Do thin capitalisation rules apply?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(select option)

▶ 33 (a) What is the applicable thin capitalisation safe harbour/ratio?

1 equity : 1 debt	<input type="checkbox"/>
1 equity : 2 debt	<input type="checkbox"/>
1 equity : 3 debt	<input type="checkbox"/>

(select option)

1 equity : 4 debt	<input type="checkbox"/>
1 equity : 5 debt	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>

(b) *If other, please provide a high-level summary of how the restriction is computed*

(maximum 120 characters)

▶ 34 (a) **Are there any other interest restriction measures that apply (e.g. BEPS 4-type, and other measures)**

Yes (please summarise)	<input type="checkbox"/>	(select option)
No	<input type="checkbox"/>	

(b) *If yes, please provide a high-level summary of the other measure(s)*

(maximum 120 characters)

▶ 35 (a) **Are taxpayers entitled to a notional interest deduction in respect of equity financing?**

Yes	<input type="checkbox"/>	(select option)
No	<input type="checkbox"/>	

(b) *If yes, how is the notional interest deduction computed?*

Specialised percentage of paid up capital	<input type="checkbox"/>	(select option)
Other method (please summarise)	<input type="checkbox"/>	

(c) *Please provide a high-level summary of the other mode of computation (if relevant)*

(maximum 120 characters)

▶ 36 **If a debt obligation of a borrower in your jurisdiction is waived, will the amount waived typically be treated as being taxable income of the borrower?**

Yes, third party and related party debt	<input type="checkbox"/>	(select option)
Yes, third party debt only	<input type="checkbox"/>	
Yes, related party debt only	<input type="checkbox"/>	
No	<input type="checkbox"/>	

PART H: INTERNATIONAL TAX POLICY FACTORS

▶ 37 (a) **Is WHT (as distinct from income tax) charged in respect of interest payments to domestic recipients?**

Yes	<input type="checkbox"/>	(select option)
No	<input type="checkbox"/>	

(b) *If yes, what is the rate of tax applicable in respect of payments?*

(please insert a number to a maximum of 1 decimal place)

▶ 38 (a) **Is WHT charged in respect of interest payments to other States?**

Yes	<input type="checkbox"/>	(select option)
No	<input type="checkbox"/>	

(b) *If yes, what is the rate of tax applicable in respect of payments to other States?*

(please insert a number to a maximum of 1 decimal place)

▶ 39 (a) **Is WHT charged in respect of interest payments to non-resident financial institutions?**

Yes	<input type="checkbox"/>	(select option)
No	<input type="checkbox"/>	

(b) *If yes, what is the applicable rate of interest WHT?*

(please insert a number to a maximum of 1 decimal place)

▶ 40 (a) **Is WHT charged in respect of interest payments to non-resident group companies?**

Yes	<input type="checkbox"/>	(select option)
No	<input type="checkbox"/>	

(b) *If yes, what is the applicable rate of interest WHT?*

(please insert a number to a maximum of 1 decimal place)

▶ 41 (a) **Is WHT charged in respect of interest payments to other non-residents?**

Yes	<input type="checkbox"/>	(select option)
No	<input type="checkbox"/>	

(b) *If yes, what is the applicable rate of interest WHT?*

(please insert a number to a maximum of 1 decimal place)

▶ 42 (a) **Is interest WHT a final tax, or is there a mechanism to recover the WHT on interest whether by way of offset against the tax liability or double tax relief?**

Final tax (no deductions available)	<input type="checkbox"/>	(select option)
Domestic relief available in principle	<input type="checkbox"/>	
Treaty relief available in principle	<input type="checkbox"/>	

(b) *If there is a mechanism for recovery of WHT, is it administratively simple or cumbersome?*

Simple	<input type="checkbox"/>	(select option)
Cumbersome	<input type="checkbox"/>	

▶ 43 (a) **Have there been any changes any WHT rates in the last 5 years?**

Yes (please specify)	<input type="checkbox"/>	(select option)
No	<input type="checkbox"/>	

(b) *If yes, what was/were the previous rate(s)?*

<input type="text"/>	(please insert a number to a maximum of 1 decimal place)
----------------------	--

(c) *If yes, have any obvious impacts in investment flows been observed since the change(s)?*

<input type="text"/>	(maximum 120 characters)
----------------------	--------------------------

▶ 44 (a) **Are you aware of any intentions for the local administration to change any WHT rates in the next 5 years?**

Yes (please specify)	<input type="checkbox"/>	(select option)
No	<input type="checkbox"/>	

(b) *If yes, what is/are the revised rate(s) expected to be?*

<input type="text"/>	(please insert a number to a maximum of 1 decimal place)
----------------------	--

▶ 45 (a) **Are there any material exemptions from the application of IWHT (e.g. exemption where interest is paid with respect to gilts or locally-arranged financing arrangements; such as Singapore's Qualifying Debt Securities exemption and/or the UK's Qualifying Eurobond Exemption)?**

Yes (please summarise)	<input type="checkbox"/>	(select option)
No	<input type="checkbox"/>	

(b) *If yes, what is/are the material exemptions and their characteristics?*

<input type="text"/>	(maximum 120 characters)
----------------------	--------------------------

(c) *If yes, how easy or difficult is it to rely on such exemptions?*

Easy, provided documentary requirements are satisfied	<input type="checkbox"/>	(select option)
Moderately difficult, but manageable	<input type="checkbox"/>	
Administratively onerous	<input type="checkbox"/>	

▶ 46 **What is the local policy rationale for the imposition of WHT on interest?**

<input type="text"/>	(maximum 120 characters)
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▶ 47 **Is interest defined to include:**

Simple interest	<input type="checkbox"/>
Discount	<input type="checkbox"/>
Manufactured payments	<input type="checkbox"/>
Other interest-equivalent amounts	<input type="checkbox"/>

▶ 48 **Does IWHT typically apply to Islamic financing arrangements (e.g. a bank's buy/sell spread on Murabaha transactions)?**

Yes	<input type="checkbox"/>	(select option)
No	<input type="checkbox"/>	

▶ 49 **Must related party cross-border debt (including intercompany receivables) be transfer priced?**

Yes	<input type="checkbox"/>	(select option)
No	<input type="checkbox"/>	

▶ 50 **Does your jurisdiction impute interest on loans from foreign lenders in relevant cases, which can then be subject to interest WHT (e.g. where the loan is otherwise interest-free)?**

Yes	<input type="checkbox"/>	(select option)
No	<input type="checkbox"/>	

▶ 51 **How is relief typically given for double taxation under domestic law?**

Exemption of income subject to foreign taxation	<input type="checkbox"/>	(select all that apply)
Foreign tax credits (subject existence of tax treaty)	<input type="checkbox"/>	
Tax credits (unilateral relief)	<input type="checkbox"/>	
Tax deduction for foreign tax on same income	<input type="checkbox"/>	

▶ 52 **How are tax credits (foreign tax credits and/or unilateral relief) typically valued?**

Full amount of foreign tax paid	<input type="checkbox"/>	(select option)
Maximum limited to domestic tax on same income	<input type="checkbox"/>	
Some other limitation	<input type="checkbox"/>	

▶ 53 (a) **Are you aware of any intentions for the local administration to change the manner in which double tax relief is given in the next 5 years?**

Yes (please specify)	<input type="checkbox"/>	(select option)
No	<input type="checkbox"/>	

(b) *If yes, please provide a high-level summary of the expected changes*

<input type="text"/>	(maximum 120 characters)
----------------------	--------------------------

PART I: BILATERAL TREATY FACTORS

▶ 54 Does your jurisdiction have in place a comprehensive tax treaty network that includes provision(s) with respect to interest withholding? Yes No (select option)

▶ 55 Has your jurisdiction entered a comprehensive tax treaty with each of the other nine members of ASEAN (bilateral or multilateral)? Yes No (select option)

▶ 56 Which model tax treaty does your jurisdiction's treaties typically follow? OECD Model UN Model US Model (select option)

▶ 57 What is the usual position typically adopted by your jurisdiction with respect to interest WHT in tax treaties? Exemption Credit (rate reduction) Deduction (select option)

▶ 58 (a) Is treaty relief in respect of domestic IWHT available at source or must an application be made? Relief available at source when paid Offset against future tax charge Application required (select option)

▶ (b) Does the local tax administration have a clear procedure in place with respect to application(s) for relief? Yes, and procedure clear Yes, but procedure not clear No established procedure (select option)

▶ 59 Are standard forms to be used for treaty claims? Yes No (select option)

▶ 60 (a) Do any specific beneficial ownership requirements apply to treaty claims (e.g. Indonesian PER-10, China Public Notice 9)? Yes (please summarise) No (select option)

(b) If yes, please provide a high-level summary of the requirements (maximum 120 characters)

▶ 61 Does a treaty claim require a certificate of residence from the jurisdiction of the lender? Yes No (select option)

▶ 62 (a) Has your country expressed an intention to incorporate any of the OECD's BEPS 4 recommendations into its treaties? Yes (please specify) No (select option)

(b) If yes, please specify which recommendations (select all that apply)

Change to preamble to clarify tax advantages not intended

Principal Purpose Test

Simplified Limitation of Benefits

Limitation of Benefits

▶ 63 (a) Is there any applicable local treaty claim pre-clearance procedure (e.g. UK double tax treaty passport (DTTP) scheme)? Yes No (select option)

(b) If yes, please provide a high-level summary of the process (maximum 120 characters)

▶ 64 What is the attitude of the tax authorities towards requests for refund of withholding tax? Generally not inclined to challenge provided claim is in order Generally resistant (select option)

▶ 65 Once requests for refunds are made, what is the usual timeframe within which tax is returned to tax payers? Within 1 month 1 to 3 months 4 to 6 months 7 to 12 months More than 12 months Not possible to recover (select option)

▶ 66 Do lenders typically try to recover relevant interest WHT, or do they more typically accept it as a cost of business (taking account of low likelihood of recovery, etc.)? Yes No (select option)

▶ 67 (a) Is there any recent precedent concerning groups being under scrutiny for cross border lending arrangements? (select option)

Yes (please summarise) <input type="checkbox"/>
No <input type="checkbox"/>

(b) If yes, please provide a high-level summary of the issue(s) (maximum 120 characters)

PART J: TAX COLLECTIONS INDICATORS

▶ 68 (a) What is the aggregate value of all income tax collections in the year 2012? (enter value in USD, in whole numbers)

(b) What is the aggregate value of all income tax collections in the year 2013? (enter value in USD, in whole numbers)

(c) What is the aggregate value of all income tax collections in the year 2014? (enter value in USD, in whole numbers)

(d) What is the aggregate value of all income tax collections in the year 2015? (enter value in USD, in whole numbers)

(e) What is the aggregate value of all income tax collections in the year 2016? (enter value in USD, in whole numbers)

(f) What is the aggregate value of all income tax collections in the year 2017? (enter value in USD, in whole numbers)

▶ 69 (a) What is the aggregate value of all corporate income tax collections in the year 2012? (enter value in USD, in whole numbers)

(b) What is the aggregate value of all corporate income tax collections in the year 2013? (enter value in USD, in whole numbers)

(c) What is the aggregate value of all corporate income tax collections in the year 2014? (enter value in USD, in whole numbers)

(d) What is the aggregate value of all corporate income tax collections in the year 2015? (enter value in USD, in whole numbers)

(e) What is the aggregate value of all corporate income tax collections in the year 2016? (enter value in USD, in whole numbers)

(f) What is the aggregate value of all corporate income tax collections in the year 2017? (enter value in USD, in whole numbers)

▶ 70 (a) What is the aggregate value of all interest WHT collections in the year 2012? (enter value in USD, in whole numbers)

(b) What is the aggregate value of all interest WHT collections in the year 2013? (enter value in USD, in whole numbers)

(c) What is the aggregate value of all interest WHT collections in the year 2014? (enter value in USD, in whole numbers)

(d) What is the aggregate value of all interest WHT collections in the year 2015? (enter value in USD, in whole numbers)

(e) What is the aggregate value of all interest WHT collections in the year 2016? (enter value in USD, in whole numbers)

(f) What is the aggregate value of all interest WHT collections in the year 2017? (enter value in USD, in whole numbers)

PART K: SUBJECTIVE OPINIONS

▶ 71 In your opinion, to what extent would reducing or eliminating interest WHT between ASEAN Member States encourage economic growth (select option)

Not at all <input type="checkbox"/>
To a small extent <input type="checkbox"/>
To a moderate extent <input type="checkbox"/>
To a large extent <input type="checkbox"/>

▶ 72 In your opinion, to what extent would reducing or eliminating interest WHT between other states encourage economic growth (select option)

Not at all <input type="checkbox"/>
To a small extent <input type="checkbox"/>
To a moderate extent <input type="checkbox"/>
To a large extent <input type="checkbox"/>

▶ 73 In your opinion, to what extent does the local cost of interest WHT impact investment returns to foreign investors and/or drive foreign inbound investment decisions (select option)

Not at all <input type="checkbox"/>
To a small extent <input type="checkbox"/>
To a moderate extent <input type="checkbox"/>
To a large extent <input type="checkbox"/>

▶ 74 In your opinion, what policy changes could be implemented with respect to interest WHT to encourage cross-border debt financing within ASEAN? (maximum 120 characters)

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APPENDIX 2: COUNTRY SURVEY, CONSOLIDATED AND ENRICHED RESPONSES



APPENDIX 2: COUNTRY SURVEY, CONSOLIDATED AND ENRICHED RESPONSES

- A. Responses received in respect of the Country Survey can be found appended below.
- B. As noted in Part I of the Report, certain responses to some of the more technical questions received from respondents were (from the perspectives of experienced international tax professionals at Deloitte Singapore) of questionable accuracy. In view of this, steps were taken to verify the responses provided against publically-available information to ensure the greatest degree of accuracy.
- C. Whilst steps have been taken to ensure the accuracy of the responses, the reader should note that many of the responses are based on anecdotal evidence and/or general observations of the professional tax advisors surveyed.

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		BRUNEI	CAMBODIA	INDONESIA	LAOS	MALAYSIA	MYANMAR	PHILIPPINES	SINGAPORE	THAILAND	VIETNAM
	Tax system (basis)	Territorial	Worldwide	Worldwide	Territorial	Territorial	Worldwide	Worldwide	Territorial	Worldwide	Worldwide
INCIDENCE OF DEBT FINANCING											
1	Is debt finance a commonly used source of funding in your jurisdiction?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2	Does the extent of debt financing used typically vary across sectors?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3	What sector(s) do you typically see having high leverage models (i.e. high debt volumes)?	Agriculture, forestry and fishing; Manufacturing; Construction; Wholesale and retail trade; Real estate activities;	Mining and quarrying; Manufacturing; Electricity, gas, steam and air conditioning supply; Water supply, sewerage, waste management and remediation activities; Financial and insurance activities; Real estate activities;	Agriculture, forestry and fishing; Mining and quarrying; Manufacturing; Electricity, gas, steam and air conditioning supply; Water supply, sewerage, waste management and remediation activities; Construction; Wholesale and retail trade; Transportation and storage; Information and communication; Financial and insurance activities; Real estate activities;	Agriculture, forestry and fishing; Mining and quarrying; Manufacturing; Electricity, gas, steam and air conditioning supply; Construction; Wholesale and retail trade; Accommodation and food services activities; Financial and insurance activities; Real estate activities;	Manufacturing; Construction; Wholesale and retail trade; Information and communication; Financial and insurance activities; Real estate activities;	Mining and quarrying; Manufacturing; Electricity, gas, steam and air conditioning supply; Real estate activities;	Manufacturing; Electricity, gas, steam and air conditioning supply; Water supply, sewerage, waste management and remediation activities; Construction; Transportation and storage; Information and communication; Financial and insurance activities; Real estate activities; Public administration and defence;	Mining and quarrying; Agriculture, forestry and fishing; Manufacturing; Electricity, gas, steam and air conditioning supply; Water supply, sewerage, waste management and remediation activities; Construction; Transportation and storage; Accommodation and food services activities; Information and communication; Financial and insurance activities; Real estate activities;	Financial and insurance activities; Other services activities;	Agriculture, forestry and fishing; Mining and quarrying; Manufacturing; Electricity, gas, steam and air conditioning supply; Water supply, sewerage, waste management and remediation activities; Construction; Transportation and storage; Financial and insurance activities; Real estate activities;
	<i>Agriculture, forestry and fishing</i>	x		x	x						x
	<i>Mining and quarrying</i>		x	x	x		x	x			x
	<i>Manufacturing</i>	x	x	x	x	x	x	x			x
	<i>Electricity, gas, steam and air conditioning supply</i>		x	x	x		x	x			x
	<i>Water supply, sewerage, waste management and remediation activities</i>		x	x				x			x
	<i>Construction</i>	x		x		x		x			x
	<i>Wholesale and retail trade</i>	x		x		x					
	<i>Transportation and storage</i>			x							x
	<i>Accommodation and food services activities</i>				x						
	<i>Information and communication</i>			x		x		x			
	<i>Financial and insurance activities</i>		x	x	x	x		x			x
	<i>Real estate activities</i>	x	x	x	x	x	x	x		x	x
	<i>Professional, scientific and technical activities</i>										
	<i>Administrative and support services activities</i>										
	<i>Public administration and defence</i>							x			
	<i>Education</i>										
	<i>Human health and social work activities</i>										
	<i>Arts, entertainment and recreation</i>										
	<i>Other services activities</i>									x	
4	What sector(s) do you typically see having low leverage models (i.e. low debt volumes)?	Financial and insurance activities; Public administration and defence; Education; Human health and social work activities; Arts, entertainment and recreation;	Agriculture, forestry and fishing; Mining and quarrying; Transportation and storage; Accommodation and food services activities; Information and communication; Administrative and support services activities;	Accommodation and food services activities; Professional, scientific and technical activities; Administrative and support services activities; Public administration and defence; Education; Human health and social work activities; Arts, entertainment and recreation;	Transportation and storage; Professional, scientific and technical activities; Administrative and support services activities; Public administration and defence; Arts, entertainment and recreation; Other services activities;	Not specified	Manufacturing; Transportation and storage; Professional, scientific and technical activities; Administrative and support services activities;	Professional, scientific and technical activities; Human health and social work activities; Other services activities;	Wholesale and retail trade; Professional, scientific and technical activities; Administrative and support services activities; Public administration and defence; Education; Human health and social work activities; Arts, entertainment and recreation; Other services activities;	Mining and quarrying; Education;	Accommodation and food services activities; Education; Other services activities;
	<i>Agriculture, forestry and fishing</i>		x								
	<i>Mining and quarrying</i>		x							x	
	<i>Manufacturing</i>						x				
	<i>Electricity, gas, steam and air conditioning supply</i>										
	<i>Water supply, sewerage, waste management and remediation activities</i>										
	<i>Construction</i>										
	<i>Wholesale and retail trade</i>								x		
	<i>Transportation and storage</i>		x		x		x				
	<i>Accommodation and food services activities</i>		x	x							x
	<i>Information and communication</i>		x								
	<i>Financial and insurance activities</i>	x									
	<i>Real estate activities</i>							x			
	<i>Professional, scientific and technical activities</i>			x	x		x			x	
	<i>Administrative and support services activities</i>		x	x	x		x			x	
	<i>Public administration and defence</i>	x		x	x					x	
	<i>Education</i>	x		x				x			x
	<i>Human health and social work activities</i>	x		x							
	<i>Arts, entertainment and recreation</i>	x		x				x			
	<i>Other services activities</i>				x						x
5	In your view, why do those industries respectively have high and low volumes of debt?	The main reason been the working capital required to run the various activities.	Due to the fact that those industries need high or low capital for the investment	it's related growing potential, capital intensive business and limited raw material availability.	For those selected industries are mostly big project promoted by Government and need big funding for large investment.	High cash flow demands or significant project funding where equity financing is not practical.	Normally, for infrastructure projects with high capex requirements, higher debt financing ratio is allowed	Those industries with high volumes of debt mainly represent big companies that raise funds to finance big projects.	Point 3 - Capital intensive sectors. Point 4 - Public sector is usually funded by govt.	This information is based on the available public information where rational is not mentioned.	Depending on industry nature, size of entity, but requirement for heavy CAPEX would be a common reason
PRESENT LEVEL OF DEVELOPMENT OF LOCAL DEBT CAPITAL MARKETS											
6	How available is local primary debt capital to local individual borrowers?	Widely available	Widely available	Widely available	Widely available	Widely available	Widely available	Widely available	Limited availability due to domestic restrictions	Widely available	Widely available
7	How available is foreign primary debt capital to local individual borrowers?	Limited availability due to existence of few lenders	Not available due to absence of lenders	Limited availability due to domestic restrictions	Limited availability due to domestic restrictions	Limited availability due to domestic restrictions	Not available due to domestic restrictions	Widely available	Limited availability due to domestic restrictions	Widely available	Limited availability due to domestic restrictions
8	How available is local primary debt capital to local corporate borrowers?	Widely available	Widely available	Widely available	Widely available	Widely available	Widely available	Widely available	Widely available	Widely available	Widely available
9	How available is foreign primary debt capital to local corporate borrowers?	Limited availability due to existence of few lenders	Not available due to absence of lenders	Limited availability due to domestic restrictions	Not available due to absence of lenders	Widely available	Limited availability due to domestic restrictions	Widely available	Widely available	Widely available	Widely available
10	Is there a local secondary market for locally-issued debt?	Limited market	Limited market	Mediocre market	No market	Mediocre market	No market	Strong market	Mediocre market	Mediocre market	Mediocre market
11	Do major overseas banks operate in your jurisdiction (e.g. through a physical, online presence, branches, rep offices, etc.)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
12(a)	Do you most commonly see overseas lenders lending into your jurisdiction from another ASEAN Member State, or from outside ASEAN?	From another ASEAN Member State	From outside ASEAN	From outside ASEAN	From another ASEAN Member State	From outside ASEAN	From outside ASEAN	From outside ASEAN	From outside ASEAN	From another ASEAN Member State	From another ASEAN Member State

		BRUNEI	CAMBODIA	INDONESIA	LAOS	MALAYSIA	MYANMAR	PHILIPPINES	SINGAPORE	THAILAND	VIETNAM
12(b)	If from another ASEAN Member State, which ASEAN state do you most often see the lender operating from?	Singapore	Singapore	Singapore	Philippines	N/A	Singapore	Singapore	Singapore	Singapore	Singapore
12(c)	If from outside ASEAN, which non-ASEAN state do you most often see the lender operating from?	N/A	China	Japan, China, Hong Kong, South Korea	World Bank and other commercial banks	No specific region	Japan, China	China, Japan, US	United States	N/A	N/A
IMPACT OF REGULATORY FACTORS											
13	What is the regulatory attitude towards debt finance?	Encouraged	Accepted	Accepted	Accepted	Accepted	Accepted	Accepted	Accepted	Accepted	Accepted
14(a)	What restrictions on debt financing apply to regulated activities?	No limitations	No limitations	Limited to percentage of regulatory capital (please specify)	Limited to percentage of regulatory capital (please specify)	Limited to percentage of regulatory capital (please specify)	No limitations	Limited to percentage of regulatory capital (please specify)	Limited to percentage of regulatory capital (please specify)	Limited to percentage of regulatory capital (please specify)	Limited to percentage of regulatory capital (please specify)
14(b)	Please specify percentage of regulatory capital (if relevant)	N/A	N/A	95%	30%	Not specified	N/A	75%	5%	14%	20%
IMPACT OF CONTENT REQUIREMENTS / OWNERSHIP RESTRICTIONS											
15(a)	Does your jurisdiction impose local ownership/content requirements in respect of foreign direct investment (i.e. equity)?	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
15(b)	If yes, which sectors are such requirements applicable to?	N/A	N/A	Agriculture, forestry and fishing; Mining and quarrying; Manufacturing; Electricity, gas, steam and air conditioning supply; Water supply, sewerage, waste management and remediation activities; Construction; Wholesale and retail trade; Transportation and storage; Accommodation and food services activities; Information and communication; Financial and insurance activities; Real estate activities; Professional, scientific and technical activities; Administrative and support services activities; Education; Human health and social work activities; Arts, entertainment and recreation;	Agriculture, forestry and fishing; Mining and quarrying; Manufacturing; Electricity, gas, steam and air conditioning supply; Construction; Wholesale and retail trade; Transportation and storage; Accommodation and food services activities; Information and communication; Financial and insurance activities; Real estate activities; Professional, scientific and technical activities; Administrative and support services activities; Education; Human health and social work activities; Arts, entertainment and recreation;	Financial and insurance activities;	Agriculture, forestry and fishing; Mining and quarrying; Wholesale and retail trade; Information and communication; Financial and insurance activities; Public administration and defence; Education; Human health and social work activities; Arts, entertainment and recreation;	Agriculture, forestry and fishing; Mining and quarrying; Manufacturing; Electricity, gas, steam and air conditioning supply; Construction; Wholesale and retail trade; Real estate activities; Professional, scientific and technical activities; Public administration and defence; Education; Other services activities;	N/A	Agriculture, forestry and fishing; Transportation and storage; Information and communication; Real estate activities;	Agriculture, forestry and fishing; Transportation and storage; Information and communication; Financial and insurance activities; Public administration and defence; Human health and social work activities; Arts, entertainment and recreation; Other services activities;
	<i>Agriculture, forestry and fishing</i>			x	x		x	x		x	x
	<i>Mining and quarrying</i>			x	x		x	x			
	<i>Manufacturing</i>			x	x			x			
	<i>Electricity, gas, steam and air conditioning supply</i>			x	x			x			
	<i>Water supply, sewerage, waste management and remediation activities</i>			x							
	<i>Construction</i>			x	x			x			
	<i>Wholesale and retail trade</i>			x			x	x			
	<i>Transportation and storage</i>			x					x		x
	<i>Accommodation and food services activities</i>			x	x						
	<i>Information and communication</i>			x	x		x		x		x
	<i>Financial and insurance activities</i>			x	x	x	x				x
	<i>Real estate activities</i>			x					x	x	
	<i>Professional, scientific and technical activities</i>			x				x			
	<i>Administrative and support services activities</i>			x							
	<i>Public administration and defence</i>				x			x			x
	<i>Education</i>			x			x	x			
	<i>Human health and social work activities</i>			x			x				x
	<i>Arts, entertainment and recreation</i>			x			x				x
	<i>Other services activities</i>							x			x
15(c)	If yes, what is the minimum percentage equity holding that must be held by local tax resident persons (across all sectors)?	N/A	N/A	5%	51%	30%	15%	60%	N/A	51%	35%
IMPACT OF INCENTIVE REGIMES											
16(a)	Are there any sector-specific incentives or otherwise to encourage/discourage raising debt capital?	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No
16(b)	If yes, please provide a high-level summary of the relevant incentive(s) and its (their) material characteristics	N/A	N/A	fiscal and non-fiscal incentives and also ease of conducting capital investment services based on current regulation	agricultural, education, medical care, whole sale and retail etc...	Tax deductions to encourage Islamic instruments	N/A	Reduced interest rate on foreign loans under the relevant tax treaty	Fund exemptions which provide IWHT exemption. Approved Qualifying Debt Securities are exempt from tax.	Interest WHT exempt for overseas entities on loan provided to IHQ for re-lending as TC (soon to be replaced by IBC)	N/A
16(c)	If yes, is the incentive only available to domestic lenders/intended to encourage local lending?	N/A	N/A	No	No	No	N/A	No	No	No	N/A
17(a)	Is an exemption from interest withholding tax available in respect of specific local incentive regimes (e.g. Financing and Treasury Centre regimes)	No	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No
17(b)	If yes, please explain which incentive regime(s) the exemption applies to (max. 120 characters)	N/A	Double Tax Agreement between Cambodia with Brunei, China, Singapore and Thailand.	if paid to the govt and to a bank but linked to the govt loan agreement or paid to specific financial institutions	N/A	Exemption for Labuan based entities	Interest income from local foreign branch are exempt from WHT	N/A	EDB approved Finance and Treasury Centre (FTC) companies are eligible for IWHT exemption	Interest WHT exempt for overseas entities on loan provided to IHQ for re-lending as TC (soon to be replaced by IBC)	N/A
IMPACT OF FORM AND DOCUMENTATION											
18	What are the principal forms of debt capital available locally (e.g. senior, mezzanine, junior, MTN, listed)?	Term facility;	Term facility	Senior; Mezzanine; Junior; Commercial paper; Medium term notes (MTN); Intercompany balances; Term facility; Revolving facility; Listed corporate bond;	Senior; Mezzanine; Commercial paper	Senior; Mezzanine; Junior; Commercial paper; Medium term notes (MTN); Intercompany balances; Term facility; Revolving facility; Listed corporate bond;	Term facility; Revolving facility;	Commercial paper; Medium term notes (MTN); Term facility; Revolving facility; Listed corporate bond;	Senior; Mezzanine; Junior; Commercial paper; Medium term notes (MTN); Intercompany balances; Term facility; Revolving facility; Listed corporate bond;	Senior; Mezzanine; Junior; Commercial paper; Medium term notes (MTN); Intercompany balances; Term facility; Revolving facility; Listed corporate bond;	Senior; Mezzanine; Junior; Commercial paper; Medium term notes (MTN); Intercompany balances; Term facility; Revolving facility; Listed corporate bond;
	<i>Senior</i>			x	x	x			x	x	x
	<i>Mezzanine</i>			x	x	x			x	x	x
	<i>Junior</i>			x		x			x	x	x

	BRUNEI	CAMBODIA	INDONESIA	LAOS	MALAYSIA	MYANMAR	PHILIPPINES	SINGAPORE	THAILAND	VIETNAM
<i>Commercial paper</i>			x	x	x		x	x	x	x
<i>Medium term notes (MTN)</i>			x		x		x	x	x	x
<i>Intercompany balances</i>			x		x			x	x	x
<i>Term facility</i>	x		x		x	x	x	x	x	x
<i>Revolving facility</i>			x		x	x	x	x	x	x
<i>Listed corporate bond</i>		x	x	x	x		x	x	x	x
<i>N/A (debt not commonplace)</i>		x								
19(a) What market is favoured in your jurisdiction for listing corporate debt?	Domestic exchange	Domestic exchange	Domestic exchange	Domestic exchange	Domestic exchange	N/A	Domestic exchange	Domestic exchange	Domestic exchange	Domestic exchange
19(b) Please specify which exchange(s) (if relevant)	N/A	N/A	N/A	N/A	N/A	No corporate debt issued by local companies.	Philippine Dealing and Exchange System	N/A	N/A	N/A
20(a) What type of collateral/security requirements are typically incorporated into facility documentation?	Mortgage; Charge over other assets; Guarantee;	Mortgage;	Mortgage; Share charge; Charge over other assets; Guarantee;	Guarantee;	Mortgage; Share charge; Charge over other assets; Guarantee;	Mortgage; Charge over other assets; Guarantee;	Mortgage; Guarantee;	Mortgage; Share charge; Charge over other assets; Guarantee;	Mortgage; Share charge; Charge over other assets; Guarantee;	Mortgage; Charge over other assets; Guarantee;
<i>Mortgage</i>	x	x	x		x	x	X	x	x	x
<i>Share charge</i>			x		x			x	x	
<i>Charge over other assets</i>	x		x		x	x		x	x	x
<i>Guarantee</i>	x		x	x	x	x	X	x	x	x
<i>Other (please specify)</i>										
20(b) Please specify the other form(s) of security typically required (if relevant)	N/A	N/A	Building, Assets,	Loan taken from bank and financial institution is requested for security	Building, Assets,	N/A	N/A	N/A	N/A	N/A
21(a) How is debt security typically enforced?	Receivership; Administration; Call on guarantee;	Call on guarantee;	Receivership; Administration; Call on guarantee; Other (please specify);	Call on guarantee;	Financial guarantee insurance	Receivership; Call on guarantee;	Other (please specify);	Administration; Call on guarantee;	Receivership; Administration; Call on guarantee;	Receivership; Administration; Call on guarantee; Other (please specify);
<i>Receivership</i>	x		x			x			x	x
<i>Administration</i>	x		x					x	x	x
<i>Call on guarantee</i>	x	x	x	x		x		x	x	x
<i>Other (please specify)</i>			x				x			x
21(b) Please specify the other mode(s) of enforcement (if relevant)	N/A	N/A	Curator	N/A	N/A	N/A	Thru exchanges, OTC markets, Self Regulatory Organizations (SRO), Clearing Agency, Transfer Agents, Trustees	N/A	N/A	Sales of the secured property (through auctions)
22(a) Are family, or parent company or other guarantees commonly required from borrower affiliates?	No	No	Yes	Yes	Yes	Yes	No	No	No	No
22(b) If yes, do these collateral/security requirements typically differ between local arrangements and those with a cross border counterparty?	N/A	N/A	Yes (please summarise)	No	No	Yes (please summarise)	N/A	Yes (please summarise)	N/A	N/A
22(c) If yes, please explain the typically differences	N/A	N/A	different requirement needed from Indonesia FSA and family/parent FSA to comply each country regulation	N/A	N/A	Cross border loans, lenders request for overseas assets or holding company guarantee. For locals, mostly properties.	N/A	Depends on a case-by-case basis on MAS regulation, industry involved and lending matrix/risk classification.	N/A	N/A
23(a) Is there any local market standard form of facility documentation (e.g. LMA/Loan Market Association standard form documents)	No	No	Yes (please summarise)	Yes (please summarise)	Yes (please summarise)	No	Yes (please summarise)	No	No	No
23(b) If yes, please specify the standard form such documentation takes	N/A	N/A	Peraturan Otoritas Jasa Keuangan Nomor 42 /POJK.03/2017	Loan documents will be designed and provided by banks and financial institution under BOL regulation	Submission to Central Bank or Securities Commission	N/A	Debt securities, in general, should be registered with the Philippine SEC	N/A	N/A	N/A
24 Do you typically expect to see tax gross-up provisions in facility documentation entered into by local borrowers?	No	Yes	Yes	Yes	No	No	No	No	Yes	Yes
25 Is it local market standard for any interest WHT cost to be passed on to the borrower?	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes
26 Is debt factoring a commonly used mode of financing?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No
27 Is cash pooling often seen in your jurisdiction?	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes	No
28 In practice, do you see cash pool headers in your jurisdiction?	Not common	Not common	Common	Not common	Not common	Never	Not common	Common	Common	Not common
29 Does WHT apply to payments made in connection with interest rate swaps and other derivatives?	Not specified	Deposits; Interest rate swaps;	Deposits; Bonds; Interest rate swaps; Repos; Sukuk and other Islamic debt instruments/arrangements;	Other investments;	Deposits; Bonds; Repos; Sukuk and other Islamic debt instruments/arrangements; Other investments;	Not specified	Deposits; Bonds;	Bonds; Interest rate swaps; Repos; Sukuk and other Islamic debt instruments/arrangements; Other investments;	Deposits; Bonds; Repos; Sukuk and other Islamic debt instruments/arrangements;	Deposits; Bonds; Interest rate swaps; Repos; Other investments;
<i>Deposits</i>		x	x		x		x		x	x
<i>Bonds</i>			x		x		x		x	x
<i>Interest rate swaps</i>		x	x		x			x	x	x
<i>Repos</i>			x		x			x	x	x
<i>Sukuk and other Islamic debt instruments/arrangements</i>			x		x			x	x	x
<i>Other investments</i>				x	x			x		x
30 Does IWHHT apply to discounts on purchase price in respect of receivables securitisation arrangements?	No	No	Yes	No	No	No	No	No	Yes	Yes
DOMESTIC TAX POLICY FACTORS										
31 Is interest incurred by taxpayers generally deductible for purposes of computing net taxable income/gains?	Yes, generally deductible	Yes, deductible up to prescribed limits	Yes, deductible up to prescribed limits	Yes, deductible up to prescribed limits	Yes, generally deductible	Yes, generally deductible	Yes, deductible up to prescribed limits	Yes, deductible up to prescribed limits	Yes, generally deductible	Yes, generally deductible
32 Do thin capitalisation rules apply?	No	No	Yes	No	No	No	No	No	No	No
33(a) What is the applicable thin capitalisation safe harbour/ratio?	N/A	N/A	1 equity : 4 debt	N/A	N/A	N/A	1 equity : 3 debt	N/A	N/A	N/A
33(b) If other, please provide a high-level summary of how the restriction is computed	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Other (please specify) There are debt to equity ratio at 3:1 and 7:1 under the BOI and Foreign Business Act, respectively
34(a) Are there any other interest restriction measures that apply (e.g. BEPS 4-type, and other measures)	No	No	Yes (please summarise)	No	Yes (please summarise)	No	No	Yes (please summarise)	No	Yes (please summarise)
34(b) If yes, please provide a high-level summary of the other measure(s)	N/A	N/A	SE-46. Restriction on Interest payment related which must be deducted by average saving deposit account in bank	N/A	Restriction based on % of non-business utilisation	N/A	N/A	Total Asset Methodology	N/A	Deductible interest expenses <=20% EBITDA (not clear yet if this is only applicable to related party loans or all)
35(a) Are taxpayers entitled to a notional interest deduction in respect of equity financing?	No	No	No	No	No	No	No	No	No	No
35(b) If yes, how is the notional interest deduction computed?	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

	BRUNEI	CAMBODIA	INDONESIA	LAOS	MALAYSIA	MYANMAR	PHILIPPINES	SINGAPORE	THAILAND	VIETNAM
35(c) Please provide a high-level summary of the other mode of computation (if relevant)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36 If a debt obligation of a borrower in your jurisdiction is waived, will the amount waived typically be treated as being taxable income of the borrower?	Yes, third party and related party debt	Yes, third party and related party debt	Yes, third party and related party debt	No	No	No	Yes, third party and related party debt	No	Yes, third party and related party debt	Yes, third party and related party debt
INTERNATIONAL TAX POLICY FACTORS										
37(a) Is WHT (as distinct from income tax) charged in respect of interest payments to domestic recipients?	No	Yes	Yes	Yes	No	No	Yes	No	Yes	No
37(b) If yes, what is the rate of tax applicable in respect of payments?	N/A	15%	15%	10%	N/A	N/A	20%	N/A	1%	N/A
38(a) Is WHT charged in respect of interest payments to other States?	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
38(b) If yes, what is the rate of tax applicable in respect of payments to other States?	2.5%	14%	20%	10%	N/A	15%	20%	15%	15%	5%
39(a) Is WHT charged in respect of interest payments to non-resident financial institutions?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
39(b) If yes, what is the applicable rate of interest WHT?	2.5%	14%	20%	10%	15%	15%	20%	15%	15%	5%
40(a) Is WHT charged in respect of interest payments to non-resident group companies?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
40(b) If yes, what is the applicable rate of interest WHT?	2.5%	14%	20%	10%	15%	15%	20%	15%	15%	5%
41(a) Is WHT charged in respect of interest payments to other non-residents?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
41(b) If yes, what is the applicable rate of interest WHT?	2.5%	14%	20%	10%	15%	15%	20%	15%	15%	5%
42(a) Is interest WHT a final tax, or is there a mechanism to recover the WHT on interest whether by way of offset against the tax liability or double tax relief?	Treaty relief available in principle	Treaty relief available in principle	Treaty relief available in principle	Treaty relief available in principle	Final tax (no deductions available)	Treaty relief available in principle	Treaty relief available in principle	Treaty relief available in principle	Treaty relief available in principle	Treaty relief available in principle
42(b) If there is a mechanism for recovery of WHT, is it administratively simple or cumbersome?	Simple	Cumbersome	Cumbersome	Cumbersome	Cumbersome	Cumbersome	Simple	Simple	Cumbersome	Cumbersome
43(a) Have there been any changes any WHT rates in the last 5 years?	Yes (please specify)	No	No	No	No	No	No	No	No	No
43(b) If yes, what was/were the previous rate(s)?	15%	N/A	N/A	10%	N/A	N/A	N/A	N/A	N/A	N/A
43(c) If yes, have any obvious impacts in investment flows been observed since the change(s)?	no available information on this impact.	N/A	N/A	No	N/A	N/A	N/A	N/A	N/A	N/A
44(a) Are you aware of any intentions for the local administration to change any WHT rates in the next 5 years?	No	No	No	No	No	No	No	No	No	No
44(b) If yes, what is/are the revised rate(s) expected to be?	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
45(a) Are there any material exemptions from the application of IWHT (e.g. exemption where interest is paid with respect to gilts or locally-arranged financing arrangements; such as Singapore's Qualifying	No	No	Yes (please summarise)	No	No	No	Yes (please summarise)	Yes (please summarise)	Yes (please summarise)	No
45(b) If yes, what is/are the material exemptions and their characteristics?	N/A	N/A	Exemption WHT on interest paid to Local Bank, Pension Fund, interest payment related to time deposit below IDR 7.5mio	N/A	N/A	N/A	Interest derived by foreign government	Recognised Qualifying Debt Securities are exempted from IWHT.	offshore WHT exempt on interest paid by the Government or by a financial institution organized by specific Thai law.	N/A
45(c) If yes, how easy or difficult is it to rely on such exemptions?	N/A	N/A	Easy, provided documentary requirements are satisfied	Moderately difficult, but manageable	N/A	N/A	Administratively onerous	Easy, provided documentary requirements are satisfied	Easy, provided documentary requirements are satisfied	N/A
46 What is the local policy rationale for the imposition of WHT on interest?	no available information	Encourage for local borrowing with Cambodia FI with WHT exemption	Based on Article 4 of Income Tax Law No.36 Year 2008, any additional to the wealth are subject to tax.	The taxpayer has the obligation to withhold tax 10% before payment interest to non-bank or financial institution	Encourage domestic lending market	To combat tax evasion.	WHT is imposed on interest derived from Philippine sources.	To dis-incentivise loan arrangement with non-SG lenders and promote Qualified Debt Securities arrangement.	This is the rational from Thai Revenue Code	IWHT is a part of WHT (called Foreign Contractor WHT) on foreign organizations earning income in Vietnam
47 Is interest defined to include:	Simple interest; Other interest-equivalent amounts;									
Simple interest	x	x	x	x	x	x	x	x	x	x
Discount			x						x	x
Manufactured payments									x	x
Other interest-equivalent amounts	x		x	x	x	x		x	x	x
48 Does IWHT typically apply to Islamic financing arrangements (e.g. a bank's buy/sell spread on Murabaha transactions)?	Yes	No	Yes	No	Yes	Yes	No	Yes	Yes	No
49 Must related party cross-border debt (including intercompany receivables) be transfer priced?	No	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes
50 Does your jurisdiction impute interest on loans from foreign lenders in relevant cases, which can then be subject to interest WHT (e.g. where the loan is otherwise interest-free)?	No	No	Yes	Yes	Yes	No	Yes	No	No	Yes
51 How is relief typically given for double taxation under domestic law?	Exemption of income subject to foreign taxation; Foreign tax credits (subject existence of tax treaty); Tax credits (unilateral relief);	Foreign tax credits (subject existence of tax treaty);	Foreign tax credits (subject existence of tax treaty);	Foreign tax credits (subject existence of tax treaty); Tax credits (unilateral relief);	Exemption of income subject to foreign taxation; Foreign tax credits (subject existence of tax treaty); Tax credits (unilateral relief);	Exemption of income subject to foreign taxation; Foreign tax credits (subject existence of tax treaty); Tax credits (unilateral relief);	Foreign tax credits (subject existence of tax treaty); Tax deduction for foreign tax on same income;	Exemption of income subject to foreign taxation; Foreign tax credits (subject existence of tax treaty); Tax credits (unilateral relief);	Foreign tax credits (subject existence of tax treaty);	Exemption of income subject to foreign taxation; Foreign tax credits (subject existence of tax treaty); Tax credits (unilateral relief);
Exemption of income subject to foreign taxation	x		x	x						x
Foreign tax credits (subject existence of tax treaty)		x			x	x	x		x	x
Tax credits (unilateral relief)	x			x	x	x		x		x
Tax deduction for foreign tax on same income							x			
52 How are tax credits (foreign tax credits and/or unilateral relief) typically valued?	Some other limitation	Maximum limited to domestic tax on same income	Maximum limited to domestic tax on same income	Some other limitation	Maximum limited to domestic tax on same income	Full amount of foreign tax paid	Some other limitation	Maximum limited to domestic tax on same income	Maximum limited to domestic tax on same income	Maximum limited to domestic tax on same income
53(a) Are you aware of any intentions for the local administration to change the manner in which double tax relief is given in the next 5 years?	No	No	No	No	No	No	No	No	No	No
53(b) If yes, please provide a high-level summary of the expected changes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
BILATERAL TREATY FACTORS										
54 Does your jurisdiction have in place a comprehensive tax treaty network that includes provision(s) with respect to interest withholding?	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
55 Has your jurisdiction entered a comprehensive tax treaty with each of the other nine members of ASEAN (bilateral or multilateral)?	No	No	Yes	Yes	Yes	No	No	Yes	Yes	Yes
Brunei	N/A	x	x	x	x			x		x
Cambodia	pending	N/A						x		pending
Indonesia	x		N/A	x	x		x	x	x	x
Laos	x		x	N/A	x		x	x	x	x
Malaysia	x		x	x	N/A			x	x	x
Myanmar				x		N/A		x	x	x
Philippines					x		N/A	x	x	x
Singapore	x	x	x	x	x			N/A	x	x
Thailand		x	x	x	x		x	x	N/A	x
Vietnam	x	x	x	x	x		x	x	x	N/A
56 Which model tax treaty does your jurisdiction's treaties typically follow? - cannot untick; no available information	OECD Model	OECD Model	UN Model	UN Model	OECD Model	OECD Model	OECD Model	OECD Model	UN Model	OECD Model

		BRUNEI	CAMBODIA	INDONESIA	LAOS	MALAYSIA	MYANMAR	PHILIPPINES	SINGAPORE	THAILAND	VIETNAM
57	What is the usual position typically adopted by your jurisdiction with respect to interest WHT in tax treaties?	Exemption	Credit (rate reduction)	Credit (rate reduction)	Credit (rate reduction)	Credit (rate reduction)	Credit (rate reduction)	Credit (rate reduction)	Credit (rate reduction)	Credit (rate reduction)	Credit (rate reduction)
58(a)	Is treaty relief in respect of domestic IWHT available at source or must an application be made?	Application required	Application required	Application required	Relief available at source when paid	Relief available at source when paid	Application required	Application required	Relief available at source when paid	Relief available at source when paid	Application required
58(b)	Does the local tax administration have a clear procedure in place with respect to application(s) for relief?	Yes, and procedure clear	Yes, but procedure not clear	Yes, but procedure not clear	Yes, but procedure not clear	Yes, but procedure not clear	Yes, but procedure not clear	Yes, and procedure clear	Yes, and procedure clear	No established procedure	Yes, and procedure clear
59	Are standard forms to be used for treaty claims?	No	No	Yes	No	No	No	Yes	Yes	No	Yes
60(a)	Do any specific beneficial ownership requirements apply to treaty claims (e.g. Indonesian PER-10, China Public Notice 9)?	No	Yes (please summarise)	Yes (please summarise)	Yes (please summarise)	No	No	No	No	No	Yes (please summarise)
60(b)	If yes, please provide a high-level summary of the requirements	N/A	Under the DTA, beneficial owner shall submit application letter & supporting doc to GDT. No form is in place.	PER-10: Using Form DGT-1 or 2 & satisfy all conditions of business purpost test and beneficial ownership conditions	It is difficult to claim tax in Laos, due to document procedure and approval are very slow	N/A	N/A	N/A	N/A	N/A	Distribution of less than 50% of income to resident company in the 3rd country, business substance requirement.
61	Does a treaty claim require a certificate of residence from the jurisdiction of the lender?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
62(a)	Has your country expressed an intention to incorporate any of the OECD's BEPS 6 recommendations into its treaties?	Yes (please specify)	No	Yes (please specify)	No	Yes (please specify)	No	No	Yes (please specify)	Yes (please specify)	Yes (please specify)
62(b)	If yes, please specify which recommendations	Not specified	N/A	Simplified Limitation of Benefits;	N/A	Principal Purpose Test;	N/A	N/A	Change to preamble to clarify tax benefits not intended; Principal Purpose Test;	Not yet specified	Principal Purpose Test;
	<i>Change to preamble to clarify tax benefits not intended</i>									x	
	<i>Principal Purpose Test</i>									x	
	<i>Simplified Limitation of Benefits</i>			x							
	<i>Limitation of Benefits</i>				x						
63(a)	Is there any applicable local treaty claim pre-clearance procedure (e.g. UK double tax treaty passport (DTP) scheme)?	No	No	No	No	No	No	No	No	No	No
63(b)	If yes, please provide a high-level summary of the process	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
64	What is the attitude of the tax authorities towards requests for refund of withholding tax?	Generally not inclined to challenge provided claim is in order	Generally resistant	Generally resistant	Generally not inclined to challenge provided claim is in order	Generally resistant	Generally resistant	Generally resistant	Generally not inclined to challenge provided claim is in order	Generally not inclined to challenge provided claim is in order	Generally resistant
65	Once requests for refunds are made, what is the usual timeframe within which tax is returned to tax payers?	4 to 6 months	More than 12 months	More than 12 months	4 to 6 months	More than 12 months	Not possible to recover	More than 12 months	Within 1 month	7 to 12 months	More than 12 months
66	Do lenders typically try to recover relevant interest WHT, or do they more typically accept it as a cost of business (taking account of low likelihood of recovery, etc.)	No	Yes	No	Yes	No	Yes	Yes	No	Yes	Yes
67(a)	Is there any recent precedent concerning groups being under scrutiny for cross border lending arrangements?	No	No	No	Yes (please summarise)	No	No	No	Yes (please summarise)	Yes (please summarise)	No
67(b)	If yes, please provide a high-level summary of the issue(s)	N/A	N/A	N/A	Loan from groups company or foreign finance institution shall be approved by the Bank of Lao PDR	N/A	N/A	N/A	IRAS does not scrutinise on cross border lending arrangements but on taxpayers who may be "treaty shopping"	Interst income / expense shall be set at market value/on an arm's length basis.	N/A
TAX COLLECTIONS INDICATORS											
68(a)	What is the aggregate value of all income tax collections in the year 2012?	NO DATA AVAILABLE	NO DATA AVAILABLE	USD 48,334,026,190	NO DATA AVAILABLE	MYR 111,676,000,000	USD 1,973,344,665	USD 19,940,287,480	USD 30,000,900,000	USD 24,857,141,982	NO DATA AVAILABLE
68(b)	What is the aggregate value of all income tax collections in the year 2013?	NO DATA AVAILABLE	NO DATA AVAILABLE	USD 41,758,162,928	NO DATA AVAILABLE	MYR 114,113,000,000	USD 3,374,806,000	USD 22,932,416,284	USD 30,151,500,000	USD 27,323,605,908	NO DATA AVAILABLE
68(c)	What is the aggregate value of all income tax collections in the year 2014?	NO DATA AVAILABLE	NO DATA AVAILABLE	USD 44,125,141,379	NO DATA AVAILABLE	MYR 120,284,000,000	USD 3,715,648,333	USD 25,158,460,593	USD 31,456,000,000	USD 26,093,339,532	NO DATA AVAILABLE
68(d)	What is the aggregate value of all income tax collections in the year 2015?	NO DATA AVAILABLE	NO DATA AVAILABLE	USD 43,880,810,141	NO DATA AVAILABLE	MYR 105,7521,000,000	USD 5,260,652,138	USD 27,171,684,805	USD 32,471,000,000	USD 26,634,586,483	NO DATA AVAILABLE
68(e)	What is the aggregate value of all income tax collections in the year 2016?	NO DATA AVAILABLE	NO DATA AVAILABLE	USD 92,996,353,081	NO DATA AVAILABLE	MYR 103,967,000,000	USD 9,695,194,676	USD 29,701,399,700	USD 34,060,000,000	USD 28,329,790,550	NO DATA AVAILABLE
68(f)	What is the aggregate value of all income tax collections in the year 2017?	NO DATA AVAILABLE	USD 1,938,710,000	USD 106,047,387,068	NO DATA AVAILABLE	NO DATA AVAILABLE	USD 5,287,746,891	USD 33,565,730,894	USD 36,375,000,000	USD 28,842,088,781	NO DATA AVAILABLE
69(a)	What is the aggregate value of all corporate income tax collections in the year 2012?	NO DATA AVAILABLE	NO DATA AVAILABLE	USD 30,540,324,256	NO DATA AVAILABLE	MYR 51,288,000,000	USD 829,866,977	USD 6,976,363,229	USD 9,349,900,000	USD 16,695,407,022	NO DATA AVAILABLE
69(b)	What is the aggregate value of all corporate income tax collections in the year 2013?	NO DATA AVAILABLE	NO DATA AVAILABLE	USD 25,433,377,308	NO DATA AVAILABLE	MYR 58,175,000,000	USD 1,670,276,423	USD 8,001,189,915	USD 9,204,900,000	USD 18,156,637,611	NO DATA AVAILABLE
69(c)	What is the aggregate value of all corporate income tax collections in the year 2014?	NO DATA AVAILABLE	NO DATA AVAILABLE	USD 24,892,793,666	NO DATA AVAILABLE	MYR 65,240,000,000	USD 1,661,369,654	USD 8,577,994,014	USD 9,712,300,000	USD 17,480,212,769	NO DATA AVAILABLE
69(d)	What is the aggregate value of all corporate income tax collections in the year 2015?	NO DATA AVAILABLE	NO DATA AVAILABLE	USD 22,547,646,801	NO DATA AVAILABLE	MYR 63,679,000,000	USD 2,552,498,069	USD 9,231,344,550	USD 10,002,200,000	USD 17,360,327,868	NO DATA AVAILABLE
69(e)	What is the aggregate value of all corporate income tax collections in the year 2016?	NO DATA AVAILABLE	NO DATA AVAILABLE	USD 41,028,717,624	NO DATA AVAILABLE	MYR 63,625,000,000	USD 5,038,310,680	USD 10,071,949,440	USD 9,857,200,000	USD 18,546,176,601	NO DATA AVAILABLE
69(f)	What is the aggregate value of all corporate income tax collections in the year 2017?	NO DATA AVAILABLE	NO DATA AVAILABLE	USD 38,472,594,478	NO DATA AVAILABLE	NO DATA AVAILABLE	USD 1,733,324,799	USD 11,092,264,326	USD 10,872,800,000	USD 19,191,986,696	NO DATA AVAILABLE
70(a)	What is the aggregate value of all interest WHT collections in the year 2012?	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE
70(b)	What is the aggregate value of all interest WHT collections in the year 2013?	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE
70(c)	What is the aggregate value of all interest WHT collections in the year 2014?	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE
70(d)	What is the aggregate value of all interest WHT collections in the year 2015?	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE
70(e)	What is the aggregate value of all interest WHT collections in the year 2016?	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE
70(f)	What is the aggregate value of all interest WHT collections in the year 2017?	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE	NO DATA AVAILABLE
SUBJECTIVE OPINIONS											
71	In your opinion, to what extent would reducing or eliminating interest WHT between ASEAN Member States encourage economic growth	To a moderate extent	To a small extent	To a large extent	To a moderate extent	To a small extent	To a moderate extent	To a moderate extent	To a moderate extent	To a moderate extent	To a small extent
72	In your opinion, to what extent would reducing or eliminating interest WHT between other states encourage economic growth	To a small extent	To a small extent	To a large extent	To a small extent	To a small extent	To a moderate extent	To a large extent	To a moderate extent	To a moderate extent	To a small extent
73	In your opinion, to what extent does the local cost of interest WHT impact investment returns to foreign investors and/or drive foreign inbound investment decisions?	To a small extent	To a small extent	To a large extent	Not at all	To a moderate extent	To a small extent	To a large extent	To a small extent	To a moderate extent	To a small extent
74	In your opinion, what policy changes could be implemented with respect to interest WHT to encourage cross-border debt financing within ASEAN?	Nothing to add	Lower interest rate	It is advisable to exempt the WHT on interest on productive loan and reciprocally implement for each ASEAN member.	Chancing on regulation and WHT rate whould be encouraged to cross-border debt financing within ASEAN member.	Accelerated APA procedure and concensus on treaty benefits	To maintain the IWHT to encourage local lending and development of local debt market	Lower interest rate and lower WHT rate	Introduce incentive for usage of debt financing and elimination of cross-border ASEAN IWHT.	WHT reduced rate on the interest payment made from or in Thailand	Abolition of the thin cap rules

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APPENDIX 3: BUSINESS SURVEY, FORM OF QUESTIONNAIRE



APPENDIX 3: BUSINESS SURVEY, FORM OF QUESTIONNAIRE

- A. For the reasons explained in the evaluation in Part I, two approaches and Business Questionnaires were used to complete the Business Survey.
- B. Input was first sought from a number of 'C-suite' executives at international and ASEAN regional banks. The Business Questionnaire circulated to those individuals comprised the following questions:
- (i) Which of the ASEAN jurisdictions are the bank's strongest markets when it comes to the provision of debt finance to local customers?
 - (ii) Which of the ASEAN jurisdictions are the bank's weakest markets when it comes to the provision of debt finance to local customers?
 - (iii) In your opinion what is the primary factor for your response(s) to question (2) being the bank's weakest market(s)?
 - (iv) On a scale of 1-10 (with 1 being not important and 10 being of greatest importance) how important is interest WHT to the bank's provision of debt finance to borrowers in ASEAN?
 - (v) When you provide loan finance to a customer, do you typically aim to incorporate gross-up provisions into the loan documentation to ensure that interest WHT is treated as a borrower cost?
 - (vi) In your opinion, what is the main thing that could be done by ASEAN governments to make the bank more likely to lend into ASEAN jurisdictions that it is currently lending into to a limited or no extent?

In view of the commercial sensitivity of the answers to some of those questions and with a view to obtaining open input, respondents were advised that all responses would be anonymised for the purposes of this Report.

- C. As result of the difficulties experienced in obtaining input in the foregoing manner, additional input was sought from international tax professionals who attended Deloitte Asia Pacific's 2019 Financial Tax Services Conference held in Singapore on 25 February 2019 and in Hong Kong on 1 March 2019. The Business Questionnaire circulated to those individuals took the following form:

Survey: Assessment of interest withholding tax structure within the ASEAN Community

Deloitte Singapore is currently undertaking an assessment of the interest withholding tax structure within the ASEAN Community.

The study is intended to contain a questionnaire component, and we would be grateful for your help by responding to the following questions. All answers will remain anonymous.

For your reference, the Member States of the ASEAN Community comprise: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

Survey

- (vii) Based on what you know of your business's operating model:
- (1) ...does any group company in an ASEAN Member State provide loan finance to a borrower in another ASEAN Member State?

[Select answer: Yes – related party only / Yes – non-related party only / Yes – to both related and non-related parties / No / I do not know]

- (2) ...does any group company outside ASEAN provide loan finance to a borrower in an ASEAN Member State?

[Select answer: Yes – related party only / Yes – non-related party only / Yes – to both related and non-related parties / No / I do not know]

- (3) ...does any group company in an ASEAN Member State provide loan finance to a borrower outside ASEAN?

[Select answer: Yes – related party only / Yes – non-related party only / Yes – to both related and non-related parties / No / I do not know]

- (viii) Please answer the following questions based on your knowledge; if you have no direct knowledge of the relevant issue, please instead provide your professional opinion:

- (1) Firstly, please indicate the basis of your responses to the following questions:

[Select answer: Direct knowledge / Professional opinion]

- (2) On a scale of 1-10 (with 1 being not important and 10 being of greatest importance) how important is interest withholding tax to your business's provision of debt finance to borrowers in ASEAN (related party and/or non-related parties)?

[Select answer: 1 to 10]

- (3) When your business provides loan finance to a borrower, does it typically aim to incorporate gross-up provisions into the loan documentation to ensure that interest withholding tax is treated as a borrower cost?

[Select answer: Yes/No]

- (4) In your opinion, what is the main thing that could be done by ASEAN governments to make your business more likely to lend into ASEAN jurisdictions? (Please consider both jurisdictions that your business is currently lending into and ASEAN jurisdictions that it does not currently lend into.)

[Answer: Open text]

Again, in view of the actual/perceived commercial sensitivity of the answers to some of those questions and with a view to obtaining open input, respondents were advised that all responses would be collected on an anonymous basis.



APPENDIX 4: BUSINESS SURVEY: ANONYMISED RESPONSES



APPENDIX 4: BUSINESS SURVEY: ANONYMISED RESPONSES

- A. Responses received in respect of the Business Survey can be found appended below.
- B. As noted in Part E of the Report, responses were collected on an anonymous basis to address respondents' concerns regarding the actual or perceived commercial sensitivity of the information provided. The data below is therefore presented on the same basis.

Business Survey: Response Set 1

Asia-focused bank established within ASEAN

- (i) Which of the ASEAN jurisdictions are the bank's strongest markets when it comes to the provision of debt finance to local customers?

Declined to answer on grounds of commercial sensitivity

- (ii) Which of the ASEAN jurisdictions are the bank's weakest markets when it comes to the provision of debt finance to local customers?

Declined to answer on grounds of commercial sensitivity

- (iii) In your opinion what is the primary factor for your response(s) to question (2) being the bank's weakest market(s)?

Declined to answer on grounds of commercial sensitivity

- (iv) On a scale of 1-10 (with 1 being not important and 10 being of greatest importance) how important is interest WHT to the bank's provision of debt finance to borrowers in ASEAN?

Not so directly important to the bank but very important to the Borrower as WHT gross-up clauses applies in almost all loans, so indirectly it impacts the Borrowers who are trying to borrow offshore.

- (v) When you provide loan finance to a customer, do you typically aim to incorporate gross-up provisions into the loan documentation to ensure that interest WHT is treated as a borrower cost?

Yes, WHT gross-up clauses is a standard in all loan documentation.

- (vi) In your opinion, what is the main thing that could be done by ASEAN governments to make the bank more likely to lend into ASEAN jurisdictions that it is currently lending into to a limited or no extent?

This is a macro-policy question – if there is free movement of capital, i.e. not currency controls, and interest payments are free of WHT, then cross-border lending should increase (at least in theory). But lending decisions are typically determined by risk considerations of the lender.

Business Survey: Response Set 2

Asia-focused bank established within ASEAN

- (i) Which of the ASEAN jurisdictions are the bank's strongest markets when it comes to the provision of debt finance to local customers?

Singapore

- (ii) Which of the ASEAN jurisdictions are the bank's weakest markets when it comes to the provision of debt finance to local customers?

Laos

- (iii) In your opinion what is the primary factor for your response(s) to question (2) being the bank's weakest market(s)?

Barriers to entry

- (iv) On a scale of 1-10 (with 1 being not important and 10 being of greatest importance) how important is interest WHT to the bank's provision of debt finance to borrowers in ASEAN?

8

- (v) When you provide loan finance to a customer, do you typically aim to incorporate gross-up provisions into the loan documentation to ensure that interest WHT is treated as a borrower cost?

Common market practice and if no gross up, pricing would likely be adjusted.

- (vi) In your opinion, what is the main thing that could be done by ASEAN governments to make the bank more likely to lend into ASEAN jurisdictions that it is currently lending into to a limited or no extent?

Depending on the limitations, removal of impediments could be withholding tax exemption, removal of interest rate capping, introduction of tax incentive, fungibility of currency, etc.

Business Survey: Response Set 3

Global bank established within Europe

The Project Team leader held an informal conversation with three senior tax and finance professionals employed by the client's Singapore branch (the "**Interviewees**") on 23 January 2019. The following comprises a summary of the key points of discussion:

- (i) The Interviewees were of the view that an effective withholding tax system necessitated simplicity, certainty of application and a level playing field between residents and non-residents.
- (ii) The Interviewees noted that interest WHT liabilities are generally passed on to the borrowers.
- (iii) The Interviewees noted that the interest withholding tax rate tends not to be a material factor from an operating perspective. The administrative issues which arise in connection with WHT and relief claims do have a material impact from a practical perspective. Indonesia's DGT-1 filing requirements were referenced as an example (though it was acknowledged that PER-25 has ostensibly improved procedures).
- (iv) The Interviewees noted that the bank will typically go to the money markets to obtain debt finance to fund the provision of debt finance to its own customers. They further noted that tax credit relief (in the form of FTCs/unilateral relief) must typically be computed with reference to net interest income, and that in the case of such back-to-back financing, tax credit relief often has little to no economic value. The Interviewees noted that it is *inter alia* for this reason that precedent facility documentation provides that claiming tax relief will be at the discretion of the lender and that, in the event such relief is claimed, it shall generally not be passed on to the borrower.
- (v) The Interviewees also noted that it would be practically and commercially onerous for lenders to disclose their books and accounts in a way that would be necessary to obtain tax relief, and that this is another reason that relief tends not to be sought by the lender and is instead passed on to the borrower as a cost of finance.

Business Survey: Response Set 4

Anonymous respondent from Deloitte Financial Services conference

- (i) Based on what you know of your business's operating model:
- (4) ...does any group company in an ASEAN Member State provide loan finance to a borrower in another ASEAN Member State?
- Yes – related party only***
- (5) ...does any group company outside ASEAN provide loan finance to a borrower in an ASEAN Member State?
- Yes – related party only***
- (6) ...does any group company in an ASEAN Member State provide loan finance to a borrower outside ASEAN?
- Yes – related party only***
- (ii) Please answer the following questions based on your knowledge; if you have no direct knowledge of the relevant issue, please instead provide your professional opinion:
- (5) Firstly, please indicate the basis of your responses to the following questions:
- Direct knowledge***
- (6) On a scale of 1-10 (with 1 being not important and 10 being of greatest importance) how important is interest withholding tax to your business's provision of debt finance to borrowers in ASEAN (related party and/or non-related parties)?
- 7***
- (7) When your business provides loan finance to a borrower, does it typically aim to incorporate gross-up provisions into the loan documentation to ensure that interest withholding tax is treated as a borrower cost?
- No***
- (8) In your opinion, what is the main thing that could be done by ASEAN governments to make your business more likely to lend into ASEAN jurisdictions? (Please consider both jurisdictions that your business is currently lending into and ASEAN jurisdictions that it does not currently lend into.)
- Clarity***

Business Survey: Response Set 5

Anonymous respondent from Deloitte Financial Services conference

- (i) Based on what you know of your business's operating model:
- (1) ...does any group company in an ASEAN Member State provide loan finance to a borrower in another ASEAN Member State?
- Yes – to both related and non-related parties***
- (2) ...does any group company outside ASEAN provide loan finance to a borrower in an ASEAN Member State?
- Yes – to both related and non-related parties***
- (3) ...does any group company in an ASEAN Member State provide loan finance to a borrower outside ASEAN?
- Yes – to both related and non-related parties***
- (ii) Please answer the following questions based on your knowledge; if you have no direct knowledge of the relevant issue, please instead provide your professional opinion:
- (1) Firstly, please indicate the basis of your responses to the following questions:
- Professional opinion***
- (2) On a scale of 1-10 (with 1 being not important and 10 being of greatest importance) how important is interest withholding tax to your business's provision of debt finance to borrowers in ASEAN (related party and/or non-related parties)?
- 8***
- (3) When your business provides loan finance to a borrower, does it typically aim to incorporate gross-up provisions into the loan documentation to ensure that interest withholding tax is treated as a borrower cost?
- Yes***
- (4) In your opinion, what is the main thing that could be done by ASEAN governments to make your business more likely to lend into ASEAN jurisdictions? (Please consider both jurisdictions that your business is currently lending into and ASEAN jurisdictions that it does not currently lend into.)
- Start with exempting interest from WHT for bank borrowings within ASEAN.***

Business Survey: Response Set 6

Anonymous respondent from Deloitte Financial Services conference

- (i) Based on what you know of your business's operating model:
- (1) ...does any group company in an ASEAN Member State provide loan finance to a borrower in another ASEAN Member State?
- Yes – related party only***
- (2) ...does any group company outside ASEAN provide loan finance to a borrower in an ASEAN Member State?
- No***
- (3) ...does any group company in an ASEAN Member State provide loan finance to a borrower outside ASEAN?
- Yes – non-related party only***
- (ii) Please answer the following questions based on your knowledge; if you have no direct knowledge of the relevant issue, please instead provide your professional opinion:
- (1) Firstly, please indicate the basis of your responses to the following questions:
- Direct knowledge***
- (2) On a scale of 1-10 (with 1 being not important and 10 being of greatest importance) how important is interest withholding tax to your business's provision of debt finance to borrowers in ASEAN (related party and/or non-related parties)?
- 8***
- (3) When your business provides loan finance to a borrower, does it typically aim to incorporate gross-up provisions into the loan documentation to ensure that interest withholding tax is treated as a borrower cost?
- No***
- (4) In your opinion, what is the main thing that could be done by ASEAN governments to make your business more likely to lend into ASEAN jurisdictions? (Please consider both jurisdictions that your business is currently lending into and ASEAN jurisdictions that it does not currently lend into.)
- Remove interest restrictions and reduced withholding tax***

Business Survey: Response Set 7

Anonymous respondent from Deloitte Financial Services conference

- (i) Based on what you know of your business's operating model:
- (1) ...does any group company in an ASEAN Member State provide loan finance to a borrower in another ASEAN Member State?
- Yes – related party only***
- (2) ...does any group company outside ASEAN provide loan finance to a borrower in an ASEAN Member State?
- Yes – related party only***
- (3) ...does any group company in an ASEAN Member State provide loan finance to a borrower outside ASEAN?
- Yes – related party only***
- (ii) Please answer the following questions based on your knowledge; if you have no direct knowledge of the relevant issue, please instead provide your professional opinion:
- (1) Firstly, please indicate the basis of your responses to the following questions:
- Professional opinion***
- (2) On a scale of 1-10 (with 1 being not important and 10 being of greatest importance) how important is interest withholding tax to your business's provision of debt finance to borrowers in ASEAN (related party and/or non-related parties)?
- 6**
- (3) When your business provides loan finance to a borrower, does it typically aim to incorporate gross-up provisions into the loan documentation to ensure that interest withholding tax is treated as a borrower cost?
- Yes**
- (4) In your opinion, what is the main thing that could be done by ASEAN governments to make your business more likely to lend into ASEAN jurisdictions? (Please consider both jurisdictions that your business is currently lending into and ASEAN jurisdictions that it does not currently lend into.)
- Reducing treaty benefit application process***

Deloitte. APPENDIX 5: INTEREST WHT TABLES



APPENDIX 5: INTEREST WHT TABLES

Table Appendix 5(1): Payments of interest on vanilla debt to sovereign recipients

Table shows the lower of the domestic rate and a relevant treaty rate

		PAYER (BORROWER) JURISDICTION									
		Brunei	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
SOVEREIGN RECIPIENT (LENDER) JURISDICTION	Domestic rate	2.5%	14%	20%	10%	15%	15%	20%	15%	15%	5%
	Brunei		0%	0%	0%	0%	15%	20%	0%	15%	0%
	Cambodia	0%		0%	10%	15%	15%	20%	0%	0%	0%
	Indonesia	0%	0%		0%	0%	15%	15%	0%	0%	0%
	Laos	0%	14%	0%		0%	0%	20%	0%	0%	5%
	Malaysia	0%	14%	0%	0%		0%	0%	0%	0%	0%
	Myanmar	2.5%	14%	20%	0%	0%		20%	0%	0%	0%
	Philippines	2.5%	14%	0%	10%	0%	15%		15%	0%	0%
	Singapore	0%	0%	0%	0%	0%	0%	15%		0%	0%
	Thailand	2.5%	0%	0%	0%	0%	0%	0%	0%		0%
	Vietnam	0%	0%	0%	10%	0%	0%	0%	0%	0%	

Table Appendix 5(2): Payments of interest on vanilla debt to financial institution recipients

Table shows the lower of the domestic rate and a relevant treaty rate

		PAYER (BORROWER) JURISDICTION									
		Brunei	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
FINANCIAL INSTITUTION (LENDER) JURISDICTION	Domestic rate	2.5%	14%	20%	10%	15%	15%	20%	15%	15%	5%
	Brunei		14%	15%	10%	10%	15%	20%	5%	15%	5%
	Cambodia	2.5%		20%	10%	15%	15%	20%	10%	10%	5%
	Indonesia	2.5%	14% ³⁷¹		10%	10%	15%	15%	10%	15%	5%
	Laos	2.5%	14%	10%		10%	10%	20%	5%	10%	5%
	Malaysia	2.5%	14%	10%	10%		10%	15%	10%	10%	5%
	Myanmar	2.5%	14%	20% ³⁷²	10%	10%		20%	8%	10%	5%
	Philippines	2.5%	14%	15%	10%	15%	15%		15%	10%	5%
	Singapore	2.5%	10%	10%	5%	10%	8%	15%		10%	5%
	Thailand	2.5%	10%	15%	10%	15%	10%	10%	10%		5%
	Vietnam	2.5%	14% ³⁷³	15%	10%	10%	10%	15%	10%	10%	

³⁷¹ A tax treaty which provides for a 10% rate was signed on 13 October 2017 but is not yet in force.

³⁷² A tax treaty which provides for a 10% rate was signed on 1 April 2003 but is not yet in force.

³⁷³ A tax treaty which provides for a 10% rate was signed on 31 March 2018 but is not yet in force.

Table Appendix 5(3): Payments of interest on vanilla debt to corporate recipients

Table shows the lower of the domestic rate and a relevant treaty rate

		PAYER (BORROWER) JURISDICTION									
		Brunei	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
CORPORATE RECIPIENT (LENDER) JURISDICTION	Domestic rate	2.5%	14%	20%	10%	15%	15%	20%	15%	15%	5%
	Brunei		10%	15%	10%	10%	15%	20%	10%	15%	5%
	Cambodia	2.5		10%	10%	15%	15%	20%	10%	15%	5%
	Indonesia	2.5	10%		10%	10%	15%	15%	10%	15%	5%
	Laos	2.5	14%	10%		10%	15%	20%	5%	15%	5%
	Malaysia	2.5	14%	10%	10%		10%	15%	10%	15%	5%
	Myanmar	2.5	14%	20%	10%	10%		20%	10%	10%	5%
	Philippines	2.5	14%	15%	10%	15%	15%		15%	15%	5%
	Singapore	2.5	10%	10%	5%	10%	10%	15%		15%	5%
	Thailand	2.5	14%	15%	10%	15%	10%	15%	15%		5%
	Vietnam	2.5	10%	15%	10%	10%	10%	15%	10%	15%	

Table Appendix 5(4): Payments of interest on public debt to all recipients

Table shows the lower of the domestic rate and a relevant treaty rate

		PAYER (GOVERNMENT/LOCAL AUTHORITY BORROWER) JURISDICTION									
		Brunei	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
PUBLIC BOND HOLDER JURISDICTION	Domestic rate	Rate depends upon the status of the recipient – please see previous charts									
	Brunei		N/A ³⁷⁴	0% ³⁷⁵	0% ³⁷⁶	0%	N/A ³⁷⁷	N/A ³⁷⁷	0%	0%	0%
	Cambodia	0%		0% ³⁷⁵	0% ³⁷⁶	0%	N/A ³⁷⁷	N/A ³⁷⁷	0%	0%	0%
	Indonesia	0%	N/A ³⁷⁴		0% ³⁷⁶	0%	N/A ³⁷⁷	0%	0%	0%	0%
	Laos	0%	N/A ³⁷⁴	0% ³⁷⁵		0%	N/A ³⁷⁷	N/A ³⁷⁷	0%	0%	0%
	Malaysia	0%	N/A ³⁷⁴	0% ³⁷⁵	0% ³⁷⁶		N/A ³⁷⁷	N/A ³⁷⁷	0%	0%	0%
	Myanmar	0%	N/A ³⁷⁴	0% ³⁷⁵	0% ³⁷⁶	0%		N/A ³⁷⁷	0%	0%	0%
	Philippines	0%	N/A ³⁷⁴	0% ³⁷⁵	0% ³⁷⁶	0%	N/A ³⁷⁷		0%	0%	0%
	Singapore	0%	N/A ³⁷⁴	0%	0% ³⁷⁶	0%	N/A ³⁷⁷	10%		0%	0%
	Thailand	0%	N/A ³⁷⁴	0%	0% ³⁷⁶	0%	N/A ³⁷⁷	N/A ³⁷⁷	0%		0%
Vietnam	0%	N/A ³⁷⁴	0% ³⁷⁵	0% ³⁷⁶	0%	N/A ³⁷⁷	N/A ³⁷⁷	0%	0%		

³⁷⁴ To date, public bonds have not been issued in Cambodia. In principle, the rate depends upon the status of the recipient – please see previous charts.

³⁷⁵ Provided denominated in non-IDR.

³⁷⁶ Provided listed on YSX.

³⁷⁷ Rate depends upon the status of the recipient – please see previous charts.



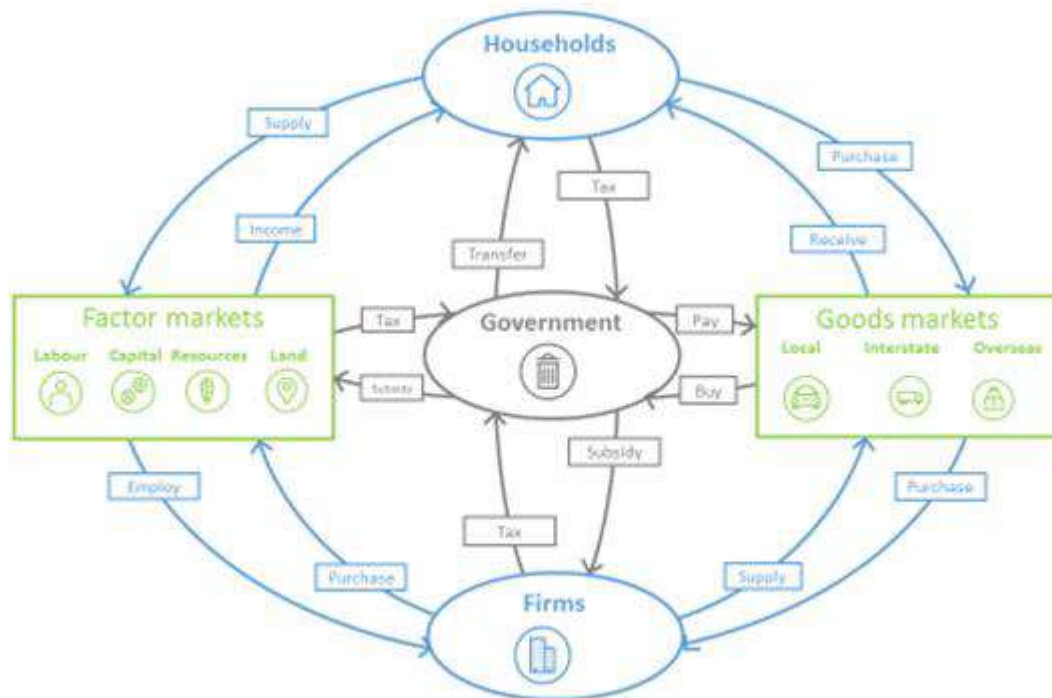
APPENDIX 6: COMPUTABLE GENERAL EQUILIBRIUM MIODELLING



APPENDIX 6: COMPUTABLE GENERAL EQUILIBRIUM MODELLING

- A. Deloitte Access Economics' Regional General Equilibrium Model (DAE-RGEM) belongs to the class of models known as Computable General Equilibrium (CGE), or Applied General Equilibrium (AGE) models. Other examples of models in this class are the Global Trade and Analysis Project (GTAP) model, the Victoria University Model (the 'Vic-Uni Model') and The Enormous Regional Model (TERM).
- B. Like GTAP, DAE-RGEM is a global model, able to simulate the impact of changes in any of the 140 countries in the GTAP database (including Indonesia, Malaysia, Philippines, Singapore, Thailand, and Vietnam) onto each of the 140 countries. The ability to incorporate the flow-on impacts of changes that may occur in the rest of the world is a key feature of global models that is not available in single country models, such as the Vic-Uni Model or TERM.
- C. The DAE-RGEM model projects changes in macroeconomic aggregates such as GDP/GRP, employment, export volumes, investment and private consumption. At the sectoral level, detailed results such as output, exports, imports by commodity and employment by industry are also produced.
- D. The following diagram comprises a stylised representation of DAE-RGEM, specifically a system of interconnected markets with appropriate specifications of demand, supply and the market clearing conditions determine the equilibrium prices and quantity produced, consumed and traded.

Chart A6.D: A stylised representation of DAE-RGEM



Source: Deloitte Access Economics

- E. The DAE-RGEM model rests on the following key assumptions:
- All markets are competitive and all agents are price takers.
 - All markets clear, regardless of the size of the shock, within the year.

- (iii) It takes one year to build the capital stock from investment and investors take future prices to be the same as present ones as they cannot see the future perfectly.
- (iv) Supply of land and skills are exogenous. In the business-as-usual case, supply of natural resource adjusts to keep its price unchanged; productivity of land adjusts to keep the land rental constant at the base year level.
- (v) All factors sluggishly move across sectors. Land moves within agricultural sectors; natural resource is specific to the resource-using sector. Labour and capital move imperfectly across sectors in response to the differences in factor returns. Inter-sectoral factor movement is controlled by overall return maximizing behaviour subject to a CET function. By raising the size of the elasticity of transformation to a large number it is possible to mimic the perfect mobility of a factor across sectors and by setting the number close to zero the factor can be made sector-specific. This formulation allows the model to acknowledge the sector specificity of part of the capital stock used by each sector, and also the sector specific skills acquired by labour while remaining in the industry for a long time. Any movement of such labour to another sector will mean a reduction in the efficiency of labour as a part of the skills embodied will not be used in the new industry of employment.

F. DAE-RGEM is based on a substantial body of accepted microeconomic theory. Key features of the model are:

- (i) The model contains a 'regional household' that receives all income from factor ownerships (labour, capital, land and natural resources), tax revenues and net income from foreign asset holdings. In other words, the regional household receives the gross national income (GNI) as its income.
- (ii) The regional household allocates its income across private consumption, government consumption and savings so as to maximise a Cobb-Douglas utility function. This optimisation process determines national savings, private and government consumption expenditure levels.
- (iii) Given the budget levels, household demand for a source-generic composite goods are determined by minimising a CDE (Constant Differences of Elasticities) expenditure function. For most regions, households can source consumption goods only from domestic and foreign sources. The choice of sources of each commodity is determined by minimising the cost using a CRESH (Constant Ratios of Elasticities Substitution, Homothetic) utility function defined over the sources of the commodity (using the Armington assumption).
- (iv) Government demand for source-generic composite goods, and goods from different sources (domestic, imported and interstate), is determined by maximising utility via Cobb-Douglas utility functions in two stages.
- (v) All savings generated in each region are used to purchase bonds from the global market the price movements of which reflect movements in the price of creating capital across all regions.
- (vi) Financial investments across the world follow higher rates of return with some allowance for country-specific risk differences, captured by the differences in rates of return in the base year data. A conceptual global financial market (or a global bank) facilitates the sale of the bond and finance investments in all countries/regions. The global saving-investment market is cleared by a flexible interest rate.
- (vii) Once aggregate investment level is determined in each region, the demand for the capital good is met by a dedicated regional capital goods sector that constructs capital goods by combining intermediate inputs in fixed proportions, and minimises costs by choosing between domestic, imported and interstate sources for these intermediate inputs subject to a CRESH aggregation function.

- (viii) Producers supply goods by combining aggregate intermediate inputs and primary factors in fixed proportions (the Leontief assumption). Source-generic composite intermediate inputs are also combined in fixed proportions (or with a very small elasticity of substitution under a CES function), whereas individual primary factors are chosen to minimise the total primary factor input costs subject to a CES (production) aggregating function.
 - (ix) Labour in DAE-RGEM is distinguished by occupational classes. The exact number of the occupation class depends on the aggregation dictated by the engagement at the time of model application. However, version 9 of the GTAP database recognises five occupational classes. These occupational classes are substitutable with each other and with other factors of production.
 - (x) Demand for each occupational class in each production sector in each region is met by the workers equipped with different skill levels (educational degree and discipline). The composition of skills in each occupation and sector is dictated by cost minimisation rule subject to a CES aggregation function. The smaller the elasticity of skills substitution within a given occupation, the more difficult it becomes for occupational labour to move across skills regardless of the wage differences. This means that a given skill will be employed in a given occupation. The number of skill types also depends on the need at the time of model application. In the default aggregation, DAE-RGEM solves with one occupation class and one skill type.
 - (xi) The supply of skills is exogenous to the model. However, following the literature on the wage curve, DAE-RGEM maintains that the skill-specific unemployment rate in each region responds negatively to rise in corresponding real wage rate. In other words, the skill specific unemployment rates in DAE-RGEM are endogenously determined and they fall with the rise in equilibrium real wage rates
 - (xii) Normally international migration in DAE-RGEM is treated as exogenous. It is maintained that wage differences in the regions observed in the base year reflects the risks and remoteness differences, any difference in the growth rates in the skill-specific regional real wage rates induces interregional migration.
 - (xiii) With respect to the sources of intermediate inputs, producers minimise costs by choosing between domestic, imported and interstate intermediate inputs subject to a CRESH aggregating function.
 - (xiv) Prices are determined via market-clearing conditions that require sectoral output (supply) to equal the amount sold (demand) to final users (households and government), intermediate users (firms and investors), and foreigners (international exports).
- G. For internationally-traded goods (imports and exports), the Armington assumption is applied whereby the same goods produced in different countries are treated as imperfect substitutes. But, in relative terms, imported goods from different regions are treated as closer substitutes than domestically-produced goods and imported composites (home-bias).

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APPENDIX 7: PROPOSED IMPLEMENTATION SCHEDULE



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RN#	ACTION	H1 2019	H2 2019	2020	2021	2022	2023	2024	2025	2026>
	Delivery of this Report	◆	→							
	Consideration/adoption by WG-AFT	◆	→							
	Consideration/endorsement by Member States		◆	→						
RN I	Negotiate and agree multilateral convention creating the Recommended Legal Framework <i>facilitated by the ASEAN Secretariat</i>									
RN II	all Member States			◆	→					
RN III	Domestic ratification of convention									
	all Member States					◆	→			
RN IV	Implementation of Recommended Best Practices <i>facilitated by the ASEAN Secretariat</i>									
	ASEAN-5						◆	→		
	Non-ASEAN-5								◆	→
RN V	Consider and deploy revised thin capitalisation and BEPS Action Item 4 measures									
	all Member States			◆	→					

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