



Taxation of cross-border mergers and acquisitions

Singapore

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Introduction

The Republic of Singapore is an island state and member of the British Commonwealth.

Income is taxed in Singapore in accordance with the provisions of the Income Tax Act (Chapter 134) (ITA) and the Economic Expansion Incentives (Relief from Income Tax) Act (Chapter 86).

Generally, the Comptroller of Income Tax is vested with the powers to administer the country's tax legislation. Certain tax incentives are administered by other statutory boards, such as the Economic Development Board and International Enterprise Singapore.

Goods and services tax (GST) and stamp duty are levied in accordance with the Goods and Services Tax Act (Chapter 117A) and the Stamp Duties Act (Chapter 312).

Recent developments

The mergers and acquisition (M&A) scheme was introduced in 2010 to encourage companies to grow their businesses. The M&A scheme comprises the M&A allowance and stamp duty relief, which can be claimed by an acquiring company.

In 2012, a 200 percent tax allowance on transaction costs incurred on qualifying M&A was introduced to further support companies carrying out M&A. The M&A scheme was further enhanced in 2015.

Details of the M&A scheme can be found in the section on purchase of shares later in this report.

Asset purchase or share purchase

An acquisition in Singapore can take the form of a purchase of assets and business, or a purchase of shares of a company. The choice is influenced by factors such as the treatment of the gains as revenue or capital (there is no capital gains tax in Singapore), the likely recapture of capital allowances by the seller, and the amount of stamp duty payable on asset purchases versus share purchases. Some of the tax considerations relevant to each method

are discussed later in the report. The advantages and disadvantages of each method are summarized at the end of the report.

Purchase of assets

A purchase of assets may give rise to income tax and stamp duty implications for the seller and buyer. Depending on the tax status of the seller, the disposal gains may be regarded as trading gains subject to income tax. Where the asset is a real property, the amount of stamp duty payable on transfer may be substantial. Unless otherwise agreed, the buyer usually pays such duty. Where capital allowances have been claimed on the assets, they may be recaptured by and taxable to the seller, depending on the consideration.

Purchase price

For tax purposes, it is necessary to apportion the total consideration among the assets acquired. Hence, it is advisable to specify in the sale and purchase agreement an allocation that is commercially justifiable. In the case of trading stocks, the transfer can be at net book value, provided the stocks also constitute trading stocks of the buyer. This is to ensure tax-neutrality on the transfer. Otherwise, the open market value is substituted as the transfer value.

Goodwill

For tax purposes, the amount of goodwill written off or amortized to the income statement of the company is non-deductible on the basis that the expense is capital in nature.

Depreciation

The ITA contains provisions for granting initial and annual tax depreciation allowances on capital expenditure incurred on qualifying assets used for purposes of the taxpayer's business (subject to certain conditions). The main rates of initial and annual allowances are summarized below.

Tax depreciation (commonly referred to as capital allowances) is granted in respect of plant and machinery used in a trade, business or profession. Plant and machinery are classified into working lives of 5, 6, 8, 10 or 16 years for tax-depreciation purposes. Land intensification allowance, comprising an initial (one-time) allowance of 25 percent and an annual allowance of 5 percent, is available on capital expenditure incurred for the construction or renovation/extension of a qualifying building or structure, subject to certain qualifying criteria.

With the exception of certain assets, all plant and machinery can be depreciated under the alternative accelerated allowances scheme of 3 years. Some assets, including prescribed automation equipment (e.g. robots, computers), power generators installed in factories or offices as back-up units in the event of power failures, and efficient pollution control equipment, can be written off in 1 year. A 100 percent write-off is also available on qualifying fixed assets where the cost of each asset is no more than 5,000 Singapore dollars (SGD). The aggregate claim for 100 percent write-off of all such assets is capped at SGD30,000 per year of assessment (YA).

For YA 2011 to YA 2018, companies are entitled to claim productivity and innovation credits (PIC) for incurring qualifying expenditure on any of six prescribed qualifying activities.

Under the PIC scheme, companies can claim additional capital allowance/tax deduction equal to three times the base expenditure incurred on the qualifying activities. The base expenditure is capped at SGD400,000 per qualifying activity. With the enhanced capital allowance/tax deduction at a maximum SGD1.2 million per qualifying activity, a company can claim up to SGD1.6 million of capital allowance/tax deduction for every SGD400,000 of base expenditure incurred on each qualifying activity.

For YA 2015 to YA 2018, the base expenditure cap for qualifying companies is increased from SGD400,000 to SGD600,000 per qualifying activity per YA, subject to certain conditions. Where a company disposes of plant and machinery, a balancing charge or balancing allowance normally arises to adjust for the difference in the residual or tax written-down value (TWDV) of an asset as compared to the consideration received for the asset. A balancing allowance is available to the company when the TWDV of the asset is greater than the consideration received. Conversely, where consideration exceeds the TWDV, a balancing charge is made (restricted to the capital allowances allowed previously in respect of the asset).

Tax attributes

In the case of an asset or business transfer, the unused tax losses and capital allowances remain with the company unless the transfer is a qualifying corporate amalgamation.

Goods and services tax

Generally, goods and services tax (GST) is chargeable at 7 percent on any supply of goods and services made by a GST-registered entity in the course or furtherance of its business.

The transfer of a business (or a part of the business that is capable of separate operation) as a going concern is treated as neither a supply of goods nor services for GST purposes, so GST is not chargeable on such transactions. This applies only where the transferee is a GST-taxable person and the assets are to be used by the transferee in an existing or new business of the same kind as that carried on by the transferor. The mere transfer of assets is not conclusive evidence that the transfer is a transfer of a business as a

going concern. The general rule is whether the transaction puts the transferee in possession of a going concern, the activities of which could be carried on without interruption. Where Inland Revenue Authority of Singapore (IRAS) is not convinced that the transfer is that of a going concern, GST at 7 percent is applicable on the entire disposal value (including any consideration for goodwill or intangibles).

Transfer taxes

The transfer of a business undertaking does not attract stamp duty. However, stamp duty is payable on any written agreement or instrument that transfers the ownership of immovable property, stocks or shares. Stamp duty is payable on any transfer, assignment or conveyance on the sale of any property by instruments executed in Singapore, unless specifically exempted under the provisions of the Stamp Duties Act. Stamp duty is payable by the purchaser based on the higher of the purchase consideration or the market value of the real property. The duty is payable at the following rates:

| Value | Stamp duty rate |
|--------------------------|-----------------|
| On the first SGD180,000 | 1% |
| On the next SGD180,000 | 2% |
| On any remaining balance | 3% |

Source: KPMG in Singapore, 2016

Foreigners and non-individuals buying any residential property including land would have to pay additional buyer's stamp duty of 15 percent on the purchase.

Seller's stamp duty applies to the following:

- Residential properties purchased on or after 14 January 2011 and disposed of within 1, 2, 3 or 4 years of purchase are subject to stamp duty of 16 percent, 12 percent, 8 percent and 4 percent respectively.
- Industrial properties purchased on or after 12 January 2013 and disposed of within 1, 2 or 3 years of purchase are subject to stamp duty of 15 percent, 10 percent and 5 percent respectively.

There are several kinds of relief provided by the Stamp Duties Act. The two key reliefs in the context of M&A are:

- relief from stamp duty in connection with a plan for the reconstruction or amalgamation of companies, provided the following key conditions, among others, are met:
 - the acquiring company must be registered or incorporated in Singapore, or
 - it must have increased its capital with a view to acquiring either the undertaking or not less than 90 percent of the issued share capital of any particular existing company
- relief from stamp duty where at least 90 percent of the consideration for the acquisition (other than any part

of consideration for the transfer to or discharge by the transferee company of liabilities of the existing company) consists of:

- where an undertaking is to be acquired, the issue of shares in the transferee company to the existing company or to holders of shares in the existing company
- where shares are to be acquired, the issue of shares in the transferee company to the holders of shares in the existing company in exchange for the shares held by them in the existing company.

Approval is required from the Commissioner of Stamp Duties.

Relief from stamp duty is available on a transfer of property between associated companies, provided the following key conditions, among others, are met:

- the effect of the transaction is to transfer a beneficial interest in immovable property or shares from one associated company to another associated company (i.e. one company is the beneficial owner of not less than 75 percent of the voting share capital and more than 50 percent of the voting power of the other)
- a third company is the beneficial owner of not less than 75 percent of the voting share capital and more than 50 percent of the voting power of both companies.

Again, approval is required from the Commissioner of Stamp Duties.

Purchase of shares

An acquisition by purchase of shares has no tax implications for the cost of the company's underlying assets because the difference between the underlying asset value and the consideration is not deductible for tax purposes.

Mergers and acquisitions scheme

The M&A scheme was introduced in 2010 to encourage companies in Singapore to grow their business through M&A.

Under the scheme, an M&A allowance equal to 5 percent of the value of acquisition is granted for qualifying shares acquired from 1 April 2010 to 31 March 2020. The maximum M&A allowance allowed for each YA is 25 percent of the value of qualifying acquisition completed during the period from 1 April 2015 to 31 March 2020, subject to a maximum cap of SGD5 million. This cap effectively allows for qualifying share acquisitions of up to SGD20 million in aggregate in each YA. The M&A allowance is claimed over 5 years on a straight-line basis.

Stamp duty relief is also granted on any sale of equitable interest in ordinary shares or on any transfer documents for ordinary shares acquisition. The instrument must be executed from 1 April 2010 to 31 March 2020. The maximum stamp duty relief is capped at SGD40,000 for each financial year (from 1 April 2015).

Key aspects of the M&A scheme are as follows:

- available to Singapore-resident companies that purchase the ordinary shares of another company directly or indirectly (for acquisitions made on or after 17 February 2012) through a wholly owned holding vehicle
- ultimate holding company of the acquiring company must be incorporated and tax-resident in Singapore (may be waived case-by-case)
- acquiring company must carry on a trade or business in Singapore on the date of acquisition, have three local employees (excluding company's directors) for a period of 12 months prior to the date of the share acquisition, and must not be connected to the target company for at least 2 years prior to the date of the share acquisition
- where the acquiring company uses a holding vehicle to make the acquisition, the holding vehicle must be a wholly owned subsidiary, must not carry on a trade or business in Singapore or elsewhere on the date of the share acquisition, and must not claim M&A allowance and stamp duty relief under the M&A scheme
- must result in the acquiring company owning (for acquisition during the period from 1 April 2015 to 31 March 2020):
 - 20 to 50 percent of the ordinary shares of the target company if, before the date of acquisition, it owned less than 20 percent of the target company, or
 - more than 50 percent of the ordinary shares of the target company if, before the date of acquisition, it owned 50 percent or less of the target company.

For qualifying share acquisitions completed during the period from 17 February 2012 to 31 March 2020, a 200 percent tax allowance is granted in the form of double tax deduction on transactions costs (net of grants or subsidies from the government or any statutory board), subject to a cap of SGD100,000 per YA. Transaction costs include legal fees, accounting and tax advisors' fees, valuation fees and any such professional fees that are necessarily incurred for the qualifying share acquisition. However, professional fees for a loan arrangement and incidental costs, borrowing costs, stamp duty and any other taxes are excluded.

The scheme is not available to asset acquisitions.

Tax losses

The unabsorbed trade losses (and capital allowances) generated by the target company are transferred along with the company and are available for carry forward for set-off against the company's future years' taxable profits, subject to the shareholders' continuity test. The test effectively requires that not less than 50 percent of the total number of issued shares of the company were beneficially held by the same shareholders at relevant comparison dates.

Additionally, the company must carry on the same trade or business in order to utilize the unabsorbed capital allowances.

The shareholders' continuity test is intended to target situations where loss-making companies are being acquired for tax reasons. Where a substantial change in ultimate shareholding takes place, local tax laws still provide the relevant company with an avenue to appeal to the Minister for Finance (or delegate) to waive the shareholders' continuity test. The minister is likely to examine the appeal based on its merits. Where such a waiver is obtained, the Singapore company can continue carrying forward its unabsorbed trade losses and/or capital allowances but only for set-off against future taxable profits arising from the same trade that gave rise to the relevant losses and/or capital allowances.

Any person carrying on a trade, business, profession or vocation may carry back their current-year unabsorbed capital allowances and current-year unabsorbed trade losses (up to SGD100,000) for set-off against their assessable income of the YA immediately preceding the YA in which the capital allowances were granted or the trade losses were incurred. The carryback relief is subject to the shareholders' continuity test. Current-year unabsorbed capital allowances are also subject to the same business test.

Pre-sale dividend

Under certain circumstances, the seller may prefer to realize part of their investment as a pre-sale dividend because dividends paid by Singapore-resident companies are tax-exempt.

Goods and services tax

Generally, the disposal of shares is a GST-exempt supply. However, where the transferee in a Singapore sale is a person resident outside Singapore, the supply is viewed as a zero-rated supply for GST purposes.

Transfer taxes

Stamp duty is levied on a transfer of shares in a Singapore company where the transfer is executed in Singapore or the legal transfer document is brought into Singapore. The rate of duty is 0.2 percent on the higher of the consideration and the market value of the shares. The net asset value is used where the market value is not readily available. The transferees may choose to use balance sheet values of properties to arrive at the net asset value. However, IRAS continues to carry out back-end audit checks to ensure the amount of duty paid reflects the true value of the shares transferred, especially for non-arm's length transfers.

For qualifying share acquisitions taking place from 1 April 2010 to 31 March 2020 under the M&A scheme, stamp duty relief is available up to SGD40,000 for each financial year (as discussed earlier).

For details about stamp duty reliefs under other circumstances, see the transfer taxes section under purchase of assets earlier in this report.

Tax indemnities and warranties and tax clearance

On taking over the target company, the purchaser assumes all related liabilities, including contingent liabilities. It is not possible to obtain a clearance from the IRAS that a potential Singapore target company has no tax arrears.

Therefore, the purchaser usually requires indemnities and warranties in the sale agreement. The extent of the indemnities or warranties is subject to negotiation between the vendor and purchaser. Where the sums involved are significant, the purchaser normally initiates a due diligence exercise, including a review of the target company's tax affairs to ascertain the tax position of the target company and identify potential tax liabilities.

Choice of acquisition vehicle

Singapore adopts a territorial system of taxation and the corporate tax regime applies equally to Singapore incorporated entities and foreign entities carrying on business in Singapore through vehicles such as a Singapore branch or permanent establishment. The main types of vehicle (described in more detail below) that may be used to acquire shares or assets in Singapore or to carry on a business in Singapore include the following:

- Singapore-incorporated company (including local holding company)
- foreign parent company
- non-resident intermediate holding company
- branch of a foreign company
- Singapore-registered business trust
- partnership
- limited liability partnership
- limited partnership
- other vehicles.

Local holding company

It can be tax-advantageous for foreign investors to establish a Singapore holding company to acquire shares or assets in (or outside) Singapore. The primary tax advantages that could arise are as follows:

- Group relief arising from the option to transfer current-year losses, current-year unabsorbed capital allowances, and donations within qualifying group companies (i.e. Singapore incorporated companies) may be available.
- Foreign-sourced dividends, foreign branch profits and foreign-sourced service income, which are taxable when received in Singapore by a Singapore resident company, may be exempt from Singapore tax where certain conditions are met. Alternatively, Singapore tax arising on

such income may be mitigated or effectively eliminated through Singapore's unilateral tax credit system and bilateral tax agreements, assuming foreign tax has been paid on the income.

- Gains on the disposal of Singapore or foreign investments/assets are not subject to Singapore tax where the gains arising are capital gains because Singapore has no capital gains tax regime. So, unless the acquisition of an asset or subsidiary is regarded as being on trading account, any gains arising from its subsequent disposal are not taxed.

For Singapore tax purposes, the tax residency of a company is determined by its place of management and control. The management and control of a company vests in its board of directors (BOD) and where the BOD meets normally determines the entity's place of management and control. To the extent that the BOD holds its meetings in Singapore to deliberate on and make supervisory decisions concerning the Singapore entity, the IRAS normally accepts that the entity is a tax-resident of Singapore. However, for a foreign-owned company (50 percent or more of its shares held by foreign companies/shareholders), the IRAS is more stringent and requires the company to provide evidence to substantiate that its control and management is indeed in Singapore.

Foreign parent company

The foreign purchaser can make the acquisition itself. Singapore does not normally tax the gains of a foreign company disposing of Singapore shares unless those shares are held for the purpose of a trade carried on through a Singapore branch. Singapore does not impose withholding tax (WHT) on dividends. However, the following payments to non-residents made by a resident person or permanent establishment in Singapore are subject to WHT in Singapore:

- interest and any payment in connection with a loan or indebtedness
- management, technical assistance and service fees where services are performed in Singapore
- royalties
- rent or any payment for use of movable property
- directors' fees.

Non-resident intermediate holding company

An intermediate holding company resident in another country can be interposed to take advantage of a favorable tax treaty with Singapore. However, certain Singapore tax treaties contain anti-treaty shopping provisions that would render ineffective any structure set up solely to derive tax benefits.

Local branch

A branch of a foreign corporation is regarded as constituting a part of the same legal entity as its head office. As the Singapore branch normally is managed and controlled out of its foreign head office, most Singapore branches are

regarded as non-residents of Singapore for tax purposes. This is on the premise that the board meetings of the foreign entity are held outside Singapore. From a Singapore income tax perspective, a branch of a foreign corporation generally is taxed no differently from a subsidiary company. There is usually no difference in the tax rates or variation in the methodology for computing the taxable profits for a branch and a subsidiary company.

As an investment vehicle, there are some inherent tax disadvantages in a Singapore branch, compared to a local company. The foreign income exemption provisions mentioned earlier are not available to a non-resident Singapore branch. Additionally, a non-resident entity cannot take advantage of the tax benefits and concessions accorded under Singapore's tax treaties, which have been concluded with more than 75 countries for double taxation relief. The non-resident entity also does not qualify for the unilateral tax relief (UTR) provisions under the ITA that would relieve qualifying foreign income from Singapore taxation.

Registered business trust

Business trusts (BT) are businesses structured in the form of trusts. A BT is created by a trust deed under which the trustee has legal ownership of the assets and manages the assets for the benefit of the beneficiaries of the BT. Unlike a company, a BT is not a separate legal entity. Unlike a private or unit trust, a BT actively runs and operates a business or trade. Under the Business Trusts Act (BTA), a BT must be run by a single responsible entity, known as the trustee-manager, which must be incorporated in Singapore.

Unlike companies, BTs are not restricted to paying dividends out of accounting profits; they can make distributions to their investors out of operating cash flow.

For income tax purposes, a BT is treated like a company. The income of a BT (registered under the BTA) is taxable at the trustee level, and the BT is treated like a company under the one-tier system. The beneficiaries or unit holders of the BT are not taxed on their shares of the statutory income (of the trustee) to which they are beneficially entitled. The beneficiaries or unit holders are not allowed any credit for the tax paid by the trustee of the registered business trust. Group relief provisions only apply to a BT that is established in Singapore, has trust deeds executed in Singapore, and is governed by Singapore law.

Partnership

A partnership is not taxed as an entity. Tax is instead charged at the partner level on the partners' shares of the adjusted income from the partnership. The divisible income is allocated among the partners according to their profit-sharing formula, and capital allowances (also allocated according to a profit-sharing formula) are deducted in arriving at the partners' chargeable income. Where there is a partnership loss, each partner may offset their share of the loss against their respective income from other sources.

Limited liability partnership

A limited liability partnership (LLP) has to be registered under the Limited Liability Partnerships Act. An LLP is regarded as a legal entity separate from the partners and confers limited liability on them. It has perpetual succession, so a change in partners does not affect its existence, rights or liabilities. An LLP is tax-transparent; it is not taxed at the entity level. Tax is chargeable on each partner based on the applicable income tax rate.

Where an LLP partner has unabsorbed capital allowances, industrial building allowances, qualifying donations or trade losses, the amount allowed for set-off against their income from other sources (relevant deductions) is restricted to the amount of their contributed capital.

When the contributed capital of an LLP partner is reduced and the reduction results in the partner's past relevant deductions exceeding the reduced contributed capital, the excess is deemed to be taxable income of the partner.

The admission of a new partner or withdrawal of an existing partner owing to retirement, death or other reasons does not result in a cessation of the business of all the partners, unless there is evidence of a change in the business carried on through the LLP.

Limited partnership

Limited partnerships (LP) in Singapore are governed by the Limited Partnership Act, which was enacted in 2008. The LP is a business structure that functions as a partnership with no separate legal personality from its partners. LPs generally comprise at least one general partner with unlimited liability and one or more limited partners that enjoy limited liability.

For Singapore tax purposes, an LP is accorded tax-transparency treatment like LLPs and general partnerships. The tax treatment applicable to the limited partners of an LP is the same that applies to partners of an LLP. The general partners of an LP are treated for tax purposes in the same way as partners of a general partnership.

Any of the general partners of an LP may assume the role of precedent partner for the purposes of notice of chargeability and filing of tax returns.

Where an LP is dissolved, the general partner(s) of the LP must wind up its affairs, unless a court orders otherwise.

Other vehicles

An unincorporated joint venture that is not a partnership is not a legal person, so it is not taxable in its own right. Tax is instead charged to the respective joint venturers on their shares of the tax-adjusted income from the joint venture.

Trust income of a unit trust is treated as the trustees' income and is subject to tax at the normal corporate tax rate. Unit holders declare their share of the trust income and obtain a credit on tax paid at the trust level.

Tax concessions are available to approved unit trusts (AUT) and designated unit trusts (DUT):

- For an AUT, only 10 percent of the gains derived from the disposal of securities is subject to tax, and the remaining 90 percent is tax-exempt.
- For a DUT, specified income and gains are tax-exempt at the trust level. Specified income and gains include gains from the sale of securities, interest income (other than interest on which Singapore tax may have been deducted at source) and foreign dividends received in Singapore.

Singapore also has one of the world's most effective tax regimes for real estate investment trusts (REIT). In Singapore, a REIT is established as a unit trust and is regulated by the Monetary Authority of Singapore. The REIT is managed by an asset manager and administered by a trustee, both of which are set up as companies limited by shares. Generally, REITs in Singapore are listed on the Singapore exchange and their units are freely tradable.

A number of tax concessions may be granted to REITs. They include:

- Tax transparency treatment applies at the trustee level where the trustee is not assessed tax on the REIT's taxable income that is distributed to the unit holders.
- REIT distributions to unit holders who are individuals are tax-exempt, unless they hold their units through a Singapore partnership.
- Foreign-source income may be exempt from tax in Singapore.
- The WHT rate for non-resident institutional investors is reduced to 10 percent for distributions made from 18 February 2005 to 31 March 2020.
- GST remission for claim of GST incurred on business expenses until 31 March 2020.

Choice of acquisition funding

A transaction can be financed through shares, loan notes, cash, asset swaps or a combination of different types of consideration.

Debt

Where the consideration is in the form of cash, the acquirer may have to raise external borrowing. Incidental costs of raising loan financing, such as legal fees, rating fees and guarantee fees, are normally viewed as non-deductible capital costs. Exceptions arise where such expenditure is integral to the operations of a trade or business, thereby qualifying as deductible revenue expenditure, as in the case of banks and other financial institutions.

'Qualifying debt securities' (QDS) are defined as Singapore government securities, bonds, notes, commercial papers, treasury bills, certificates of deposit and Islamic debt securities issued by qualifying entities. The main tax concessions for QDS are as follows:

- tax exemption on interest, discount, prepayment fee, redemption premium and break cost from any QDS, such other income directly attributable to QDS, and any amount payable from any Islamic debt securities that are QDS (collectively 'QDS income') that is derived by non-resident person, subject to qualifying conditions
- concessionary tax rate of 10 percent on QDS income derived by companies and bodies of persons, subject to qualifying conditions.

The tax exemption and concessionary tax rate will apply to QDS issued until 31 December 2018.

In addition, current Singapore tax legislation provides for tax exemption on interest, discount, prepayment fee, redemption premium and break cost from any debt securities, such other income directly attributable to debt securities and any amount payable from any Islamic debt securities, where the income is derived from Singapore by any individual, provided such income is not derived through a partnership in Singapore or from carrying on a trade, business or profession.

Deductibility of interest

Interest expense is tax-deductible where it is incurred on capital employed in acquiring income. Therefore, interest cost is deductible where it is incurred in connection with amounts borrowed and used as working capital or to fund capital expenditure used to generate income for the company. As such, interest incurred on borrowings to acquire either shares of a company or the trade and assets of a company should be tax-deductible. See, however, comments later in the report.

While there are no thin capitalization rules in Singapore, certain restrictions may limit the deductibility of interest.

The IRAS takes the view that each investment asset (including an intercompany advance) constitutes a separate source of income. Therefore, to the extent that the investment or asset has never produced income (i.e. non-income-producing investments and assets), any interest expense that is incurred in funding or financing the asset is not deductible for income tax purposes.

Where it is not possible to trace the usage of interest-bearing funds, the IRAS uses an asset-based formula to attribute the interest expense to the non-income-producing investment. Based on this formula, the interest attributable to the non-income-producing investment is disallowed for tax purposes. Non-income-producing investments include interest-free loans and equity investments that have never yielded dividend income.

Withholding tax on debt

Interest paid to any person who is not a tax resident of Singapore is subject to Singapore WHT at the rate of 15 percent of the gross payment. The WHT applies provided that the interest is not derived by the non-resident person from any trade, business, profession or vocation carried on or exercised by the non-resident in Singapore and that the interest is not effectively connected with any permanent establishment of that non-resident person in Singapore. The rate of WHT may be reduced by a tax treaty between Singapore and the country of the recipient.

Where interest is payable on a loan for a purpose that promotes or enhances economic and technological development in Singapore, an application may be made to the Minister for Finance for the payment of the interest to be exempted from WHT.

Checklist for debt funding

- Consider whether the level of non-income-producing assets limits the deduction of interest expenses.
- Consider whether WHT of 15 percent on interest may be reduced or eliminated by structuring loans from the relevant treaty country.

Islamic financing

Although Islamic finance has existed for several decades, this alternative has only recently attracted global attention.

The basic principle of Islamic banking is the prohibition or absence of interest. Given the nature and structure of Islamic financial products, they tend to attract more tax than conventional financial products. Transactions that involve financing of real estate in compliance with Islamic law would typically be exposed to stamp duties twice under Singapore tax law because there would be two transfers of legal title to the property asset.

To encourage the growth of Islamic financing, the following tax concessions have been introduced:

- The imposition of double stamp duties in respect of qualifying Islamic financing arrangements involving real estate is waived, subject to certain prescribed conditions.
- The concessionary tax treatment under the QDS scheme is extended to Islamic debt securities. Under this treatment, any amount payable from any Islamic debt securities that are QDS and issued from 1 January 2005 to 31 December 2018 may be tax-exempt or taxed at 10 percent, subject to certain conditions.
- Any amount payable on the Islamic debt securities derived by individuals on and after 1 January 2005 is exempt from Singapore tax, provided the income is not derived through a partnership in Singapore or from carrying on a trade, business or profession.

Equity

Incidental costs of raising equity finance, such as legal and professional fees, are normally regarded as capital in nature. As such, they are not tax-deductible unless they qualify for double tax deduction under the M&A scheme outlined in the earlier section.

The registration fee for a limited liability company is SGD300, regardless of the size or currency of the share capital. A Singapore company is no longer required to have an authorized capital.

There is no WHT on dividends paid by a Singapore company. Dividends paid by a Singapore-resident company are tax-exempt in Singapore.

Profits arising from share swap transactions are not normally subject to income tax under restructuring arrangements. Stamp duty is generally payable in a share swap transaction unless the conditions for intragroup exemption (discussed earlier) are satisfied.

Hybrids

A commonly used hybrid is the redeemable preference share (RPS). An RPS is generally treated as a form of equity for tax purposes even though certain RPSs may be treated as debt instruments for accounting purposes. The use of an RPS allows for flexibility of redemption, which is generally regarded as a repayment of capital. Recently, the IRAS has also issued guidelines to determine the characterization of hybrid instruments and accordingly the tax treatment. As the characterization would be determined based on facts and circumstances and a combination of factors, an advance ruling may be sought from the IRAS in order to obtain certainty before issuance of the hybrid instrument.

Discounted securities

For tax purposes, the issuer of discounted securities can claim deduction for the discount as a borrowing cost. However, the discount is only allowed as a deduction when it is incurred on the maturity or redemption of the debt securities.

Deferred settlement

The buyer is not allowed a deduction for deferred consideration for an acquisition because the payment is regarded as capital in nature. This treatment applies even where the deferred consideration can only be determined at a later date on the basis of the post-acquisition performance of the business.

Depending on the seller's tax status, the seller is taxed on deferred consideration where the gains from the sale of the business or shares are regarded as trading gains.

Other considerations

Concerns of the seller

Where the seller is likely to be taxed on gains arising from the transfer, it is more tax-efficient for the seller to realize part of the value of their investment by the payment of a pre-sale dividend, which is tax-exempt.

Amalgamations

Under the Companies Act (Cap. 50), Singapore provides for an effective and efficient statutory form of merger and amalgamation process, which allows:

- two or more companies to merge and continue as one company without involving the courts, provided the companies are solvent
- a parent and a wholly owned subsidiary to merge or two or more wholly owned subsidiaries to merge (i.e. a short-form amalgamation).

A new tax framework was implemented for amalgamating companies in a qualifying corporate amalgamation that takes effect on and after 22 January 2009.

The new tax framework only applies to a 'qualifying amalgamation', which is defined as:

- any amalgamation of companies where the notice under section 215F of the Companies Act (Cap. 50) or a certificate of approval under section 14a of the Banking Act (Cap. 19) is issued on or after 22 January 2009
- other amalgamations of companies approved by the Minister (or delegate).

For the new tax framework to apply, the amalgamated company must elect in writing within 90 days from the date of the amalgamation to avail itself of the tax treatment for a qualifying amalgamation. On election, the trade and business of all the amalgamating companies is treated as carried on in Singapore by the amalgamated company from the date of amalgamation.

The legislation for the tax framework for qualifying corporate amalgamation includes the following provisions:

- An amalgamated company cannot claim a tax deduction for interest and borrowing costs incurred on any borrowings made by an amalgamating company to acquire shares in another amalgamating company where the two companies concerned subsequently amalgamate.
- Where the property transferred is trading stock for both the amalgamated and amalgamating companies, the amalgamated company is deemed to have taken over the trading stock at net book value and the amalgamated company. Consequently, the cost of the stock claimable by the amalgamated company in computing its gains is the net book value of the stock taken over at the point of amalgamation.
- Alternatively, the amalgamation company can elect to take over the stock at fair value. In this case, the amalgamated company can fully deduct the fair value and the amalgamating company is taxed on the difference between fair value and net book value.
- Where the property transferred is trading stock of the amalgamating company but a capital asset to the amalgamated company, the amalgamating company is

regarded as having sold the property in the open market on the date of amalgamation.

- Where the property transferred is not a trading stock of the amalgamating company but is trading stock of the amalgamated company, the purchase consideration of the amalgamated company is taken as the market value on the date of amalgamation or actual amount paid, whichever is the lower.
- Where the amalgamating company ceases to exist on amalgamation, the amalgamated company can deduct the impairment loss or the amount of bad debts written off in respect of the trade debts taken over (from the amalgamating company). Similarly, where the amalgamating company has been allowed a deduction in respect of any debt written off or impairment loss, any such debt recovered subsequently is taxable for the amalgamated company.
- Where capital allowances have been made to properties transferred from the amalgamating company to the amalgamated company, the capital allowances continue to be made to the amalgamated company as if no transfer had taken place.
- Where the amalgamating company has capital allowance, donation or loss remaining unused at the date of amalgamation, the amalgamated company may take over those items and use them against its assessable income, provided the amalgamating company was carrying on a trade up to the date of amalgamation and the amalgamated company continues to carry on the same trade or business as that carried on by the amalgamating company immediately before the amalgamation.
- Where any of the amalgamating companies have opted to adopt Financial Reporting Standards (FRS) 39 for tax purposes, the amalgamated company cannot opt out of applying FRS 39. Where the amalgamating company has opted out of FRS 39 for tax purposes, the amalgamated company can maintain the same status unless it opts to adopt the FRS 39 tax treatment.
- Where any of the amalgamating companies ceases to exist on amalgamation, the amalgamated company assumes all liabilities and obligations of the amalgamating companies.

Group relief/consolidation

Subject to meeting the requisite conditions, qualifying group companies may transfer current YA unabsorbed capital allowances, current-year losses and unabsorbed approved donations to other group member companies. For the purpose of the group relief system, the primary test (among other requirements) is that a group must consist of a Singapore-incorporated company and its Singapore-incorporated group members. Two Singapore-incorporated companies are members of the same group where:

- at least 75 percent of the ordinary share capital in one company is beneficially held, directly or indirectly, by the other
- at least 75 percent of the ordinary share capital in each of the two companies is beneficially held, directly or indirectly, by a third Singapore-incorporated company (i.e. the relevant holding company).

Transfer pricing

The IRAS has issued several circulars on transfer pricing and advance pricing agreements (APA). Singapore transfer pricing guidance is similar to the transfer pricing principles of the Organisation for Economic Co-operation and Development (OECD). The IRAS has adopted the arm's length principle as the standard and expects all related-party transactions to be conducted on an arm's length basis.

Hence, where interest is not charged on a related loan between Singapore companies, the IRAS restricts the claim for interest deduction by the lender and does not impute interest income to reduce compliance cost since the loans are domestic. As of 1 January 2011, the IRAS requires all cross-border loans to be made at arm's length terms.

With effect from YA 2015, transfer pricing documentation should be prepared and maintained on a contemporaneous basis for cross-border related party transactions unless otherwise exempted. Otherwise, there may be penalties for not complying with the recordkeeping requirements.

Dual residency

There is no advantage in establishing a dual resident company because the IRAS does not recognize such status.

Foreign investments of a local target company

As Singapore has adopted a territorial basis of taxation, tax is levied on income accruing in or derived from Singapore. Foreign-sourced income is not taxable in Singapore unless it is received or deemed to be received in Singapore under local tax legislation. Hence, dividend income from foreign investments is not taxed in Singapore unless it is remitted or deemed remitted to Singapore.

An income tax exemption is still generally granted to all persons resident in Singapore on their specified foreign income — namely, dividends, branch profits and service income received in Singapore on or after 1 June 2003 — provided the following conditions are met:

- In the year the income is received in Singapore, the headline tax rate of the foreign jurisdiction from which the income is received is at least 15 percent.
- The specified foreign income has been subjected to tax in the foreign jurisdiction from which it was received.
- The IRAS is satisfied that the exemption would be beneficial to the Singapore-resident person.

Where the specified foreign income was exempted from overseas tax in the relevant foreign jurisdiction by virtue of a

tax incentive awarded for substantive business operations undertaken in the foreign jurisdiction, the income is deemed to have been taxed in that foreign jurisdiction.

Where the above conditions are not met, the specified foreign income is taxed on remittance under normal tax rules. Where the specified foreign income is also subject to tax in the foreign jurisdiction, double taxation may be relieved through Singapore's unilateral tax credit system and through its many bilateral tax treaties.

With effect from YA 2012, foreign tax credits can be claimed for foreign tax suffered under a foreign tax credit pooling system, which is based on the lower of the aggregate foreign taxes paid or the aggregate Singapore tax payable in the pooled foreign income.

Comparison of asset and share purchases

Advantages of asset purchases

- The purchase price of qualifying assets (or a proportion) may be depreciated for tax purposes in the form of capital allowances.
- Liabilities and business risks of the vendor company are not transferred.
- Possible to acquire only certain parts of a business.
- Interest is deductible where incurred to fund the acquisition of plant, equipment and other assets that will be used in the trade or business.

Disadvantages of asset purchases

- Possible clawback of capital allowances claimed by the vendor in the form of a balancing charge.
- Higher stamp duties on the transfer of real or immovable properties.
- Benefits of any losses or unused tax attributes remain in the target company.

Advantages of share purchases

- No balancing charges or clawbacks for the vendor.
- Purchaser may be able to use and benefit from tax losses, other unused tax attributes and tax incentives of the company acquired, subject to conditions.
- Lower stamp duties payable on the transfer of shares, compared with real or immovable property.
- Eligible for M&A allowance and stamp duty relief under the M&A scheme, subject to conditions.

Disadvantages of share purchases

- Purchaser may acquire historical tax and other liabilities.
- No deduction or depreciation allowances (capital allowances) are available for the purchase cost of shares.
- Interest incurred to fund the acquisition of shares could be restricted.

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