Tax Alert

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Tax perspectives on the re-domiciliation of companies to Singapore

Background

The Companies (Amendment) Bill 2017 (passed on 10 March 2017) introduced an inward re-domiciliation regime in Singapore to increase Singapore's competitiveness as an international business hub. Under the regime, a foreign corporate entity (FCE) is allowed to transfer its registration to Singapore. Once re-domiciled, the FCE would become a Singapore company and be required to comply with the provisions of the Companies Act.

Requirements for re-domiciliation

The original jurisdiction of the FCE must permit re-domiciliation to another jurisdiction, and the FCE must be able to adapt its legal structure to become a company limited by shares under the Companies Act.

The FCE must also satisfy at least two of the following criteria at the end of the 2 financial years immediately preceding its application:

- Revenue exceeding S$10 million
- Total assets exceeding S$10 million
- 50 employees

The legislation retains a general power to refuse or revoke the re-domiciliation of a FCE if the nature and purpose of the re-domiciliation are illegal, in conflict with the interest of Singapore, or in the event of non-compliance with the relevant criteria.

Singapore tax implications

The Ministry of Finance (MOF) recently issued the draft Income Tax (Amendment) Bill 2017 for public consultation, which includes the proposed tax framework for companies re-domiciled in Singapore.

The proposed tax treatment set out under the draft legislation is only applicable to an FCE if it has not carried on any trade or business in Singapore before the date of re-domiciliation. The provisions are broadly as follows:

- **Capital Allowances** – Claimable on qualifying plant and machinery based on the lower of net book value and market value at the time of re-domiciliation.
- **Writing Down Allowances** – Claimable on qualifying Intellectual Property Rights based on the lower of acquisition cost (less accumulated amortisation and impairment) and open market value at the time of re-domiciliation.
- **Bad Debts** – No deduction for bad debts written off in respect of debts incurred before the date of re-domiciliation. Likewise, bad debts written off prior to re-domiciliation which are recovered would not be taxable.
- **Trading Stock** – Will be valued at the lower of cost or net realisable value on the date of re-domiciliation for the purpose of tax deductions.
- **Expenses incurred prior to re-domiciliation** – No deduction for expenses incurred before re-domiciliation for which relief from tax was given in another jurisdiction. A deduction should be available in respect of the following costs incurred solely for the purposes of a trade in Singapore which was not carried out prior to the date of re-domiciliation: IP protection costs, R&D costs, renovation and refurbishment costs, qualifying design expenditure and pre-trading expenditure.
- **Relief for Exit Taxes** – Following re-domiciliation, the original place of incorporation of the FCE may levy taxes on income, which is also subject to tax in Singapore. For example, an exit tax on unrealised profits which are subsequently taxed in Singapore. In this instance, a credit may be available against any additional tax arising, subject to conditions and approval by the Finance Minister.

It should be noted that the tax legislation as currently drafted is not final and may be subjected to changes following the feedback received by the MOF.

An international perspective

There are three key themes which are relevant in considering the impact of the new regime:

- The majority of the countries which allow for re-domiciliation are generally regarded as tax havens.
- Most other countries have exit rules which deem a migration and/or change of residency as an effective disposal of assets.
- The BEPS rules will affect low-substance migrations that are designed to take advantage of low-tax jurisdictions.

Our key observations of the proposed changes in the Singapore rules against the above background are:

- The existence of exit tax rules in many countries may limit the range of companies which are able to take advantage of the ability to re-domicile in Singapore, unless the foreign tax paid is available as a tax credit in Singapore.
- The thrust of these proposals could be to attract substantive companies which are set up in the Cayman Islands or other tax havens to re-settle in Singapore. This is similar to how the S-VACC tends to attract fund managers who have, or are, set up in Cayman Islands rather than those planning a set up in Ireland or Luxembourg.
- Among companies which hold intellectual property, re-domiciliation in Singapore might be seen to be sensible from an overall BEPS perspective. This is because the overall business environment, taxation regime and the substance requirements in Singapore are more consistent with global standards. It might also be a useful alternative for tax haven companies which are impacted by the inclusion of their country on the EU Blacklist.

Opportunities

In summary, the proposed re-domiciliation regime would be suitable for:

- Companies wishing to benefit from a more stable political and business infrastructure, or a more favourable tax and regulatory environment whilst still retaining their corporate history and branding.
- Companies with a large portfolio of intellectual property.
- Corporate groups looking to restructure in the light of greater tax transparency and BEPS developments.
- Companies wishing to align their domicile with their shareholders or operational base in Singapore.
- Opportunities to refresh tax basis for tangible and intangible assets.

How we can help

As a committed tax advisor to our clients, we welcome any opportunity to discuss the relevance of the above matters to your business.

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