2016 Tax Updates

Singapore

1. The BEPS Project[1]

The Base Erosion and Profit Shifting ("**BEPS**") project commenced in 2013 and the final report on the measures to combat BEPS was released in 2015. In June 2016, the Ministry of Finance announced that Singapore will be joining the inclusive framework for the global implementation of the BEPS Project as a BEPS Associate. In this capacity, Singapore has committed to implementing the four BEPS minimum standards in the areas of:

(i) Countering harmful tax practices (BEPS Action 5)

Singapore will continue to use tax incentives to promote the growth of its economy. The emphasis will continue to be on anchoring substantive business operations in Singapore. Existing tax incentive regimes are reviewed regularly and left to expire or revised depending on their relevance and competitiveness.

(ii) Preventing tax treaty abuse (BEPS Action 6)

Singapore is part of an Ad Hoc Group established to develop a multilateral instrument that will introduce measures against tax treaty abuse and countries that sign this multilateral instrument will adopt the measures in their tax treaties. The Ad Hoc Group aims to conclude its work and open the multilateral instrument for signature by 31 December 2016.

(iii) Country-by-Country Reporting ("**CbCR**") for transfer pricing documentation (BEPS Action 13)

Singapore will implement CbCR for financial years beginning on or after 1 January 2017. The CbCR will apply to multinational enterprises whose ultimate parent entities are in Singapore and whose group turnover exceed S$ 1.125 billion. We will elaborate on the CbCR developments in Singapore subsequently in this Tax Update.

(iv) Improvements in cross-border tax dispute resolution (BEPS Action 14)

Singapore will work with other countries to monitor the implementation of minimum standards on dispute resolution mechanisms developed under the BEPS project. This is to ensure that taxpayers have access to effective and expedient dispute resolution mechanisms under Singapore's bilateral tax treaties.

www.bakermckenzie.com

For further information please contact

Dawn Quek
Tel: +65 6434 2599
dawn.quek@bakermckenzie.com

Samantha Tan
Tel: +65 6434 2696
samantha.tan@bakermckenzie.com

Zenzel Chew
Tel: +65 6434 2593
zenzel.chew@bakermckenzie.com

[1] Please see our Client Alert titled "*Singapore Joins International Framework for Implementing BEPS*", released in June 2016, for more detailed comments on the update.

We discuss below other developments in Singapore relating to international tax cooperation.

1.1 Automatic Exchange of Information ("**AEOI**")

Singapore has introduced legislation to implement the AEOI under the Common Reporting Standard ("**CRS**"). As at the time of writing, Singapore has entered into the following bilateral Competent Authority Agreements ("**CAA**") for AEOI purposes with the following countries:

(i) Australia;

(ii) United Kingdom;

(iii) Japan;

(iv) Republic of Korea;

(v) South Africa; and

(vi) Norway.

In addition, there are draft amendments proposed to be made to the Singapore Income Tax Act, which will confer upon the Comptroller additional powers to request for information, and will increase penalties for the failure of a taxpayer to comply with such requests.

1.2 Country-by-Country Reporting

The Inland Revenue Authority of Singapore ("**IRAS**") has recently held a public consultation with Singapore-headquartered multinational enterprises ("**MNEs**") further to the implementation details of CbCR and had released an e-Tax guide following the consultation[2]. The key points of the guide are noted below.

1.2.1 Thresholds

MNEs will be required to submit a CbC report in relation to a financial year, where:

(i) the MNE group is a Singapore MNE group;

(ii) the consolidated group revenue in the preceding financial year is at least S$ 1,125 million; and

(iii) the MNE group has subsidiaries or operations in at least one foreign jurisdiction.

1.2.2 Timing

The ultimate parent entity, which is the MNE's Reporting Entity for the purposes of CbCR, will be required to submit a CbC report within 12 months from the last day of the ultimate parent entity's financial year.

1.2.3 Disclosures

IRAS will exchange the CbC reports with jurisdictions with which Singapore has entered into agreement for automatic exchange of CbC reports, having established the following conditions:

[2] Please see IRAS' e-Tax guide on Country-by-Country Reporting, released on 10 October 2016, for implementation details. The guide can be accessed here: https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax_Guides/etaxguide_Income%20Tax_Country-by-Country%20Reporting.pdf.

(i) these jurisdictions have a strong rule of law and can ensure the confidentiality of the information exchanged and prevent its unauthorised use; and

(ii) there must be reciprocity in terms of the information exchanged.

1.2.4 Forms

Submissions of CbC reports to the Comptroller must be done electronically in accordance with the format prescribed by IRAS.

1.2.5 Level of detail

A CbCR requires aggregate tax jurisdiction-wide information relating to the global allocation of the income, taxes paid, and certain indicators of the location of economic activity among tax jurisdictions in which the reporting MNE group operates.

It also requires a listing of all the entities (including permanent establishments) for which financial information is reported, including the tax jurisdiction of incorporation, where different from the tax jurisdiction of residence, as well as the nature of the main business activities carried out.

2. Other Singapore Income Tax Updates

We set out below a few key updates to Singapore's tax regime. Many of these changes were announced during the Singapore 2016 Budget.

The 2016 Budget was delivered by the Finance Minister on 24 March 2016. It introduced piecemeal changes to address concerns about a slowing economy, as Singapore embarks on a journey to transform its economy through innovation and enterprise. We set out the key updates below.

2.1 Key Corporate Tax Changes

2.1.1 Changes to Section 19B Writing-Down Allowance

Currently, under Section 19B of the *Income Tax Act* ("**ITA**"), writing-down allowances ("**WDA**") are available on capital expenditure incurred to acquire qualifying intellectual property rights ("**IPRs**"). The writing-down period is over 5 years.

Following the 2016 Budget, taxpayers may elect for the WDA to be claimed over a period of 5, 10, or 15 years for qualifying IPR acquisitions made within YA 2017 to YA 2020. The election must be made at the point of submitting the tax return of the Year of Assessment ("**YA**") relating to the basis period in which the qualifying cost is first incurred. Once made, the election is irrevocable.

An anti-avoidance mechanism for IPR transfers will also be introduced, which will empower the Comptroller of Income Tax to make specified adjustments to the transacted price of the IPR, if the IPR is not transacted at open market value ("**OMV**").

2.1.2 Automation Support Package - Investment Allowance

As part of the initiative to drive productivity and encourage companies to automate, the Government has introduced the Automation Support Package ("**ASP**"). The ASP is administered by SPRING Singapore.

Part of the ASP includes a 100% investment allowance ("**IA**") on the amount of approved capital expenditure (net of grants) for qualifying projects. The approved capital expenditure is capped at S$10 million per project. The

proposed IA is in addition to the existing capital allowance for plant and machinery.

2.2 Changes to incentives schemes

2.2.1 Extension of Finance & Treasury Centre Scheme

Increasingly, MNEs are establishing or expanding their strategic Regional Treasury Centres ("**RTCs**") to enhance operational efficiency, mitigate financial risks and optimize financing costs and capital.

With the recent enhancements to the Finance & Treasury Centre ("**FTC**") scheme, Singapore presents itself as a favourable destination for MNEs which are looking to restructure their existing financing structures.

Previously, the FTC scheme provided a 10% concessionary tax rate on qualifying income of the FTC, as well as withholding tax exemptions on certain payments (e.g., interest) made by the FTC to non-resident approved network companies ("**ANCs**"). The scheme was due to be phased out on 31 March 2016.

During the Singapore 2016 Budget, the Minister for Finance announced that the scheme would be extended and certain enhancements to the FTC scheme would be introduced. On 1 June 2016, the Economic Development Board ("**EDB**") released further details on these enhancements. The key changes are summarised below.

Feature	**Before 25 March 2016**	**From 25 March 2016 onwards**
Concessionary tax rate	10% on all qualifying income.	8% on all qualifying income.
Withholding tax exemption	Withholding tax exemption granted to the FTC on certain payments made to non-residents, e.g., interest on bonds held by persons who are not tax resident in Singapore.	Existing exemption still applicable. In addition, exemption enhanced to include interest on deposits placed with the FTC by non-resident ANCs (subject to conditions).
Substantive requirements	To qualify for the scheme, the EDB will typically impose minimum investment commitment levels.	The EDB has stated that substantive requirements will increase.
Sunset date	31 March 2016	31 March 2021

The enhancements to the FTC scheme appear intended to encourage MNEs to set up regional or global treasury / financing centres in Singapore. Cash pooling activities could possibly also fall within the scope of the FTC scheme. These changes should make Singapore more attractive in encouraging MNEs to house global treasury activities in Singapore, particularly if these MNEs already have substantial business operations in Singapore.

2.2.2 Enhancing M&A Scheme

The Mergers and Acquisitions ("**M&A**") scheme was introduced in Budget 2010 to encourage Singapore companies, especially SMEs, to grow through strategic acquisitions.

Previously, under the M&A Scheme, tax allowance of 25% was granted for up to S$20 million of the purchase consideration paid for qualifying M&A

deals per YA, while stamp duty relief was granted for up to S$20 million of the purchase consideration paid for qualifying M&A deals per YA.

Following Budget 2016, the existing cap will be increased from S$20 million to S$40 million such that:

(i) Tax allowance of 25% will be granted for up to S$40 million of consideration paid for qualifying M&A deals per YA; and

(ii) Stamp duty relief will be granted for up to S$40 million of consideration paid for qualifying M&A deals per financial year.

This change will take effect for qualifying M&A deals made from 1 April 2016 to 31 March 2020.

2.2.3 Extension of 13Z Exemption

To provide upfront certainty to companies in their corporate restructuring, the tax exemption for companies' gains on qualifying disposals of equity investments under Section 13Z will be extended till 31 May 2022. All conditions of the scheme remain the same.

2.2.4 Extension of Double Tax Deduction for Internationalisation Scheme

The Double Tax Deduction ("**DTD**") for Internationalisation Scheme aims to encourage Singapore companies to expand overseas and was introduced in Budget 2011.

Following the 2016 Budget, the DTD for Internationalisation Scheme will be extended for another four years from 1 April 2016 to 31 March 2020. The existing automatic DTD on up to S$100,000 qualifying expenses will also be extended to qualifying expenditure incurred during this same period. All other conditions of the scheme remain the same.

3. GST Updates

Similar to the previous year, 2016 has been a relatively quiet year from the GST front. As such, we have identified below material updates in IRAS's administrative practice.

3.1 New IRAS Guidelines on Determining the Belonging Status of Supplier and Customer

On 25 May 2016, IRAS released an e-Tax guide setting out general administrative rules for determining where a supplier or a recipient of services belongs.

By way of background, the place where a supplier of services belongs will determine if a supply of services is made in Singapore and this may have consequent GST registration implications for the supplier. The place where a recipient of services belongs will affect whether the supply of services can qualify for zero-rating.

Under Section 15 of the *Goods and Services Tax Act* ("**GSTA**"), a supplier of services belongs in Singapore if the supplier:

(a) has a business establishment ("**BE**") or a fixed establishment ("**FE**") in Singapore, and no BE or FE outside Singapore;
(b) has no establishment in any country but his usual place of residence is Singapore; or
(c) has establishments in Singapore and outside Singapore and the establishment of his which is most directly concerned with the supply is in Singapore.

The key points in IRAS's e-Tax Guide are as follows:

(i) A supplier will be treated as having a BE in a country if its main seat of economic activity is in the country. This will depend on various factors including where essential decisions concerning general management of business are made, where board meetings are held, and where the registered address of the business is located.

(ii) IRAS will regard a service provider as an agent only if the overseas person does not have his own human and technical resources to carry out his business activities. A service provider will be treated as a BE of an overseas person if the service provider is a dependent agent based on the economic reality, function and substance of the arrangement.

(iii) A supplier would have a FE in a country if it has both the human and technical resources necessary to provide the particular services on a permanent basis. Generally, IRAS will presume that technical resources are present where human resources are present. IRAS has indicated that there would be continuity and permanency of the human and technical resources if, amongst other conditions, such resources are present in the relevant country for an aggregate period of more than 183 days in any 12-month period.

(iv) To determine the BE or FE that is most directly concerned with a supply, a supplier may use proxies such as revenue contribution, costs incurred, and time spent in relation to that supply. Generally, where the BE or FE in Singapore performs more than 50% of that particular service based on the proxies, it would be most directly concerned with that supply.

(v) The above guidelines may also apply to determine where a customer belongs. However, it should be noted that the human and technical resources necessary to provide services may be different from those necessary to receive services.

4. Recent Court Decisions on Tax

4.1 Discovery process in judicial review of the Comptroller's Exchange of Information decision

The background to the case of *AXY and others v Comptroller of Income Tax* [2016] 1 SLR 615 was the National Tax Service of the Republic of Korea had issued an EOI request ("**NTS's Request**") to the Comptroller for information on certain Korean taxpayers' banking activities in Singapore, specifically, information on bank accounts held by certain Singapore companies in Singapore.

The Comptroller complied with NTS's Request and issued notices to various banks in Singapore to obtain the requested information. The taxpayers sought leave to apply for judicial review of the Comptroller's decision. The specific issue in this case related to discovery proceedings brought in relation to the following documents:

(i) the NTS's Request itself;

(ii) the correspondence between the Comptroller and the Korean tax authorities;

(iii) the notices issued to the banks;

(iv) documents relating to the investigations in Korea;

(v) the income tax returns of the Singapore companies; and

(vi) the documents relating to the internal procedures of the Comptroller's EOI review committee.

The judge in *AXY* allowed the discovery of documents *(i)*, *(ii)* and *(iii)*, broadly on the grounds that the information contained in these documents related to the Comptroller's decision-making process, and would be relevant in reviewing whether the Comptroller had exercised its discretion independently.

The judge, however, rejected the discovery of documents *(iv)*, *(v)* and *(vi)*. Document *(iv)* was rejected on the grounds that it related to the factual accuracy of the NTS's Request, which the court was not required to substantively review. Document *(v)* was rejected as it was neither material nor necessary for reviewing whether the Comptroller's decision was irrational, illegal or procedurally improper. Document *(vi)* was rejected as it related to the Comptroller's internal procedures which may be very sensitive in nature, and in any case the document was not relied upon by the Comptroller and appeared to be a fishing expedition on the taxpayers' part.

This case should be considered in light of Section 105HA of the ITA, which was effective after the proceedings in *AXY* were initiated. Under Section 105HA, EOI requests made by foreign authorities and related documents will not be subject to discovery in judicial review proceedings if the court is satisfied that the foreign tax authority has requested the Comptroller to keep the document confidential.

4.2 Stamp duty implications of a Japanese "absorption type split"

This was an ancillary issue in the decision by the Singapore High Court in *JX Holdings Inc and another v Singapore Airlines Ltd* [2016] SGHC 212. The applicant (JX Holdings Inc) sought, *inter alia*, a rectification of the defendant's register of members. The basis of the application was that JX Holdings Inc was the ultimate successor in title to certain shares in Singapore Airlines Ltd (the defendant) ("**SIA Shares"**) which were initially purchased by a Japanese-incorporated company in 1986 ("**KOL**"). KOL underwent multiple corporate restructurings, and the SIA Shares were eventually vested in Nippon Oil Corporation ("**NOC**"). NOC subsequently underwent an "absorption-type split" under the Japanese Companies Act, whereby rights and obligations, including ownership of the SIA Shares were passed on to JX Holding Inc.

The Singapore High Court held in favour of JX Holding Inc. Section 130(1) of the Singapore Companies Act prohibited the registration of a transfer of shares unless effected through a proper instrument or transfer or the shares were transmitted by operation of law. On the facts, the SIA Shares were transmitted by operation of law within the meaning of Section 130(1).

This decision has an impact on stamp duty because the execution of an instrument of transfer of Singapore shares would attract Singapore stamp duty (unless stamp duty relief / remission is available and obtained), whereas a transmission of Singapore shares would not. In this regard, the judge directed the parties to seek the input of the IRAS, but the position IRAS submitted to the Court was not published in the judgment.