Corporate Tax

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Sandy Bhogal

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CONTENTS

Singapore

Tan Kay Kheng & Tan Shao Tong
WongPartnership LLP

Overview of corporate tax work over last year

The tax practice in WongPartnership LLP is one of the leading tax practices in Singapore. We collaborate with the firm's other practices to holistically provide advice to clients through the entire spectrum of tax-related issues, including tax planning and advice, corporate and international tax, stamp duties, goods and services tax and property tax. We also advise on tax issues arising in debt financing, restructuring, swaps, funds, securitisations and real estate deals. Quite often, these transactions involve novel structures and issues.

Over the past year, we were involved in various significant commercial deals, such as the issuance of US$500 million senior perpetual securities by Parkway Pantai, one of Asia's largest integrated private healthcare groups, as well as the inaugural issuance of women's Livelihood Bonds by Impact Investment Exchange, which is the first "social welfare" bond which can be traded like any other bonds. We have also been active in advising on the nascent area of initial coin offerings and the tax implications arising therefrom.

Key developments affecting corporate tax law and practice

AXY and others v. Comptroller of Income Tax [2018] SGCA 23

This is a May 2018 Singapore Court of Appeal decision which discusses the obligations of the Singapore Comptroller of Income Tax ("Comptroller") under Singapore's exchange of information ("EOI") regime in dealing with requests by foreign tax authorities for protected information from financial institutions. In the High Court, the applicants in *AXY* had applied to commence judicial review of the Comptroller's decision to issue notices to various banks seeking protected information after receiving such a request from a foreign tax authority. The High Court had to determine whether or not the applicants could establish an arguable case of reasonable suspicion that the Comptroller's decision was either illegal or irrational. The High Court Judge held that the applicants had not established an arguable case and dismissed the application to commence judicial review. The applicants then appealed to the Court of Appeal.

The Court of Appeal dismissed the appeal. More crucially, the Court of Appeal also held that in order for the EOI regime to run effectively, the Comptroller must be able to assume the correctness of the information laid before him by the foreign tax authority, and that it is not part of the Comptroller's function, when deciding to accede to an EOI request, to resolve contentious issues of foreign law or reach definitive conclusions as to whether the person of interest is or is not liable to tax in the Requesting State. To hold otherwise would not only render the EOI regime inoperable and impractical but also would run counter to its purpose, which is to facilitate the exchange of information as much as possible.

Transfer pricing

The Inland Revenue Authority of Singapore ("IRAS") endorses the arm's length principle as the standard to determine transfer prices between related parties. Under the arm's length principle, prices between related parties should be equivalent to prices that unrelated parties would have charged in similar circumstances. Methods which are used to determine the appropriate transfer price include the comparable uncontrolled price method, the resale price method, cost plus method, and transactional profit methods such as the transactional profit split method and the transactional net margin method. Taxpayers should prepare and keep contemporaneous transfer pricing documentation to show that their related party transactions are indeed conducted at arm's length. The purpose of preparing transfer pricing documentation is also to provide evidence to IRAS that taxpayers have conducted a thorough evaluation of their compliance with transfer pricing rules and can defend their transfer prices in the event of a transfer pricing audit by the tax authorities.

With effect from Year of Assessment 2019, it is mandatory for certain taxpayers to prepare transfer pricing documentation. Taxpayers who are not required to do so on a mandatory basis are still encouraged to do so to better manage their transfer pricing risks.

Taxpayers who are required under the law to prepare transfer pricing documentation are (a) taxpayers where the gross revenue derived from their trade or business is more than S$10 million for the basis period concerned, or (b) taxpayers where transfer pricing documentation was required to be prepared for the basis period immediately before the basis period concerned. Transfer pricing documentation would include documents providing an overview of the businesses of the group in which the taxpayer is a member and which is relevant to its business operations in Singapore, as well as details of the taxpayer's transactions with its related parties, including functional and transfer pricing analysis. While there is no requirement for taxpayers to submit the transfer pricing documentation when they file their tax returns, they are required to submit them within 30 days upon receipt of a request for such documentation by IRAS. Taxpayers are also required to retain such documentation for a period of at least five years. It should also be noted that if transfer pricing adjustments are made by IRAS following a transfer pricing review or audit, the adjustments are subject to a surcharge of 5%, regardless of whether there is tax payable on the adjustments.

There are notable transactions that are exempt from transfer pricing documentation. For example, taxpayers are exempt from preparing such documentation in the following scenarios:

(a) related party domestic transactions subject to the same tax rate;
(b) related party domestic loans;
(c) routine support services on which a 5% cost mark-up is applied; and
(d) related party transactions not exceeding certain prescribed threshold values.

Carbon tax

Singapore has joined more than 130 countries, including China, Japan and South Korea, in ratifying the Paris Agreement, re-affirming its commitment to address climate change and reduce emissions. With effect from 2019, a carbon tax will be imposed on large direct emitters of greenhouse gases such as power stations. These emitters will be charged S$5 per tonne of greenhouse gas emissions from 2019, and this tax rate will be reviewed by 2023. Such emitters are required under the Carbon Pricing Act to register themselves and prepare emissions reports. The policy objective behind the introduction of a carbon tax is to incentivise companies to improve energy and carbon efficiency. Affected emitters will pay

the carbon tax by buying and surrendering carbon credits corresponding to their greenhouse gas emissions. These carbon credits are bought from the National Environment Agency.

Taxation of virtual currency

The rise in the popularity and use of virtual currency as a medium of exchange is a recent evolution, and tax rules have not been specifically amended or revised to take into account their use and the manner in which virtual currency should be taxed. However, the IRAS has issued guidance on the use of virtual currency. According to the guidance provided by IRAS, businesses that accept virtual currencies as payment of goods and services should record the sale based on the market value of the goods or services; the same applies for businesses which pay for goods or services using virtual currencies. If the market value of such goods and services cannot be determined, the virtual currency exchange rate at the point of the transaction may be used. Tax deductions can also be allowed to businesses that use virtual currency as a medium of exchange.

Additionally, businesses that buy and sell virtual currencies in the ordinary course of business will be taxed on the profit derived from trading in virtual currency. Profits derived by businesses which mine and trade virtual currencies in exchange for money are also subject to tax. Businesses that buy virtual currencies for long-term investment purposes enjoying capital gains from the disposal of these virtual currencies will not be subject to tax as there is no capital gains tax in Singapore. Whether a business is buying virtual currencies in the ordinary course of business or for long-term investment purposes is a question of fact, and IRAS uses the "Badges of Trade" test to determine whether or not a trade exists. These "Badges of Trade" include:

(a) The length of ownership of the asset
The longer the asset is held, the more likely it is regarded as being held for long-term purposes and therefore not with a view to trade.
(b) The frequency of transactions
The higher the frequency of similar transactions, the more likely it is to be found that there is the existence of a trade.
(c) The motive
If the intention is to quickly dispose of the asset at the time of acquisition for a quick profit, it is more likely that there is a trade.
(d) Mode of financing
Significant and/or short-term financing are indicators that there is a trade and that the company does not have the financial ability to hold the asset for a long term.
(e) Nature of the asset being bought/sold
Assets such as immovable property would generally be regarded as being held for a long term, while other types of assets such as commodities would more likely be regarded as the subject of trading.

Adjustments to income tax exemptions applicable to corporates

Singapore has a start-up tax exemption scheme, pursuant to which qualifying start-up corporates can enjoy a 100% exemption on the first S$100,000 of normal chargeable income and a 50% exemption on the next S$200,000 of normal chargeable income. With effect from Year of Assessment 2020, this tax exemption will be adjusted to a 75% exemption on the first S$100,000 of normal chargeable income, and a 50% exemption on the next S$100,000 of normal chargeable income.

In addition, all companies and bodies of persons can qualify for partial tax exemption on 75% of the first S$10,000 of normal chargeable income and 50% of the next S$290,000 of normal chargeable income. With effect from Year of Assessment 2020, this will be adjusted

to 75% of the first S$10,000 of normal chargeable income and 50% of the next S$190,000 of normal chargeable income.

Introduction of a new tax framework for funds which are Singapore Variable Capital Companies ("S-VACCs")

The S-VACC is a new vehicle which is typically used for collective investment schemes and intended to accommodate a variety of traditional and alternative asset classes and investment strategies. Such vehicles are typically used by funds and the Monetary Authority of Singapore is studying the regulatory framework for S-VACCs to further develop and strengthen Singapore's position as a hub for fund management and fund domiciliation. A tax framework for S-VACCs will be introduced. Under this new framework, an S-VACC will be treated as a company and a single entity for tax purposes, and the tax exemptions under sections 13R and 13X of the Singapore Income Tax Act, which are typically utilised by funds structured as companies, trusts or limited partnerships, will also be extended to S-VACCs.

Rationalisation of withholding tax exemptions for the financial sector

Under Singaporean tax law, withholding tax is imposed on interest and certain other payments made by a tax resident or a Singapore permanent establishment. To promote Singapore as a financial hub, there is a range of withholding tax exemptions that apply to financial institutions for certain types of payments.

It was announced in the Singapore Budget Statement 2018 that the withholding tax exemptions for the following types of payments will be reviewed by 31 December 2022:

(a) payments made under cross-currency swap transactions made by Singapore swap counterparties to issuers of Singapore dollar debt securities;
(b) payments made under interest rate or currency swap transactions by financial institutions;
(c) payments made under interest rate or currency swap transactions by the Monetary Authority of Singapore;
(d) specified payments made under securities lending or repurchase agreements by specified institutions;
(e) interest on margin deposits paid by members of approved exchanges for transactions in futures; and
(f) interest on margin deposits paid by members of approved exchanges for spot foreign exchange transactions (other than those involving Singapore dollars).

The year ahead

The implementation of mandatory transfer pricing documentation is consistent with Singapore's approach in aligning its practices with international tax practices, such as those based on the OECD's Base Erosion and Profit Shifting ("BEPS") initiative. The imposition of a 5% surcharge where transfer pricing adjustments arise will certainly encourage taxpayers to take transfer pricing issues seriously and maintain detailed transfer pricing documentation. We would also expect more rules and regulations consistent with the BEPS initiative to be implemented in Singapore in due course.

The announcement by the Government to review the various withholding tax exemptions is not surprising, given the Government's policy in reviewing Singapore's numerous tax incentives from time-to-time, as some incentives become less relevant with changes in the economy (whether domestic or global) or objectives for implementing those incentives become less compelling or are met. As these incentives are reviewed and revised on a frequent basis, it would certainly be useful to keep abreast of announcements on the validity of these incentives before finalising any business structure.

Tan Kay Kheng
Tel: +65 6416 8102 / Email: kaykheng.tan@wongpartnership.com

Tan Kay Kheng heads the Tax Practice and is also a Partner in the Litigation & Dispute Resolution Group. In the field of revenue law, Kay Kheng's areas of practice encompass both contentious and advisory/transactional work relating to income tax, stamp duty, property tax and goods & services tax. He also practises in the field of general litigation and arbitration, such as disputes relating to commercial/corporate law, accountants' work and real property (land acquisitions).

Kay Kheng has been admitted as a Fellow of CPA Australia and the Singapore Institute of Arbitrators. He is a Chartered Tax Adviser with the Tax Institute, an Accredited Tax Adviser (Income Tax) with the Singapore Institute of Accredited Tax Professionals (SIATP) and a member of the International Fiscal Association.

Tan Shao Tong
Tel: +65 6416 8186 / Email: shaotong.tan@wongpartnership.com

Tan Shao Tong is a Partner in the Tax Practice. His main practice areas are income tax, goods & services tax, stamp duty and property tax. Shao Tong is recommended in *The Legal 500: Asia Pacific – The Client's Guide to the Asia Pacific Legal Profession 2018* for the area of Tax.

Shao Tong is a contributing editor for *Singapore Civil Procedure 2017* and *Goods and Services Tax Law & Practice* (2nd Edition). He also co-authored the Singapore chapter of *Global Legal Insights – Corporate Tax*, 2014, 2015 and 2017 editions. He is an Accredited Tax Practitioner (Income Tax) with the Singapore Institute of Accredited Tax Professionals and is a member of the ACCA.

WongPartnership LLP

12 Marina Boulevard Level 28, MBFC Tower 3, Singapore 018982
Tel: +65 6416 8000 / URL: www.wongpartnership.com

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