



MERGERS AND ACQUISITIONS

# Singapore

Taxation of Cross-Border  
Mergers and Acquisitions

2010 Edition

TAX

# Singapore

## 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) 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, however, being administered by other statutory boards such as, the Economic Development Board and International Enterprise Singapore.

Goods and services tax 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

In the 2009 budget, the Minister for Finance announced a new tax framework for qualifying corporate amalgamations. The objective of the proposed framework is to allow the tax consequences of a continuing business to apply to a qualifying amalgamation.

At the time of writing in October 2009, the draft legislation for the amalgamation of companies has been put forward in the Income Tax (Amendment) Bill 2009, which has yet to be enacted.

The proposed 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; and
- such other amalgamations of companies as the Minister may approve.

For the new tax framework to apply, the amalgamated company must elect within 90 days from the date of the amalgamation to avail itself of the proposed tax

treatment for a qualifying amalgamation. On election, the trade and business of all the amalgamating companies will be treated as carried on in Singapore by the amalgamated company from the date of amalgamation.

The (proposed) legislation for the tax framework for qualifying corporate amalgamation includes the following:

- An amalgamated company cannot claim tax deduction for interest and borrowing costs incurred on any borrowings taken up by an amalgamating company to acquire shares in another amalgamating company when the two companies concerned subsequently amalgamate.
- When the property transferred is trading stock for both the amalgamated and amalgamating companies, the amalgamated company will be deemed to have taken over the trading stocks at net book value and the amalgamated company may claim deduction only on the amount of provision of diminution in value computed on that net book value.
- If the property transferred is trading stock of the amalgamating company, but a capital asset to the amalgamated company, the amalgamating company would be regarded as having sold the property in the open market on the date of amalgamation.
- If 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 would be taken as the market value on the date of amalgamation or actual amount paid, whichever is the lower.
- When the amalgamating company ceases to exist on amalgamation, the amalgamated company can claim deduction on the impairment loss or the amount of bad debts written off in respect of the trade debts taken over (from the amalgamating company). Similarly, if the amalgamating company has been allowed a deduction in respect of any

debt written off or impairment loss, any such debt recovered subsequently would be taxable for the amalgamated company.

- When capital allowances have been made to properties transferred from the amalgamating company to the amalgamated company, the capital allowances will continue to be made to the amalgamated company as if no transfer had taken place.
- When the amalgamating company has capital allowance (tax depreciation), 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.
- If any of the amalgamating companies have opted to adopt FRS 39 for tax purposes, the amalgamated company will not be allowed to opt out of applying FRS 39. If 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.
- When any of the amalgamating company ceases to exist on amalgamation, the amalgamated company has to assume all liabilities and obligations of the amalgamating companies.

## 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 of method of acquisition, whether by share or asset purchase, would be affected 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 in the hands of 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 chapter. The advantages and disadvantages of each method are summarized at the end of the chapter.

### 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 taxation status of the seller, the disposal gains may be regarded as a trading gain subject to income tax. When the asset is a real property, the amount of stamp duty payable on transfer may be substantial and unless otherwise agreed, such duty is usually paid by the buyer. Where capital allowances have been claimed on the assets and depending on the consideration, such allowances may be recaptured and taxable in the hands of the seller.

### 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 which 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 would be 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 Income Tax Act (ITA) contains provisions for granting initial and annual tax depreciation allowances on capital expenditure incurred on acquiring or constructing industrial buildings (as defined) and qualifying plant and machinery used for the 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 is classified into working lives of 5, 6, 8, 10, or 16 years for tax depreciation purposes. Industrial building allowances, comprising an initial (one-time) allowance of 25 percent and an annual allowance of 3 percent, are available on qualifying expenditure incurred in the construction or acquisition of an industrial building.

With the exception of certain assets, all plant and machinery can be depreciated under the alternative accelerated allowances scheme of three consecutive years. Some assets, including prescribed automation equipment (robots, computers, etc.), 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 one year.

With regard to fixed assets purchased on or after the Year of Assessment 2005, the Inland Revenue Authority of Singapore (IRAS) has granted a concessionary tax treatment allowing, on due claim, a 100-percent write-off on qualifying fixed assets. This concessionary treatment is subject to the following conditions:

- the cost of each asset is no more than SGD 1,000; and
- the aggregate claim for 100 percent write-off of all such assets is capped at SGD 30,000 per year of assessment.

When a company disposes of plant and machinery, a balancing charge or balancing allowance normally arises. This is 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 will be available to the company when the TWDV of the asset is greater than the consideration received. Conversely, if consideration exceeds the TWDV, a balancing charge is made (though the charge is restricted to the original cost 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 qualifies as a corporate amalgamation discussed earlier under Recent Developments.

#### *Goods and Services Tax (GST)*

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 to be treated as neither a supply of goods, nor a supply of services for GST purposes. This means that GST will not be chargeable on such transactions. This applies only if 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 guiding rule is whether the transaction puts the transferee in possession of a going

concern, the activities of which could be carried on without interruption. In the event that IRAS is not convinced that the transfer is that of a going concern, GST at 7 percent would be 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. Stamp duty is, however, payable on any written agreement or instrument which transfers the ownership of immovable property, stocks, or shares.

Stamp duty is payable on any transfer, assignment, or conveyance on sale of any property by instruments executed in Singapore, unless specifically exempted under the provisions of the Stamp Duties Act. Stamp duty would be payable by the purchaser based on the higher of the purchase consideration or the market value of the real property. The rates at which the duty is payable are as follows:

SGD	Percent
On the first 180,000	1
On the next 180,000	2
Balance thereafter	3

Source: KPMG in Singapore, 2008

There are several kinds of relief provided by the Stamp Duties Act. The two key reliefs in the context of mergers and acquisitions are:

Relief from stamp duty in connection with a plan for the reconstruction or amalgamation of companies provided the following key conditions, amongst others, are met:

- The acquiring company must be registered in Singapore or incorporated in Singapore or must have increased its capital with a view to the acquisition of either the undertaking, or not less than 90 percent of the issued share capital of any particular existing company.
- At least 90 percent of the consideration for the acquisition (other than such part as consists in 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; or
  - 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 in the case of a transfer of property between associated companies, provided the following key conditions, amongst others, are met:

- the effect thereof is to transfer a beneficial interest in immovable property or shares from one associated company to another associated company, that is to say one is the beneficial owner of not less than 75 percent of the issued share capital of the other; or
- a third company is the beneficial owner of not less than 75 percent of the issued share capital of both companies.

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.

### *Tax Indemnities and Warranties*

On taking over the target company, the purchaser has to assume all related liabilities including contingent liabilities. It is, therefore, usual for the purchaser to require indemnities and warranties. Where the sums involved are significant, the purchaser would normally initiate a due diligence exercise including a review of the target company's tax affairs.

### *Tax Losses*

The unused losses generated by the target company will be transferred along with the company. However, those unused tax losses (including capital allowances) are available for carry-forward for set-off against its future years' taxable profits, subject to the continuity of ownership 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 (the shareholders' continuity test). When the shares of one company are held by or on behalf of another company it is the shareholders and their respective shareholdings in

the latter company that must be compared, to ascertain whether a substantial change has occurred.

In addition, the company must carry on the same trade or business, to be able to use brought forward capital allowances.

It should be noted that the intention of the shareholders' continuity test is to target situations where loss-making companies are being acquired for tax reasons. In a situation where a substantial change in ultimate shareholding has taken place, local tax laws would still provide the relevant company with an avenue to appeal to the Minister for Finance or any person he/she may appoint to waive the shareholders' continuity test. The Minister is likely to examine the appeal based on its merits. In the event that such a waiver is obtained, the Singapore company would be allowed to continue carrying forward its unused tax 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 his/her current year unabsorbed capital allowances and current year unabsorbed trade losses for set-off against his/her assessable income of the Year of Assessment (YA) immediately preceding the YA in which the capital allowances were granted or the trading losses were incurred. The carry-back relief was effective from YA 2006 and is subject to a shareholders' continuity test. Current year unabsorbed capital allowances are also subject to the same business test. The proposal restricts carry-back relief to the lowest of the following:

- The actual amount of qualifying deductions
- The assessable income of the immediately preceding YA
- SGD 100,000

In the 2009 budget, it was proposed that the loss carry-back scheme be enhanced to allow qualifying deductions up to SGD 200,000 incurred in each year of assessment 2009 and 2010 to be carried-back to three preceding years of assessment. At the time of writing, the legislation has not been enacted.

### *Pre-Sale Dividend*

Under certain circumstances, the seller may prefer to realize part of his/her investment as a pre-sale dividend.

This is because dividends paid by Singapore-resident companies are tax exempt.

### *Goods and Services Tax (GST)*

In general, the disposal of shares is an exempt supply and would not be subject to GST. However, if the transferee in a Singapore sale is a person resident outside Singapore, the supply would be viewed as a zero-rated supply for GST purposes.

### *Transfer Taxes*

Stamp duty is levied on a transfer of shares in a company executed in Singapore. The rate of duty is 0.2 percent on the higher of the consideration, or the market value of the shares. Net asset value would be used in the case where the market value is not readily available. With effect from 31 August 2004, it is no longer mandatory that transferees use a market valuation of immovable properties to compute the net asset value of the shares transferred when stamping their transfers. Transferees may, if they choose, use balance sheet values of properties to arrive at the net asset value. However, IRAS will continue 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.

With regard to stamp duty reliefs, please refer to the stamp duty section under Purchase of Assets.

### *Tax Clearances*

It is not possible to obtain a clearance from the IRAS that a potential Singapore target company has no arrears of tax. Therefore, it is usual to include tax indemnities and warranties in the sale agreement. The extent of the indemnities or warranties is subject to negotiation between the vendor and purchaser.

The advisers to the prospective purchaser may undertake a due diligence review of the books and records of the target company to ascertain the tax position of the target company and to 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 such vehicles as a Singapore branch or permanent establishment. The main types of vehicle that may be used to acquire shares or assets in Singapore or to carry on a business in Singapore include the following:

- A Singapore-incorporated company (including a local holding company)
- Foreign parent company
- Non-resident intermediate holding company
- A branch of a foreign company
- A Singapore-registered business trust
- A partnership
- A limited liability partnership
- Other vehicles

These are considered, in turn, later in the chapter.

### ***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 (that is, 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 tax 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 if 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 would not be 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 will normally determine the entity's place of management and control. As such, to the extent that

the BOD holds its board meetings in Singapore to deliberate upon and make supervisory decisions concerning the Singapore entity, the IRAS would normally accept that the entity is a tax-resident of Singapore. However, for a foreign-owned company (50 percent or more of its shares are held by foreign companies/shareholders), the IRAS would be more stringent and require 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, as 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 loan or indebtedness
- Management fees
- Technical assistance and service fees
- 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 any structure set-up solely to derive tax benefits ineffective.

### **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 would normally be managed and controlled out of its foreign head office, it follows that most Singapore branches would usually be 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 is generally taxed no differently from a subsidiary company, that is, there is

usually no difference in the tax rates or variation in the methodology for computing the taxable profits for a branch vis-à-vis a subsidiary company. It should be noted that 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 above would not be 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 bilateral or double-taxation agreements (DTAs) concluded with more than 60 countries for double taxation relief, or the unilateral tax relief (UTR) provisions under the Singapore Income Tax Act (SITA) that would relieve qualifying foreign income from Singapore taxation.

### **Registered Business Trust**

Business trusts (BTs) 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. A BT is also different from a private or unit trust in that a BT actively runs and operates a business or trade. Under the Business Trusts Act (BTA), a BT has to be run by a single responsible entity known as the trustee-manager, which must be incorporated in Singapore.

BTs, unlike companies, are not restricted to paying dividends out of accounting profits; it can make distributions to its investors out of its 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 would be treated like a company under the one-tier system. The beneficiaries or unitholders of the BT would not be taxed on their shares of the statutory income (of the trustee) to which they are beneficially entitled. The beneficiaries or unitholders 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. When there is a partnership loss, each partner's share of the loss may be offset against his/her respective income from other sources.

### *Limited Liability Partnership (LLP)*

An LLP has to be registered under the Limited Liability Partnerships Act. It 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 the existence, rights, or liabilities of the LLP. An LLP is tax-transparent; it is not taxed at the entity level. Tax will be chargeable on each partner based on the applicable income tax rate.

When an LLP partner has unabsorbed capital allowances, industrial building allowances, qualifying donations, or trade losses, the amount allowed for set-off against his/her income from other sources (relevant deductions), will be restricted to the amount of his/her 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 will be deemed as income of the partner chargeable to tax.

The admission of a new partner or withdrawal of an existing partner owing to retirement, death, or other reasons will 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.

### **Other Vehicles**

An unincorporated joint venture that is not a partnership is not a legal person and is, therefore, not chargeable to tax 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 would be subject to tax at the normal corporate tax rate. Unitholders declare their share of the trust income and obtain a credit on tax paid at the trust level. Tax concessions are, however, applicable to approved unit trusts (AUTs) and designated unit trusts (DUTs). In the case of the AUT, only 10 percent of the gains derived from the disposal of securities would be subject to tax, with the remaining 90 percent being tax exempt. In the case of the DUT, specified income and gains, including 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 are exempt from tax at the trust level.

Singapore has one of the most effective tax regimes for real estate investment trusts (REITs) in the world. 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 at the trustee level where the trustee is not assessed to tax on the REIT's taxable income that is distributed to the unitholders;
- REIT distributions to unitholders who are individuals, except for those who hold their units through a Singapore partnership, are granted tax exemption;
- the transfer of Singapore properties into REITs would be granted remission of stamp duties provided certain conditions are met;
- foreign-sourced income may be exempted from tax in Singapore; and
- the WHT rate for non-resident institutional investors is reduced to 10 percent for distributions made during the period from 18 February 2005 to 17 February 2010.

### **Choice of Acquisition Funding**

The financing of a transaction can be in the form of shares or 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 finance, such as legal fees, rating fees, and guarantee fees, are normally viewed as capital and hence are non-deductible. 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 bonds, notes, commercial papers, treasury bills, and certificates

of deposit issued by qualifying entities. The main tax concessions for QDS are:

- tax exemption on interest and discount from QDS derived by non-residents, subject to qualifying conditions;
- concessionary tax rate of 10 percent on interest and discount from QDS derived by companies and bodies of persons, subject to qualifying conditions; and
- tax exemption on interest and discount from debt securities derived by any individual, provided it is not derived through a partnership in Singapore or from carrying on of a trade, business, or profession.

The tax exemption and concessionary rate will apply to QDS issued during the period from 27 February 2004 to 31 December 2013.

### ***Deductibility of Interest***

---

Interest expense is tax deductible if it is incurred on capital employed in acquiring income. Interest cost is, therefore, deductible if it is incurred in connection with moneys 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 chapter.

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

The IRAS takes the view that each investment asset (including an inter-company advance) constitutes a separate source of income. Therefore, to the extent that the investment or asset has never produced income (that is, non-income producing investments/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 that is attributable to the non-income producing investment is disallowed for tax purposes. Examples of non-income producing investments are interest free loans and equity investments that have never yielded dividend income.

### ***Withholding Tax on Debt and Methods to Reduce or Eliminate***

---

Interest payments made to any person who is not a tax resident in Singapore are subject to Singapore WHT at the rate of 15 percent of the gross amount. This is provided that the interest is not derived by the non-resident person from any trade, business, profession, or vocation carried on or exercised by him/her in Singapore and is not effectively connected with any permanent establishment of that non-resident person in Singapore. The rate of WHT may be reduced under the provisions of the relevant DTA between Singapore and the country of the recipient.

Where interest is payable on a loan which that promote or enhance the 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 the level of non-income producing assets that will limit the deduction of interest expenses.
- Consider whether WHT of 15 percent on interest may be reduced or eliminated by structuring loans from the relevant DTA country.

### ***Islamic Financing***

---

Although Islamic finance has existed for several decades, it is only recently that this alternative concept has received 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 tended to attract more tax than conventional financial products. Transactions that involved 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 will be waived. This is subject to certain prescribed conditions being met.
- The concessionary tax treatment under the QDS scheme will be extended to Islamic debt securities. Under the concessionary tax treatment, the interest and discount income derived from Islamic debt securities may be 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 will be exempt from Singapore tax.

### **Equity**

Incidental costs of raising equity finance, such as legal and professional fees, are normally regarded as capital in nature and are not, therefore, tax deductible.

The registration fee for a limited liability company is SGD 300, 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 and dividends paid by a Singapore-resident company are tax exempt in Singapore.

Profits arising from share swap transactions will normally not be subject to income tax under restructuring arrangements. Stamp duty would generally be payable in a share swap transaction unless the conditions for intra-group exemption (discussed above) 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 notwithstanding that certain RPSs may be treated as debt instruments for accounting. The use of an RPS allows for flexibility of redemption, which is generally regarded as a repayment of capital.

### **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**

When the acquisition involves deferred consideration that can only be determined at a later date on the basis of the post-acquisition performance of the business, the buyer would not be allowed a deduction, because the payment is regarded as capital in nature. Depending on the taxation status of the seller, he/she would be taxed on deferred consideration if the gains from the sale of the business/shares are regarded as his/her trading gains.

## **Other Considerations**

### **Concerns of the Seller**

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

### **Company Law and Accounting**

The Companies Act (Chapter 50) sets out how Singapore companies may be formed, operated, re-organized, and dissolved or wound up. The Companies (Amendment) Act 2005 made significant amendments to implement some of the changes recommended in the final report of the Company Legislation and Regulatory Framework Committee (CLRFC) published on 22 October 2002. The changes include the introduction of a more 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 combining companies are both solvent; and
- a short-form amalgamation process for merging a parent and a wholly-owned subsidiary and for merging two or more wholly-owned subsidiaries.

Generally, legal mergers through amalgamation would be accounted for with the purchase method under FRS 103, except for transactions among entities under common control. If entities are under common control, there is a choice of either using the purchase method or the as-if pooling method.

### **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 if:

- at least 75 percent of the ordinary share capital in one company is beneficially held, directly or indirectly, by the other; or
- 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 (that is, the relevant holding company).

### **Transfer Pricing**

The IRAS has issued several circulars on transfer pricing and advance pricing agreements (APAs). Singapore transfer pricing guidance is very similar to the Organization for Economic Cooperation and Development (OECD) transfer pricing principles. 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 would restrict the claim for interest deduction by the lender and not impute interest income to reduce compliance cost since the loans are domestic. In the case of related cross-border loans, the IRAS is prepared to continue applying interest restriction for a transition period of two years from 1 January 2009. From 1 January 2011, the IRAS would require all cross-border loans to be at arm's length.

### **Dual Residency**

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

### **Foreign Investments of a Local Target Company**

Singapore adopts 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 will not be taxed in Singapore unless it is remitted or deemed remitted to Singapore. Notwithstanding this, an income tax exemption will generally be 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 qualifying 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; and
- the IRAS is satisfied that the exemption would be beneficial to the Singapore-resident person.

Notwithstanding the above, if 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, such income is deemed to have been subjected to tax in that foreign jurisdiction.

When the conditions are not met, the specified foreign income is taxed on remittance under normal tax rules. It is, therefore, possible that the specified foreign income may also be subject to tax in the foreign jurisdiction (that is, there may be international double taxation). Double taxation may be relieved through Singapore's unilateral tax credit system and through its many bilateral DTAS.

In the 2009 budget, the Minister for Finance announced that tax exemption will be granted on all foreign-sourced income accrued on or before 22 January, 2009 to a Singapore-resident company and is received or deemed received in Singapore from 22 January 2009 to 21 January 2010 without having to meet any qualifying conditions.

## **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 will not be transferred.
- It is possible to acquire only certain parts of a business.
- Interest incurred to fund the acquisition of plant, equipment, and other assets that will be used in the trade or business is deductible.

### **Disadvantages of Asset Purchases**

- Possible claw-back 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.
- The benefits of any losses or unused tax attributes remain in the target company.

### **Advantages of Share Purchases**

- No capital allowances, balancing charges, or claw-backs on 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 meeting relevant conditions.
- Lower stamp duties payable on the transfer of shares compared with real or immovable property.

### ***Disadvantages of Share Purchases***

---

- Purchaser may acquire historic 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 subject to restriction.

## Withholding Tax Rate Chart

The rate information and footnotes contained in this table are from the 2009 IBFD/KPMG Global Corporate Tax Handbook.

Country	Dividends		Interest <sup>1</sup> (%)	Royalties (%)
	Individuals, Companies (%)	Qualifying Companies (%)		
Australia	15	15	10	10 <sup>2</sup>
Austria	10	10	5	5
Bahrain	0	0	5	5
Bangladesh	15	15	10	10 <sup>3</sup>
Belgium	15	15	10	5
Belgium (new)	15	0/5 <sup>20</sup>	5	5 <sup>21</sup>
Brunei	10	10	5 <sup>5</sup> /10	10
Bulgaria	5	5	5	5
Canada	15	15	15	15
China (People's Rep.)	12	7 <sup>4</sup>	7 <sup>5</sup> /10	10
Cyprus	0	0	7 <sup>5</sup> /10	10
Czech Republic	5	5	0	10
Denmark	5/10	0 <sup>7</sup>	10	10
Egypt	15	15	15	15
Estonia	10	5 <sup>4</sup>	10	7.5
Fiji	15	5 <sup>8</sup>	10	10
Finland	10	5 <sup>8</sup>	5	5
France	15	10 <sup>8</sup>	10	0
Germany	15	5 <sup>8</sup>	8	8
Hungary	10	5 <sup>4</sup>	5	5
India	15	10 <sup>4</sup>	10 <sup>5</sup> /15	10
Indonesia	15	10 <sup>4</sup>	10	15
Israel	10	5 <sup>8</sup>	7	5
Italy	10	10	12.5	15/20 <sup>10</sup>
Japan	15	5 <sup>11</sup>	10	10
Kazakhstan	10	5 <sup>4</sup>	10	10
Kuwait	0	0	7	10
Latvia	10	5 <sup>4</sup>	10	7.5
Lithuania	10	5 <sup>4</sup>	10	7.5
Luxembourg	10	5 <sup>8</sup>	10	10
Malaysia	10	5 <sup>4</sup>	10	8
Malta	0	0	7/10 <sup>19</sup>	10
Mauritius	0	0	0	0
Mexico	0	0	5 <sup>5</sup> /15	10
Mongolia	10	5 <sup>4</sup>	5 <sup>5</sup> /10	5
Myanmar	0	0	8 <sup>5</sup> /10	10 <sup>12</sup> /15
Netherlands	15	0 <sup>4</sup>	10	0
New Zealand	15	15	15	15
Norway	15	5 <sup>4</sup>	7	7
Oman	5	5	7	8
Pakistan	10/12.5/15 <sup>13</sup>	10/12.5/15 <sup>13</sup>	12.5	10
Papua New Guinea	15	15	10	10
Philippines	25	15 <sup>14</sup>	15	15 <sup>15</sup> /25
Poland	10	10	10	10
Portugal	10	10	10	10
Qatar	0	0	5	10
Romania	5	5	5	5
Slovak Republic	10	5 <sup>8</sup>	0	10
South Africa	15	5 <sup>8</sup>	0	5
South Korea	15	10 <sup>4</sup>	10	15
Sri Lanka	15	15	10	15
Sweden	15	10 <sup>4</sup>	10 <sup>16</sup> /15	0
Switzerland	15	10 <sup>4</sup>	10	5

Country	Dividends		Interest <sup>1</sup> (%)	Royalties (%)
	Individuals, Companies (%)	Qualifying Companies (%)		
Taiwan	17	17	17	15
Thailand	20	20 <sup>4</sup>	10/25	15
Turkey	15	10 <sup>4</sup>	7.5 <sup>5</sup> /10	10
United Arab Emirates	5	5	7	5
United Kingdom	15	5 <sup>8</sup>	10	10
Uzbekistan	5	5	5	8
Vietnam	12.5	5/7 <sup>18</sup>	10	5 <sup>12</sup> /15

### Notes

- Many of the treaties provide for an exemption for certain types of interest, e.g. interest paid to public bodies and institutions, banks or financial institutions, or in relation to sales on credit, approved industrial undertakings or approved loans. Such exemptions are not considered in this column.
- The rate does not apply to royalty payments in respect of the operations of mines, quarries, or exploitation of natural resources, and literary or artistic copyrights.
- The rate does not apply to royalty payments in respect of literary or artistic copyrights (including film royalties).
- The rate generally applies to participations of at least 25 percent of capital or voting shares, as the case may be.
- The lower rate applies to interest received by a bank or financial institution.
- The lower rate applies to dividends received by pension funds or similar institutions providing pension schemes.
- The rate applies to dividends paid to a company which holds directly at least 25 percent of the payer's capital for an uninterrupted period of at least one year, and the dividends are declared in that period.
- The rate generally applies to participations or control of at least 10 percent of capital or voting power, as the case may be.
- The higher rate applies to royalty payments for the use or right to use industrial, scientific or commercial equipment.
- The higher rate applies to copyright on literary and other artistic work.
- The rate applies to dividends paid to a company which holds directly at least 25 percent of the payer's voting shares during a six-month period prior to the year-end for which the distribution of profits occur.
- The lower rate generally applies to royalty payments for the use or right to use any patent, design or model, plan, secret formula or process, or any industrial, commercial, or scientific equipment, or experience, as the case may be.
- Ten percent for dividends paid to the beneficial owner by a company engaged in an industrial undertaking, 12.5 percent for dividends paid to the beneficial owner by a company not engaged in an industrial undertaking, and 15 percent in all other cases.
- Fifteen percent for dividends paid to a company or partnership which holds at least 15 percent of the voting stock of the payer during the part of the payer's taxable year preceding the payment and during the whole of its prior taxable year.
- The lower rate applies to approved royalties and royalties arising from the use of cinematographic films or tapes for television or broadcasting.
- The lower rate applies to interest paid to a financial institution in respect of an industrial undertaking.
- The domestic rate applies; there is no reduction under the treaty. In respect of dividends, the aggregate of dividend WHT and corporate income tax on the payer's profits cannot exceed 40 percent of the taxable income from which the dividends are declared.
- Five percent for dividends paid to a company which contributed directly or indirectly more than 50 percent of the payer's capital or more than USD 10 million, 7.5 percent for dividends paid to a company which contributed between 25 percent and 50 percent of the payer's capital.
- The lower rate applies to interest received by a bank.
- The 0-percent rate applies to dividends paid to a Belgian company that at the time of payment held, for an uninterrupted period of at least 12 months, at least 25 percent of the capital of the Singaporean dividend-paying company. The 5-percent rate applies to dividends paid to a Belgian company that held directly at least 10 percent of the capital of the Singaporean dividend-paying company.
- The 5-percent rate applies to 60 percent of the gross amount of royalties received as a consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, or 100 percent of the gross amount of all other royalties included in the definition.

## KPMG in Singapore

David Lee  
KPMG Tax Services Pte Ltd  
16 Raffles Quay #22-00  
Singapore  
048581  
Singapore

Tel. +65 6213 2539  
Fax +65 6227 1297  
e-Mail dlee2@kpmg.com.sg

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2010 KPMG Tax Services Pte Ltd., a Singapore corporation and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (KPMG International), a Swiss entity. All rights reserved.

KPMG and the KPMG logo are registered trademarks of KPMG International Cooperative ("KPMG International"), a Swiss entity.