Singapore Tax Developments 2017

Audit / Tax / Advisory

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As we look forward to 2018, we examine some tax developments in 2017 that businesses need to take note of as they plan for the coming new year. While there are many in this respect, we have selected some of the developments that we consider as noteworthy for your reference.

New Reporting of Related Party Transactions to Take Effect from YA2018

With effect from Year of Assessment 2018, IRAS will be introducing a new Related Party Transactions (RPT) reporting requirement for companies. A new form ("RPT Form") must be completed by companies if the value of RPT is in excess of S$15 million for the relevant Year of Assessment and submitted together with the Form C.

The value of RPT (as reported in the audited accounts) is the aggregate of the following:

1. All amounts of RPT as disclosed in the Income Statement, excluding compensation remunerated to key management personnel and dividends; and

2. Year-end balances of loans and non-trade amounts owing to/from all related parties.

The values of these categories of RPT are to be reported:

- Sales and purchases of goods
- Services income and expenses
- Royalty and licence fee income and expense
- Interest income and expense
- Other income and expense
- Year-end balances of loans and non-trade amounts

New IRAS e-Tax Guide on Customer Accounting for Prescribed Goods

The Inland Revenue Authority of Singapore (IRAS) issued a new GST e-Tax Guide on "Customer Accounting for Prescribed Goods" ("GST e-Tax Guide) on 15 September 2017.

In this guide, IRAS has indicated that customer accounting for certain prescribed goods will be implemented with effect from 1 January 2019. The purpose of introducing customer accounting is to prevent the loss of GST revenue under fraudulent schemes whereby the sellers abscond with the GST amounts that they have collected from customers but businesses further down the supply chain continue to claim the input tax.

Normally, a supplier of taxable goods and services will account for the output tax. However, under customer accounting, the responsibility to account for the output tax on taxable supplies is shifted from the supplier to the customer. Customer accounting is only applicable to prescribed goods which are defined in the GST e-Tax Guide as mobile phones, memory cards and off-the-shelf software.

Customer accounting shall apply on any local sale of prescribed goods made to a GST-registered customer if the value of the sale (excluding GST) exceeds $10,000 in a single invoice. The customer in this situation will account for the output GST chargeable on the purchase, on behalf of the supplier. The customer can claim the input tax on this purchase if the relevant conditions for claiming input tax are met. The supplier must state in the tax invoice issued to the customer, the amount of output tax due on the supply for which the customer is required to account for on the supplier's behalf.

The following are specifically excluded from customer accounting:

a) A supply of goods made under the Gross Margin Scheme,

b) A supply of goods made under the Approved Third Party Logistics Company Scheme or Approved Refiner and Consolidator Scheme to an approved/specified person, and

c) A deemed taxable supply of goods arising from the transfer or disposal of goods for no consideration.

A new Section 38A has been inserted into the Goods and Services Tax Act to give effect to customer accounting. For more detailed information on the mechanics of customer accounting, please refer to the GST e-Tax Guide.

PIC Scheme to Phase Out in 2018

The Productivity and Innovation Credit (PIC) scheme will lapse after YA 2018, as announced during Budget 2016. Businesses may still choose to receive cash payout on qualifying expenditures incurred during the basis period of YA 2018.

Here are three important details:

1. Expenditure incurred after the basis period of YA 2018 will not be eligible for PIC benefits. For example, a company with a financial year end of 31 December must incur the qualifying expenditure by 31 December 2017 in order to qualify for the PIC benefits.

2. Eligibility for PIC cash payout is determined based on the date when the expenditure is incurred and not the date of submission of the cash payout application.

3. Businesses can submit their cash payout claims for YA 2018 after the end of the relevant financial quarter, but not later than the income tax filing due date of YA 2018. From 1 August 2016, it is compulsory to e-file the PIC Cash Payout application.

IRAS Clarifies When Foreign-Sourced Offshore Income Is Considered Received in Singapore

The Inland Revenue Authority of Singapore (IRAS) had updated its website on 2 August 2017 on "Taxable and Non-taxable Income" with the addition of new FAQs, clarifying when foreign-sourced offshore income is considered received in Singapore and subject to tax.

IRAS has outlined in one of its updated FAQs, that the transmission of foreign-sourced offshore income by a company from its offshore bank account to the Central Depository Pte Ltd (CDP)'s bank account in Singapore for the payment of one-tier tax exempt dividends to its scripless shareholders, does not constitute income received in Singapore from outside Singapore, and therefore is not taxable.

However, IRAS has highlighted that this non-taxation is subject to the condition that the one-tier tax exempt dividend is paid directly into the CDP's bank's account and does not involve any physical remittance, transmission or bringing of funds into Singapore.

IRAS Updates Guidelines on Transfer Pricing

On 12 January 2017, the Inland Revenue Authority of Singapore (IRAS) released the e-Tax Guide, "Transfer Pricing Guidelines (4th Edition)". The Guide explains IRAS' transfer pricing compliance programme and position regarding various transfer pricing matters and provides taxpayers with guidance on transfer pricing relating to:

• The application of the arm's length principle when transacting with their related parties.

• The application of the arm's length principle for specific transactions, like related party services and loans.

• Maintenance of transfer pricing documentation; and

• Facilities provided under tax treaties to resolve transfer pricing disputes.

In this edition, the revised guidelines make reference to the Base Erosion and Profit Shifting (BEPS) Action Plans 8 – 10 Aligning Transfer Pricing Outcomes with Value Creation and Action Plan 13 Transfer Pricing Documentation. A summary of key changes made by IRAS in this edition of the e-Tax Guide is as follows:

1. Aligning transfer pricing outcomes with value creation

IRAS has explicitly noted that profits should be taxed where the real economic activities generating the profits are performed and where value is created.

Further, a more robust risk analysis is now required to demonstrate not only that an entity is contractually bearing risks, but also that the entity has the capacity and capability, from both a financial and operational perspective, to assume and manage the specific economically significant risks.

Additional guidance and examples on risk analysis have been provided by IRAS.

2. Safe harbour provisions for intercompany loan transactions

IRAS has introduced an administrative practice w.e.f. 1 January 2017, whereby a safe harbour interest margin can be applied for cross-border intercompany loans provided or received by a Singapore taxpayer. The interest margin, which will be published on an annual basis, can be applied on all new loans, which are below the S$15 million threshold.

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3. Enhanced guidance on Advance Pricing Arrangements (APAs)

The IRAS has clarified that, depending on the facts and circumstances of each request, it may exercise its discretion to vary the number of roll-back years whereas previously the number of roll-back years will generally not exceed two financial years.

Reference has also been made to Action Plan 5 – Countering Harmful Tax Practices More Effectively, taking into Account Transparency and Substance – to outline the framework by which IRAS will exchange information on unilateral APAs with foreign jurisdictions.

4. Enhanced guidance on Mutual Agreement Procedures (MAPs)

Similar clarifications have also been provided for MAPs. For example, IRAS aims to resolve a MAP case within 24 months from receiving the taxpayer's complete application as well as to consider refunds of any interest and/or penalties that may have already been imposed in a transfer pricing audit during the MAP discussions.

The IRAS has also noted that any negotiation between the IRAS and the foreign competent authority may be challenging if the taxpayer has already chosen to accept the transfer pricing audit settlement with the foreign competent authority.

For further details, please refer to the IRAS e-Tax Guide.

Two Key Changes in Compliance Requirements for Companies with up to $5 million in Annual Revenue.

To ease the tax filing process and in effort to reduce companies' compliance costs, the Government announced two key changes in compliance requirements for companies with up to $5 million in annual revenue, in March 2017.

1. Changes to Estimated Chargeable Income (ECI) Filing Requirements

Companies with financial years ending on or after July 2017 will no longer need to file their ECIs if their annual revenues do not exceed S$5 million for the financial year, and if their ECIs are nil for the Year of Assessment (YA).

For companies with financial years ending June 2017 and before, the criteria for the ECI waiver remain unchanged i.e. annual revenue being not more than S$1 million for the financial year, and a nil ECI for the YA.

2. Filing Form C-S: Companies with Annual Revenues Below S$5 Million to Qualify

Companies with annual revenues of S$5 million and below can qualify for Form C-S filing with effect from Year of Assessment (YA) 2017. All other conditions remain unchanged.

For YA 2016 and before, the annual revenue threshold is S$1 million to qualify for Form C-S filing.

Form C-S is a simplified income tax return for qualifying companies where there is no requirement for submission of tax computations and financial statements to the IRAS.

Penalty for Late Submission of GST Returns

Currently, if a taxable person does not submit the GST return by the applicable due date, a penalty of $200 applies for each completed month that the taxable person continues not to make the GST return. The total penalty for late filing shall not exceed $10,000.

With effect from 1 April 2018, if a taxable person does not submit the GST return by the applicable due date, a $200 penalty shall apply immediately. Thereafter, an additional penalty of $200 shall apply for each completed month that the taxable person continues not to make the GST return. However, there is no change to the total penalty for late filing i.e. it shall not exceed $10,000.

Digital Economy: Government Studying Necessary Adjustments to GST System

On 6 November 2017, Minister for Finance, Mr Heng Swee Keat, responded to a Parliamentary question with regards to what the Government's methodology is in streamlining its Goods and Services Tax (GST) system for GST-registered local suppliers and non-GST registered overseas suppliers. This is with respect to the rapid growth of the digital economy, where it is expected that there will be a rise in local businesses and consumers purchasing goods and services from overseas suppliers.

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Mr Heng replied that the Government is studying how it would make the required adjustments to its GST system to protect local GST-registered business from disadvantage, due to digital-transactions and cross-border trade.

Mr Heng informed that the Inland Revenue Authority of Singapore (IRAS) had launched its consultation papers on the proposed reverse charge and overseas vendor registration regime in May 2017, to gather response and suggestions from various affected stakeholders.

He added that IRAS is preparing to engage with financial institutions and e-commerce and electronic marketplace operators, among others, for various ideas for the cross-border taxation of goods and services in light of the digital economy, and that developments in other countries are also being monitored.

Mr Heng also informed that lead time will be provided for implementation of any measures announced by the Government.

Source: Ministry of Finance, Singapore

Sale and Purchase Agreements for Shares are Subject to Stamp Duty

The execution of a Sale and Purchase Agreement (SPA) for shares are subject to stamp duty, effective from 11 March 2017, following the passing of the Stamp Duties (Amendment) Act 2017 on 10 March 2017, with amendments to Section 22 of the Stamp Duties Act (SDA).

Prior to the amendment, stamp duty was payable only on the execution of the instrument of transfer (being the share transfer form), and not on the contracts and agreements for the sale of shares. This in effect brings forward the point at which stamp duty is payable on sales of shares to the execution of the SPA, rather than the transfer of shares that occurs on completion of the agreement.

With the implementation of the new Section 22, stamping must be carried out within 14 days of signing the SPA (if the SPA is executed in Singapore).

Also, should the SPA be conditional upon fulfilment of condition precedents which are not satisfied and completion does not eventually occur, purchasing parties may apply to the Inland Revenue Authority of Singapore for a refund of stamp duties paid. However, there is no assurance or guarantee on the grant of refunds.

Furthermore, SPAs for the sale of scripless shares would now also be stamp dutiable whereas before the amendment, there was typically no stamp duty applicable for the sale of scripless shares since no instrument of transfer was executed for such sale.

Note:

The above excludes Singapore's tax treaty developments, which will be covered in a separate document.

Unless otherwise indicated, the source of information is the Inland Revenue Authority of Singapore (IRAS).

For further information, please refer to their website at: **www.iras.gov.sg**

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