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Singapore Tax Alert

October 2017

# Recent Singapore Tax Developments

## Singapore recently ammounced the following TP related amendments during October 2017:

### Possible Scenarios of TP adjustments

The Inland Revenue Authority of Singapore (the IRAS) may make the following TP adjustments to related party transactions that are not in compliance with the arm's length principle:

- Increase the amount of income of the taxpayer that is either derived in Singapore or is received in Singapore from outside Singapore to an arm's length amount;
- Reduce the deductions claimed by the taxpayer; and
- Reduce the losses claimed by the taxpayer.

The amendments also empower the IRAS to ignore the form of the transaction where it is inconsistent with the substance.

### Deeming the Remittance of foreign sourced income beyond Section 10(25)

Singapore's territorial tax regime ensures that a foreign sourced income (e.g. interest on a passive loan to a foreign party) is taxed in Singapore only on its remittance [or deemed remittance under section 10(25) of the Income Tax Act (ITA)].

The above scenarios could raise a question whether the IRAS has powers to make a TP adjustment to deem a 'receipt' of income in Singapore by applying arm's length principle; say by increasing the amount of interest 'received' in Singapore from nil to arm's length amount in respect of an interest free loan to a foreign related party.

It appears that for IRAS may make such TP adjustments only where at least a part of income

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is first received in Singapore from outside Singapore. Thus, the TP amendment may not alter the territorial tax system of Singapore completely for related party transactions.

### Surcharge (penalty for TP adjustments)

In the above 3 scenarios of TP adjustments, the IRAS will apply a 5% surcharge on the amount of adjustment, with a discretion to waive the same partly or fully where a reasonable cause is proven. Surcharge is payable within a month from the notice date and also applies where no additional taxes are to be paid post TP adjustment (e.g. in a loss scenario).

### Compulsory TP documentation

The Amendments also introduces mandatory contemporaneous TP Documentation for businesses with turnover exceeding $10 million. Penalties for not preparing contemporaneous TP Documentation have been increased to SGD 10,000.

However, non-mandatory cases may also suffer from a disadvantage of not being allowed any rectification relief in relation to a related party transaction in absence of adequate TP documentation; this is due to an amendment under Section 93A of ITA.

### General

IRAS will provide further guidance in updated Singapore TP Guidelines in early 2018 in relation to the above.

The above changes shall mostly apply in respect of an accounting year ending during 2018 and onwards. Having said that Singapore had already enacted TP guidelines for some time and non-compliance with these guidelines can entail adjustments with consequent tax and penalty implications for earlier periods.

### Our Comments

The above developments necessitate Singapore taxpayers to revisit their Singapore TP strategy irrespective of whether mandatory TP documentation applies to mitigate:

- TP adjustments resulting into additional tax liabilities and automatic levy of surcharge;
- Higher penalties for not maintaining TP documentation in mandatory cases; and
- The adverse tax impact due to denial of rectification or corresponding relief in respect of related party transactions.

## Guide on Interpretation of Singapore Tax Treaty (DTA)

IRAS has issued an e-Tax guide to provide taxpayers with guidance on

- The interpretation and application of Singapore's DTAs; and
- The mutual agreement procedure (MAP) under Singapore's DTAs.

Singapore's recent DTAs are largely based on OECD MC (*Organisation of Economic Co-operation and Development Model Tax Convention on Income and on Capital*) with some modifications. However, there are some differences between Singapore's DTAs and the

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OECD MC. This guide serves as a useful tool to interpret the DTAs and understand the approach of IRAS on various DTA concepts.

## Inwards re-domiciliation: company law regulations issued

### Company Law Amendments

Singapore has issued long awaited regulations to facilitate inward re-domiciliation of foreign companies into Singapore. The regulations highlight the following minimum requirements for the inward re-domiciliation:

a) Permissible under the Law of foreign country

The law of current jurisdiction of incorporation must permit the transfer of the applicant foreign company's incorporation and the applicant company must comply with such law.

b) Size

Since Re-domiciliation is aimed towards applicants leading to positive commercial contribution, an applicant company must meet any two of the following three criteria:

1. the value of its total assets exceeds SGD 10 million;
2. its annual revenue exceeds SGD 10 million; or
3. it has more than 50 employees.

Where the applicant is a parent company, the foreign corporate group will have to meet the above on a consolidated basis. For a subsidiary applicant company, either the applicant satisfies the criteria on a single entity basis, or its Singapore parent (currently registered or sought to be redomiciled) meets the criteria.

c) Solvency

Baring specified exceptions, applicant company should be solvent (e.g. it should be able to pay its debts and value of its assets must be higher than value of liabilities).

### Tax Amendments

The Singapore tax law is also being amended to provide for a tax framework for the foreign companies re-domiciling into Singapore.

## How Dhurva Advisors can assist you

Dhruva Advisors Singapore provides the full suite of Singapore tax and corporate secretarial services. We will be glad to discuss and assist you in relation to your business affairs related to the above amendments or any other matter in Singapore and the region.

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