

Clarity by IRAS on Amalgamations and New Tax Reliefs for Corporate M&A

In an ongoing effort by the Inland Revenue Authority of Singapore (IRAS) to provide clarity to taxpayers and professional service providers such as lawyers and accountants, on 20 January 2010, the IRAS issued an IRAS e-Tax Guide on the 'Tax Framework for Corporate Amalgamations'. This followed a consultation process which began on 22 January 2009.

In essence, the new tax framework helps to clarify the tax issues that arise on amalgamation of companies under the provisions of the Companies Act.

Legislative changes to the Singapore Income Tax Act (SITA)

A new provision is being introduced to the SITA (Section 34C) setting out the income tax treatment applicable to amalgamating companies and an amalgamated company in a qualifying amalgamation.

The provision specifies that, in a qualifying amalgamation, all the amalgamating companies' businesses in Singapore will be treated as being carried on by the amalgamated company effective on the date of amalgamation. Further; any property held on capital account of each amalgamating company will be treated similarly in the capital account of the amalgamated company; and any property held on revenue account of each amalgamating company will be treated similarly in the revenue account of the amalgamated company.

An asset is treated as being on capital account where this forms part of the assets of the business or company which are held on a *long term* basis, such as buildings and land or investments such as bonds or stock which are held to derive interest or dividend income.

Assets held on revenue account comprise assets that are held on a *short term* basis, for example trading stock and inventory or shares held by a fund or company which are held to derive capital gains. This clarification is important as, depending

on the facts, often assets on capital account are not taxable when these are sold, either by the transferor (before the amalgamation also described as the *amalgamating company*) or by the transferee (after the amalgamation also described as the *amalgamated company*).

Capital Assets

Where the amalgamated company has the intention to continue holding assets taken over as 'investment assets', the IRAS prescribes a list of details that should be maintained by the amalgamated company. This is crucial to defend a potential challenge by the IRAS subsequently that the gains arising from the sale of these capital assets should not be taxable for Singapore income tax purposes. Additionally, the gain or loss on the sale of the asset is computed on the original cost incurred by the amalgamating company and not at the *fair value* of the asset at the date of transfer or sale.

Revenue Assets

Assets on revenue account will be transferred for income tax purposes at their *carrying amounts* as reflected in the amalgamating companies' books at the time of amalgamation, resulting in the amalgamated company having stepped into the shoes of the amalgamating company. Therefore, in the case of trading stock/inventory, the amalgamated company will be deemed to have taken these over at their *net book value*. Further clarity is provided in the document where the impact of the Financial Reporting Standard 103 which impacts Business Combinations is applicable.

Other issues covered in the document include the following:

- Tax treatment on the reclassification of assets where revenue assets before the amalgamation are converted to capital assets and vice versa
- Tax treatment relating to unabsorbed Capital Allowances, Losses and Donations
- Tax treatment of specific Assets, Liabilities and Tax Items

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- Goods & Services Tax and Stamp Duty issues.

The IRAS has also gone to some length to clarify the Stamp Duty and Goods and Services Tax (GST) issues. However, the IRAS could have gone further to clarify some specific GST issues in greater detail.

2010 Singapore Budget Changes impacting M&A

In the Budget Announcement on 22 Feb 2010, the Minister of Finance announced that a new M&A allowance will be introduced to encourage companies to consider M&A as a strategy for growth and internationalisation. The M&A allowance will be a one-off tax allowance scheme to help defray a portion of acquisition costs. The new allowance will help the acquiring firm to offset part of its cost with simplicity in mind without the need to distinguish between interest costs and other costs thereby being neutral between debt and equity in financing transactions.

The M&A allowance will be granted to qualifying M&As executed from 1 April 2010 to 31 March 2015 (both dates inclusive). The quantum of the allowance is 5% of the value of the acquisition, subject to a cap of S\$5 million (5% of deals worth up to S\$100 million) of allowance granted for all qualifying deals executed per YA. The allowance will be written down equally over five years,

In addition, stamp duty on transfers of unlisted shares for qualifying M&A deals executed from 1 April 2010 to 31 March 2015 will also be remitted. The remission is capped at S\$200,000 (0.2% of deals worth up to S\$100 million) of stamp duty per year.

The IRAS will release details of the M&A allowance and stamp duty relief scheme by June 2010. However, the stamp duty remission will be available for qualifying M&As executed from 1 April 2010 to 31 March 2015 (both dates inclusive).

Conclusion

The new income tax framework for amalgamations and the announcement in the 2010 Budget Statement are further milestones in the public-private partnership the IRAS is striving to achieve to ensure clarity in its views and sharing these with taxpayers and professional service providers and are very much to be welcomed.

This tax framework for amalgamation applies w.e.f. 22 January 2009 and the amalgamated company is required to make a written election to the Comptroller of Income Tax with a prescribed list of documents and information.

However, as discussed above, the final details in the 2010 Budget, whilst effective from 1 April 2010, will be released by the IRAS by June 2010.

The content of this article is only intended to provide general information on the subject covered. Nothing in this article should be treated as legal advice.

Any enquiries may be directed to:

Gurdeep Randhay

Tax Director

Email: gstrandhay@cnplaw.com

Website: www.cnplaw.com