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RELIEF FROM DOUBLE TAXATION AND THE POOLING OF FOREIGN TAX CREDIT

(compiled by N Vimala Devi)

Foreign sourced income may suffer tax in the foreign country where it arose. When such foreign sourced income is received in Singapore, it will be subject to Singapore tax unless it is exempt under the foreign sourced exemption rules.

Foreign sourced exemption rules

Certain income comprising foreign sourced dividend income, service fees and branch profits received by a Singapore resident company are tax exempt provided all the following conditions are satisfied:

1. The foreign sourced income is subject to tax of a similar character to income tax in the foreign jurisdiction;
2. The foreign sourced income is derived from a country which has a headline tax rate of at least 15%; and
3. The foreign sourced income if exempt from any Singapore tax should not give rise to any unfavorable tax consequence to the Singapore resident company.

The other avenues to mitigate the double taxation of the foreign sourced income received by a Singapore company are by claiming either Foreign Tax Credit Relief where there is a tax treaty between the Singapore and the foreign country from which the foreign sourced income is derived from or Unilateral Tax Credit Relief in instances where there is no tax treaty between Singapore and the foreign country.

Foreign Tax Credit Relief

The Foreign Tax Credit Relief ("FTC") which is also known as double tax relief is granted to a Singapore tax resident recipient under a Tax Treaty that Singapore has concluded with the foreign country to allow the claim for the foreign tax credit on the foreign tax paid. For a company, its management and control must be exercised in Singapore, before it can qualify to be a Singapore tax resident.

The amount of FTC is restricted on a source-by-source and country-by-country basis and is calculated at the lower of:

1. the actual foreign tax paid; or
2. the Singapore tax payable on the foreign sourced income less attributable expenses.

The claim for foreign tax credit is actually very restrictive as, in many cases, the Singapore effective tax payable after deducting all the direct and expenses attributable to the foreign sourced income is substantially lower than the actual foreign tax suffered. Any excess of foreign tax paid over the Singapore tax payable on one type of foreign income from a foreign country is not available to be set against the Singapore tax payable on the same type of income from another country. Also, any excess of foreign tax paid on one type of income (example, dividend) is not available to be set off against the Singapore tax payable on another type of income (example, interest) from the same foreign country. Effectively, the FTC offered very minimal relief from double taxation of the foreign sourced income.

Unilateral Tax Credit Relief

Where Singapore has not concluded any Double Tax Agreement with the foreign jurisdiction, the Singapore company is allowed to claim the Unilateral Tax Credit Relief ("UTC"). With effect from year of assessment 2009 all foreign sourced income having suffered foreign tax is allowed UTC on the foreign income received from non-tax treaty countries. The UTC is calculated in the same manner as provided for under the foreign taxes paid as explained above.

Given the often minimal relief offered under the FTC or UTC reliefs, in the 2011 Budget, a new FTC pooling system was introduced for Singapore companies to have greater flexibility to claim their foreign taxes paid and pay lower Singapore income tax on the foreign income remitted.

New Pooling of Foreign Tax Credit

Under the new FTC pooling system, with effect from year of assessment 2012, Singapore resident companies can choose to combine their foreign taxes suffered on any of their foreign sourced income provided the foreign income meets all the following conditions:-

1. foreign tax must have been paid;
2. the headline tax rate of the foreign country is at least 15% at the time of remittance of the income; and
3. the company is entitled to claim FTC or UTC and there is Singapore tax payable on that income.

The pooling of the FTC is calculated at the lower of:

1. the amount of pooled foreign tax paid on the pool of foreign income or
2. the amount of Singapore tax payable on the pool of foreign income less attributable expenses.

Under this new system any excess tax paid on a foreign sourced income can be used to set off against the Singapore tax payable on another foreign sourced income in the selected pool of foreign income. Consequently, this may result in tax savings.

Singapore companies with foreign sourced income should carefully consider and plan the timing of their remittances to Singapore to maximize on their claim for FTC under the new pooling system.

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APPLICATION BY FOREIGN COMPANIES FOR WAIVERS UNDER SECTION 373, COMPANIES ACT, CAP 50

(compiled by Michelle Heng)

On 5 January 2012, The Accounting and Corporate Regulatory Authority ("ACRA") issued its first Practice Direction for 2012 concerning applications by foreign companies ("FC") for waiver from filing its local branch accounts and for relief from the requirements relating to the form and content of accounts or reports lodged with ACRA.

For a FC that is required to hold an AGM and file financial statements in its country of origin :

Section 373(1) of the Companies Act, Cap 50 (the "Act") requires a FC to file its Head Office ("HO") accounts within 2 months from its Annual General Meeting. The FC is also required to file the audited accounts of its Singapore branch with ACRA.

However, a FC may apply, under prescribed conditions, for a waiver for its *branch accounts only* and also for relief from the requirements relating to the form and content of accounts or reports with regard to both branch and HO accounts. The application to the Registrar for this waiver to file its branch accounts or for relief relating to the form and content of the accounts or reports should be lodged *at least a month before the due date* of its filing of accounts (ie within 2 months from its AGM) for ACRA's consideration so as to give ACRA adequate time to assess the application

For a FC that is not required to hold an AGM in its country of origin :

Section 373(4) allows the FC to file a balance sheet and such requisite documents as if it is a public company incorporated under the Act, within 7 months from its financial year end. In addition, the FC is also required to file the audited accounts of its Singapore branch with ACRA.

In certain circumstances, the FC may apply for a waiver for its *branch accounts only* and also for relief from the requirements relating to the form and content of accounts or reports with regard to both branch and HO accounts. The FC may apply for up to a maximum of 2 months extension to file its HO and branch acounts, provided the application is made within 6 months from the financial year end of the FC for ACRA's consideration.

As ACRA has now clarified the time frame for which applications for relief from the requisite sections of Section 373 may be made, any application that do not adhere to the specified time frames will be rejected.

As a general rule, ACRA will not grant exemptions upon application and will only consider granting the exemption if it can be proved to the Registrar's satisfaction that specified conditions are met. Cost of compliance on its own is not sufficient justification for an exemption.

An application for waiver for filing branch accounts will only be approved if ACRA is satisfied that:-

- It is impractical to comply having regard to the nature of its operations in Singapore
- There is no real value having regard to the amount involved
- It will involve expense unduly out of proportion to its value or
- It will be misleading or harmful to the business of the FC or to any company related to that FC

An application for relief from the requirements relating to the form and contents of accounts or reports lodged will only be approved if:-

- Compliance will render the accounts or reports misleading
- Compliance is inappropriate to the circumstances of the FC
- Compliance with the requirements will impose unreasonable burden on the FC

With effect from financial year commencing 1 January 2012, ACRA has also clarified that it will no longer accept lodgment of the accounts of an FC's immediate, intermediate or ultimate holding company in lieu of the HO accounts.

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