

## Singapore corporate re-domiciliation regime - up and running!



### **ACRA officially gazetted the Companies Law Regulations to permit foreign companies to re-domicile to Singapore**

On 11 October 2017, the Accounting & Corporate Regulatory Authority (ACRA) of Singapore implemented, with immediate effect, the Companies (Transfer of Registration) Regulations 2017 ("Re-domiciliation Regulations") which permits eligible foreign companies to transfer their place of incorporation to Singapore.

The Re-domiciliation Regulations have been issued pursuant to the amendments to the Companies Act (Chapter 50) introducing the provisions to allow the inbound re-domiciliation of foreign corporate entities (FCEs) to Singapore, and to further govern

such re-domiciled FCEs under the Singapore company law provisions.

### **Company Law Requirements**

#### **1. Permissibility to re-domicile to Singapore**

The foremost requirement is that the original jurisdiction of the FCE must permit the re-domiciliation to Singapore, and the FCE must be able to adapt its legal structure to become a Company limited by shares under the Singapore Companies Act.

We have provided the list of jurisdictions that permit re-domiciliation in the Appendix below.

## 2. Minimum size requirements

FCEs must also satisfy at least two of the following criteria at the end of the 2 financial years immediately preceding its application:

- Revenue exceeding S\$10 million
- Total assets exceeding S\$10 million
- 50 employees

The minimum size requirement can be fulfilled by the FCEs on a consolidated basis in the following circumstances:

- Where the FCE is a parent, along with its subsidiaries; or
- Where the FCE is a subsidiary, along with its parent, which is either an FCE also re-domiciling to Singapore or is an existing Singapore company.

## 3. Solvency requirements

It is important that the FCE is solvent and the value of its liabilities cannot be more than the value of its assets. The directors of the FCE would need to sign a declaration that the FCE is solvent and that it is in the position to pay all of its existing debts.

## Tax Implications

### Singapore

The Income Tax (Amendment) Bill 2017, which includes the tax framework for companies re-domiciled in Singapore, was passed in the Parliament on 2 October 2017 and received Presidential assent on 19 October 2017.

The tax treatment set out under the newly introduced sections 34G and 34H in the Income Tax (Amendment) Act 2017 is only applicable to FCEs where such FCEs have not carried on any trade or business in Singapore before the date of re-domiciliation.

The tax provisions are broadly as follows:

- **Relief from Exit Taxes** – Where the FCE is subject to tax in its existing jurisdiction on re-domiciling to Singapore (e.g. exit taxes on deemed income), credit of such taxes may be available after re-domiciliation against any Singapore taxes paid on such income when subsequently realised, subject to conditions and approval by the Finance Minister. Such tax credit would be lower of the Singapore tax and the foreign taxes paid.
- **Deduction for expenses incurred prior to re-domiciliation** – Expenses incurred prior to the re-domiciliation which have been given a

deduction or relief from tax in another jurisdiction, would not be allowed as a deduction in Singapore. However, certain specified deductions should be available where the costs are incurred solely for the purposes of a trade in Singapore. Examples of such costs are - IP protection costs, R&D costs, renovation and refurbishment costs, qualifying design expenditure and pre-trading expenditure. These costs may only be allowed in the year the FCE commences business in Singapore.

- **Deduction for Trading Stocks** – The deduction for trading stock would be the lower of the cost of the trading stock and the net realisable value of such stock as on the date of re-domiciliation.
- **Bad Debts** – Bad debts incurred before the date of re-domiciliation would not be allowed as a deduction where it is written off after re-domiciling. In contrast, bad debts which are recovered after the re-domiciliation would not be taxable.
- **Impairment loss on financial assets** – Any impairment loss incurred on a financial asset before re-domiciliation and reversed after re-domiciling would not be taxable. Where such impairment loss on financial assets held on revenue account is incurred after the re-domiciliation date, such loss would be allowed as a deduction. Any such loss reversed subsequently would be taxable to the extent of deduction availed.
- **Capital Allowances** – Where the FCE has incurred capital expenditure on qualifying plant and machinery and would use the assets for the purpose of trade and business in Singapore after re-domiciliation, capital allowances can be claimed based on the lower of net book value and market value of the assets at the time of re-domiciliation.
- **Writing Down Allowances** – Where the FCE has incurred capital expenditure in acquiring intellectual property rights and uses the rights for the purpose of its trade and business in Singapore after re-domiciliation, writing down allowances can be claimed based on the lower of acquisition cost (less accumulated amortisation and impairment) and open market value at the time of re-domiciliation.

Further, the MOF has clarified in its response to the public comments on the draft Bill that the tax exemption scheme for New Start-Up Companies would not be allowed for re-domiciled companies as this would not be in line with the policy objective of the scheme, given that the exemption under the scheme was introduced to support entrepreneurship in Singapore.

## International Tax

It is important to also note the impact of re-domiciling to Singapore from an international tax perspective. We have listed the primary international tax implications and our observations thereon:

- Most countries have exit tax rules where any deemed income arising from migration and/or change of residency is taxed on the basis that such change is effectively a disposal of assets.
  - Although the imposition of exit taxes may limit certain companies to take advantage of the ability to re-domicile in Singapore, the possibility of availing credit of such foreign taxes against any future Singapore taxes should appeal to groups looking to expand in Singapore.
- As the tax environment is moving towards the OECD/ G20 BEPS led initiative, tax havens and low tax jurisdictions without appropriate levels of substance are increasingly being challenged.
  - The opportunity to migrate corporate vehicles to a bona fide commercial jurisdiction such as Singapore, which is already recognised by the OECD and the Forum on Harmful Tax Practices (“FHTP”) as meeting international tax standards, will be welcomed by International Groups.

- BEPs initiative towards digital economy requires planning towards holding of intellectual property rights in a jurisdiction where substance can be justified.
  - Given that Singapore offers incentives in relation to holding and developing of intellectual property is supported by nexus and appropriate levels of substance, the re-domiciliation offers another avenue to realigning the corporate structure with the location of the economic activities.

### What does this mean for you?

The Re-domiciliation regime is another welcome enhancement to the Singapore corporate environment. It is likely to be more attractive for the following groups:

- Corporate groups wishing to benefit from a more stable political and business infrastructure.
- Corporate groups requiring a more favourable tax and regulatory environment while retaining their corporate/ legal history and branding.
- Corporate groups looking to restructure in the light of the BEPS developments and the need for greater tax transparency.
- Companies wishing to align corporate domicile with their shareholders, regional hub and/ or operational base in Singapore.



## Appendix

Jurisdictions that permit re-domiciliation to Singapore

|                        |   |
|------------------------|---|
| Andorra                | Lebanon                                     |
| Anguilla               | Liberia                                     |
| Antigua and Barbuda    | Lichtenstein                                |
| Aruba                  | Luxembourg                                  |
| Australia              | Macao                                       |
| Austria                | Malaysia (Labuan)                           |
| Bahamas                | Maldives                                    |
| Bahrain                | Malta                                       |
| Barbados               | Marshall Islands                            |
| Belgium                | Mauritius                                   |
| Belize                 | Montserrat                                  |
| British Virgin Islands | Nauru                                       |
| Brunei                 | Netherlands Antilles                        |
| Canada                 | New Zealand                                 |
| Cayman Islands         | Panama                                      |
| Cook Islands           | Philippines                                 |
| Costa Rica             | Portugal (Madeira)                          |
| Cyprus                 | Samoa                                       |
| Delaware, USA          | Seychelles                                  |
| Dominica               | St Kitts and Nevis                          |
| Gibraltar              | St Lucia                                    |
| Grenada                | St Vincent                                  |
| Guernsey               | Grenadines                                  |
| Hungary                | Switzerland                                 |
| Ireland                | Turks and Caicos Islands                    |
| Isle of Man            | United Arab Emirates (Dubai, Ras al-Kaimah) |
| Israel                 | Uruguay                                     |
| Jersey                 | US Virgin Islands                           |
| Latvia                 | Vanuatu                                     |



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