SINGAPORE

A Review of the New Tax Planning Opportunities in Singapore

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On February 28, 2003, Singapore's Finance Minister delivered his 2003 Budget Statement. The Finance Minister announced that to attract investors and boost exports, a tax exemption will be granted to both individuals and companies, for all foreign-sourced dividend, foreign branch profits and foreign-sourced service income (collectively the "specified foreign income") remitted to Singapore from June 1, 2003 if such income is earned from jurisdictions with "headline" tax rates of at least 15 percent.

The Finance Minister's proposal has removed much of the competitive tax advantage enjoyed to date by the hitherto popular tax haven incorporated listing vehicles which were used to seek a listing on the Singapore stock exchange and is hence expected to lead to a significant decrease in their use.

This tax exemption proposal, and the shift to the one-tier corporate tax system in Singapore, now makes dividend income derived by a Singapore resident listing vehicle, from a company resident in a foreign country with a "headline" tax rate of 15 percent or higher (*e.g.,* Mauritius) and received (or deemed received) in Singapore, *tax exempt* in the hands of the recipient. It is therefore now more advantageous to have, say, a Mauritius incorporated and tax resident company as the listing vehicle rather than, for example, a tax haven incorporated and tax resident company because the "headline" tax rate of tax haven jurisdictions is invariably much less than 15 percent, if not zero percent.

In contrast to tax haven companies, normal corporate tax in Mauritius is 25 percent while tax incentive companies benefit from a reduced tax rate of 15 percent. The Mauritius incorporated and tax incentive resident company most appropriate for tax planning in such circumstances is the Category 1 Global Business Licence company ("GBL1"). A GBL1 is taxed at an incentive tax rate of 15 percent but has the option of either applying an automatic deemed foreign tax credit of 80 percent against this 15 percent, resulting in an effective tax rate of only 3 percent *or* of applying actual foreign taxes paid (documentary proof required) limited to the Mauritius corporate tax liability at 15 percent which often may result in nil tax being paid in Mauritius.

The issue which required clarification was whether the "headline" tax rate of at least 15 percent referred to the actual tax rate imposed on taxable income or whether a nominal tax rate of 15 percent was all that was required.

The Inland Revenue Authority of Singapore ("IRAS"), in a circular issued on May 21, 2003, has now clarified that the tax exemption will indeed be granted to all Singapore residents on their specified foreign income received in Singapore provided that:

- in the year the income is received in Singapore, the highest corporate tax rate of the foreign jurisdiction (*e.g.,* Mauritius) is at least 15 percent; and
- The specified foreign income received in Singapore must have been subjected to tax in the foreign jurisdiction (either tax paid or payable).

Furthermore, the IRAS Circular has made it clear that:

- There is no shareholding requirement to be met in order to enjoy the tax exemption on the foreign-sourced dividend;
- The headline tax rate of a foreign jurisdiction refers to the highest corporate tax rate of the foreign jurisdiction. It is not necessarily the actual rate of tax imposed by the foreign jurisdiction on the specified foreign income;
- Companies resident in Singapore that have been granted tax exemption on their specified foreign income can distribute normal exempt dividend out of such tax exempt income if they choose to do so. Their corporate shareholder(s) where resident in Singapore (regardless of their percentage of shareholding, and whether they are the immediate shareholders or otherwise) will be able to further onward distribute normal exempt dividend out of the normal exempt dividend received; and
- To enjoy the tax exemption on the specified foreign income, persons resident in Singapore need only declare, in the appropriate section of their income tax returns, that their specified foreign income qualifies for the tax exemption and to furnish certain particulars.

Opportunities, of course, now also exist for tax planning using a vehicle in a foreign jurisdiction with a "headline" tax rate of at least 15 percent (*e.g.,* a GBL1 in Mauritius):

- as an investment holding vehicle; or
- registered in Mauritius as a branch to generate tax exempt branch profits (when remitted to Singapore but taxable in Mauritius at 3 percent) aris-

ing from a trade or business carried on by this foreign branch; or

- set up as a fixed place of operation in Mauritius to generate service income (as distinguished from employment income), *i.e.,* professional, technical, consultancy or other services provided by a person in the course of its trade, profession or business.

Mauritius also has a tax treaty with Singapore which is currently in force whereby a Mauritius tax resident vehicle may benefit from complete exemption from Singaporean interest and royalty withholding tax making Mauritius unique as a jurisdiction for debt financing and leasing into Singapore.

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