EVERSHEDS HARRY ELIAS

Legal Update

Note on Inward Re-domiciliation to Singapore

29 November 2017

Effective 11 October 2017, following the amendments to the Singapore Companies Act (Cap. 50), eligible foreign corporate entities ("**FCE**") are permitted to transfer their place of incorporation to Singapore by way of an inward re-domiciliation.

FCE may choose to re-domicile to Singapore to allow them to anchor here in Singapore as their regional headquarters to leverage on Singapore's hub status.

Re-domiciliation will not (a) affect the obligations, liabilities, property or rights of the FCE; (b) create a new Singapore entity; or (c) affect any proceedings by or against the FCE.

Eligibility Requirements

A FCE must first be authorised to transfer its incorporation under the laws of its place of incorporation. To do so, the country in which a FCE is originally in must permit outward re-domiciliation. At present, various offshore jurisdictions such as Cayman Islands and British Virgin Islands, Australia, Canada and New Zealand permit re-domiciliation. On the other hand, jurisdictions such as the UK and Hong Kong do not permit outward re-domiciliation.

<u>Size criteria</u>

In order to qualify for re-domiciliation to Singapore, a FCE must satisfy any two of the following size criteria:

(a) Value of the FCE's total assets exceeding S$10 million;

(b) Annual revenue of the FCE exceeding S$10 million; and

(c) The FCE having more than 50 employees.

If the FCE is a parent company, the size criteria above is calculated based on consolidated figures on a group level. Where the FCE is a subsidiary, the above size criteria is satisfied if (i) its parent company satisfies the size criteria or (ii) the FCE itself is not a parent company and it satisfies the size criteria.

The size criteria is to encourage and attract FCEs with potential prospects of contributing to the Singapore economy.

Solvency and other requirements

The FCE must also be balance-sheet solvent as at the date of the application and is able to pay its debts (including for the period of 12 months immediately after the date of the application for registration) as they fall due.

Further, the FCE must not:

(a) be placed under judicial management or undergoing an ongoing proceeding to be placed under judicial management;

(b) have entered into any compromise or arrangement with any other person or undergoing an ongoing proceeding to be placed under any compromise or arrangement; and

(c) be in liquidation or being wound up or undergoing an ongoing liquidation or winding-up proceeding.

Advantages of inward re-domiciliation to Singapore

The advantages of re-domiciliation to Singapore can be classified into the following categories:

(a) Tax incentives

Lower Corporate Income Tax Rate. Singapore offers a lower corporate income tax rate of 17% for the companies in Singapore, as compared to jurisdictions such as Australia (30%), Canada (26.5%) and New Zealand (28%).

Availability of Tax Rebates and Tax Exemptions. For Year of Assessment 2017, there is a 50% corporate income tax rebate, capped at S$25,000.[1] There is also a partial tax exemption of 75% on the first S$10,000 and 50% on the next S$290,000 of the company's income subject to tax at the prevailing corporate tax rate.

Relief on Exit Taxes. Singapore provides tax credits on Singapore-sourced income in respect of any exit taxes imposed on such income by the FCE's original place of incorporation.

Capital Gains Tax. Capital gains made on sale of properties, shares or other financial instruments are generally not taxable unless such gains is made in the course of the company's trading business with a profit-seeking motive.

Deductions available. Certain specified deductions such as IP protection costs, pre-trading expenditure and R&D costs are available if the costs are incurred for the purposes of a trade in Singapore. Capital allowances can be claimed based on the lower of net book value and market value of the assets.

(b) Organizational benefits

Given the lower operating costs in Asia, many of the companies' operating subsidiaries are now based in the South East Asia region. A re-domiciliation to Singapore will allow the parent company to be based closer to its operating subsidiaries.

[1] For Year of Assessment 2018, companies will be granted a 20% corporate income tax rebate, capped at S$10,000.

(c) Singapore as a financial hub with stable political and business infrastructure

Singapore has long been recognized as a robust business hub with a stable political and business infrastructure, and a well-established judicial system. In recent years, Singapore has been recognized as Asia's top financial centre (3rd in the world after London and New York) in the Global Financial Centres Index 21 (March 2017), and was ranked as having the best intellectual property protection in Asia (4th in the world after Switzerland, Finland and Luxembourg) by the World Economic Forum in The Global Competitiveness Report 2016-2017. Singapore provides a conducive pro-business environment for FCEs considering to re-domicile to Singapore.

(d) Retention of corporate branding and identity

The FCE will continue to retain its corporate branding and identity after the inward re-domiciliation, as the identity of the FCE remains unaffected, therefore resulting in minimal operational disruption.

(e) Push factor: International focus on the traditional tax havens

Given the recent international focus on the traditional tax havens, the concerted move towards greater tax transparency, and the implementation of the OECD/G20 Base Erosion and Profit Shifting ("**BEPS**") package by many jurisdictions, this might provide an impetus for FCEs to consider re-domiciliation to another jurisdiction with a more robust tax regime.

To that end, Singapore has joined the inclusive framework for the global implementation of the BEPS Project as a BEPS Associate and Singapore's tax incentives have recently been reviewed by the Forum on Harmful Tax Practices and have been found to meet international tax standards.

Concluding Note

The entire process of re-domiciliation is expected to take about 2 months. The re-domiciliation regime is attractive for groups wanting to benefit from Singapore's regional hub status, as headquarters for its businesses operating in the South East Asia region.

Companies can enjoy favourable tax and regulatory environment in a stable business environment.

Please feel free to contact us if you would like to know more about re-domiciliation to Singapore.

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