

ASEAN INVESTMENT & TAX NEWS

FEATURE ARTICLE

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FOREWORD

Greetings and welcome to the first issue of 2019 ASEAN Investment & Tax News (AITN). There seems to be a more measured start to 2019, as I am buoyed by the American and Chinese leaderships' 90-day truce on the recent trade war. Both countries have sat down for a fresh round of dialogue, to strike a deal that will hopefully further stabilise the world's economy.

On the same optimistic note, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) comes into effect on 30 December 2018 for 11 of its members including Malaysia. The CPTPP is a free trade agreement that is expected to increase trade between countries that constitute 13.5% of the world's economy.

Meanwhile back on the regional front, the ASEAN chair will be rotated to Thailand, who unveiled the theme of its chairmanship - Advancing Partnership for Sustainability. As the new ASEAN chair, Thailand's Prime Minister Prayut Chan-oh-cha has outlined its key priorities which include boosting connectivity in infrastructure, rules and regulations and people-to-people links.

With another exciting quarter in the ASEAN economic environment, our tax experts continue to analyse and bring the latest in-depth updates and reforms from around the region.

Our feature article touches on Thailand's introduction of new transfer pricing rules into Thailand's Revenue Code. The legislation reflects the Thai government's serious efforts to align itself with international developments on the transfer pricing front.

Meanwhile, in Singapore we discuss the recently passed Variable Capital Companies (VCC) Bill. A VCC is a new legal entity/structure for investment fund, and our colleagues have outlined the key points of the VCC bill and how it will enhance

the nation's appeal as an international fund management hub.

In Malaysia, on the back of a tax regime change from Goods and Services Tax (GST) and Sales and Service Tax (SST), we look back at the proposed key changes of the 2019 Budget which was tabled on 2 November 2018.

In Indonesia, we discuss the updated tax holiday granted to corporate taxpayers. The updated regulation sees a significant reduction from the IDR 500 billion to IDR 100 billion of capital investment plan to enjoy the said tax holiday. Read on to find out the key changes stemming from the update.

Our Myanmar colleagues, meanwhile discuss the various tax updates in the county, specifically on clarifying the treatment of Commercial Tax, a new regulation that will allow foreign banks to lend to Myanmar companies and a clarification of the Tax Year for 2018/2019.

Finally, our Cambodian team takes an in-depth look at the provision of Seniority Payments & Wage Payments or Prakas 443 on Seniority Payments (Prakas 443) which is effective from 1 January 2019. The main aim of the Prakas 443 is to clarify the scope and enforcement of the relevant provisions on seniority payments for employees under Unfixed Duration Contracts (UDCs).

We trust the updates shared here will give you insights into key developments on tax and investment, in and around the region. Please contact us if you would like to have more information or comprehensive advice on any of the news or articles presented in this publication.

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Variable Capital Companies (VCC) Bill was passed into law

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FEATURE: THAILAND

NATION STRENGTHENS ITS TRANSFER PRICING RULES

The introduction of transfer pricing legislation marks a significant step towards the development of transfer pricing rules in Thailand.

New transfer pricing legislation has been introduced into Thailand's Revenue Code, reflecting the Thai government's serious efforts to align itself with international developments on the transfer pricing front.

The new law:

- 1 Codifies transfer pricing rules and relief;
- 2 Introduces mandatory transfer pricing documentation requirements;
- 3 Mandates reporting of related party transactions by certain taxpayers;
- 4 Imparts specific powers to assessment officers to impose transfer pricing adjustments; and
- 5 Institutes a specific penalty regime for non-compliance.



FEATURE: THAILAND

NATION STRENGTHENS ITS TRANSFER PRICING RULES (Con't)

BACKGROUND

The Thai Revenue Code already has express provisions in Section 65 Bis (4) requiring all taxpayers to follow market driven prices while undertaking any transaction. The newly enacted transfer pricing legislation codifies the arm's length principle into the Revenue Code and imparts specific powers to assessment officers to impose transfer pricing adjustments in respect of either income or expenses arising from non-arm's length transactions between related parties.

WHAT IS REQUIRED?

All taxpayers who enter into related party transactions are required to ensure that the transactions or arrangements are entered into on an arm's length basis.

To substantiate their positions, taxpayers are required to prepare transfer pricing documentation establishing the arm's length nature of their related party transactions.

In addition, the legislation mandates for certain taxpayers with revenues exceeding a prescribed threshold (to be specified later by a Ministerial Regulation but not less than THB 200 million) to submit a report of their related party transactions to the Revenue Department with their corporate tax return.

WHAT IS THE PENALTY FOR NON-COMPLIANCE?

The legislation empowers an assessment officer to adjust the income or expenses of companies or registered partnerships to the amount of income to be received or expenditure to be paid as if they were independent parties for the calculation of net taxable profit or assessable income for tax purposes.

Furthermore, non-submission of the required transfer pricing disclosure form within the prescribed period or provision of incorrect information without justifiable reasons may lead to the imposition of a penalty not exceeding THB 200,000.

WHEN DOES THE NEW LAW TAKE EFFECT?

The new regulations apply to accounting periods starting on or after 1 January 2019.

WHAT'S NEXT?

Guidance on the interpretation and practical application of the new rules still needs to be issued by the Thai Revenue Department, which can be expected to cover matters such as comparability analysis, determination of arm's length range, consideration of conditions for special transactions, etc.

Since joining the OECD's Inclusive Framework on Base Erosion and Profit Shifting (BEPS), Thailand has committed to implement the four minimum standards of the BEPS package that includes application of BEPS Action Plan 13, which mandates a three-tiered transfer pricing documentation structure (Country-by-Country Report [CbCR], Master File and Local File). With the transfer pricing law now in place, the CbCR and Master File regulations are expected to be implemented soon.

All businesses in Thailand — irrespective of their size — that have related party transactions should start evaluating their transfer pricing policies, to proactively identify any potential risk areas and take remedial measures.


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NEWS

CAMBODIA:

PROVISION OF SENIORITY PAYMENTS & WAGE PAYMENTS



Following the issuance of the amendments to the Labour Law in Cambodia which came into effect on 26 June 2018, the Ministry of Labour and Vocational Training (MLVT) issued Prakas 443 on Seniority Payments (Prakas 443) which will be effective from 1 January 2019.

The main aim of the Prakas 443 is to clarify the scope and enforcement of the relevant provisions on seniority payments for employees under Unfixed Duration Contracts (UDCs). Previously 'severance' was only payable upon termination of a UDC by the employer.

Under Prakas 443, severance has now been replaced by seniority payments. The main aspects of Prakas 443 are as follows:

1 Seniority payments from 2019 onwards:

Under Prakas 443, seniority payments equal to 15 days of wages and fringe benefits must be paid to employees two times per year according to the following schedule:

- a 7.5 days of wages and fringe benefits to be paid in June each year; and
- b 7.5 days of wages and fringe benefits to be paid in December each year.

Once a new employee has completed one month of employment, the employee would be entitled for the 7.5 days of wages and fringe benefits payable in June or December of that year irrespective of whether they complete the entire 6 months of service.

When an employee is terminated before the end of June or December in a particular year, the employee will be entitled to a seniority pay at a rate of 7 days wages and fringe benefits, except in the event of termination for serious misconduct, in which case seniority pay for that period will not be payable.

In addition, under the Prakas 442 issued by the Ministry of Labour and Vocational Training (MLVT) on 21 September 2018, beginning January 2019, all enterprises governed under the Labour Law must pay wages to employees twice per month in the following manner:

- a First Payment: 50% of base wages for that month in the second week of the month; and
- b Second Payment: the remaining base wages, fringe benefits and other allowances for that month in the fourth week of the month.

The enactment of this new Prakas 442 and 443 is likely to increase an employer's liability with respect to seniority and wage payments as the employer would now need to ensure that he has the cash flow to pay the seniority and wage payments in accordance to the periods stipulated in the Prakas 443.

2 Back pay of seniority payments prior to 2019

Under Prakas 443, employees who were employed prior to 2019 are also entitled to the back pay for all past seniority. However, the amount is capped at a maximum of 6 months of the average base wage in each relevant year of employment up to 31 December 2018. For employees in the textile, garment and footwear manufacturing (TGF) sectors who have been employed before 1 January 2019, he is entitled to 15 days of back pay per year (to a maximum of 6 months) paid as follows:

- a 7.5 days of seniority payment to be paid in June each year; and
- b 7.5 days of seniority payment to be paid in December each year.

Upon termination the employee will be paid in full the outstanding back pay (to a maximum of 6 months of the average base wage in each relevant year of employment up to 31 December 2018).

NEWS

INDONESIA:

UPDATED TAX HOLIDAY

The Minister of Finance (MoF) has issued Regulation No. 150/PMK.010/2018 (PMK-150) on 27 November 2018 which revokes the recently issued MoF Regulation No. 35/PMK.010/2018 (PMK-35), as part of Economic Policy Package XVI. There are a number of important changes to note as follows:

Under the updated regulation, the tax holiday is granted to corporate taxpayers with a minimum capital investment plan of IDR 100 billion. This is a significant reduction from the minimum capital investment plan of IDR 500 billion in PMK-35.

There are now 18 pioneer industries compared to the previous 17 pioneer industries in the business sectors. For the complete list, please refer to the details of eligible Standard Classification of Business Field (KBLI) of each pioneer industry that are stipulated in the Regulation of Capital Investment Board (BKPM).

There are several facilities which depend on the amount of investment as follows:

Provision	New Capital Investment	
	IDR 100 billion up to < IDR 500 billion	≥ IDR 500 billion
Corporate Income Tax Reduction Rate	50%	100%
Consession Period	5 Years	5 - 20 Years*
Transition Period	25% CIT Reduction for the next 2 years	50% CIT Reduction for the next 2 years

Investment (IDR)	Period in years
500 billion up to < 1 trillion	50%
1 trillion < 5 trillion	5 Years
5 trillion < 15 trillion	25% CIT Reduction for the next 2 years
15 trillion < 30 trillion	25% CIT Reduction for the next 2 years
≥ 30 trillion	25% CIT Reduction for the next 2 years

NEWS

INDONESIA: UPDATED TAX HOLIDAY (Con't)



The corporate taxpayer, who is authorised to get the facility, is obligated to do separate bookkeeping between the income with facility and without facility. The corporate taxpayer is still required to withhold tax from other parties in accordance with regulations.

In order to qualify for the tax holiday, the corporate taxpayer must meet the criteria below:

- Classified as a pioneer industry;
- Status as an Indonesian legal entity;
- Is a new investment that has not been issued the decision regarding granting or refusing the Corporate Income Tax (CIT) reduction;
- Value of new investment plan is at least IDR 100 billion; and
- Fulfil the Debt-to-Equity Ratio as referred to in the MoF Regulation concerning determining the Debt-to-Equity Ratio for calculating CIT.

For new investments, the corporate taxpayer can verify its eligibility through the Online Single Submission (OSS) system that will determine if the taxpayer has met the criteria for the tax holiday and the OSS system will send a notification to the taxpayer on the eligibility.

Thereafter, the corporate taxpayer is required to submit the details of fixed assets in the investment plan, Debt-to-Equity Ratio and shareholder fiscal statements in softcopy through OSS. Before commencement of commercial production, the corporate taxpayer is required to submit together with a registration of business licence number for new taxpayers or within 1 year after receiving the business licence for new investments.

If the corporate taxpayer wishes to apply for the tax holiday in which the industry is not listed as a pioneer industry but meet all the other criteria, the eligibility for the tax holiday will be discussed between BKPM and the relevant ministries.

The Directorate General of Taxes (DGT) who receives delegation of authority from MoF, will issue its decision within five working days from receipt of the complete application from OSS system. The OSS system will send notification to the corporate taxpayer on the decision.

The new investment which has been granted a tax holiday under PMK-150 cannot be eligible for other Income Tax facilities for investment in certain business fields and/or in certain areas that is stipulated in Government Regulations.

NEWS

MALAYSIA:

KEY HIGHLIGHTS FROM THE 2019 BUDGET

The 2019 Budget in Malaysia was tabled by the Minister of Finance, YB Lim Guan Eng on 2 November 2018. This was followed by the issuance of the Finance Bill 2018 which contains the proposed amendments to the tax legislation. We are pleased to highlight below some of the proposed key changes which may be of interest to you:



KEY HIGHLIGHTS FROM THE 2019 BUDGET

AREAS	AMENDMENTS
Corporate tax rate	The income tax rate for SMEs and LLPs on chargeable income of up to RM500,000 is proposed to be reduced from 18% to 17%.
Limitation on Carry Forward Business losses and Reinvestment Allowances	Any unabsorbed business losses / reinvestment allowance can ONLY be carried forward for a maximum of 7 consecutive years of assessment (YA) and any balance unabsorbed would be disregarded.
Limitation of Group Relief	Companies will only be allowed to surrender losses limited to 3 YAs only. Claimant companies with unutilised investment tax allowances or unabsorbed pioneer losses will no longer be eligible for the group relief.
Amendment to the Scope of Special Classes of Income	Section 4A of the Income Tax Act (ITA) 1967 shall be widened to include any advice given and/or services rendered in connection to management or administration by non-residents. Therefore, a wider scope of services performed by non-residents would be subject to withholding tax.
Special Voluntary Disclosure Program	A Special Voluntary Disclosure Program will be offered to taxpayers who voluntarily declare any unreported income and the penalty rates will be 10% and 15% for declaration made on or before 31 March 2019 and 30 June 2019 respectively.
Earnings Stripping Rules (Rules)	A new Section 140C is proposed to disallow the deductibility of interest expenses in connection with or on any financial assistance in a controlled transaction in excess of the maximum amount of interest as determined under Rules made under the ITA. Detailed rules shall be issued by the IRB after the Finance Bill 2018 has been gazetted.
Incentive for Industry4WRD	<ul style="list-style-type: none"> i It is proposed that a tax deduction may be claimed on readiness assessment expenses of 14.0-RA of up to RM27,000 paid to the Malaysian Productivity Corporation. ii A Double Deduction may be claimed on qualifying expenses incurred in implementing the industry4WD Vendor Program. The claim is limited to RM 1 million per year and up to 3 YAs. iii A Single or Double Deduction may be claimed on human capital development expenses incurred in line with Industry 4.0 requirement.

NEWS

MALAYSIA:

KEY HIGHLIGHTS FROM THE 2019 BUDGET (Con't)

KEY HIGHLIGHTS FROM THE 2019 BUDGET															
AREAS	AMENDMENTS														
Real Property Gains Tax (RPGT)	<p>RPGT rates on chargeable gains for disposal in the 6th year and subsequent years are to be increased as follows:</p> <table border="1"> <thead> <tr> <th>Disposer</th> <th>Current rate</th> <th>Proposed rate</th> </tr> </thead> <tbody> <tr> <td>Company</td> <td>5%</td> <td>10%</td> </tr> <tr> <td>Other than company and other than non-citizen and non-permanent resident individual</td> <td>0%</td> <td>5% (Note)</td> </tr> <tr> <td>Non-citizen and non-permanent resident individual</td> <td>5%</td> <td>10%</td> </tr> </tbody> </table> <p>Note: Exemption will be given to Malaysian citizens for the disposal of low cost, low-medium cost and affordable homes priced at RM200,000 and below.</p>			Disposer	Current rate	Proposed rate	Company	5%	10%	Other than company and other than non-citizen and non-permanent resident individual	0%	5% (Note)	Non-citizen and non-permanent resident individual	5%	10%
Disposer	Current rate	Proposed rate													
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Other than company and other than non-citizen and non-permanent resident individual	0%	5% (Note)													
Non-citizen and non-permanent resident individual	5%	10%													
Stamp Duty	Stamp duty rate will be increased from 3% to 4% in relation to the transfer of property in excess of RM1 million.														
Review of Labuan Tax Treatment	<ul style="list-style-type: none"> (i) Abolishment of RM20,000 fixed tax rate. (ii) Transactions in Ringgit Malaysia and with Malaysian residents shall be allowed. (iii) New substance requirements to qualify for preferential tax treatment. (iv) Intellectual property income to be taxed under Income Tax Act 1967 <p>The above proposals are in response to the recommendations by the Forum of Harmful Tax Practices.</p>														
Sales Tax	It is proposed that a credit system for Sales Tax deduction is made available to small manufacturers who purchase their products from importers instead of other registered manufacturers.														
Service Tax	<p>Service tax shall be imposed on imported services by business (B2B) and business to customer (B2C) from 1 January 2019 and 1 January 2020 respectively.</p> <p>Recipients (whether registered or non-registered) of imported services shall be responsible to account, declare and pay the service tax for B2B transactions. Foreign suppliers shall be required to register and charge service tax for online services provided to consumers (B2C).</p>														

Given the many amendments proposed in the 2019 Budget and the relatively short time frame available for the implementation, BDO in Malaysia shall be pleased to assist our clients to review their current business structures and processes for compliance and tax efficiency.

NEWS

MYANMAR:

VARIOUS TAX UPDATES FOR NOVEMBER 2018



CLARIFICATION ON THE COMMERCIAL TAX (CT) OFFSETTING MECHANISM

Two Notices were issued by the Internal Revenue Department (IRD) clarifying the treatment of recording and submitting CT upon the sale and purchase of goods and services.

Notice No. 2/2018

dated 11 October 2018

The seller must pay output CT to IRD within 10 days after the end of the month *when the invoice is issued or payment is received, whichever comes first.*

Notice No. 3/2018

dated 29 October 2018

The Company only can offset input CT against output CT only when the payments have been made to the suppliers and not when the invoice is received from suppliers.

Illustration:

Company engaged in trading business sold item A at a cost of MMK10 million (including MMK 0.5 million CT) to Company B on 15 July 2018. Then Company B paid the full amount on 15 September 2018.

In this case, Company A is required to submit the CT within 10 days after the month of July together with a copy of the Form 31 to the IRD on the same month of filing. The original Form 31 will be issued to Company B once the payment has been settled by Company B.

Hence, Company B is only able to claim the input CT paid only in the month of September 2018.

Unutilised input CT cannot be carried forward to the next financial year, but can be deducted as business expenses when computing the annual corporate income tax.

NEWS

MYANMAR:

VARIOUS TAX UPDATES FOR NOVEMBER 2018 (Con't)



FOREIGN BANKS ARE ALLOWED TO LEND TO LOCAL COMPANIES (NOVEMBER 2018 UPDATES)

As per Notification No. 6/2018 dated November 8, all branches of foreign banks have been given the right to provide financing and certain banking services to all local companies owned by Myanmar nationals.

The change applies to the 13 foreign banks that have been licensed to open branches since 2015 but whose lending was previously restricted to foreign-owned companies and joint ventures only.

With this directive issued by the Central Bank of Myanmar recently, local companies may need to adhere to international standards of corporate governance in order to secure financial assistance from branches of foreign banks operating in Myanmar.

CLARIFICATION OF THE TAX YEAR FOR 2018/2019

2018 – 2019 Union Tax Law (2018 – 2019 UTL) enacted by the Union Parliament on 25 September 2018 clarifies the change in the tax year of reporting.

The new tax year for State-owned enterprises (SOEs) is fiscal year ending 30 September starting from 1 October 2018. This is aligned with the Myanmar government's new budget year. All other taxpayers other than SOEs will keep their financial year ending 31 March 2019 but will start aligning with the new fiscal year ending 30 September starting from 1 October 2019.

Taxpayers that close their accounts by 31 March 2019 will need to follow a six (6) month transition period from 1 April to 30 September 2019 in order to come into alignment with the new financial year of reporting in Myanmar starting from 1 October 2019.

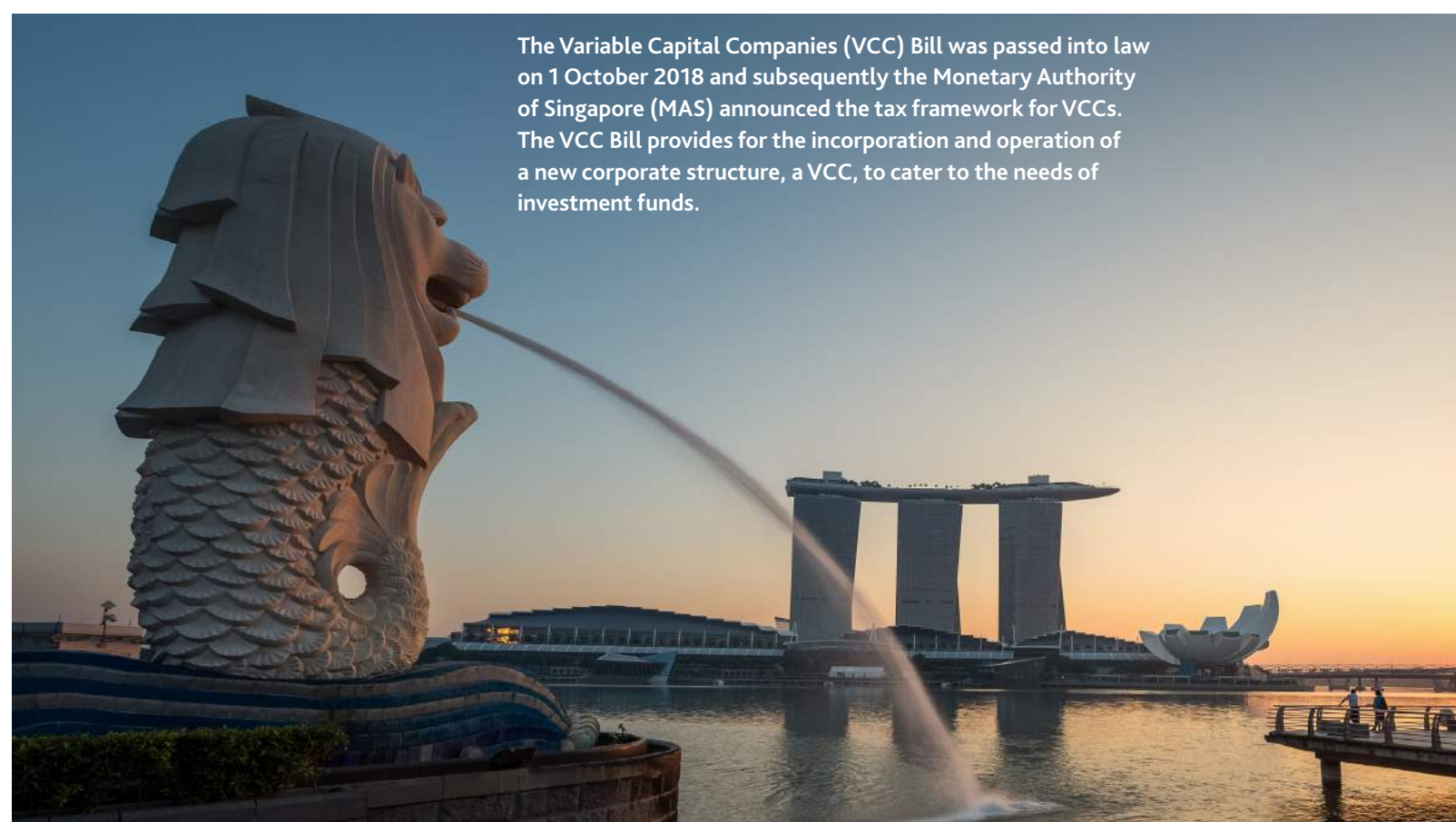
Under the Myanmar Income Tax Law, unutilised losses can be only carried forward for three (3) consecutive years following the year when the year when the loss was incurred.

Hence, the six month period transition period may be considered as one full financial year in determining the carry-over loss period.

NEWS

SINGAPORE:

VARIABLE CAPITAL COMPANIES (VCC) BILL WAS PASSED INTO LAW



The Variable Capital Companies (VCC) Bill was passed into law on 1 October 2018 and subsequently the Monetary Authority of Singapore (MAS) announced the tax framework for VCCs. The VCC Bill provides for the incorporation and operation of a new corporate structure, a VCC, to cater to the needs of investment funds.

The highlights are as follows:

- 1 A VCC can either be set up as a single fund VCC (i.e. standalone VCC) or a VCC with multiple sub-funds (i.e. umbrella VCC).
- 2 A VCC will only need to file a single tax return as it is treated as a company and a single entity for Singapore tax purposes.
- 3 Tax exemptions under Sections 13R and 13X of the Singapore Income Tax Act (SITA) will be made available to the VCCs.
- 4 The 10% concessionary tax rate under the Financial Sector Incentive – Fund Management scheme will be extended to approve fund managers managing incentivised VCCs.
- 5 A Singapore Certificate of Residence (COR) is available for VCCs that are managed and controlled from Singapore. For umbrella VCCs, the COR issued will be on the VCC, with names of the sub-funds receiving the same nature of income from the same treaty country included in the COR.
- 6 The Enhanced Tier Fund (ETF) Scheme and Singapore Resident Fund (SRF) Scheme under the SITA will apply to VCCs just like how it is applied to a Singapore company, including the current withholding tax exemption and GST remission.

NEWS

SINGAPORE:

VARIABLE CAPITAL COMPANIES (VCC) BILL WAS PASSED INTO LAW (Con't)



CONDITIONS UNDER THE ETF AND SRF SCHEMES

Among other conditions under the ETF scheme, the fund has to have a minimum fund size of SGD 50 million at the point of application and annual local business spend of at least SGD 200,000. The MAS has announced that these requirements are applied at the VCC level (and not on each sub-fund). This will encourage fund managers to use umbrella VCCs to house sub-funds as opposed to incorporating individual Singapore companies for each fund as the total threshold would have been much higher than that of an umbrella VCC.

Investors looking to invest in funds qualifying for the SRF scheme will be pleased to know that the two tests under the SRF scheme are also applied at the VCC level, and not at each sub-fund level. The two tests are:

- 1 "Approved Company" test
 - the fund should not be 100% owned by Singapore persons
- 2 Non-qualifying investor test
 - non-qualifying investors (i.e. non-individual investors from Singapore which own more than 30%, or 50% in some instances, in the fund) will need to pay a financial penalty

If there is a VCC with four sub-funds, out of which only one is partly-owned by non-Singapore persons, the entire VCC (including the four sub-funds) will still meet the "Approved Company" test and qualify for the SRF Scheme.

The application of the non-qualifying investor test at the VCC level increases the base on which the 30% (or 50%) threshold is determined, thereby improving the chances of a Singapore non-individual investor to qualify as a qualifying investor.

One common condition under the ETF and SRF schemes working against the VCC structure is the investment objective condition. This condition stipulates that the investment objective of the entire fund (applied at the VCC level) cannot be changed once the fund has been approved under either one of the schemes. As long as there is a breach of this condition by one of the sub-funds, the entire VCC will be affected. Should the objective of a newly-added sub-fund differs from the initially approved one, approval will have to be sought from the authorities if the VCC still wants to qualify for the schemes.

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BDO has a dedicated team of Tax specialists who are committed to delivering a consistently high quality of services. With a wealth of global resources within our grasp while possessing an in-depth understanding of local business needs and regulations, combined with the quality of staff and experience with clients, multi range of industries and projects, we can provide excellent value proposition for any business.

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