SINGAPORE BRIEFING

Holding Company in Singapore

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A holding company or investment holding company, refers to one that owns assets from which passive sources of income are derived, as opposed to an operating company which supplies goods, services, or both. For an operating company, there is often a natural jurisdiction for establishment based on the location of activities of the proposed business, this is not necessarily the case for a holding company. It is necessary to consider where the holding company should be established, particularly where cross-border factors are at play and in light of the introduction of minimum substance requirements by the Organisation for Economic Co-operation and Development (OECD). We consider why Singapore is preferred as a location for holding companies.

Company establishment & environment

Incorporating a company is relatively easy; it can be completed within a day where the necessary documents are on hand. Some key requirements of a Singapore-incorporated company are that it must appoint at least one local resident director and have a local registered address. Minimum share capital is SGD1 and shareholders can be corporate entities or natural persons. It is possible that different classes of shares are issued to confer varying rights (e.g. voting right, right to dividend).

Singapore is valued for its stable political environment. Investors can also take comfort in its strong financial sector. Singapore banks are well-regulated by the Monetary Authority of Singapore and are in compliance with the International Standards on Combating Money Laundering and Financing of Terrorism.

Attractive taxation system

Basis of taxation - Singapore tax regime operates on a territorial basis, meaning foreign-sourced income is not taxable in Singapore unless it is received or deemed received in Singapore.

Low corporate tax rate - Singapore's headline tax rate of 17% is amongst the lowest in the world.

Profit repatriation - Dividends from a Singapore tax resident company or a foreign company whose profits have been subject to tax at 15% are exempt from tax under the one-tier corporate tax system, regardless of receipt into Singapore. Tax on dividends from low tax jurisdictions can be minimised by careful management of the remittance of funds. Dividends paid from a Singapore company to its owners do not suffer withholding tax when paid to non-residents, making it a viable option for profit repatriation.

Capital gains tax - There is no capital gains tax in Singapore.

Stamp duty - Stamp duty is levied at 0.2% of the purchase price or the value of the shares transferred.

Wide treaty network - Singapore has concluded more than 85 double taxation treaties (DTTs) internationally. Singapore tax resident companies may rely on DTTs to apply a lower withholding tax rate or avoid the same income being taxed twice (usually by tax credit). In order to access benefits under a DTT, the holding company must demonstrate its tax residency in Singapore by virtue of its control and management being exercised in Singapore and obtain a Certificate of Residence from the Inland Revenue Authority of Singapore ("IRAS").

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Tax residency

The tax residency of a company determines which country has taxing rights, potentially, on its worldwide income and is therefore imperative it is understood. The place of incorporation does not necessarily indicate tax residency, it is the place of effective management and control of the company which normally takes precedence. The place of management and control refers to where the highest level of control takes place (rather than the day-to-day management), this is often considered to be where the board of directors perform their duties.

In Singapore, it is the place of management and control which will be the determinative factor although this is generally where the board of directors meet for strategic decision making, additional factors set out below are also considered:

- Presence of other related companies (tax resident or with business activities) in Singapore; or
- Receipt of support or administrative services from a related company in Singapore; or
- Having at least one director based in Singapore who holds an executive position and is not a nominee director; or
- Having at least one key employee (e.g. CEO, CFO, COO) based in Singapore.

In the case of a foreign-owned investment holding company in receipt of only passive or foreign sourced income, the IRAS generally considers the company to be tax resident outside Singapore by virtue of the company acting on the instruction of the foreign owners. In such cases, while demonstrating tax residency in Singapore can prove more challenging, it is not impossible.

Recent developments

There was once little dispute over the possible jurisdictions for the establishment (incorporation and tax residency) of a holding company, a jurisdiction where investments could grow and return income tax free and levied nominal stamp duty on the sale of a share was seen as appealing enough to look no further. Add to that a strong legal system and privacy measures and the decision was made. Times are changing following the OECD release of global standards that apply to “no or only nominal tax” jurisdictions that require “substantial activities” in order for the tax regime not to be considered “harmful tax practice”. Such jurisdictions (e.g. the BVI and the Cayman Islands) have taken action by introducing legislation on the minimum requirements to demonstrate “substantial activities”. The changes are causing shifts in the industry as the local law aims to meet the global standards but maintain the jurisdictions’ appeal which has been built over many years, investors are left with uncertainty.

Following this introduction, it has become more onerous to demonstrate tax residency in a low or only nominal tax jurisdiction and the local rules, in some cases, remain uncertain. It should be noted, however, that “pure equity holding companies” are generally subject to less stringent requirements as compared to other activities.

Even where the newly enacted substance rules are complied with, the company could still find itself to be tax resident, in another jurisdiction without careful management. Although this is a risk for many unwary directors, there would be no treaty protection in the case of no or nominal tax jurisdiction since comprehensive DTTs have generally not been agreed with such jurisdictions.

Issues to consider

An investment holding company incorporated in a low or only nominal tax jurisdiction may fall to be within scope of the new economic substance rules, unless it can evidence its tax residency in Singapore or elsewhere. It is often helpful to consider tax residency and incorporation together.

Management should consider the practicalities of directors demonstrating substance in each jurisdiction as part of the conclusion on the chosen location of the holding company, rather than mere “rubber stamping” of decisions.

Requests to tax authorities for a certification of tax residence take time to process and may become protracted, especially where facts have to be gathered and presented before the relevant tax authority agrees to the company’s claim. Management will need to contemplate, on top of the points above, the preparation work and time frame to meet the economic substance reporting deadlines.

How Rawlinson & Hunter can help

Rawlinson & Hunter provides accounting, tax, trust and corporate services and can assist in advising companies on their residence status, incorporation, holding structures, and help navigate the practical actions required to ensure that a desired residence status is maintained as well as helping group companies in efficient tax planning.

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