Top Five Tax Considerations in 2021

Move Beyond "Survival Mode" And Keep An Eye On Tax

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A year marked by the Covid-19 pandemic, 2020 has upended the world in countless ways.

As economies worldwide gradually recover, businesses must also move beyond "survival mode" and reassess an important area which they may have neglected during the 2020 frenzy – tax.

As businesses progress into 2021, here are five key areas in tax to keep an eye on:

1) Get Tax Treatment Right for COVID-19 Related Items

COVID-19-RELATED PAYOUTS

To help cushion the impact of Covid-19 on businesses and individuals, a series of Covid-19-related payouts have been introduced by the government. As different tax treatment may apply to different payouts, it is important for businesses and individuals to be cognisant of the correct tax treatment for their income tax filings.

In general, payouts that are provided to defray operating costs of a business are revenue in nature and taxable. For example, payouts under the Wage Credit Scheme, which provide support to wage increases for Singaporean workers, and payouts under the Jobs Growth Incentive, which provide wage support to eligible employers with new local hires between a specified timeframe, are both taxable.

On the other hand, payouts that are provided to support individuals through the exceptional circumstances arising from the Covid-19 pandemic, such as the Covid-19 Support Grant and the Temporary Relief Fund payout, are generally not taxable. Payouts that are intended to help employers retain their local employees by easing cashflow and mitigate the financial impact of Covid-19 containment measures, such as payouts under the Jobs Support Scheme and the Covid-19 Stay-Home Notice (SHN) scheme, are also not taxable.

PURCHASE OF WORK-RELATED EQUIPMENT TO FACILITATE WORK-FROM-HOME (WFH) ARRANGEMENTS

As working-from-home remains the default mode of working in Singapore, employers are required to provide the facilities necessary and direct employees to work from home as far as practicable.

To facilitate remote working, some companies have instructed their employees to purchase work-related equipment (for example, chairs, printers and monitors) which are essential to the employees performing their duties at home, and thereafter, the companies will reimburse them for the purchases. Such reimbursements are not taxable in the hands of the employees. From the companies' perspective, the reimbursements would constitute business expenditure. These business expenditures are capital in nature and the company may claim capital allowances on the work-related equipment.

If the employee retains the equipment when it has ceased to be used for work purposes or upon the cessation of employment, he will be taxed if the equipment has a residual market value at that point in time and he is not required to pay an amount equivalent to such value. The residual market value of the equipment may be determined by the employer using any reasonable method.

Working remotely from Singapore due to Covid-19

A Singapore Citizen or Singapore Permanent Resident who is exercising overseas employment, but is now working remotely from Singapore for his overseas employment due to Covid-19, will continue to be treated as not exercising an employment in Singapore for the period from the date of his return to the date of his departure from Singapore in 2020, or up to 30 June 2021, whichever is earlier, provided certain conditions are met.

Likewise, non-resident foreigners exercising overseas employment who are on short-term business assignment in Singapore, but are unable to leave Singapore due to travel restrictions caused by Covid-19, will be treated as not exercising an employment in Singapore for the period of his extended stay in 2020. This is provided that the period of his extended stay is for a period of not more than 60 days and the work done is not connected to his business assignment in Singapore (and would have been performed overseas if not for Covid-19). If these conditions are not met, normal tax rules will apply to determine the taxability of the non-resident foreigner's employment income for the period of extended stay in Singapore.

2) Keep Up with The Changing Transfer Pricing (TP) Landscape in Singapore

Communicating exceptional TP Positions

Many companies have been negatively impacted by Covid-19. To substantiate the arm's length nature of their TP outcome arising from this exceptional economic situation, companies should provide an analysis to outline the specific impact that Covid-19 has had on their businesses, including reasons and supporting evidence to justify how their profitability has been negatively impacted by Covid-19. Such information would help Inland Revenue Authority of Singapore (IRAS) better understand the broader facts and circumstances affecting the companies' businesses when reviewing their unusual TP positions.

In Singapore, companies are allowed to apply term testing (that is, the testing of related party transactions over a multiple-year period) without prior consultation with IRAS for the Years of Assessments (YAs) 2021 and 2022, if they are of view that annual testing may result in volatile results due to the Covid-19 situation.

However, not all jurisdictions allow term testing and as such, companies should carefully consider the potential impact of adopting term testing on their related parties in other jurisdictions. Failure to do so may result in potential TP disputes.

As appropriate comparable data are not likely to be available when the TP documentation is prepared, companies should, to the extent possible, show that the commercial and financial relations they entered into are broadly consistent with the arm's length standard through a qualitative analysis.

Waiver of condition for "qualifying past TP documentation"

To ease compliance burden, companies are allowed to use the TP documentation they have prepared previously ("past TP documentation") to support the transfer price in the basis period concerned if that past TP documentation is a "qualifying past TP documentation".

One of the conditions to be "qualifying past TP documentation" is that the transaction for which the past TP documentation was prepared and the transaction in the basis period concerned are undertaken with the same related parties.

Due to supply chain disruptions during the Covid-19 pandemic, companies may have to transact with different related parties and the above condition may not be satisfied.

IRAS has since clarified through its regular dialogue with the Singapore Chartered Tax Professionals that it is prepared to consider waiving the "same related parties" condition if the basis of transacting with the new related party is the same as the related parties stated in the past TP documentation, and that the change in related party is expected to be temporary and non-recurrent. Companies may write in to seek IRAS' agreement on a case-by-case basis.

3) Understand Singapore's New General Anti-Avoidance Regime

The recent amendments to Singapore's general anti-avoidance provisions have reaffirmed Singapore's strong stance against tax avoidance. Specifically, a new Section 33A has been introduced to impose a surcharge for tax avoidance arrangements. The surcharge would apply to adjustments made to tax assessments from YA 2023, and would amount to 50% of the income tax or additional income tax to be imposed by the Comptroller as a result of the adjustments made to counteract the advantage obtained or obtainable from the arrangement.

Once the Comptroller asserts tax avoidance, the taxpayer would have to demonstrate otherwise in appealing the assessment. This process could have a significant financial impact on the taxpayer as it would have to first settle the tax assessments (including the new surcharge) in full, regardless of any objection or appeal lodged against IRAS' assertions.

While the surcharge would take effect only from YA 2023, it would be timely for businesses to start reviewing existing arrangements, address any risks identified at the outset, and take steps to protect their tax positions taken. With the stakes raised and given that the line between legitimate tax planning and tax avoidance is not always clear in practice, businesses must re-evaluate whether the tax positions that they have taken are within their risk appetite. Contemporaneous documentation (such as board resolutions) must be maintained to provide the necessary evidence to corroborate that an arrangement was carried out for *bona fide* commercial reasons and not as one of its main purposes the avoidance or reduction of tax.

4) Avoid Getting Caught Up in Missing Trader Fraud (MTF)

In a typical MTF arrangement, a person (the "missing trader") would collect output tax from its customers and abscond without handing over such tax to the tax authorities, while other businesses along the supply chain continue to make input tax claims on their purchases, resulting in a loss of revenue to the State. Alternatively, the missing trader may obtain from the tax authorities an input tax credit claim on purported supplies which it never received before absconding.

With the recent amendments to the Singapore Goods and Services Tax (GST) Act to counter MTF, a taxpayer is now required to show that it has taken reasonable steps to ascertain whether a supply made to it was part of a fraudulent arrangement, and has come to a reasonable conclusion that the supply was not part of such an arrangement.

Where there is an MTF arrangement, if the taxpayer fails to take reasonable steps to assess the arrangement, or (even after taking reasonable steps) did not arrive at any reasonable conclusion, it would be taken to "should have known" that the arrangement was fraudulent. Accordingly, the taxpayer may be denied its input tax claims and subject to a surcharge of 10% of the amount of input tax claim. The ensuing financial exposure could be sizeable.

Importantly, businesses should undertake due diligence before entering into a business transaction, and keep records of the steps taken to determine if a supply to him was part of an MTF arrangement.

To provide guidance on how businesses may recognise and respond to the risk indicators for a MTF arrangement and what may amount to "reasonable steps" in relation to due diligence checks, IRAS has published an e-Tax Guide on "Due Diligence Checks to Avoid Being Involved in MTF" in February 2021. While the examples of due diligence checks and risk indicators in the guide are not exhaustive, they are useful in helping businesses better understand what is generally required to protect themselves from getting implicated in an MTF arrangement.

At the end of the day, businesses must ensure that they are not in any way connected to an MTF arrangement, and be alert to transactions and arrangements that deviate from normal commercial practices and expectations within their industry. As the saying goes, "If it sounds too good to be true, it probably is."

Case study for MTF:

William is the owner of Company W, a trading company. John, an acquaintance of William from a recent online tradeshow, approached him with an attractive business opportunity with practically no commercial risks. John claimed that he was sharing this business opportunity as his company (Company J) did not have the resources to manage the huge volume of transactions.

In the proposed business arrangement, Company W's role was to receive and fulfil the orders for the goods from a list of pre-arranged overseas customers. Company W would purchase the goods from Company J and onsell the same to the overseas customers at an agreed profit margin. Company W would claim the input tax incurred on its purchases from Company J, and export the goods zero-rated to the overseas customers.

William was assured that the deals could take place quickly, with sales turnaround of three days from the receipt of goods delivered by Company J to the export of goods by Company W to the overseas customers.

To further sweeten the deal, John said that Company W would not need to pay for the goods purchased from Company J until after Company W received payment from the overseas customers. Given the extremely attractive and risk-free arrangement, William decided to proceed with the deal without performing further due diligence checks or enquiries.

During IRAS' review of the refunds, the transactions were found to be part of an MTF arrangement. From the risk indicators presented (for example, the lack of commerciality of the business arrangement and the payment arrangement), IRAS found that the circumstances connected with the supplies should have led a reasonable person to assess that the deals were too good to be true and that there was reasonable risk that the supplies were part of an MTF arrangement.

As Company W did not perform the necessary due diligence checks and enquiries to establish the legitimacy of the transactions and reasonably conclude that the supplies were not part of an MTF arrangement, its input tax claims would be denied by IRAS. Company W would also be liable to pay a surcharge of 10% of the amount of input tax denied; if the amount of input tax denied is $100,000, a surcharge of $10,000 will be payable (on top of the additional tax assessed).

5) Harness Technology and Digitalisation

New technology and digitalisation of tax collection are transforming the tax industry. From automating tax-filing processes to harnessing digital tools and gaining insights into businesses' financial and tax positions, tax authorities across the globe are investing heavily in technology to improve their efficiency and capability. As tax authorities transform, companies and tax advisors must also enhance their tax functions by leveraging tax technology, or risk being left behind.

In Singapore, IRAS has been active in adopting new technologies in its engagement with taxpayers. For example, IRAS and Accounting and Corporate Regulatory Authority (ACRA) have partnered accounting software providers to co-create a new digital solution that allows small and medium-sized enterprises to automate the preparation and filing of statutory returns with IRAS and ACRA seamlessly.

Separately, taxpayers can now submit their GST returns and transaction listings directly from their accounting software to IRAS via Application Programming Interface (API) instead of inputting their tax figures manually. Taxpayers who have not considered any of these new tax digitalisation initiatives may want to evaluate if the initiatives are suitable for them.

On the international front, the growing demand for tax transparency and increased disclosure requirements (such as the Country-by-Country Reporting requirements) would likely necessitate a critical rethink by companies with international footprints on whether their existing tax systems and processes would continue to meet their tax obligations in each country and serve the tax function of the future. As tax compliance is moving towards real time in some countries, businesses operating in these countries will have to join the tax digital revolution, sooner rather than later, in investing in tax technology to manage their compliance needs.

Conclusion

These are the five key areas of tax to look out for in 2021. If you have been neglecting tax to focus on your business during the pandemic, it is high time to reassess your tax positions before the taxman comes knocking.

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