SINGAPORE

ATMD BIRD & BIRD

New tax boosts for M&As in Singapore

By S Sharma

On 18 October 2010, amendments were passed to the Income Tax Act (ITA) and the Stamp Duties Act (SDA), which among other things incorporated the Budget 2010 business restructuring incentives for mergers and acquisitions (M&As).

Income Tax

Under a new section 37L of the ITA, a Singapore company can claim a deduction for capital expenditure incurred by it or its acquiring subsidiary, in acquiring the ordinary shares of another company (target company) of up to 5 per cent of the cost of a qualifying acquisition, subject to a cap of S$5,000,000, where the expenditure is incurred between 1 April 2010 and 31 March 2015.

Stamp Duty

Under a new section 15A of the SDA, relief from ad valorem stamp duty chargeable under Article 3(c) in the First Schedule may be sought on any instrument executed between 1 April 2010 and 31 March 2015 for or in connection with a qualifying acquisition by a Singapore company or its acquiring subsidiary in the ordinary shares of a target company, to the extent of S$200,000 for any of the acquiring company's financial years. The instrument for which relief from duty is sought has to comply with section 15(2) of the SDA to be deemed to have been duly stamped.

Qualifying acquisition

Generally a qualifying acquisition may fall into one of four distinct categories:

(a) An acquisition where the acquiring Singapore company or its acquiring subsidiary owns 50 per cent or less of the ordinary shares in the target company before the acquisition, and the acquisition in question raises its ownership level to more than 50 per cent;

(b) An acquisition which occurs within the same basis period or relevant financial year as the acquisition in paragraph (a);

(c) An acquisition where the acquiring Singapore company or its acquiring subsidiary owns more than 50 per cent but less than 75 per cent of the ordinary shares in the target company before the acquisition, and the acquisition in question raises its ownership level to 75 per cent or more, and the acquisition does not occur within the same basis period or relevant financial year as the acquisition in paragraph (a);

(d) An acquisition which occurs within the same basis period or relevant financial year as the acquisition in paragraph (c).

Claim for tax deduction

The claim for deduction must be made at the time the income tax return of the acquiring company for the year of assessment in which the capital expenditure for the acquisition is incurred, is due to be lodged unless time has been extended. Various formulae are provided to be used in determining the amount of deduction for each qualifying acquisition. The Comptroller of Income Tax assesses the claim for deduction and is empowered to determine any question regarding the amount paid for the shares if the qualifying acquisition is not an arm's length transaction.

Application for relief from stamp duty

Where the acquiring company which has paid or is liable to pay duty on the instrument transferring the shares makes an application for relief, and the Commissioner of Stamp Duties is satisfied that the instrument is entitled to the relief, he will refund the duty to the company, subject to certain limits.

Conclusion

These new tax boosts for M&As have much financial savings to offer taxpayers, provided due care and attention are paid to the minute details in these incentives, including various events of disallowance that need to be reported to the tax authorities if and when they occur.

ATMD Bird & Bird LLP
Corporate & Commercial Group
2 Shenton Way, #18-01 SGX Centre 1, Singapore
Tel: (65) 6534 5266
Fax: (65) 6223 8762
Email: s.sharma@twobirds.com
www.twobirds.com