Answers

Note: ACCA does not require candidates to quote section numbers or other statutory or case references as part of their answers. Where such references are shown below, they are given for information purposes only.

1 Letter to Lobang King Pte Ltd (LKPL)

Tax adviser
Firm's address

The board of directors
LKPL
Company address

1 October 2018

Dear Sirs

Singapore tax position for LKPL and affected parties

We refer to your request for advice following our recent meeting and correspondence and are pleased to set out our advice on the respective issues as follows:

(i) Tax implications arising from the proposed acquisition of shares in Singapore United Conglomerate Pte Ltd (SUCPL) for LKPL and each of the sellers

There are income tax, goods and services tax (GST) and stamp duty implications arising from LKPL's proposed acquisition of the respective shares in SUCPL from Eric Teo, Thomas Moo and Tom Sally Pte Ltd (TSPL).

Income tax implications

For LKPL

As the buyer, LKPL would have to pay a consideration price for the acquisition of the respective shares in SUCPL from Eric Teo, Thomas Moo and TSPL. LKPL would ordinarily not be able to claim a tax deduction for the acquisition consideration as this is a capital expenditure.

However, provided LKPL meets all the qualifying conditions of the mergers and acquisition (M&A) scheme, it is potentially able to enjoy the following benefits:

– An M&A allowance of 25% of the acquisition value of the SUCPL shares, capped at $40 million (which is applicable as the consideration was $50 million), spread equally over five years of assessment, i.e. $2 million each year;
– stamp duty relief, capped at $80,000 per year of assessment (which is applicable since 0·2% of $50 million consideration is equal to a higher amount of $100,000); and
– a one-off 200% deduction on qualifying transaction costs of $80,000 ($100,000 cap not applicable), i.e. $160,000.

It is likely that these benefits would be available to LKPL as all of the following six qualifying conditions of the M&A scheme as applicable to the acquirer (i.e. LKPL) and the target company (i.e. SUCPL) are met:

– LKPL is a Singapore company which is incorporated and tax resident in Singapore.
– LKPL carries on a trade or business in Singapore at the date of acquisition.
– LKPL has in its employment at least three local employees (it has 50, most of whom are Singapore citizens), throughout the 12-month period prior to the proposed date of share acquisition.
– LKPL has not been connected to SUCPL, the target company, for at least two years prior to the proposed date of share acquisition.
– The proposed share acquisition will take place during the period from 1 April 2010 to 31 March 2020 which will result in LKPL owning at least 20% of SUCPL; it owned less than 20% before the acquisition.
– SUCPL, the target company, also carries on a trade or business and has in its employment at least three employees throughout the 12-month period prior to the proposed date of share acquisition.

For the sellers, Eric Teo, Thomas Moo and TSPL

For each of the three sellers, the relevant income tax issue is whether they will each be subject to tax on the potential gain from the sale of their respective shares.

Singapore does not impose tax on capital gains. However, there are no specific laws or regulations which deal with the characterisation of capital gains. In general, gains or profits derived from the disposal of shares acquired for long-term investment purposes are considered as capital gains and therefore not subject to Singapore tax. On the other hand, where such gains or profits arise from activities, which the Inland Revenue Authority of Singapore (IRAS) regards as the carrying on of a trade or business of dealing in shares in Singapore, gains or profits will ordinarily be taxed as income.

In the case of both Eric Teo and Thomas Moo, the risk of an income tax exposure is low because individuals are generally not taxed on such gains because such gains are usually treated as capital gains, unless the sellers are share traders. Moreover, both are founder shareholders who have held their stakes in SUCPL for almost 20 years before the proposed sale.

As for TSPL, a corporate shareholder of SUCPL, whether the gains can be regarded as capital gains is less certain as it entails looking at the various factors before a meaningful conclusion can be drawn. However, TSPL may be able to take advantage of the safe harbour rules, which provide certainty for the non-taxation of companies' gains on disposal of equity investments, because the following conditions are satisfied:

– the potential gains are derived from the disposal of ordinary shares in an investee company during the period 1 June 2012 to 31 May 2022;
– immediately prior to the date of the proposed share disposal, TSPL, the divesting company, had held about 50% (i.e. at least 20%) of the ordinary shares in SUCPL; and
– this minimum stake was held for a continuous period of almost three years (i.e. at least 24 months).

GST implications

There is no GST on the transfer of equity interests in a Singapore company. The transfer of equity is an exempt supply for GST purposes in Singapore. LKPL would therefore not have to pay input tax on the purchase consideration in the event that any of the sellers are GST-registered.

Conversely, each of the three sellers would have no obligation to collect output GST on the purchase consideration in the event that they are GST-registered.

Stamp duty (including any additional conveyance duties)

For LKPL

The transfer of shares executed in Singapore is subject to stamp duty. The rate of stamp duty for the transfer of shares in a Singapore company is 0·2% on the higher of the consideration or the market value of the shares transferred. The net asset value would be used in the case where the market value is not readily available. Based on a consideration of $50 million, the stamp duty payable would be $100,000 (i.e. 0·2% of $50 million). However, as explained above, stamp duty relief of up to $80,000 is available under the M&A scheme and so the net stamp duty payable after relief is $20,000.

However, additional conveyance duties (ACDs) are applicable on qualifying acquisitions and disposals of equity interests in property-holding entities (PHEs) on or after 11 March 2017.

SUCPL is a Type 1 PHE as 60% (i.e. at least 50%) of its total tangible assets comprises immovable properties in Singapore in the form of residential properties.

The proposed acquisition of 50,002 shares in SUCPL, a PHE, constitutes a qualifying acquisition as the buyer, LKPL, will become a significant owner of the PHE after acquisition since it plans to buy more than 50% (i.e. 50,002/100,002) of the shares in SUCPL.

Being a qualifying acquisition, and based on SUCPL's underlying value of $12 million on its residential property, LKPL would have to pay additional conveyance duties for buyers (ACDB) of $2,032,340, calculated as follows:

On the first $180,000	1% x 50,002/100,002 x $180,000	=	$900
On the next $180,000	2% x 50,002/100,002 x $180,000	=	$1,800
On the next $640,000	3% x 50,002/100,002 x $640,000	=	$9,600
Exceeding $1,000,000	4% x 50,002/100,002 x $11,000,000	=	$220,004
On the entire $12,000,000	30% x 50,002/100,002 x $12,000,000	=	$1,800,036
Total		=	$2,032,340

For the sellers, Eric Teo, Thomas Moo and TSPL

Basic stamp duty is payable only by the buyer, LKPL, and the sellers have no obligations to pay basic stamp duty.

There are three sellers and the proposed sale of their respective shares in SUCPL would not give rise to a qualifying disposal since these shares were acquired before 11 March 2017. Consequently, there is no additional conveyance duties for the sellers (ACDS). As noted earlier, there is no stamp duty for the sellers.

(ii) Implications if Sally Moo sells her shares in TSPL to LKPL instead

As in (i) above, Sally Moo, as an individual seller, is unlikely to be taxed on any gains from the disposal of her shares in TSPL to LKPL on the premise that such gains would be treated as capital gains.

There is no GST on the sale of shares, even if Sally Moo happens to be registered for GST.

There is also no basic stamp duty or ACDS for shares acquired before 11 March 2017.

(iii) Unutilised capital allowances of $2 million

As agreed by the Comptroller, SUCPL had unutilised capital allowances (UCAs) of $2 million, which arose during the year of assessment (YA) 2017, for the financial year ended 31 December 2016. These can be carried forward for offset against future taxable income of SUCPL provided the following two conditions are both satisfied:

– There is no substantial (more than 50%) change in SUCPL's ultimate shareholders and their respective shareholdings as at the relevant dates. The said relevant dates are 31 December 2017 (i.e. the last day of the year in which the capital allowances arose) and 1 January 2019 (i.e. the first day of the YA in which the UCAs are to be utilised); and

– there is no change in the company's trade.

The acquisition by LKPL is scheduled to take place on 1 December 2018. When that happens, Eric Felix Pte Ltd (EFPL) will be the only common shareholder on the two relevant dates of 31 December 2017 and 1 January 2019. The shareholding test will not be met as the common shareholder will own less than 50% (i.e. 50,000/100,002) of the shares in SUCPL on both relevant dates. Whilst there is no change in the company's trade, the company is unable to generate sufficient profits from the trading of computer products to set off the UCA of $2 million. Hence, LKPL as the new shareholder of 50,002 shares, is unable to benefit proportionately from the UCAs of $2 million.

Even if SUCPL were able to generate future profits as a result of the injection of LKPL's profitable computer businesses into SUCPL, the shareholding test will still not be met if the acquisition takes place as scheduled on 1 December 2018. Therefore, LKPL as the new shareholder of 50,002 shares is still unable to benefit proportionately from the utilisation of the UCA of $2 million.

Despite failing the shareholding test, the Comptroller may be able to waive this test if he is satisfied that the substantial change in SUCPL's shareholders is not to derive a tax advantage. Given the circumstances of the purchase where LKPL, as a new shareholder, appears to be hoping to benefit proportionately from the utilisation of SUCPL's non-utilised capital allowances, this waiver may be difficult to obtain.

(iv) Tax planning tips

LKPL cannot mitigate its exposure to basic buyer's stamp duty. But it can mitigate its exposure to ACDB if LKPL is not a significant shareholder of SUCPL (i.e. the PHE, either before or after the acquisition). LKPL is not a shareholder of the PHE before the acquisition; and to avoid being a significant owner after the acquisition, it must acquire less than a 50% equity interest. To do so, it should reduce the number of acquisition shares from 50,002 to 50,000 so that this falls short of the 50% equity interest (50,000/100,002 is less than 50%).

Currently, LKPL is unable to utilise its proportionate share of SUCPL's UCAs, even if it injects its profitable computer business into SUCPL, the computer business of which is not expected to recover during the next five years. This is because it fails to meet the shareholding test if the acquisition takes place as scheduled on 1 December 2018. However, by delaying the acquisition date to 2 January 2019 or beyond, there will then be no change in the shareholders at all on the two relevant dates of 31 December 2017 and 1 January 2019. This way, LKPL as the new shareholder of 50,000 shares will then be able to benefit proportionately from the utilisation of the UCA of $2 million. For example, if LKPL is able to inject $2 million of future profits into SUCPL whilst meeting the shareholding test, SUCPL's UCAs of the same amount (i.e. $2 million) can be absorbed by these profits. The benefit enjoyed by LKPL will be $999,980 (i.e. 50,000/100,002 x $2 million).

I hope the above is useful. Please do not hesitate to contact me if you need further clarification.

Yours sincerely

Tax adviser

2 High Flex Pte Ltd (HFPL)

(a) Retrenchment payment and benefits

The proposed payment of $68,000, termed an '*ex-gratia*' payment, is part of a retrenchment package currently offered by HFPL to its employee, Olivia. The other elements of Olivia's retrenchment package are payments she is contractually entitled to, such as holiday reimbursement, commission and dental reimbursement.

The salary in lieu of notice amounting to $16,000, holiday reimbursement as well as commission, are all taxable in full as they constitute gains or profits from employment and are accordingly taxable under s.10(1)(b) of the Singapore Income Tax Act. However, the dental reimbursement which constitutes non-basic care is not taxable as an administrative concession.

Notwithstanding that certain benefits-in-kind such as the dental reimbursement may not be taxable upon receipt by the employee, the company can nevertheless claim a deduction for all these expenses which make up staff costs.

Ex-gratia payments or gratuities for past services are regarded as payments for services. They also constitute gains or profits from employment and are accordingly taxable under s.10(1)(b) of the Singapore Income Tax Act.

The only component which is not taxable to the retrenched employee is any retrenchment payment made to compensate the employee for loss of employment. This is because such a payment is regarded as a capital receipt. Accordingly, it is not subject to tax when received by the employee, in the absence of a capital gains tax regime in Singapore.

Whether any payment made to a retrenched employee is compensation for loss of office or not is largely a question of fact. The Inland Revenue Authority of Singapore (IRAS) will have to examine all the facts and circumstances giving rise to the payments to determine the nature of payments in each case.

The nature of the payment does not simply depend, and hence is not affected by, the description ascribed to the payments made by the employer.

In this regard, the proposed payment of $68,000 was initially termed *ex-gratia* as HFPL was not aware of the possibility of classifying this amount as a retrenchment payment, in order to make it more enticing for Olivia to accept. The amount was calculated internally by applying a multiplier of 8·5 (term of service in years) to the monthly pay. Olivia regarded the amount of payment insufficient to compensate her, although she finally accepted this payment.

On the premise that this payment made by the Singapore company is not contractual and arises from an unexpected change in circumstances such that the company has to terminate her service, then such payment can be argued to be compensatory in nature. This is especially so if both parties, i.e. HFPL and Olivia, are in agreement on the intention of this payment being compensatory in nature. This is despite the initial classification of the payment as an '*ex-gratia*' payment.

Therefore, Bryson's advice is not correct. Hence it is recommended to immediately 'correct' the classification of the payment to reflect the true intentions of the employer and the employee. This could be made in Olivia's Form IR8A or IR21 so that the true facts are presented to IRAS and when questioned, the company could further explain the circumstances giving rise to the payment of $68,000.

Notwithstanding that the payment may be treated as being made to compensate Olivia for the loss of her employment, HFPL can still claim a tax deduction for this payment as long as the company is carrying on a trade or business and continues its existing business after the payment is made. This is on the premise that the payment made by HFPL is incurred for the continuing profitability of the company and thus for the production of income.

It is therefore not correct to deduce that HFPL can only claim a deduction for *ex-gratia* payments or gratuities for past services if the employee is taxed upon receipt of this payment. As explained in the preceding paragraph, it is possible for the company to claim a tax deduction even for a payment which is meant to compensate the employee for loss of office.

(b) Income tax and goods and services tax (GST) treatment of fringe benefits

Bryson's advice is correct in that HFPL can, in general, claim a tax deduction for all fringe benefits provided by a company to its employees. This is provided that such costs can be treated as staff costs and do not constitute expenses which are specifically prohibited under the Income Tax Act.

On the other hand, the employee is, in general, subject to individual income tax on all benefits-in-kind derived from their employment. This is unless such benefits are not taxable by concession.

All these fringe benefits given to staff during family day and corporate dinner and dance events are not taxable when received by the respective employees as they constitute benefits which foster goodwill or promote camaraderie among staff which are not taxable under an administrative concession.

For corporate income tax purposes, the company can claim a tax deduction for the full or partial subsidies on the packages purchased from Universal Studios for both the staff and their family members as well as the door gifts and lucky draw prizes.

GST-registered businesses can claim input tax on expenses incurred relating to the provision of fringe benefits provided they meet certain conditions and the input tax is not specifically blocked under regulations 26 and 27 of the GST (General) Regulations.

HFPL may claim in full the GST incurred on the Universal Studios packages given free to its employees. For the 50% of the cost recovered on packages taken up by the family members of HFPL employees, the company is required to account for output tax. Correspondingly, HFPL can claim 50% of the GST incurred on these packages. The remaining 50% is considered as a family benefit and blocked under regulation 26 of the GST (General) Regulations.

HFPL does not have to account for output tax on the door gift since the cost of each gift is less than $200. For the lucky draw prizes, HFPL will have to account for output tax on each prize which costs more than $200 so long as it had claimed input tax on the GST incurred on these prizes. On the other hand, if HFPL either did not incur input tax or chose not to claim the input tax on these prizes, then it need not account for the output tax.

3 Zoro Garments China Ltd (ZGCL)

(a) Singapore corporate income tax liability for ZGCL

Generally, an overseas entity such as ZGCL should not have any corporate income tax liability in Singapore unless it conducts certain activities which are tantamount to creating a permanent establishment (PE) in Singapore.

A PE could arise through a direct presence, such as the incorporation or registration of a physical presence, or through an indirect presence, such as the presence of an agent, employees or other personnel carrying out business activities in Singapore, unless the activities are limited to a preparatory or auxiliary nature. The indirect presence could amount to the carrying on of a business in Singapore and create a taxable presence therein.

Under the provisions of the DTA between Singapore and China, which follows the OECD model, a 'permanent establishment' means a fixed place where a business is wholly or partly carried on, for example, a branch or office.

In general, an overseas entity such as ZGCL could create a taxable presence in Singapore if it were considered to be 'trading in' Singapore rather than 'trading with' Singapore in the light of the activities carried out in Singapore. If an entity is merely 'trading with' Singapore, the entity is not subject to Singapore tax as the source of the trading income is outside Singapore.

Whether an entity is 'trading in' or 'trading with' Singapore is a question of fact. If an agent regularly contracts for the performance of services in Singapore on behalf of the non-resident, the non-resident may be deemed to be carrying on a trade in Singapore. Essentially, the main factors which would give rise to a 'trading in' Singapore situation in so far as providing services is concerned would include *inter alia*:

– The securing and concluding of sales contracts in Singapore;
– The performance of the contracts or services in Singapore; and
– The payment for the services in Singapore.

When a contract is both concluded and performed outside Singapore, a non-resident cannot be said to be carrying on a business in Singapore even if the entity has a presence in Singapore or the initial negotiations and costing of the contracts were done in Singapore. Hence, if a non-resident is able to substantiate that the sales contracts are made and concluded outside Singapore, and payment is made outside Singapore, it should not have a taxable presence in Singapore and therefore should not be subject to tax in Singapore. Otherwise, it could be taxed on the attributable profits derived from Singapore.

An overseas entity like ZGCL could still be regarded as 'trading in' Singapore through the activities or conduct of the brokers/agents, employees or other related personnel acting on its behalf. For this purpose, if the brokers/agents/employees/related personnel in Singapore can accept orders on behalf of the foreign entity and habitually exercise authority to conclude contracts in the name of ZGCL, these individuals would have created a PE in Singapore for a foreign entity. The profits from the relevant transactions attributable to the PE would hence be taxable in Singapore. However, if these individuals merely transmit solicited orders to the overseas entity, for the latter's acceptance which takes place overseas, then there should be no exposure to Singapore tax. Essentially, an overseas entity would have a taxable presence in Singapore if it has another person acting on its behalf in Singapore who, amongst others:

– Has and habitually exercises an authority to conclude contracts; or
– Habitually secures orders wholly or almost wholly for ZGCL or for such other enterprises as are controlled by that person.

Most of the treaties concluded by Singapore which follow the OECD model also provide that a foreign entity shall not be deemed to have a PE in Singapore merely because it carries on business in Singapore through a broker, general commission agent or any other agent of an independent status, provided that such individuals are acting in the ordinary course of business.

As a general guide, an agent is of an independent status under the following circumstances:

– It is independent of the foreign entity both legally and economically;
– It is acting in the ordinary course of its business when acting on behalf of the foreign entity;
– It is performing commercial activities for the foreign entity which are not subject to detailed instructions or comprehensive control by the foreign entity; and
– It is not bearing any entrepreneurial risk for the foreign entity.

Based on the background information provided, it is understood that the generation of sales for ZGCL is undertaken by the sales team of Zoro Garments Hong Kong (ZGHK), located in Hong Kong (i.e. outside Singapore). Presumably, any income which is derived from Singapore will be in the form of consultancy fees earned from providing the results of the mystery shoppers to companies in Singapore. It is also understood that all of ZGCL's physical business operations and human activities (including the provision of computer and customer support) take place outside Singapore. In addition, there is no marketing, servicing or delivery of goods and services being undertaken electronically in Singapore. Nor is there any obligation arising from any electronic commerce transactions in Singapore. Moreover, the ZGCL website is hosted on a server outside Singapore and there is no maintenance of any marketing information on a Singapore website. It is also assumed that as the mystery shoppers are employed on a casual basis (i.e. not full time), they are not acting as agents of ZGCL. Even if they were considered to be acting as agents of ZGCL, they would meet the definition of *bona fide* independent agents who are not rendering services solely to ZGCL and are not wholly devoted to ZGCL (i.e. essentially they satisfy the 'independent status' of an agent as discussed above).

The only substantial activity which was conducted in Singapore was the training provided by the employees from ZGHK. Although the training may be conducted at the same venue in the hotel seminar room in Singapore, it does not give rise to the creation of a permanent establishment in Singapore. This is because the place of training is not fixed as the seminar room is not at the disposal of ZGCL for a prolonged period of time with a certain degree of permanence. Also, no trade or business was conducted in Singapore through a fixed place as the conduct of training by itself is not tantamount to a trade.

Although the employees from ZGHK can be considered dependent agents, the activities which they conduct in Singapore are restricted to training and do not include any of the factors discussed above which would be indicative of a trade.

Based on the above premise and the application of the 'operations' tests, the business operations of ZGCL are arguably not carried out in Singapore and consequently, the income derived from these operations cannot be considered sourced in Singapore and hence is not liable to Singapore tax.

(b) Withholding tax (WHT) and goods and services tax (GST) implications for ZGCL arising from the payment of service fees

There should be no Singapore WHT requirement arising from the payment of the service fees to the mystery shoppers in Singapore by ZGCL. This is because ZGCL is not a resident of Singapore and also does not have a permanent establishment in Singapore. As such, the payment is outside the jurisdiction of Singapore tax laws.

GST is an indirect tax on the supply of taxable goods and services made in Singapore by a taxable person (see below) in the course or furtherance of any business carried on by that person and on the importation of goods into Singapore. Goods are considered to be supplied in Singapore if they are located in Singapore at the time when the sale is made. For the supply of services, it is based on the location of the business or fixed establishment which provides the services or which is directly connected with the supply of the services, rather than where the services are physically performed.

Under the GST Act, a person is liable to register for GST if the person makes taxable supplies in Singapore in the course of business and the annual taxable turnover exceeds $1 million. A GST-registered person is normally referred to as a taxable person. A taxable person has to charge GST (referred to as 'output tax') on all taxable supplies made and can claim the GST incurred (referred to as 'input tax') against the output tax.

Whether the mystery shoppers have to charge GST (currently at 7%) on the services provided to ZGCL would depend on whether they have fixed or business establishments in Singapore and whether they are making annual taxable supplies in Singapore exceeding $1 million. If the answer is affirmative for both, the mystery shopper must compulsorily register as a taxable person for GST. In determining this threshold of $1 million, one has to look at the value of the taxable supplies in Singapore for the current quarter and the past three quarters; or alternatively, the expected value of taxable supplies in the next 12 months. If either of these tests results in a value of taxable supplies in Singapore exceeding $1 million, the mystery shopper would be required to register for GST. If the annual taxable supplies of the mystery shopper do not exceed $1 million, they may still apply for voluntary registration but approval from the Comptroller of GST would be given on a case-by-case basis. Once a voluntary approval is granted, the mystery shopper would be required to remain registered for at least two years. The decision to volunteer for GST registration would depend on whether the recoverable input GST suffered is material enough to render it cost effective for the mystery shopper to be GST-registered.

If the mystery shopper is GST-registered, they are legally obliged to charge GST on any taxable supply of goods made to Singapore customers. On the other hand, they can invoice without GST if the mystery shopper is not a taxable person.

From the perspective of ZGCL, whether or not it has to incur input GST would depend on whether the mystery shopper is a taxable person. As ZGCL does not carry on any business in Singapore in its own name nor have any legal entity in Singapore, it is unlikely to be required to register for GST. The conduct of training in Singapore would not give rise to the creation of either a business or fixed establishment in Singapore by ZGCL. Consequently, any input GST it suffers on the payment of the service fees, if applicable, will not be claimable.

4 Green Earth Movement Singapore (GEMS)

(a) Income tax implications arising from the distribution of dividends from Moontec International Convention & Exhibition (MICE) to GEMS

MICE is a company deriving trading income from the rental of commercial space and organising international conferences. On the premise that it holds its board of directors' meetings in Singapore, it should be regarded as tax resident in Singapore. Under current Singapore rules, a Singapore company can pay dividends out of profits, and so MICE is able to pay out any after-tax profit from its business activities to its shareholders without any adverse tax consequences, regardless of the share ownership. This is because there is no withholding tax on dividends. Moreover, Singapore adopts a one-tier corporate tax system whereby tax is only levied at the company level. This tax is final and shareholders receiving dividends from a Singapore tax resident company are fully exempt from Singapore tax, regardless of whether they are Singapore or foreign shareholders.

Foreign shareholders, on the other hand, may be taxed on the receipt of such dividends back in their own home country. Exactly how they are taxed depends on the tax laws in the respective countries where they come from.

When MICE distributes dividends to Diamond Property Investment (DPI), an entity incorporated and operating in the British Virgin Islands (BVI), there would be no Singapore or BVI taxes, including withholding tax, for the recipients of the dividends. The same consequences apply to Ruby Property Investment (RPI), an entity incorporated in the BVI.

A Singapore corporate shareholder who receives foreign dividends from a BVI entity may, however, be subject to full Singapore tax at the prevailing corporate tax rate, currently at 17%. This is because under Singapore's tax system, foreign income is taxable when it is received or deemed received in Singapore. This is unless the foreign dividends are received by a Singapore tax resident company, and all three of the following conditions are met:

(i) In the year the foreign income is received in Singapore, the headline tax rate of the foreign country from which the income is remitted is at least 15%; and

(ii) The foreign income has been subject to tax in the foreign country from which they were remitted; and

(iii) The Comptroller is satisfied that the tax exemption would be beneficial to the person resident in Singapore.

As the dividend income paid out from RPI originated from BVI and no tax is suffered in BVI, conditions 1 and 2 above would not be satisfied. Consequently, such foreign dividends would not be exempt from Singapore tax under s.13(8) of the Singapore Income Tax Act if received by an entity operating in Singapore.

However, GEMS is a registered charity in Singapore. Pursuant to s.13(1)(zm) of the Singapore Income Tax Act, the income of any charity registered or exempt from registration under the Charities Act is fully exempt from Singapore tax. With this automatic tax exemption for registered charities, they are also not required to file income tax returns. Hence, unless the charity registration status of GEMS is revoked prior to the receipt of the foreign dividends from RPI, there should be no adverse tax implications for GEMS upon receipt of dividends from RPI.

(b) Singapore corporate income tax exposure for Ruby Property Investment (RPI)

As RPI is incorporated in BVI and does not carry out any trading activities (except to hold its board of directors' meetings) in Singapore, it should not be taxed in Singapore on the receipt of dividends from another BVI entity, which similarly does not carry out any trading activities nor hold its board of directors' meetings in Singapore.

However, if RPI has created a permanent establishment (PE) or is regarded as carrying out trading activities in Singapore, then there is a risk that it will be regarded as operating in Singapore. Consequently, RPI may be taxed on the receipt of foreign dividends from Diamond Property Investment (DPI), another entity incorporated in the BVI. This will happen if the foreign dividend is remitted to, transmitted or brought into Singapore.

This is because the dividend income paid out from DPI originated from BVI and no tax is suffered in BVI. Moreover, the headline tax rate of BVI is less than 15%. As such, the foreign dividends would not be exempt from Singapore tax if received by RPI in Singapore. Such income would be subject to full Singapore tax at the prevailing corporate tax rate, currently 17%.

RPI currently has a sole director who is a Singapore citizen and currently holds its annual board meeting in Singapore through passing directors' resolutions by written circulars. As this is done entirely in Singapore, there is a chance that the tax authorities may regard the company as a tax resident of Singapore.

However, this by itself does not create a tax exposure as long as no trading activities are carried out in Singapore. It does create complications as the tax authorities may question RPI as to why management and control of a BVI entity is exercised in Singapore. Moreover, Robert Png is a common director of both RPI and MICE and in fact is the key person exercising control in both companies. In this regard, there is a risk that any actions taken or decisions made by Robert Png may potentially create a PE risk for RPI in so far as it relates to the conduct of trading activities in Singapore.

To reduce the likelihood of any possible corporate income tax exposure for RPI, it is important that matters discussed during RPI's board meetings are confined to those of a routine and administrative nature, and not related to any business or trade carried out in Singapore.

(c) Significance of acquiring approved institution of a public character status

An approved institution of a public character (IPC) is able to receive tax-deductible donations. This means donors, whether individuals or entities, are granted a tax deduction for donations made to IPCs. For every $1 of donation, the donor is able to claim $2·50 tax deduction against their statutory income.

		Available	*Maximum*
1	Letter on Singapore tax position		
(i)	**Tax implications of proposed acquisition of shares in Singapore United Conglomerate Pte Ltd (SUCPL)**		
	Income tax implications for Lobang King Pte Ltd (LKPL):		
	Purchase consideration ordinarily not deductible	1·0	
	Benefits under the mergers and acquisition (M&A) scheme	3·0	
	Conditions for M&A scheme and application	4·0	
	Income tax implications for sellers:		
	No tax exposure for individual sellers	2·0	
	Tom Sally Pte Ltd (TSPL) can rely on safe harbour rules	3·0	
	Goods and services tax (GST) implications for LKBL	1·0	
	GST implications for sellers	1·0	
	Stamp duty implications for LKPL:		
	Basic stamp duty	1·0	
	Additional conveyance duties explained	2·0	
	Additional conveyance duties computation	2·5	
	Stamp duty implications for sellers	2·0	
		22·5	18·0
(ii)	**Implications if Sally Moo sells her shares in TSPL to LKPL instead**		
	No income tax	1·0	
	No GST	1·0	
	No stamp duty/ACDS	1·0	3·0
(iii)	**Unutilised capital allowances of $2 million**		
	Possibility of claim without injecting business	4·0	
	Possibility of claim after injecting business	2·0	
	Option for waiver subject to condition but unlikely to succeed	2·0	
		8·0	6·0
(iv)	**Tax planning tips**		
	To reduce stamp duty exposure	2·0	
	To benefit from claiming unutilised capital allowances	2·0	4·0
	Professional marks		
	Appropriate format and presentation of the letter	1·0	
	Structure including relevant headings	1·0	
	Effectiveness of communication	1·0	
	Logical flow	1·0	4·0
			35·0

		Available	Maximum
2	**High Flex Pte Ltd (HFPL)**		
(a)	**Retrenchment payment and benefits**		
	Salary in lieu of notice	2·0	
	Holiday reimbursement and commission	2·0	
	Dental reimbursement	2·0	
	Gratuities	2·0	
	Compensation for loss of office	2·0	
	Arguments for compensation for loss of office	2·0	
	Requirement to correct treatment	2·0	
	Tax deductibility of compensation for loss of office	2·0	
	Overall conclusion	2·0	
		18·0	16·0
(b)	**Income tax and goods and services tax (GST) treatment of fringe benefits**		
	Income tax treatment:		
	General rule	2·0	
	Application	2·0	
	GST treatment:		
	General rule	1·0	
	Universal Studios packages	2·5	
	Door gifts	1·0	
	Lucky draw prizes	2·0	
		10·5	9·0
			25·0

		Available	Maximum
3	**Zoro Garments China Ltd (ZGCL)**		
(a)	**Singapore corporate income tax liability for ZGCL**		
	Generally no tax exposure for overseas entity unless there is a permanent establishment (PE)	1·0	
	Ways of creating a PE	6·0	
	Application and conclusion	10·0	
		17·0	14·0
(b)	**Withholding tax (WHT) and goods and services tax (GST) implications of the payment of service fees**		
	No WHT implications	1·0	
	GST implications – for ZGCL	2·0	
	GST implications – for mystery shoppers	4·0	
		7·0	6·0
			20·0

		Available	Maximum
4	Green Earth Movement Singapore (GEMS)		
(a)	**Income tax implications arising from the distribution of dividends from Moontec International Convention & Exhibition (MICE) to GEMS**		
	Tax treatment for dividends paid from tax resident company	2·0	
	Likely no Singapore or BVI taxes for the two BVI entities	2·0	
	Foreign dividends are taxable when remitted for normal company	3·0	
	Application	2·0	
	Tax exemption for income received by registered charities	3·0	12·0
(b)	**Singapore corporate income tax exposure for Ruby Property Investment (RPI)**		
	No exposure if RPI is not trading in Singapore	1·0	
	Foreign income remitted to Singapore may be taxable	3·0	
	Risky if directors' resolutions are passed in Singapore	1·0	
	Risky if Robert Png makes decisions in Singapore	1·0	
	Ways to mitigate PE risk	2·0	
		8·0	6·0
(c)	**Significance of approved institution of a public character status**		
	Able to receive tax-deductible donations	1·0	
	Can claim 2·5 times the donation	1·0	2·0
			20·0