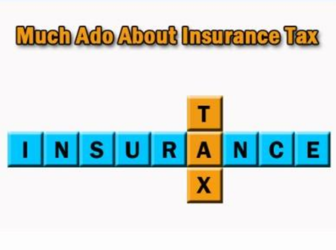

TED: Much Ado About Insurance Tax Part1

Updates and Essentials of Insurance Tax

1 September 2016, Thursday

Facilitated by:
Accredited Tax Advisor (Income Tax and GST) Ms Anna Low & Mr Lim Shiang Ming

The finance and insurance industry constituted about one-third of Singapore's total growth in 2015 and contributed close to 30% of gross domestic product (GDP) growth in the last four years. The industry's high growth potential and importance to the Singapore economy are evident.

Set against the backdrop of an evolving global tax landscape, the insurance sector's ability to keep abreast of global tax developments to confidently push forth its growth strategy would be crucial to our island country's continual success.

To this end, the Singapore Institute of Accredited Tax Professionals teamed up with tax advisors from KPMG in Singapore to update participants on the global and Singapore tax developments.

The *Tax Excellence Decoded* (TED) session also addressed issues faced by insurers when trying to meet various tax compliance requirements, including income tax, goods and services tax (GST), research and development (R&D) tax claims and transfer pricing (TP).

In this first of our two-part series focusing on the insurance sector, we will cover global tax changes and the impact on the insurance industry, as well as the recent Singapore income tax updates for insurers. We will then dwell on the intricacies of insurers dealing with GST, R&D tax claims and TP issues in Singapore in the second part of the series.

Global Tax Changes and the Impact on Insurance Industry

Following the Organisation for Economic Co-operation and Development (OECD)'s issuance of its final report on the 15-action Base Erosion and Profit Shifting (BEPS) project last year, the focus is now on the implementation of the recommendations which is based on three pillars – coherence, substance and transparency.

Coherence

Recommendations around this pillar mainly seek to create coherence at the international level regarding the design of domestic tax rules to neutralise (perceived) abuses by taxpayers using hybrid mismatch arrangements for cross-border activities.

BEPS Action 2 on hybrid mismatch arrangements aims to tackle deliberate arbitrage, where a single instrument or entity is treated differently in separate countries, to obtain undue benefits domestically or through tax treaties. Some of the proposed measures may potentially impact the asset management of an insurer. To avoid being seen as engaging in purposeful tax avoidance, it may be advisable for insurers to review their tax positions and corporate structures, especially if their corporate groups invest in hybrid debt instruments or use dual-resident entities or other arbitrage structures.

BEPS Action 3 on controlled foreign companies (CFC) rules responds to the risk that taxpayers with a controlling interest in a foreign subsidiary may strip the base of their country of residence by shifting income into a low- (or no-) tax jurisdiction.

The nature of business specific to the insurance industry, where risk diversification is necessary, sparks debate over the need to strengthen CFC rules. It is also argued that certain aspects of the insurance industry, such as reinsurance, operate in a well-regulated environment where there is no real need for CFC rules. Recognising such sentiments, the BEPS report distinguishes captive insurance from reinsurance, and recommends that reinsurance income be excluded from the CFC regime.

While Singapore does not presently have CFC rules, insurers are encouraged to watch this space especially if their parent companies operate in jurisdictions with CFC rules.

Accredited Tax Advisor (Income Tax and GST) Anna Low, Head of Insurance Tax at KPMG in Singapore, shared her insights on global tax changes and the impact on the insurance industry.

SUBSTANCE

Besides coherence, the BEPS recommendations also seek to reinforce substance requirements in existing international standards, as well as to ensure alignment of taxation with the location of economic activities and value creation.

To prevent treaty abuse or treaty shopping, the OECD is proposing to introduce the limitation of benefits (LOB) rule or the principle purpose test (PPT) rule. The former is a specific anti-abuse rule which avails treaty benefits only when certain conditions are met, while the latter is a more general anti-abuse rule based on the main purpose of the transaction or arrangement.

Another key area to monitor is Permanent Establishment (PE). As the OECD proposes to broaden the PE definition and narrow specific exclusions, insurers should thoroughly review and keep tabs on their offshore business activities to determine if they have triggered any PE, bearing in mind that PE rules vary in different jurisdictions. Some possible issues for insurers to ponder when establishing the level of risk of creating a PE are:

a) Track location of the employees playing the principal role leading to conclusion of contracts;
b) Consider the possibility of a "Representative Office" constituting PE;
c) Determine whether related parties in the sales process are independent, and whether there is a need to modify the sales contracting process;
d) Find out whether any closely-related foreign agents are authorised to sign up clients within certain parameters, and
e) Consider whether the products are standardised

"*As countries contemplate the implementation of the various BEPS Actions, insurers with cross-border operations should actively review BEPS developments and consider the impact on their value chain from sales and marketing to underwriting, risk management and asset management,*" highlighted Accredited Tax Advisor (Income Tax and GST) Anna Low, Head of Insurance Tax at KPMG in Singapore, during the TED session.

TRANSPARENCY

The final pillar of the BEPS project aims to increase transparency through improved TP documentation standards, including the use of Country-by-Country Reporting (CbCR).

In addition to the BEPS project, the OECD also developed the Common Reporting Standard (CRS) for tax administrations to obtain information from financial institutions and automatically exchange that information with other jurisdictions on an annual basis. More than 100 jurisdictions, including major financial centres such as Dubai, Hong Kong, Luxembourg and Switzerland, have endorsed the CRS and will commence the automatic exchange of information in either 2017 or 2018.

Singapore has committed to implement the CRS, with the first exchange to take place by September 2018. Singapore-based financial institutions will be required to transmit to the IRAS the CRS information on their account holders who are tax residents of jurisdictions that Singapore has a Competent Authority Agreement for CRS with.

Specifically for insurers, financial reporting of income from certain cash value insurance contracts, annuities and sales proceeds from financial assets will be required under the CRS. Insurers should consider how the CRS requirements will affect them and ensure that their systems and procedures are robust enough to capture relevant information for reporting.

Recent Tax Developments in Singapore for the Insurance Industry

There are broadly three categories of insurance businesses which may qualify for concessionary tax rates (CTR) or tax exemptions in Singapore, namely life (re)insurance, general (re)insurance and composite insurance businesses, subject to certain conditions.

From 1 April 2015, the tax incentives for Approved Offshore General, Life and Composite Insurers are subsumed under the Insurance Business Development (IBD) Scheme. The incentives allow approved insurance businesses a CTR of 10% for qualifying income derived from offshore (re)insurance activities conducted in Singapore. Following this, other tax incentive schemes for general insurance have also been gradually subsumed under the IBD scheme, offering a more standardised CTR of 10% apart from certain exceptions. The scope of income for qualifying specialised insurance businesses (QSIB) has also been expanded to include both onshore and offshore risks from 1 September 2016.

"*It is vital for insurers to ensure that proper processes and controls are in place to identify the incomes for each concessionary tax category, and correctly attribute the expenses to the respective incomes,*" cautioned Lim Shiang Ming, Director at KPMG in Singapore.

Lim Shiang Ming, Director at KPMG in Singapore, discussed recent Singapore income tax updates for insurers.

Comptroller of Income Tax v BBO [2014] SGCA 10

One notable development in the insurance sector is the landmark decision made by the Court of Appeal in *Comptroller of Income Tax v BBO* [2014] SGCA 10 where the Court of Appeal makes it clear that the holding of assets in statutorily mandated insurance funds and to meet solvency margins prescribed by legislation will not mean that any gains accruing from the sale of such assets will automatically amount to taxable income. This is contrary to the IRAS' typical view that any gains derived by insurers from any investments are revenue in nature and hence taxable.

Following this landmark case, the IRAS issued an e-Tax guide on "Income Tax: Treatment of Gains Derived from Disposal of Investments of Insurers" in October 2015 to clarify its position. Essentially, the IRAS would still consider share investments to be revenue in nature until proven otherwise. It is thus important for insurers to maintain proper documentation of any intention for long-term strategic holding to be used as supporting evidences when required.

To determine whether disposal gains are capital or revenue in nature in the case of insurers, the "badges of trade" test, which looks at factors such as the holding period of investments and the frequency of transactions, should be applied.

Amid all the tax developments both locally and globally, it is indeed an exciting time for the insurance industry as it continues its rapid growth in Singapore. Do review your company's tax positions regularly to ensure that they are sustainable. And while you are at it, remember to maintain adequate documentations – you never know when you may need it.

Facilitators

Ms Anna Low
Head of Insurance Tax
KPMG in Singapore
Accredited Tax Advisor (Income Tax and GST)
T: +65 6213 2547
E: alow@kpmg.com.sg

Mr Lim Shiang Ming
Director, Insurance Tax
KPMG in Singapore
T: +65 6213 3773
E: shiangminglim@kpmg.com.sg

This technical event commentary is written by Felix Wong, Head of Tax, SIATP. This article is based on SIATP's Tax Excellence Decoded session facilitated by Accredited Tax Advisor (Income Tax and GST) Anna Low, Head of Insurance Tax, KPMG in Singapore and Lim Shiang Ming, Director, Insurance Tax, KPMG in Singapore.

For more tax insights, please visit www.siatp.org.sg.