MALAYSIA

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1. Introduction

1.1 General Comments on M&A in Malaysia

This chapter details the main issues that are relevant to both buyers and sellers on the transfer of business or shares in a Malaysian company.

In Malaysia, there is no statutory concept of "merger" and the mode of a merger typically involves an acquisition of shares or business assets (and liabilities) of another company when structuring M&A transactions in addition to commercial considerations, income tax (including impact on tax incentives), stamp duty and real property gains tax implications should be considered . Non-tax considerations, such as exchange control and foreign equity participation requirements may also impact the transactions.

1.2 Corporate Tax

Malaysia operates a unitary tax system on a territorial basis. Tax residents of Malaysia, whether corporate or individuals, are taxed on income accruing in or derived from Malaysia or received in Malaysia from outside Malaysia. However, resident companies (except for those carrying on banking, insurance, sea or air transport operations) and resident individuals are exempted from income tax on foreign-sourced income remitted to Malaysia. Non-residents are only taxed on income accruing in or derived from Malaysia.

The corporate tax rate for resident and non-resident corporations (including branches of foreign corporations) is 28%. However, with effect from the Year of Assessment 2004, companies resident in Malaysia with paid-up capital not exceeding RM2.5 million are subject to income tax at the rate of 20% on chargeable income up to and including RM500,000. The remaining chargeable income will continue to be taxed at the prevailing corporate tax rate of 28%.

The basis of income assessment is on a current year basis and a self-assessment system of taxation was introduced in stages, starting with companies, in the year 2001.

Generally, capital gains are not subject to tax in Malaysia. However, gains derived from the ordinary course of business would be treated as ordinary income and subject to tax at the prevailing corporate tax rate.

- Taxation of Dividends

  Malaysia has an imputation system of taxing dividends. The ability of a company to pay dividends to a shareholder depends on the availability of tax franking credits (see Section 108 credit) and its distributable profits. If the company does not have sufficient franking credits (which is the amount of income tax paid by the company less the amount already used to frank payments of dividends), any dividend paid would be subject to tax at the current rate of 28%. Such tax paid is not creditable against any future tax liability of the company.

  Exempt income, generated from offshore income or pioneer income derived by the company, may be distributed to the shareholders without having to satisfy the above-mentioned franking requirement.

  Under the imputation system, Malaysian-sourced dividends received by shareholders are deemed to have suffered tax at source at the corporate tax rate (currently 28%) by the paying company. If there are expenses incurred in deriving such dividends, these expenses are tax deductible and may result in the Malaysian shareholders receiving a tax refund.

  Where dividends are paid out of tax-exempt profits, such dividends are not subject to tax in the hands of the shareholders.

  There is no withholding tax on dividends paid by Malaysian companies.

1.3 Withholding Tax

The Malaysian income tax legislation provides for withholding tax to be deducted at source on certain payments made to non-residents. The withholding tax rates are as follows:

	Non-treaty rate%	**Treaty rate%**
Interest	0 – 15	0 – 15
Royalties	10	0 – 10
Management/Technical fees*	10	0 – 10
Rental of moveable properties	10	0 – 10

*Effective from 21st September 2002, payments to non-residents in respect of management/ technical services rendered outside Malaysia will not be subject to withholding tax

Malaysia has a comprehensive network of double tax treaties which may reduce the withholding tax rates on the above payments made to a resident of a treaty country.

Malaysia also imposes withholding tax on payments made to non-resident contractors in respect of services rendered in Malaysia at the following rates:

- 10% of contract payment on account of tax which is, or may be, payable by the non-resident contractor; and
- 3% of contract payment on account of tax which is, or may be, payable by employees of the non-resident contractor.

It is generally the view of the Malaysian tax authorities that reimbursement of out-of-pocket expenses to non-residents in respect of services rendered by the non-residents in Malaysia, or the rental of moveable properties from non-residents, will be considered as part of the contract value and be subject to withholding tax.

1.4 Goods and Services Tax/Value Added Tax

Currently, Malaysia does not have a value added tax (VAT) system. However, the Government has proposed to implement, with effect from 1st January 2007, a consumption tax system based on the value-added model to be known as Goods and Services Tax (GST). GST is proposed to replace the existing consumption taxes of sales tax and service tax.

Based on the discussion paper issued by the Government, it is proposed that the transfer of going concern is disregarded for GST/VAT purposes on the basis that it is neither a supply of goods nor services.

Currently, the following indirect taxes may be imposed on goods and services, as the case may be:

- import duties at specific rates, ad valorem rates (up to 60%) or composite rates, on dutiable goods imported into Malaysia;
- sales tax at specific rates or ad valorem rates (5% and 10%) on taxable goods that are manufactured in, or imported into, Malaysia;
- excise duties at specific rates or ad valorem rates (up to 250%) on goods subject to excise duty that are manufactured in, or imported into, Malaysia; and
- service tax at 5% on taxable services provided by taxable persons, which are prescribed by way of regulations.

1.5 Stamp Duty

Malaysia imposes stamp duty on chargeable instruments executed in certain transactions. In a stock deal, Malaysian stamp duty is payable at the rate of 0.3% on the consideration paid or market value of the shares (whichever is higher). In an asset deal, stamp duty ranging from 1% to 3% is payable on the market value of the dutiable properties transferred under the instrument. Stamp duty is payable by the buyer.

Specific exemptions from stamp duty are available provided stipulated conditions are met (see section 2.4.3).

1.6 Real Property Gains Tax

There is no capital gains tax regime in Malaysia. Real property gains tax (RPGT) is however imposed on gains derived from the disposal of real property situated in Malaysia or shares in a real property company (RPC). Depending on the period of ownership, these gains will be subject to RPGT at rates ranging from 5% to 30%. A RPC is a controlled company, the major assets of which consist substantially of real property or RPC shares.

Specific exemptions from RPGT are available, provided stipulated conditions are met (see section 7.3.1). Approval for exemption must be secured prior to the disposal.

2. Acquisitions

2.1 The Preference of Purchasers: Stock vs. Assets Deal

The benefits and drawbacks of either a stock or asset acquisition would depend on various factors, including the tax attributes of the Target Company, the acquiring company, business fit of the Target Company with the buyer, and most importantly, the commercial considerations. Potential buyers can also improve shareholder values and returns on investment through tax efficient structuring and planning.

In a stock acquisition, the buyer may be exposed to liabilities and exposure in the Target Company. As such, the buyer would need to carry out a due diligence exercise on the Target Company's business in a stock acquisition compared to an asset acquisition.

2.2 Stock Acquisition

The main advantage of a stock acquisition is that the tax attributes such as unabsorbed tax losses, tax incentives or dividend franking credits remain with the Target Company.

- Preservation of Tax Losses and Unutilised Tax Depreciation Carried Forward

  Generally, companies are allowed to carry forward their accumulated tax losses and unutilised tax depreciation to be set off against their future business income. Such tax treatment is accorded for an unlimited period of time. Furthermore, companies that ceased operations for several years may still utilise accumulated losses and unabsorbed capital allowances to be set off against new business income.

  Based on the recently enacted Finance Act 2005, effective from the Year of Assessment 2006, accumulated tax losses and unutilised tax depreciation of a Target Company shall be disregarded in the event there is a change of more than 50% of the shareholding in the Target Company. However, the Minister of Finance may, under special circumstances, exempt a company from the above provisions.

  At this stage there has not been any ruling issued by the tax authorities as to what are the "special circumstances" under which this new restriction would be relaxed.

- Continuity of Tax Incentives

  Where the Target Company is entitled to any tax incentives or exemptions, the conditions attached to the incentives or exemptions should be examined to ensure that a change in owner ship will not affect the target's entitlement to such incentives or exemptions.

- Others

  As highlighted previously, the buyer may be exposed to liabilities in the Target Company in a stock acquisition. Hence, a thorough due diligence exercise on the Target Company's business in a stock acquisition will need to be conducted. This step will help identify the potential tax costs and, where appropriate, explore means of minimising the impact or applying for exemption. The due diligence could also contribute towards managing potential risks in the future.

2.3 Asset Acquisition

In an asset acquisition, any tax attributes such as unabsorbed tax losses, tax incentives and dividend franking credits remain with the Target Company and may not be transferred to the buyer.

- Preservation of Tax: Losses and Unutilised Tax Depreciation Carried Forward

  Generally, unabsorbed tax losses and unutilised tax deprecation of a Target Company may not be transferred to the acquiring company in an asset acquisition.

- Continuity of Tax Incentives

  Under an asset deal, any tax incentives or exemption currently enjoyed by the Target Company will unlikely be transferred to the acquiring company. Generally, the buyer will have to submit a new application for tax incentives or exemptions upon acquiring the business, if it is eligible.

- Others

  In an asset acquisition, the buyer has the choice of determining the assets/liabilities to be acquired. However, the buyer should still need to carry out a limited due diligence exercise on the assets to be acquired.

2.4 Transaction Cost

2.4.1 GST/VAT

As mentioned in section 1.4, based on the discussion paper issued by the Government, it is proposed that the transfer of going concern is disregarded for GST/VAT purposes on the basis that it is neither a supply of goods nor services.

2.4.2 Stamp Duty

In a stock deal, Malaysian stamp duty is payable by the buyer at the rate of 0.3% on the consideration paid or market value of the shares (whichever is higher). For an asset deal, stamp duty ranging from 1% to 3% is payable by the buyer on the market value of the dutiable properties transferred under the instrument.

Specific stamp duty exemption is available provided stipulated conditions are met (see section 2.4.3).

2.4.3 Concessions Relating to M&As

The Malaysian Income Tax Act and Stamp Act provide some concessions when a company is being reorganised.

- For income tax purposes, sale of tax depreciable assets between related parties may be effected at the tax written down value of the assets. This means that the seller will not have any taxable balancing charge or deductible balancing allowance arising from the sale. The buyer will also be deemed to have acquired the assets at its tax written down value. The transfer value of the fixed assets will be disregarded and the buyer would be entitled to claim annual allowances based on the original acquisition cost of the fixed assets but restricted to the tax written down values of the assets acquired. No initial allowance may be claimed on these fixed assets.

  Additionally, the costs incurred in acquiring a foreign company will also be allowed a tax deduction over a period of five years provided stipulated conditions are met. For instance, the acquisition is for the purpose of acquiring high technology for production within the country or for acquiring new export markets for local products; the acquirer must be a company incorporated in Malaysia with at least 60% Malaysian equity ownership and is involved in manufacturing or trading/marketing activities and the acquired entity must be a foreign company with 100% foreign equity ownership that is located abroad and involved in manufacturing or trading/ marketing activities.

- In respect of corporate restructuring or amalgamations, relief from stamp duty is available under the following circumstances:

  - if the acquisition of shares or assets is in connection with a scheme of amalgamation or reconstruction and the consideration comprises substantially of shares in the transferee company; or
  - if the shares or assets are transferred between associated companies (i.e. there must be 90% direct or indirect relationship between the transferee and the transferor).

  In addition to the above, to further encourage public listed companies to expand and compete globally, it has been proposed in the budget announcement on 30th September 2005 that stamp duty exemptions would be given on M&A undertaken by companies listed on Bursa Malaysia. The M&A must be approved by the Securities Commission between 1st October 2005 and 31st December 2007 and completed not later than 31st December 2008.

2.4.4 Tax Deductibility of Transaction Costs

Generally, transaction costs incurred during M&A exercises are not tax deductible to the buyer. However, to the extent to which the expenses are incurred in relation to the purchase of trading stock, such expenses should be deductible.

3. Basis of Taxation Following Stock or Asset Acquisition

3.1 Stock Acquisition

In general, the acquisition price will be the tax cost base of the shares. If the shares acquired are shares in a RPC, the shares would be a chargeable asset and any subsequent gain on disposal of the shares would attract real property gains tax. A RPC is a controlled company that owns real property with a defined value of not less than 75% of its total tangible assets at the time the real property was acquired. The purchase price of the RPC shares would, under certain circumstances, be determined by a statutory defined formula. It is therefore important to ascertain, at the time of a stock deal, whether the shares acquired are RPC shares.

3.2 Asset Acquisition

In the purchase of assets, the buyer would generally be treated as having acquired the assets at their acquisition price. The buyer may claim initial and annual allowances on the acquisition price of plant and machinery. It may be possible to achieve a step up in the cost base of depreciable assets for the buyer. However, in allocating the purchase price of the assets, an independent professional valuation report should be obtained to support the reasonable allocation of the purchase price to the various asset categories.

The step up in cost base is not relevant where fixed assets are transferred between companies under common control, as the tax provisions would deem the transfer of fixed assets to be at their tax written down values. The transfer value of the fixed assets will be disregarded and the buyer would be entitled to claim annual allowances based on the original acquisition cost of the fixed assets but restricted to the tax written down values of the assets acquired. No initial allowance may be claimed on these fixed assets.

No tax deduction is available for the amortisation of acquisition goodwill to the buyer. Therefore, the purchase price on an asset deal should ideally be allocated as much as possible to inventory, depreciable capital assets, and other items which are entitled to a tax deduction or tax depreciation.

4. Financing of Acquisitions

4.1 Thin Capitalisation

There is currently no thin capitalisation rule in Malaysia.

4.2 Deductibility of Interest

4.2.1 Stock Deal

In a stock deal, interest expense incurred on money borrowed to finance the acquisition of shares is tax deductible to the extent that dividend income is received in the same year. This could result in a tax refund to the shareholder company.

For example, assume that a Malaysian company receives a gross dividend of RM100 from its Malaysian subsidiary. In the same year, the Malaysian company incurred interest expense of RM90 on the investment. As the interest expense will be tax deductible against the dividend income, there will be a tax refund to the Malaysian company.

	RM
Dividend (gross)	100
Interest expense, say	(90)
Net dividend	10
Tax on net dividend	2.8
Tax paid (imputation system)	(28.0)
Tax to be refunded	25.2

It is important to time the payment of interest with the flow of dividends to maximise the interest deduction and therefore maximise the tax refund. It should be noted that excess interest costs are not eligible for offset against other income, nor can they be carried forward to offset against future dividend income.

4.2.2 Asset Deal

Interest incurred on funds used to acquire a business under an asset deal should be fully tax deductible. Since there is no thin capitalisation rule in Malaysia, it is possible to maximise the amount of debt used to fund the acquisition of business.

5. Mergers

In Malaysia, there is no statutory concept of a “merger”. The mode of merger in Malaysia involves either the acquisition of shares in an existing Malaysian company, or an acquisition of assets (and liabilities) of another entity.

All proposed acquisitions of assets (including a subscription of shares), or any interests, mergers and takeovers of a Malaysian business or company requires strict approval of the Foreign Investment Committee (FIC), which is responsible for the co-ordination and regulations of such matters under the Regulation of Acquisition, Mergers and Takeovers.

Generally, acquisition of assets or interests in Malaysian incorporated companies of more than RM10 million in value, or acquisition which results in the transfer of ownership or control to foreign interests, or where there is an acquisition of 15% or more of the voting rights in a Malaysian company by foreign interest, requires the prior approval of the FIC. The FIC may impose foreign equity restrictions.

6. Other Structuring and Post-Deal Issues

6.1 Repatriation of Profits

The common methods of repatriation of profits are through payments of dividends, interest, royalties and management fees.

The ability of a company to pay dividends to a shareholder (resident or non-resident) would depend on the availability of retained earnings and dividend franking credits. Companies with insufficient dividend franking credits will suffer additional tax charge to the extent of the shortfall of the franking credits. Exempt income (e.g. offshore income or pioneer income of the company) may be distributed to the shareholders without having to satisfy the franking requirement. There is no restriction for exchange control purposes on dividend distribution by Malaysian subsidiary to non-residents.

Payment of interest and royalties to non-residents would be subject to withholding tax, at rates which may be reduced under the relevant double tax treaty. As for management and technical fees, if the services are performed wholly outside Malaysia, there is no withholding tax on the payment.

6.2 Losses Carried Forward and Unutilised Tax Depreciation Carried Forward

As explained earlier, a company is allowed to carry forward its accumulated tax losses and unutilised tax depreciation to be set off against its future business income provided that there is no change of more than 50% of its shareholding. Exemption from the above provision (i.e. the 50% continuity of shareholding requirement) may be obtained by the Minister of Finance under special circumstances.

Unutilised tax depreciation may also be carried forward indefinitely, subject to the 50% shareholding requirement, but can only be used to offset against future income of the same business source. In other words, these unutilised balances may not be applied against income of a new business source.

Unabsorbed tax losses, unutilised tax deprecation and dividend franking credits may not be transferred to the acquiring company under an asset deal.

6.3 Tax Incentives

Under an asset deal, any tax incentive or exemption currently enjoyed by the Target Company is unlikely to be transferred to the acquiring company. Generally, the buyer will have to submit a new application for tax incentives or exemptions upon acquiring the business, if it is eligible.

For a stock deal, the conditions attached to the incentives should be examined to ensure that a change in ownership will not affect the Target Company's entitlement to such incentives or exemptions.

Unutilised tax incentive may be carried forward indefinitely but may only be used to offset against future income of the same business source.

6.4 Group Relief

Beginning from Year of Assessment 2006, tax losses of a Malaysian company may be utilised to set off against the aggregate income of another company within the same group provided stipulated conditions are met.

The group relief is limited to 50% of the current year's unabsorbed losses of the surrendering company. The following conditions need to be satisfied before the losses may be surrendered:

- the claimant and surrendering companies each must have a paid-up capital in respect of ordinary share of more than RM2.5 million;
- both the claimant and the surrendering companies must have the same accounting period;
- the shareholding, whether direct or indirect, of the claimant and surrendering companies in the group must not be less than 70%. In determining the 70% shareholding relationship, shares with fixed dividend rights are to be ignored;
- the 70% shareholding must be on a continuous basis during the preceding year and the relevant year;
- the claimant company must be able to demonstrate that it is beneficially entitled, directly or indirectly, to at least 70% of the residual profits and assets (in the case of liquidation) of the surrendering company, available for distribution to all equity holders (and vice versa); and
- the companies are not enjoying tax incentives in the year where tax losses are being surrendered or claimed.

Losses resulting from the acquisition of proprietary rights, or a foreign-owned company, should be disregarded for the purpose of group relief.

7. Disposal

7.1 Preference of Sellers: Stock vs. Asset Deal

In preparing for a deal, it would be appropriate for the seller to identify the income tax and real property gains tax impact on any gains arising from the stock or asset deal. Where possible, the tax costs should be quantified and the potential tax exposure minimised. Positive tax attributes and value of tax shelters (e.g. the availability of carry forward tax losses, unutilised tax depreciation and availability of tax franking credits) could also be factored in and used as a bargaining tool when negotiating with the buyer. As mentioned earlier, accumulated tax losses and unutilised tax depreciation of a Target Company shall be disregarded in the event there is a change of more than 50% of the shareholding in the Target Company unless an exemption to comply with the continuity of same ownership test is obtained.

Generally, from a seller's perspective, it may be less complicated to sell a target through a stock deal.

7.2 Stock Sale

7.2.1 Profit on Sale of Stock

Unless the seller is in the business of dealing in shares, the profits on the sale of shares should not be subject to income tax as such profits are considered capital in nature. Malaysia does not have a capital gains tax regime, except for real property gains tax. Where the shares represent interests in a RPC, the gains from the disposal thereof are subject to real property gains tax. Real property gains tax is levied at scale rates from 5% to 30% depending on the period of ownership.

7.2.2 Distribution of Profits

Provided that the seller has sufficient dividend franking credits, the profits made from the sale of stock can be distributed as dividend to the shareholders. Otherwise, the payer company would suffer additional tax cost to the extent of the shortfall of the franking credit.

If the profits from the sale of shares are significant and the company does not have sufficient dividend franking credit to distribute such profits, it may need to transfer its existing business, if any, to a separate entity and then liquidate the company. Proceeds paid to shareholders on liquidation are not subject to franking credit restrictions.

7.3 Asset Sale

7.3.1 Profit on Sale of Assets

Generally, the sale of real property (land and building) or shares in a RPC would be subject to real property gains tax.

However, exemptions are available under the Real Property Gains Tax Act 1976. The most notable exemptions relate to the transfer of real property between companies in the same group. It is possible to apply for an exemption from real property gains tax on the transfer of assets between companies in the same group if the asset is transferred to bring about greater efficiency in operations.

The exemption may, provided the scheme is in compliance with the Government policy on capital participation in industry, also cover assets:

- transferred between group companies under any scheme of reorganisation, reconstruction, or amalgamation; or
- distributed by a liquidator in the case of a liquidation made under any scheme of reorganisation, reconstruction, or amalgamation.

Transactions in these categories must obtain the prior approval of the Malaysian tax authorities.

In respect of the sale of trading stock, the gain would be subject to income tax as it is considered as part of the business income.

Any gain on the sale of fixed assets would not be subject to income tax. For transactions between unrelated parties, a balancing adjustment (balancing charge or allowance) may arise. If the transfer value exceeds the tax written down value of the asset, the difference, known as a balancing charge, is taxable to the company. The balancing charge is restricted to the amount of allowances previ ously claimed. If the transfer value is less than the tax written down value of the asset, the shortfall, a balancing allowance, is deductible against the adjusted income of the company. If the transaction is between related parties, no balancing adjustment arises on the seller as the assets are deemed to be transferred at their tax written down value.

Currently, there is no indirect tax implication for the disposal of real properties (e.g. factory and office premises) and for the sale of machinery/equipment and trading stocks, where import duty and/or sales tax have been paid. In addition, disposal of shares will not be subject to any indirect taxes in the form of import duty/excise duty/sales tax/service tax.

If the seller has any exemptions from import duty and/or sales tax, including any facility for licensed manufacturers in Malaysia (licensed under the Sales Tax Act), the following indirect tax implications would apply:

- the sale of exempt dutiable and/or taxable machinery/equipment (inclusive of spare parts) and raw materials would result in the import duty and/or sales tax becoming due and payable, unless the buyer is able to obtain exemption of import duty and/or sales tax for the purchase of the said machinery/equipment and raw materials from the relevant authorities; and

- in respect of sales tax-free raw materials, taxable work-in-progress and taxable finished goods manufactured by the seller, who is a licensed manufacturer under the Sales Tax Act, there are provisions in the Sales Tax Act to allow the buyer to purchase these items free of sales tax subject to certain conditions being met. However, the buyer has to be a licensed manufacturer as well. Otherwise sales tax would be due and payable upon sale by the seller.

7.3.2 Distribution of Profits

As mentioned under section on stock sale, the gain arising from the disposal of assets may be distributed as dividend to the shareholders provided there is sufficient dividend franking credits which may be used to frank the payment of such dividend.

8. Transaction Costs for Seller

8.1 GST/VAT

As mentioned in section 1.4, based on the discussion paper issued by the Government, it is proposed that the transfer of going concern is disregarded for GST/VAT purposes on the basis that it is neither a supply of goods nor services.

8.2 Stamp Duty

Insofar as stamp duty is concerned, the stamp duty cost is borne by the buyer for any transfer of shares or real properties.

8.3 Concessions Relating to M&As

The Malaysian Income Tax Act and Real Property Gains Tax Act provide some concessions when a company is being reorganised.

- For income tax purposes, sale of tax depreciable assets between related parties can be effected at the tax written down value of the assets. This means that the seller will not have any balancing charge or balancing allowance arising from the sale.
- Specific exemptions from real property gains tax are available to M&A transactions provided stipulated conditions are met. For example, exemption may be granted if it can be clearly shown that the transfer of property between group companies results in increased operational efficiency (and for consideration consisting substantially of shares) or where an asset is transferred in any scheme of reorganisation or reconstruction in compliance with Government policy on capital participation in industry.

  In addition to the above, to further encourage public listed companies to expand and compete globally, it has been proposed in the budget announcement on 30th September 2005 that real property gains tax exemptions would be given on M&A undertaken by companies listed on Bursa Malaysia. The M&A must be approved by the Securities Commission from 1st October 2005 to 31st December 2007 and completed not later than 31st December 2008.

8.4 Tax Deductibility of Transaction Costs

Generally, transaction costs incurred on M&A exercises are not tax deductible to the seller. However, to the extent to which the costs are incurred in relation to the sale of trading stock, such costs shall be tax deductible.

9. Preparation of Target for Sale

In preparing for a deal it would be appropriate for the seller to identify the income tax and RPGT impact on any gains arising from the share or asset deal. Where possible, the tax costs should be quantified and the potential tax exposure minimised. Positive tax attributes and value of tax shelters (e.g. the availability of carry forward tax losses, unutilised tax depreciation and availability of tax franking credits) could also be factored in and used as a bargaining tool when negotiating with the buyer. As mentioned earlier, accumulated tax losses and unutilised tax depreciation of a Target Company shall be disregarded in the event there is a change of more than 50% of the shareholding in the Target Company unless an exemption to comply with the continuity of same ownership test is obtained.

- Intra-group Transfer of Assets Being Retained

  In preparing for a sale of assets, it is important to do an identification of the assets to be transferred, identification of costs and net book values of the assets to be transferred and to engage an independent professional appraiser to value the assets.

- Pre-sale Dividend

  A company may decide to pay a dividend to its shareholders prior to a sale of the shares in the company. The ability of a company to pay dividends would depend on the availability of retained earnings and dividend franking credits or exempt credits. There is no adverse tax implication arising from a distribution of pre-sale dividends.

10. De-mergers

There is no statutory concept of a “de-merger” in Malaysia. The mode of de-merger in Malaysia typically involves either a disposal of shares/assets to another party or a distribution in specie of the shares/assets to the shareholders either via dividend distribution or a capital reduction exercise (which requires Court approval).

The taxation treatment of a disposal is as stated above under section 7.

Where the de-merger is by way of a dividend in specie, the company paying the dividend must have sufficient franking or exempt tax credits when shares/assets are distributed. The shareholders receiving the distribution will be taxed on the dividend distributed (see section 4.2.1.).

Where the de-merger is effected through a return of capital via a capital reduction exercise, the shareholders would generally not be taxed on the capital distribution (unless the shareholders are treated as share dealers).

11. Listing/Initial Public Offer (IPO)

Where an IPO is concerned, there should be no tax implications if the shares have been held as long-term investments and are non-RPC shares.