

Asia Pacific Insurance Tax News

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Foreword

Welcome to our first issue of the PricewaterhouseCoopers (PwC) Asia Pacific Insurance Tax News

It gives me great pleasure to launch our latest tax publication for the insurance industry - the Asia Pacific Insurance Tax News.

The Asia Pacific region is an exciting place to be. As set out in Swiss Re's publication *sigma 03/2008*, based on the results of its 2007 World Insurance Survey, the Asia Pacific region is home to three of the top ten insurance countries in the world by total premium volume. Japan was ranked third, Korea seventh and China tenth. Asia Pacific is also home to India and China, the two most populous countries in the world. Add on to that mix the low insurance penetration rates in countries like Indonesia and Vietnam, and you'll find that Asia Pacific must be one of the most desirable insurance regions in the world today.

Despite its attraction, the Asia Pacific region is a minefield where taxation is concerned. Quite often, we find that the tax laws are not designed to cater to the special situations of insurers. We also find tax laws struggling to keep up with the innovation and developments in the industry. The rapid proliferation and updates around regulations and accounting standards also pose additional tax challenges.

In this issue of Asia Pacific Insurance Tax News, our specialists from seven countries will share with you some of these insurance tax issues. I hope you will find them of interest. Please do give us your feedback on the issues discussed and what topics you would like to see addressed in future issues.

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PricewaterhouseCoopers Asia Pacific Insurance Tax News is a periodic publication that offers insights into trends and developments in insurance and taxation.

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The Asia Pacific Insurance Tax News offers an insight into topical tax issues in the insurance industry in the Asia Pacific. If you would like to discuss further any of the issues raised, please contact the individual authors or the country contacts listed at the end of each article.

Australia

New legislation impacts foreign non-life insurers in Australia

Foreign non-life insurers who are writing Australian business, or contemplating doing so, have always needed to consider whether they have a taxable presence in Australia and therefore, subject to Australia's corporate tax regime. Whereas a technical analysis might have been relatively straight-forward in the past, an introduction of new regulatory requirements mean that the implications to foreign non-life insurers now need to be revisited.

DOFIs – considered authorised insurers under new prudential requirements

New legislation, operating from 1 July 2008, now requires direct offshore foreign insurers (DOFIs) operating in the Australian non-life insurance market to be authorised insurers and therefore, subject to Australia's prudential requirements. DOFIs are typically foreign insurers writing non-life insurance business in Australia through an agent or broker.

These new rules were introduced to ensure that adequate protections are afforded to policyholders of DOFIs. As a result, DOFIs are now regulated in a manner consistent with domestic insurers and those foreign insurers with existing branches or subsidiary operations in Australia.

One of the prudential requirements of holding an insurance licence in Australia is that DOFIs must maintain sufficient assets in Australian to meet their liabilities. There are however proposed exemptions from being an authorised insurer which apply to:

- High value insureds who are sophisticated purchasers of non-life insurance bearing complex risks
- DOFIs which cover atypical risks such as risk arising from nuclear, terrorism or aviation risks
- DOFIs which cover customised risks

Permanent establishment

Prior to the introduction of the new regulatory requirements, DOFIs were generally taxed on 3% of premiums derived by them from Australian insureds. Where the DOFI was acting through an agent, that agent had the obligation of collecting tax and remitting it to the Australian Taxation Office (ATO).

With the new prudential requirements, DOFIs choosing to continue its operations in Australia can do so in a number of ways:

- Open a branch operation in Australia
- Open a subsidiary in Australia
- Appoint an agent in Australia.

Operating through an Agent

Typically, in the short term, most DOFIs in Australia seem to prefer to operate through an agent, particularly where the Australian business written is not substantial. Under such circumstances, since the DOFI would not normally have staff in Australia, the appointed agent would typically administer

most aspects of the business subject to certain approvals obtained from offshore. Hence, an agent can have the following responsibilities:

- Authorised to write business on behalf of the DOFI
- Appointed to manage investments/assets in Australia
- Delegated to manage the underwriting process in Australia including claims handling
- Tasked to provide administration services
- Entrusted to deal with the regulators.

Implications on income tax position

From an income tax perspective, even though a DOFI may use an agent which may be independent, there is still a likelihood that the DOFI is carrying on a business through a permanent establishment in Australia. Assuming this is the case, it will have a taxable presence in Australia and be taxed on profits at the corporate tax rate of 30%. In addition, where the DOFI has reinsurance arrangements relating to Australian risks, an election can be made such that the reinsurance premiums paid by the permanent establishment are deductible and reinsurance recoveries assessable. Should this election be made, a 3% tax applies to the reinsurance premiums paid to the non-resident reinsurer. The contrasting tax positions are summarised in the table on the next page:

DOFI	Income tax position	Offshore reinsurance
No Australian permanent establishment	Australian insured or agent is required to withhold 3% of premiums	Unaffected by Australian tax
Australian permanent establishment	Taxed at 30% of taxable profits	<p>If no election – reinsurance premiums are non-deductible and reinsurance recoveries non-assessable.</p> <p>If election is made – 3% tax on reinsurance premiums; reinsurance premiums are deductible and reinsurance recoveries assessable.</p>

Where a DOFI finds itself operating through a permanent establishment, there are also a number of complex transitional issues to consider. In particular, it is not entirely clear how Australia's tax regime, applicable to insurance permanent establishments, takes into account businesses that are written before the DOFI was seen to be carrying on its business through a permanent establishment. It is unclear because there does not appear to be any jurisdiction limitations imported into these provisions. At worst, it implies a potential for double taxation.

Attribution of profits

Where a DOFI is carrying on business through a permanent establishment, a question arises as to the amount of profits to be taxed. The business profits article in the double taxation agreements with which Australia has entered into generally states that the amount of profits of the non-resident to be taxed in Australia is

the amount which is attributable to that permanent establishment. The profits attributed to the permanent establishment are then determined on the assumption that the permanent establishment is a distinct and separate enterprise.

Australia moreover has comprehensive transfer pricing rules in its domestic legislation. The rules require permanent establishments to deal with related parties on an arm's length basis.

On 18 July 2008, the OECD released the final Report on the Attribution of Profits to Permanent Establishments Parts I - IV (the Report). Part IV of the Report relates to the insurance industry and it prescribes a methodology for determining the profits to be attributed to the permanent establishment. It is beyond the scope of this article however to discuss the details of the Report, but it is worth noting that although the ATO has not publicly endorsed the Report, it is anticipated

that this will likely happen sometime in the near future.

Impact on cost

Where DOFIs are compelled to comply with Australia's regulatory requirements, careful consideration should be given to income tax issues - particularly, whether there is a permanent establishment and how the transition is managed. In some areas the technical analysis is not as straight-forward as in the past. Aside from income tax obligations, there are also a number of indirect taxes that may apply and these include stamp duty, goods & services tax and fire service levies. These indirect taxes can become a significant cost concern to the business and which is why their implications should be considered thoroughly.



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China

Meeting stormy challenges ahead in insurance tax

Despite its attraction, the China investment and tax environment is extremely challenging for foreign insurers not simply because of its constantly changing regulations, but also the ambiguity sometimes surrounding the interpretation of tax policies and the prevailing inconsistencies underlying enforcement practices.

This article highlights some of the latest developments in the China tax and regulatory regime that may affect foreign insurers operating in the fast growing China market.

Reduced tax rate under the new income tax law

The new China corporate income tax law bears good news to insurers as the new law reduces their tax rate from 33% down to 25% effective 1 January 2008. However, many foreign insurers are still operating in a loss position and therefore cannot enjoy any immediate benefit from the tax rate reduction.

Generally speaking, the gestation period for foreign insurers in China can be in the region of 8-10 years. Fierce competition and rapid geographic expansion also contribute to the significant loss for the foreign insurers in China during their start-up period. However, tax losses in China can only be carried forward for a period not exceeding five years.

Foreign insurers that have been operating for more than five years in China but are unable to breakeven

face the problem of tax loss expiry, and may have to endure significant write-offs of related deferred tax assets in their books. Careful planning is therefore required to enable foreign insurers to earn an income stream within the five years time frame that allow them to utilise their tax loss before its expiration.

Tax deductibility of various insurance reserves

One of the major tax challenges for foreign insurers in China is the deductibility of various insurance reserves and provisions. A number of the key tax rulings in China which have set out tax treatments on this subject were issued back in the late 1990s. They basically limit tax deductions of insurance reserves to the same limits as those applying under the insurance accounting rules prevailing in China at that time. However, the Chinese insurance accounting rules have undergone significant changes when a comprehensive new set of accounting standards, which were effective in 2007, was introduced. This has led to greater book-tax differences for the insurers in China.

The introduction of the new income tax regime in China (effective 1 January 2008) created significant uncertainty as to whether the old tax rulings governing the tax deductibility of the various insurance reserves are still applicable. There is therefore a pressing need for China's tax authorities to clarify the basis of claiming tax deductions for the various insurance reserves without further delay.

Business tax and stamp duty

In China, indirect taxes often exceed income tax and can have a far greater impact on foreign insurers.

Non-life insurers are subject to an insurance premium tax known as Business Tax (BT) which is levied at 5% on the gross insurance premium earned.

Life insurers are in a more tax advantageous position as life insurance products may be granted BT exemption upon proper approval by the Beijing State Administration of Taxation. However, the application for BT exemption is a time-consuming and cumbersome exercise because every new product needs a separate exemption to be granted. If a new life insurance product is launched before a BT exemption application is approved, BT would have to be paid on the related premium income during the interim period.

Another indirect tax affecting insurers is stamp duty which is levied at 0.1% on the premium amount stated in property insurance contracts. The stamp duty is imposed on the parties to the property insurance contract. However, the stamp duty regulations are not entirely clear on whether reinsurance contracts are also dutiable documents. This uncertainty has posed concerns and challenges to reinsurers in China.

New products

One of the biggest opportunities faced by foreign insurers is their ability to introduce innovative products to the customers. For example, there was significant growth in unit-linked life insurance products at a time when the stock market in China was relatively strong.

Some of these life insurance products are structured with strong savings and investment components. In China, banks are required to withhold individual income tax on payment of interest to individual customers on savings deposits. However, the question of whether this withholding requirement will be extended to life products with savings and investment elements is still a grey area. Tax authorities in various locations in China have started to make extensive queries on these products and some have sought to argue that these products are of a similar nature to savings deposits, and thus are subject to withholding tax.

Foreign insurers intending to build up a significant portfolio of these products should carefully monitor the latest developments on this topic in view of the potential operational tax risk, which can be significant, in connection with the withholding tax issues on these products.

The way ahead

Positive regulatory reforms in China will usher abundant opportunities for foreign insurers to achieve greater market share; and broaden product offerings. At the same time, China's tax landscape for insurers will change significantly in the areas highlighted in this article. The need for foreign insurers to perform a comprehensive operational tax review on their business in China is of paramount importance in order to navigate the new operational environment more effectively and cost efficiently and allow them to gain greater competitive advantage going forward.



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India

Some taxing issues for the life insurance industry

Life insurance companies in India are regulated by the Insurance Regulatory and Development Authority (IRDA). The IRDA was constituted in 1999 and has since prescribed various regulations including those relating to the preparation of financial statements, maintenance of solvency margins, investment restrictions, and others, for all Indian life insurance companies.

The Indian insurance sector opened up to the private sector in the year 2000. Up until the opening up of the sector, the life insurance business in India was dominated by the state-run Life Insurance Corporation of India, which today continues to have a large, albeit declining, share of the market. Post-2000, taking advantage of a more liberalised regime, several foreign insurance groups have set up joint ventures with local partners.

Special provisions

From a taxation standpoint, life insurance companies are governed by special provisions under Indian income-tax law, which overrides the general rules applicable for taxation of other business profits. Broadly speaking, based on these special provisions, taxable profits of life insurance companies shall be taken to be the annual average of the surplus (deficit) arrived at by adjusting the opening surplus (deficit) from the year-end surplus (deficit) as determined by the actuarial valuation made in accordance with the Insurance Act, 1938. No separate adjustments are specifically provided

for to the surplus so arrived.

In view of these special provisions overriding the general rules applicable for the computation of business income, items that are normally considered for adjustments to determine taxable business income are instead not considered in the computation of taxable income of a life insurance company.

Further, taxable profits of a life insurance business are taxable at a special tax rate of 12.5% (plus applicable surcharge and cess); whereas any other income is taxable at the normal corporate tax rate which currently stands at 30% (plus applicable surcharge and cess).

Policyholders and shareholders accounts

A core tax question faced by the Indian insurance industry is what should be the basis for the computation of taxable profits in the life insurance business. It relates to the distinction between the policyholders account and the shareholders account since, in the format prescribed by IRDA, every life insurance company is required to maintain these two accounts separately.

The issue therefore is around whether insurance companies have to prepare and file their tax returns of income by aggregating the surplus (deficit) shown under these two accounts. It can be argued on the grounds that these two accounts are prepared only for

disclosure purposes as required under the insurance regulations, and as such, the surplus (deficit) under the two accounts need to be aggregated when determining taxable profits. The premise for this approach is moreover supported by IRDA regulations since under the requirements, life insurance companies are not allowed to carry on any business other than life insurance business - an aggregation of both the accounts would reveal the proper income tax profits from the insurance activities. Further, in such cases, transfers, if any, made from the shareholders to the policyholders account (or vice versa) should be ignored while computing the taxable profits.

Tax authorities may adopt a stand where only the surplus (deficit) arising on the policyholder's account are to be attributed to the life insurance business, and that the special provisions discussed above would apply only to such profits. Under such a case, the beneficial tax rate of 12.5% (plus applicable surcharge and cess) would apply to these profits alone, whereas the surplus (deficit) arising in the shareholder's account would be treated as profits from business other than life insurance. The taxable income on the shareholder's account would be calculated considering the normal provisions of the income-tax law and taxed at the normal rate of 30% (plus applicable surcharge and cess).

Such a position taken by the Indian tax authorities could result

in significant tax exposures for life insurance companies. This is an industry issue, and in this context, efforts are being coordinated in joint representation through their representative body, Life Insurance Council. However, the outcome of such representation and of the litigation currently appears uncertain.

Carry forward and set off of losses

Another aspect which impacts the industry concerns the timeframe for the carry-forward and set-off of business losses.

In the initial years of operations, life insurance companies typically incur losses due to their income (including premium) being lesser than their actuarial liability on the policies issued. These losses are carried forward to be set-off in subsequent years. Under Indian income-tax law, such brought-forward business losses can be set-off by a company against business profits in the subsequent years. Such losses are available for carry-forward for a maximum period of up to eight years.

Since there is a relatively longer gestation period for insurance companies, the losses incurred in the initial years could lapse as there may not be sufficient income available for set-off in subsequent years. This being an industry issue representations have been made to the Indian authorities to extend the time limit for the carry-forward of such losses.

Challenges for the industry

The above illustrates some of the tax challenges faced by the life insurance industry in India. The current Indian tax provisions are certainly not designed to cater to the special situation of life insurers and we do expect more issues to surface as the industry develops. It is important that the life insurance industry keeps abreast of these issues and remains in dialogue with Indian authorities.



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Korea

Tax treatment of Variable Insurance

The taxpayer's position

Variable Insurance provides to policyholders benefits which vary in accordance with the performance of the investment portfolio that is being managed on behalf of the Variable Insurance policyholders.

For accounting purposes, the Variable Insurance is maintained in the Separate Account of insurance companies. However for tax purposes, the Variable Insurance Separate Account is treated as part of the insurance company's own assets and liabilities. As a result, any unrealised gains and losses relating to the investment component in the Variable Insurance Separate Account are required to be adjusted for tax purposes. In a bullish market, this has the effect of creating a temporary tax deduction for unrealised gains, even though the insurance company's position is considered neutral from both accounting and economic perspectives.

Recently, in the course of investigating a US-based life insurance company, the Korean National Tax Service (NTS) challenged the current tax treatment of the Variable Insurance Separate Account.

Initial position taken by the NTS

The treatment adopted by the taxpayer was in accordance with the strict reading of the tax law.

However, the NTS argued, on the grounds of substance, that unrealised gains in the Variable Insurance Separate Account should not be adjusted for tax purposes by the insurance company since the policyholders are the real beneficiaries from the Variable Insurance Separate Account, rather than the insurance company.

Consequently, the taxpayer engaged PwC Korea to defend its current tax treatment after the NTS had notified that it would issue a tax assessment to the taxpayer in relation to this issue.

A more favourable ruling

After months of meetings and discussions with both the NTS and the Ministry of Strategy and Finance (MOSF) which was responsible for drafting the tax law and the highest authority in Korea for the interpretation of the tax law before the courts, PwC Korea successfully obtained a ruling from MOSF to affirm the treatment adopted by the taxpayer based on current law.

Together with a more favorable ruling, PwC Korea was also able to finally convince the pre-assessment panel reviewing this issue at the NTS, that a tax assessment should not be raised.

Industry Impact

The final decision by the NTS not to raise a tax assessment has effectively curtailed what was going

to become an industry issue; an issue which could potentially incur trillions of Korean Won in taxes and penalties.

The existing rules for the Variable Insurance Separate Account have the effect of creating a timing difference between book and tax. As mentioned above, in a bullish market, a temporary tax deduction for unrealised gains is created. Likewise, in a bearish or "down-trending" market, as we are currently experiencing, the adjustment to unrealised losses have the effect of creating a temporary taxable income to the insurance company. In a bearish market, the acceleration of tax payments as a result of the adjustment for unrealised losses could create cash flow issues for some insurance companies.

Amendment to the law?

Perhaps, the better way is for the tax treatment of unrealised gains and losses of investments in the Variable Insurance Separate Account to be aligned with accounting treatment and economic substance. In this regard, we understand that the MOSF is seriously considering the amendment of the relevant provisions of the Korean corporation tax laws. PwC Korea supports such a change and we will be submitting a memorandum to the MOSF on how the current provision ought to be changed.



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The Philippines

Taxwise or otherwise, insurers should be happy

The Bureau of Internal Revenue's (BIR) paradigm shift in revenue collection has resulted in a barrage of revenue issuances serving to clarify and provide additional guidelines in tax collection in the different business sectors and industries.

While we can understand that the initiatives are geared towards effective implementation and enforcement of tax laws, a number of the issuances appeared to have crossed the line between implementation and legislation.

A recent revenue issuance which has caused quite an uproar in the insurance industry is Revenue Memorandum Circular (RMC) 30-08 which the BIR issued in April 2008.

This RMC expanded the scope and coverage of the 5% premium tax and the Documentary Stamp Duty (DST) on insurance contracts and certificates; extended the application of the gross receipts tax on certain income of insurance companies and limited the allowable deductions from gross income for purposes of calculating the 2% Minimum Corporate Income Tax (MCIT).

In view of its controversial provisions, various business groups within the industry, e.g., Philippine Insurers and Reinsurers Association and Philippine Life Insurance Association, have asked the Department of Finance for the deferment of the implementation of the RMC.

After a series of dialogue and

consultation between the BIR and representatives of the industry organisations, the BIR finally issued in August 2008 the RMC 59-2008 which amended RMC 30-08. As a compromise, RMC 59-2008 excluded some of the objectionable provisions of RMC 30-08 although certain provisions which were, nonetheless, amenable to the industry were retained.

The salient features of the new RMC are:

I. Minimum corporate income tax

The following direct costs are allowed as deduction from gross income for purposes of calculating the 2% MCIT of life and non-life insurance companies:

1. Salaries, wages and other employee benefits of personnel directly engaged in underwriting; claims and benefits; actuarial costs; policy owner services, such as but limited to policy changes and amendments; policy endorsements/assignments; policy benefits and features; changes in forfeiture options; and policy reinstatements.
2. Commissions on direct writings/reinsurance.
3. Cost of facilities directly utilised in providing the service such as depreciation or rental of equipment used and cost of supplies.

4. Inspection and medical fees.

Marketing cost which is considered indispensable to produce and deliver insurance products is excluded from the allowable deductions. However, other expenses which are not considered as direct cost, such as investment expenses relating to investment income not subjected to final tax, are allowed as deductions from gross income.

II. Documentary stamp tax

1. P15 DST is imposed on individual certificates issued pursuant to group policy contracts and Certificates of Cover on motor vehicle insurance. The DST on these documents, though, is opposed by the industry on grounds of double taxation, since DST is already imposed on the premiums collected under the insurance contract.
2. A health and accident insurance policy is treated as a life insurance contract and, as such, is subject to DST under Section 183 of the Tax Code which refers to Stamp Tax On Life Insurance Policies. It is no longer under Section 185, which refers to Stamp Tax on Fidelity Bonds and Other Insurance Policies. The change in basis means a reduction in DST from 12.50% (P0.50 on each P4) to 0.25%

(P0.50 on each P200) based on the premium collected.

3. Certificates issued to a policyholder evidencing his or her contribution to the variable unit link fund partakes the nature of a deed of trust. Accordingly, these certificates are not subject to the DST prescribed under Section 195 of the Tax Code since DST is already collected on the premiums from the variable contracts under Section 183 of the same Code.

III. Business tax

Premiums paid on health and accident insurance issued by both life and non-life insurance companies are subject to 5% premium tax. However, other related payments which before were considered part of premiums such as re-issuance fees, reinstatement fees, renewal fees as well as penalties paid to the life insurance companies, are now treated as services fees subject to 12% value-added tax under Section 108 of the Tax code, or Percentage Tax under Section 116 of the same Code if it does not exceed the P1.5-million threshold.

Lastly, application of the 5% GRT has also been expanded to cover other types of investment income of insurance companies such as income from investments in real estate which are considered income from performing quasi-banking activities or similar banking activities.

Positive results

The combined efforts of the different players in the insurance industry have gained positive results since majority of the changes embodied under RMC 59-2008 are favorable to the industry.

Although some objectionable provisions were retained, the final product was still acceptable to both the BIR and the industry.

Open dialogues and discussions with the BIR on an industry basis should be exhausted. Such an exercise gives the BIR a clearer understanding and appreciation of the nature and peculiarities and problems of the transactions and practices within the industry and, thus, helps it formulate guidelines that would ensure efficient tax collection in any one particular industry.

The insurance industry was pleased with the progress made in achieving an amendment of RMC 30-2008. However, the industry believes that there are still a number of issues to be resolved. Hence, during the last week of September several insurance companies filed a petition before the Court of Tax Appeals (CTA) questioning pertinent provisions of RMC 59-2008. No action has yet been taken by the CTA pending the filing of a reply by the Bureau of Internal Revenue.

This article first appeared in BusinessWorld in the Philippines, "Taxwise or Otherwise" on 25 September 2008.



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Singapore

Incentives to reduce your effective tax rate

Insurance business is becoming increasingly globalised and mobile. Singapore is not just competing within Asia against locations such as Hong Kong and Labuan, but also competing for the international insurance dollar against popular tax-favoured locations such as Bermuda, Ireland and Luxembourg.

Use of tax incentives

Singapore has long used tax incentives to draw business activity to its shores. In the insurance space, a variety of incentives exist to entice global insurance players to base their regional operations in Singapore and place their non-Singapore (i.e. offshore) business in Singapore. Most of these incentives apply to insurers and reinsurers but there are some that are aimed at insurance brokers, service providers and captive owners. Some of these incentives are discussed below.

Low normal corporate tax rate

The normal corporate tax rate in Singapore, currently at 18%, is one of the lowest in the Asian region. In addition, partial tax exemption exists such that, effectively, S\$152,500 of the first S\$300,000 of normal taxable income is exempt from tax.

10% tax for offshore insurance business

Under the long standing offshore insurance incentive, a Singapore-based insurer or reinsurer may

apply to the Monetary Authority of Singapore (MAS) for an incentive to pay tax at the reduced rate of 10% on the profits it derives from insuring and reinsuring “offshore risks” or from carrying on “offshore life business”.

In practice, there are no specific qualifying conditions for this incentive and approval for it is generally always given.

10% tax for offshore insurance broking services

This incentive was introduced in 2008 to support the development of offshore insurance broking services in Singapore. It grants a 10% concessionary tax rate on commission and fee income derived from the provision of insurance broking and advisory services in Singapore by qualifying insurance and reinsurance brokers, to non Singapore-based persons.

This tax incentive scheme is on an application and approval basis from 1 April 2008 to 31 March 2013. Both existing and new brokers can apply for this scheme, subject to eligibility criteria which will include an evaluation of the applicant’s proposed incremental number of experienced professionals employed and business development plans in Singapore.

5% tax for offshore Takaful and Retakaful business

This incentive, also introduced in

2008, aims to stimulate the growth of Islamic insurance in Singapore and ensure that Singapore does not miss out on the exponential growth of Islamic insurance in the region. It offers a 5% incentive tax rate for five years to qualifying insurers on income derived from writing offshore Takaful and Retakaful business.

The tax incentive is available upon application to, and approval from, the MAS from 1 April 2008 to 31 March 2013. Applicants will be evaluated based on their proposed incremental number of experienced professionals who are significantly involved in the Shariah-compliant activities and their business development plans for Singapore.

0% tax for offshore specialised risks business

This tax exemption scheme is awarded for a period of five years to any insurer who underwrites at least one of the following specialised insurance risks:

- (a) Terrorism Risks;
- (b) Political Risks;
- (c) Energy Risks; and
- (d) Aviation and Aerospace Risks.

This incentive aims to support the development of expertise and capacity in the above specialised business lines. The window period for approval for this incentive is from 1 September 2006 to 31 August 2011.

The MAS had earlier advised that applicants for this incentive would be expected to recruit and maintain at least two additional insurance professionals, where one of whom possesses at least 7 years of experience in the underwriting of the qualifying specialised insurance risks.

0% tax for onshore and offshore marine hull & liability business

This tax exemption (0%) scheme is available upon approval for a period of up to ten years to non-life direct insurance and reinsurance companies (including P&I clubs) in Singapore. Under this exemption scheme, approved marine hull & liability insurers who have made additional commitment to write marine hull and liability insurance business from Singapore can enjoy tax exemption on their qualifying income.

This is the only incentive which applies to both offshore and onshore businesses and is intended to complement other shipping incentives available to promote Singapore as a shipping hub for the region.

Applications for the incentive will be evaluated based on both qualitative (expertise, business plans, etc) and quantitative criteria such as the following:

- At least one dedicated marine hull and liability underwriter with at least five years of relevant

experience; and

- At least S\$3 million marine hull & liability premium volume in the preceding financial year.

0% tax for offshore captive insurance business

Captive insurance companies who are licensed to carry out such captive insurance activities in Singapore may apply for a tax exemption in respect of their offshore insurance business. The effect of this incentive is to bring the otherwise 10% tax rate for offshore business down to 0%, making Singapore an attractive alternative captive location as compared to other usual captive locations like Bermuda, Cayman or even Labuan.

The incentive, which is for ten years, is available upon application from 17 Feb 2006 to 16 Feb 2011. There are no other qualifying conditions for this incentive.

10% tax for Financial Services Incentive (FSI) - Headquarter Services award

Insurance groups who set up their global or regional offices in Singapore to provide headquarter-type services to its network entities in the region could qualify for the FSI Headquarter Services award ("FSI-HQ"). This would entitle the FSI-HQ company to be taxed at the concessionary rate of 10% on income derived from the provision of qualifying headquarter services to its approved network (which must be

non-Singapore) companies.

Depending on the size of the applicant company, the number and extent of headquarter services provided, the number of professional employed and the number of non-Singapore entities serviced, the FSI-HQ incentive may be awarded for a period of up to 10 years.

5% tax for high value-added processing services

The Qualifying Processing Services Company (QPC) incentive scheme was first introduced in 2004 to encourage the provision of high value processing services in the financial activities of treasury and securities, asset management, private banking, wholesale banking and retail banking. In 2004, the QPC incentive scheme was extended to the insurance industry.

This incentive scheme gives a QPC a 5% incentive tax rate, for either five, seven or ten years, on qualifying income derived from the provision, in Singapore, of prescribed high value processing services in support of designated insurance and other financial sector activities.

The prescribed high value processing services for the insurance industry are:

- Run-off management and related services
- Claims management and processing services
- Loss adjusting services

- Policy issuance, processing, administration, renewal and collection services
- Risk modeling and related services

Among the qualifying criteria for this incentive are the following:

- (a) the QPC must employ and maintain at least eight professional earning more than S\$3,500 per month
- (b) the QPC must provide the processing services to at least two countries outside Singapore.

Approved Special Purpose Vehicle engaged in asset securitisation transactions (ASPV Scheme)

The ASPV Scheme, which has been in existence since 2004, grants certain tax concessions to an approved Special Purpose Vehicle (SPV) that is set up for the purpose of a securitisation transaction. To further support the development of Singapore as an alternative risk transfer and structured finance centre in Asia, the ASPV Scheme was extended to include insurance-related risks in 2007.

Thus, where insurance risks are transferred into a Special Purpose Reinsurance Vehicle (SPRV) under a securitisation transaction approved by the MAS, certain tax concessions may be available to the SPRV during the incentive period. These concessions will include income tax

exemption on income derived by the SPRV, fixed recovery of goods and services tax on business expenses of the SPRV, stamp duty remissions on asset transfers and withholding tax exemption on certain over-the-counter financial derivatives payments that the SPRV may be liable to pay to a non-resident person in connection with the securitisation transaction.

Potential reduction in effective tax rate?

As can be observed, Singapore has a slew of attractive tax incentives to attract insurance business activities to Singapore. Each of these incentives has its own qualifying criteria which can be a minefield to navigate. To benefit from these incentives, insurers will need to understand their own commercial circumstances and their ability to restructure their business or otherwise use the incentives. With the right planning and structure, these tax incentives could potentially be used to reduce a global or regional insurer's effective tax rate.



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New developments in tax for insurance companies

The Taiwan Ministry of Finance (MOF) recently announced a number of changes to its tax regulations and accounting standards. We discuss below some of the proposed changes affecting insurance companies. These will include new accounting standards for insurance companies, changes to the tax treatment of various insurance policies and the tax treatment of losses carried forward.

Statement of Financial Accounting Standards No.40 tentatively set to apply in 2011 for Insurers

Following discussions between the Financial Supervisory Commission (FSC) and members of the insurance industry, Statement of Financial Accounting Standards No.40 (SFAS No.40): Rules Regarding the Accounting Treatment of Insurance Contracts looks set to be implemented starting 2011. SFAS No.40 which requires greater financial transparency has induced strong concerns amongst some insurers that capital inadequacies will become more apparent and lead to greater pressures to recapitalise.

According to sources, the FSC had previously invited life and non-life insurers to discuss the timing of the implementation of SFAS No.40. The Accounting Research and Development Foundation, responsible for the implementation of SFAS No.40, had recommended that the accounting standard be implemented in 2010. However,

the insurance companies, while expressing their willingness to cooperate and adhere to SFAS No.40, requested to postpone the date further to 2012. Ultimately, 2011 was agreed by both parties.

From a tax perspective, insurance companies will need to review the changes that SFAS No. 40 may have on its accounts that are used for tax reporting purposes. It would then need to understand and assess the tax consequences of those accounting changes. The earlier this is done, the better prepared the insurance companies would be. 2011 is not that far away.

Group investment-linked insurance premiums may not be tax-deductible for profit-seeking enterprises

The National Tax Administration (NTA) has indicated that profit-seeking enterprises which pay for investment-linked insurance policies as benefits to their employees cannot deduct the related premiums as expenses for tax purposes. The NTA does not consider group investment-linked insurance policies as group life insurance (i.e. policies with premiums which are tax deductible). Pursuant to a public ruling by the Executive Yuan's FSC, the only type of investment-linked insurance policies currently approved by the FSC is the ones taken up by individuals. At present, group investment-linked insurance policies and group investment-linked annuity insurance policies have not

been approved by the FSC. In this regard, the NTA has indicated that current investment-linked insurance policies should be in relation to those taken out by individuals rather than by groups. It follows that Item 5 of Article 83 under the Assessment Rules Governing Profit-Seeking Enterprises concerning tax deductibility of group life insurance payment will not be applicable to group investment-linked insurance premiums.

Legal ruling requires investment-linked insurance assets to be subject to estate tax

An administrative court has ruled and set precedence that payments from investment-linked insurance policies are to be included in a deceased's estate and subject to estate tax. The case involved a deceased person who, in the two years prior to his or her death had begun to pay heavy premiums in an investment-linked life insurance policy. The NTA, in keeping with the principle of fairness in taxation and the need for efficiency in the overall system, decided to include the value of the mutual funds underlying the investment-linked insurance policy in the deceased's estate which is subject to estate tax.

Unapproved foreign insurance policy payments subject to estate tax

The MOF has indicated that receipts of life insurance payments made on foreign insurance policies,

that is policies issued by foreign insurance companies, that have not been approved by the FSC are not exempted from estate tax. Estate executors have to include life insurance payments from such policies in the deceased's net estate which is subject to tax. The MOF said the exemption of life insurance payments in Item 9 of Article 16 of the Estate and Gift Tax Act was mainly to accommodate the rules stipulated by the Insurance Act. Payments from life insurance contracts with identified beneficiaries and who are exempted from estate tax are limited only to those defined by Article 112 of the Insurance Act. Otherwise, payments from life insurance contracts that have not been approved by the FSC (and as such have not met the requirements stipulated within Article 112 of the Insurance Act) will still need to be included in the deceased's estate and subject to estate tax.

Losses carried forward period to be extended

The Executive Yuan has the intention of extending the tax losses carried forward period of profit-seeking enterprises from the current five years (starting from the year losses are incurred) to ten years. According to the MOF documents, there is a global trend of extending losses carried forwards and many countries – including Hong Kong, Malaysia, Singapore and others – no longer limit the time losses carried forward will expire.

This change would be welcomed by a number of foreign insurers who have experienced tax losses as they are still in expansionary or investment phases in the Taiwan market. Enactment of proposed provisions as set forth in this newsletter is still currently under discussion in the Taiwan Legislative Yuan. It is difficult to predict when relevant legislation will be passed and we will be closely monitoring progress and providing updates as we move ahead.



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