

Tax Alert

SINGAPORE

April 2005

In this issue of Tax Alert, KPMG Tax Services highlights the income tax treatment for businesses registered under the Business Trusts Act 2004 and the various tax exemptions and incentive schemes which have limited "shelf life".

Income Tax Treatment for a Business Trust Registered under the Business Trusts Act 2004

On 21 September 2004, the Business Trusts Act 2004 (BTA) was gazetted. This new piece of legislation provides the framework for the governance of a business trust registered under the BTA (referred to as a 'BT' in this Alert). The IRAS issued a circular on 14 December 2004 to set out the income tax treatment of such BTs. The structure and income tax treatment of BTs are summarised in Appendix 1.

Tax Incentives, Concessions and Exemptions with Limited "Shelf Life"

Over the years, various tax exemptions and incentives were announced by the Government, some of which have a limited "shelf life". The "shelf life" for such tax incentives, concessions and exemptions are summarised in Appendix 2.



About Tax Alert

KPMG's Tax Alert highlights the latest tax developments, impending change to laws or regulations, current practices and potential problem areas that may impact your company. As certain issues discussed herein are time sensitive it is advisable to make plans accordingly.

"Tax Alert" is issued exclusively for the information of clients and staff of KPMG Tax Services and should not be used or relied upon as a substitute for detailed advice or as a basis for formulating business decisions.

Appendix 1: Income Tax Treatment for a Business Trust Registered under the Business Trusts Act 2004

What are BTs?	BTs are businesses structured in the form of trusts. A BT is created by a trust deed under which the trustee has legal ownership of the assets and manages the assets for the benefit of the beneficiaries of the BT.
Is a BT different from a company or from a private or unit trust?	Unlike a company, a BT is not a separate legal entity. A BT is also different from a private or unit trust in that a BT actively runs and operates a business or trade. Under the BTA, a BT has to be run by a single responsible entity known as the trustee-manager which must be incorporated in Singapore.
Are BTs restricted to making distributions out of its accounting profits?	BTs, unlike companies, are not restricted to paying dividends out of accounting profits as it can make distributions to its investors out of its operating cash flow.
How is the income of a BT taxed?	For income tax purposes, a BT is treated like a company. The income of a BT (registered under the BTA) is taxable at the trustee level and the BT will be treated like a company under the one-tier system. The beneficiaries or unitholders of the BT will not be taxed on their share of the statutory income (of the trustee) to which they are beneficially entitled to. The beneficiaries or unitholders are not allowed any credit for the tax paid by the trustee of the registered business trust.
Can group relief provisions apply to a BT?	Group relief provisions can only apply to a BT which is established in Singapore and its trust deed executed in Singapore and governed by Singapore laws. All the requirements stipulated in the IRAS circular of 23 October 2002 on the loss transfer system of group relief will also apply to a BT except that the units of the BT will be used in lieu of the ordinary shares of the company.
Can a BT claim deductions for unabsorbed capital allowance, industrial building allowance, trade loss and donation?	<p>The "shareholdings test" would need to be met before a company can claim deductions for unabsorbed capital and industrial building allowances, trade loss and donation. Similarly, a BT would have to meet the "unitholding test" before it can claim deductions for unabsorbed capital and industrial building allowances, trade loss and donation.</p> <p>The "unitholding test" is satisfied if, on the relevant dates, the same unitholders are entitled to no less than 50% of any residual profits and residual assets available for distribution and on a winding up respectively. The relevant dates for the comparison of the "unitholding test" is the same as that in the "shareholdings test".</p>
Can section 24 be elected for a sale of property involving a BT?	<p>Section 24 of the Income Tax Act will be amended to allow election under that section for the sale of the property involving a BT. In this case, the election can only apply where the relationship between the seller and buyer (denoted as 'A' and 'B' respectively) is as follows:-</p> <ul style="list-style-type: none"> (a) company A owns more than 50% units in registered business trust B; (b) trustee of registered business trust A holds more than 50% units in registered business trust B on trust for the unitholders of registered business trust A; (c) unitholders of registered business trust B own more than 50% shares of company A; (d) trustee of registered business trust B holds more than 50% shares of company A on trust for the unitholders of registered business trust B; (e) another company C owns more than 50% shares of company A or more than 50% units in registered business trust A, and more than 50% units in registered business trust B or; (f) trustee of another registered business trust C holds, on trust for its unitholders, more than 50% shares of company A or more than 50% units in registered business trust A, and more than 50% units in registered business trust B.
How is the resident status of a BT determined?	For a BT to be regarded as tax resident of Singapore, the trustee of the BT has to carry on the business or trade of the BT in Singapore and the management and control of the business is in Singapore.
Can a BT claim double tax relief (DTR) or unilateral tax credit (UTC)?	Where a BT is a tax resident of Singapore and derives foreign sourced income which has suffered tax in a country which Singapore has concluded an Avoidance of Double Tax Agreement (DTA), DTR will be granted to the BT. Similarly, where the foreign sourced income is derived from a country which does not have a DTA with Singapore, unilateral tax credits will be granted in accordance with the provisions of section 50A of the Income Tax Act.
Can the relief for stamp duty under section 15 of the Stamp Duties Act apply to assets transferred to BTs?	<p>Relief for stamp duty under section 15 of the Stamp Duties Act is applicable to assets transferred to BTs. The conditions of relief as stated in the following rules which applies to companies are also applicable to BTs:</p> <ul style="list-style-type: none"> - Stamp Duties (Relief from Stamp Duty Upon Transfer of Assets Between Associated Companies) Rules 2000 - Stamp Duties (Relief from Stamp Duty Upon Reconstruction or Amalgamation of Companies) Rules 2000

Appendix 2: Tax Incentives, Concessions and Exemptions with Limited "Shelf Life"

Tax Incentive	Effective date	Expiry date
Research and Development and Intellectual Property Management Hub Royalties and interest derived or earned outside Singapore would be exempt from tax when remitted to Singapore and used to fund R & D development activities that are conducted or controlled from Singapore	1/6/2003	31/5/2008
Integrated Industrial Capital Allowances Allows companies to claim capital allowances on equipment used by their subsidiaries outside Singapore	1/3/2003	28/2/2013
Overseas Investment Incentive Provides tax deferral of up to 2 years for the Singapore holding company based on losses incurred by approved overseas investment	1/1/2004	31/12/2006
Intellectual Property Tax deduction for patenting costs incurred during qualifying period	1/6/2003	31/5/2013
Approved Logistics expenses Further deduction for approved logistics expenses. The incentive is administered by EDB	1/7/2004	30/6/2009
Tax Exemption on Vessel Sales Shipping companies under the Singapore Registry of Ships and Approved International Shipping Enterprise Schemes enjoy tax exemption on gains from the sale of vessels	YA ¹ 2005	YA ¹ 2009
Investment Allowance Scheme for Flagship Concepts Investment allowance for capital expenditure incurred on qualifying equipment costs	1/4/2005	31/3/2010
Concessionary Rate - Financial Sector	Effective date	Expiry date
Asian Currency Unit (ACU) FSI scheme introduced expiry date for ACU incentive. As a transitional arrangement, ACUs currently enjoying 10% tax rate will be automatically granted the Standard tier award (without conditions) for a 5-year period from 1 January 2004. After 31 December 2008, financial institutions that wish to enjoy 10% tax rate will need to apply for the FSI scheme	1/1/2004	31/12/2008
Provision of Processing Services to Financial Institutions Qualifying income derived from the provision of high value-added processing services to financial institutions is taxable at concessionary rate of 5%	27/2/ 2004	26/2/2009
Discount Income from Qualifying Debt Securities (QDS) Discount income from QDS issued during period from 27 February 2004 to 31 December 2008 is taxable at 10% if derived by companies and body of persons as defined in section 2(1) of the ITA	27/2/2004	31/12/2008
Concessionary Rate - Tourism	Effective date	Expiry date
Approved tourism mega events Concessionary tax rate of 10% on income accruing from approved mega tourism events	1/4/2005	31/3/2010
Tax Exemption	Effective date	Expiry date
New companies If the first 3 YAs of a qualifying company fall within YA 2005 to 2009, the company can claim for full tax exemption up to S\$100,000 of its normal chargeable income (excluding Singapore franked dividends)	YA ¹ 2005	YA ¹ 2009
Withholding Tax Exemption	Effective date	Expiry date
Facility / Equipment in space satellite Withholding tax exemption on payments to non-residents for the use or right to use any facility or equipment in a space satellite	11/7/1997	10/7/2007
Submarine cable capacity Withholding tax exemption on payments to non-residents for the use of capacity on submarine cables	28/2/2003	27/2/2008

¹ Year of Assessment

Withholding Tax Exemption	Effective date	Expiry date
Interest Payable on Offshore Loans for the Financing of Singapore Ships Withholding tax exemption on interest payable on offshore loan(s) taken by a shipping enterprise for the financing of Singapore ship(s), subject to the requirements specified under the Block Transfer Scheme and such terms and conditions imposed by the Maritime and Port Authority of Singapore	1/11/2003	31/12/2008
Intellectual Property Withholding tax exemption on payments to non-residents for the use or right to use information and digitised goods by end-users	28/2/2003	27/2/2013
Over-the-counter financial derivative contracts Payments on over-the-counter financial derivative contracts made by financial institutions to non-residents excluding permanent establishment in Singapore, are exempted from withholding tax	27/2/2004	19/5/2007
Withholding Tax - reduction in tax rate	Effective date	Expiry date
Distributions to Foreign Non-individual Investors in Real Estate Investment Trusts (REITs) The tax rate for distributions to foreign non-individual investors of REITs during the period from 18 February 2005 to 17 February 2010 is reduced from 20% to 10%	18/2/2005	17/2/2010
Deduction	Effective date	Expiry date
Deduction for upfront land premium For lease of 60 years or less, deduction for upfront lump sum payment for lease of industrial land for the construction or use of a building or structure for the purpose of carrying on qualifying activities.	First day of basis period for YA ¹ 2004	27/2/2013
Capital Allowances	Effective date	Expiry date
Intellectual Property (IP) Automatic writing down allowance for IP acquisition	1/11/2003	31/10/2008

¹ Year of Assessment

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