BY VIVIAN NEW

Tax Planning For the Year-End

How to keep tax costs to a minimum, not just for special transactions but for routine, recurring transactions as well.

Tax is often one of the major costs of profitable companies. Hence, when contemplating major business decisions such as acquiring a business or embarking on a major asset acquisition, many companies would seek guidance on related tax issues.

However, since most business transactions have tax consequences, it is probably worthwhile to consider how tax costs could be kept to a minimum not just for special transactions but for routine, recurring transactions as well.

As the financial year for December year-end companies is drawing to a close, the most practical way of minimising tax costs is to have a pre-year end review to identify opportunities to save tax, to defer it or even to bring it forward if that will result in profits being charged at a lower tax rate.

This article discusses some key year-end corporate tax planning ideas which companies could consider in seeking to minimise their corporate tax liabilities.

YEAR END BUSINESS PLANNING

A pre-year-end review should ideally commence by reviewing the financial information of the company for the year in review, including a set of current management accounts as well as financial projections indicating key proposed business transactions such as purchase or sale of fixed assets, acquisition of investments, etc.

As the tax profile of each company is different, its tax planning requirements may vary and as circumstances change, strategies developed may also need to be modified as and when necessary. However, the key areas outlined below should be considered in any pre-year-end tax planning review:

DEFERRING TAXABLE INCOME OR PROFITS

It may be desirable to delay recognising a sale in the current financial year provided this does not conflict with the company's business profit projection for the year. It is also relevant to consider whether income received is actually refundable at a later date due to certain conditions attached. Based on Malaysian tax rules, income received is only taxable when it is earned, i.e. when the sale is unconditional and proceeds do not need to be refunded. If a sale can be delayed from, say, December to January next year, the payment of any corporate tax arising from the sale will also be deferred accordingly.

Delaying a profit to the next financial year can sometimes result in it being charged

at a lower corporate tax rate, in cases where there is a proposed reduction of the prevailing corporate tax rate. For example, in the recent announcement of the 2014 Budget proposals, it has been proposed that the corporate income tax rate be reduced from 25% to 24% with effect from the year of assessment (YA) 2016 and 20% to 19% for small and medium enterprises in respect of the first RM500,000 of their chargeable income. Hence, deferring profits from the 2015 to the 2016 financial year will result in some tax savings.

BRINGING FORWARD TAX DEDUCTIBLE EXPENSES

In addition to deferring taxable profits and income, incurring tax deductible expenses earlier would also reduce the tax payable for a particular year, if these expenses are tax deductible.

One of the key areas to be reviewed are provisions made in the company's books before the end of the financial year to account for certain expenditure which will be incurred and/or paid in the following year. This is often done to 'match' the expenditure to the year to which it relates.

However, mere accounting provisions (i.e. contingencies) are not deductible for tax purposes unless a legal liability to pay such amount has arisen, usually evidenced by an invoice issued by the supplier. Hence, where it is determined that provisions for certain expenditure need to be made before year-end, it is worthwhile to consider whether an invoice for such expenditure can be issued by the supplier before the financial year-end as this will legally mean that the expense has been incurred.

Other relevant provisions include:

- **Year end bonus payments for employees** – Whether actual bonus amounts can be ascertained and made known to employees thereby 'incurring' the bonus expense, notwithstanding that the payments will be made in the following year.
- **Provisions for doubtful trade debts** – Consider whether a specific provision (instead of a general one) can be made, i.e. an amount which is owed by a specific trade debtor. The tax authorities would also consider factors such as the rationale for the provision, whether reasonable evaluation has been made and whether actions have been taken to recover such debt before allowing a tax deduction.
- **Provisions for slow-moving stock** – Similar to doubtful trade debts, consider whether a specific provision can be made, i.e. an amount which relates to specific stock items instead of a percentage of the total value of stock of the company at any point in time.

OTHER CONSIDERATIONS

- **Submission of tax estimates** – Malaysian companies (except for certain small and medium enterprises) are required to submit their tax estimates for the following YA to the Inland Revenue Board (IRB) 30 days before the start of that YA. In the event the company's final tax liability exceeds the tax estimate by more than 30% of the final tax, the difference in excess of 30% would be subject to a 10% penalty. While the tax estimate can be revised in the sixth and ninth month of the following YA, it is important for the initial tax estimate to be as accurate as possible to avoid lumpy payments thus ensuring cash flow consistency.

- **Keeping records** – Supporting documentation for business transactions are important to substantiate a tax deduction claimed in the tax return or a position adopted in arriving at the chargeable income of a company. Examples include accounting records, invoices and receipts and business contracts and agreements. It is often a good practice to review the records of the company at the end of the financial year to ensure that all relevant documentations for that year are available and maintained readily on file for the purpose of a potential tax audit, which may be some years later.

For the purpose of the financial year ending 2013, consideration should also be given to certain tax benefits which are expiring at the end of the year, such as the following:

- **Distribution on franked/Section 108 dividends** – As the single tier system of dividend distribution is fully operational from 1 January 2014 onwards, companies with unutilised Section 108 credits may want to consider paying franked dividends to its shareholders before the credits are permanently disregarded after 31 December 2013.

- **Proposed increase in Real Property Gains Tax (RPGT) rates** – It was proposed in the 2014 Budget that the RPGT rates be increased from 1 January 2014 onwards (*see table*).

In order to minimise any RPGT payable on the disposal of real property, it could be beneficial to bring forward the disposal and effect the transaction prior to 2014.

PROPOSED INCREASE IN REAL PROPERTY GAINS TAX RATES

Disposal	Companies	
	Current rate	Proposed rate
Within 2 years	15%	30%
In the 3rd year	10%	30%
In the 4th year	10%	20%
In the 5th year	10%	15%
In the 6th year and thereafter	0%	5%

CONCLUSION

While it may not be possible for profitable companies to wholly avoid paying taxes, a pre-year end tax planning review would certainly be useful for identifying any potential areas which could result in the reduction of the overall tax payable. In order to perform an effective review and recommend possible strategies to enhance tax efficiency, businesses would need to have a clear understanding of the tax legislation as well as the technical deficiencies and ambiguities in the law. mb

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