Singapore Budget 2021: Commentary and more

Special Issue

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Foreword

"…[O]ne can zero in on Mr Heng's messaging on global tax developments of late and appreciate our vulnerable position."

Deputy Prime Minister, Coordinating Minister for Economic Policies and Minister for Finance, Mr Heng Swee Keat, delivered the Budget Statement on Tuesday, 16 February 2021 in Parliament.

Tax issues remain a key priority even if speeches from recent budgets contain little details. Indeed, one can zero in on Mr Heng's messaging on global tax developments of late and appreciate our vulnerable position.

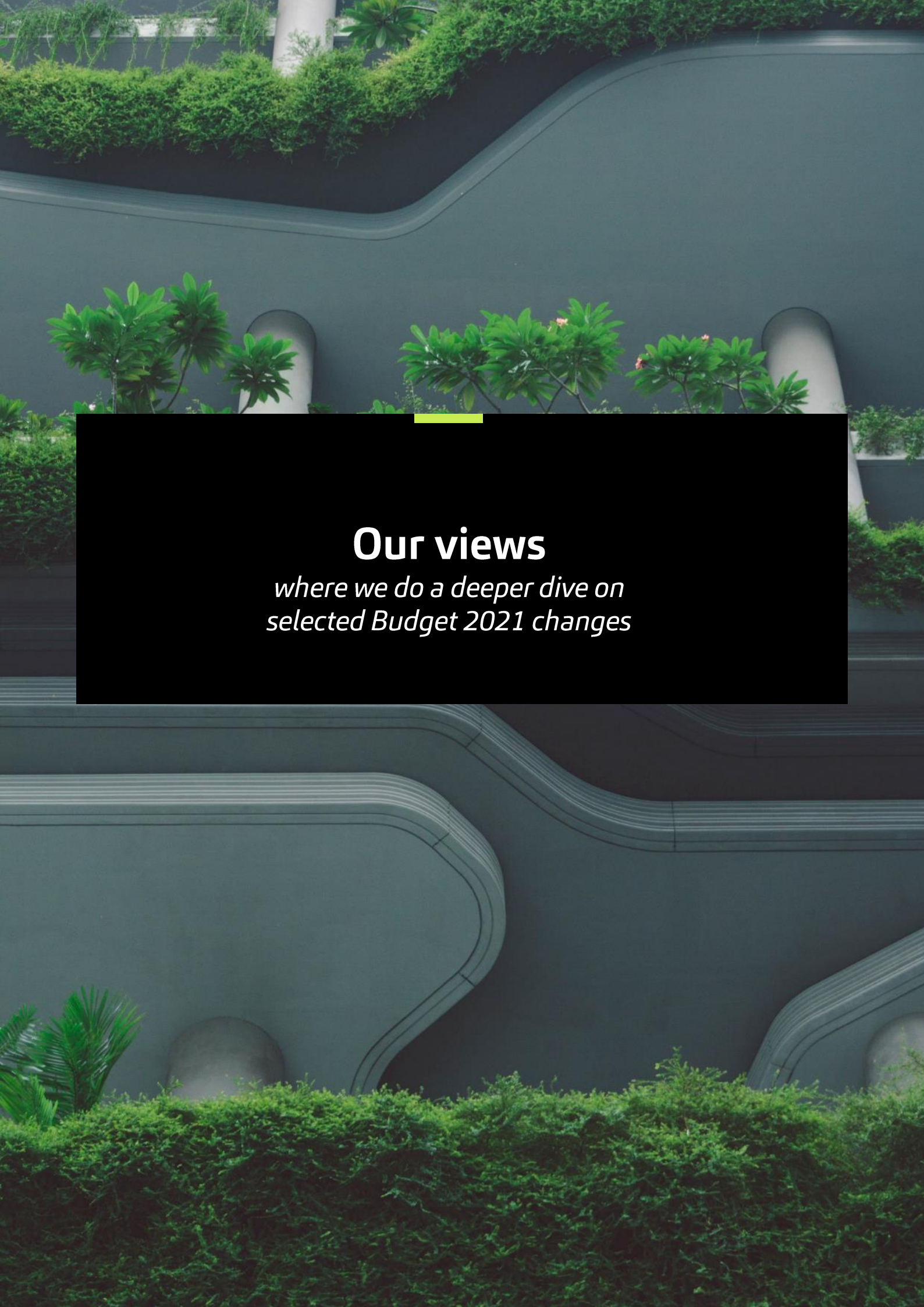
I did so, in my commentary piece titled "Time for Singapore to grab the tax rules by the horns?" for *The Business Times* on 18th February 2021 (https://lnkd.in/gUAaFig), but also discussed other positives for our economy including the need to have more and better discussions around attracting tycoons and the spin-off effects for the country.

These are issues perhaps more geared for the future; indeed, in my first year leading the tax practice at Baker Tilly Singapore, I am pleased to release this publication which contains also past and present themes.

The most apparent of such present themes will invariably be contained within the "Our views" and "Tax changes" sections of this publication; I am also proud however to point you to "Our thought leadership on tax issues" segment containing many forward-looking articles we released in recent times, while also drawing on past and at times, very ancient (!) perspectives.

I wish you an enjoyable read.

Loh Eng Kiat
Partner & Practice Leader, Tax
Baker Tilly Singapore



Our views

where we do a deeper dive on selected Budget 2021 changes

Goods and Services Tax (GST)

GST on imported low-value goods and non-digital services

Current

Currently, low-value goods (i.e. below the threshold of S$400) imported via air or post are not subject to GST. In addition, business-to-consumer ("B2C") imported non-digital services (such as live interaction with overseas providers of educational learning, fitness training, counselling) are also not subject to GST.

Proposed

With effect from 1 January 2023, GST will be extended to:

- Low-value goods which are imported via air or post. This will be effected via the Overseas Vendor Registration ("OVR") and Reverse Charge ("RC") regimes.
- B2C imported non-digital services. This will be effected via the OVR regime.

The expansion of the scope of GST is to ensure a level playing field for the local businesses to compete effectively and that our GST system remains resilient in a digital economy.

IRAS will consult the industry before finalising the implementation details.

Our comments

The proposed changes did not come as a surprise as Mr Heng Swee Keat had in the Singapore Budget 2018 shared that the government was reviewing international developments on the collection of GST on low-value imported goods. Given the successful implementation of the imposition of GST on low-value imported goods in countries such as Australia and more recently United Kingdom, it is just a matter of time that the scope of GST in Singapore be expanded to include low-value imported goods.

The proposed changes will be welcomed by local businesses as it will allow local businesses to compete effectively as the overseas suppliers of goods will be subject to the same GST treatment as local suppliers. For most local businesses, the changes should not affect them unless the local businesses are not entitled to claim input tax in full (e.g. non-profit organisations, banks, developers of residential properties) if GST-registered.

Goods and Services Tax (GST)

Changes to zero-rating basis for the supply of media sales

Current

The supply of media sales is zero-rated under section 21(3)(u) of the GST Act if the advertisement is intended to be substantially circulated outside Singapore. Hence, the basis for determining whether zero-rating applies on the supply of media sales is based on the place of circulation of the advertisement. Media sales refer to the sale of advertising space for hardcopy print and outdoor advertisement, the sale of advertising airtime for broadcasting via TV and radio and the sale of media space for web advertising via email, internet and mobile devices.

Proposed

In view that online advertising has grown and developments in digital technologies have also changed the way that media sales are supplied, it is difficult for suppliers of digital media sales to determine the place of circulation.

With effect from 1 January 2022, the basis for determining whether zero-rating applies to a supply of media sales will be updated, to be based on the place where the customer (i.e. the contractual customer) and direct beneficiary of the service belong.

Our comments

The new basis for determining whether zero-rating applies would be consistent with the basis used in jurisdictions such as Australia and New Zealand. However, we do foresee issues with how businesses can determine all the direct beneficiaries of the services to determine if zero-rating applies and particularly, in situations where there are both local and overseas direct beneficiaries. It will be useful if IRAS can provide guidance on this matter in the revised e-Tax Guide for Advertising Industry.

Income Tax and others

Spending on business improvements

A number of changes were introduced in Budget 2020 as temporary tax measures to support businesses including:

- the according of an option to accelerate tax depreciation claims
- the according of an option to accelerate renovation & refurbishment (R&R) deduction

Budget 2021's proposal to extend the above measures for another year, with the same parameters, could be geared towards providing businesses with more time to spend on business improvements in certain areas (e.g. buying new machines to improve efficiency, renovating office premises etc) especially as many businesses could have cut back on various expenditures in the past year

While these extensions will be welcome, it remains to be seen whether business sentiments can be sufficiently stirred by these options (that can potentially improve cash flow associated with certain business spending) to invest in more productive assets and/or to refurbish. For example, it may well be the case that loss-making businesses see little benefit in such optionality for themselves as the choice often is to defer (where possible) than to accelerate tax claims.

Carry-back relief scheme

We are slightly disappointed that bolder steps have not been taken in liberalising this scheme. With the S$100,000 cap still existing and Singapore's prevailing corporate tax rate of 17 per cent, this means that the current system can at best provide a single company (no matter how big) with income tax refund of S$17,000 in a relevant year. This does not seem like a quantum of life-saving proportions for many businesses facing business restrictions, and diminishes the Budget 2020 and 2021 enhancements to allow items to be carried-back up to 3 years (previously only 1 year).

The Australian government announced late last year that it will introduce a temporary loss carry-back measure to support certain businesses, and where conditions are met the offset is to be uncapped. A few other major economies have also relaxed their carry-back rules, and when weighed against these benchmarks, it suggests a missed opportunity for our government to take a decisive move in removing the cap associated with the system. Such a move should, in the long term, be revenue-neutral for the government, unless pervasive business failures become rife.

Income Tax and others

Encouraging philanthropy

Some donations in Singapore can in fact generate 250 percent tax deduction value. This should remain the case for donations up to 31 Dec 2023, as a result of this year's announcements.

Donors can carry forward unutilised deductions resulting from qualifying donations for only five years. When unused capital allowances and trade losses can be carried forward indefinitely (if the requisite conditions are met), there appears to be no compelling reason why there needs to be a five-year limit for unused donations. If the 250 percent tax deduction rate for qualifying donations reflects a desire to encourage greater charitable efforts, then this period of extreme economic downturn should give policymakers the incentive to strengthen the tax code's support of philanthropy and remove the five-year time limit — introduced nearly two decades ago — once and for all.

Sustainability

With increasing global pressure regarding climate change, particularly in light of recent extreme weather events, it is unsurprising that the Minister emphasised the importance of responding to climate change by comparing its effects to those of the pandemic. The Budget initiatives this year include green bonds for public infrastructure projects and concrete steps encouraging taxpayers to switch from petrol-fuelled vehicles to electric ones, with the Minister hinting that the carbon tax may be increased soon after 2023 and that more drastic 'green' changes may be implemented soon.

Income Tax and others

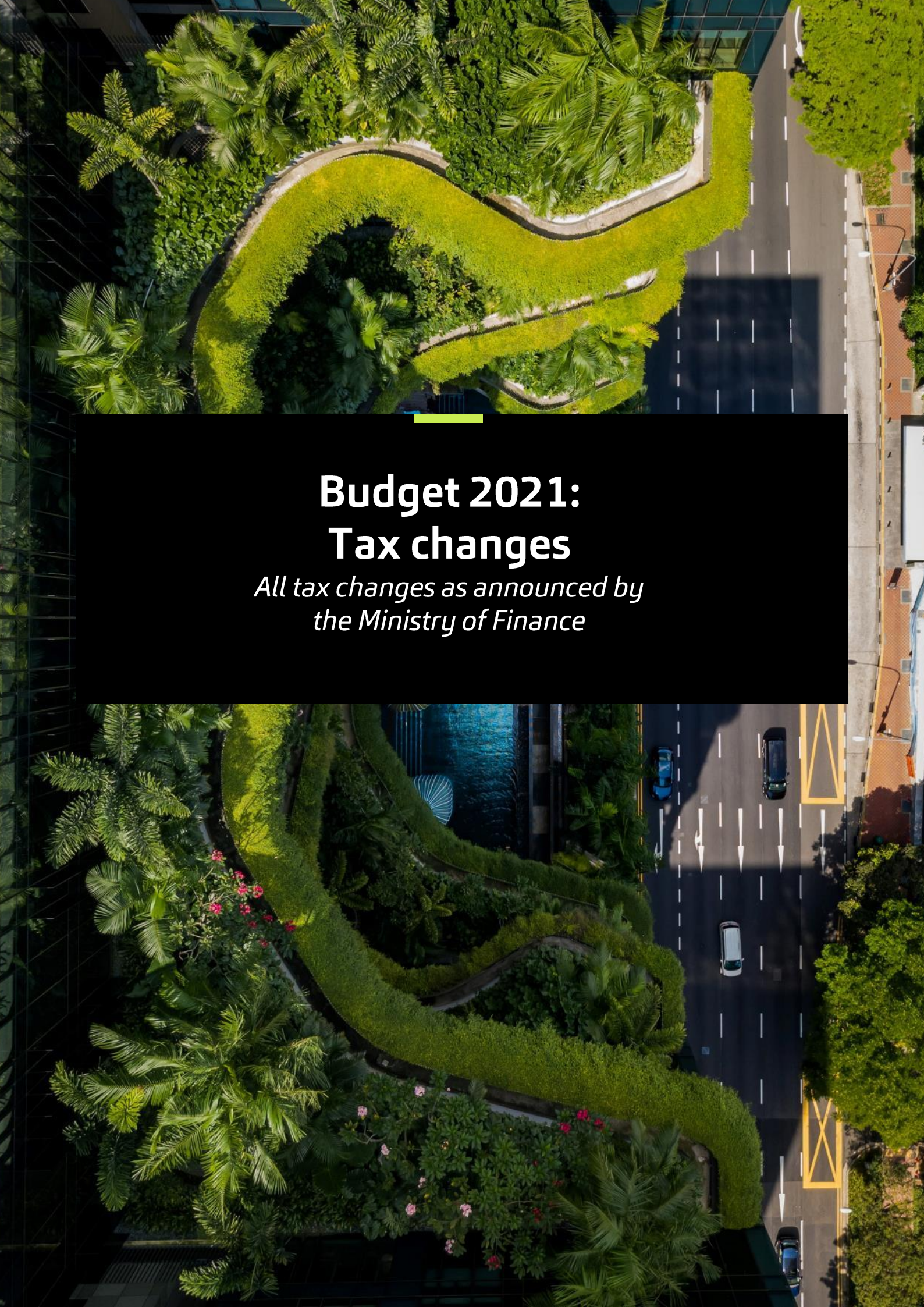
Borderless Marketing

When travel and crowd size restrictions are imposed worldwide, and when companies and individuals alike purchase goods and services digitally, "internationalisation" takes on a new meaning. It is therefore heartening that Enterprise Singapore has expanded the scope of the double tax deduction for internationalisation ("DTDi"), to include virtual trade fairs and additional activities (that do not require physical travel) which qualify for automatic double deduction. However, considering that attendance at overseas trade fairs do not need to relate to "approved" events to qualify for the automatic double deduction, it is unclear why virtual trade fairs need to be approved, for this same purpose. Perhaps Enterprise Singapore may consider setting certain criteria for a virtual fair to qualify for DTDi purposes, or allow appeals and nominations for virtual trade fairs that are not otherwise approved.

A 'new normal' for tax incentives?

The recently-released Pillar Two Blueprint (in the context of the Organisation for Economic Co-operation and Development (OECD)'s Base Erosion and Profit Shifting (BEPS) 2.0 project) puts forth several mechanisms to ensure a global minimum tax rate. If implemented, the difference between a company's Singapore tax liability and the hypothetical tax liability (computed using the global minimum tax rate) may have to be made up for by its foreign parent company in its home jurisdiction. This can severely dim the allure of local tax incentives (a significant factor encouraging multinationals to set up shop here), and (in the words of Mr Heng) "adversely impact our corporate income tax revenues".

This may have already manifested by way of there being no new or extension of Singapore tax incentives, apart from the extension of the Not-for-Profit Organisation ("NPOs") tax incentive.



Budget 2021: Tax changes

All tax changes as announced by the Ministry of Finance

SINGAPORE BUDGET 2021: TAX CHANGES

The following is provided by the Inland Revenue Authority of Singapore and the Ministry of Finance.

Please refer to: https://www.iras.gov.sg/irashome/News-and-Events/Singapore-Budget/Budget-2021---Overview-of-Tax-Changes/ and https://www.mof.gov.sg/docs/librariesprovider3/budget2021/download/pdf/annexf1.pdf for more details.

All Businesses

Tax change	Summary
Extend the Year of Assessment ("YA") 2020 enhancements to the carry-back relief scheme	To continue providing support to businesses, the enhancements to the carry-back relief scheme for YA2020 will be extended to apply to qualifying deductions for YA2021, with the same parameters.
Extend the option to accelerate the write-off of the cost of acquiring plant and machinery ("P&M")	To continue providing support to businesses, the option to accelerate the write-off of the cost of acquiring P&M will be extended to capital expenditure incurred on the acquisition of P&M in the basis period for YA2022 (i.e. FY2021), with the same parameters.
Extend the option to accelerate the deduction of expenses incurred on renovation and refurbishment ("R&R")	To continue providing support to businesses, the option to claim R&R deduction in one YA (i.e. accelerated R&R deduction) will be extended to qualifying expenditure incurred on R&R in the basis period for YA2022 (i.e. FY2021), with the same parameters.

Tax change	Summary
Enhance the Double Tax Deduction for Internationalisation ("DTDi") scheme	To continue supporting internationalisation efforts of businesses amid changes in the business environment, the scope of the DTDi scheme will be enhanced to cover the following specified expenses incurred to participate in approved virtual trade fairs: a) Package fees charged by event organisers for virtual exhibition hall and booth access, collateral creation, business meeting/match sessions, pitches/product launches/speaking slots, webinar/conference, and post event analytics; b) Third-party costs for design and production of digital collaterals and promotion materials for virtual fairs; and c) Logistics costs incurred to send materials/samples overseas to potential clients met at virtual trade fairs The list of qualifying expenses for overseas investment study trips will also be expanded to include logistics costs to transport materials/samples used during the investment trips. In addition, the scope of qualifying activities which do not require prior approval from Enterprise Singapore or STB will be enhanced to cover the following additional activities, up to the current annual expense cap of $150,000: a) Product/service certification (primarily to increase buyer's acceptance in overseas markets) approved by Enterprise Singapore; b) Overseas advertising and promotional campaign; c) Design of packaging for overseas markets; d) Advertising in approved local trade publication; and e) Participation in virtual trade fairs approved by Enterprise Singapore. The above enhancements will take effect for qualifying expenses incurred on or after 17 February 2021. Enterprise Singapore will provide further details of the changes by 28 February 2021.

Tax change	Summary
Extend the Business and IPC Partnership Scheme ("BIPS")	To continue supporting corporate volunteering, BIPS will be extended till 31 December 2023. All other conditions of the scheme remain the same.
Extend the Not-for-Profit Organisation ("NPO") tax incentive	To continue attracting NPOs to Singapore, the NPO tax incentive will be extended till 31 December 2027.
Allow the Automation Support Package ("ASP") to lapse, but retain the 100% Investment Allowance ("IA") scheme to support automation	The ASP will lapse after 31 March 2021. Schemes including the Enterprise Development Grant, IA scheme, and the Enterprise Financing Scheme will continue to be available to support businesses in their automation, productivity, and scale-up efforts. Specifically, the 100% IA scheme to support automation will be extended by two years, for automation projects approved by Enterprise Singapore from 1 April 2021 to 31 March 2023. All other conditions of the scheme remain the same.
Extend and enhance the Investment Allowance (Energy Efficiency) ("IA-EE") scheme	The IA-EE scheme will be renamed the "Investment Allowance for Emissions Reduction" scheme, with the following revisions: a) Expansion in the scope of qualifying projects to include projects involving a reduction of greenhouse gas emissions; and b) Streamlined and updated eligibility conditions. These will apply to all projects (i.e. there will no longer be a distinction between data centres and non-data centres). The revised conditions will apply to projects approved by EDB from 1 April 2021 to 31 December 2026 (both dates inclusive).

Tax change	Summary
Withdraw the Accelerated Depreciation Allowances for Highly Efficient Pollution Control Equipment ("ADA-PCE") scheme	The ADA-PCE scheme will be withdrawn from 17 February 2021. Since the introduction of this scheme in 1996, regulatory measures have been introduced including our air emission standards, which set emission concentration limits for a list of controlled pollutants. These measures are reviewed over time. The Ministry of Sustainability and the Environment ("MSE") and the National Environment Agency ("NEA") will continue to regularly review our measures to manage pollution and improve air quality in Singapore.

Finance sector

Tax change	Summary
Extend and refine the double tax deduction ("DTD") for qualifying upfront cost attributable to retail bonds issued under MAS' Seasoning Framework and Exempt Bond Issuer Framework	To promote rated retail bond issuances, the DTD scheme will be extended for qualifying upfront cost incurred on or after 19 May 2021 that is attributable to rated retail bonds (instead of all retail bonds) issued during the period from 19 May 2021 to 31 December 2026 (both dates inclusive) under the Seasoning Framework and Exempt Bond Issuer Framework. The refinement of the DTD scheme seeks to provide investors with access to rated retail bonds. Credit rating improves market transparency by providing timely and independent assessments of the creditworthiness of bond issuers. All other conditions of the DTD scheme remain the same. MAS will provide further details of the changes by 31 May 2021.

Tax change	Summary
Extend and rationalise the withholding tax ("WHT") exemptions for the financial sector	To support Singapore's value proposition and competitiveness of our financial sector, the following changes will be made: A. The existing WHT remission for interbank/ interbranch transactions will be legislated as a WHT exemption with effect from 1 April 2021, along with a review date of 31 December 2031. Under this WHT exemption, all Section 12(6) payments made by banks in Singapore for the purpose of their trade or business, to their branches / head offices outside Singapore or other banks outside Singapore will be exempt from tax where such payments: a) are made during the period from 1 April 2021 to 31 December 2031 (both dates inclusive) under a contract that takes effect before 1 April 2021; or b) are made under a contract that takes effect during the period from 1 April 2021 to 31 December 2031 (both dates inclusive). In such cases, the WHT exemption will apply to the entire duration of the contract, including payments that are made beyond 31 December 2031 under that contract. B. The WHT exemption will be extended till 31 December 2026. All other conditions of the WHT exemption remain the same. All Section 12(6) payments made to any non-resident person (excluding any PEs in Singapore) by the specified entities, for the purpose of the specified entities' trade or business, are exempt from tax where such payments: a) are made during the period from 1 April 2011 to 31 December 2026 (both dates inclusive) under a contract that took effect before 1 April 2011; or b) are made under a contract that takes effect during the period from 1 April 2011 to 31 December 2026 (both dates inclusive). In such cases, the WHT exemption applies to the entire duration of the contract, including payments that are made beyond 31 December 2026 under that contract.

Tax change	Summary
Extend and rationalise the withholding tax ("WHT") exemptions for the financial sector *(cont'd)*	C. The WHT exemption will be extended till 31 December 2026. All other conditions of the WHT exemption remain the same. Specified entities are not required to withhold tax on all Section 12(6) payments made to any PE in Singapore if the payments: a) are made during the period from 17 February 2012 to 31 December 2026 (both dates inclusive) under a contract that took effect before 17 February 2012; or b) are made under a contract that takes effect during the period from 17 February 2012 to 31 December 2026 (both dates inclusive). In such cases, the specified entities do not need to withhold tax on all Section 12(6) payments that are made for the entire duration of the contract, including payments that are made beyond 31 December 2026 under that contract. As per the existing tax treatment, the PEs in Singapore are required to declare the Section 12(6) payments that they received in their annual income tax returns and are assessed to tax on such payments (unless the payments are specifically exempt from tax). MAS will release further details of all changes by 31 May 2021.
Extend the WHT exemption on payments made for structured products	To support Singapore's value proposition and competitiveness of our financial sector, the WHT exemption will be extended for another five years and will cover payments made under a contract that takes effect during the period from 1 January 2007 to 31 December 2026 (both dates inclusive). All other conditions of the WHT exemption remain the same. MAS will release further details of the changes by 31 May 2021.

Tax change	Summary
Extend the WHT exemption on payments for over-the-counter ("OTC") financial derivatives	To support Singapore's value proposition and competitiveness of our financial sector, the WHT exemption will be extended for another five years till 31 December 2026. All other conditions of the WHT exemption remain the same. All payments on OTC financial derivatives made by a financial institution in Singapore to any non-resident person (excluding any PE in Singapore) are exempt from WHT, where such payments: a) are made during the period from 20 May 2007 to 31 December 2026 (both dates inclusive) under a contract that took effect before 15 February 2007; or b) are made under a contract that takes effect during the period from 15 February 2007 to 31 December 2026 (both dates inclusive). In such cases, the WHT exemption applies to the entire duration of the OTC financial derivatives contract, including payments that are made beyond 31 December 2026 under that contract. MAS will release further details of the changes by 31 May 2021.

GST

Tax change	Summary
Extension of GST to a) goods imported via air or post that are valued up to (and including) the current GST import relief threshold of S$400 ("low-value goods"), and b) business-to-consumer ("B2C") imported non-digital services, through the extension of the Overseas Vendor Registration and reverse charge regimes	GST will be extended to: a) **Low-value goods which are imported via air or post.** This will be effected via the Overseas Vendor Registration and reverse charge regimes. Jurisdictions that have extended their GST or Value Added Tax ("VAT") regimes to cover imported low-value goods include Australia, New Zealand, Norway, Switzerland, and the United Kingdom. GST is already and will continue to be collected on goods imported via land or sea, regardless of value. b) **B2C imported non-digital services** (such as live interaction with overseas providers of educational learning, fitness training, counselling and telemedicine). This will be effected via the Overseas Vendor Registration regime. Jurisdictions which already tax similar services include Australia and New Zealand. This change, together with the change announced in Budget 2018 to extend GST to B2C imported digital services and business-to-business ("B2B") imported services, will ensure a level playing field for our local businesses to compete effectively. Overseas suppliers of goods and services will be subject to the same GST treatment as local suppliers. This change will also ensure that our GST system remains resilient as the digital economy grows. This change will take effect from 1 January 2023. IRAS will consult the industry shortly, before we finalise the implementation details.

Tax change	Summary
For GST purposes, change the basis for determining whether zero-rating applies to a supply of media sales, from the place of circulation of the advertisement to the place where the customer and direct beneficiary of the service belong.	Online advertising has grown and is expected to account for an increasing share of advertising spending in future. Developments in digital technologies have also changed the way that media sales are supplied, making it more difficult for suppliers of digital media sales to determine the place of circulation of the advertisement. Given this trend, the basis for determining whether zero-rating applies to a supply of media sales will be updated, to be based on the place where the customer (i.e. the contractual customer) and direct beneficiary of the service belong: a) If the customer of the service belongs outside Singapore and the direct beneficiary either belongs outside Singapore or is GST-registered in Singapore, the media sales will be zero-rated; and b) If the customer belongs in Singapore, the media sales will be standard-rated. This change will take effect for the supply of media sales on or after 1 January 2022.

Other tax changes

Tax change	Summary
Extend the 250% Tax Deduction for Qualifying Donations	To continue encouraging Singaporeans to give back to the community, we will extend the 250% tax deduction to qualifying donations made from 1 January 2022 to 31 December 2023.All other conditions of the scheme remain the same.

Vehicles

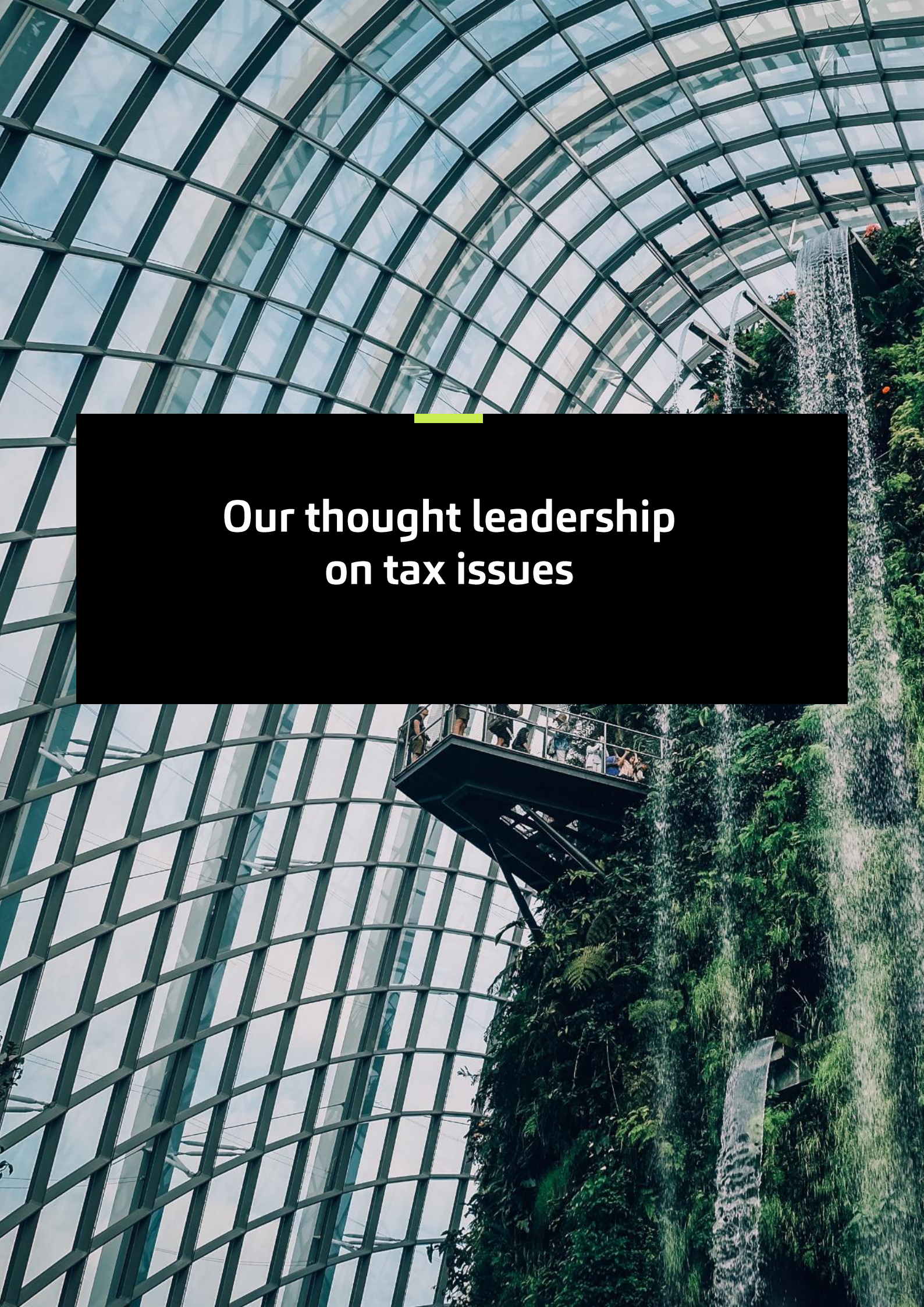
Tax change	Summary	
Enhancement of the Electric Vehicle ("EV") Early Adoption Incentive ("EEAI")	45% rebate off the ARF for electric cars and taxis from January 2022 to December 2023 at a cap of $20,000, with an ARF floor of $0.	
Revision to petrol duty rates		Duty rate
	Premium grade petrol – unleaded (RON 97 and above)	S$0.79 per litre
	Intermediate grade petrol – unleaded (RON 90 and above but under RON 97)	S$0.66 per litre

Vehicles

Tax change	Summary
Transitional offset measures for vehicles using petrol	To ease the transition to the revised petrol duty rates, a road tax rebate will be provided for petrol and petrol-hybrid vehicles at the following rates for one year: • 15% for cars, including taxis and private hire cars ("PHCs"); • 60% for motorcycles; and • 100% for commercial vehicles. The road tax rebate will be effective from 1 August 2021 to 31 July 2022. On top of the 15% road tax rebate, active drivers of taxis and PHCs using petrol will receive an additional Petrol Duty Rebate of $360 to be paid out over 4 months in view of their higher mileage. On top of the 60% road tax rebate, individual owners of motorcycles using petrol, registered as at 16 February 2021, with the following engine capacity will receive an additional Petrol Duty Rebate:

Engine capacity of motorcycle	Petrol duty rebate
≤ 200 cc	$80
201 to 400 cc	$50
> 400 cc	-

LTA will release further details on the additional Petrol Duty Rebates for taxi and PHC drivers, and individual motorcycle owners in April 2021.



Our thought leadership on tax issues

Our thought leadership on tax issues

Author: Loh Eng Kiat (Partner and Practice Leader, Tax)

Time for Singapore to grab the tax rules by the horns?

This was first published in *The Business Times* on 18 February 2021.

IN PINPOINTING specific uncertainties to Singapore's revenue base in his Budget speech last year, Deputy Prime Minister and Finance Minister Heng Swee Keat pointed out then that there were "ongoing discussions to revise international tax rules under the Base Erosion and Profit Shifting (BEPS) project".

Since then, he has continued to "double down" on how the BEPS project could significantly impact Singapore's tax fundamentals and cause it to lose corporate income tax revenue.

This message of being constrained in pursuing our own tax policy mix - or what some may blatantly call a dilution of tax sovereignty - persisted subtly in his address this year with increased intensity, as noted from his use of stronger phrases such as ". . . will adversely impact".When Australian Treasurer Josh Frydenberg announced on October 6 that the country's government will reintroduce a loss carryback tax scheme, he revealed what was possibly one of the worst-kept secrets in the world of impending tax reform.

Ending tax avoidance

Over the last decade or so, the Organisation for Economic Co-operation and Development (OECD) has been especially influential in shaping international tax developments. Under the OECD/G20 Inclusive Framework on BEPS, many countries have been collaborating to put an end to tax avoidance strategies that exploit gaps in tax rules.

With a view towards ensuring everybody pays their fair share of taxes, the BEPS-related initiatives look set to result in the most fundamental change to the international tax rules since the 1920s.

Beyond our shores, BEPS-specific positioning statements are similarly mounting.

In his 2020-21 Budget speech, Hong Kong's financial chief Paul Chan warned that "new developments in the international tax arena will affect the competitiveness of Hong Kong's tax regime", and specifically suggested the OECD's proposal for imposing a global minimum tax rate (GMTR) may diminish the attractiveness of tax-friendly hub jurisdictions in the eyes of multinationals.

The broad thrust is that if the tax paid by a multinational in Singapore is lower than the GMTR, its parent company will be subject to additional taxes or defensive measures imposed by the jurisdictions where they are located. If implemented, this could affect many multinationals operating and benefiting from incentivised corporate tax rates in Singapore.

The types of tax incentives and the choice of tax policies in Singapore have evolved with the country's economic development, and bilateral avenues (via the technical term of "tax sparing clauses" in tax treaties) were frequently used in the past to ensure that tax forgone by Singapore because of its tax incentives, was not subsequently picked up by other countries.

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Time for Singapore to grab the tax rules by the horns?

This new dimension of GMTR is less easily solved by virtue of it being more multilateral (over 135 countries are involved in the BEPS discussions) and multi-faceted in nature. It could arguably even pose existential challenges to some longstanding tax incentives here.

For now, since international consensus on the GMTR has not yet been reached, it is premature to do a major overhaul of our tax incentives' framework. But this should not be ruled out for future budgets within this term of government.

In a similar vein, unilaterally pursuing major local tax reforms may be futile, and it is therefore of little surprise that many of the tax changes (mostly tweaks) were detailed in an annex, rather than in the main speech.

All hands should be on deck

With most sectors contracting last year amid the worst full-year recession since Singapore's independence, the perceived growth in high-profile family offices seems a potential bright spark.

Recent reports in February of Google co-founder Sergey Brin - the world's ninth richest person - setting up a family office in Singapore to help manage his wealth, also pointed to the rush by super-rich families opening family offices here, including hedge fund boss Ray Dalio.

There may be further opportunities with the Monetary Authority of Singapore signalling that the Variable Capital Company (VCC) framework, launched in January 2020, may soon be relaxed to also accommodate single-family office (SFO) structures as part of a VCC 2.0 drive, thus allowing high-net-worth families more choices here.

Additional Budget debates on attracting more tycoons, including spin-off topics on fostering philanthropic causes in Singapore (mentioned briefly in Mr Heng's speech albeit in a wider context) and renewed conversations on whether to broaden our wealth tax net, should be encouraged.

The wealth tax discussion is not necessarily new in the Singapore context, but the surrounding fiscal circumstances certainly are.

An OECD tax policy study in 2018 showed that some countries have already expressed a renewed interest in net wealth taxes as a way to raise revenue. As revenue from income and consumption-based taxes declines with struggling economies, this call may intensify in the days ahead.

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Time for Singapore to grab the tax rules by the horns?

That said, in our context this clearly needs to be weighed against other factors such as a potential impact to our competitiveness and pragmatic considerations (for instance, something that can be "tax-planned away" would likely not pass muster).

A vibrant Budget

The commitments in this Budget to build a Singapore that is economically vibrant, socially cohesive, environmentally and fiscally sustainable are laudable. In this new year of the Ox, I especially applaud that there was no bulldozing through strategic tax reform measures, considering the multilateral dimensions and complexities of the day.

Our thought leadership on tax issues

Author: Loh Eng Kiat (Partner and Practice Leader, Tax)

Why Loss Carry Back is the Way to Safely Kickstart Economies

This was first published in *Tax Notes International* on 9 November 2020.

When Australian Treasurer Josh Frydenberg announced on October 6 that the country's government will reintroduce a loss carryback tax scheme, he revealed what was possibly one of the worst-kept secrets in the world of impending tax reform.

As a preview article put it: A string of rich nations [has] introduced or expanded their loss carryback provisions this year because of the losses inflicted on usually profitable companies by the pandemic. They include the United States, Britain, Germany, Austria, Japan and New Zealand. [1]

The suggestion is that a loss carryback tool should be used widely during trying times — and is said to have been encouraged by the OECD. While many countries already have rules governing the carry forward of losses, loss carryback regimes are less common. This article seeks to rationalize the reasons for the apparent reticence toward loss carryback regimes, using Singapore's tax framework as a primary example along with a few other countries.

Revenue Loss Concerns and Possible Safeguards

Although income tax was introduced in Singapore in 1947, a loss carryback system was not seriously discussed at the policy level until 2002, when it was offered as one of the tax recommendations of the Economic Review Committee (ERC, established December 3, 2001). Before the loss carryback regime, carry forward relief was for many years the only relief available for losses[2] that could not be completely used because of insufficient taxable income.

It is fair to posit that as a tax recommendation of the ERC, the introduction of a loss carryback system was regarded as a move that would not lead to significant losses in government revenue. Indeed, the ERC recognized that while a loss carryback system could lead to greater uncertainty in government revenue, there should be no long-term impact[3] on revenue because the system already allows losses to be carried forward.

[1] Rob Harris and Shane Wright, "'Loss Carry Back': The Scheme to Help Businesses on the Brink," The Sydney Morning Herald, Oct. 2, 2020.

[2] The term "losses" is used for brevity and clarity, although Singapore's loss carryback regime (as well as carry forward relief) extends to unused capital allowances and trade losses, subject to relevant conditions and exclusions.

[3] That said, the ERC indicated its recognition that a revenue loss arises only if the company does not recover from its current losses and subsequently fails.

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Why Loss Carry Back is the Way to Safely Kickstart Economies

Put another way, losses (in theory) defer subsequent taxes when carried forward to relieve future taxable profits; with loss carryback, the focus is to refund recent taxes paid. A loss carryback system therefore creates timing differences for tax collection but may not result in loss of revenue to the government.

Be that as it may, although the loss carryback recommendation was provided to the Singapore government for consideration in time for the 2002 budget, it was not until the 2005 budget that a loss carryback regime was introduced. At the time of introduction, a loss carryback was subject to a cap of SGD 100,000 (about $73,000)[4]. Setting a cap clearly signified that the original intent of the loss carryback scheme introduced in that budget some 15 years ago was meant to help small businesses cope with cash flow problems.

Singapore also restricted the number of years[5] that carryback losses are allowed. Taken together, those restrictions seemed to allow Singapore to get used to the potential loss of revenue associated with the loss carryback regime. The proposed Australian loss carryback measure will be available to corporate tax entities (which include corporate limited partnerships and public trading trusts) with an aggregated turnover of less than AUD 5 billion ($3.52 billion). Entities falling below that threshold can apply tax losses against taxed profits in a previous income year. That demonstrates yet another simple safeguard, particularly for countries concerned that revenue collection from their largest corporations would be affected.

A 'Frank' Discussion of a Tax Problem

One of the limits to the Australian loss carryback system is that the amount carried back cannot generate a franking account deficit (so it will be limited to the company's franking account balance).

The concept of franking account deficit is sometimes viewed as a structural constraint in an imputation system, which the OECD has described as:

> *A system under which part or all of the corporate income tax paid by a company on its profits is credited against the personal income tax liability of the shareholders in receipt of dividends. The imputation reduces or eliminates the double taxation of distributed profits which arises under the classical system of taxation.*[6]

[4] The capped amount had been increased before, notably around the time of the 2008 global financial crisis when a SGD 200,000 cap applied temporarily.

[5] As one of Singapore's 2020 budget measures, the carryback relief system will be enhanced for tax year 2020, with the maximum number of tax years that the qualifying deductions can be carried back to increase from one to three.

[6] OECD Tax Database Explanatory Annex, "Part II: Taxation of Corporate and Capital Income" (updated Sept. 2020).

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Why Loss Carry Back is the Way to Safely Kickstart Economies

The relevant rule is that corporate profits would have to be taxed before the necessary franking credits are created to enable a dividend payment. Alternatively, corporate tax liabilities are accelerated, through a franking account deficit mechanism to enable the dividend payments.

The interaction of the loss carryback regime and an imputation system can thus be somewhat unwieldy. The first is meant to facilitate a corporate income tax refund, while the second can conversely induce prepayment of corporate income tax through the payment of unfranked dividends.

Singapore addressed that kind of design dilemma when it commenced the phasing out of its imputation system (a process completed by December 31, 2007), alongside the introduction of another form of tax loss relief (group relief)[7]. For countries still on imputation systems, however, those items should be considered in the context of any intended introduction or liberalization of loss carryback regimes.

'Cash Is King,' or FOMO

From a cash flow benefit perspective, with Singapore's prevailing corporate tax rate of 17 percent and a maximum amount of SGD 100,000 allowed for loss carryback, the framework can at best provide a company (whether large or small) with an income tax refund of SGD 17,000 in a relevant year.

That said, that best-case scenario under the loss carryback regime often cannot even crystallize — particularly for start-ups. Consider hypothetical Company A, whose first year of assessment on incorporation was 2017. It had SGD 120,000 of assessable income in tax year 2018 but suffered tax losses of SGD 100,000 in tax year 2019. If A seeks loss carryback, it may find itself getting an income tax refund of only approximately SGD 1,000 (instead of SGD 17,000) referable to the 2018 tax previously paid.

The mechanics are fleshed out in greater detail on the Inland Revenue Authority of Singapore website. Broadly explained, the result can be attributed to A qualifying for the tax exemption scheme for new start-up companies, which is limited to a qualifying company's initial years and allows it to claim a large exemption for lower levels of otherwise taxable income; and the impact of automatic rebate on tax otherwise payable. The particular example (as shown on the website) of obtaining a refund of only SGD 1,000 despite using the full SGD 100,000 loss carryback limit is part of a broader warning to taxpayers to ensure that a loss carryback is beneficial to them before making a claim, because elections made for loss carryback are irrevocable.

[7] That enables companies to deduct unused capital allowances, trade losses, or donations of one company from the assessable income of another company in the same group. For more information, see Inland Revenue Authority of Singapore, "Group Relief" (last accessed Oct. 8, 2020)

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Why Loss Carry Back is the Way to Safely Kickstart Economies

For some, the result could challenge the narrative that cash is king, because the scenarios compared clearly show that allowing the losses to be carried forward instead of back results in higher tax savings overall. Therefore, the fear of missing out (FOMO) on more substantial dollar tax savings could prevent a loss carryback election. That may be particularly so for countries whose tax systems allow for unlimited loss carry forward subject to fulfilling requisite conditions, such as Singapore's.

As I call for liberalizing Singapore's loss carryback regime by adopting an uncapped approach, there would be other tax planning complexities to consider, such as judiciously choosing the rate of tax depreciation for some assets to achieve overall tax savings and efficiency.

Indeed, on its website, New Zealand's Inland Revenue Department instructs taxpayers that they must let it know if they are going to use the loss carryback scheme. No reasonable tax authority is likely to mandate the use of loss carryback over the prevailing loss carry forward option likely available under that country's rules. Therefore, while acknowledging that the loss carryback regime could improve a taxpayer's cash flow, the downside is that it can be complex for taxpayers and create blind spots from an overall and longer-term tax-efficiency perspective.

Uncapping Loss Carryback Is the Way Forward

Singapore needs to move toward an uncapped loss carryback approach — or, at the very least, increase the SGD 100,000 cap significantly In a contemporaneous setting, the fiscal history of an organization like Singapore Airlines (which reportedly recently recorded the first annual net loss in its 48-year history) could help rationalize the mechanics, albeit as an extreme example[8].

Simply put, an uncapped[9] loss carryback regime could allow Singapore Airlines to obtain an income tax refund of about SGD 36.04 million if its reported full-year net loss of SGD 212 million is preferable to only one main legal entity and approximates current-year unused trade losses to be effected at 17 percent for Singapore tax purposes; and its reported earnings of SGD 683 million in the previous year were similarly referable to only that same main entity and were largely taxable at 17 percent in Singapore.

[8] I call this extreme because if a turnover cap restriction akin to Australia's of less than SGD 5 billion is used, Singapore Airlines may be excluded from an uncapped loss carryback regime.

[9] A restriction on the maximum number of years loss carry back can apply to should continue, however. In this example, by continuing to limit the number of tax years (currently three as announced in the 2020 budget) to which loss carryback can apply, the worst-case scenario for loss of government revenue can never extend to the income taxes previously paid and referable to Singapore Airlines' first 45 years. In the above numerical example, the first 47 years of income taxes previously paid will remain intact for now.

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Why Loss Carry Back is the Way to Safely Kickstart Economies

The potential refund of SGD 36.04 million is calculated by multiplying SGD 212 million by the 17 percent tax rate — but the point is that if the scope of the loss carryback regime with a SGD 100,000 cap was to operate, the income tax refund could have been only SGD 17,000. If one were to make inferences from recent press reports disclosing the pay packages of affected air crew, it may be that a refund of SGD 17,000 is not even sufficient to fund a month's salary for an experienced pilot.

At least two OECD member countries (Canada and Ireland) do not impose a numerical limit on the losses, even if they do regulate the number of years the relevant losses may be carried back. It is my understanding that those uncapped approaches predate the COVID-19 pandemic. For a counterexample in adopting or liberalizing a loss carryback regime, one may wish to point to Hong Kong, which has apparently resisted strategic reform to its tax system for over 50 years. However, as a territory with a very narrow tax base — for instance, it is somewhat of an outlier by not having a broad-based consumption tax regime — it is probably not the best example to follow in this discussion.

But beyond country-specific comparisons, potential safeguards against major losses in government revenue have been addressed and residual unease can possibly be managed by imposing a turnover threshold like Australia's. While a liberalized loss carryback framework can increase complexities for taxpayers in terms of the tax choices to be made, that is perhaps a quid pro quo exchange in attaining flexibility to seek meaningful tax refunds and Singapore at least has the advantage of no longer having to contend with complicated franking deficit impediments. Therefore, to move forward, it is time for Singapore to ride the internationally observed loss carryback momentum by relaxing its own rules decisively.

Our thought leadership on tax issues

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Riding on the momentum to move backwards

This was first published in *The Business Times* on 28 October 2020.

In confirming recently that UK Chancellor Rishi Sunak's Autumn Budget had been cancelled, his office issued a statement saying: "…now is not the right time to outline long-term plans - people want to see us focused on the here and now".

Locally, Deputy Prime Minister Heng Swee Keat similarly sent a clear signal to anyone who might still be harbouring misguided hopes of expansive fiscal measures, by emphasising in his Facebook post on Oct 3, 2020 that "…there will not be a new round of support measures".

Aligning with the theme of being targeted and offering an immediate suggestion, I detail below my sole Budget wish of a trending tax reform measure, centring on the business case for liberalising Singapore's Loss Carry-Back Relief (LCBR) system.

A historical overview of LCBR

Although income tax was introduced in Singapore in 1947, it is my belief that a LCBR system was seriously discussed at the policy level only from the year 2002, by way of it being put forward as one of the tax recommendations of the Economic Review Committee (ERC).

Before LCBR, carry-forward relief was, for many years, the only relief available for losses that cannot be completely used due to insufficiency of taxable income. As a tax recommendation of the ERC back then, it is fair to posit that the introduction of a LCBR system was regarded as a move which would not lead to significant losses in government revenue. Indeed, the ERC recognised that while a LCBR system may lead to greater uncertainty in government revenue, there ought to be no long-term impact on government revenue as the system already allows losses to be carried forward.

For ease of illustration, one may refer to the accompanying Table 1 which compares the total tax collected over the lifecycle of a hypothetical corporate taxpayer under (a) scenario where LCBR system is not used; and (b) scenario where LCBR is used to allow losses to be carried back for one year. As Table 1 illustrates, the total tax collected over the lifecycle under both scenarios would be the same (S$1.36 million in this example). This reinforces the point that a LCBR system only results in timing differences for tax collection, and importantly, does not result in loss of revenue to the government.

Be that as it may, although the LCBR recommendation was known to have been put up for consideration in time for Budget 2002, it was not until Budget 2005 that a LCBR was introduced. When it was launched, LCBR was subject to a cap of S$100,000 in losses. The cap clearly signified that the LCBR scheme introduced in that Budget some 15 years ago was originally aimed at relieving small businesses to help them cope with cash-flow problems.

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Riding on the momentum to move backwards

Today, the S$100,000 cap still exists, although a temporary increase to the cap did occur before, notably around the time of the Global Financial Crisis where a S$200,000 cap applied for some years. However, the prevailing atmosphere where many larger businesses similarly require significant cash-flow support, arguably presents strong imperatives to reconsider the continued necessity for a capped LCBR approach.

From a cashflow benefit perspective, with Singapore's prevailing corporate tax rate of 17 per cent and a maximum amount of S$100,000 allowed for LCBR, the current system can at best provide a single company (no matter how big) with income tax refund of S$17,000 in a relevant year. This hardly seems like a quantum of life-saving proportions for many businesses facing business restrictions while concurrently sustaining livelihoods of their employees, with the unfortunate example of local SME Teo Heng KTV reportedly sustaining about S$500,000 losses per month since March 2020 springing to mind.

The imperative for liberalising LCBR

The case of an exceptionally large corporate can showcase the full benefits of an uncapped LCBR regime. In a contemporaneous setting, the fiscal history of an organisation like Singapore Airlines (which reportedly recently recorded a first annual net loss in its 48-year history) could demonstrate this distinctly.

Simply put, an uncapped LCBR regime has the potential of allowing Singapore Airlines to obtain income tax refund of around S$36.04 million (assuming the following: their reported full-year net loss of S$212 million is only referable to one main legal entity and approximates current-year unutilised trade losses to be effected at 17 per cent for Singapore tax purposes; their reported earnings of S$683 million in the previous year were similarly only referable to that same main legal entity and were largely taxable at 17 per cent in Singapore).

The said potential refund of S$36.04 million is simply calculated by multiplying S$212 million by the 17 per cent tax rate, but the point is that if the scope of the current LCBR regime with a S$100,000 cap was to operate, ceteris paribus the income tax refund could have been only S$17,000. Anecdotally, if one were to infer from recent press reports disclosing the plight and pay packages of affected aircrew, it may be that such a S$17,000 refund from the current LCBR regime is not quite sufficient to fund a month's salary for an experienced pilot.

A few further points ought to be reiterated within the context of this example pertaining to Singapore Airlines:

- Unless the national carrier does not recover, subsequently fails and never pays income taxes in Singapore again, the said S$36.04 million does not represent a permanent loss of government revenue even if it amounts to a short-term cash-flow impact. Relating this to the illustration in Table 1, the uncapped LCBR allows a full corporate income tax refund for the immediate year before the crisis, thus providing an additional form of cash-flow relief in today's trying times. It also means that when its business recovers in due course, Singapore Airlines should correspondingly resume paying corporate income taxes quicker since some losses have been used up earlier due to LCBR.

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Riding on the momentum to move backwards

- While the quantums involved under an uncapped LCBR are much more meaningful, these may not necessarily represent any real drain on government spending and reserves. This can be contrasted against other fiscal measures like the Jobs Support Scheme (JSS), where to date more than S$21.5 billion in JSS support have already been disbursed.
- By continuing to impose a limit on the number of years of assessment (currently three as announced in the 2020 Budget Statement) to which LCBR can apply, the worst-case scenario from a loss of government revenue perspective can never extend to the income taxes previously paid and referable to the first 45 years' history of Singapore Airlines. In the above numerical example, the first 47 years of income taxes previously paid will remain intact.

International tax attitude

It would be remiss not to make some specific references to loss carry-back measures internationally as well as related reform in vogue during such trying times for several countries. The Australian government announced on Oct 6, 2020 that it will introduce a temporary loss carry-back measure to support certain businesses, and where conditions are met the offset is to be uncapped. According to a recent report by the Sydney Morning Herald, "…A string of rich nations have introduced or expanded their loss carry-back provisions this year because of the losses inflicted on usually profitable companies by the pandemic. They include the United States, Britain, Germany, Austria, Japan and New Zealand…"

In relation to an uncapped carry-back approach, it is noted that at least two OECD member countries (Canada and Ireland) do not impose a numerical limit on the losses, even if they do regulate the number of years the relevant losses may be carried back. It is my understanding that such an approach pre-dates the current pandemic.

Closer to home, in August 2020 the Hong Kong Financial Services Development Council (via FSDC Paper No 46 titled "Hong Kong Catching Up - Modernising Hong Kong's Tax Loss Relief") issued recommendations including their view of the importance that can be played by the territory launching a loss carry-back option in ensuring Hong Kong can stay competitive in the global market. This specific view of the Council is not necessarily new and had also been presented before in recent but "normal" times, such as in 2017.

Backwards as the way forward

To conclude, it is my view that Budget 2021 represents a significant opportunity for the government to take a decisive move in removing the cap associated with the LCBR system. Such a move should, in the long term, be revenue-neutral for the government, unless pervasive business failures become rife. As of now, I remain optimistic for Team Singapore. In concluding remarks in his recent ministerial statement in Parliament, Mr Heng indicated his confidence that the country will continue thriving as an exciting and vibrant global city and "…emerge stronger as a cohesive and resilient nation".

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Riding on the momentum to move backwards

The government recently expressed its intention to pivot from broad based relief like the JSS, to more targeted support, including help for firms in sectors that are suffering a temporary drop in demand now (but which will eventually recover). A liberalised LCBR system as part of Budget 2021 will be an excellent (and yet remarkably risk-free) way for the finance ministry to "put one's money where one's mouth is".

Table 1

Capped LCBR Versus Uncapped LCBR

	All Amounts in S$'000	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10	Yr 11	Yr 12	Total
	Current year's taxable income/(Loss)	1,000	1,000	1,000	(3,000)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	8,000
Scenario A	Current Year Tax eventually paid (Without uncapped LCBR)	170	170	170					170	170	170	170	170	1,360
Scenario B	Current year tax eventually paid (with uncapped LCBR)	170	170					170	170	170	170	170	170	1,360

Notes

1.For ease of illustration and comparative purposes, this example does not take into account the impact the tax exemption(s),reliefs etc may effectively apply to lower tiers of taxable income, and merely applies a flat corporate tax rate of 17% to taxable income.

2. For simplicity, it is assumed that year 4 and above is where the adverse impact of Covid-19 results in S$3M of tax losses, which the taxpayer in question then uses against (otherwise) taxable income of other years. In this example, it is also assumed that the taxpayer voluntarily ends the business by year 12, and thus over the entire lifecycle of its business made a net total of S$8m of taxable income.

Our thought leadership on tax issues

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Answering the tax riddles in Singapore's Jobs Support Scheme

This was first published in *Tax Notes International* on 25 September 2020.

Job retention policies have been used by many governments during this difficult pandemic period to limit social and economic hardship. A recent study suggests that as of June 12, at least 75 percent of OECD countries had some form of job retention scheme.[1]

In Singapore, the Jobs Support Scheme (JSS) is meant to help enterprises retain their local employees during this period of grave economic uncertainty. Through the JSS, the government will provide cash subsidies to fund between 10 and 75 percent of the first SGD 4,600 (approximately $3,300) of gross monthly wages that an employer pays each local employee for a stipulated period.

The JSS probably served as a lifeline for many businesses during the so-called circuit-breaker period — that is, the period during which the government mandated, *inter alia*, full home-based learning for schools and the closure of most physical workplace premises to prevent the spread of COVID-19[2] — when the JSS provided exceptional support. In April and May, the wage support topped up to 75 percent for all firms, regardless of sector.

An additional sweetener for eligible businesses is the automatic nature of periodic JSS payouts — no application necessary. This contrasts with some countries in the region where wage support can only be obtained after cutting through a good bit of red tape.

With over 140,000 employers[3] benefiting from the wage support, the scheme obviously has a very wide reach, and it can affect beneficiaries of differing profiles in different ways. In the field of taxation, the JSS can potentially result in some awkward outcomes when its design elements interact with long-standing local tax principles. The earliest set of final corporate income tax returns affected by the JSS will not be due before the end of November 2021. To avoid leaving a bitter aftertaste, I urge the relevant authorities to consider the issues raised below with greater granularity, particularly with the recently announced extension of the JSS scheme.[4]

[1] OECD, "Flattening the Unemployment Curve Policies to Support Workers' Income and Promote a Speedy Labour Market Recovery" (June 12, 2020).

[2] Ministry of Health (Singapore) release regarding heightened social distancing measures (Apr. 3, 2020).

[3] Inland Revenue Authority of Singapore, "Over 140,000 Employers to Receive $4 Billion in Next Jobs Support Scheme Payout From 28 May" (May 17, 2020).

[4] Tang See Kit, "Extension of Jobs Support Scheme Among S $8 Billion Worth of Measures Announced by Heng Swee Keat," Channel News Asia, Aug. 17, 2020.

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Answering the tax riddles in Singapore's Jobs Support Scheme

At the outset, it is important to note that at the time of this writing, the Ministry of Finance is in the process of proposing amendments to the Income Tax Act that would, inter alia, clarify the tax treatment of the COVID-19 support measures for businesses. Whether the final amendments will address all of the concerns raised in this article — and whether they will do so thoroughly — remains to be seen. The schedule called for a period of consultation from July 20 to August 7, and the MOF is expected to publish a summary of the comments received and its responses by the end of September. This article reflects some of the feedback that I have provided in response to the consultation.

The Tax Exemption Baseline

From a tax practitioner's standpoint, a somewhat unexpected piece of the JSS is that the payouts will be tax-exempt according to a recent clarification from the Inland Revenue Authority of Singapore (IRAS). It is surprising, juxtaposed with the IRAS's "general guiding principles," which state that grants or payouts will typically be taxable when they are given to help defray operating expenses.[5]

If the authorities see fit to give legislative force to IRAS's stated position, I believe that the baseline plan of tax exempting JSS payouts may give rise to some tax-related difficulties, which I hope future legislation and guidance materials will address.

There is a need for further IRAS clarification to be provided along the lines of allowing (and, hopefully, also confirming) the full tax deductibility of the underlying wages that are defrayed by the JSS payout. To illustrate this, consider a simplified example: A business with no revenue this year, wages of SGD 100, and a JSS payout of SGD 75 will simply not pay income taxes for the year. Some may suggest that such a business should only be entitled to a tax deduction based on the net business outlay of SGD 25 (that is, SGD 100 less SGD 75). However, allowing the SGD 100 of underlying wages to be claimed in full as a tax deduction can provide tax savings in future years. The higher tax savings from full tax deductibility can potentially enhance the fiscal support that the JSS provides to businesses.

Indeed, if the wages constitute the running costs of a business undertaking, Singapore's tax deductibility rules should not preclude a full tax deduction. Business expenses are generally deductible[6] if they are "wholly and exclusively incurred in the production of income." The fact that the company earns little or no business revenue — or that the tax-exempt JSS payout is (unfortunately) the main income stream — should not alter this basic position.

[5] IRAS, "Tax Treatment of Grants/Payouts Commonly Received by Companies" (last accessed Aug. 6, 2020).

[6] There may be some exceptions to this rule, such as when the expenses are a contingent liability, capital in nature, specifically prohibited, or incurred before the commencement of business.

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Answering the tax riddles in Singapore's Jobs Support Scheme

An accounting presentation method may unwittingly thwart the desired outcome of a full tax deduction for underlying wages linked with tax exemption on JSS income. Under International Financial Reporting Standard 20, "Accounting for Government Grants and Disclosure of Government Assistance," the grant income can either be presented separately as grant income (or under "other income") or deducted against salary costs.

If businesses adopt the latter accounting option and present JSS grant income in the more opaque manner and deduct the grant income against the salary costs, then they may be more likely to neglect to make a book-tax adjustment to treat the JSS grant income as tax-exempt. By doing so, the businesses would indirectly and inadvertently suffer tax on the JSS grant, which is not the government's intent.

In other words, the principle of "tax follows accounting" cannot apply in this instance, and the IRAS (as the administering body disbursing JSS payouts) should automatically rectify this mistake for the benefit of the taxpayer based on the information at its disposal. Alternatively, and at the very least, the IRAS should provide a simple and penalty-free option allowing the taxpayer to amend its tax returns in this particular situation.

'Passing On' the Payments

Another tax-related difficulty stems from conflating the intended tax-exempt outcome of JSS amounts with behavioural expectations. Such expectations may arise from both the general public — for example, in recent weeks numerous comments on the forum page of the *Straits Times* website have borne titles like "Managing agents should try to pass on JSS payouts where possible," "Condo managing agents should pass on JSS payouts to clients," and "Make firms that don't need wage subsidy payouts return them" — and also from the authorities. As an example of the latter, the Ministry of Manpower (MOM) recently issued as advisory titled "Labour supply companies should pass on the benefits from the Jobs Support Scheme to your clients.[7]

The MOM advisory recognizes that there are companies involved in labour supply services that contract employees out to work for their clients, and it sets out MOM's general expectation that — with an exception for some outsourced service providers — labour supply companies (LSCs) should pass on the JSS payouts for those employees to the clients that continue to pay full fees for the employees' contracted services. The MOM reaches this conclusion because the policy intent of the JSS is to provide wage support for local employment.

[7] An additional line of FAQ response has just been added to the IRAS website, which states: "If an employer passes on the JSS payout in the form of monetary payment to another party, that monetary payment is taxable in the hands of the recipient." It must be emphasized that because this additional line was added only recently, its full tax consequences have not yet been analyzed. My initial view, however, is that some additional complexities and economic distortions may unfortunately ensue, rather than allowing for a level playing field and conceptual clarity.

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Answering the tax riddles in Singapore's Jobs Support Scheme

Leaving aside the naturally difficult issues of honourable behaviour and the like, it is far from straightforward to figure out the impact of JSS payouts being tax-exempt when the benefits are passed on. To my knowledge, under the rules in effect as accessed on August 20, 2020, the tax-exemption outcome would be found in a one-line response to FAQ 10 on the IRAS section of its website that contains JSS-related information: "The JSS payout will be exempt from income tax in the hands of employers."[8] While the brevity and sweeping nature of this statement is unambiguous — and it is certainly helpful in many general situations — it is clearly an insufficient answer to the tax questions presented when JSS benefits are passed on.

For example, assuming adherence to the MOM advisory, the LSCs' clients will not be receiving JSS payouts per se, instead they may be receiving service-fee rebates from the labour suppliers. Even if the service-fee rebates can be causally linked and traced to the underlying JSS payout, the fact that the existing rule only mentions JSS payouts (that is, it does not mention any derivative amount) and suggests a legal employer-employee relationship is necessary may cause the tax-exemption outcome to be effectively denied — or, at the very least, made contentious — for both the clients and the labour suppliers.

The MOM's general expectation regarding LSCs give rise to at least three other potential concerns:

- Passing on JSS benefits within this model framework invariably means that LSCs must be prepared to be almost fully transparent with their clients regarding the profit margins they earn on the local employees involved (at least on those earning less than SGD 4,600 of gross monthly wages). It is unclear to me whether transparency on the profit margins of LSCs constitutes market practice, although admittedly this goes beyond the scope of my professional expertise.
- An LSC with greater tax acumen and a strong desire to maintain privacy regarding its profit margins may be disinclined to continue traditional employer-employee relationships. By shifting to independent consultant contracts — that is, the use of contract *for* service, rather than contract *of* service — the LSC can practically eliminate its entitlement to JSS payouts, and therefore it may have no benefits to pass on to its clients. To prevent an (otherwise noble) attempt by the Singapore government to support businesses and protect local employment from being thwarted in this manner, it may be necessary to scrutinize independent consultant contracts more critically, even when the context is purely domestic. For example, the concept of an independent agent exclusion in the permanent establishment context typically requires that the agent is independent in both a legal and an economic sense, and this line of inquiry can be extended to the LSC situation as well.

[8] Inland Revenue Authority of Singapore, "Jobs Support Scheme (JSS)."

- If an LSC recognizes both the JSS payouts and the exact amount being passed on to the client in the income statement, then the tax deductibility of the latter expense can — based on local tax principles — be unwieldy. This is because the amount cannot be said to be "wholly and exclusively incurred in the production of income" when the chronology suggests that it is incurred after the income is earned. For that expense to be tax-deductible, the LSC may need to rely on section 14X of the ITA, a specific provision covering deductions for expenditures incurred to comply with statutory and regulatory requirements. If, however, the MOM advisory pertaining to passing on of JSS benefits simply represents "soft law" or a moral suggestion, then incurring the expense might not fall squarely within the specific provision focused on compliance with statutory and regulatory requirements. Be that as it may, this may largely be academic because JSS payouts are meant to be tax-exempt; in other words, both the JSS payments and the amount passed on should be disregarded for Singapore tax purposes

A Final Point on Philanthropy

In my previous article,[9] I touched on numerous news reports highlighting the return or donation of JSS payouts by a few large companies in Singapore.

In the case of donations, it is worth mentioning that some donations in Singapore can in fact generate 250 percent tax deduction value. Donors can carry forward unutilized deductions resulting from qualifying donations for five years.

When unused capital allowances and trade losses can be carried forward indefinitely (if the requisite conditions are met), there appears to be no compelling reason why there needs to be a five-year limit for unused donations. This issue is magnified since the JSS-linked donations can be sizeable, with the amount based on a percentage of wages rather than nominal amounts.

If the 250 percent tax deduction rate for qualifying donations reflects a desire to encourage greater charitable efforts, then this period of extreme economic downturn should give policymakers the incentive to strengthen the tax code's support of philanthropy and remove the five-year time limit — introduced nearly two decades ago — once and for all.

[9] Eng Kiat Loh, "Today's Taxes, Yesterday's Terms: Reimagining Old Concepts to Understand a New Normal," *Tax Notes Int'l*, July 27, 2020, p. 513.

Our thought leadership on tax issues

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Today's Taxes, Yesterday's Terms: Reimagining Old Concepts to Understand a New Normal

This was first published in *Tax Notes International* on 27 July 2020.

Some have boldly predicted the death of the physical office, but anecdotal evidence tells me another corporate creation is set to thrive, perhaps more than ever: business jargon. Wikipedia includes the word "reimagine" on its "list of common buzzwords which form part of the jargon of corporate, academic, government, and everyday work and social environments." As many of us in Singapore seek to return to normal life, we can "leverage" our "core competencies" to handle this "paradigm shift," sometimes by "taking a step back."

Just as some long-standing practices like quarantining — which, according to the Centres for Disease Control and Prevention, began during the 14th century as a way to protect coastal cities from plague outbreaks[1] — have been revived during these extraordinary times, I think some very old ideas can help us grapple with several modern happenings in the tax world.

Settling the Score After the Fall

Discussing the violent protests in Hong Kong, a Financial Times article, assertively titled "Beijing Will Have Its Revenge on Hong Kong," referenced the Chinese phrase 秋後算賬 (qiu hou suan zhang) in concluding that the Chinese government will seek vengeance against the region, even if details such as when and how remain unclear[2]. While the literal translation of the phrase is "to balance the books after the autumn harvest," the article explains that the aphorism can be used in many situations, particularly when vengeance is almost certain but the circumstances require a bit of patience before revenge can be sought.

As the world at large grapples with the COVID-19 pandemic, the priorities of the world's tax authorities have had to take a back seat and allow broader economic and health concerns to take center stage. This concession is in keeping with the recommendations advanced by several of the tax field's most influential supranational entities. For instance, the IMF suggested temporarily reducing actions related to tax audits and using simplified procedures for relaxed tax obligations, with a view to resuming enforcement actions post-crisis when warranted.[3]

In this part of the world, the Australian Taxation Office appears to have heeded this suggestion, indicating that in most cases it will pause any new audit activity.[4] Likewise, the Inland Revenue Authority of Singapore (IRAS) has introduced some temporary taxation measures that can be beneficial to taxpayers in many ways.[5] Many of the measures are subject to audit, which ultimately means that the need for businesses to focus resources and attention on tax matters will continue unabated.

[1] Centers for Disease Control and Prevention, 'History of Quarantine' (Jan 10,2012)

[2] Jamil Anderlini, "Beijing Will Have Its Revenge on Hong Kong," Financial Times, Oct. 6, 2019.

[3] IMF Fiscal Affairs Department, "Tax and Customs Administration Responses," Special Series on Fiscal Policies to Respond to COVID-19 (2020)

[4] OECD, "Tax Administration Responses to COVID-19: Measures Taken to Support Taxpayers" (Apr. 21, 2020).

[5] Inland Revenue Authority of Singapore, "Tax Residence Status of a Company and Permanent Establishment."

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Today's Taxes, Yesterday's Terms: Reimagining Old Concepts to Understand a New Normal

For example, in a corporate context, tax residency cannot be unlinked from some sort of in-country presence. Recent IRAS guidance acknowledges this, but it also proposes allowing companies to take a lookback approach to residency.[6] Put simply, if a company was a Singapore tax resident in its 2019 financial year, it can potentially remain a tax resident for its 2020 financial year even if travel restrictions mean that the company cannot hold its board of directors' meetings in Singapore — often a key determinant of residency status.

While the lookback approach is one of several useful measures that can help to alleviate businesses' concerns regarding Singapore tax obligations — specifically, the lookback rule can help companies avoid the tax consequences of losing tax residency status and the attendant tax benefits thereof — the IRAS still expects documentary support to be prepared and maintained.

Consequently, a future tax audit could focus on a company's self-asserted tax residency status, and tardy or non-existent documentation could trigger difficult disputes with the IRAS.

Taxpayers — in particular, businesses with cross-border activities — that unwisely underestimate the importance of managing their tax risks during the pandemic may face the wrath of numerous tax authorities down the road. These risks are especially pronounced because tax administrations around the world have been ramping up efforts to collate and exchange information automatically under internationally agreed protocols such as the common reporting standard.

秋後問斬 (Qiu Hou Wen Zhan)

A phrase that appears to be a predecessor term to — and of which 秋後算賬 (*qiu hou suan zhang*) became a by-product — may also be useful for reimagining a modern tax phenomenon. 秋後問斬 (*Qiu hou wen zhan)* literally refers to implementing capital punishment after the fall season. Apparently, there are several reasons for waiting to carry out punishments until after autumn has passed, including the desire to publicly shame the wrongdoers. After the fall harvest was complete, the largely agrarian populace would have more time to witness morbid public executions, a practice that further humiliated the criminals and may have had a deterrent effect on the general public.

A disconcerting parallel exists in today's world of taxation. Over the last decade, high-profile naming-and-shaming exercises have become the norm. This includes legislatures grilling multinational enterprises about low effective tax rates as well as the sensationalized publication of information obtained as a result of several large-scale data leaks identifying taxpayers who use offshore vehicles and imputing negative motives to those individuals and entities. Typically, the moral aspects of the issues get conflated with the legal facets.

[6] Ibid

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The trend of using the court of public opinion to gather support for tax-related reform looks set to continue. While this is unlikely to have been the intention — given that the level of public discourse on tax matters typically is not intense in the country's traditional media platforms — another example is developing in Singapore. The Jobs Support Scheme (JSS) is a new wage subsidy scheme through which the government of Singapore will fund between 25 and 75 percent of the first SGD 4,600 (approximately $3,300) of gross monthly wages paid to each local employee for a 10-month period. Payments are automatic; employers who do not require wage support and who wish to be excluded from JSS pay-outs can apply to decline the pay-outs.

Numerous news reports have highlighted the return or donation of JSS pay-outs by a few large companies that ostensibly did not need the payments they received[7]. These reports, which include selective naming of the companies in question, have generally commended the corporate altruism displayed but also — perhaps unwittingly — have fostered public discourse and cynicism regarding the program, including questions about whether the automatic nature of JSS pay-outs leads to misuse and should be re-evaluated.

'Striking While the Iron Is Hot'

"Striking while the iron is hot" seems to be the OECD's philosophy in recent years as it bulldozes through fundamental international tax reforms under the umbrella of the base erosion and profit shifting project initiatives, including the latest efforts commonly referred to as BEPS 2.0. This project looks poised to rock the arm's-length principle — a concept that has been in formal existence since the 1920s (a century old!) — but intense political pressure to tax highly digitalized MNEs fuels it on.

Partly in jest, I submit that the linguistically awkward nomenclature of BEPS 2.0, including the use of the term "amount A" to describe a new taxing right focused on profits allocable to market jurisdictions, implies that the OECD itself — let alone the broader business world — is not quite ready for this change.

It may also be tempting for a layperson in Singapore to view such discussions as highfalutin ideas relevant elsewhere or to have a "not in my backyard" mindset about them. But the country's deputy prime minister, Heng Swee Keat, saw fit to publicly pinpoint BEPS 2.0 on several occasions as a key international development that could significantly affect hub economies like Singapore's, thus underscoring the gravity of the issue and its relevance to our country. Indeed, a broad way to characterize Singapore's approach — including its decision to join the inclusive framework for the global implementation of the BEPS project in 2016[8] and its civil servants from the finance ministry being very involved in the ongoing international discussions — may be to call it an outgrowth of the belief that "if you're not at the table, you're on the menu."

[7] Rachel Phua, "COVID-19: More Than 130 Companies Return Jobs Support Scheme Wage Subsidies Worth S$97 Million," Channel News Asia, June 15, 2020.

[8] Singapore Ministry of Finance, "Singapore Joins Inclusive Framework for Implementing Measures Against Base Erosion and Profit Shifting (BEPS)" (June 16, 2016).

Today's Taxes, Yesterday's Terms: Reimagining Old Concepts to Understand a New Normal

However, the BEPS 2.0 discussions could still become more "nuanced," and there may still be time for the OECD and interested countries to "pivot" away from discussions heavily focused on the taxation of profits.

'Picking One's Battles'

"Picking one's battles" is key. The bigger picture, especially the depressing economic outlook with the continuing pandemic, suggests a BEPS 2.0 victory may be hollow. With losses expected to be prevalent, there will be little profit to allocate and thus little for market jurisdictions to tax.

'Death and Taxes'

I end with "death and taxes" — the certainty of which is often noted. While this trite association did not inspire tax professionals to lobby for essential-worker status, I nevertheless find the overly elevated stature of tax risk in today's business climate somewhat unnerving, particularly in times such as these.

In years past, I wrote — perhaps, I admit, with some pride — about how "C suite" executives surveyed globally cited "high taxation" as their top business risk, pushing even the loss of customers into second place. Such inflated sentiments toward tax may need to be normalized over time, but for now they represent a privilege that must come with responsibility for us as tax leaders.

The world today needs businesses to survive; "death from taxes" cannot be allowed to be an outcome of aggressive taxing attitudes. Some form of tax amnesties may even be merited depending on the circumstances.

However, "taxes from death" might be "low hanging fruit" that can provide a "quick win." According to an OECD tax policy study, only four OECD members were still levying recurrent taxes on individuals' net wealth in 2017[9]. The study also pointed out that some countries have shown a renewed interest in net wealth taxes as a way to raise revenue; as revenue from income and consumption-based taxes declines, this call may intensify in the days ahead.

[9] OECD, "The Role and Design of Net Wealth Taxes in the OECD," Tax Policy Studies 26 (2018).

Our thought leadership on tax issues

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Job Support Scheme: Boon for businesses or bane for bean counters?

The Jobs Support Scheme (JSS) is meant to help enterprises retain their local employees during this period of grave economic uncertainty, by way of the Government providing cash subsidies to co-fund between 25% to 75% of the first $4,600 of gross monthly wages paid to each local employee in a ten-month period.

For many businesses, the JSS possibly represented a huge lifeline, with exceptional support being provided during the 'circuit breaker' period where the wage support for the months of Apr and May 2020 were topped-up to 75% for all firms regardless of sector.

An additional sweetener for eligible businesses come in the form of the automatic nature of periodic JSS payouts, whereby application for the scheme is not required. This contrasts with some countries in the region whereby wage support is only possible after cutting through some red tape.

With over 140,000[1] employers benefiting from this significant wage support measure, the scheme obviously has a very wide reach and can therefore affect beneficiaries of differing profiles in a fair number of ways. In the field of accounting and taxation, if some of the implications are not properly dealt with, it can leave a sour taste for the persons involved despite the noble intentions behind the scheme. We discuss some of these considerations next.

Accounting Perspectives

Should JSS payouts be recognised as income for accounting purposes?

As a basic starting point, from an industry perspective, recognition of JSS payouts as income for accounting purposes does not seem to be in doubt, although the questions of when and how remain to be addressed.

In this regard, a response contained within the Inland Revenue Authority of Singapore (IRAS) website to one of the FAQs pertaining to JSS can be instructive in addressing the timing aspect. The clarification is that while the payouts are calculated with reference to wages paid in certain months, they are meant to support businesses during the period of economic uncertainty in which the payouts are received.

Further, the guidance provided within Financial Reporting Standard 20 Accounting for Government Grants and Disclosure of Government Assistance (FRS 20) should be considered, wherein the standard indicates: "Government grants shall be recognised in profit or loss on a systematic basis over the periods in which the entity recognises as expenses the related costs for which the grants are intended to compensate."

[1] https://www.iras.gov.sg/irashome/News-and-Events/Newsroom/Media-Releases-and-Speeches/Media-Releases/2020/Over-140-000-employers-to-receive-$4-billion-in-next-Jobs-Support-Scheme-payout-from-28-May/

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Taken together, the above effectively means that (1) the months in which JSS funds get disbursed (namely April 2020, May 2020, July 2020 and October 2020); and (2) the reference to months such as October and November 2019 to obtain corresponding wage amounts from, serves only to accelerate the JSS calculation and facilitate faster payouts, are, in itself, unimportant in the decision of when the JSS-related income gets recognised for accounting purposes. As also noted in Financial Reporting Bulletin 6 ("FRB 6") issued by the Institute of Singapore Chartered Accountants (ISCA), "[t]he timing and manner in which the grant will be received should not affect the accounting for the grant".

The above should not be wholly surprising given the prevalence of accrual basis accounting over cash basis accounting; however, it bears mentioning that the accounting for JSS should still be applied with some use of judgement. In this context, the Singapore Government meant to co-fund the wages of local employees for ten months by way of the JSS, and for most companies the ten months period of economic uncertainty likely commenced in April 2020 (when the country entered 'circuit breaker' phase). That said, companies in the more affected sectors (e.g., tourism, hospitality, etc) should not be precluded from recognising the JSS-related income earlier, say starting from March 2020 if they are able to justify their economic circumstances and, if required to do so, provide the necessary accounting disclosures in their financial statements.

Is there a choice in the accounting presentation?

Another pertinent accounting question relates to how the JSS-related income ought to be presented. With reference to FRS 20, the grant income can be presented either (1) separately as grant income or under "other income"; or (2) deducted against the salary costs. While ISCA's FRB 6 suggests that greater transparency will be achieved with the first method, ultimately both methods are regarded as acceptable from an accounting standpoint. In other words, this is an area where businesses get to choose. As we turn to discussing certain tax implications subsequently, it may become apparent that according businesses with a choice (of using either method) can result in practical difficulties further down the road.

Tax Perspectives

From a tax practitioner's standpoint, a somewhat surprising corollary of the JSS is that the payouts will be tax-exempt, based on a recent clarification made by the IRAS. This is so when one juxtaposes this expressly stated outcome against the IRAS' guiding principle[2] in general circumstances that grant/payout will typically be taxable if it is given to defray operating expenses. If the authorities see it fit to give legislative force to the above outcome, it is submitted that this baseline (of tax-exempting JSS payouts) can give rise to a number of tax-related difficulties, to which we hope future legislation/guidance materials can seek to address.

[2] https://www.iras.gov.sg/irashome/Businesses/Companies/Working-out-Corporate-Income-Taxes/Taxable-and-Non-Taxable-Income/Tax-Treatment-of-Grants/-Payouts-Commonly-Received-by-Companies/

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The tax deductibility issue

One of these have been mentioned in a previous op-ed (BT, May 26) in which inter alia, a clamour was made for further IRAS clarification to be provided along the lines of allowing (and hopefully, also confirming) the full tax deductibility of the underlying wages in question that get defrayed by the JSS payout. If this is to be allowed, higher tax savings from such full tax deductibility can ensue and potentially enhance fiscal support to businesses. On this note, it would also be harder to appreciate why businesses may wish to adopt the accounting option of presenting JSS grant income in the opaquer manner of deducting the same against the salary costs even if it's an allowed alternative within the accounting rules as discussed above.

This is because in such a setting, there is increased likelihood that businesses may simply take the more intuitive option of deducting the (defrayed/lowered) wage costs for tax purposes rather than the full equivalent and in so doing, indirectly and inadvertently suffer tax on the JSS grant.

The "passing on" issue

Another tax-related difficulty stems from conflating the intended tax-exempt outcome of JSS amounts with behavioural expectations. Such expectations may arise from both the general public (e.g., numerous articles in the Straits Times (Forum page) in recent weeks with titles as manifest as "Managing agents should try to pass on JSS payouts where possible", "Condo managing agents should pass on JSS payouts to clients", "Make firms that don't need wage subsidy payouts return them", etc) as well as the authorities. In the latter case, there is in fact a recent advisory[3] titled "Labour supply companies should pass on the benefits from the Jobs Support Scheme to your clients" issued by the Ministry of Manpower (MOM).

This MOM advisory expresses the awareness that there are companies involved in labour supply services where employees are contracted out to work for their clients, and sets out MOM's general expectation that labour suppliers (with the exception of certain outsourced service providers) should pass on the JSS payouts for such employees to the clients who continue to pay full fees for the employees' contracted services. This is given that the policy intent of JSS is to provide wage support for local employment.

[3] https://www.mom.gov.sg/covid-19/advisory-on-labour-supply-companies#:~:text=Given%20the%20intent%20of%20JSS,for%20the%20employees'%20contracted%20services

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Job Support Scheme: Boon for businesses or bane for bean counters?

Leaving aside the naturally difficult issues of righteous behaviour and the like, it is not even straightforward to realise the outcome of tax exempting JSS payouts in situation(s) where such benefits are to be passed on. To our knowledge, currently[4] this tax exemption outcome is simply stated as a one-liner response[5] to FAQ #10 on the IRAS website section providing JSS-related information as follows: "The JSS payout will be exempt from income tax in the hands of employers." While the brevity and sweeping nature of this statement is unambiguous and no doubt helpful in many general situations, it is clearly insufficient to address situation(s) where JSS benefits are to be passed on.

For example, and in the context of adhering to the above-mentioned MOM advisory, the clients (of the labour suppliers) will not be receiving JSS payouts per se but may instead be receiving service fee rebates from labour suppliers.

Even if such service fee rebates can be causally linked and traced to the underlying JSS payout, the fact that the referenced tax-exemption statement thus far (1) mentions only JSS payout specifically and does not cover any derivative amount; and (2) suggests the need for a legal employer-employee relationship, can cause the tax-exemption outcome to be effectively denied (or at the very least, made contentious) for both the clients and the labour suppliers in this scenario.

In passing, one may also note that the passing on of JSS benefits within this model framework invariably means that the labour supply companies are prepared to be almost fully transparent with their clients with respect to the profit margins they earn on the local employees involved (at least on those earning less than $4,600 of gross monthly wages). It is unclear to us whether the provision of such clarity on the profit margins of labour supply companies constitutes market practice although admittedly this goes beyond the scope of our collective professional expertise.

In closing, with the final JSS payout expected in October 2020 and the earliest set of final corporate income tax returns with JSS impact not due before the end of November 2021, there is likely still time for the authorities involved to address the above issues (and possibly more) with granularity. As we suggest, the issues can indeed be multi-faceted and needs to be carefully thought through and dealt with. Otherwise, and especially for those tasked with accounting and tax responsibilities, it can leave a bitter aftertaste.

[4] At the time of writing, the authors of this article are aware that the Ministry of Finance (MOF) is proposing certain amendments to the Income Tax Act to *inter alia*, clarify the tax treatment of measures announced for COVID-19 support to businesses. Whether the final amendments would be sufficient to fully address the points raised in this article remains to be seen, given that there is an ongoing period of consultation from 20 July to 7 August 2020, and a summary of the main comments received together with the MOF's responses would be published by the end of September 2020.

[5] https://www.iras.gov.sg/irashome/Schemes/Businesses/Jobs-Support-Scheme--JSS-/

Our thought leadership on tax issues

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Using an AAA battery model to power us along

This was first published in The Business Times on 26th May 2020

Last week, my op-ed "Settling the (Tax) score after the fall' (BT, May 22) described how a theme of vengeance could end up hurting many taxpayers especially if they slacken in their tax affairs during these trying times. Some have told me that the tone of the article was 'scary' even if it represents some 'hard truths' in the world of taxation. As we prepare to exit the circuit breaker, here is a more benign piece aimed at spreading positive vibes especially in the tax field.

The fourth round of Covid-19 support measures, which Deputy Prime Minister and Finance Minister Heng Swee Keat will announce in a statement on Tuesday afternoon, has been named "Fortitude". Those of more pristine memory and/or greyer hair might recall off-Budget measures of some yesteryears, but many will definitely know that having four sets of Budget measures in less than four months is unparalleled.

As we eagerly await the announcement of new or improved headline support measures, there is also merit in reflecting on how some of the (already) "older" Budget 2020 measures could be enhanced. Take for instance, the Jobs Support Scheme (JSS). One of the flagship items that emerged from the Solidarity Budget last month was the enhancement to the JSS, whereby 75 per cent of gross monthly wages for all sectors (for the first S$4,600 of wages paid to each local employee in April 2020) receives government funding.

The less obvious corollary of the JSS is that these payouts will also be tax exempt, based on a recent clarification by the Inland Revenue Authority of Singapore (IRAS). This should bring additional cheer overall, but if further clarification can be provided along the lines of confirming the full tax deductibility of the underlying wages in question (that are defrayed by the JSS payout), that would be even more helpful. If so the JSS benefits go beyond the impact of subsidizing a sizable percentage of wages but can be tax-affected in a positive way as well.

Part IV of Ongoing Series of Budget Measures

To illustrate this in a simplified example, a business with no revenue this year, wages of $100 and JSS payout of $75 will simply not pay income taxes for the year. However, if the $100 of underlying wages can be claimed in full as a tax deduction, this can provide tax savings in future years.

Several news reports have also emerged in recent weeks of large companies returning or donating their JSS payouts. While an independent means-testing approach may be undesirable in administering JSS given the swift manner in which the cash support has been dispensed, there may be merit in evaluating whether the timing of disbursements could be tiered by the size of the businesses.

In broad terms, the cash disbursements for the largest companies (such as government-linked companies, multinationals with revenue exceeding a certain threshold) can be "suspended" for a pre-defined period. Upon lapsing of such period or an earlier irrevocable option made to disentitle themselves of the JSS, where no call for such funds by these companies have been made, the unused funds will return to the general pool to support other businesses in greater need.

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Using an AAA battery model to power us along

This has the potential of reducing administrative difficulties for such companies to first receive and then to return the money, as well as spare some of them from having to demonstrate genuine altruism from showmanship (for instance, some donations can generate 250 per cent tax deduction value whereas a plain return of JSS payouts to the government should be simply tax-neutral)

Treasure Automatic Measures

Amid the plethora of pandemic news, including of relief measures different countries have taken in support of businesses and taxpayers, we sometimes take for granted the nature of Singapore's support philosophy. The automatic nature of many of Singapore's measures have been somewhat underrated, and a quick glance across the region for comparison can elucidate.

In this stressful time where many businesses have had to comply with plenty of new regulations at very short notice, the automatic (in the real sense, since no prior application is required) extension of various tax filing deadlines by the IRAS can be highly comforting where there are actually some compliance matters that can be dealt with slightly later rather than at immediate short notice basis. In Australia, while tax lodgement obligations have also been deferred, this outcome was reportedly due to the Australian Tax Office (ATO) cracking under pressure after representations by industry bodies. In other words, the ATO's initial plan was not to allow for automatic deferral but to rely on some form of applications being made.

Malaysia's wage subsidy scheme to support businesses in paying wages to their employees bears some similarity to our JSS. However, the Malaysian version of the wage subsidy is not automatic but requires businesses to apply for it. The scheme is said to be "subject to fund availability and government decisions", and in some cases applicants are eligible only if they can prove 50 per cent or more decline in their comparative revenue numbers. This means that clearly additional administrative efforts would be needed if a Malaysian business wants to benefit from the scheme and there will be time pressures involved as the scheme is subject to fund availability (and funds may run out).

Take Action

The second 'A' of the AAA battery reference relates to action. In introducing a slew of tax measures this year, observers may note that some of these require the taxpayers to make judicious tax choices. Often, once taken, the choice made cannot be reversed. For example, a change was announced this year which reinstated the possibility for taxpayers to carry-back (to supplement the usual mode of carrying-forward on a generally unlimited but conditional basis) some tax losses by up to three years.

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Using an AAA battery model to power us along

Before this change, the carry-back option was limited to the qualifying amount being used only to reduce tax payable in the preceding year. It bears noting that a choice to carry-back qualifying losses by up to three years will not necessarily always yield the better tax outcome compared with the one-year-carry-back approach. In this regard, there will be obvious benefit for taxpayers who take proactive action in simulating the tax outcomes of the various options before making their final choice, especially since the IRAS now also allows carry-back claims to be made by taxpayers much earlier based on estimated figures to facilitate faster tax refunds.

In passing, I describe another new tax measure announced this year which relates to the ability to fast-track certain tax depreciation claims with an attractive 75 per cent claim in the first year, a much higher rate than the usual 33.3 per cent claim. While the effect may be largely timing in nature, in such volatile times when the "cash is king" mantra reverberates even more, taking proactive action and evaluating one's tax choices conscientiously than passively accepting the norm could yield better tax outcomes.

Plan Ahead

The last 'A' aimed at energising us is to look ahead, by anticipating (and preparing for) subsequent tax authority scrutiny and cultivating a planning mindset in relation to tax matters as businesses seek to move forward. While Singapore has consistently been rolling out tax measures to support businesses, proactively reviewing your organisation's profile/ tax attributes and planning should certainly help.

Government funds and support measures can only go so far - tax destiny should remain in one's own hands. For example, as lending/borrowing activities become more intense in this economic climate, your organisation may wish to think about how some of its anticipated financing activities can become more tax-efficient (for example, to get more interest deductions).

Such discourse can go beyond third-party financing situations, but pure intra-group financing plays will certainly also need to take into account business commerciality and substance issues as tax authorities across the world similarly up their game in the days ahead.

Our thought leadership on tax issues

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Settling the (tax) score after the fall

This was first published in The Business Times on 22nd May 2020

During the violent Hong Kong protests, a Financial Times article (assertively titled "Beijing will have its revenge on Hong Kong") referenced the Chinese phrase 秋後算賬 (*qiu hou suan zhang)*, in concluding that vengeance by the Chinese government will be forthcoming even if the questions of when and how remain unclear.

With the literal translation of the phrase being "to balance the books after the autumn harvest", that article highlights this Chinese aphorism that can be used in many situations, particularly where the vengeance aspect is almost certain but an element of patience is required in the circumstances.

The Message for Relevant Authorities and Taxpayers

As the world at large grapples with the Covid-19 pandemic, priorities of some regulatory bodies have had to take a back seat as broader economic and health concerns (rightly) take centre stage. In the taxation field, leading multilateral organizations influential in this space, such as the United Nations (UN), the Organization for Economic Co-operation and Development (OECD) and the International Monetary Fund (IMF), have been quick to provide guidance materials and recommendations that can help frame the way forward for tax authorities in implementing interim policies and measures. For instance, the IMF suggested a temporary reduction of tax-audit actions, as well as setting up simplified procedures associated with relaxed tax obligations with a view to applying enforcement actions post-crisis where warranted.

Closer to home, the Australian Taxation Office (ATO) appears to have converged towards this suggestion by reportedly indicating that - with respect to audits - it will in most cases pause any new audit activity.

While there is currently no similar messaging in Singapore relating to the pausing of new tax audit by the authorities, the Covid-19 (Temporary Measures) Act passed by Parliament on April 7 could provide some useful parallels for the relevant authorities to consider.

According to the Ministry of Law, this new legislation is meant to impose a moratorium on certain legal actions, so that parties have time to negotiate and work out their differences without the threat or uncertainty of legal proceedings. The prescribed period of relief under this legislation will be six months in the first instance.

This is a timeframe which could prompt questions as to whether the recently announced automatic three-month deferment of certain income tax payments could be doubled for general alignment and, importantly, provide stronger relief to taxpayers.

Furthermore, the legislation in its current form is unlikely to statutorily preclude the Inland Revenue Authority of Singapore (IRAS) from initiating legal action on a taxpayer deep in arrears. In the interest of broadening relief for taxpayers, there may be a case for the scope of the Covid-19 (Temporary Measures) Act to be expanded to include IRAS-tax-payer interactions and accord a moratorium to some degree.

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Settling the (tax) score after the fall

Such a move could foster certainty, even if over the years the IRAS has often been regarded as a reasonable body by many taxpayers and one which is unlikely to embark on vexatious litigation. Settling the (tax) score after the fall.

For taxpayers, it will be important to realize that even as tax compliance and tax payment deadlines get deferred, the hard truth is that the need to focus resources and attention towards taxation matters should remain largely unabated.

For example, in a corporate context, the concepts of tax residency status and permanent establishment (PE) typically cannot be de-linked from some sort of in-country presence. Recent IRAS guidance acknowledges this, but proposes to allow a "look-back" kind of approach. Put simply, in the context of tax residency status, if a company was regarded as a Singapore tax resident with reference to its 2019 financial year, it can potentially still be so for its 2020 financial year, even if, due to travel restrictions, it is not able to hold its board of directors' meeting in Singapore - often an important determinant in residency status discussions.

The same "look-back" spirit applies in the context of foreign companies seeking to prevent PEs from being created because of unplanned presence of their employees in Singapore. While the "look-back" kind of approach is definitely part of useful measures introduced that can alleviate businesses' Singapore tax concerns - and avoid unwanted tax consequences such as losing tax residency status and the attendant tax benefits - in return, the IRAS expects documentary support to be prepared and maintained. In other words, a future tax audit could very well potentially focus on a corporate's self-asserted tax residency status, where tardy requisite documentation - or worse, a lack thereof - can trigger difficult disputes with the IRAS.

And not least, taxpayers - particularly businesses with cross-border activities - who unwisely choose to underestimate the importance of managing their tax risks during the difficult pandemic situation may face the wrath of numerous tax authorities down the road. This is especially so since globally, tax administrations have, in recent years, been ramping up their abilities to collate and exchange information automatically under internationally agreed protocols such as the Common Reporting Standards (CRS).

Message for a Supranational

In the decade or so preceding the current pandemic, the OECD has been especially exemplary in shaping international tax developments. Under the OECD/G-20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), over 135 countries have been collaborating to put an end to tax avoidance strategies that exploit gaps in tax rules to avoid paying tax.

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Settling the (tax) score after the fall

In framing that "BEPS due to multinational enterprises exploiting gaps and mismatches between different countries' tax systems affects all countries", action plans have been developed and implemented at an unprecedented rate, to foster international collaboration to end tax avoidance. With a view towards ensuring everybody pays their fair share of taxes, the BEPS-related initiatives were set to result in the most fundamental change to the international tax rules since the 1920s.

The latest incarnation of these initiatives (widely labelled BEPS 2.0) has been the potential introduction of various new concepts such as a new taxing right (Amount A, in OECD vernacular) focused on profits allocable to market jurisdictions; a fixed return for certain distribution and marketing activities (Amount B, again in OECD lingo) which aims to standardize the remuneration of distributors, etc.

In the context of this article, these OECD initiatives could collectively culminate in the settling of scores after years and decades of perceived low tax incidence of many large multinationals. As a learned commentator posits, "BEPS is the revenge of source countries (recast as 'market' jurisdictions)".

Singapore, as an international business hub location without a large domestic market, stood to become a "net" loser in the face of such fundamental international tax reform. As Minister Indranee Rajah puts it (in her address at a digital tax conference on Oct 4, 2019), "if BEPS 2.0 focuses excessively on allocating profits towards where the market is governments that have previously invested in building a conducive business environment might find less motivation to continue doing so". There can be considerable disincentive for our nation if this eventuates.

Beyond the economic interests of hub locations like Singapore, the Covid-19 pandemic should however prompt a rethink of the BEPS 2.0 measures. At the very least, the question ought to be whether the OECD's openly stated aim of finalizing these "by the end of 2020" still resonates, or that this timing is somehow not ripe, with the potential to dis-tract some member countries of the Inclusive Framework in safeguarding lives and livelihoods.

One reason is that thus far, the BEPS-related initiatives have largely been conceived to deal with corporate profits. In a post-pandemic world where losses (rather than profits) for many businesses could be pervasive, it remains to be seen whether an Amount A approach that allocates large losses (which in theory, defer taxes) to market jurisdictions will be viewed enthusiastically by these same countries.

A final reason for why the time may not be ripe to introduce these BEPS 2.0 measures is one that is neither economic nor tax-related, but a linguistic one - if the erudite tax minds at the OECD have not quite found a way to describe these novel BEPS 2.0 concepts using more intuitive commercial lingo (and having to use somewhat awkward nomenclature like Amount A and Amount B), it is quite possible that the broader business world is just not ready.

Our thought leadership on tax issues

Author: Yvonne Chua (Partner, GST) & Amy Sim (Senior Manager, GST)

A GST Perspective: COVID-19 and Potential Opportunities to Optimise Cashflow

More than three million people worldwide have been infected with COVID-19 and the number of confirmed cases in Singapore have crossed the 20,000 mark as at the beginning of May 2020. The circuit-breaker period has been extended to 1 June 2020 and tighter circuit breaker measures such as closing of more work places were also implemented to curb the spread. While it was announced that the Government will be easing some of the circuit breaker measures, the fight against the virus will be a long battle.

During such testing times, businesses especially the Small and Medium-sized Enterprises with limited resources are more vulnerable than ever. When economies eventually reopen, many businesses may also struggle to recover from the crisis.

Improving Cashflow from a GST Perspective

Hence, it is critical for businesses to reduce their costs and find ways to improve their cash flow to ensure that they stay financially viable to survive the crisis. From a GST perspective, there are opportunities for businesses to optimise cashflow and to improve the financial liquidity of businesses. While these are not new, it is time for businesses to reconsider their options.

* Please note that the options laid out below are subject to conditions and/or approval from the Inland Revenue Authority of Singapore (IRAS).

A. Apply for GIRO or request for an instalment payment plan

- Businesses that were previously not on GIRO may wish to consider applying for GIRO for the payment of GST as deductions are made on the 15th of each month, after the due date for payment which means an additional 15 days of cashflow advantage as compared to other modes of payment (e.g., cheque payment, internet banking fund transfer).
- Further, businesses that face difficulties in paying the GST may also consider approaching the IRAS to discuss the possibility of an instalment plan for the payment of GST.

B. Change the filing frequency of GST returns

- Given that most businesses are by default on a quarterly filing frequency, businesses can consider filing their GST returns on a monthly basis to get their GST refunds faster if they are on net GST refundable positions.

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C. Change the basis of input tax claims

- Businesses may wish to make their input tax claims based on the date of receipt of the invoices, rather than the processing or posting date of the invoices into the accounting system, which may fall into the next prescribed accounting period and hence, delaying their input tax claims. However, note that the basis of claiming input tax must be applied consistently for all GST returns.

D. Apply for bad debt relief

- With the current situation, businesses may not be able to recover money that is owed to them by their customers. In such cases, businesses may consider applying for bad debt relief for the return of output tax previously accounted for and paid by them to IRAS.

E. Apply for special GST schemes

- Businesses importing goods into Singapore usually have to pay GST upfront on imports and subsequently claim refunds via the submission of their GST returns. There are some special GST schemes [e.g., Major Exporter Scheme (MES), Import GST Deferment Scheme IGDS)] for which businesses can consider to alleviate cashflows as GST is suspended at the point of the importation of goods. This is particularly relevant for businesses that import a substantial amount of goods into Singapore.
- There are also other schemes that are designed to improve the cashflow of businesses in specific industries [e.g. Approved Import GST Suspension Scheme (AISS) for businesses in the aerospace industry or the Approved Contract Manufacturer and Trader (ACMT) Scheme for contract manufacturers].

F. Apply for GST Group registration

- Companies within the same group may consider applying for GST Group registration as supplies made between members of the group are disregarded for GST purposes and hence, helps to improve cashflow for the group. This option should be considered if there are substantial intra-group supplies made between companies within the group.

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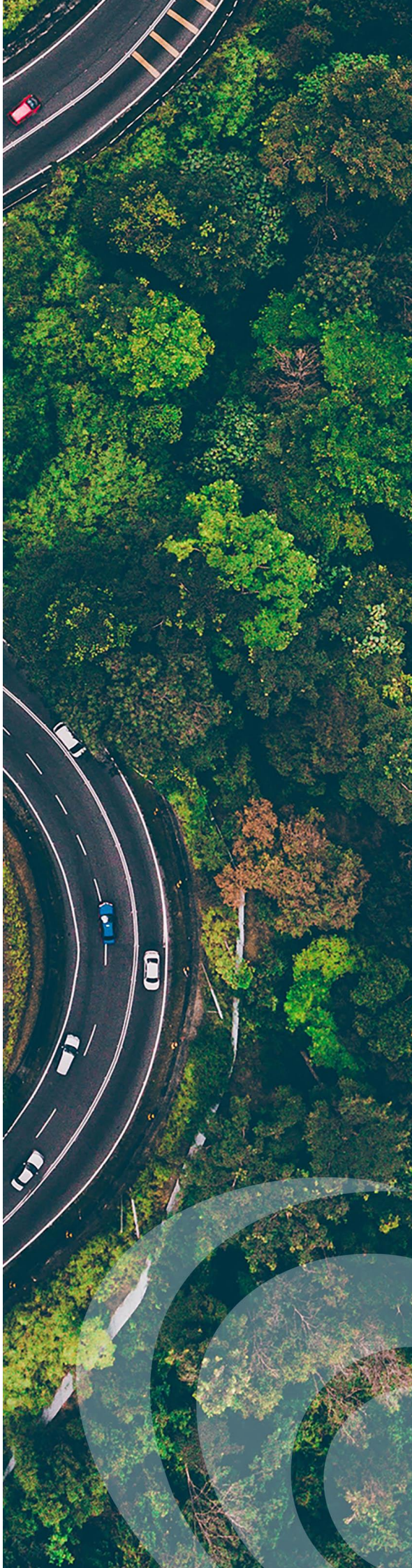

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