On 23 March 2017, the Monetary Authority of Singapore (MAS) issued a consultation paper¹ on the proposed framework for Singapore Variable Capital Companies (S-VACC) and a draft S-VACC Act.

Executive summary

This tax alert summarizes key aspects proposed by the MAS in the consultation paper and the draft S-VACC Act.

Singapore's reputation as an Asian fund management hub is well documented. In 2015², Singapore's assets under management (AUM) grew by 9% to S$2.6 trillion and the number of registered and licensed fund managers grew to 628. The factors that have contributed to the astronomical rise of Singapore's asset management sector include a stable, supportive government; a favourable and clear tax system; a strong legal system; and a great place to live, work and play. These pillars are underpinned by one solid foundation – long-term vision. Singapore has always looked ahead in a bid to invent its future.

While Singapore's dominance in Asia as a fund management hub cannot be denied, many funds distributed and managed from Singapore are domiciled in Luxembourg, the Cayman Islands and Ireland. One key reason for this is Singapore's legal and tax framework for fund vehicles. A Singapore fund can be set up as a Company, a limited partnership or a unit trust. The current corporate law requirements and tax rules for each of these vehicles have certain limitations which have limited the number of funds that could have been set up in Singapore. The addition of the S-VACC, a flexible corporate form fund vehicle, to Singapore's portfolio of vehicles provides the fund industry with a vehicle that is tailor-made to address many of these limitations.

Variable capital corporate form funds have been successfully legislated by several countries. Most notably, Luxembourg, Ireland, the Cayman Islands and the United Kingdom each offers a variable capital corporate form fund. In 2016, Hong Kong also issued a legal, regulatory and tax framework for an open-ended fund company. The MAS has based the draft S-VACC Act on international best practices established by these jurisdictions.

While Singapore is looking to provide its fund industry a shot in the arm, the tax treatment accorded to the S-VACC will play an important role in determining whether the S-VACC will be a success. The consultation paper does not include proposals on how an S-VACC may be taxed. The MAS has requested for comments on the consultation paper and the draft S-VACC Act by 24 April 2017 and has welcomed feedback from the industry on tax aspects.

² MAS 2015 Singapore Asset Management Survey
Key features

For an S-VACC

► S-VACCs will be governed by a new S-VACC Act to be administered by the Accounting and Corporate Regulatory Authority (ACRA).

► An S-VACC structure can only be used for a Collective Investment Scheme (CIS), as defined by the Securities and Futures Act (Cap 289) (SFA).

► S-VACCs can be set-up as open-ended or closed-ended funds.

► Umbrella funds / sub-funds with segregated assets and liabilities can be created within the S-VACC as separate “cells”. Each cell will be registered with the ACRA but will not have an independent legal personality.

► Re-domiciliation of equivalent foreign corporate form funds, as S-VACCs, will be permitted.

For Investors in an S-VACC

► An S-VACC will not be required to disclose its register of shareholders to the public.

► S-VACCs will be allowed to freely redeem shares and pay dividends out of capital.

► Redemption of shares and capital reduction must be carried out at the net asset value (NAV) of the S-VACC. However, limited exceptions apply.

Governance and operational aspects

► An S-VACC will have to be managed by a licensed, regulated or a specified exempted fund management company.

► An S-VACC must have at least one Singapore resident director and one director that is also a director of its fund manager. Additional requirements have been proposed for Authorised Schemes (i.e., a scheme for retail investors).

► An S-VACC must have its registered office in Singapore and a Singapore-based company secretary.

► For Authorised Schemes and Restricted Schemes (i.e., a scheme for accredited investors), the S-VACC must have an approved custodian.

► The MAS will ensure that S-VACCs comply with Anti-Money Laundering and Countering Financing of Terrorism requirements.

On the tax front, the consultation paper states that the S-VACC structure is expected to act as a platform for fund managers to anchor their substantive operations in Singapore, where control and management will be executed from Singapore. The MAS is currently studying the tax regime for S-VACCs, including exploring the feasibility of extending the current fund vehicle tax schemes to S-VACCs.

Comments

The S-VACC has the potential to be an exciting addition to Singapore’s fund ecosystem as long as the tax treatment, internationally and in Singapore, supports the MAS’s intentions for introducing the vehicle.

Tax aspects

Every fund structure aspires to be tax-neutral as investors should not be penalised for pooling their investments in a fund vehicle set up in a location that offers robust commercial, economic, regulatory and tax advantages.

Two fundamental tax aspects of every fund structure are:

► Taxation of the fund vehicle in the country where it is set up; and

► Taxation of the fund vehicle in the country where it invests.

Taxation of the S-VACC in Singapore

As the MAS evaluates the tax regime for the S-VACC, it will be helpful to learn from the tax experiences of similar vehicles in Luxembourg, Ireland, the Cayman Islands and the United Kingdom.

In Luxembourg, for instance, corporate form funds with variable capital, known as SICAV (Société d’Investissement à Capital Variable), are not liable to corporate income or capital gains tax. In Ireland, while in theory Irish Collective Asset-Management Vehicle (ICAV) are liable to tax, they are exempt from tax by virtue of being authorised by the Central Bank of Ireland. These measures were put in place to ensure that the fund vehicle does not suffer tax on in its income in its country of incorporation in addition to the tax paid in the country where the income is sourced.

In our view, for an S-VACC to be a compelling choice, it would need to be eligible for Singapore’s existing fund tax incentive schemes pursuant to sections 13R or 13X of the Income Tax Act (ITA) such that its income is
exempt from Singapore tax so long as the conditions of
the relevant fund tax incentive scheme are met.

However, as these schemes were designed to apply to a
company, a partnership or a trust, one will need to
consider whether some of the conditions of these
schemes can be applied “as is” to an S-VACC.

► For example, the minimum fund size condition of
S$50 million and the minimum local business spend
of S$200,000 under the section 13X fund tax
incentive scheme should ideally be applied at the
level of the S-VACC itself rather than each cell
within the S-VACC. This is consistent with the
approach adopted with respect to unit trusts.
Further, multiplication of the economic conditions
by the number of cells in the S-VACC would make
the section 13X fund tax incentive commercially
unviable for many S-VACCs.

► Another example would be the application of
financial penalties on non-qualifying investors
under the section 13R fund tax incentive scheme.
Generally, section 13R penalises certain investors if
they (alone or with their associates) own interest in
a section 13R approved company in excess of a
prescribed threshold. Whether this rule (as well as
the related association tests) should be applied at
the level of each cell or at the level of the S-VACC
will need to be carefully considered.

The key will be to apply Singapore’s fund tax incentive
schemes to S-VACCs in a fair and consistent manner.

If an S-VACC does not qualify for a fund tax incentive
scheme, or fails to meet the conditions of the scheme, its
income should be subject to tax in Singapore in
accordance with the existing tax legislation.

Taxation of the S-VACC internationally
Treaty benefits

Singapore has an extensive tax treaty network,
especially in the Asia-Pacific region. The success of the
S-VACC will, at least in part, depend on whether an S-
VACC can access Singapore’s treaty network.

Treaty partners define and interpret whether an entity
should be treated as eligible for tax relief in accordance
with the relevant tax treaty as well as local tax rules and
practices. In general, to qualify for relief under a treaty:

► An entity must be a person who is a resident of at
least one of the contracting states to the treaty.

► To be considered as a resident of a contracting
state, an entity must be ‘liable to tax’ in that state
under the laws of that state. A treaty partner will
generally demand a certificate of residence (COR)
issued by the relevant authority in the jurisdiction
in which an entity claims to be tax resident.

It is therefore imperative that an S-VACC is considered
to be a “person resident in Singapore”. If not, an S-
VACC could be faced with higher withholding taxes in
the country where its income is sourced. The
Luxembourg SICAV as well as the Irish ICAV have faced
this issue from some tax treaty partners. It is important
to note that the OECD Model Convention with respect to
Taxes on Income and Capital as well as the UN Model
Double Taxation Convention state that for the purposes
of each Model Convention, the term “person” includes a
company and the term “company” means any body
corporate or any entity that is treated as a body
corporate for tax purposes.

As per the draft S-VACC Act, an S-VACC is included in
the definition of “company”. Section 2(1) of the ITA
defines the term “person” to include a company.
Further, the term “resident in Singapore”, in relation to
a company is defined in the ITA to mean a company or
body of persons the control and management of whose
business is exercised in Singapore.

Therefore, if an S-VACC is considered to be a company
under the ITA and is able to demonstrate that its control
and management is exercised in Singapore, it may be
able to access Singapore’s tax treaties.

It will be important for the Inland Revenue Authority of
Singapore (IRAS) to be willing to issue a COR to S-VACCs
if the place of its control and management is indeed in
Singapore. In our experience, Singapore companies
under the section 13R and 13X schemes that are
controlled and managed in Singapore have been able to
obtain CORs from the IRAS and have successfully
accessed Singapore’s tax treaties. We expect Singapore
to continue to support its taxpayers, including S-VACCs
in this regard and where required, engage foreign
competent authorities under the Mutual Agreement
Procedure article of the relevant tax treaty.

Base Erosion and Profit Shifting (BEPS)

Action 6 of the BEPS Project aims to counter the abuse
of tax treaties by preventing the granting of treaty
benefits in inappropriate circumstances. Action 6
prescribes a specific anti-abuse rule (the limitation of
benefit rules) and a general anti-abuse rule (the principal
purposes test). Countries will adopt these rules by
signing a Multi-lateral Instrument (MLI). As a BEPS
Associate, Singapore is committed to certain ‘minimum
standards’, which includes Action 6. It will be interesting to see how an S-VACC is viewed from an Action 6 and MLI perspective. One view is that an S-VACC (which will be managed by a Singapore fund manager) as the pooling and/or investment vehicle adds substance in Singapore as compared to a structure where pooling takes place outside Singapore. In any event, it remains important to document the commercial rationale for adopting a particular fund structure.

Other tax aspects
Goods and services tax (GST) and withholding tax

If an S-VACC is granted an approval under a fund tax incentive scheme, apart from corporate tax, in our view, it must also be allowed to claim the other benefits under the scheme, including GST remission and exemption from withholding tax obligations on certain payments.

Re-domiciliation and conversions

While the consultation paper has referred to the potential re-domiciliation of foreign corporate form funds, as S-VACCs, there is no mention of whether the existing Singapore fund vehicles could be converted into an S-VACC. To encourage immediate use of S-VACCs once enacted, in our view, conversion of existing fund vehicles into S-VACCs should be permitted. Further, both re-domiciliation and conversion should be allowed in a tax-neutral manner.

Stamp duty

In our view, the issue, redemption or repurchase of shares of an S-VACC should not attract stamp duty.

Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standards (CRS)

In the absence of specific FATCA / CRS provisions for S-VACC structures, an analysis of similar provisions would have to be made to determine their FATCA / CRS obligations. In practice, given that similar structures exist in trust form in Singapore as well as in company form overseas, reliance may be placed on existing analysis for similar structures.

Transfer pricing

The ITA defines the term “related party” in relation to two distinct persons. As each cell within an S-VACC is not a distinct person, one would need to analyse whether transactions between two or more cells within an S-VACC would need to adhere to the arm's length principle and transfer pricing documentation under the ITA.

Tax compliance obligations

To reduce administrative burden, each S-VACC should be allowed to file a single income tax return rather than a return per cell within that S-VACC. The IRAS should also agree that non-resident investors in an S-VACC are not required to file a tax return in Singapore solely on account of having invested in shares of an S-VACC.
For further information, please contact one of the following or your usual EY contact:

Amy Ang  
Partner, Financial Services Organisation Leader  
Ernst & Young Solutions LLP  
+65 6309 8347  
amy.ang@sg.ey.com

Desmond Teo  
Partner, Financial Services Tax and International Tax  
Ernst & Young Solutions LLP  
+65 6309 6111  
desmond.teo@sg.ey.com

Stephen Bruce  
Partner, Financial Services Tax  
Ernst & Young Solutions LLP  
+65 6309 8898  
stephen.bruce@sg.ey.com

Louisa Yeo  
Partner, Financial Services Tax  
Ernst & Young Solutions LLP  
+65 6309 6479  
louisa.yeo@sg.ey.com

Helen Tindle  
Executive Director, Financial Services Tax  
Ernst & Young Solutions LLP  
+65 6309 6354  
helen.tindle@sg.ey.com

Mriganko Mukherjee  
Director, Financial Services Tax  
Ernst & Young Solutions LLP  
+65 6309 8013  
mriganko.mukherjee@sg.ey.com

Tan Peh Huang  
Director, Financial Services Tax  
Ernst & Young Solutions LLP  
+65 6309 8287  
peh-huang.tan@sg.ey.com