Malaysia

Country M&A Team

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1. Introduction

1.1 General Comments on M&A in Malaysia

This chapter details the main issues that are relevant to both buyers and sellers on the transfer of business or shares in a Malaysian company.

In Malaysia, there is no statutory concept of “merger” and the mode of a merger typically involves an acquisition of shares or business assets (and liabilities) of another company. When structuring M&A transactions in addition to commercial considerations, income tax (including impact on tax incentives) and stamp duty implications should be considered. Non-tax considerations, such as exchange control and foreign equity participation requirements may also impact the transactions.

1.2 Corporate Tax

Malaysia operates a unitary tax system on a territorial basis. Tax residents of Malaysia, whether corporate or individuals, are taxed on income accruing in or derived from Malaysia or received in Malaysia from outside Malaysia. However, resident companies (except for those carrying on banking, insurance, sea or air transport operations) and resident individuals are exempted from income tax on foreign-sourced income remitted to Malaysia. Non-residents are only taxed on income accruing in or derived from Malaysia.

The corporate tax rate for resident and non-resident corporations (including branches of foreign corporations) has been reduced to 26% for year of assessment (“YA”) 2008. The corporate tax rate will be further reduced to 25% for YA 2009 and subsequent years of assessment. However, companies resident in Malaysia with paid-up capital not exceeding RM2.5 million are subject to income tax at the concessionary rate of 20% on chargeable income up to RM500,000. The remaining chargeable income will be taxed at the prevailing corporate tax rate.

The basis of income assessment is on a current year basis and a self-assessment system of taxation was introduced in stages, starting with companies, in the year 2001.

There is no capital gains tax regime in Malaysia. The disposal of shares will not be taxable if the disposer is not in the business of trading in shares. Gains derived from the ordinary course of business would be treated as ordinary income and subject to tax at the prevailing corporate tax rate.

- Taxation of Dividends

  Malaysia has an imputation system of taxing dividends. The ability of a company to pay dividends to a shareholder depends on the availability of tax franking credits (see Section 108 credit) and its distributable reserves. If the company does not have sufficient franking credits (which is the amount of income tax paid by the company less the amount already used to frank payments of dividends), any dividend paid would be subject to tax at the current rate of 26%. Such tax paid is not creditable against any future tax liability of the company.

Malaysia has however, introduced the single-tier tax system with effect from 1 January 2008 to replace the above imputation system. Companies which do not have credit balances in their Section 108 account as at 31 December 2007 will pay dividends under the single-tier tax system.

Companies which have unutilised Section 108 tax credit balances as at 31 December 2007 are given a 6-year transitional period (from 1 January 2008 to 31 December 2013) to utilise the Section 108 credits for payment of franked dividends. These companies will pay dividends under the single-tier tax system once their Section 108 account is depleted or latest by 31 December 2013 even though they have not yet fully utilised their Section 108 tax credit balances.

A company may make an irrevocable election to disregard its Section 108 balance and pay dividends under the single-tier tax system anytime during the transitional period.

Under the imputation system, Malaysian-sourced dividends received by shareholders are deemed to have suffered tax at source at the corporate tax rate (currently 26%) by the paying company. If there are expenses incurred in deriving such dividends, these expenses are tax deductible and may result in the shareholders receiving a tax refund upon filing a tax return.

With the introduction of the single-tier tax system, dividends payable to shareholders under the single-tier tax system are exempt from Malaysian income tax in the hands of shareholders.

Exempt income, generated from offshore income or tax incentives (such as pioneer income) may be distributed to the shareholders without having to satisfy the above-mentioned franking requirement. Notwithstanding the introduction of the single-tier tax system, exempt dividends will continue to be paid out as exempt dividends.

Where dividends are paid out of tax-exempt profits, such dividends are not subject to tax in the hands of the shareholders.

There is no withholding tax on dividends paid by Malaysian companies.

1.3 Withholding Tax

The Malaysian income tax legislation provides for withholding tax to be deducted at source on certain payments made to non-residents. The withholding tax rates are as follows:

	Non-treaty rate %	Treaty rate %
Interest	0-15	0-15
Royalties	10	0-10
Management / Technical fees*	10	0-10
Rental of moveable properties	10	0-10

**Effective from 21 September 2002, payments to non-residents in respect of management / technical services rendered outside Malaysia will not be subject to withholding tax.*

Malaysia has a comprehensive network of double tax treaties which may reduce the withholding tax rates on the above payments made to a resident of a treaty country.

Malaysia also imposes withholding tax on payments made to non-resident contractors in respect of services rendered in Malaysia at the following rates:

- 10% of contract payment on account of tax which is, or may be, payable by the non-resident contractor; and
- 3% of contract payment on account of tax which is, or may be, payable by employees of the non-resident contractor.

It is generally the view of the Malaysian tax authorities that reimbursement or disbursement of out-of-pocket expenses to non-residents in respect of services rendered by the non-residents in Malaysia, or the rental of moveable properties from non-residents, will be considered as part of the contract value and should be subject to withholding tax.

1.4 Goods and Services Tax / Value Added Tax

Currently, Malaysia does not have a value added tax (VAT) system. However, the Government has proposed to implement a consumption tax system based on the value-added model to be known as Goods and Services Tax (GST). GST is proposed to replace the existing consumption taxes comprising sales tax and service tax. Currently, there has been no indication as to when GST will be implemented.

Based on the discussion paper issued by the Government, it is proposed that the transfer of a going concern is disregarded for GST / VAT purposes on the basis that it is neither a supply of goods nor services.

Currently, the following indirect taxes may be imposed on goods and services, as the case may be:

- import duties at specific rates, ad valorem rates (up to 60%) or composite rates, on dutiable goods imported into Malaysia;
- sales tax at specific rates or ad valorem rates (5% and 10%) on taxable goods that are manufactured in, or imported into, Malaysia;
- excise duties at specific rates, ad valorem rates (up to 105%) or composite rates, on goods subject to excise duty that are manufactured in, or imported into, Malaysia; and
- service tax at 5% on taxable services provided by taxable persons, which are prescribed by way of regulations.

1.5 Stamp Duty

Malaysia imposes stamp duty on chargeable instruments executed in certain transactions. In a stock deal, Malaysian stamp duty is payable at the rate of 0.3% on the consideration paid or market value of the shares (whichever is higher). In an asset deal, stamp duty ranging from 1% to 3% is payable on the market value of the dutiable properties transferred under the instrument. Stamp duty is payable by the buyer.

Specific exemptions from stamp duty are available provided stipulated conditions are met (see section 2.4.3).

1.6 Capital Gains Tax

There is no capital gains tax regime in Malaysia.

Real property gains tax (RPGT) is a form of capital gains tax. Under the RPGT Act 1976, RPGT is charged on gains arising from the disposal of real property situated in Malaysia or shares in a real property company (RPC). Depending on the period of ownership, these gains will be subject to RPGT at rates ranging from 30% to 5%. A RPC is a controlled company, the major assets of which consist substantially of real property or RPC shares. However, disposals of properties or RPC shares after 31 March 2007 are exempt from RPGT.

2. Acquisitions

2.1 The Preference of Purchasers: Stock vs. Assets Deal

The benefits and drawbacks of either a stock or asset acquisition would depend on various factors, including the tax attributes of the Target Company, the acquiring company, business fit of the Target Company with the buyer, and most importantly, the commercial considerations. Potential buyers can also improve shareholder values and returns on investment through tax efficient structuring and planning.

In a stock acquisition, the buyer may be exposed to liabilities and exposure in the Target Company. As such, the buyer would need to carry out a due diligence exercise on the Target Company's business in a stock acquisition compared to an asset acquisition.

2.2 Stock Acquisition

The main advantage of a stock acquisition is that the tax attributes such as unabsorbed tax losses, tax incentives or dividend franking credits (where the credits are still available for dividend franking until 31 December 2013) remain with the Target Company.

- Preservation of Tax Losses and Unutilised Tax Depreciation Carried Forward

  Generally, companies are allowed to carry forward their accumulated tax losses and unutilised tax depreciation to be set off against their future business income. Such tax treatment is accorded for an unlimited period of time. Furthermore, companies that ceased operations for several years may still utilise accumulated losses and unabsorbed capital allowances to be set off against new business income.

  However, with effect from the Year of Assessment 2006, accumulated tax losses and unutilised tax depreciation of a Target Company which is dormant shall be disregarded in the event there is a change of more than 50% of the shareholding in the Target Company.

- Continuity of Tax Incentives

  Where the Target Company is entitled to any tax incentives or exemptions, the conditions attached to the incentives or exemptions should be examined to ensure that a change in ownership will not affect the target's entitlement to such incentives or exemptions.

- Others

  As highlighted previously, the buyer may be exposed to liabilities in the Target Company in a stock acquisition. Hence, a thorough due diligence exercise on the Target Company's business in a stock acquisition will need to be conducted. This step will help identify the potential tax costs and, where appropriate, explore means of minimising the impact or applying for exemption. The due diligence could also contribute towards managing potential risks in the future.

2.3 Asset Acquisition

In an asset acquisition, any tax attributes such as unabsorbed tax losses, tax incentives and dividend franking credits (available for dividend franking until 31 December 2013) remain with the Target Company and may not be transferred to the buyer.

- Preservation of Tax: Losses and Unutilised Tax Depreciation Carried Forward

  Generally, unabsorbed tax losses and unutilised tax depreciation of a Target Company may not be transferred to the acquiring company in an asset acquisition.

- Continuity of Tax Incentives

  Under an asset deal, any tax incentives or exemption currently enjoyed by the Target Company will unlikely be transferred to the acquiring company. Generally, the buyer will have to submit a new application for tax incentives or exemptions upon acquiring the business, if it is eligible.

- Others

  In an asset acquisition, the buyer has the choice of determining the assets / liabilities to be acquired. However, the buyer should still carry out a limited due diligence exercise on the assets to be acquired.

2.4 Transaction Cost

2.4.1 GST / VAT

As mentioned in section 1.4, based on the discussion paper issued by the Government, it is proposed that the transfer of a going concern be disregarded for GST / VAT purposes on the basis that it is neither a supply of goods nor services.

2.4.2 Stamp Duty

In a stock deal, Malaysian stamp duty is payable by the buyer at the rate of 0.3% on the consideration paid or market value of the shares (whichever is higher). For an asset deal, stamp duty ranging from 1% to 3% is payable by the buyer on the market value of the dutiable properties transferred under the instrument. With effect from 1 January 2008, private valuation reports on properties instead of valuation from the Government can be accepted provided that a bank guarantee payable to the Stamp Collector for the additional duty is furnished.

Specific stamp duty exemption is available provided stipulated conditions are met (see section 2.4.3).

2.4.3 Concessions Relating to M&As

The Malaysian Income Tax Act and Stamp Act provide some concessions when a company is being reorganised.

- For income tax purposes, sale of tax depreciable assets between related parties may be effected at the tax written down value of the assets. This means that the seller will not have any taxable balancing charge or deductible balancing allowance arising from the sale. The buyer will also be deemed to have acquired the assets at its tax written down value. The transfer value of the fixed assets will be disregarded and the buyer would be entitled to claim annual allowances based on the original acquisition cost of the fixed assets but restricted to the tax written down values of the assets acquired. No initial allowance may be claimed on these fixed assets.

  Additionally, the costs incurred in acquiring a foreign company will also be allowed a tax deduction over a period of five years provided stipulated conditions are met. For instance, the acquisition is for the purpose of acquiring high technology for production within the country or for acquiring new export markets for local products; the acquirer must be a company incorporated in Malaysia with at least 60% Malaysian equity ownership and is involved in manufacturing or trading / marketing activities and the acquired entity must be a foreign company with 100% foreign equity ownership that is located abroad and involved in manufacturing or trading / marketing activities.

In respect of corporate restructuring or amalgamations, relief from stamp duty is available under the following circumstances:

- if the acquisition of shares or assets is in connection with a scheme of amalgamation or reconstruction and the consideration comprises substantially of shares in the transferee company; or
- if the shares or assets are transferred between associated companies (i.e. there must be 90% direct or indirect relationship between the transferee and the transferor).

In addition to the above, to further encourage public listed companies to expand and compete globally, stamp duty exemptions would be given on an approved scheme of merger and acquisition undertaken by companies listed on Bursa Malaysia. The M&A must be approved by the Securities Commission up to 31 December 2010 and executed not later than 31 December 2011.

2.4.4 Tax Deductibility of Transaction Costs

Generally, transaction costs incurred during M&A exercises are not tax deductible to the buyer. However, to the extent to which the expenses are incurred in relation to the purchase of trading stock, such expenses should be deductible.

3. Basis of Taxation Following Stock or Asset Acquisition

3.1 Stock Acquisition

For agreements dated on or after 1 January 2006, Financial Reporting Standard ("FRS") 3 requires that for acquisitions that result in a parent-subsidiary relationship, all identifiable assets, liabilities, contingent liabilities and intangible assets are to be valued at fair values. The difference between the cost of the acquisition and the fair values of these assets and liabilities is the goodwill on acquisition.

For tax purposes, the change in the accounting standard does not affect the tax treatment under a stock acquisition. As there is no capital gains tax regime in Malaysia, there is no requirement to ascertain the acquisition price of the shares.

3.2 Asset Acquisition

As in 3.1 above, agreements for the sale of assets dated on or after 1 January 2006 are also required to comply with the rules under FRS 3 where all identifiable assets, liabilities, contingent liabilities and intangible assets are to be valued at fair values.

For tax purposes, tax treatment of the purchase of assets are not necessarily determined by accounting method. The general principles of taxation are still applicable.

In the purchase of assets, the buyer would generally be treated as having acquired the assets at their acquisition price which is the fair values of the assets under FRS 3. The buyer may claim initial and annual allowances on the fair values of plant and machinery. As the assets are valued at fair values, it may be possible to achieve a step up in the cost base of depreciable assets for the buyer. As required under FRS 3, in allocating the purchase price of the assets, an independent professional valuation report is normally obtained to support the reasonable allocation of the purchase price to the various asset categories.

FRS 3 also requires the recognition of contingent liabilities. These do not qualify for deduction as it is not incurred. There is also a requirement to recognize other intangible assets such as brands, customers base, software development, other research and development expenditure, etc. These are generally not tax deductible but some intangibles may qualify for tax deduction under specific tax rules.

The step up in cost base is not relevant where fixed assets are transferred between companies under common control, as the tax provisions would deem the transfer of fixed assets to be at their tax written down values. The transfer value of the fixed assets will be disregarded and the buyer would be entitled to claim annual allowances based on the original acquisition cost of the fixed assets but restricted to the tax written down values of the assets acquired. No initial allowance may be claimed on these fixed assets.

No tax deduction is available for the amortisation of acquisition goodwill to the buyer. Therefore, the purchase price on an asset deal should ideally be allocated as much as possible to inventory, depreciable capital assets, and other items which are entitled to a tax deduction or tax depreciation.

4. Financing of Acquisitions

4.1 Thin Capitalisation

There is currently no thin capitalisation rule in Malaysia.

4.2 Deductibility of Interest

4.2.1 Stock Deal

In a stock deal where dividends are paid under the tax imputation system, interest expense incurred on money borrowed to finance the acquisition of shares is tax deductible to the extent of the dividend income is received in the same year. This could result in a tax refund to the shareholder company. However, companies which do not have credit balance in their Section 108 account as at 31 December 2007 will pay dividends under the single-tier tax system. In this case, a tax refund would not be available to the shareholder company as the dividends received under the new single-tier tax system are exempt from tax and expenses are not deductible.

For example, assume that a Malaysian company receives a gross dividend of RM100 from its Malaysian subsidiary. In the same year, the Malaysian company incurred interest expense of RM90 on the investment. Under the tax imputation system, as the interest expense will be tax deductible against the dividend income, there will be a tax refund to the Malaysian company.

Tax system	Tax imputation RM	Single-tier dividend RM
Dividend	100	74
Interest expense (say)	90	
Net taxable dividend income	10	
Tax on net taxable dividend income	2.6	
Tax paid (imputation system)	(26.0)	
Tax to be refunded	23.4	

Under the tax imputation system, it is important to time the payment of interest with the flow of dividends to maximise the interest deduction and therefore maximise the tax refund. It should be noted that excess interest costs are not eligible for offset against other income, nor can they be carried forward to offset against future dividend income.

Under the single-tier dividend system, the dividends receivable are exempt from tax. Hence, no deduction of expenses, including interest is allowable against the dividends.

4.2.2 Asset Deal

Interest incurred on funds used to acquire a business under an asset deal should be fully tax deductible. Since there is no thin capitalisation rule in Malaysia, it is possible to maximise the amount of debt used to fund the acquisition of business. However, there are specific industries in Malaysia which are required to maintain minimum paid up share capital.

5. Mergers

In Malaysia, there is no statutory concept of a "merger". The mode of merger in Malaysia involves either the acquisition of shares in an existing Malaysian company, or an acquisition of assets (and liabilities) of another entity.

All proposed acquisitions of assets (including a subscription of shares), or any interests, mergers and takeovers of a Malaysian business or company requires approval of the Foreign Investment Committee (FIC), which is responsible for the co-ordination and regulations of such matters under the Guideline on the acquisition of interests, mergers and takeovers by local and foreign interests.

Generally, acquisition of assets or interests in Malaysian incorporated companies of more than RM10 million in value by local or foreign interests, or acquisition which results in the transfer of ownership or control to foreign interests, or where there is an acquisition of 15% or more of the voting rights in a Malaysian company by foreign interest, requires the prior approval of the FIC. The FIC may impose foreign equity restrictions.

6. Other Structuring and Post-Deal Issues

6.1 Repatriation of Profits

The common methods of repatriation of profits are through payments of dividends, interest, royalties and management fees.

The ability of a company to pay dividends to a shareholder (resident or non-resident) would depend on the availability of retained earnings and dividend franking credits under the imputation tax system. With effect from 1 January 2008, companies with insufficient dividend franking credits will pay dividends under the new single-tier dividend system. Under the new single-tier system, the ability of a company to pay dividends to a shareholder (resident or non-resident) would only depend on the availability of retained earnings.

Exempt income (e.g. offshore income or pioneer income of the company) may be distributed to the shareholders without having to satisfy the franking requirement. There is no restriction for exchange control purposes on dividend distribution by Malaysian subsidiary to non-residents.

Payment of interest and royalties to non-residents would be subject to withholding tax, at rates which may be reduced under the relevant double tax treaty. As for management and technical fees, if the services are performed wholly outside Malaysia, there is no withholding tax on the payment.

6.2 Losses Carried Forward and Unutilised Tax Depreciation Carried Forward

As explained under 2.2 above, a company is generally allowed to carry forward its accumulated tax losses and unutilised tax depreciation to be set off against its future business income. Unutilised tax depreciation may be carried forward indefinitely, but can only be used to offset against future income of the same business source. In other words, these unutilised balances may not be applied against income of a new business source.

A dormant company however, is only allowed to carry forward its accumulated tax losses and unutilised tax depreciation provided there is no change of more than 50% of its shareholding.

Unabsorbed tax losses, unutilised tax deprecation and dividend franking credits (where applicable) may not be transferred to the acquiring company under an asset deal.

6.3 Tax Incentives

Under an asset deal, any tax incentive or exemption currently enjoyed by the Target Company cannot be transferred to the acquiring company. Generally, the buyer will have to submit a new application for tax incentives or exemptions upon acquiring the business, if it is eligible.

For a stock deal, the conditions attached to the incentives should be examined to ensure that a change in ownership will not affect the Target Company's entitlement to such incentives or exemptions.

Unutilised tax incentive may be carried forward indefinitely but may only be used to offset against future income of the same business source.

6.4 Group Relief

Beginning from Year of Assessment 2006, tax losses of a Malaysian company may be utilised to set off against the aggregate income of another company within the same group provided stipulated conditions are met.

The group relief is limited to 50% of the current year's unabsorbed losses of the surrendering company. The following conditions need to be satisfied before the losses may be surrendered:

- the claimant and surrendering companies each must have a paid-up capital in respect of ordinary shares of more than RM2.5 million;
- both the claimant and the surrendering companies must have the same accounting period;
- the shareholding, whether direct or indirect, of the claimant and surrendering companies in the group must not be less than 70%. In determining the 70% shareholding relationship, shares with fixed dividend rights are to be ignored;
- the 70% shareholding must be on a continuous basis during the preceding year and the relevant year;
- the claimant company must be able to demonstrate that it is beneficially entitled, directly or indirectly, to at least 70% of the residual profits and assets (in the case of liquidation) of the surrendering company, available for distribution to all equity holders (and vice versa); and
- the companies are not enjoying tax incentives in the year where tax losses are being surrendered or claimed.

Losses resulting from the acquisition of proprietary rights, or a foreign-owned company, should be disregarded for the purpose of group relief.

7. Disposal

7.1 Preference of Sellers: Stock vs. Asset Deal

In preparing for a deal, it would be appropriate for the seller to identify the income tax impact on any gains arising from the stock or asset deal. Where possible, the tax costs should be quantified and the potential tax exposure minimised. Positive tax attributes and value of tax shelters (e.g. the availability of carry forward tax losses, unutilised tax depreciation and availability of tax franking credits (which can be utilized until 2013)) could also be factored in and used as a bargaining tool when negotiating with the buyer. As mentioned earlier, if the Target Company is a dormant company, accumulated tax losses and unutilised tax depreciation of the Target Company shall be disregarded in the event there is a change of more than 50% of the shareholding in the Target Company.

Generally, from a seller's perspective, it may be less complicated to sell a target through a stock deal.

7.2 Stock Sale

7.2.1 Profit on Sale of Stock

Unless the seller is in the business of dealing in shares, the profits on the sale of shares should not be subject to income tax as such profits are considered capital in nature. Malaysia does not have a capital gains tax regime.

7.2.2 Distribution of Profits

Provided that the seller has sufficient retained earnings, the cash proceeds received from the sale of stock can be distributed as dividend to the shareholders.

If the cash proceeds from the sale of shares exceed the retained earnings, it may need to transfer its existing business, if any, to a separate entity and then liquidate the company. Proceeds paid to shareholders on liquidation are not subject to retained earnings.

7.3 Asset Sale

7.3.1 Profit on Sale of Assets

The sale of real property (land and building) is not subject to tax as Malaysia exempts from tax any gains on disposals of properties after 31 March 2007. However, if the company trades in real properties or develop real properties, the gains on sale of real properties would be subject to income tax.

In respect of the sale of trading stocks of a company, any gains arising from the sale would be subject to income tax as it is considered as part of the business income.

Any gain on the sale of fixed assets would not be subject to income tax. For transactions between unrelated parties, a balancing adjustment (balancing charge or allowance) may arise. If the transfer value exceeds the tax written down value of the asset, the difference, known as a balancing charge, is taxable to the company. The balancing charge is restricted to the amount of allowances previously claimed. If the transfer value is less than the tax written down value of the asset, the shortfall, a balancing allowance, is deductible against the adjusted income of the company. If the transaction is between related parties, no balancing adjustment arises on the seller as the assets are deemed to be transferred at their tax written down value.

Currently, there is no indirect tax implication for the disposal of real properties (e.g. factory and office premises) and for the sale of machinery / equipment and trading stocks, where import duty and / or sales tax have been paid. In addition, disposal of shares will not be subject to any indirect taxes in the form of import duty / excise duty / sales tax / service tax.

If the seller has any exemptions from import duty and / or sales tax, including any facility for licensed manufacturers in Malaysia (licensed under the Sales Tax Act), the following indirect tax implications would apply:

- the sale of exempt dutiable and / or taxable machinery / equipment (inclusive of spare parts) and raw materials would result in the import duty and / or sales tax becoming due and payable, unless the buyer is able to obtain exemption of import duty and / or sales tax for the purchase of the said machinery / equipment and raw materials from the relevant authorities; and
- in respect of sales tax-free raw materials, taxable work-in-progress and taxable finished goods manufactured by the seller, who is a licensed manufacturer under the Sales Tax Act, there are provisions in the Sales Tax Act to allow the buyer to purchase these items free of sales tax subject to certain conditions being met. However, the buyer has to be a licensed manufacturer as well. Otherwise sales tax would be due and payable upon sale by the seller.

7.3.2 Distribution of Profits

As mentioned under the section on stock sale, the gain arising from the disposal of assets may be distributed as dividend to the shareholders provided there is sufficient retained earnings in the company.

8. Transaction Costs for Seller

8.1 GST / VAT

As mentioned in section 1.4, based on the discussion paper issued by the Government, it is proposed that the transfer of a going concern be disregarded for GST / VAT purposes on the basis that it is neither a supply of goods nor services.

8.2 Stamp Duty

Insofar as stamp duty is concerned, the stamp duty cost is borne by the buyer for any transfer of shares or real properties.

8.3 Concessions Relating to M&As

The Malaysian Income Tax Act provide some concessions when a company is being reorganised.

- For income tax purposes, sale of tax depreciable assets between related parties can be effected at the tax written down value of the assets. This means that the seller will not have any balancing charge or balancing allowance arising from the sale.
- In addition to the above, to further encourage public listed companies to expand and compete globally, stamp duty exemptions would be given on an approved scheme of merger and acquisition undertaken by companies listed on Bursa Malaysia. The M&A must be approved by the Securities Commission up to 31 December 2010 and executed not later than 31 December 2011.

8.4 Tax Deductibility of Transaction Costs

Generally, transaction costs incurred on M&A exercises are not tax deductible to the seller. However, to the extent to which the costs are incurred in relation to the sale of trading stock, such costs shall be tax deductible.

9. Preparation of Target for Sale

In preparing for a deal it would be appropriate for the seller to identify the income tax impact on any gains arising from the share or asset deal. Where possible, the tax costs should be quantified and the potential tax exposure minimised. Positive tax attributes and value of tax shelters (e.g. the availability of carry forward tax losses, unutilised tax depreciation and availability of tax franking credits (available to be utilized until 2013)) could also be factored in and used as a bargaining tool when negotiating with the buyer. As mentioned earlier, if the Target Company is a dormant company, accumulated tax losses and unutilised tax depreciation of the Target Company shall be disregarded in the event there is a change of more than 50% of the shareholding in the Target Company.

- Intra-group Transfer of Assets Being Retained

  In preparing for a sale of assets, it is important to do an identification of the assets to be transferred, identification of costs and net book values of the assets to be transferred and to engage an independent professional appraiser to value the assets.

- Pre-sale Dividend

  A company may decide to pay a dividend to its shareholders prior to a sale of the shares in the company. The ability of a company to pay dividends would depend on the availability of retained earnings. There is no adverse tax implication arising from a distribution of pre-sale dividends.

10. De-mergers

There is no statutory concept of a "de-merger" in Malaysia. The mode of de-merger in Malaysia typically involves either a disposal of shares / assets to another party or a distribution in specie of the shares / assets to the shareholders either via dividend distribution or a capital reduction exercise (which requires Court approval).

The taxation treatment of a disposal is as stated above under section 7.

From 1 January 2008 onwards, where the de-merger is by way of a dividend in specie, the company paying the dividend would be required to adopt the new single-tier dividend system. This dividend shall be exempt in the hands of the shareholders.

Where the de-merger is effected through a return of capital via a capital reduction exercise, the shareholders would generally not be taxed on the capital distribution (unless the shareholders are treated as share dealers).

11. Listing / Initial Public Offer (IPO)

Where an IPO is concerned, there should be no tax implications if the shares have been held as long-term investments.