

BDO CONNECT



MANAGING PARTNER'S MESSAGE



Frankie Chia
Managing Partner
BDO Singapore

Despite growing concern over a slowing economic growth, BDO is maintaining a cautiously positive attitude, both globally and locally.

With the conclusion of our recent firmwide town hall meeting, we are confident that we are prepared to adapt to anything 2012 may bring.

On the international front, BDO demonstrated a growth of 4.41% in Euro this year as compared to the previous year (7.36% when measured in US dollars). In the Asia Pacific region, BDO's revenue continues to grow, showing an increase of 21%.

You may be interested to know that BDO Singapore has launched an additional social media channel on Twitter. Please

follow @BDOSingapore for updates. We will continue to be active on Facebook on the BDO Think Ahead page as well.

We would also like to take this opportunity to congratulate our clients who have placed within the "Enterprise 50" and "Singapore Prestige Brand Awards." It is commendable to see these businesses contribute so significantly to Singapore's economy as well as to the global picture – their ambitious achievements beget their well-deserved accolades, and we should be proud to have played a part in their success.

With 2012 upon us, I hope that everyone enjoys the rest of the holidays, keeping in mind their goals for the New Year. Together, we shall reap the rewards and conquer the challenges of 2012."

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SINGAPORE NEWS

BDO among Graduate's Preferred Employers in Accounting and Financial Management

SINGAPORE'S 100
leading graduate employers

As voted by 4,500 university students, BDO was among the graduates' preferred employers in Accounting and Financial Management.

The standing earned is reflective of BDO's branding activities and marketing efforts during graduate recruitment campaigns.

The survey observed the employment outlook of students and graduates, examining their preferences, priorities and influences when selecting their first employer after graduation.

Many students and graduates aspire to work for top companies in Singapore.

From a list of over 200 employers, participants were asked to select the companies they would most like to work for, as well as those they consider to be attractive employers.

Singapore's 100 leading graduate employers is a graduate careers publication that profiles the organisations that are market leaders in their own sectors, serious about attracting the brightest graduates to join them.

Mandatory FRSs Adoptions for 2011

By Narissa Chen, Senior Manager, Audit Technical & Training
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FRSs, INT FRSs and amendments that are mandatory for the first time for 31 December 2011 year-end.

In order to comply with paragraph 28 in FRS 8 Accounting Policies, Changes in Accounting Estimates and Error entities need to disclose effects of the initial application of FRSs, INT FRSs and amendments that are mandatory for the first time.

An entity shall disclose:

- a) Title of the FRS
- b) When applicable, that the change in accounting policy is made in accordance with its transitional provisions
- c) Nature of the change in accounting policy
- d) When applicable, a description of the transitional provisions
- e) When applicable, the transitional provisions that might have an effect on future periods
- f) The current period and each prior period presented, to the extent practicable, the amount of the adjustment:
 - (i) Each financial statement line item affected
 - (ii) If FRS 33 Earnings per Share applies to the entity, for basic and diluted earnings per share
- g) Amount of the adjustment relating to periods before those presented, to the extent practicable
- h) If retrospective application required is impracticable for a particular prior period, or for periods before those presented, the circumstances that led to the existence of that condition and a description of how and from when the change in accounting policy has been applied

The list below shows the FRSs, INT FRSs and amendments that are mandatory for the first time for 31 December 2011 year ends.

1. FRS 101 First-time Adoption of Financial Reporting Standards (Amendment)
2. FRS 101 First-time Adoption of Financial Reporting Standards - Improvements to FRSs (2010)
3. FRS 103 Business Combinations (Revised 2008) - Improvements to FRSs (2010)
4. FRS 107 Financial Instruments: Disclosures - Improvements to FRSs (2010)
5. FRS 1 Presentation of Financial Statements - Improvements to FRSs (2010)
6. FRS 24 (Revised) Related Party Disclosures
7. Consequential Amendments from FRS 27 Consolidated and Separate Financial Statements to FRS 21, FRS 28 and FRS 31
8. FRS 32 Classification of Rights Issues (Amendment)
9. FRS 34 Interim Financial Reporting - Improvements to FRSs (2010)
10. INT FRS 113: Customer Loyalty Programmes - Improvements to FRSs (2010)
11. INT FRS 114: The Limit on a Defined Benefit Asset, Minimum Funding Requirements and their Interaction (Amendment)
12. INT FRS 115 Agreements for the Construction of Real Estate
13. INT FRS 119: Extinguishing Financial Liabilities with Equity Instruments

SINGAPORE NEWS

BDO FRS Update, 13 October 2011

An annual endeavour by BDO LLP, this year's Seminar was held at Novotel Singapore Clarke Quay, targeting users of financial information, ranging from Chief Financial Officers to Accountants.

This one-day conference attracted more than 80 delegates as they seek to stay relevant and evolve in response to the ever changing financial landscape.

Thoughtfully presented by our Audit and Assurance Partners, Ms. Lim Ai Leen and Mr. Lai Keng Wei, the informative seminar provided not only a snapshot of the recent developments in financial reporting standards both locally and internationally, but also insights and practical directional guidance to their implementation.



FRS 101 First-time Adoption of Financial Reporting Standards

1. Amendment to FRS 101

Issued: 8 April 2010

Limited Exemption from Comparative FRS 107 Disclosures for First-Time Adopters

The amendment permits first-time adopters to use the same transitional provisions as are available to existing preparers of FRS financial statements that are included in Improving Disclosures about Financial Instruments (Amendments to FRS 107). This means that an entity need not present comparative information for the disclosures required by the amendment to FRS 107 for:

- any annual or interim period, including any statement of financial position, presented within an annual comparative period ending before 31 December 2009, or
- any statement of financial position as at the beginning of the earliest comparative period as at a date before 31 December 2009.

Accounting impact: Relief from the provision of certain comparative FRS 107 disclosures.

Mandatory adoption for periods beginning on or after 1 July 2010 Early adoption permitted

2. Improvements to FRSs (2010)

Issued: 7 October 2010

Changes in accounting policies during an entity's year of adoption of FRS

If a first-time adopter changes its accounting policies or its use of exemptions in FRS 101 after the date of its first interim financial report prepared in accordance with FRS 34, but before the issue of its first annual FRS financial statements, the reconciliations between previous GAAP and FRS are required to be updated. The requirements of FRS 8 Accounting Policies, Changes in Accounting Estimates and Errors do not apply.

Use of revalued amount as deemed cost

The relief available under FRS 101 for the use of fair value as deemed cost has been extended from 'event driven fair value' measurements which are carried out at or before an entity's date of transition to FRS to include measurements that are carried out between the date of transition and the end of the entity's first annual FRS reporting period. An event driven fair value is specified as a remeasurement to fair value of some or all assets and liabilities on an event such as a privatisation or public offering.

As an example, if an entity chooses to use an event driven fair value as deemed cost under FRS for an asset where the measurement date is after its date of transition to FRS but before the end of the entity's first annual FRS reporting period, an adjustment will be made to equity as at the fair value measurement date. During the period from transition date to the fair value measurement date, historical cost or other amounts permitted by FRS are presented. The rejection of an approach of 'working back' from the measurement date to a deemed cost at an entity's date of transition to FRS, on the basis that this would require the use of hindsight and would result in a carrying amount at transition date that was neither historical cost nor fair value.

Deemed cost for assets used in operations subject to rate regulation

The amendment permits a first-time adopter to use its previous GAAP carrying amounts for property, plant and equipment and intangible assets that are, or were previously, used in operations subject to rate regulation, as deemed cost at the date of transition to FRS. This election is available on an individual asset basis.

Mandatory adoption for periods beginning on or after 1 January 2011 Early adoption permitted

SINGAPORE NEWS

BDO Annual Dinner and Dance, 25 November 2011

Another highly anticipated annual event by BDO LLP Singapore, this year's Dinner and Dance venue was at Riverview Hotel Singapore.

With the majority of the firm's employees voting for the 'Back-to-School' theme, BDO Singapore's dinner and dance was an eventful evening filled with fun activities, delightful performances as well as unforgettable memories.



FRS 103 Business Combinations

3. Improvements to FRSs (2010)

Issued: 7 October 2010

Measurement of Non-Controlling Interest (NCI)

The amendment clarifies that the option to measure NCI at either fair value, or the proportionate share of the acquisition date fair value of the acquiree's identifiable net assets that are recognised by the acquirer, applies only to instruments that give the NCI a present ownership interest and entitle the holder to a proportionate share of net assets in the event of liquidation. All other components of NCI are measured at their acquisition date fair value, unless another measurement is required by FRS.

The amendment has been made to ensure that certain components of NCI are not measured at zero. For example, if a share-based payment transaction is classified as equity, it is measured in accordance with FRS 102 Share-based Payment. Another example is a preference share that represents NCI, being an equity instrument, with its holder being entitled to a return of the initial amount subscribed on liquidation. The NCI that relates to the preference shares is measured at fair value.

Share-based payment transactions of an acquiree that are either not replaced on a business combination or are voluntarily replaced

The current requirement for an acquirer to measure share-based payment awards, that it issues to replace existing awards of an acquiree at the acquisition date, in accordance with FRS 102 has been extended. This means that existing share-based payment awards of an acquiree that are not replaced in a business combination are also measured by the acquirer in accordance with FRS 102 at the acquisition date. If the awards have not vested at the acquisition date, they are accounted for as if the acquisition date was the grant date. If the awards have vested at the acquisition date, they are accounted for as part of NCI in the acquiree.

An acquirer may exchange its own share-based payment awards for awards held by employees of the acquiree. The current requirement is to account for that exchange as a modification of the existing arrangement where the acquirer is obliged to replace the existing awards. This requirement is retained with the amount calculated in accordance with FRS 102 being allocated between the cost of the business combination and post acquisition services. The amendment extends this to cover replacement awards where the acquirer is not obliged to replace the existing awards, but chooses to do so voluntarily.

In some cases, existing share-based payment awards previously issued by an acquiree expire as a result of a business combination. In those circumstances, if the acquirer replaces those awards voluntarily, the entire fair value of those replacement awards calculated in accordance with FRS 102 is accounted for as a post acquisition remuneration expense.

Transition - contingent consideration balances arising from business combinations that took place prior to the adoption of FRS 103 (2008)

FRS 103 (2008) included a consequential amendment to FRS 39 that brought contingent consideration balances arising on a business combination within the scope of that standard. This means that instead of changes in the carrying amount of contingent consideration after the acquisition date being accounted for as an adjustment to the cost of the original business combination, they are now accounted for in accordance with FRS 39 and recognised in profit or loss. The amendment clarifies that the change in scope of FRS 39 is applied to business combinations on a prospective basis, meaning that where a business combination took place before the date of adoption of FRS 103 (2008), changes in contingent consideration are still accounted for as an adjustment to the cost of the original business combination.

Mandatory adoption for periods beginning on or after 1 July 2010 Early adoption permitted. *On adoption, to be applied prospectively from the date on which FRS 103 (2008) was first applied.*

SINGAPORE NEWS

BDO LLP Singapore Townhall Meeting, 23 December 2011

A yearly session held at the Singapore Management University's Mochtar Riady Auditorium where the Managing Partner of BDO LLP Singapore, Mr Frankie Chia, shares important global and local updates and changes with the rest of the firm.

Aside from highlighting the positive growth and performances of BDO, both globally and locally, this year's presentation by Mr Chia also emphasised the firm's local strategy and initiatives for the year 2012.

The event also saw a batch of employees being rewarded for their loyalty with long-service awards.

The half-day firmwide meeting ended with a sumptuous Christmas Lunch Buffet for everyone, which was the perfect finale to cap off the year and welcome the festive holidays.



FRS 107 Financial Instruments: Disclosures

4. Improvements to FRSs (2010)

Issued: 7 October 2010

Clarification of disclosure requirements

The amendment clarifies quantitative disclosure requirements for risks arising from financial instruments, and encourages accompanying narrative disclosures if the concentration of risk is not apparent from the quantitative disclosures.

The requirements for disclosures of credit risk, including collateral held, are clarified and reduced, with the carrying amount of assets that would have been past due or impaired unless they had been renegotiated no longer needing to be disclosed.

Mandatory adoption for periods beginning on or after 1 January 2011

Early adoption permitted

FRS 1 Presentation of Financial Statements

5. Improvements to FRSs (2010)

Issued: 7 October 2010

Presentation of changes in equity

The amendment clarifies that the analysis of items of Other Comprehensive Income may be shown in either the (primary) statement of changes in equity, or in the notes to the financial statements.

Mandatory adoption for periods beginning on or after 1 January 2011

Early adoption permitted

FRS 24 (Revised) Related Party Disclosures

6. Revised FRS 24

Issued: 22 January 2010

Related Party Disclosures

FRS 24 was revised in response to concerns that, in practice, the application of the existing disclosure requirements and the definition of a related party could be complex and difficult to apply in practice, particularly in environments where government control is pervasive. The revisions address these concerns by:

- Providing a partial exemption for government-related entities - under the previous requirements, if a government controlled, or significantly influenced, an entity, the entity was required to disclose information about all transactions with other entities controlled, or significantly influenced by the same government. The revised standard requires such entities to disclose information about individually and collectively significant related party transactions only.
- Providing a revised definition of a related party - the definition of a related party has been simplified and inconsistencies eliminated. Illustrative examples have also been added. The revised definition means that some entities may have more related parties for which disclosures will be required. The entities that are most likely to be affected are those that are part of a group that includes both subsidiaries and associates, and entities with shareholders that are involved with other entities.

Accounting impact: Disclosure only. Provides a partial exemption from the disclosure requirements of FRS 24 for entities that are controlled, jointly controlled or significantly influenced by a state in relation to other state-controlled entities. Amends and clarifies the definition of a related party.

Mandatory adoption for periods beginning on or after 1 January 2011

Early adoption permitted

INTERNATIONAL SNIPPETS

BDO 2011 year end results demonstrate growth

BDO, the world's fifth largest accountancy network, is pleased to announce that the total combined fee income for the year ended 30 September 2011 for all BDO Member Firms, including the exclusive members of the US and Spanish firms' Alliances, amounted to €4.064 billion / US\$ 5.672 billion.

This represents an increase of 4.41% in euro compared to the previous year, and an increase of 7.36% when measured in US dollars.

The fee split by service line across the BDO network remains similar to previous years, although with a slight increase in audit and accounting services: the latter now accounts for over 61% of our combined fee income, with those for tax and advisory services remaining steady at just under 19% and 20% respectively.

(NB all of the above percentages are as expressed in euro).

At 30 September 2011, BDO provides services in 135 countries – up from 119 in 2010. There has been a corresponding rise in the number of partners and staff working in BDO, as well as the number of BDO offices: up to 48,767 people and 1,118 offices respectively.

Martin van Roekel, who took on the international CEO role on 1 October 2011, is pleased to see the tangible growth throughout the network in the last year.

"Client service is the foundation we've built our global business on and continuously developing and implementing exceptional service delivery is the key thrust of BDO's business strategy

Consequential amendments from FRS 27 Consolidated and Separate Financial Statements to:-

*FRS 21 The Effects of Changes in Foreign Exchange Rates,
FRS 28 Investments in Associates, and
FRS 31 Interests in Joint Ventures*

7. Improvements to FRSs (2010)

Issued: 7 October 2010

Transitional requirements for consequential amendments

It has been clarified that the amendments made to FRS 21, FRS 28 and FRS 31 as a consequence of FRS 27 (revised 2008) are to be applied prospectively from the date of adoption of that standard (which is, annual periods beginning on/after 1 July 2009 with earlier application permitted). As exceptions, certain requirements of FRS 28 and FRS 31, which relate to accounting in the separate financial statements of the investor, are applied retrospectively.

Mandatory adoption for periods beginning on or after 1 July 2010

Early adoption permitted

FRS 32 Financial Instruments: Presentation

8. Amendment to FRS 32

Issued: 18 November 2009

Classification of rights issues - amendment to FRS 32

The amendment addresses the accounting for rights issues (rights, options or warrants) that are denominated in a currency other than the functional currency of the issuer. Previously such rights issues were accounted for as derivative liabilities as the exposure to changes in exchange rates meant that the 'fixed for fixed' criterion was not met. However, the amendment requires that, provided the entity offers the rights, options or warrants pro rata to all of its existing owners of the same class of its own non-derivative equity instruments, such rights issues are classified as equity regardless of the currency in which the exercise price is denominated.

Accounting impact: Rights issues at a fixed price per share, when that price is stated in a currency other than an entity's functional currency, may be recorded as equity transactions rather than financial liabilities.

Mandatory adoption for periods beginning on or after 1 February 2010

Early adoption permitted

FRS 34 Interim Financial Reporting

9. Improvements to FRSs (2010)

Issued: 7 October 2010

Content of an interim financial report - significant events and transactions

The amendments emphasise that disclosure about significant transactions and events is required to update relevant information presented in the most recent annual financial report.

FRS 34 has been made more specific about events and transactions for which disclosure is required, and guidance has been added covering the application of the requirements for financial instruments.

Mandatory adoption for periods beginning on or after 1 January 2011

Early adoption permitted

INTERNATIONAL SNIPPETS

BDO France announces merger with SOVEC

BDO, the world's fifth largest accountancy network, has announced a merger with SOVEC, an auditing and chartered accounting firm based in Rhône-Alpes. The move significantly develops the firm's geographical coverage in this region.

BDO in France had until now more than 500 staff and 50 partners working out of 19 offices in Paris, Ile de France, Bourgogne, PACA and Grand Ouest. In 2011, the firm's revenue was €51 million.

SOVEC operates in 5 departments in Rhône-Alpes and Hautes-Alpes and the merger takes BDO to 8th position amongst accountancy firms in France, with 750 employees and a €69 million revenue.

BDO announces appointment of new member firms in Kuwait

The new BDO Kuwait, Al Nisf & Partners, is among the top three audit, tax and consulting firms in Kuwait. The firm's clients in Kuwait include some of the largest business groups and Kuwaiti listed companies, as well as a large number of multinationals operating in Kuwait.

The new BDO Kuwait's managing partner, Qais Al Nisf, is looking forward to the firm's future with BDO.

He commented that "Since inception we have kept our clients' interests at the forefront. We have a real understanding of the Kuwait environment and we specialise in providing innovative, expert and commercially astute audit, tax and consulting services.

INT FRS 113 Customer Loyalty Programmes

10. Improvements to FRSs (2010)

Issued: 7 October 2010

Fair value of award credits

The amendment clarifies that the fair value of award credits includes consideration of the amount of discounts or incentives that would otherwise be offered to customers who have not earned award credits from an initial sale.

Mandatory adoption for periods beginning on or after 1 January 2011

Early adoption permitted

INT FRS 114 The Limit on a Defined Benefit Asset, Minimum Funding Requirements and their Interaction

11. Amendment INT FRS 114

Issued: 22 January 2010

Prepayment of a minimum funding requirement

The amendment applies in the limited circumstances in which an entity is subject to minimum funding requirements and makes an early payment of contributions to cover those requirements. The amendment expands the circumstances in which the benefit of such an early payment is recorded as an asset.

Accounting impact: Additional prepayments of contributions to cover minimum funding requirements may be recorded as an asset.

Mandatory adoption for periods beginning on or after 1 January 2011

Early adoption permitted

INT FRS 115 Agreements for the Construction of Real Estate

12. INT FRS 115

Issued: 26 August 2010

IFRIC 115 applies to the accounting for revenue and associated expenses by entities that undertake the construction of real estate directly or through subcontractors, may enter into agreements with one or more buyers before construction is complete. Such agreements take diverse forms.

The interpretation deals with the recognition of revenue among real estate developers for sales of units, such as apartments or houses, 'off plan', ie before construction is complete. It also provides guidance on how to determine whether an agreement for the construction of real estate is within the scope of FRS 11 Construction Contracts or FRS 18 Revenue and when revenue from the construction should be recognised.

The main expected change in practice is a shift for some entities from recognising revenue using the percentage of completion method (ie as construction progresses, by reference to the stage of completion of the development) to recognising revenue at a single time (ie at completion upon or after delivery).

Agreements that will be affected will be mainly those currently accounted for in accordance with FRS 11 that do not meet the definition of a construction contract and do not transfer to the buyer control and the significant risks and rewards of ownership of the work in progress in its current state as construction progresses.

The accompanying note on application of INT FRS 115 in Singapore takes into account the legal framework in Singapore that is directly relevant to the application of INT FRS 115 in Singapore and summarises the Council's considerations in reaching its consensus on the accounting treatment for the sale of uncompleted residential properties "off-plan".

The Council noted that standard residential property sales in Singapore meet the criteria set out in FRS 18 that would require such sales to be accounted for on a percentage of completion method. However, in some situation specific to the circumstances of a development project, there might be uncertainties that would require the completion of construction method to be applied, consistently with the principles set out in FRS 18 for the treatment of revenue when such uncertainties exist.

Mandatory adoption for periods beginning on or after 1 January 2011

Early adoption permitted

INT FRS 119 Extinguishing Financial Liabilities with Equity Instruments

13. INT FRS 119

Issued: 22 January 2010

INT FRS 119 addresses transactions in which an entity issues equity instruments to a creditor in return for the extinguishment of all or part of a financial liability (a 'debt for equity swap').

INT FRS 119 does not apply to arrangements in which liabilities are extinguished in return for equity instruments in accordance with the original terms of the financial liability (such as convertible debt; these continue to be addressed by FRS 32), nor does it address the appropriate accounting approach to be adopted by the creditor.

For transactions within its scope, where the whole of a financial liability is extinguished, INT FRS 19 requires the equity instruments issued to be measured at their fair value and the difference between that fair value and the carrying value of the financial liability extinguished to be recognised in profit or loss. Where only part of the financial liability is extinguished, an allocation of the consideration between the extinguished portion of the liability and the part of the liability that remains outstanding may be required depending on whether, and the extent to which, the contractual terms of the remaining liability have been modified. If it is not possible reliably to measure the equity instruments issued, the fair value of the debt extinguished is used instead. However, in these circumstances the guidance in FRS 39.49 relating to the valuation of financial liabilities with a demand feature is not applied.

Accounting impact: May result in additional amounts being recognised in profit or loss as a result of debt for equity swaps.

Mandatory adoption for periods beginning on or after 1 July 2010

Early adoption permitted

Avenues Available to Companies Facing Financial Difficulties in These Uncertain Times

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Three years on and after numerous bailouts by governments around the world, the world economy is once again on the edge with the economies of the United States of America and the European Union struggling, stock markets around the world losing billions of dollars by fears of new setbacks, sovereign defaults & the possibility of a double-dip recession.

There will be more uncertainties in 2012 and it is difficult to predict in which direction (growth or recession?) the world economy will head in the next 12 months.

Singapore's open economy makes us vulnerable to the happenings around the world, particularly during these uncertain times.

Despite our government's efforts to make our local economy more resilient, businesses have to embrace themselves for the storm that may be ahead. Even profitable / successful businesses have been known to fail during such uncertain times, as sales drop and financial institutions tighten their credit lines.

That being said, there are avenues available to businesses to protect themselves from creditors' action(s) so that they are allowed some time to resolve its existing liabilities and to avoid closure of their businesses OR if the business is no longer viable, to cut its losses.

Likewise, these avenues may also be considered by any businesses to recover debts from their delinquent customers.

Business Still Viable

Informal Procedures

Work-Outs / Monitoring Accountants / Special Accountants

If a company's financial position is deteriorating, the company can seek professional help to monitor its financial position.

These professionals appointed by the company, sometimes at the advice of the major lender(s) / creditor(s) of the company, provide management advice and assist in management / financial control.

The professionals' presence helps to rebuild confidence of the major lenders(s) / creditor(s).

The goodwill of the company is also preserved due to less publicity on the appointment of the monitoring / special accountants.

Formal Procedures

If a company's business is still viable but financially troubled and it faces threats from creditors, an application to the High Court for a Scheme of Arrangement or Judicial Management may be made to provide an opportunity for the company to rehabilitate themselves (NB: An application for Judicial Management may be made by the company or its creditors).

These procedures strive to strike a balance between the interest of the shareholders and the creditors and afford a second lease of life for companies with good long-term prospects.

Scheme of Arrangement

A company proposing a scheme is usually faced with cashflow difficulties.

The scheme allows the company to formulate a repayment plan for its creditors to resolve its existing liabilities.

The company will have to obtain



approval from the requisite majority of its creditors at a creditors' meeting in order for the said plan to be implemented.

Where necessary, the company may also apply to the High Court to stay all legal proceedings commenced against it so that it can be given time to formulate and implement the repayment plan.

Judicial Management

A company facing legal action(s) from its creditors may apply to the High Court to place itself under judicial management if its business is still viable.

An immediate advantage of judicial management is that there is a moratorium on all legal proceedings commenced against the company upon the filing of the application with the High Court.

The granting of a judicial management order ("JMO") to the company is to achieve one or more of the following purposes:

- a. The survival of the company, or the whole or part of its undertaking as a going concern;
- b. The approval of a scheme of arrangement between the company and its creditors;

c. A more advantageous realisation of the company's assets would be effected than on a winding up

The judicial manager(s) will have to table a statement of proposals to the creditors within 60 days from the JMO (or such extended time as allowed by the High Court) on how to achieve one or more of the purposes stated above.

The JMO is valid for a period of 180 days from the making of the JMO unless extended by the High Court.

Business No Longer Viable

If a business is no longer viable, a company may consider the following avenues to cut its losses.

Businesses seeking to recover debts from their delinquent customers may also consider some of these avenues.

Receiver

If an asset or business is charged to a creditor, a receiver / receiver & manager may be appointed by the lender to take control of the charged asset / business.

The receiver / receiver & manager will safeguard these charged assets / businesses, with a view to source for acquisition or dispose them at the

highest possible value for the lender.

Provisional liquidation / liquidation

A business may be placed under voluntary / compulsory liquidation so that the company's affairs can be wound up in an orderly manner and the funds realised be paid to its creditors (in the priority as per the provisions of the Companies Act).

At times, a company may be placed under provisional liquidation in order to avoid a scramble of assets by creditors.

In these uncertain times, as long as a business is still viable, it is not the end of the road for a company that is facing financial difficulties.

For a business that is not, the company should aim to minimise its losses. Preventive and early actions should be taken by a company in order to benefit all stakeholders.

This article is a brief summary of the avenues available to companies facing difficulties in these uncertain times. Should you wish to obtain more information, please contact our business restructuring services division.



Singapore's First Case on Tax Avoidance

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Every man is entitled to order his affairs such that the least amount of tax is payable.

Such an arrangement which involves structuring of transactions to minimise his tax liability is known as tax planning.

The Courts have also clearly supported the rights of a taxpayer to pay only that amount of tax which he is obliged to.

Tax planning is therefore a legitimate exercise when done within the legal framework of the law.

Contrasted with this is tax avoidance.

“Avoidance” has been defined as the action of avoiding anything that is unwelcome (Shorter Oxford English Dictionary).

Under Singapore tax laws, anti-avoidance provisions are found in Section 33 of the Income Tax Act (“the Act”).

It empowers the Comptroller to disregard or vary certain arrangements, where the purpose and effect of that arrangement is directly or indirectly to alter, relieve, reduce or avoid any person’s liability to pay tax which would otherwise have been payable.

However, the section shall not apply to any arrangement carried out for bona fide commercial reasons and had not as one of its main purposes the avoidance or reduction of tax.

A question therefore arises is whether a taxpayer’s arrangement that makes use of the specific provisions of the Act to reduce his tax liability constitutes tax avoidance.

In other words, how the general anti avoidance provision is to be interpreted and applied vis-à-vis the specific provision under which tax reliefs are claimed.

This issue was examined in the Singapore’s first case on anti-avoidance by the Income Tax Board of Review (“the Board”).

Briefly, in AQQ’s case, the Appellant - AQQ, was incorporated in Singapore in May 2003 as a wholly owned subsidiary of a public company - B, which was listed on the Kuala Lumpur Stock exchange.

In addition, B also held a Malaysian subsidiary - C and a Singapore subsidiary - D and a number of other Singapore subsidiaries through C and D. Sometime in 2003, B decided to reorganise the corporate holding structure by making the Appellant a proposed holding company to hold its Singapore subsidiaries.

A financing arrangement with a Singapore Bank was put in place to fund the acquisition of these Singapore subsidiaries.

The arrangement involved the Appellant issuing fixed rate convertible notes worth S\$225 million to the Singapore Bank on 18 August 2003 at an interest rate of 8.85 percent per annum.

With the proceeds, the Appellant acquired all the Singapore subsidiaries held by B, C and D on the same day as the notes were issued.

On the same day (i.e. 18 August 2003), the bank sold the principal component of the notes i.e. S\$205 million, at par with an interest rate of 8.845 percent per annum to its Mauritius Branch, which then on sold the same notes to C at an interest rate of 8.84 percent per annum also on the same day.

The interest component of the loan i.e. S\$20 million was structured as a forward sale agreement by the Bank to its Mauritius Branch and then ultimately to C.

The structuring of this financing arrangement was done in such a way that it enabled C to obtain funds (through sale of its shareholding in the subsidiaries and internal borrowings) for it to pay the Mauritius branch for purchase of loan notes which in turn paid the Bank.

After reorganisation, the Singapore subsidiaries paid dividends amounting to S\$83,173,945 to the Appellant for YAs 2004 to 2007.

Against this dividend income, an interest deduction on the above financing arrangement was claimed totaling to S\$67,096,467.

The dividends paid carried tax franking credits as well, under the imputation system as it existed then.



Under the imputation system, the tax payable by a company on its normal chargeable income was not a final tax, as the tax payable could be used to pay dividends with tax credit.

Dividends that carried tax credit were known as franked dividends, which were taxable in the hands of shareholders. The shareholders would be taxed on the gross dividends (i.e. inclusive of the tax credit) but could set-off the tax credit against their tax payable.

Resultantly, the Appellant claimed a refund of S\$13,561,794 under this (now defunct) imputation system.

On the basis that the interest deductions were properly allowable, refunds of S\$9,589,816 were made by the Comptroller for YAs 2004 to 2006.

However, following further queries, the Comptroller invoked Section 33 of the Act as he was not satisfied that there were commercial justifications for the financing arrangement.

In the revised assessments, the Comptroller disregarded the dividend income and interest expense. Consequently, the Appellant had to repay the tax refund.

The Appellant argued before the Board that there was no case for Section 33 to apply as there was no reduction of tax. The receipt of dividend income increased both the amount of taxable income and the tax assessed.

Further, the payment of dividend was entirely a commercial decision and a matter of internal management of the company.

The financing arrangement and the reorganisation of the corporate structure were carried out for bona fide commercial reasons and not to avoid or reduce tax.

All the transactions were genuine and real. Furthermore, the transactions had been structured within the specific provisions of the Act and therefore outside the realm of Section 33.

In dismissing the appeal (and drawing legal guidance from the Australian and New Zealand cases), the Board concluded that:

- The general anti-avoidance provisions and specific provisions are to be construed together so as to give appropriate effect to each, with neither overriding the other. The taxpayer has the choice to arrange his fiscal affairs so as to derive the best tax advantage.

Whether an arrangement constitutes tax avoidance will depend on whether the taxpayer's use of the specific provision has occurred in a manner that is consistent with Parliament's purpose and contemplation, determined by an objective analysis of the overall scheme and purpose of the anti-avoidance legislation.

- A "classic indicator" of a use that is outside Parliamentary

contemplation is the structuring of an arrangement so that the taxpayer gains the benefit of the specific provision "in an artificial or contrived way".

- The arrangement was not carried out for bona fide commercial reasons but had as one of its main purposes the avoidance or reduction of tax even though the financing arrangement did occur, there was an actual flow of funds and proper legal documentation to support the arrangement.

Further, there was no documentary and contemporaneous evidence of the group's intention to restructure the holding of its Singapore subsidiaries. Also, no valuation of shares of subsidiaries was carried out. There were also no minutes of meetings or other records of discussions by the directors documenting a business case justifying the taking of the loan.

The Bank was merely a facilitator and not really a lender as it did not bear any risk for the loan of such a magnitude. The Appellant could have simply borrowed from C without involving the Bank (as C had already borrowed money from D and B to pay for the loan notes).

- No commercial justification was provided as to how the occurrence of the transactions on the same day would advance the objectives or purposes of the reorganisation.

In light of this decision, the taxpayers should therefore ensure that they have a commercial basis with supporting documents to justify their tax planning arrangements.

In order to determine whether those arrangements constitute tax avoidance and whether it would fall within the realm of Section 33, the purpose (not motive but the effect which it is sought to achieve - the end in view) and effect (means the end accomplished or achieved) of the arrangement is to be considered objectively from the features and elements of the arrangement and the overt acts by which it was put into effect.

This would entail consideration of several factors such as the manner in which the arrangement was carried out, the role of the relevant parties and any relationship they may have with the taxpayer, the duration of the arrangement as well as the nature and extent of the financial consequences it will have for the taxpayer.

The Courts are not concerned with the motives and subjective intention of the taxpayer.

Section 33 is designed to avoid the fiscal effect of a tax avoidance arrangement having more than merely incidental purpose or effect of tax avoidance and to prevent uses of the specific provisions which fall outside their intended scope in the overall scheme of the Act.

Resultantly, a taxpayer still has a choice in deciding how an arrangement is to be structured provided the specific tax provision he chooses to rely on satisfies the intention of the Parliament on a construction of the Act as a whole.

Protecting Your Business Against Downtime

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In this increasingly digital age, where IT lies at the foundation of most businesses, here are two simple steps to formulate a Business Continuity Management (BCM) procedure for IT systems to ensure sustained operations even after a system meltdown.



In this day and age, where a click of the mouse can yield answers in seconds, the flow of information and communication is also slowly, but surely, becoming highly dependent on the degree of technology available.

This means that the lack of a proper Information Technology (IT) infrastructure in place could potentially result in organisations coming to a standstill in times of unforeseen crisis, especially for companies in the manufacturing business, where operations are chiefly reliant on IT and cutting-edge systems.

Starting from data entry to month-end posting, communication and transactions along the supply chain, IT and information systems are considered critical support elements in these business operations.

Each process is interdependent and a single layer of disturbance could result in a domino effect, which would subsequently affect other business operations.

For enterprises to continue running swiftly and effectively following an

emergency such as technology failure, they need to compose a comprehensive BCM procedure.

Here are some steps that you can consider taking:

Step 1: Prevention is better than cure

To keep productivity up and financial losses low following an emergency or a system disruption, firms need to be able to keep their technology infrastructure running at the very least.

However, many manufacturing firms in Singapore tend to see IT recovery and business continuity measures as investments with minimal or no real return.

As a result, management teams are typically reluctant to devote more finances into constructing proper disaster recovery systems.

In such cases, the consequences can be more than an inconvenience.

It could mean a loss of vital electronic records such as customer orders and transactions, a dip in productivity and accountability, and subsequently a plunge in revenue and commerce.

In ensure business operations carry on smoothly in times of emergency, organisations can make physical preventive measures such as preparing uninterruptible power supplies to provide short-term backup power to the system; gasoline- or diesel-powered generators to provide long-term backup power; or plastic tarps that protect equipment from water damage.

For a more economical and yet fuss-free solution, organisations can turn to offsite storage of backup media, non-electronic records and system documentation.

Some popular offsite storage solutions:

1. SugarSync (www.sugarsync.com)

Provides flexibility to sync, access and share files instantly and securely anytime from any computer, tablet or smartphone. 30-days free trial includes 2GB online storage and excellent support centre with comprehensive tutorials, troubleshooter and discussion forum.

2. Mozy (www.mozy.com)

One of the simplest automatic secure backup utility services that businesses can adopt with \$6 or less a month. A 2GB online backup plan is also available for trial - at no cost.

3. Elephant Drive (www.elephantdrive.com)

With this service, you can customise plans based on the amount of storage and number of licensed users you need. A 15-days trial with 2GB online storage is available for free. Data can be accessed from any Internet-enabled device.

**Disclaimer: The service providers available locally are not limited to the forementioned companies and any references to any specific commercial products or services does not constitute endorsement by BDO LLP.*



Step 2:
Recover quickly and effectively

As always, preventive measures are not all-encompassing.

A proper framework of interim measures will assist the swift recovery of information and information systems in a crisis.

Such measures include:-

- Recovery of IT functions using alternate equipment
- Manual performance of IT functions
- Off-site storage and relocation of IT operations to an alternate site.

Depending on the outage time an enterprise allows, as well as its cost-benefit strategy, there are several different temporary sites they can consider:

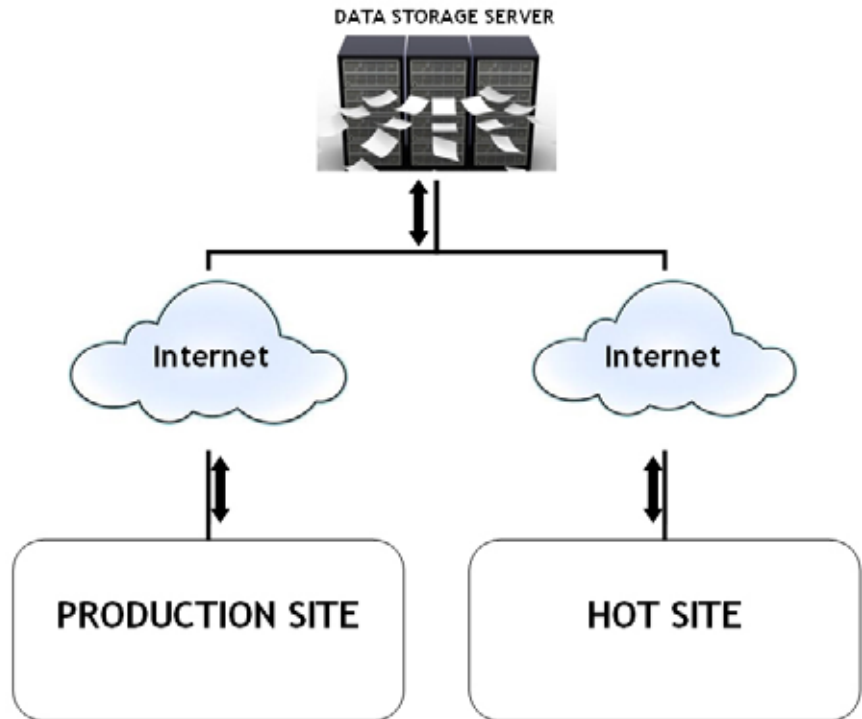
• Hot sites:-

A duplicate of the original site of the enterprise, with full IT systems and near-complete backups of data, including office space and proper IT infrastructure.

Recovery time: Within a few hours

• Warm sites:-

With hardware and connectivity established, including incomplete backups that may be around a week old.



• Cold sites:-

Only supply office space, but enterprises are to provide and install the equipment necessary for continued operations.

It is the least expensive, but requires a longer time to get a firm fully operational.

Recovery time: At least a week.

Business continuity does not end at IT

IT infrastructure is just one critical business function listed under a broader

BCM framework.

Through the adoption of the preventive and recovery measures above, businesses are an enormous step closer to ensuring business continuity - even in the event of a system meltdown.

Nevertheless, before diving straight into implementing disaster recovery plans, always conduct a proper risk assessment analysis of your enterprise to ensure a good Return-on-Investment.



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