



## Singapore Tax & Legal developments

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Greetings from your Tax & Legal team at Deloitte Singapore. We hope that you and your loved ones are staying safe and healthy despite these challenging times. As we navigate ourselves through this trying period, we are committed to giving you the support you need.

We are pleased to share the following with you.

#### Tax framework for variable capital companies (VCCs)

On 28 August 2020, the Inland Revenue Authority of Singapore (IRAS) published public guidance regarding the tax framework for Singapore VCCs.

The VCC is a new form of legal entity for investment funds available under Singapore law with effect from 14 January 2020. It provides for the operation of multiple, segregated collective investment schemes (each a **sub-fund**) within a single legal entity. A VCC may be established as a single fund, or as an umbrella fund that comprises two or more sub-funds.

Whilst VCCs have been available since the beginning of 2020, only high-level guidance regarding the tax treatment of such entities had been made available previously. The new guidance comprises the first detailed explanation of how VCCs and individual sub-funds will be liable to tax in Singapore, among other guidance.

#### Overview

The new guidance, entitled [\*IRAS e-Tax Guide: Tax Framework for Variable Capital Companies\*](#) (e-Tax Guide), explains that:

- (a) For corporate income tax purposes, VCCs (incorporated pursuant to the Variable Capital Companies Act 2018 (Act 44 of 2018) [VCC Act]) are treated as companies under the Companies Act (Cap 50) (Companies Act), and—irrespective of whether a VCC has established any sub-funds—will be recognised as a single entity for income tax purposes save to the extent otherwise stipulated in legislation or in the e-Tax Guide.
- (b) For Goods and Services Tax (GST) purposes, each sub-fund is regarded as a separate person making independent sale and purchase decisions based on its respective investment strategy. Consequently, each sub-fund shall be required to assess its individual GST registration liability, and GST-registered sub-funds will be required to account for GST on taxable supplies (including any such supplies made to other sub-funds) and may also claim input tax subject to existing rules. GST remission for qualifying funds is also extended to sub-funds.
- (c) Sub-funds will also be treated as separate persons for Singapore stamp duty purposes.

The remainder of this alert contains further details of the tax framework applicable to VCCs, as explained by the IRAS in the new e-Tax Guide.

### Tax residence

The tax residence of a VCC will be determined based on general principles; i.e., with reference to where the control and management of the VCC's business is exercised, with the location in which the board of directors makes strategic decisions often being a key factor. The tax residence of a sub-fund will follow the tax residence of the VCC at the umbrella level (i.e., it will not be possible for a VCC to be tax resident in one jurisdiction and for a sub-fund to be tax resident in a different jurisdiction).

VCCs may apply for a certificate of residence (COR) to support tax treaty claims. As sub-funds will not be legal persons, the IRAS will issue a COR to a VCC in the name of that VCC, and such COR shall state the sub-funds in respect of which the COR is made available.

### Income tax treatment

The IRAS explains in the e-Tax Guide that VCCs incorporated pursuant to the VCC Act shall be treated as companies incorporated pursuant to the Companies Act and that a reference to a company in the Income Tax Act (ITA) and related subsidiary legislation shall include a VCC. Consequently, the provisions of the ITA will apply to a VCC at the umbrella level (i.e., as a single entity, irrespective of how many sub-funds it may have) in the same way as any other company, save to the extent otherwise stipulated (either in legislation or in the e-Tax Guide). The e-Tax Guide goes on to explain the following income tax framework:

| Issue          | Income Tax Treatment   |
|----------------|--|
| Tax exemptions | <p>As VCCs are to be used as investment funds, the e-Tax Guide states that VCCs shall only be considered for the tax exemptions under the following provisions:</p> <ul style="list-style-type: none"> <li>(i) Section 13H ITA (<i>Exemption of income of venture company</i>);</li> <li>(ii) Section 13R ITA (<i>Exemption of income of company incorporated and resident in Singapore arising</i></li> </ul> |

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- from funds managed by fund manager in Singapore);*
- (iii) Section 13X ITA (*Exemption of income arising from funds managed by fund manager in Singapore*).

Each of those exemptions will be applied for, and shall apply, at the umbrella-level. If a VCC obtains an exemption, all sub-funds of that VCC will benefit from the exemption.

In addition, the economic conditions attaching to the above awards shall also apply at the umbrella level. For example, satisfaction of the S\$50 million assets under management (AUM) requirement applicable to a section 13X VCC applicant will be determined with reference to the aggregate AUM of all sub-funds combined.

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| Computation of chargeable income                                       | <p>The chargeable (or exempt) income of a VCC comprises the aggregate chargeable (or exempt) income of all its sub-funds combined. Hence to compute the chargeable (or exempt) income of a VCC, computations must be completed at the sub-fund level (taking into account the tax treatments outlined further below), and then aggregated. In the case of a re-domiciled umbrella VCC, the modified tax framework applicable to re-domiciled companies will also apply at the sub-fund level.</p> <p>As noted above, the ITA shall apply to a VCC in the same way as any other company, save to the extent specified. Paragraph 5.8 of the e-Tax Guide lists the ITA provisions that provide for certain tax deductions to which a VCC will not be entitled. Those deductions relate to activities and expenditure that an investment fund would not typically seek to claim in any case.</p> |
| Capital allowances, losses and donations                               | <p>Capital allowances, losses and donations will be quarantined; meaning that unabsorbed amounts attributable to a sub-fund will not be available for deduction against the income of another sub-fund or any other income of the VCC at the umbrella-level.</p> <p>Excess amounts may be carried forward or carried back in the normal manner, subject to there being no substantial change to the share capital structure of the VCC in relation to the relevant sub-fund.</p>  |
| Partial tax exemption, start-up tax exemption and corporate tax rebate | <p>The exempt amounts and rebates for a VCC are to be computed at the umbrella-level, and it shall be within the discretion of the management of the VCC to allocate the exempt amounts and rebates between sub-funds in a manner considered fair to shareholders.</p>  |
| Foreign tax credits  | <p>Foreign tax credits available pursuant to section 50 ITA are to be computed at the sub-fund-level.</p>   |

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For the purposes of unilateral relief for foreign dividends pursuant to section 50A ITA, the 25% shareholding requirement is to be determined with reference only to the shareholding of the relevant sub-fund (i.e., the requirement cannot be satisfied by aggregating the shareholdings of more than one sub-fund).

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Section 13Z tax exemption

Section 13Z ITA provides that a gain derived by a company from a disposal of ordinary shares of another company shall be exempt from income tax if the divesting company holds at least 20% of the ordinary shares in the investee company (i) immediately prior to the disposal of such shares, and (ii) for a continuous period of at least 24 months beforehand.

To determine satisfaction of those conditions, regard must be had to the percentage shareholding attributable to the relevant sub-fund only (i.e., there shall be no aggregation if two sub-funds of the same VCC each held ordinary shares in the same investee company).

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Distributions

Distributions made by a Singapore tax resident VCC shall be exempt from tax in the hands of the shareholders of the company pursuant to section 13(1)(za) ITA.

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Administration

Like other companies, VCCs are required to file annual Estimated Chargeable Income and an annual income tax return.

Irrespective of the number of sub-funds a VCC has, only one set of forms needs to be filed (i.e., at the umbrella-level—this is consistent with a VCC comprising a single legal entity).

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Registration/  
winding-up of  
sub-funds

There is no need to inform the IRAS of the registration of new sub-funds. However, should an umbrella fund decide to wind up a sub-fund, tax clearance must be obtained.

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**GST treatment**

The liability to register and account for GST applies individually to sub-funds; hence one sub-fund of a VCC may be liable to register and account for GST (e.g., because the value of its taxable supplies or imported services exceeds S\$1 million in the past calendar year or is expected to exceed S\$1 million in the next 12 months) whereas another sub-fund of the same VCC may not be required to do so. GST obligations will only apply at the VCC-level where the VCC has no sub-funds.

Once the level at which GST obligations apply has been identified, the GST rules apply in the normal manner.

Sub-funds of VCCs holding an award under either section 13R or 13X of the ITA which are not GST-registered will be able to claim input tax at an annual fixed rate determined by the Monetary Authority of Singapore (MAS) under a GST remission, subject to the

VCC's satisfaction of the MAS' remission requirements (i.e., satisfaction of the relevant award requirements in the preceding financial year, and being managed or advised by a prescribed fund manager in Singapore, etc.).

### **Stamp duty treatment**

Sub-funds will be treated as separate persons for stamp duty purposes, such that stamp duty (including buyer's stamp duty, additional buyer's stamp duty, seller's stamp duty and additional conveyance duty) will be imposed at the sub-fund level.

Stamp duty will only be imposed at the VCC-level if the VCC has no sub-funds. Once the level at which stamp duty applies has been identified, the stamp duty rules apply in the normal manner.

A transfer between two sub-funds of the same VCC will be subject to duty in the same as a transfer between two companies. In the event that an umbrella VCC effects an acquisition or a disposal with or between its sub-funds in a manner that is not evidenced or signified by an instrument; and had that acquisition or disposal been effected, evidenced or signified by an instrument, the instrument would have been chargeable with duty, the umbrella VCC must give a notice to the Commissioner of Stamp Duties within 14 days of the transaction with its sub-fund or between its sub-funds, and such notice shall be chargeable with stamp duties accordingly.

The e-Tax Guide implies that, for additional conveyance duty (ACD) purposes, the definition of property-holding entity (PHE) (appearing in section 23 of the Stamp Duties Act) should be read as though the relevant sub-fund was the relevant company. However, the e-Tax Guide also mentions that where the non-umbrella VCC or umbrella VCC is a PHE, the cancellation or issuance of shares of the non-umbrella VCC or umbrella VCC (i.e., at the VCC level) may also attract ACD if the transferor or transferee (as the case may be) is or becomes a significant owner (after taking into account the interests which their associates may own).

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### **Deloitte Singapore's views**

Overall, the e-Tax Guide sets out a clear explanation regarding how Singapore VCCs and their sub-funds will be taxed.

The approach outlined is consistent with the segregation of assets and liabilities, but takes into account the singular legal form of the VCC in the context of the income tax, GST, and stamp duty rules.

Whilst it is inevitable that clarifications and additional guidance will be required as the use of Singapore VCCs becomes more prevalent, the e-Tax Guide provides a good starting point for VCCs (and their investors) to understand their tax filing obligations and provides more certainty in the application of the tax rules to VCCs and their sub-funds.

One issue not specifically addressed in the e-Tax Guide is how stamp duty relief could be made available to a VCC and/or its sub-funds pursuant to the Associated Permitted Entity Rules and the Reconstruction Rules. In practice, both sets of rules are frequently of relevance to investment funds; particularly where a fund or sub-fund needs to be bifurcated to preclude an incoming investor's exposure to a particular asset class as part of the commercial terms of the investment.

As the e-Tax Guide states that sub-funds will be treated as separate persons for stamp duty purposes, eligibility for relief under each set of rules is expected to be determined with reference to the relevant sub-fund(s). Similarly, determining the existence of an association for purposes of the Associated Permitted Entity Rules should presumably be considered with reference only to relevant sub-funds.

## Contacts

For more information on the above or any other matters, please contact either the listed contacts below, or any member of the [Singapore Tax & Legal team](#).

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