

Client Update: Singapore

2023 OCTOBER

Tax

Bill Passed to Implement Changes to Approved Royalty Incentive (ARI) Scheme

On 7 November 2023, the Economic Expansion Incentives (Relief from Income Tax) (Amendment) Bill ("**Bill**") was passed in Parliament. The Bill seeks to amend the Economic Expansion Incentives (Relief from Income Tax) Act 1967 ("**Act**"), with the most salient amendment being the replacement of the existing agreement-based Approved Royalty Incentive ("**ARI**") scheme with a new activity-based ARI scheme.

Other amendments include:

- (a) extending the period during which approvals may be given in respect of certain incentive schemes under the Act. Schemes applicable to (i) pioneer service companies; (ii) pioneer enterprises; (iii) development and expansion companies; (iv) foreign loans; and (v) investment allowances for certain types of projects have been extended by five years from 31 December 2023 to 31 December 2028;
- (b) enhancing the powers of the Minister for Finance and the Minister for Trade and Industry in their administration of various incentive schemes under the Act; and
- (c) making other miscellaneous and consequential amendments.

ARI Scheme

By way of background, the ARI scheme was introduced to encourage companies to access cutting-edge technology and know-how for substantive activities in Singapore by way of offering tax exemptions or concessionary withholding tax ("**WHT**") rates on approved royalties, technical assistance fees, or contributions to research and development costs (collectively, "**Relevant Payments**") made to a non-tax resident. Approval for ARI is currently granted on an **agreement-based approach**. The ARI Scheme was scheduled to lapse after 31 December 2023.

To continue encouraging companies to leverage new technologies and know-how to develop the capabilities of Singapore's local workforce and capture new growth opportunities, it was announced in Budget 2022 (covered in our February 2022 Legal Update titled "[Forward, Together: Singapore Budget 2022](#)") that the ARI scheme will be extended till 31 December 2028 and be simplified to cover classes of royalty agreements on an **activity-based approach**. The Bill implements this change.

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Key aspects of the new ARI scheme are as follows:

- (a) The Minister for Trade and Industry ("**Minister**") may provide approval of an activity for a company where:
 - the company has entered into or is desirous of entering into an agreement or arrangement with a non resident person under which Relevant Payments are or will be payable to the non resident person ("**Non-Resident**"); and
 - the agreement or arrangement is for the purpose of carrying on the activity of the company.
- (b) The Minister may specify in an approved activity certificate ("**Certificate**") that the approved activity will be exempt from tax or that a concessionary rate of tax will be levied (collectively, "**tax incentives**"), subject to any conditions specified in the certificate. The Minister may specify different tax incentives (including different concessionary rates) for different classes, categories, or descriptions of (i) approved activities; (ii) Relevant Payments; or (iii) Non-Residents.
- (c) Where a company already has an agreement-based ARI, it may apply for the revocation of the existing ARI for the agreement and for the approval of the new activity. If the new activity is approved, the tax incentives under the new ARI will apply to the Payments payable under the earlier agreement even if they have ceased to be approved Payments. However, this only holds true if the company has applied for the revocation of the existing ARI.

The new activity-based ARI aims to alleviate the administrative burden of needing to apply for approval each time a company varies an approved agreement or enters a new agreement. This change from an agreement-based ARI to an activity-based ARI will provide a more flexible approach to suit companies' constantly evolving investment interests as the use of intangible assets and intellectual property has become more pervasive. However, companies should consider whether the agreement-based or activity-based ARI would, under their individual circumstances, best serve their purposes.

On a last note, the Minister has commented that the change to an activity-based approach is not a relaxation of the scheme, and that the Bill still clearly defines activities which are supportable under the ARI scheme. Companies that make claims under agreements which are not covered by a supportable activity will still have their claims rejected. In this regard, companies should carefully consider whether the claims made under their agreements are covered by a supportable activity in order to avoid a rejection of their claims and being obliged to pay the full prevailing WHT on royalties, fees or contributions payable under their agreements.

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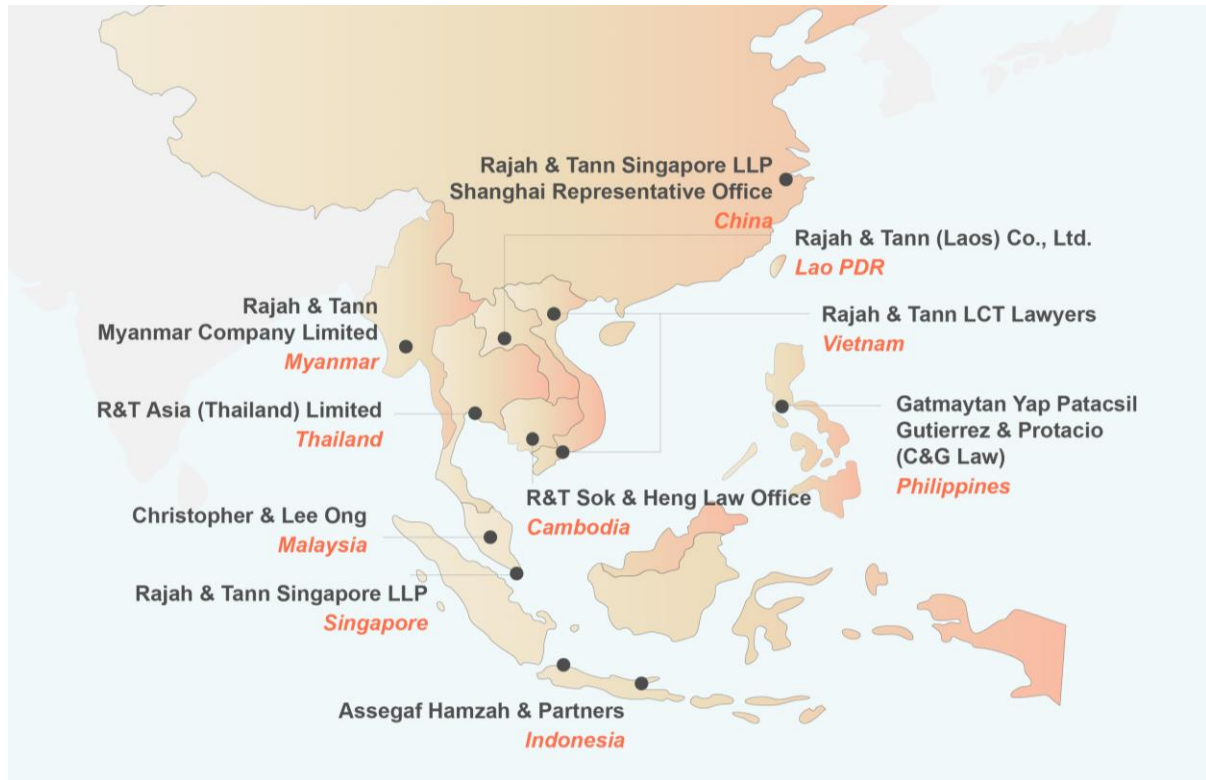
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