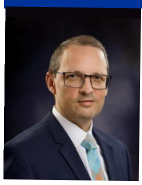
Hamel-Smith FORUM

ATTORNEYS-AT-LAW, TRADEMARK & PATENT AGENTS

VOLUME 13 ISSUE 5 | The Lawyers Newsletter for Business Professionals | OCTOBER 2023



NO ESCAPING DEATH OR TAXES:
TELL THE GRIM REAPER "Not Anymore!"

M. Glenn Hamel-Smith

The well-known adage says that there is no escaping death and taxes. If you are an individual, spoiler alert, I am afraid that the saying still applies to you for the moment – sorry! Perhaps with further developments in artificial intelligence and new technologies, we may at some point be able to prolong the arrival of death until it seems that we are comparatively immortal, at least compared to the old idiom of three score and ten, which many so persons are living beyond today.

But the good news is that if you are a small or medium sized company, or if you own such a company, both death and corporate taxes (for the company, not you the individual owner) can be avoided, at least for a while anyway.

Companies, as perpetual creatures of statute (they are entities created by legislation instead of procreation) can avoid "death" if they are successful in avoiding insolvency, being amalgamated (when two or more companies merge into one company), or acquired by another company. That said, one might equate amalgamation to reincarnation in some cases as the amalgamated company continues to live on in the new surviving amalgamated company in a sense (in this jurisdiction anyway – in other jurisdictions, they cease to exist). But when death comes, whether for a person or a company, it is pretty much finite. It happens, it's all over, there is no more. So, one can argue that, of the two nuisances of death and taxes, the more annoying is taxes, because unlike death, they never seem to end.

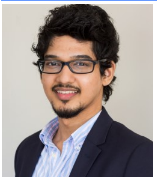
But, no more! There is a way for some companies to legitimately escape paying corporate taxes, for a few years at least. And as corporate taxes are an expense that companies have to pay, escaping taxes could help a young growing company avoid insolvency and possible death. You should note that our relatively recently proclaimed Bankruptcy and Insolvency legislation is actually designed to help companies avoid the death of insolvency (if possible) by staving off creditors for a while so that they can have time to renegotiate their debts. So how can a small or medium sized company avoid paying corporate tax? Such companies can do so by getting listed on the SME (small and medium enterprises) Exchange (also called the Junior Stock Exchange) of the Trinidad & Tobago Stock Exchange (TTSE).

Companies that can qualify and list on the SME Exchange pay zero percent corporate tax (not even Green Fund or Business Levy) for the first five years from being listed. Okay, so maybe you can't escape corporate taxes forever, but not having to pay for five years is really not bad at all. After those five years, your listed SME company pays corporate taxes at half the current rate (fifteen percent) for the next five years. All these measures were introduced in the Finance Act, 2020 to encourage companies to list to develop our capital markets. Of course, after ten years from listing, your SME company pays corporate taxes just like every other company (and will graduate to the senior stock exchange – unless it seeks to delist). Hopefully by that time, after carrying out a successful public offering of shares (an IPO) and possibly additional public offerings (APOs), it will be a large and successful company that is well capable of paying full corporate taxes and contributing to a successful economy.

The good news is that accessing that corporate tax-free status (at least for a few years) may become more accessible to SME companies. It will be more accessible if the TTSE is successful in amending one of its qualifying rules for

(cont'd on page 4)

CONTENTS



RECENT TAX INCENTIVES IN TRINIDAD & TOBAGO: A PRE-BUDGET CONSIDERATION

Miguel Vasquez

The Government of Trinidad and Tobago has introduced a number of tax incentives over the past few years, aimed at stimulating growth or encouraging development in certain sectors and industries. With the national budget due to be announced within the next few weeks, it would be useful to recall some of the previous incentives, as companies and businesses consider how they can optimize use of these incentives, or chart a course to benefit from any further incentives that may be introduced.

Construction and Manufacturing Industries:

For companies involved in the manufacturing sector, the Government introduced a one-time credit for manufacturing companies that invest in new machinery, production lines or new equipment, up to a maximum credit of $50,000.00. The company must, however, be an approved manufacturing company as certified by the Minister of Trade and Industry.

Furthermore, manufacturing companies are also entitled to a reduction in Corporation Tax, namely to 25%, on the first $100,000.00 that is expended on investments in projects relating to information technology, digitization, and technology development, to advance growth in the manufacturing industry. Petrochemical companies are excluded this incentive.

An approved property development company is entitled to deduct from any capital expenditure incurred by that company in the construction of a building that is to be used for commercial or industrial purposes by the company, a purchaser or lessee, an amount equal to 15% where construction of the building is proved to have commenced before the 31st December, 2005 and is completed on or before the 31st December, 2007, or to have commenced on or after the 1st January, 2008, and is completed on or before the 31st December, 2014. Alternatively, an amount equal to 20% of the expenditure, where construction of the building is proved to have commenced on or after the 1st January, 2015, and is completed on or before the 31st December, 2024.

Renewable Energy:

T&T has introduced a number of measures to incentivise the use of renewable energy, including the introduction of wear and tear allowances up to 150% in respect of expenditure incurred on the acquisition of plant, machinery, parts and materials for use in the manufacture and acquisition of solar water heaters, and wind turbines, and equipment, solar photovoltaic systems and supporting equipment; as well as allowances of 150% in respect of expenditure incurred in carrying out an audit for the design and installation of energy saving systems, an accelerated allowance at the rate of 75% on expenditure incurred in the acquisition of plant and machinery by a certified Energy Service Company for the purpose of conducting energy audits, and exemptions on value added tax, customs duties and motor vehicles tax on certain new or used electric cars. Most recently, the Government introduced a measure that reduces the rate of VAT on new equipment for manufacturing companies utilising alternate energy technologies; renewable energy options, such as gasifiers using biomass, and harnessing renewable energy through wind, solar and water, to 0%.

Technology and Digitization:

Registered payment service providers and electronic money issuers are entitled to a tax credit for expenditure incurred in the acquisition of equipment, intellectual property related to software outsourcing and creation, product development, web development, security and maintenance, hosting, regulatory costs, and bank settlement fees, up to a maximum of $50,000.00. This incentive was introduced in order to encourage the growth of online financial transactions and the development of a digital economy.

Moreover, companies, whose core business activities are digitization and technology solutions (i.e., activities relating to software programmes or services), are entitled to be taxed at half of the Corporation Tax rate on their first $100,000.00 of chargeable income for income year 2022, and on the first $200,000.00 of chargeable income for income year 2023.

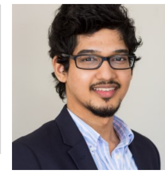
Companies engaged in research and development are entitled to a capital allowance of 40% (up to a maximum of $3,000,000.00) on expenditure incurred in the said research and development. For the purposes of the allowance, research and development refers to the process intended to create a new or improved product.

Tech start-ups, new tech businesses and existing tech businesses, are entitled to a super-allowance at the rate of 150%, but up to a maximum of $3,000,000.00. The companies falling within the scope of entitlement are companies that were incorporated within three (3) years from the 1st January, 2020, and whose purpose is to provide digital technology products or services.

A company that incurs expenditure in creating employment in a technology industry, where the employees comprise a majority of persons between the ages of 18 and 35, are entitled to an allowance equal to 150% of the actual expenditure incurred in respect of the creation of employment, up to a maximum of $3,000,000.00.

RECENT TAX INCENTIVES IN TRINIDAD & TOBAGO:
A PRE-BUDGET CONSIDERATION

Miguel Vasquez



(Cont'd from page 2)

The technology industry for these purposes is defined as developers of computer software and hardware, providers of cloud services, internet services, e-commerce services, consumer electronics services and telecommunication services.

The Government also introduced exemptions on VAT, online purchase tax and Customs Duties, on all computers, computer hardware, software, mobile and digital equipment, cell phones, accessories and computer peripherals.

Energy Industry:

A number of incentives have also been introduced in the energy industry including an increase to the tax credit to 30% (but up to a maximum of $500,00.00) to offset the costs of investment in carbon capture and storage, and enhanced oil recovery, for companies who have invested in this activity. The expenditure must be incurred in technology which prevents or removes carbon emissions from the atmosphere and stores the captured carbon emissions for reuse in manufacture, or stores the captured carbon emissions underground or otherwise, or for the increased recovery of crude oil from a reservoir by using various methods, including steam, water flooding or gas injection into an existing oil well.

General:

Certain approved small companies may obtain an exemption from Corporation Tax for a period of six (6) years. Moreover, small and medium enterprises who are newly listed on the T&T Stock Exchange are entitled to a 0% tax rate on Business Levy and Green Fund Levy for the first five (5) years following listing, and to a 50% reduction in these taxes for the subsequent five (5) years. These companies are also entitled to an exemption from Corporation Tax for the first five (5) years following listing, as well as a 50% reduction in their Corporation Tax rate for the subsequent five (5) years.

A small and medium enterprise is considered to be a company whose minimum issued share capital is (a) $5,000,000.00 and maximum issued share capital does not exceed $50,000,000.00 following the initial public offering, (b) minimum and maximum capital base comprises of issued share capital only and does not include retained earnings and accounts transferred from such issued share capital or account, (c) a minimum of 25 unconnected shareholders own a total of at least 30% of the new issued share capital of the company, and (d) whose capital is raised with the issuance of an initial public offering to be followed by a listing on the T&T Stock Exchange no more than 60 days after allotment of the issue.

An allowance aimed at encouraging companies and businesses to hire young persons (i.e., persons between the ages of 16 and 25) who completed secondary school education was also introduced. The structure of the hire is required to be in the form of an apprenticeship training programme that is registered with the National Training Agency. A company would be entitled to claim an allowance equal to 150% of the expenditure incurred in hiring the young person, up to a maximum of 20% of the total wages and salaries bill of the company for the year.

The Withholding Tax rates on distributions (most relevantly, dividends) to non-residents were also reduced. For distributions made to a parent company, the reduction was from 5% to 3%, while distributions made other than to a parent company, are now subject to Withholding Tax at the rate of 8% (i.e., down from 10%).

Companies who incur expenditure in the conservation or preservation of property under the National Trust of T&T, is entitled to a 150% tax allowance on the expenditure it incurs, up to $1,000,000.00.

T&T also partially proclaimed the Special Economic Zones Act, Act No. 1 of 2022 which provides for the development, operation and management of Special Economic Zones ('SEZ') within which favourable fiscal incentives may be provided. Based on the type of licence issued, benefits may include reductions in the rate of Corporation Tax, research and development allowances, exemptions on property tax, stamp duty on instruments for the purchase, lease and acquisition of land for its use, and import duties for approved capital goods, spare parts, raw materials, building materials and articles.

It will be interesting to see what further incentives and measures are introduced by the Government for the next fiscal year, as Trinidad and Tobago continues to strive to stimulate economic growth across all sectors and industries.

Miguel Vasquez is a Senior Associate within the firm's Dispute & Risk Management Department and can be reached at miguelv@trinidadlaw.com

NO ESCAPING DEATH OR TAXES:
TELL THE GRIM REAPER "Not Anymore!"
M. Glenn Hamel-Smith

companies that wish to list on the SME Exchange – it is seeking to do so at the moment. Rule 400(2) of the TTSE Rule Book outlines the Special Market Listing Requirements relative to the SME Market – that is, what things your company needs to do, or requirements it must meet, in order be able to list on the SME Exchange.

Currently, according to Rule 400(2), companies seeking to list on the SME Exchange, must, among other things, have at least twenty-five unconnected shareholders owning at least thirty percent (30%) of the total issued share capital (the issued shares of the company). While there is no definition of "unconnected shareholder" in the TTSE Rules, extrapolating from the definition of "connected persons" under the TTSE Rules, it is assumed that a "connected shareholder" is a shareholder who is a: director or senior officer/manager of the listed company, or the spouse, minor child or dependent (or a spouse of a dependent), or partner of such a person, or a corporate entity controlled by any such person. If that is so, an unconnected shareholder should be anyone who is not a connected shareholder.

At present, to qualify to list on the SME Exchange, a company must have an IPO of its shares following which at least twenty-five unconnected shareholders acquire and hold at least 30% of the issued share capital (in addition to the shares held by the connected shareholders). In the hope of attracting many companies to list on the SME Exchange, the TTSE is seeking to amend the above provision of Rule 400(2) to reduce the 30% threshold to 20% with the proviso that the TTSE can determine that even lower thresholds can be applied with the approval of the Trinidad and Tobago Securities and Exchange Commission (the Commission).

If the amendment is passed with the proviso, a company's shares could still potentially be listed on the SME Exchange (to qualify for the tax holiday) if there are even less than 25 unconnected shareholders who hold less than 20% of the share capital following its IPO, provided that the Commission approves. More on the proposed amendment can be found here: https://www.ttsec.org.tt/sosp-ttse-rule-400-2-sme-special-market-listing-rule/ with written comments being requested by July 9, 2023, although it would be unusual if later submissions were to be refused.

There is, of course, no free lunch, to paraphrase another maxim. So while a company that successfully lists on the SME Exchange will not have to pay corporate taxes for 5 years (and will pay reduced taxes for another five after that), there are costs associated with carrying out a successful IPO and getting listed on the SME Exchange, including fees payable to both the TTSE and the Commission, not to mention broker and legal fees. And there are also on-going reporting and filing requirements for listed companies which add to the cost of doing business.

Companies will need to weigh those listing and reporting costs against the potential savings from the tax holiday to determine if it will be worthwhile to list. Perhaps the TTSE and the Commission should look into publishing what the average costs might be (even if a range) for companies of varying sizes to list on the SME Exchange. It might also be helpful (and make it more attractive to list), if the TTSE and the Commission provided a waiver or discount on the first-year fees for companies that choose to list on the SME Exchange. Whatever the outcome, just remember you heard it here first – you can escape death and taxes, but only for a while, and only if you are an SME company.

M. Glenn Hamel-Smith is a Partner within the firm's Transactional Dept. and may be reached at glenn@trinidadlaw.com

The featured articles were previously published in the Trinidad Guardian newspaper.

The Lawyers Newsletter for Business Professionals

Published by M. Hamel-Smith & Co.
Eleven Albion, Cor. Dere & Albion Streets
Port of Spain, Trinidad & Tobago
Tel: 1(868) 299-0981 / Fax: 1(868) 625-9177
E-mail: mhs@trinidadlaw.com / Web: www.trinidadlaw.com
and intended for limited circulation to clients and associates of our firm.