

Income Tax (Amendment) (Exchange of Information) Bill

Bill No. 18/2009.

Read the first time on 14th September 2009.

A BILL

intituled

An Act to amend the Income Tax Act (Chapter 134 of the 2008 Revised Edition) to facilitate the exchange of information under certain avoidance of double taxation arrangements.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Income Tax (Amendment) (Exchange of Information) Act 2009 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 101

2. Section 101(3) of the Income Tax Act (referred to in this Act as the principal Act) is amended by deleting the words “or 98” and substituting the words “, 98 or 105M”.

New Parts XXA and XXB

10 3. The principal Act is amended by inserting, immediately after section 105, the following Parts:

“PART XXA

EXCHANGE OF INFORMATION UNDER AVOIDANCE OF DOUBLE TAXATION ARRANGEMENTS

15 Interpretation of this Part

105A.—(1) In this Part —

“avoidance of double taxation arrangement” means an arrangement having effect under section 49;

20 “competent authority”, in relation to a prescribed arrangement, means a person or an authority whom the Comptroller is satisfied is authorised under the EOI provision of the arrangement to make a request to the Comptroller for information under that provision;

25 “exchange of information provision” or “EOI provision”, in relation to an avoidance of double taxation arrangement, means a provision in that arrangement which provides expressly for the exchange of information concerning the tax positions of persons;

30 “prescribed arrangement” means an avoidance of double taxation arrangement that —

(a) has an EOI provision; and

(b) is declared by the Minister, by an order under section 105C(1), as a prescribed arrangement;

“tax position”, in relation to a person, means the person’s position as regards any tax —

- 5 (a) of the country with whose government the avoidance of double taxation arrangement in question was made; and
- (b) that is covered by the EOI provision of that arrangement, including the person’s position as regards —
- (i) past, present and future liability to pay any such tax;
- 10 (ii) penalties, interest and other amounts that have been paid, or are or may be payable, by or to the person in connection with any such tax; and
- (iii) claims, elections, applications and notices that have been or may be made or given in connection with any such tax.
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(2) References in this Part to the tax position of a person include the tax position of —

- (a) a person (not being an individual) that has ceased to exist; and
- 20 (b) an individual who has died.

(3) References in this Part to the tax position of a person are to his tax position at any time or in relation to any period, unless otherwise stated in the prescribed arrangement in question.

Purpose of this Part

25 **105B.** The purpose of this Part is to facilitate the disclosure of information to a competent authority under an avoidance of double taxation arrangement prescribed under section 105C in accordance with the EOI provision in that arrangement.

Prescribed arrangement

30 **105C.**—(1) The Minister may by order declare an avoidance of double taxation arrangement as a prescribed arrangement for the purposes of this Part.

(2) The Minister may by a subsequent order revoke any order previously made under subsection (1).

Request for information

5 **105D.**—(1) The competent authority under a prescribed arrangement may make a request to the Comptroller for information concerning the tax position of any person in accordance with the EOI provision of that arrangement.

(2) Unless the Comptroller otherwise permits, the request must set out the information prescribed in the Eighth Schedule.

10 (3) Every request shall be subject to and dealt with in accordance with the terms of the prescribed arrangement.

Comptroller to serve notice of request on certain persons

15 **105E.**—(1) After receipt of a request under section 105D for any information which, in the opinion of the Comptroller, is information referred to in subsection (2), the Comptroller shall serve notice of the request by ordinary post on —

(a) the person identified in the request as the person in relation to whom the information is sought; and

20 (b) the person identified in the request as the person who is believed to have possession or control of the information.

(2) The information referred to in subsection (1) is information that is protected from unauthorised disclosure under —

(a) section 47 of the Banking Act (Cap. 19) including any regulations made under subsection (10) of that section; or

25 (b) section 49 of the Trust Companies Act (Cap. 336).

(3) Notice under subsection (1) shall be treated as served on the day succeeding the day on which it would have been received in the ordinary course of post if it is addressed —

30 (a) in the case of an individual or a body of persons, to the last known business or private address of the individual or body of persons;

(b) in the case of a company incorporated in Singapore, to its registered office; or

(c) in the case of a company incorporated outside Singapore, either to the individual authorised to accept service of process under the Companies Act (Cap. 50) at the address filed with the Registrar of Companies, or to the registered office or any place of business of the company wherever it may be situated.

(4) Notice under subsection (1) need not be served on any person —

(a) if the Comptroller —

(i) does not have any information of the person referred to in subsection (3);

(ii) is of the opinion that this is likely to prevent or unduly delay the effective exchange of information under the prescribed arrangement; or

(iii) is of the opinion that this is likely to prejudice any investigation into any alleged breach of any law relating to tax of the country with whose government the prescribed arrangement in question was made (whether the breach would result in the imposition of a criminal or civil penalty); or

(b) on such other ground as may be prescribed under section 105H.

(5) Rules made under section 105H may provide for the particulars to be given in a notice under subsection (1).

Power of Comptroller to obtain information

105F.—(1) Sections 65 to 65C shall have effect for the purpose of enabling the Comptroller to obtain any information for the purpose of complying with a request under section 105D.

(2) For the purpose of subsection (1) —

(a) the reference in section 65 to the purpose of obtaining full information in respect of any person's income shall be read as a reference to the purpose referred to in subsection (1);

(b) a reference in section 65B to the purposes of this Act shall be read as the purpose referred to in subsection (1); and

(c) references in section 65B to proceedings for an offence under this Act, proceedings for the recovery of tax or penalty and proceedings by way of an appeal against an assessment shall be read as proceedings for an offence under the law relating to tax of the country of the competent authority making the request, proceedings for the recovery of tax or penalty under such law, and proceedings by way of an appeal against an assessment or equivalent procedure under such law, respectively.

Power of Comptroller to obtain information from other authorities

105G.—(1) For the purpose of complying with a request under section 105D, the Comptroller may request the Comptroller of Goods and Services Tax, the Comptroller of Property Tax, the Chief Assessor or the Commissioner of Stamp Duties to transmit information in his possession to the Comptroller.

(2) Notwithstanding any obligation as to secrecy imposed under any written law or rule of law, the Comptroller of Goods and Services Tax, the Comptroller of Property Tax, the Chief Assessor or the Commissioner of Stamp Duties may transmit to the Comptroller information requested by him under subsection (1).

Rules for purposes of this Part

105H. The Minister may make rules —

- (a) to prescribe anything which may be prescribed under this Part; and
- (b) for the purposes of carrying out the provisions of this Part.

PART XXB

COURT ORDERS RELATING TO RESTRICTED INFORMATION

Interpretation of this Part

105I. In this Part —

“authorised officer” means an officer of the Inland Revenue Authority of Singapore who is authorised by the Comptroller for the purposes of this Part;

“information subject to legal privilege” means —

- 5 (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client; and
- (b) communications between —
- 10 (i) a professional legal adviser and his client or any person representing his client; or
- (ii) a professional legal adviser or his client or any such representative and any other person,
- made in connection with, or in contemplation of, judicial
- 15 proceedings and for the purposes of such proceedings,
- when they are in the possession of a person who is entitled to possession of them, but excluding, in any case, any communications or item held with the intention of furthering a criminal purpose.

20 **Orders relating to certain information**

105J.—(1) Where —

- (a) the Comptroller requires any information —
- (i) for the administration of this Act, other than for an investigation or a prosecution of an offence alleged or
- 25 suspected to have been committed under this Act; or
- (ii) in order to comply with a request made under section 105D; and
- (b) the Comptroller is of the opinion that the information is protected from unauthorised disclosure under —
- 30 (i) section 47 of the Banking Act (Cap. 19) including any regulations made under subsection (10) of that section; or
- (ii) section 49 of the Trust Companies Act (Cap. 336),

then the Comptroller or an authorised officer may apply to the High Court for an order under subsection (2).

(2) If, on such an application, the High Court is satisfied that the conditions referred to in subsection (3) are fulfilled, it may make an order that the person who appears to it to have possession or control of the information to which the application relates shall —

(a) make a copy of any document containing the information and provide the copy to an authorised officer for him to take away; or

(b) give an authorised officer access to the information, within 21 days from the date of the order or such other period as the Court considers appropriate.

(3) The conditions referred to in subsection (2) are as follows:

(a) the making of the order is justified in the circumstances of the case; and

(b) it is not contrary to the public interest for a copy of the document to be produced or that access to the information be given.

(4) Both or either of the following persons may, within 7 days from the date the order is served on the person against whom it is made, apply to the High Court to have the order discharged or varied:

(a) the person against whom the order is made;

(b) the person in relation to whom information is sought,

and the Court, on hearing such an application, may discharge the order or make such variation to it as it thinks fit.

(5) The person referred to in subsection (4)(b) shall be entitled to make such an application even if an order under subsection (7) has been made to the effect that an order under subsection (2) shall not be disclosed to him, if (despite the first-mentioned order) he becomes aware of the second-mentioned order.

(6) Proceedings under this section other than subsection (4) may, at the discretion of the High Court, be conducted in the presence or absence of —

(a) the person alleged to have possession or control of that information or against whom the order under subsection (2) is made, as the case may be; or

(b) the person in relation to whom information is sought.

5 (7) The High Court may, in any proceedings under this section, on the application of the Comptroller, make such further order as it may consider necessary to ensure the confidentiality of anything relating to any order made in those proceedings.

(8) All proceedings under this section shall be heard in camera.

10 (9) No person may inspect or take a copy of any document relating to any proceedings under this section without the leave of the High Court.

(10) No information relating to any proceedings under this section may be published without the leave of the High Court; and leave shall not be given unless the Court is satisfied that the information, if published in accordance with such directions as it may give, would not reveal any matter that the Comptroller or any person referred to in subsection (6) reasonably wishes to remain confidential.

(11) Rules of Court may provide for the procedure relating to —

20 (a) any proceedings under this section; and

(b) appeals from such proceedings.

Supplementary provisions regarding section 105J orders

25 **105K.**—(1) Where the High Court orders a person under section 105J(2) to give an authorised officer access to any information found on any premises, it may, on the same or a subsequent application of the Comptroller or an authorised officer, order any person who appears to him to be entitled to grant entry to the premises to allow an authorised officer to enter the premises to obtain access to the information.

30 (2) Where any information to which an order under section 105J relates is contained in or accessible by means of any data equipment —

(a) an order under section 105J(2)(a) shall have effect as an order to make a copy of a document containing the

information in a form which can be taken away and which is visible and legible; and

(b) an order under section 105J(2)(b) shall have effect as an order to give access to the information in a form which is visible and legible.

(3) A person is not excused from producing any document or giving access to any information by an order under section 105J(2) on the ground that doing so —

(a) might tend to incriminate the person or make the person liable to a penalty; or

(b) would be in breach of an obligation (imposed by law or otherwise) not to disclose the information.

(4) An order under section 105J(2) —

(a) shall not confer any right to the production of, or of access to, information subject to legal privilege; and

(b) shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by law or otherwise.

(5) An authorised officer may photograph or make copies of any thing produced or to which access is granted pursuant to an order made under section 105J(2).

(6) In this section, “data equipment” means any equipment which —

(a) automatically processes information;

(b) automatically records or stores information;

(c) can be used to cause information to be automatically recorded, stored or otherwise processed on other equipment (wherever situated); or

(d) can be used to retrieve information whether the information is recorded or stored in the equipment itself or in other equipment (wherever situated).

Immunities

105L.—(1) No civil or criminal action, other than a criminal action for an offence under section 105M, shall lie against any person for —

- (a) making a copy of a document or giving access to any information if he had done so in good faith in compliance with an order made against him under section 105J(2); or
- (b) doing or omitting to do any act if he had done or omitted to do the act in good faith and as a result of complying with an order made under section 105J(2) or (7).

(2) Any person who complies with an order made under section 105J(2) or (7) shall not be treated as being in breach of any restriction upon the disclosure of information imposed by any law, contract or rules of professional conduct.

Failure to comply with section 105J orders

105M. Any person who —

- (a) without reasonable excuse contravenes an order under section 105J(2) or (7); or
- (b) in purported compliance with an order under section 105J(2), produces to an authorised officer any document which contains any information, or makes available to an authorised officer any information, known to the person to be false or misleading in a material particular without —
 - (i) indicating to the authorised officer that the information is false or misleading and the part that is false or misleading; or
 - (ii) providing correct information to the authorised officer if the person is in possession of, or can reasonably acquire, the correct information,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.”.

Amendment of section 106

4. Section 106(3) of the principal Act is amended by deleting the words “Sixth and Seventh Schedules” and substituting the words “Sixth, Seventh and Eighth Schedules”.

5 **New Eighth Schedule**

5. The principal Act is amended by inserting, immediately after the Seventh Schedule, the following Schedule:

“EIGHTH SCHEDULE

Section 105D(2)

10 **INFORMATION TO BE INCLUDED IN A REQUEST FOR INFORMATION UNDER PART XXA**

1. The purpose of the request.
2. The identity of the competent authority.
3. The identity of the person in relation to whom the information is requested.
- 15 4. A statement of the information requested for including its nature, the relevance of the information to the purpose of the request, and the form in which the competent authority wishes to receive the information from the Comptroller.
- 20 5. The grounds for believing that the information requested for is held by the Comptroller, the Comptroller of Goods and Services Tax, the Comptroller of Property Tax, the Chief Assessor or the Commissioner of Stamp Duties, or is in the possession or control of a person in Singapore.
- 25 6. The name and address of any person believed to have possession or control of the information requested for.
7. A statement that the request is in conformity with the law and administrative practices of the country of the competent authority, and that the competent authority is authorised to obtain the information under the laws of that country or in the normal course of administrative practice.
- 30 8. A statement that the country has pursued all means available in its own territory to obtain the information including getting the information directly from the person in relation to whom the information is requested.
9. The details of the period within which that country wishes the request to be met.
- 35 10. Any other information required to be included with the request under the prescribed arrangement.

11. Any other information that may assist in giving effect to the request.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Income Tax Act (Cap. 134) to augment the ability of the Comptroller of Income Tax (the Comptroller) in complying with requests for information under certain avoidance of double taxation arrangements (referred to as DTAs) entered into by Singapore.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 101(3) so that prosecution for an offence under the new section 105M can only be commenced at the instance or with the consent of the Public Prosecutor.

Clause 3 inserts 2 new Parts.

The new Part XXA contains provisions to facilitate the exchange of information under DTAs to be prescribed under the Part (referred to as prescribed DTAs). The new Part comprises new sections 105A to 105H.

The new section 105A defines terms used in the new Part. In particular, it defines the term “tax position” which qualifies the type of information which may be sought by a Party to a prescribed DTA. The Party may seek information relating to a person’s position as regards any tax of that Party that is covered by the DTA. This includes his liability to pay such tax and any related penalty, interest, claim, election, application or notice. The information sought may relate to a person’s tax position at any time, subject to any limitation set out in the DTA.

The new section 105B sets out the purpose of the new Part which is to facilitate the Comptroller in complying with a request for information under a prescribed DTA. It is to be noted that exchange of information under a DTA that has not been prescribed will continue to be governed by the existing provisions of the Act, such as section 49(5).

The new section 105C deals with the manner of prescribing a DTA for the purposes of the new Part.

The new section 105D describes how a request for information is to be made to the Comptroller. The request is subject to and is to be dealt with in accordance with the terms of the prescribed DTA.

The new section 105E requires the Comptroller to give notice of the request for information to the person in respect of whom information is sought, as well as the person believed to be in possession of the information, save in certain circumstances. The duty to give notice only arises if the information sought is believed to be information protected from disclosure under the Banking Act (Cap. 19) or the Trust Companies Act (Cap. 336).

The new section 105F lifts the requirement of “domestic tax interest” under various information gathering powers of the Act to enable the Comptroller to obtain information to comply with a request under a prescribed DTA.

The new section 105G enables the Comptroller to obtain information required to give effect to a request under a prescribed DTA from other tax authorities, viz. the Comptroller of Goods and Services Tax, the Comptroller of Property Tax, the Chief Assessor and the Commissioner of Stamp Duties.

The new section 105H creates a rule-making power for the purposes of the new Part.

Clause 3 also inserts a new Part XXB which sets out the procedure for obtaining certain restricted information for tax administration purposes or for the purpose of complying with a request under a prescribed DTA. Such information includes information that is protected from disclosure under the Banking Act (Cap. 19) and the Trust Companies Act (Cap. 336). Currently, such information need not be disclosed by reason of section 65B(2) of the Income Tax Act (Cap. 134).

The new Part XXB comprises new sections 105I to 105M.

The new section 105I defines various terms used in the new Part.

The new section 105J empowers the Comptroller to apply to the High Court for an order against a person to produce a copy of a document containing the information sought or to give access to the information. The section also provides for a right of the person against whom the order is made and the person in respect of whom information is sought to apply to the High Court to vary or discharge the order.

The new section 105K contains additional provisions as regards an order made under section 105J. These include giving the officer executing the order the right to be allowed to enter any premises to access the information sought, the duties under the order as regards information contained in or accessible by means of data equipment, and the limits on the order.

The new section 105L provides for immunities from civil or criminal action for a person who complies with a section 105J order.

The new section 105M makes the doing of certain acts offences, namely, the non-compliance with a section 105J order, and the production or giving access to an officer executing the order material that is false or misleading in a material particular.

Clause 4 amends section 106(3) to enable the Minister to amend the Eighth Schedule.

Clause 5 inserts a new Eighth Schedule, which sets out the matters which must be contained in a request for information under a prescribed DTA.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
