

Income Tax (Amendment No. 2) Bill

Bill No. 16/2016.

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A BILL

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An Act to amend the Income Tax Act (Chapter 134 of the 2014 Revised Edition).

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

Short title and commencement

1.—(1) This Act is the Income Tax (Amendment No. 2) Act 2016.

(2) Sections 2(c) and 3 come into operation on 1 August 2016.

(3) Sections 2(a) and (b) and 4 to 10 come into operation on a date
5 that the Minister appoints by notification in the *Gazette*.

Amendment of section 8A

2. Section 8A of the Income Tax Act (called in this Act the principal Act) is amended —

(a) by inserting, immediately after the words “section 65B(3)” in
10 subsection (1)(a), the words “or 105L(1)”;

(b) by deleting subsection (3) and substituting the following
subsection:

“(3) Any person who is —

(a) filing or submitting any return, estimate,
15 statement or document may; or

(b) giving a notice under section 45(1)(b) or
45D(2) or providing any information under
section 105L(1) must (unless otherwise
permitted by the Comptroller),

20 do so through the electronic service.”; and

(c) by inserting, immediately after subsection (14), the
following subsections:

“(15) In this section —

(a) a reference to the filing or submission of any
25 return, estimate, statement or document
includes a reference to the making of an
election under section 37I(1) or (4A); and

(b) a reference to any return, estimate, statement
30 or document includes a reference to such
election.

(16) Despite subsection (3), any person making an election under section 37I(1) or (4A) must, unless otherwise permitted by the Comptroller, do so through the electronic service.”.

Amendment of section 37I

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3. Section 37I of the principal Act is amended —

(a) by deleting the word “and” at the end of paragraph (b) of subsection (2), and by inserting immediately thereafter the following paragraph:

“(ba) if made on or after 1 August 2016, be made using the electronic service, except that the Comptroller may in any particular case or class of cases permit the election to be made in any other manner; and”;

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(b) by deleting the words “, the year of assessment 2016, the year of assessment 2017 and the year of assessment 2018” in subsection (4) and substituting the words “and the year of assessment 2016”;

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(c) by inserting, immediately after subsection (4), the following subsections:

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“(4AA) For the year of assessment 2017, the amount of cash payout is —

(a) if the last day of the basis period for that year of assessment is before 1 August 2016, the amount computed in accordance with subsection (4) (as applied with the necessary modifications); or

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(b) if the last day of the basis period for that year of assessment is on or after 1 August 2016

$$(A \times 60\%) + (B \times 40\%),$$

where A is the lower of the following:

5 (i) the aggregate amount of selected expenditure for one or more quarters (or part of such quarter) between the first day of the basis period for that year of assessment and 31 July 2016 (both dates inclusive);

10 (ii) \$100,000; and

B is the lower of the following:

15 (i) the aggregate amount of selected expenditure for one or more quarters (or part of such quarter) between 1 August 2016 and the last day of the basis period for that year of assessment (both dates inclusive);

20 (ii) the balance after deducting the lower of the amounts specified in paragraphs (i) and (ii) of the definition of A from \$100,000.

25 (4AB) For the year of assessment 2018, the amount of cash payout is —

30 (a) if the first day of the basis period for that year of assessment is before 1 August 2016, the amount computed in accordance with subsection (4AA)(b) (as applied with the necessary modifications); or

- (b) if the first day of the basis period for that year of assessment is on or after 1 August 2016

$$B \times 40\%,$$

where B is the lower of the following:

- (i) the aggregate amount of selected expenditure for all quarters of the basis period for that year of assessment; 5
- (ii) \$100,000.”;
- (d) by deleting the word “and” at the end of paragraph (b) of subsection (4B), and by inserting immediately thereafter the following paragraph: 10
- “(ba) if made on or after 1 August 2016, be made using the electronic service, except that the Comptroller may in any particular case or class of cases permit the election to be made in any other manner; and”;
- (e) by deleting the words “subsections (3) and (4)” in subsection (4C) and substituting the words “subsections (3), (4), (4AA) and (4AB)”;
- (f) by deleting the words “subsection (3) or (4)” in subsection (4D) and substituting the words “subsection (3), (4), (4AA) or (4AB)”;
- (g) by deleting paragraph (b) of subsection (4D) and substituting the following paragraph: 25
- “(b) such part of the price of the equipment or rights that the qualifying person elects to be used for computing the cash payout for the year of assessment if the selected expenditure or the aggregate amount of selected expenditure for the cash payout is — 30

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- (i) the amount mentioned in subsection (3)(a)(ii) in the case of the year of assessment 2011, or subsection (3)(b)(ii) in the case of the year of assessment 2012;
- (ii) \$100,000 in the case of the year of assessment 2013, 2014, 2015 or 2016;
- (iii) \$100,000 —
- 10 (A) in the case of the year of assessment 2017, where the last day of the basis period for that year of assessment is before 1 August 2016; or
- 15 (B) in the case of the year of assessment 2018, where the first day of the basis period for that year of assessment is on or after 1 August 2016; or
- 20 (iv) the amount mentioned in paragraph (ii) of the definition of A or paragraph (ii) of the definition of B in subsection (4AA)(b) —
- 25 (A) in the case of the year of assessment 2017, where the last day of the basis period for that year of assessment is on or after 1 August 2016; or
- 30 (B) in the case of the year of assessment 2018, where the first day of the basis period for that year of assessment is before 1 August 2016.”;

(h) by inserting, immediately after subsection (4D), the following subsection:

“(4DA) Sub-paragraphs (i) to (iv) of subsection (4D)(b) have effect for all cash payouts for the respective years of assessment mentioned in those sub-paragraphs.”;

- (i) by deleting sub-paragraph (i) of subsection (4E)(b) and substituting the following sub-paragraph: 5

“(i) $A \times B$,

where A is the amount of such capital expenditure; and

B is the percentage in the second column of the following table set out opposite the period in which the agreement is signed in the first column of the table: 10

<i>If the agreement is signed</i>	<i>Percentage</i>	
In the basis period for the year of assessment 2012	30%	
In the basis period for the year of assessment 2013, 2014, 2015 or 2016	60%	20
On or before 31 July 2016 in the basis period for the year of assessment 2017 or 2018	60%	25
On or after 1 August 2016 in the basis period for the year of assessment 2017 or 2018	40%	30

”;

(j) by deleting subsection (5) and substituting the following subsection:

“*(5)* For the purposes of subsections (1), (3), (4), (4AA), (4AB) and (4A), an individual carrying on one or more trades, professions or businesses through 2 or more firms (excluding partnerships) must not be granted a cash payout that exceeds the amount computed in accordance with subsection (3), (4), (4AA) or (4AB) (as the case may be).”;

(k) by deleting subsection (19) and substituting the following subsection:

“*(19)* Unless disallowed by the Comptroller under subsection (20), where the Comptroller has recovered any amount under subsection (15)(b) or (c), the amount of the relevant expenditure mentioned in subsection (14) or (14A) is to be increased by an amount determined in accordance with the formula

$$\frac{A}{B},$$

where A is the amount recovered by the Comptroller under subsection (15)(b) or (c); and

B is the percentage in the second column of the following table if the amount recovered is for a cash payout for —

(a) expenditure incurred;

(b) equipment acquired under a hire-purchase agreement signed; or

(c) intellectual property rights acquired under an IPR instalment agreement signed,

in the period set out opposite in the first column of the table:

<i>When the expenditure was incurred, or the hire-purchase agreement or IPR instalment agreement was signed</i>	<i>Percentage</i>	
In the basis period for the year of assessment 2011 or 2012	30%	5
In the basis period for the year of assessment 2013, 2014, 2015 or 2016	60%	10
On or before 31 July 2016 in the basis period for the year of assessment 2017 or 2018	60%	15
On or after 1 August 2016 in the basis period for the year of assessment 2017 or 2018	40%	20
	”.	

Amendment of section 105I

4. Section 105I of the principal Act is amended by inserting, immediately before the definition of “international tax compliance agreement”, the following definition:

“ “competent authority agreement” means a bilateral or multilateral agreement to improve international tax compliance based on the standard for automatic exchange of financial account information in tax matters developed by the Organisation for Economic Co-operation and Development;”.

Amendment of section 105K

5. Section 105K(1) of the principal Act is amended —

(a) by inserting, immediately after paragraph (a), the following paragraph:

5 “(aa) a competent authority agreement between the Government and —

(i) the government of another country; or

(ii) the governments of 2 or more countries;”;

10 (b) by deleting the words “that agreement” in paragraph (b) and substituting the words “an agreement in paragraph (a) or (aa)”; and

(c) by deleting paragraph (c) and substituting the following paragraph:

15 “(c) any other agreement or arrangement between the Government and —

(i) the government of another country; or

(ii) the governments of 2 or more countries,

20 which makes provision corresponding, or substantially similar, to that made by an agreement in paragraph (a), (aa) or (b).”.

Amendment of section 105L

6. Section 105L of the principal Act is amended by deleting subsection (1) and substituting the following subsections:

25 “(1) Subject to subsection (5), a person falling within any description of persons prescribed by regulations (called in this section a prescribed person) must provide the Comptroller (or such other person as may be authorised by the Comptroller) with information of a description prescribed by those regulations.

30 (1A) The information under subsection (1) must be provided —

- (a) at such times and frequency as may be prescribed by the regulations or as the Comptroller may in any particular case allow;
- (b) in such form and manner as may be prescribed by the regulations or as the Comptroller may in any particular case allow; and
- (c) using the electronic service, except that the Comptroller may in any particular case or class of cases permit the information to be given in any other manner.”

Amendment of section 105M

7. Section 105M of the principal Act is amended by inserting, immediately after subsection (3), the following subsections:

“(3A) Where —

- (a) a person (*X*), in order to comply with a regulation mentioned in section 105P(2)(c), requests another person (*Y*) to provide any information contemplated by an agreement mentioned in section 105P(1) to establish *Y*’s residence for a tax purpose contemplated by that agreement; and
- (b) *Y*, in purported compliance with that request, provides any such information to *X* which *Y* knows is false or misleading in any material particular,

Y 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.

(3B) Where —

- (a) *X*, in order to comply with a regulation mentioned in section 105P(2)(c), requests *Y* to provide any information contemplated by an agreement mentioned in section 105P(1) to establish another person’s (*Z*) residence for a tax purpose contemplated by that agreement; and

(b) *Z* provides any such information, whether directly or indirectly, to *X* or *Y* which *Z* knows is false or misleading in any material particular,

Z 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 105N

8. Section 105N of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

“(1) Sections 65 to 65D have effect for the purpose of enabling the Comptroller to obtain any information for the purpose of —

(a) complying with any provision of an international tax compliance agreement;

(b) enabling Singapore to carry out its obligations under any provision of such agreement; or

(c) determining whether a person has complied with any regulation made under section 105P.”;

(b) by deleting the word “and” at the end of subsection (2)(c); and

(c) by deleting the full-stop at the end of paragraph (d) of subsection (2) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

“(e) section 65E has effect in relation to a notice issued under section 65B for a purpose mentioned in subsection (1).”.

Amendment of section 105P

9. Section 105P of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

“(1) The Minister may make regulations for, or in connection with, giving effect to or enabling effect to be given to —

(a) an international tax compliance agreement; or

(b) any future competent authority agreement which may be declared as an international tax compliance agreement under section 105K(1).”;

(b) by deleting paragraph (c) of subsection (2) and substituting the following paragraph:

“(c) impose on a person —

(i) audit requirements for the purpose of determining the extent of compliance by the person with the regulations made under this section (including requiring the person’s internal auditor or appointing another person to carry out an audit, and report the results of the audit to the Comptroller);

(ii) due diligence requirements;

(iii) registration and other requirements; and

(iv) a requirement that the person inform the Comptroller if the person wishes to authorise another person to perform any requirement under section 105L(1) or sub-paragraphs (i), (ii) and (iii) on the person’s behalf,

being requirements that —

(A) are required or permitted to be imposed under an international tax compliance agreement on any person to whom the agreement applies; or

(B) may facilitate the implementation of any future competent authority agreement

which may be declared as an international tax compliance agreement under section 105K(1);”; and

(c) by deleting the word “and” at the end of paragraph (ca) of subsection (2), and by inserting immediately thereafter the following paragraph:

“(cb) enable the Comptroller to appoint another person to carry out an audit for the purpose of determining the extent of compliance by a person with the regulations made under this section; and”.

Amendment of section 105PA

10. Section 105PA of the principal Act is amended by deleting subsections (1) and (2) and substituting the following subsections:

“(1) This section applies where a regulation made under section 105P imposes a duty on a person (*A*) to —

- (a) provide any information to another person;
- (b) require *A*’s internal auditor or appoint another person to carry out an audit for the purpose of determining the extent of compliance by *A* with the regulation;
- (c) carry out any due diligence requirements; or
- (d) provide any information to —
 - (i) *A*’s internal auditor or the appointed person mentioned in paragraph (b); or
 - (ii) a person appointed by the Comptroller to carry out an audit.

(2) *A* is not excused from complying with a duty mentioned in subsection (1) by reason only that *A* is under a duty not to collect, use or disclose any information, whether imposed by written law, rule of law, any contract or any rule of professional conduct.”.

EXPLANATORY STATEMENT

This Bill seeks —

- (a) to implement the changes to the Productivity and Innovation Credit Scheme mentioned in the Government’s 2016 Budget Statement;
- (b) to enable Singapore to comply with a bilateral or multilateral agreement that is or may be entered into by her that is based on the standard for automatic exchange of financial account information in tax matters developed by the Organisation for Economic Co-operation and Development (OECD). The standard is also known as the Common Reporting Standard (CRS); and
- (c) to make certain other technical amendments to the Income Tax Act (Cap. 134).

Clause 1 relates to the short title and commencement.

Clause 2 makes consequential amendments to section 8A (Electronic service) arising from an amendment to section 105L requiring information to be provided using the electronic service. The clause also amends section 8A to require an irrevocable written election under section 37I to be made using the electronic service provided under section 8A if the election is made on or after 1 August 2016.

Clause 3 amends section 37I (Cash payout under Productivity and Innovation Credit Scheme) —

- (a) to reduce the rate for converting qualifying expenditure into a cash payout from 60% to 40% for qualifying expenditure incurred on or after 1 August 2016;
- (b) to require an irrevocable written election to be made using the electronic service if made on or after 1 August 2016; and
- (c) to make other consequential amendments.

Clause 3 also corrects a clerical error in section 37I(4D), which sets out the maximum cash payout for the subject of a hire-purchase agreement or an IPR instalment agreement. In that subsection, the reference to the amounts in subsections (3)(a)(ii) or (b)(ii) and (4)(b) ought to be references to the expenditure selected for the payouts rather than to the payouts themselves. The new subsection (4DA) makes it clear that the amendment applies to all payouts for each applicable year of assessment. These include payouts already made.

Clause 4 amends section 105I (Interpretation of Part XXB) to provide a definition of “competent authority agreement” (CAA). A CAA is either a bilateral or multilateral agreement to improve international tax compliance that is based on the CRS.

Clause 5 amends section 105K (International tax compliance agreements) to empower the Minister to declare (by order) a CAA between the Singapore Government and one or more governments of foreign countries as an international tax compliance agreement. The clause also amends section 105K to permit the Minister to declare (by order) the following to be international tax compliance agreements:

- (a) any agreement modifying or supplementing a CAA; or
- (b) any other agreement or arrangement which makes provision corresponding, or substantially similar, to that made by a CAA.

Clause 6 amends section 105L (Provision of information to Comptroller) to require a prescribed person to provide information (required to be provided under regulations) to the Comptroller of Income Tax (the Comptroller) using the electronic service provided by the Comptroller under section 8A (new subsection (1A)(c)).

Clause 7 amends section 105M (Offences) to create 2 new offences.

Under the new subsection (3A), a person (*Y*) commits an offence if —

- (a) another person (*X*), in order to comply with a regulation mentioned in section 105P(2)(c), requests *Y* for any information contemplated by an agreement mentioned in section 105P(1) to establish *Y*'s residence for a tax purpose contemplated by that agreement; and
- (b) *Y* gives any such information to *X* which *Y* knows is false or misleading in any material particular.

Under the new subsection (3B), a person (*Z*) commits an offence if —

- (a) *X*, in order to comply with a regulation made under section 105P(2)(c), requests *Y* for any information contemplated by an agreement mentioned in section 105P(1) to establish *Z*'s residence for a tax purpose contemplated by that agreement; and
- (b) *Z* gives any such information, whether directly or indirectly, to *X* or *Y* which *Z* knows is false or misleading in any material particular.

An example of a case covered by the new subsection (3B) is a beneficiary knowingly giving false or misleading information in connection with the beneficiary's residence for tax purposes to his or her trustee upon a request by the trustee.

The maximum punishment for both offences is a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or both.

Clause 8 amends section 105N (Power of Comptroller to obtain information) to permit the Comptroller to also invoke the Comptroller's powers under sections 65

to 65D to ascertain if a person has complied with regulations made under section 105P. This is the new subsection (1)(c).

Clause 9 amends section 105P (Regulations to implement international tax compliance agreements) to empower the Minister to make regulations to enable effect to be given to any future CAA which may be declared as an international tax compliance agreement (new subsection (1)(b)). The clause also amends subsection (2)(c) to permit regulations to be made to impose on any person —

- (a) audit requirements for the purpose of determining the extent of compliance by the person with the regulations made under the section;
- (b) due diligence requirements;
- (c) registration and other requirements; and
- (d) a requirement to inform the Comptroller if the person wishes to authorise another person to perform any requirement under section 105L(1) or subsection (2)(c) on his or her behalf.

Finally, clause 9 inserts a new subsection (2)(cb) to permit the Comptroller to appoint another person to carry out an audit for the purpose of determining the extent of compliance by a person with the regulations made under section 105P.

Clause 10 amends section 105PA (Duty to provide information under regulations prevails over duty of secrecy, etc.) to expand the scope of subsection (1). The current section 105PA deals with a case where a regulation under section 105P imposes a duty on a person to provide information to another person. The amended subsection (1) now encompasses regulations made under section 105P which impose duties on a person (*A*) —

- (a) to require *A*'s internal auditor or appoint another person to carry out an audit of *A*'s compliance with the regulations;
- (b) to carry out any due diligence requirements; or
- (c) to provide any information to any of the following persons carrying out the audit:
 - (i) *A*'s internal auditor;
 - (ii) a person appointed by *A* to carry out the audit;
 - (iii) a person appointed by the Comptroller to carry out the audit.

Clause 10 also deletes and substitutes subsection (2) to provide that the above duties imposed on *A* prevail over any duty not to collect, use or disclose any information under any law, contract, or rules of professional conduct. The other current provisions of section 105PA will confer immunities on *A*, when carrying out those duties, against an action for a breach of any such duty not to collect, use or disclose any information.

EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.
