

# Legal Update

Singapore

2020 SEPTEMBER



ADSAN LAW

## PROPOSED CHANGES TO INCOME TAX ACT : OVERVIEW

### Overview and Comments on Proposed Changes to Income Tax Act (including COVID19 Budget)

On 20 July 2020, the Ministry of Law released a draft amendment bill<sup>1</sup> (the “**Draft Bill**”) to the Income Tax Act<sup>2</sup> (the “**ITA**”) to introduce 38 amendments. The amendment bill was formulated to consolidate and supplement the budgetary measures for COVID19 pandemic<sup>3</sup>. This article seeks to summarise the key proposed changes to the ITA, which are expected to take effect from YA 2021, the policy motivations behind them, as well as some comments from the author.

### Key Budgetary Amendments related to COVID19

In order to mitigate against the economic fallout stemming from the pandemic, the government announced several tax reliefs for both businesses and individuals in the Unity, Solidarity and Fortitude Budgets. We summarise the notable COVID19 related budgetary amendments vis-à-vis the ITA:

1. **Corporate Tax Grant**<sup>4</sup>: A one-off 25% corporate income tax rebate, capped at \$15,000 per company, is granted for YA 2020.

---

<sup>1</sup> The Draft Bill can be downloaded at the following link: <https://www.mof.gov.sg/docs/default-source/default-document-library/2020-itabill/itabill2020-entire-bill9669b991d63d4291a4a488a5c0a7df01.pdf>

<sup>2</sup> Income Tax Act (Cap. 134) 2014, Rev. Ed.

<sup>3</sup> Paragraph 1, Public Consultation on Draft Income Tax (Amendment) Bill 2020, Ministry of Finance, accessible at the following link: [https://www.mof.gov.sg/public-consultation/public-consultation-open/2020/public-consultation-on-draft-income-tax-\(amendment\)-bill-2020](https://www.mof.gov.sg/public-consultation/public-consultation-open/2020/public-consultation-on-draft-income-tax-(amendment)-bill-2020)

<sup>4</sup> Section 92I of ITA; Clause 56 of Draft Bill



2. **Qualifying Deductions Increased to 3 YAs<sup>5</sup>**: Unabsorbed capital allowances and trade losses that constitute deductibles to assessable income may now be carried back up to 3 preceding YAs, i.e. up from YA2017, but capped at \$17,000.
3. **Extension of Double Tax Deduction (“DTDi”) Scheme<sup>6</sup>**: The DTDi is a tax deduction scheme introduced in Budget 2018 for companies that intend to expand overseas. The scheme allows for a 200% tax deduction on eligible expenses for international market expansion and investment development activities. The duration of the scheme will be extended to 2025 and will cover additional qualifying expenses.
4. **Extension of Mergers and Acquisition (“M&A”) Scheme<sup>7</sup>**: Under the M&A scheme, an M&A allowance, which is capped at 25% of share acquisition value or \$10 million, will be granted to the acquiring company that acquires the ordinary shares of another company. The applicable qualifying period will also be extended to 31 Dec 2025.
5. **Prescribed Payouts exempted from Income Tax<sup>8</sup>**: For individuals, payouts received in relation to COVID19 such as Self-Employed Income Relief, Workfare Special Payment, COVID19 Support Grant will become exempted from Income Tax. Similarly, for businesses, payouts received such as Job Support Scheme, COVID19 Quarantine Order Allowances, Leave of Absence and Stay Home Notice will become exempted from Income Tax.
6. **Benefits in Kind exempted from Income Tax<sup>9</sup>**: Allowances that are paid to qualifying employees for basic necessities such as food and accommodation will be exempted from Income Tax. However, these allowances are subjected to a cap of \$50 and \$75 per day respectively.
7. **Lifting of Deduction Cap for Doubtful Debts and Securities<sup>10</sup>**: For banks and qualifying finance companies, there is a maximum cap for deductibles from doubtful debts arising in its loans or investments under Section 14I of the ITA. The cap will no longer apply in YF2021 and 2022.
8. **Disclosure of Individual Tax Information by Comptroller<sup>11</sup>**: Solely for the purposes of implementing any public scheme such as those related to COVID19, the Comptroller will be empowered to disclosure information to the CEO of IRAS or authorized officers without consent from the individual taxpayer in order to ensure smooth execution and flow of information between agencies while preserving the official secrecy of the taxpayer’s affairs.

It is clear from the above measures that the principal purpose of the amendments is to ease the tax burden on both individuals and businesses to hopefully ensure that businesses, as well as individuals, stay afloat.

---

<sup>5</sup> Sections 23, 36A, 36C, 37, 27E of ITA; Clauses 29, 34, 35, 36 and 39 of Draft Bill

<sup>6</sup> Sections 14B, 14K and 14KA of ITA; Clauses 17, 19 and 20 of Draft Bill

<sup>7</sup> Section 37L of ITA; Clause 41 of Draft Bill

<sup>8</sup> Section 13ZA, 13ZE and Tenth Schedule of ITA; Clauses 16, 22 and 60 of Draft Bill

<sup>9</sup> *Ibid*

<sup>10</sup> Section 14I of ITA; Clause 18 of Draft Bill

<sup>11</sup> Sections 6, 106 and Ninth Schedule of ITA; Clauses 4, 57 and 60 of Draft Bill

## Tax Avoidance Surcharge

Under the current Section 33(1) of the ITA, where the Comptroller is satisfied that a tax arrangement seeks to alter, relieve or avoid tax liability imposed, it has the discretion to disregard or vary the arrangement in manner that counteracts the tax advantage. The proposed changes to the ITA comprise of 2 main changes. Firstly, the Comptroller no longer has a discretion but “must”<sup>12</sup> disregard or vary the arrangement it deems to be tax avoidance. The purpose of the change is curious since even under the Draft Bill, the decision to exercise its powers conferred under Section 33(1) of the ITA ultimately lies with the Comptroller. However, it may imply a hardened policy stance against tax avoidance arrangements and the government’s growing intolerance for them.

More importantly, the Draft Bill seeks to introduce a “surcharge”<sup>13</sup> equal to 50% of the amount of income tax imposed for arrangements that the Comptroller deemed to constitute tax avoidance. This effectively levies a monetary penalty for arrangements considered to be a form of tax avoidance by the Comptroller, over and above the tax liability that the taxpayer would have to pay once the arrangement had been altered or disregarded. A similar 50% surcharge will also be introduced to the Stamp Duties Act<sup>14</sup> and the Goods and Services Tax Act.

Singapore has long adopted the policy of deterring tax avoidance through its general anti-avoidance rules (“GAAR”)<sup>15</sup> under Section 33 of the ITA. However, it is well recognized the application of Singapore GAAR is a fact dependent exercise which goes into the subjective intention and mind of the taxpayer in formulating the questionable arrangement<sup>16</sup>. Given that most corporations (as well as individuals) are typically motivated to structure their deals or arrangements in a manner to minimize tax liability through tax planning, this adds a further risk exposure that may lead to higher costs or the abandonment of such an exercise altogether.

From a practical perspective, it will become more imperative for businesses, especially large corporations, to be legally advised in their tax arrangements in order to avoid exposure to the new penalties under the Draft Bill. As with most tax planning measures, it is prudent to always document the commercial reasons arising from the need for the relevant change or transaction and if there any counter-parties, to ensure that negotiations are done at an arm’s length.

---

<sup>12</sup> Clause 30 of Draft Bill

<sup>13</sup> Sections 33, 33A and 34; Clauses 30 and 31 of Draft Bill

<sup>14</sup> Clause 63 of Draft Bill

<sup>15</sup> IRAS e-Tax Guide – Income Tax: The General Anti-Avoidance Provision and its Application (First Ed.), 11 July 2016, downloadable at the following link: [https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax\\_Guides/etaxguides\\_CIT\\_The%20General%20Anti-avoidance%20Provision%20and%20its%20Application.pdf](https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax_Guides/etaxguides_CIT_The%20General%20Anti-avoidance%20Provision%20and%20its%20Application.pdf)

<sup>16</sup> See *Comptroller of Income Tax v AQQ* [2014] SGCA 15 at [110]



### Investment in Immovable Property

Presently, Section 10E(1) of the ITA disallows the deduction or setting off from chargeable income under Section 10(1) of the ITA outgoings or expenses and capital allowances incurred in respect of investments, such as letting of immovable properties or service apartments. The section was originally introduced to address the issue of companies holding investments not for sale but to derive passive investment income as their business trade, thereby obtaining the same tax benefit as companies that dealt solely in the business of *dealing with investments*.<sup>17</sup>

Under the Draft Bill, Section 10E of the ITA will expressly exclude non-owners of immovable properties from the ambit of the section<sup>18</sup>. The purpose of the amendment is to clarify that Section 10E of the ITA does not apply to taxpayers who are not legal owners of the immovable properties or are not in a position to receive any consideration from the or novation of the leases or the disposal of the immovable property<sup>19</sup>. Rather, it specifically applies to companies carrying on the business of making investments or trustees of a property trust.

Previously, from YA 2005, the government provided an administrative concession to non-owners of immovable properties<sup>20</sup> such as main tenants of food courts that were caught by the section and were prejudiced by not benefitting from the tax advantage. With the amendments to ITA, there may be no further need for such a concession as such non-owners as well as entities who do not benefit from the dealing with immovable properties are expressly excluded from the section.

### Technical Amendment to “Incapacitated Person”

The Draft Bill also introduces an update to the definition of an “incapacitated person” under the ITA. The current definition for an “incapacitated person” under Section 2 of the ITA reads “*any infant, lunatic, idiot or insane person*”. The updated definition<sup>21</sup> under the Draft Bill will redefine an “incapacitated person” as follows:

“a) *An individual who is below 21 years of age; or*

---

<sup>17</sup> Paragraph 3.3 of IRAS e-Tax Guide – Income Tax: Ascertainment of Income from Business of Making Investment (Second Ed.), 11 April 2012, downloadable at the following link: [https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax\\_Guides/etaxguides\\_IIT\\_Ascertainment%20of%20Income%20from%20Business%20of%20Making%20Investment\\_2012-04-11.pdf](https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax_Guides/etaxguides_IIT_Ascertainment%20of%20Income%20from%20Business%20of%20Making%20Investment_2012-04-11.pdf)

<sup>18</sup> Clause 6 of Draft Bill

<sup>19</sup> S/No. 11 of Annex C of Proposed Non-Budget Amendments, Ministry of Finance, downloadable at the following link: <https://www.mof.gov.sg/docs/default-source/default-document-library/2020-itabill/itabill2020-annex-c60e00431e13c40cb81caf0c0a2a4d8ee.pdf>

<sup>20</sup> Paragraph 5.2 of IRAS e-Tax Guide – Income Tax: Ascertainment of Income from Business of Making Investment (Second Ed.), 11 April 2012.

<sup>21</sup> Clause 2 of Draft Bill



*b) An individual who lacks capacity to make a decision for himself/herself in relation to any matter at the material time concerned because of an impairment of, or a disturbance in the functioning of, the mind or brain, whether such impairment or disturbance is permanent or temporary.”*

This amendment is laudable as it not only seems more palatable given the common parlance of the word “idiot”, but also brings itself in line with the definition under Section 4(1) of the Mental Capacity Act<sup>22</sup>. Given the legal difficulties in definition of the term “*idiot*”, which was previously understood to refer to “*persons of unsound mind*”<sup>23</sup>, the updated definition does well to clarify the scope and ambit of the term. Specifically, based on definition under the amended ITA, applicability of the ITA is extended to include any person who is shown to lack mental capacity, even if such an impairment is temporary.

### **Concluding Remarks**

The Draft Bill strikes a good balance between implementing the government’s measures relating to COVID19 while ensuring that the government does not lose out on tax revenue with the market’s developments. Businesses and individuals should be attuned to the latest proposed changes to stay ahead.

Author: Ernest Wong

### **CONTACT**

#### **ADSAN LAW LLC**

300 Beach Road Level 26  
The Concourse  
Singapore 199555  
Tel: 68282828  
[www.adsanlaw.com](http://www.adsanlaw.com)

This publication is only intended to provide general information only and does not constitute any legal or other advice. While we endeavour to ensure that information contained herein is accurate at the time of publication, we do not warrant its accuracy or completeness or accept any liability for any loss or damages arising from reliance thereon.

©Adsan Law LLC

---

<sup>22</sup> Mental Capacity Act (Cap 177A), 2010 Rev Ed

<sup>23</sup> Lord Brandon in *In re F. (Mental Subject: Sterilisation) (House of Lords)* [1989] 2 WLR 1025, at 1068-9

