

Sender's Fax: 6533 5700
Sender's DID: 6530 0229
Sender's Email: rapinder@lawsoc.org.sg

Our Ref: LS/10/COR2/Gen(PubCon)/10-11/AC.rk
Your Ref:

19 July 2010

Ministry of Finance
The Treasury
100 High Street
#10-01
Singapore 179434

BY E-MAIL ONLY
E-mail: Bena_NEO@mof.gov.sg
No. of pages: 4 pages
(including this page)

For the attention of: Ms Bena Neo
Senior Associate (Tax Policy)

Dear Ms Neo

PUBLIC CONSULTATION ON INCOME TAX (AMENDMENT) BILL 2010

We refer to your e-mail dated 29 June 2010 inviting the Law Society to provide our feedback on the draft amendments to the Income Tax Act.

This matter was released to our Corporate Practice Committee (the "Committee") for comments.

The Committee's views are enclosed.

Thank you for giving the Law Society the opportunity to consider the matter.

Yours sincerely



Alvin Chen
Director, Representation and Law Reform Department

Encl.



THE LAW SOCIETY
OF SINGAPORE

39 South Bridge Road
Singapore 058673
Tel: 6538 2500
Fax: 6533 5700
Email: lawsoc@lawsoc.org.sg
Website: www.lawsociety.org.sg

PRO BONO SERVICES OFFICE
1 Havelock Square Level 5
Subordinate Courts Complex
Singapore 059724
Tel: 6536 0650
Tel: 6534 1564 (CLAS)
Fax: 6534 5237
Email: ProBonoServices@lawsoc.org.sg
Email: CLAS@lawsoc.org.sg

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Public Consultation of The Draft Income Tax (Amendment) Bill 2010 – Submission of Comments

Date Submitted: 19 July 2010

Name: **Law Society of Singapore**

Contact Details:

Details:

No.	Tax Change	Comments	Proposed change to the Income Tax (Amendment) Bill
1.	Clause 4(c) of draft Bill	It is not clear why the "qualifying company" must be directly owned by the shipping enterprise when no similar restriction is imposed under Section 13F ITA	Require the "qualifying company" be a company at least 50% of the total of issued ordinary shares be beneficially owned, directly or indirectly, by the shipping enterprise.
2.	Clause 7(c) of draft Bill	<p>The Government should re-consider the proposal that exempt income under MFI scheme exclude income from finance leases treated as sales.</p> <p>Our concern is that this will erode the benefits conferred by the MFI scheme compared to (for example) Section 13A of the ITA rendering the scheme less attractive, bearing in mind that the Government has already reduced the incentive period from 10 years to 5 years in the 2010 Budget.</p> <p>Conceptually, one of the attractions of the original MFI scheme (compared to e.g. the SRS scheme in Section 13A) was that the exemption covered all forms of finance leasing income, unlike schemes such as Section 13A which (arguably) did not cover finance leases treated as sales. Given this fact, the Government's proposed change will, by removing one of the key factors distinguishing the MFI scheme from other shipping incentive scheme, make the MFI scheme more difficult to market/promote to investors.</p>	Delete Clause 7(c) of draft Bill
3.	Clause 8 of draft Bill	Although this point is tangential to the drafting of Clause 8, we believe that it would be desirable if the Government could re-consider granting tax concessions to law firms established as	

No.	Tax Change	Comments	Proposed change to the Income Tax (Amendment) Bill
		partnerships or LLPs – as an incentive scheme targeted at companies excludes the majority of law practices in Singapore.	
4.	Clause 9(4) of draft Bill	<p>We appreciate that the definition of Sovereign Wealth Fund in this clause was probably derived from the "Santiago Principles" published by the International Working Group on Sovereign Wealth Funds. However, we note that this definition excludes both Governments themselves and central banks/monetary authorities. The definition in Clause 9(4) of the draft Bill refers, however, to Governments but not central banks/monetary authorities. We suggest that from the perspective of granting incentives, it should not matter whether the foreign State funds being managed in Singapore are part of official reserves managed by a (e.g.) central bank or are held under the auspices of a SWF within the meaning of the Santiago Principles.</p> <p>We also recommend that the definition of "foreign government-owned entity" be recast as set out in the next column. This will cater to the possibility that a SWF may decide to establish its own presence in Singapore as a branch in order to undertake investment activities.</p>	<p>We recommend that sovereign wealth fund refer to any pool of funds beneficially owned by:</p> <ul style="list-style-type: none"> (i) the government of a foreign State or political subdivision; (ii) the central bank or monetary authority of a foreign State or political subdivision; (iii) any other specific purpose investment fund or arrangement (whether constituting a legal entity or otherwise) owned by such a government and wholly and beneficially owned by (i) or (ii) above which is created for macroeconomic purposes and which holds, manages or invests assets to achieve a financial objective; or (iv) such other person or entity as the Minister or such person as he may appoint may approve. <p>The funds of the SWF must be managed in Singapore by an establishment of, or an entity wholly and beneficially owned by, the government, central bank or monetary authority of a foreign State or political subdivision or such other person or entity as the Minister or such person as he may appoint may approve,</p>
5.	Clause 16 of draft Bill – new Section 14S	We suggest refinement to the definition of "industrial or product design" – at the moment, if read strictly, the definition of "industrial or product design" would apply only to work that, in fact, <u>optimised</u> the functions, value and appearance of a product. The problem however with such a definition is that no-one can ever tell when a design achieves an "optimal" outcome!	<p>Proposed definition:-</p> <p>"industrial or product design" means the creation and/or development of concepts or specifications that seek to promote, improve or enhance the functions, value or appearance of physical products, taking into account users' needs or desires, marketability and production considerations.</p> <p>The term "in-house" should also be deleted from the definition of "staff costs" since the term staff costs is also</p>

No.	Tax Change	Comments	Proposed change to the Income Tax (Amendment) Bill
			used in the definition of costs incurred by an approved design services provider.
6.	Clause 16 of draft Bill – new Section 14T	A refinement is proposed in relation to expenditure incurred in respect of any software. Bearing in mind that modern machinery all contains some computing and software component, the key test for whether software costs should seem to us not to be whether the software is priced separate or not, but whether the software is necessary and integral to the operation of the plant or machinery	In new Section 14T(2)(c)(ii), delete the reference to ", without the software and the machinery or plant being priced separate" and substitute ", and where the software is necessary and integral to the operation of the machinery or plant".
7.	Clause 21 of draft Bill – new Section 18C	In this section, consideration can be given whether it is appropriate to refer to "trade or <u>business</u> "	
8.	Clause 30 of draft Bill – new Section 37K	In sub-section (8), it may be convenient for the Minister or such person as he may appoint to have the right to waive the requirement in sub-sections (6)(g) and (h) in addition to the requirements in sub-sections 6(c) to (f).	
9.	Clause 37 of draft Bill	The draft Bill proposes that the 10% concessionary tax rate for QDS shall not apply to financial sector incentive companies, who may enjoy a 12% tax rate instead.	We recommend that FSI companies should not be disadvantaged in this manner in relation to their investments in QDS and that the proposed amendment be deleted. Alternatively, the 12% should apply only to FSI companies who seek to avail of a concessionary tax rate on income from "debt capital market" activities under the FSI.