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## SINGAPORE 2017 - EXECUTIVE UPDATE ON INTERNATIONAL TAX

*Singapore continues to build on its commitment to the principle behind the Base Erosion and Profit Shifting (BEPS) project - that profits should be attributable to the jurisdiction where the substantial economic activities giving rise to the profits are conducted. Singapore is among the earliest non-OECD, non-G20 jurisdictions to join the Inclusive Framework on BEPS in June 2016. Following the BEPS 2015 Final Report, the Income Tax Act ("the Act") and Regulations were amended to give legal effect to Singapore's obligations on : Exchange Of Information Under Avoidance Of Double Taxation Arrangements and Exchange of Information Arrangements (PART XXA); and International Agreements to Improve Tax Compliance (PART XXB). Most of the amendments were effected in 2016.*

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The 2016 amendments to the Act conferred explicit powers to the Comptroller to obtain information from taxpayers and to allow the information collected to be used "for administration of the Act" and to combat anti-avoidance. Under **s.105L** a prescribed person must provide the Comptroller with information of a description prescribed by regulations made under **s.105P**. A prescribed person is not excused from providing the information by reason only that the person is under a duty not to collect, use or disclose that information, whether imposed by written law, rule of law, any contract or any rule of professional conduct, in respect of that information. **Section 105O** states "For the avoidance of doubt, any information provided or obtained under **s.105L** or **105N** may be used for any purpose connected with the administration of this Act, including the investigation or a prosecution for an offence alleged or suspected to have been committed under this Act."

**Section 105MA** on "anti-avoidance" provides that : if a person enters into any arrangements or takes any action; and in the Comptroller's view, the main purpose, or one of the main purposes of the person in entering into the arrangements or in taking the action is to avoid any obligation under, or to circumvent the application of **s.105L** or any regulation made under **s.105P**, then the Comptroller may in writing direct a relevant person that **s.105L** or the regulation has effect in relation to the relevant person as if the arrangements had not been entered into, and **s.105L** or the regulation shall then apply accordingly.

Under **s.105N** the Comptroller is empowered to use **s.65 to 65D** of the Act 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 **s.105P**. **Section 65** states that for the purpose of obtaining full information in respect of a person's income, the Comptroller may give notice requiring the person to complete a return specified in the notice, to the Comptroller.

**Section 65A** empowers the Comptroller to give notice to any person to furnish particulars of all bank accounts, all assets, all sources of income, and all facts bearing upon his liability to income tax to which he is, or has been, liable. To obtain information, the Comptroller has powers under **s.65B**, to have full and free access to all buildings, places, documents, computers, computer programs and computer software. The Comptroller may require any person to give orally, in writing, or through the electronic service, all such information concerning his or any other person's income or assets or liabilities as may be demanded of him by the Comptroller for the purposes of this Act. A **Section 65B notice** applies notwithstanding a duty of secrecy under Banking Act or Trust Companies Act.

Singapore signed the **Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting** ("the Multilateral Instrument") on 7.6.2017. Singapore had participated actively in the Ad Hoc Group under the OECD and G20 to develop the Multilateral Instrument. The Multilateral Instrument seeks to facilitate the implementation of tax-treaty-related measures to counter BEPS. Signatories to the Multilateral Instrument can efficiently update their DTAs

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to incorporate the measures, without the need to re-negotiate each DTA. These measures include BEPS minimum standards on preventing treaty abuse and enhancing dispute resolution.

In signing the Multilateral Instrument, Singapore will adopt, amongst others: **(A) BEPS minimum standard for preventing treaty abuse**: (i) a statement of intent that a DTA is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, and (ii) the adoption of a general anti-abuse rule, commonly known as the Principal Purpose Test. **(B) BEPS minimum standard for enhancing dispute resolution**: When a Singapore resident taxpayer encounters taxation which is not in accordance with the intended application of the DTA provisions, the taxpayer can seek assistance from Inland Revenue Authority of Singapore (IRAS) to resolve the dispute. Singapore has opted for the mandatory binding arbitration provisions to be included in our DTAs as they provide certainty to taxpayers that treaty-related disputes will be resolved within a specified timeframe.

Singapore intends for the Multilateral Instrument to apply to DTAs with treaty partners that are members of the Ad Hoc Group. This would put our treaties in line with international standards and increase access to benefits such as certainty and efficient dispute resolution mechanisms. The agreed changes to each DTA will enter into force after the Multilateral Instrument has been ratified by Singapore and the treaty partner.

Singapore will work towards the ratification of the Multilateral Instrument at the earliest date. Clarification on the amendments to each DTA will be provided to taxpayers through the IRAS's website.

Singapore signed, on 21.6.2017, the **Multilateral Competent Authority Agreements ("MCAAs") on the Automatic Exchange of Financial Account Information under the Common Reporting Standard ("CRS")**; and **the Exchange of Country-by-Country ("CbC") Reports**. The MCAAs reaffirms Singapore's commitment to the international standards on tax cooperation. The MCAAs have gained recognition as multilateral framework agreements for bilateral cooperation on **Automatic Exchange of Information ("AEOI")**. In the case of CbCR, signing the MCAA will enable Singapore to efficiently establish a wide network of exchange relationships for the automatic exchange of CbC Reports.

Under the MCAAs, AEOI relationships remain bilateral – signatories to the MCAA enter into AEOI on a bilateral basis with another signatory on a mutual consent basis. Singapore will continue to abide by the principles for establishing bilateral AEOI relationships. The principles are : **(A)** The AEOI partner has the safeguards needed to ensure the confidentiality of information exchanged and prevent its unauthorised use; and **(B)** there is full reciprocity with the AEOI partner in terms of information exchanged. As of 6.1.2017, Singapore has signed CAAs with Australia, United Kingdom, Japan, Republic of Korea, South Africa, Norway, Italy, Canada, Finland, the Netherlands, Iceland, Malta, Ireland, Latvia and New Zealand.

Under the Common Reporting Standard (CRS), in effect since 1.1.2017, Singapore-based Financial Institutions (SGFIs) – depository institutions such as banks, specified insurance companies, investment entities and custodial institutions – are now required to establish the tax residency status of all their account holders, and report to IRAS. The CRS is an internationally agreed standard for the automatic exchange of information (AEOI) on financial accounts between jurisdictions for tax purposes, with the objective of enhancing tax transparency to detect and deter tax evasion through the use of offshore bank accounts. More than 100 jurisdictions, including major financial centres such as Dubai, Hong Kong and Switzerland, have committed to implement AEOI based on the CRS and will commence AEOI under the CRS either in 2017 or 2018. Singapore has made an international commitment to commence AEOI under the CRS in 2018.

Reciprocal exchange of information can commence after committed jurisdictions have introduced the necessary laws to implement CRS and the required confidentiality and data protection safeguards are in place. The confidentiality and data protection safeguards is an international requirement set out by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

The purpose of **PART XXB** *International Agreements to Improve Tax Compliance* is to implement Singapore's obligations under an international tax compliance agreement, and to enable **country-by-country reports ("CbCR")** to be filed with the Comptroller in accordance with the Action 13 Report on Transfer Pricing Documentation. Action 13 report contains a three-tiered standardised approach to transfer pricing documentation, including a minimum standard on **CbCR**. CbCR will be required for a MNE group in a financial year (the first year is FY 2017), where (a) the MNE group is a Singapore MNE group; (b) the consolidated group revenue in the preceding financial year is **at least S\$1,125 million**; and (c) the MNE group has subsidiaries or operations in at least one foreign jurisdiction. Based on the identification of relevant jurisdictions in a CbCR submitted by a Reporting Entity, the Comptroller will provide the CbCR to the tax authorities of those jurisdictions if there is an agreement with the relevant tax authority for the automatic exchange of CbCR information. The OECD sets out three permitted uses for information contained in CbCR : to assess high level transfer pricing risk; to assess other BEPS-related risks; and for economics and statistical analysis.

**Section 105P** of the Act on "*Regulations to implement international tax compliance agreements,*" took effect from 29.12.2006. It empowers the Minister to make regulations to give effect to (a) an international tax compliance agreement; or (b) any future competent authority agreement which may be declared as an international tax compliance agreement. These Regulations may prescribe different types of information, and frequencies for the information, in relation to different international tax compliance agreements, different persons or under different circumstances. The Minister may also make regulations to enable the Comptroller to obtain a CbCR or its equivalent where the Comptroller is unable to obtain the report from the tax authority of a country in accordance with the Action 13 Report.

The Act defines "**CbCR exchange agreement**" to mean a bilateral or multilateral agreement that is based on a model agreement in the Action 13 Report, and that requires the exchange of country-by-country reports. A "**competent authority agreement**" is 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 OECD. "**International tax compliance agreements**" include (a) the Foreign Account Tax Compliance Act of the United States of America (FATCA) Agreement with the United States; (b) a "competent authority agreement" between Singapore and the government of another country; or the governments of 2 or more countries; (c) a "CbCR exchange agreement" between Singapore and the government of another country; or the governments of 2 or more countries; and (d) any other agreement or arrangement which makes substantially similar provisions.

The purpose of **PART XXA** *Exchange Of Information Under Avoidance Of Double Taxation Arrangements and Exchange of Information Arrangements* is to facilitate the disclosure of information to a competent authority under an avoidance of double taxation arrangement (DTA) in accordance with the EOI provision in that arrangement; or under and in accordance with an EOI arrangement. An "**exchange of information arrangement**" or "**EOI arrangement**" is an arrangement having effect under s.105BA. An "**exchange of information provision**" or "**EOI provision**", in relation to a DTA, means a provision in that DTA which provides expressly for the exchange of information concerning the tax positions of persons. A "**competent authority**", in relation to a "prescribed arrangement", is a person or an authority whom the Comptroller is satisfied, is authorised to make a request to the Comptroller for information.

**Section 105BA** defines an "**EOI arrangement**". The Minister may by order declares that an arrangement specified in the order has been made with the government of any country, or the governments of 2 or more countries, for the exchange of information concerning the tax positions of persons (whether upon request by an authority of a country to the arrangement or otherwise). An EOI arrangement includes a multilateral treaty to which Singapore is a Party, the purpose or one of the purposes of which is the exchange of information concerning the tax positions of persons (whether upon request by an authority of a Party to the treaty or otherwise).

**Section 105D (Request for information)** provides that a 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, if it is a DTA, the EOI provision, or if it is an EOI arrangement, the provisions of that arrangement. Unless the Comptroller otherwise permits, the request must set out the information prescribed in the Eighth Schedule of the Act. Every request shall be subject to and dealt with in accordance with the terms of the prescribed arrangement.

After receipt of a request under **s.105D** for any information which is information referred to in subsection (2), the Comptroller shall serve notice of the request on the person identified as the person in relation to whom the information is sought. Where the request, in the opinion of the Comptroller, does not contain sufficient information for the Comptroller to serve notice, the Comptroller shall, after he discovers such information from information already in the Comptroller's possession or obtained under **s.105F** or **105G**, serve notice of the request on that person.

Notice need not be served on any person if (a) the Comptroller does not have any information of the person upon whom service may be effected; (b) is of the opinion that this is likely to prevent or unduly delay the effective exchange of information under the prescribed arrangement; or (c) 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 of the competent authority making the request (whether the breach would result in the imposition of a criminal or civil penalty); or (d) on such other ground as may be prescribed under **s.105H**.

**Section105GA** states that "For the avoidance of doubt, any information obtained under **s.105F** or **105G** may be used not only for the purpose of complying with a request under **s.105D**, but also for any purpose connected with the administration of this Act, including the investigation or a prosecution for an offence alleged or suspected to have been committed under this Act." **Section 105G** empowers the Comptroller to 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.

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