



# FTC CORPORATE & TAX ADVISORY PTE. LTD.

150 Orchard Road #08-01 Singapore 238841 Email: [services@accountlaw-tax.com.sg](mailto:services@accountlaw-tax.com.sg)  
Tel: (65) 6737 7808 Fax: (65) 6738 4032 [management@accountlaw-tax.com.sg](mailto:management@accountlaw-tax.com.sg)

Singapore

Malaysia

Hong Kong

ASEAN

Asia-Pacific

Tax Advisory : 6738 9831  
Corporate Advisory : 6737 9604  
Personal / Company Tax : 6738 7434  
GST Advisory : 6737 9657  
Accounts / Payroll : 6737 7808  
Client Services : 6737 7808

Company No : 198403006G

[www.accountlaw-tax.com.sg](http://www.accountlaw-tax.com.sg)

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## SINGAPORE BUDGET 2017 EXECUTIVE UPDATE

***Minister for Finance Heng Swee Keat presented his Budget on 20.2.2017. Specific details on the tax changes may be announced later by IRAS, MAS and other bodies. An Income Tax Amendment Bill will be passed during the year. Subsidiary legislation including statutory regulations may also be enacted.***

Income Tax Amendment Bill 2017 is out for public consultation. It will then be tabled in Parliament later in the year. The Bill amends the Income Tax Act (“the Act”) to implement measures announced in Budget 2017 (see our Budget Report attached) and a significant number of non-Budget measures set out below. All amendments will take effect from the date the Amendment Act is published in the Gazette, unless stated otherwise.

**Section 34D** will be amended to require the arm’s length conditions to be identified on the basis of the “actual commercial or financial relations” between the related parties. It will impose “tests” to determine if transactions are carried out at arm’s length conditions. The identification of the arm’s length conditions must be carried out (a) on the basis of the actual commercial or financial relations between the 2 persons; and (b) by taking into account both the form and substance of those relations, but disregarding the form of those relations to the extent it is inconsistent with their substance. If persons who were not related parties would in comparable circumstances enter into substantially different commercial or financial relations than the actual commercial or financial relations, then the identification of the arm’s length conditions must be carried out on the basis of the first-mentioned relations. If persons who were not related parties would in comparable circumstances not enter into any commercial or financial relations, then the identification of the arm’s length conditions must be carried out on the basis of the absence of any commercial or financial relations.

The amended s.34D gives the Comptroller explicit powers to make adjustments if a tax advantage is obtained as a result of not imposing arm’s length conditions. The Comptroller may make adjustments as appropriate to (a) increase the amount of the income of the person for the year of assessment; (b) reduce the amount of the deduction or allowance that may be allowed or made; and (c) reduce the amount of the loss of the person for the year of assessment.

A **new section 34F** requires businesses (unless exempt by rules to be prescribed) with significant related party transactions to prepare transfer pricing documentation (“TPD”) to explain whether transactions with related parties are conducted at arm’s length. The TPD (a) must be prepared no later than the time for the making of the return of the income of the businesses for the year of assessment; (b) must contain such details as may be prescribed of the commercial or financial relations of the parties as respects the transaction, the conditions made or imposed between them as respects the transaction, as well as an explanation as to whether those conditions are arm’s length conditions within the meaning of **section 34D(1)(b)**; and (c) must comply with all other requirements as to their form and content as may be prescribed. We await the rules to be prescribed.

Section 34F applies to businesses (a) if the gross revenue of the business for the basis period (being the basis period for the year of assessment 2019 or a subsequent year of assessment) is more than \$10 million; or (b) unless exempt by rules to be prescribed, businesses must prepare TPD that complies with subsection (4) for each transaction undertaken by businesses with a related party in the basis period.

Businesses must retain in safe custody TPD prepared for each transaction, for a period of at least 5 years from the end of the basis period in which the transaction took place. The Comptroller may, by written notice, require the person to furnish to the Comptroller a copy of any TPD prepared by the person, and

**Frankie L C Tan** Accredited Tax Advisor (Income Tax & GST) LLM (Master of Laws)(Queensland) FCA (ICAEW) • **Vincent Lim** • **Yvonne Lim** Bsc(Hons)AccFin • **Jason Lim** Bsc AccFin • **Jaime Koh** Bsc(Hons)AccFin • **Vera Siak** Bsc AccFin

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the person must comply within 30 days starting from the date the notice is served on the person. A person who provides to the Comptroller any documentation that the person knows to be false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000. **Section 34F will take effect from YA 2019.**

The Act has to keep pace with a key principle from English case law : profits or gains from an entity must be computed in a manner consistent with the ordinary principles of commercial accounting and established taxing principles and the overriding rules of the tax statutes. For example, **section 34A** (Adjustment on change of basis of computing profits of financial instruments) deals with the taxation of gains and losses arising from **FRS 39**. FRS 39 will be replaced by **FRS 109** applicable to financial period beginning 1 January 2018 or YA 2019. A **new section 34AA** provides for changes to the basis of computing profits, losses or expenses in respect of financial instruments, arising from the adoption of FRS 109. Also, a **new section 34I** makes adjustments to the amount of statutory or exempt income of a person for a year of assessment, arising from the first time adoption of **FRS115** (Revenue from Contracts with Customers (“FRS 115”) applicable to financial period beginning 1 January 2018 or YA 2019.

Section 34A applies on an election basis. The new section 34AA applies on a “qualifying person” basis. “Qualifying person” means (a) in the case of a year of assessment for a basis period beginning on or after 1 January 2018, a person who is required to prepare or maintain financial accounts in accordance with FRS 109 for that basis period, or (b) a person who chooses to “early adopt” FRS 109 for a basis period beginning before 1 January 2018, or (c) a person who does not fall under (a) or (b) may apply to the Comptroller for approval to be a qualifying person.

**Section 34AA** provides that, with certain exceptions, any amount charged to tax or allowable as a deduction in respect of any financial instrument of a qualifying person is that which, in accordance with FRS 109, is recognised in determining the profit or loss or expense in respect of that financial instrument. The exceptions include : (a) anything recognised in accordance with FRS 109, that is capital in nature; or (b) provisions made for expected credit losses recognised under FRS 109 for financial instruments or loans which are not credit-impaired.

FRS 109 imposes impairment requirements for an entity’s expected credit losses on its financial assets and commitments to extend credit. Under FRS 109 it is no longer necessary for a credit event to have occurred before credit losses are recognised. Instead, an entity always accounts for expected credit losses, and changes in those expected credit losses. The amount of expected credit losses is updated at each reporting date to reflect changes in credit risk since initial recognition and, consequently, more timely information is provided about expected credit losses.

**Section 34AA** further provides for a case where a gain relating to a financial instrument and recognised under FRS 109 was not taxed because it was treated as capital in nature, and a loss or expense relating to a financial instrument and recognised under FRS 109 was allowed as a deduction because it was treated as revenue in nature. If the gain is later discovered to be revenue in nature or the loss or expense discovered to be capital in nature, then the gain, loss or expense is treated as income for the year of assessment of the basis period in which the discovery takes place. This rule is necessary because unrealised gains, losses or expenses may be recognised under FRS 109, before their true nature becomes known.

The **new section 34I** deals with the retrospective adjustments that may be required to the revenue amount in an entity’s financial accounts in any previous basis period, arising from the adoption of **FRS 115**. If the income assessed for a past year of assessment is different from the amount that would have been computed had the Comptroller used the adjusted revenue amount as the starting point for the computation, then the difference is treated as income chargeable to tax, to be deducted from the amount of exempt income, or allowable as a deduction (as the case may be) for the year of assessment of the basis period in which FRS 115 is first applied.

Other non-Budget measures introduced in the 2017 Amendment Bill :

- **New sections 34G and 34H** introduce a tax framework for foreign companies which re-domicile into Singapore under the new Part XA of the Companies Act (Transfer of registration) which allows a company incorporated in a foreign country, to transfer its domicile to Singapore.
- Introduce an end-date of YA 2023 to the tax benefit accorded to the existing incentive recipients of the eligible Family-owned Investment Holding Company (“FIHC scheme”)
- Refine the Maritime Sector Incentive – Shipping related Support Services (“MSI-SSS”) scheme, clarify the definition of ship management services under Maritime Sector Incentive (“MSI”) and clarify the scope of Corporate Services under the MSI-SSS scheme.
- Refine the Financial Sector Incentive (“FSI”) schemes
- Refine the Insurance Business Development (“IBD”) Umbrella Scheme and Insurance Broking Schemes. Amend the provision to make clear the tax treatment of policy liabilities (“PL”) of insurers
- Increase the maximum amount of tax deduction and tax exemption for qualifying third-party voluntary contributions made to Medisave accounts of employees and self-employed persons.
- Enhance the Global Trader Programme (“GTP”)
- Extend the concessionary income tax rate of 10% on distributions made by the trustee of a Real Estate Investment Trust (“REIT”) to qualifying non-resident non-individual investors
- Revise a condition for tax deduction for tax resident individuals’ voluntary contributions to their Medisave accounts.

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***We do individual updates on corporate tax, goods & services tax, international tax and expatriates tax. Contact our CEO, Clients' Services Yvonne Lim.***

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