

## LEGISLATION UPDATE

### INCOME TAX (AMENDMENT) (EXCHANGE OF INFORMATION) BILL 2009

#### Implementation of Standard for Exchange of Information for Tax Purposes

The Income Tax (Amendment) (Exchange of Information) Bill (the "**Bill**") has been introduced in Parliament. The Bill proposes to amend the Income Tax Act to bring the level of assistance Singapore can provide to foreign jurisdictions under Avoidance of Double Taxation Agreements ("**DTAs**") in line with the Organization for Economic Cooperation and Development's Standard on the exchange of information for tax purposes (the "**Standard**").

#### Background

The Organization for Economic Cooperation and Development (the "**OECD**") is an international organization which brings together the governments of 30 countries to discuss and put forward policies on global economic, social and governance issues. The Standard was developed by the OECD to facilitate the effective exchange of information ("**EOI**") between countries which sign DTAs with each other. It was endorsed by the United Nations Committee of Tax Experts on International Cooperation in Tax Matters in October 2008.

In March 2009, Singapore endorsed the Standard. Since then, Singapore has signed protocols with various countries to amend their existing DTAs to incorporate the Standard, and is in the process of negotiating many more. The current list of countries which have signed protocols is set out in Appendix A below. The protocols will not come into effect until after Singapore's legislative amendments to give effect to the Standard have been approved by Parliament and gazetted, and the relevant ratification procedures have been completed by the signatory countries.

The Bill therefore takes the next step in implementing the Standard by amending Singapore's tax legislation. This will enable Singapore to extend enhanced EOI cooperation to countries which sign a DTA with Singapore: (i) in which the Standard is incorporated, and (ii) which has been prescribed by order of the Minister for Finance ("**Prescribed DTA**").

#### The proposed amendments

The Bill addresses the following key issues:

- (a) lifting of domestic interest requirement;

#### MAIN OFFICE

20 Raffles Place  
#17-00 Ocean Towers  
Singapore 048620

t +65 6535 0733

f +65 6535 4906

mail@drewnapier.com  
www.drewnapier.com

Co. Reg. No. 200102509E

- (b) accessing confidential information held by banks and trust companies;
- (c) extending EOI to taxes other than income tax; and
- (d) ensuring that EOI requests are clear, specific, relevant and comply with the Standard.

### Lifting of domestic interest requirement

Currently, the Inland Revenue Authority of Singapore (the “**IRAS**”) can exchange information with a DTA partner only where it has the requested information in its records or if it is able to obtain the requested information for its domestic tax enforcement purposes. The Bill extends the scope of information that may be exchanged by allowing the IRAS to obtain information pursuant to an information request from a foreign competent authority under a Prescribed DTA, even if the information request does not relate to a Singapore tax matter, provided that the information was requested in accordance with the EOI provision of that Prescribed DTA.

Based on the definition of “tax position” under the Bill, the information request from the foreign competent authority may extend to past, present and future liability to pay any tax.

### Accessing information held by banks and trust companies

#### *Application for court order to release confidential information*

The Bill also proposes to allow the IRAS limited access to information protected by confidentiality provisions in the Banking Act and the Trust Companies Act, both for the IRAS’ domestic tax administration purposes and to comply with a request given by another jurisdiction under a Prescribed DTA. Without the new provisions of the Bill, such information would be protected from disclosure.

The Bill, however, protects the sanctity of legal privilege by excluding the production of, or access to, information subject to legal privilege.

To obtain the information protected by confidentiality provisions in the Banking Act and the Trust Companies Act, the IRAS must obtain a court order from the Singapore High Court. An order may only be granted where the court is satisfied that: (a) the making of the order is justified in the circumstances of the case; and (b) it is not contrary to the public interest for a copy of the document to be produced or that access to the information be given.

The person against whom the court order is made must comply with it within 21 days, unless the court specifies a different time period for compliance.

#### *Rights of affected parties*

The parties which would be affected by the above provisions would be the taxpayer and his bank or trust company (collectively, the “**affected parties**”). The Bill protects the rights of the affected parties by providing that:

- apart from certain exceptional circumstances (e.g. where the IRAS is of the opinion that such notice will prejudice investigation into an alleged breach of tax laws), the IRAS must serve a notice of request on the affected parties when it receives a request pursuant to a Prescribed DTA for information about the taxpayer; and
- after the court order is served, the affected parties may, within 7 days, apply to the Singapore High Court to have the order discharged or varied.

These rights have been inserted as a result of the feedback received from a public consultation on a draft version of the Bill held in June this year.

### Extending EOI to taxes other than income tax

Apart from income tax information, information relating to other types of tax such as goods and services tax, stamp duty and property tax may also be requested under a Prescribed DTA. The Bill also proposes to allow the Comptroller of Income Tax to obtain information from the Comptroller of Goods and Services Tax, the Comptroller of Property Tax, the Chief Assessor or the Commissioner of Stamp Duties for the purposes of complying with an information request.

### Clear, specific and relevant EOI requests which comply with the Standard

The Standard permits the jurisdiction which is being requested to exchange information (in this case, Singapore) to reject requests which are frivolous, spurious or in the nature of “fishing expeditions”. In order to ensure clear, specific and relevant EOI requests which are consistent with the Standard, the Bill provides that the requesting authority must make its request for information in a specific written format.

The format is set out in the proposed Eighth Schedule to the Income Tax Act. Some of the details which the requesting authority must provide include: the purpose of the request, the identity of the requesting authority, the grounds for believing that the information is with the IRAS or other tax authority, and a statement that the requesting country has pursued all means available in its own territory to obtain the information.

### Comment

The provisions of the Bill significantly expand the scope of information that the IRAS has access to and which may be provided to a foreign competent authority. Whilst the provisions seek to take into account the rights of the affected parties with respect to confidential information by prescribing procedural safeguards, including the requirement that the IRAS obtain a court order for disclosure, it remains to be seen how the provisions will be construed and applied.

**References:**

Please click on the links below to refer to the documents:

1. [The Income Tax \(Amendment\) \(Exchange of Information\) Bill](#);
2. [The MOF Consultation Paper dated 29 June 2009](#); and
3. [The MOF Summary of Responses to the Public Consultation dated 15 September 2009](#).

If you have any queries on this update, or wish to discuss how it may potentially affect you or your business, please feel free to contact the corporate and finance lawyers in Drew & Napier LLC (please refer to the Directors' Profiles on our [website](#)), or any of the following lawyers:

**Ong Sim Ho**

Director (Corporate & Finance)

T: +65 6531 2250

E: [simho.ong@drewnapier.com](mailto:simho.ong@drewnapier.com)

**Ong Ken Loon**

Associate Director (Corporate & Finance)

T: +65 6531 4106

E: [kenloon.ong@drewnapier.com](mailto:kenloon.ong@drewnapier.com)

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**Appendix A**

List of Countries which have signed Protocols amending Avoidance of Double Taxation Agreements to incorporate the Standard for Exchange of Information

<b>Country</b>	<b>Date of Signing</b>
<a href="#"><b>Belgium</b></a>	16 July 2009
<a href="#"><b>New Zealand</b></a>	21 August 2009
<a href="#"><b>United Kingdom</b></a>	24 August 2009
<a href="#"><b>Denmark</b></a>	25 August 2009
<a href="#"><b>The Netherlands</b></a>	25 August 2009
<a href="#"><b>Australia</b></a>	8 September 2009
<a href="#"><b>Austria</b></a>	15 September 2009
<a href="#"><b>Norway</b></a>	18 September 2009

Please click on the name of the country to access the full text of the protocol.

The above information is current as of 18 September 2009.

## OUR BUSINESS GROUPS AND PRACTICE AREAS

**BANKING/GENERAL FINANCE**

**David Ang**  
T +65 6531 2236  
F +65 6535 4864  
E david.ang@drewnapier.com

**Valerie Kwok**  
T +65 6531 2222  
F +65 6535 4864  
E valerie.kwok@drewnapier.com

**Sandy Foo**  
T +65 6531 4118  
F +65 6535 4864  
E sandy.foo@drewnapier.com

**BIOMEDICAL SCIENCES**

**Tony Yeo**  
T +65 6531 2512  
F +65 6220 0324  
E tony.yeo@drewnapier.com

**BUILDING & CONSTRUCTION**

**Tan Liam Beng**  
T +65 6531 4139  
F +65 6533 3591  
E liambeng.tan@drewnapier.com

**CAPITAL MARKETS**

**Sin Boon Ann**  
T +65 6531 2206  
F +65 6535 4906  
E boonann.sin@drewnapier.com

**Petrus Huang**  
T +65 6531 2208  
F +65 6535 4906  
E petrus.huang@drewnapier.com

**CHINA BUSINESS GROUP**

**David Chin**  
T +65 6531 2304  
F +65 6535 1952  
E david.chin@drewnapier.com

**COMPETITION LAW**

**Cavinder Bull, SC (contentious)**  
T +65 6531 2416  
F +65 6533 3591  
E cavinder.bull@drewnapier.com

**Lim Chong Kin (non-contentious)**

T +65 6531 4110  
F +65 6535 4864  
E chongkin.lim@drewnapier.com

**CORPORATE**

**David Ang**  
T +65 6531 2236  
F +65 6535 4864  
E david.ang@drewnapier.com

**Gary Pryke**  
T +65 6531 4104  
F +65 6535 4864  
E gary.pryke@drewnapier.com

**OTHER OFFICES****Drewmarks Patents & Designs (Malaysia) Sdn Bhd**

9th floor  
Bangunan Getah Asli (Menara)  
148 Jalan Ampang  
50450 Kuala Lumpur, Malaysia  
T +603 2162 2522/2162 2529  
F +603 2162 2804  
E drewmark@tm.net.my

**CORPORATE (cont'd)**

**Sin Boon Ann**  
T +65 6531 2206  
F +65 6535 4906  
E boonann.sin@drewnapier.com

**Yeo Wee Kiong**  
T +65 6531 2500  
F +65 6535 4864  
E weekiong.yeo@drewnapier.com

**CORPORATE INSOLVENCY & RESTRUCTURING**

**Sushil Nair**  
T +65 6531 2410  
F +65 6533 9029  
E sushil.nair@drewnapier.com

**Manoj Sandrasegara**  
T +65 6531 4156  
F +65 6533 9029  
E manoj.sandra@drewnapier.com

**EMPLOYMENT & IMMIGRATION**

**Indranee Rajah, SC**  
T +65 6531 4100  
F +65 6532 7149  
E indranee.rajah@drewnapier.com

**FAMILY & MATRIMONIAL**

**Randolph Khoo**  
T +65 6531 2418  
F +65 6532 7149  
E randolph.khoo@drewnapier.com

**FUND MANAGEMENT, REIT & PRIVATE EQUITY**

**Petrus Huang**  
T +65 6531 2208  
F +65 6535 4906  
E petrus.huang@drewnapier.com

**INSURANCE & REINSURANCE**

**Gary Pryke**  
T +65 6531 4104  
F +65 6535 4864  
E gary.pryke@drewnapier.com

**INTELLECTUAL PROPERTY**

**Dedar Singh Gill (Trade Marks)**  
T +65 6531 2507  
F +65 6533 0694  
E dedar.singh@drewnapier.com

**Morris John (Patents)**

T +65 6531 2503  
F +65 6533 0694  
E mj@drewnapier.com

**INTERNATIONAL ARBITRATION**

**Davinder Singh, SC**  
T +65 6531 2403  
F +65 6532 7149  
E davinder.singh@drewnapier.com

**Jimmy Yim, SC**  
T +65 6531 2504/2505  
F +65 6533 9029  
E jimmy.yim@drewnapier.com

**LITIGATION**

**Davinder Singh, SC**  
T +65 6531 2403  
F +65 6532 7149  
E davinder.singh@drewnapier.com

**Jimmy Yim, SC**  
T +65 6531 2504/2505  
F +65 6533 9029  
E jimmy.yim@drewnapier.com

**Indranee Rajah, SC**  
T +65 6531 4100  
F +65 6532 7149  
E indranee.rajah@drewnapier.com

**PROJECT FINANCE**  
**Gary Pryke**  
T +65 6531 4104  
F +65 6535 4864  
E gary.pryke@drewnapier.com

**Valerie Kwok**  
T +65 6531 2222  
F +65 6535 4864  
E valerie.kwok@drewnapier.com

**Sandy Foo**  
T +65 6531 4118  
F +65 6535 4864  
E sandy.foo@drewnapier.com

**PROPERTY**  
**Zennifa Rahim**  
T +65 6531 2392  
F +65 6535 1952  
E zennifa.rahim@drewnapier.com

**SHIPPING & INT'L TRADE**  
**Ian Koh**  
T +65 6531 2436  
F +65 6533 3591  
E ian.koh@drewnapier.com

**TAX & PRIVATE CLIENT SERVICES**  
**Ong Sim Ho**  
T +65 6531 2250  
F +65 6535 4864  
E simho.ong@drewnapier.com

**TMT**  
**Lim Chong Kin**  
T +65 6531 4110  
F +65 6535 4864  
E chongkin.lim@drewnapier.com

**TRANSNATIONAL & CROSS-BORDER WORK**  
**Julian Kwek**  
T +65 6531 2485  
F +65 6533 9029  
E julian.kwek@drewnapier.com

**PT Drewmarks Konsultama**

Correspondence address:  
20 Raffles Place  
#17-00 Ocean Towers  
Singapore 048620  
T +65 6531 2503/6531 2504  
F +65 6533 0694  
E ip@drewnapier.com

**DrewCorp Services Pte Ltd**

20 Raffles Place  
#09-01 Ocean Towers  
Singapore 048620  
ROC No. 200102492H  
T +65 6531 2266  
F +65 6533 1542 / 6533 7649  
E services@drewcorpservices.com