

LEGISLATION COMMENT

INCOME TAX (AMENDMENT) ACT 1990

Introduction

THE Income Tax (Amendment) Act 1990¹ (“the Amendment Act”) is one of an annual series of amendment Acts which give effect to the Government’s annual budget statements. It was passed by Parliament on 15 January 1990, assented to by the President on 31 January 1990 and published on 9 February 1990. It implements the income tax changes announced in the 1989 Budget Statement made by the Minister for Finance, Dr. Richard Hu on 3 March 1989.² It also makes other amendments to the Income Tax Act.³ During the second reading of the Bill, Dr. Richard Hu said:

“The ... Bill gives legislative effect to five income tax concessions announced in the 1989 Budget Statement. Opportunity is also taken to include six other amendments to the Act.”⁴

Commencement

The general commencement date of the Act is 9 February 1990. However sections 2 and 3(b) have retrospective effect from 17 February 1989 and section 16(a) and (c) has retrospective effect from 1 January 1989. Sections 9, 10, 11, 13, 17(a), 20(a) and (d) have effect from the year of assessment 1990 and subsequent years of assessment.

Corporate Tax Rate

The Minister stated both in the 1989 Budget Statement and during the second reading of the Bill that the reduction of the Corporate Tax rate by 1% is a modest reduction but is indicative of the direction in which corporate taxation will move if economic conditions allow. He added that

¹ Act No. 1 of 1990.

² *Singapore Parliamentary Debates*, Vol. 53, No. 1, Col. 23 to 42.

³ Cap. 134.

⁴ *Singapore Parliamentary Debates*, Vol. 54 No. 10, Col. 930; 15 January 1990.

it will ensure that Singapore's corporate tax structure remains one of the most competitive in the world. This new rate takes effect from the year of assessment 1990. It is interesting to note that in the 1990 Budget Statement on 2 March 1990,⁵ the Minister again announced a further reduction of 1% in the corporate tax rate to 31% with the same *raison d'être*. Section 13 of the Amendment Act amends section 43 of the Income Tax Act to reduce the tax rate for companies, trustees and non-resident persons from 33% to 32%. Several consequential amendments follow from the reduction of the corporate tax rate.

Section 16 of the Amendment Act amends section 44 of the Income Tax Act to provide that resident companies will be entitled to deduct tax at 32% instead of 33% in respect of Singapore dividends paid by them. This section also amends section 44(11) of the Income Tax Act for cases where tax on dividends paid in 1989 have been deducted at 33%. In such cases the net dividend is deemed to have been paid without deduction of tax and will be grossed up at the rate of 32% to determine the gross dividend assessable to tax. The difference between the amount of tax deducted at 33% from such dividend and the tax deemed to be so deducted will be available to the company to be set off against the tax deducted from any future dividends. Section 17 of the Amendment Act amends section 45 of the Income Tax Act to provide for the reduction of the tax to be deducted on interest and other payments made to non-residents from 33% to 32%.

Section 18 of the Amendment Act makes a consequential amendment to section 46(2) of the Income Tax Act in ascertaining the amount of tax that may be set off against a taxpayer's dividend income. Section 8 of the Amendment Act amends section 35(2A) of the Income Tax Act to provide for Singapore dividends derived by a person during 1988 to be assessed for the year of assessment 1989 in cases where such dividends would by virtue of his accounting period be assessed for the year of assessment 1990. According to the Minister's speech, this is to avoid a mismatch whereby dividends derived in 1988 are taxed at 32% while tax credits of 33% are allowed on such dividends.

In order to ensure that those who are taxed under the existing Part B marginal rates, such as management corporations and cooperatives, will not be taxed above the effective corporate tax rate of 32%, section 42(5) of the Income Tax Act has been amended by section 11 of the Amendment Act. With effect from the year of assessment 1990 the highest effective rate of tax imposed on a person, other than an individual, under Part B of the Second Schedule to the Income Tax Act is limited to 32% on every dollar of chargeable income.

Computer Gifts

Before the Amendment Act, except for gifts to the National Museum, only gifts of money to an institution of public character qualified for

⁵ Straits Times, 3 March 1990, p. 33.

deduction. Section 37(2) of the Income Tax Act has now been amended by section 9 of the Amendment Act to allow a deduction for the value of a computer (including computer software and peripherals) donated to a prescribed educational or research institution in Singapore. This concession takes effect from the year of assessment 1990. The prescribed institutions are specified in the Income Tax (Computer Gifts) (Educational and Research Institutions) Rules 1990.⁶ They include all the Institutions of Higher Learning, Vocational and Industrial Training Board, Precision Engineering Institute, Philips Government Training Centre, French-Singapore, German-Singapore and Japan-Singapore Institutes and the National Computer Board.

Building Alterations for Disabled Employees

Section 5 inserts a new section 14H to allow deductions, subject to a maximum of \$100,000, for approved expenditure incurred in building additions or alterations to premises which facilitate the mobility or work of disabled employees. One can expect the construction of ramps for wheelchairs and modification of toilets for use by the disabled to qualify for such deductions subject to actual approval. The purpose of the expenditure is not confined to facilitating the employee's work but includes facilitating the employee's mobility. It is thus arguable that building alterations to facilitate the employee's access to recreational facilities and other facilities such as the cafeteria sited within the employer's premises would also qualify for the deduction. Unlike other deductions and allowances for buildings and constructions, e.g. those under section 16 or 17, the full amount of the approved expenditure can be deducted in one year of assessment and need not be claimed over a number of years as in the case of initial and annual allowances. The employers must be either the owners or lessees of the premises. The limit of \$100,000 is in respect of deductions over all years of assessment. Once a deduction is allowed under the new section 14H, no other deduction will be allowed for that expenditure.

Increased Personal Reliefs

The 1989 Budget was dubbed the "Family Budget" by the press primarily because of the increased personal reliefs. Section 10 of the Amendment Act amends section 39(2) of the Income Tax Act to increase the relief given to a taxpayer in respect of -

- (a) his wife from \$1,000 to \$1,500;
- (b) a disabled dependant who is either a sibling or child of the taxpayer from \$750 to \$2,500 so long as the dependant does not have an income of more than \$1,500 in the year;
- (c) aged parents and grandparents from \$1,000 to \$2,500.

⁶ G.N. No. S 193/90.

Section 20 of the Amendment Act amends the Fifth Schedule to the Income Tax Act to give effect to the incentives to encourage procreation. The normal child relief for the first, second and third child is increased from \$750 to \$1,500. This relief will also apply to a fourth child born on or after 1st January 1988. Where a married woman has elected for separate assessment under section 51(4), the enhanced child relief for the second, third and fourth child below 12 years of age is increased from the present 10%, 15% and 15% of the mother's earned income to 15%, 20% and 25% respectively. The maximum claim for the enhanced child relief for each child below 12 years old is increased from \$10,000 to \$15,000. It is noteworthy that paragraph 7 of the Fifth Schedule has been redrafted into the form of a table whereby easy reference is facilitated especially where the enhanced child reliefs differ in accordance with both the age of the child and the order of birth. Before the year of assessment 1990, the age of the child did not affect the quantum of enhanced child relief so long as the child was "eligible" for relief under section 39(2)(d).

Fourth Child Rebate

Section 42A, which before the amendment dealt with the third child rebate, was redrafted by section 12 of the Amendment Act to provide for special tax rebates of \$20,000 and 15% of a married woman's earned income to be granted in respect of a fourth child born on or after 1st January 1988. In the process of redrafting section 42A, the provisions relating to the third child have been polished. The rebate may be used to offset either or both the husband's and wife's tax liabilities. A further tax rebate equal to 15% of a married women's earned income is provided for use to offset her tax liabilities where she has elected for separate assessment. Where the fourth child is born within five years of the birth of the third child, the rebate may be absorbed for up to five years of assessment after the last year of assessment in which the third child's rebate may be allowed. Without this provision, the taxpayers may not be able to take full advantage of the incentive if the two births are close to each other. They may have insufficient tax liability to claim a total of \$40,000 together with 15% each of the wife's earned income in each year of assessment following the year in which the third and the fourth child is born; all within a period of say 7 years. Taxpayers would be further gratified to learn that it was announced in the 1990 Budget Statement that the Minister has decided to extend the five-year period within which each of the third and fourth child rebates have to be absorbed to seven years.⁷ This together with the new second child rebate would necessitate further amendments to section 42A in the next amendment Act.

If the fourth child is adopted by another person within 5 years of his birth, the rebate or balance thereof will not be available for deduction against the tax payable for any year of assessment following the year in which the child is adopted. Where the taxpayer's marriage is dissolved

⁷ Straits Times, 3 March 1990, p.33.

by divorce or annulment within 5 years of the birth of the fourth child, the rebate or balance, will also not be available for any year of assessment following the year of the order of divorce or annulment. Fourth child of the family is defined as "a child of the family, being a citizen of Singapore at the time of his birth or within 12 months thereafter and who has at the time of his birth 3 other siblings who are members of the same household and who are citizens of Singapore at that time." Sibling is defined as a brother or sister and includes a step-brother or step-sister, or brother or sister adopted in accordance with any written law relating to adoption. One implication of the definitions is that if any of the first 3 children is a non-citizen when the fourth child is born, the rebate will not apply. Another implication is that the first three children need not be the tax payer's natural children but the fourth child has to be. Of course, if the third child is not the taxpayer's natural child, the third child rebate will not apply.

Approved Oil Traders

To enhance Singapore as an international centre for oil refining and trading and also as a financial centre, section 15 of the Amendment Act inserts a new section 43F to enable the Minister to make regulations providing for a concessionary rate of tax of 10% for the income of approved oil trading companies derived from prescribed transactions in petroleum, petroleum products and petroleum futures. An Oil trading company is defined widely as "a company carrying on a business of trading in petroleum, petroleum products or petroleum futures". However to qualify for the concession the oil trading company has first to be approved by the Minister or such other person as he may appoint which in this case will be the Trade Development Board. As far as the writer knows, no regulations have yet been made. It is envisaged that the forthcoming regulations would be patterned after the Income Tax (Concessionary Rate of Tax for Approved Headquarters Company) Regulations 1988⁸ and specify both the qualifying services and eligible petroleum products. The regulations may provide that the concessionary rate applies retrospectively to income derived on or after 1 January 1989.

A related amendment made to section 43D(1) of the Income Tax Act by section 14 of the Amendment Act extends the application of tax at the rate of 10% (or such other concessionary rate as provided under regulations) for SIMEX members to transactions in petroleum futures on approved markets or exchanges with approved oil trading companies. This would presumably allow the Minister to approve established exchanges such as the International Petroleum Exchange and the New York Mercantile Exchange. The existing Income Tax (Concessionary Rate of Tax for Income from Gold Bullion, Gold Futures and Financial Futures) Regulations 1985⁹ would almost certainly have to be amended or replaced by new regulations.

⁸ G.N. No. S 43/88.

⁹ G.N. No. S 349/85.

These incentives are major ones from the economic point of view. In the 1990 Budget Statement, the Minister said that the Approved Oil Trader Scheme has enhanced Singapore's business environment for international oil trading and encouraged companies to site their trading operations in Singapore. It has also generated significant spin-offs in the form of \$21 billion worth of trade-related financing committed over the next 5 years.¹⁰ Trading can be in both "wet" and "paper" barrels and in oil futures. It is not known to what extent the scheme will apply to "paper barrels". The importance of oil trading has been further emphasised by the Iraqi invasion of Kuwait on 2 August 1990 and the resulting Gulf crisis.

Income Tax Board of Review

Section 19 of the Amendment Act amends section 78(1) of the Income Tax Act to allow the Minister to appoint members of the Board of Review for such period as he may determine. Before the amendment, the Minister could only appoint members for fixed periods of three years.¹¹ This amendment gives added flexibility but may affect the tenure of the members as there is now no longer a fixed or minimum period of appointment.

Motor Car Allowances for Driving Instruction

Before the amendments, capital allowances for motor cars registered as business service passenger vehicles *i.e.* "Q" series registered cars are each restricted to \$35,000.¹² Deductions for outgoings and expenses *i.e.* running costs are also given as a proportion of \$35,000.¹³ Only taxis, motor cars used as school transport and private hire cars have before the amendment been exempted from the restriction. Section 6 of the Amendment Act amends section 19(2C) of the Income Tax Act to exclude a motor car registered as a business service passenger vehicle and used mainly in the business of providing driving instruction from the restriction imposed on the capital allowances which may be claimed under the section. Similarly, section 4 of the Amendment Act amends section 14(4) to exclude a motor car registered as a business service passenger vehicle and used mainly in the business of providing driving instruction from the restriction imposed on deductions for the running costs. The rationale given by the Minister for the amendments is that it is to ensure that the restrictions do not pose difficulties to those categories of taxpayers who depend on cars for their livelihood.¹⁴

¹⁰ Straits Times, 3 March 1990, p.32.

¹¹ The present Chairman of the Income Tax Board of Review is Judicial Commissioner Mr. Tan Teow Yeow. The other members according to the July 1990 Edition of the Government Directory are Wee Sip Chee, Chee Tiang Chin, Lim Chin Beng, Lim Sean Teck, Charles William Meyer, Lee Khye Seng, Henry Tan Hoay Gie, Lim Han Soon, Lim Tian Leong, Lim Cheng Pah, Wee Kian Kok, Lim Ngak and Wong Lee Hoong.

¹² Section 19(2A) read together with section 19(2D).

¹³ Section 14(3) read together with 14(3B).

¹⁴ *Singapore Parliamentary Debates*, Vol. 54, No. 10, Col. 932, 15 January 1990.

Central Provident Fund Contributions

Section 4 of the Amendment Act amends section 14(l)(e) of the Income Tax Act to increase the limit of 10% imposed on the deductions allowed in respect of an employer's contributions to an approved pension or provident fund. This amendment is necessary in the light of the increases to 12% and 15% in the rate of employer's Central Provident Fund contributions which came into effect on 1st July 1988 and 1st July 1989 respectively.¹⁵ With the recent announcement that the rate of employer's contributions will be increased to 16½ % from 1st July 1990, similar amendments to section 14(l)(e) are expected to be made in the next amendment Bill.

Although the Minister in his 1989 Budget Statement announced that with effect from the year of assessment 1990, obligatory contributions to those funds by employees and employers would no longer be tax deductible, this Amendment Act does not contain any provision to this effect. The reason for this is that representations were made since the Statement that the proposed 40% (of the total annual ordinary wages) limit imposed on additional wages may be too low for certain categories of employees who draw low basic salaries but high bonuses and commissions *e.g.* sales persons and foreign exchange dealers. As a result of these representations, a joint press release was issued on 22 December 1989 by the Ministries of Finance and Labour to announce that the scheme has been modified to allow employees earning less than \$100,000 in total annual wages to continue to enjoy full tax deductions and exemptions in respect of both employer's and employee's contributions. However those employees earning more than \$100,000 in annual wages will be affected by the new scheme. Contributions which are not tax deductible or exempt will no longer be compulsory. One can therefore expect amendments in the next Amendment Bill and the Central Provident Fund Act¹⁶ to give effect to this scheme.

Conclusion

This legislative comment is intended as a guided tour to the Amendment Act which to some will seem like a maze because of the highly technical nature of tax legislation. Among the more notable tax changes are the incentives for procreation, increased personal reliefs and the concessions for approved oil trading companies and trading in petroleum futures on the Singapore International Monetary Exchange ("SIMEX"). I have not discussed sections 2, 3 and 7 as they are technical amendments.

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¹⁵ The Central Provident Fund (Amendment of Schedule) Notifications 1988 and 1989 (S Nos. 161 of 1988 and 261 of 1989).

¹⁶ Cap. 36.

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