The Income Tax (Amendment) Bill 2020 was published on 5 October 2020. The Ministry of Finance (MOF) also issued its response to feedback it received in response to a draft bill issued for public consultation on 20 July 2020.

In a move which reaffirms Singapore’s position against tax avoidance, the Bill proposes the repeal and re-enactment of the general anti-avoidance provisions, and the introduction of a surcharge to be imposed on anti-avoidance arrangements. Similar amendments are proposed to the Stamp Duties Act in the Bill, and in the Goods and Services Tax (Amendment) Bill 2020 which was published a day after the Bill.

The remaining amendments relate mainly to measures announced in the various Budget Statements presented in Parliament, together with some changes arising from the MOF’s ongoing review of existing tax policies and administration. In this newsletter, we highlight some of the key changes.

Proposed amendments to the general anti-avoidance provisions

One of the key non-budget changes proposed is the repeal and re-enactment of the general anti-avoidance provision in Section 33 of the Income Tax Act (ITA).

It provides that the reduction or avoidance of tax liability of any person includes that of a claimant of qualifying deductions transferred to it under the group relief scheme. In the event that the Comptroller of Income Tax (the Comptroller) invokes Section 33 to vary or disregard an arrangement which results in an adjustment to qualifying deductions that have been transferred under group relief, the tax will be paid by the claimant and the surcharge (discussed in detail in the next section) will be borne by the transferor.

Apart from this, the re-enacted Section 33 is no different from the current Section 33. Hence the principles laid out in AQQ v CIT [2014] SGCA 15 to determine if an arrangement falls within Section 33 should continue to apply.

Almost identical amendments are also proposed to the Stamp Duties Act where the proposed Section 33A is intended as a re-enactment of the original general anti-avoidance provision. The re-enacted Section 33A applies to arrangements made or entered into from 1 September 1999. It was earlier proposed in the draft bill that the Commissioner may make an adjustment to counteract any reduction in or avoidance of duty payable even when there is no instrument. Following feedback from public consultation, this proposal has been removed from the bill tabled in Parliament.

Introduction of a surcharge for tax avoidance arrangements

A new Section 33A of the ITA is proposed to impose a surcharge on tax avoidance arrangements. Currently, where it is determined that there is a tax avoidance arrangement, any tax adjustments made by the Comptroller would only counteract the advantage obtained from the arrangement. The Bill proposes to introduce a surcharge amounting to 50% of the amount of income tax or additional income tax to be imposed by the Comptroller as a result of the tax adjustments made to counteract the advantage obtained or obtainable from the arrangement. The surcharge is to be automatically applied, notwithstanding any appeal or objection submitted for the relevant tax assessment. The surcharge is to be applied to adjustments made to tax assessments from Year of Assessment (YA) 2023 onwards.

Similar changes to impose a surcharge are proposed in respect of the GST and stamp duty anti-avoidance provisions.
The ITA currently has in place a penalty regime for non-compliance and hefty penalties for tax evasion. Given that the surcharge is applicable solely at the discretion of the Comptroller to determine whether or not a tax avoidance arrangement exists, it is hoped that there will be safeguards accompanying the change in law, e.g. it will be useful to publish a surcharge remission framework to give clarity on how it will be administered.

A surcharge remission framework could be considered to encourage taxpayers to voluntarily come forward to make a full disclosure should they be concerned about their arrangements. For example in Ireland, if a taxpayer claims a tax advantage that arises from a tax avoidance transaction under the general anti-avoidance rules (GAAR), the taxpayer will be liable to pay additional taxes, interest on the additional taxes and a surcharge of 30% of the additional amount of tax payable. However, there are protective measures for the taxpayers in Ireland. If a taxpayer is concerned that the tax authority may challenge a scheme under the GAAR, the taxpayer can file a protective notification. This is a full disclosure by the concerned taxpayer to ensure that if the tax authority successfully challenges the scheme, the tax avoidance surcharge of 30% will not be imposed. In addition, the accrual of interest may be delayed.

**Tax measures announced in the Unity Budget**

The Bill will legislate the following tax measures announced in the Unity Budget in February 2020:

- Corporate income tax rebate of 25% for YA 2020, capped at $15,000.
- Increase in the number of years for which YA 2020 qualifying deductions (i.e. current year unabsorbed capital allowances and trade losses) of up to $100,000 may be carried back to three immediate preceding years of assessment.
- Accelerated write-off over two years for capital expenditure incurred on the acquisition of plant and machinery in the basis period for YA 2021. This is an irrevocable option.
- Extension of the Double Tax Deduction for Internationalisation (DTDi) scheme until 31 December 2025, and expansion of the scope of qualifying expenses to include new categories of expenses such as third-party consultancy costs for specified purposes.
- Extension of the exemption scheme under Section 13Z of the ITA for gains on disposal of ordinary shares under certain conditions, and the exclusion, with effect from 1 June 2022, of disposals of unlisted shares in an investee company that is in the business of trading, holding or developing immovable properties (whether situated in Singapore or elsewhere) from the scheme.


**Tax treatment of COVID-19 support and payouts**

Following further announcements in the 2020 Resilience, Solidarity and Fortitude Budgets to support businesses and workers affected by the pandemic, the Inland Revenue Authority of Singapore (IRAS) provided guidance on the tax treatment of COVID-19-related payouts on its website on 20 July 2020. The Bill proposes to legislate the tax treatment of such payouts.

Prescribed payouts to businesses and individuals under schemes like the Jobs Support Scheme, COVID-19 Support Grant, payments to a person under specified public schemes such as those relating to quarantine or stay-home notices, and the Self-Employed Person Income Relief Scheme, will be exempt from income tax under the proposed Section 13ZA of the ITA.

Other payments made to mitigate the impact of the pandemic that will also be exempt from income tax under this proposed section include:

- Benefits-in-kind and cash allowances for accommodation, food, transport and other necessities received by employees, subject to conditions and caps
- Rental rebates from the reduction in property taxes
- Payouts under the Point-to-Point support package for taxi and private hire car drivers

**Other non-Budget amendments**

Some of the other non-Budget amendments in the Bill include:

- Amendments to Section 7 of the ITA to prescribe mandatory electronic tax refunds (e.g. direct credit to a Singapore bank account or by telegraphic transfer to a foreign bank account) of income tax to companies
- Amendments to Section 6 of the ITA to introduce a new exception to the secrecy provisions to facilitate the disclosure of information to foreign tax authorities, with taxpayer’s consent, for the purposes of Singapore’s participation in multilateral tax compliance programmes

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• Amendments to Section 37B of the ITA to clarify the application of the adjustment factor to unabsorbed capital allowances, losses or donations.

• Amendments to Section 10E of the ITA, such that it only applies to legal owners of immovable properties or those which have a proprietary interest in the properties (including a lease or an easement).

Conclusion

Along with various Budgetary measures and technical or administration matters, the Bill seeks to introduce a surcharge on tax avoidance arrangements. The surcharge will be levied and payable automatically once the Comptroller determines that Section 33 applies, unless he decides to remit it in whole or in part. It is as yet unclear under what circumstances and how the Comptroller will exercise his discretion. Taxpayers may of course object to the Comptroller’s determination of their arrangement as tax avoidance, appeal to the Board of Review or the courts against the Comptroller’s decision, but would otherwise have limited avenues to object to or plead their case on the imposition of the surcharge.

Given that the tax avoidance surcharge will apply for adjustments to arrangements from YA 2023 onwards, it is hoped that the IRAS could provide some guidance on how it intends to administer the remission provision in due course.
For a deeper discussion of how the above might affect your business, please feel free to contact:

Chris Woo  
Tax Leader  
chris.woo@pwc.com  
+65 9118 0811

Paul Lau  
Partner  
paul.st.lau@pwc.com  
+65 8869 8718

Abhijit Ghosh  
Tax Markets Leader  
abhijit.ghosh@pwc.com  
+65 8223 0698