THE LAW SOCIETY OF SINGAPORE

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Our Ref: LS/10/RLR/CON(5)/2015/ADR.Corp.State/DLT/gk/an

24 July 2015

Ministry of Finance
100 High Street, #10-01
The Treasury
Singapore 179434
Attention: Tax Policy Directorate

BY POST & EMAIL
[pc_itabill@mof.gov.sg]

Dear Sir / Madam

FEEDBACK BY LAW SOCIETY ON THE PUBLIC CONSULTATION ON INCOME TAX (AMENDMENT) BILL 2015

We refer to your email of 29 June 2015 inviting Law Society to provide feedback on the Public Consultation on Income Tax (Amendment) Bill 2015 ("Bill").

2 The Bill was referred to our practice committees and their views on the same are set out in Annex A for your consideration.

3 The Law Society is grateful to the Ministry of Finance ("MOF") for engaging members for their feedback on the Bill.

Yours faithfully

Delphine Loo Tan
Director (HoD), Representation and Law Reform

ANNEX A – FEEDBACK ON THE PUBLIC CONSULTATION OF THE INCOME TAX (AMENDMENT) BILL 2015

PUBLIC CONSULTATION OF THE INCOME TAX (AMENDMENT) BILL 2015 ("BILL")

Date Submitted:		24 July 2015	
Name:		The Law Society of Singapore	
Contact Details:		Representation & Law Reform Department, represent@lawsoc.org.sg	
S.No.	**Tax Change (Amendment to Income Tax Act)**	**Comments**	**Proposed change to draft Income Tax (Amendment) Bill**
1.	Amendment of Section 6	Use of "despite" in Section 11 (A) of the Bill seems unwieldy from a drafting perspective.	It is suggested that the word "despite" be replaced with "notwithstanding".
2.	Amendment of Section 8A, read with Section 65B	It is not clear whether the electronic service to be provided by the Comptroller for the provision of information under Section 65B (3) of the Income Tax Act ("Act") requires the person's consent under Section 8A(7).	Clarification is sought on whether a person's consent is required before notice may be given electronically, where service of a Section 65B (3) notice takes place. The concern is that non-compliance with such a notice is an offence, and there is a need for the person to be aware that service of such a notice may take place electronically, in order to avoid any inadvertent non-compliance.
3.	Amendment of Section 10	Clause 5 (d) of the Bill provides that "*Where subsection (20B) had applied to a unit trust" – however, under subsection (20D), subsection (20B) will only apply to certain unit holders or partners of a partnership which is a unit holder (in other words, subsection (20B) cannot apply to a "**unit trust**")*". The same applies to subsection (20H) and the explanatory note to Clause 5.	It is suggested that the draft subsections (20G) and (20H) and the explanatory note be amended to avoid making reference to subsection (20B) "applying" to a unit trust. MOF may also wish to consider the following amendment: *"(20G) **Where subsection (20B) had applied to the persons referred to in subsection (20D) —*** *(a) the amount of the income referred to in subsection (20B)(a) that had yet to be distributed to the unit holders of the unit trust by the corresponding date in question is treated, for the purposes of any subsequent application of subsection (20B), as having been*

			distributed by the unit trust to the persons ***referred to in subsection (20D)*** *immediately after* ***that first corresponding date*** *in question; and"*
4.	Amendment of Section 10L	There is a general lack of practical guidance on the tax treatment of SRS withdrawals.	It is suggested that an e-tax guide on the tax treatment of SRS withdrawals be drafted, including worked examples to provide further guidance on the practical application of this provision read with the Income Tax (Supplementary Retirement Scheme) Regulations.
5.	Amendment of Section 13	With regard to the new subsection (17), it is suggested that rather than referring to accreditations and institutions as set out on a specified website, it may be more appropriate to refer to gazetted regulations / rules.	It is suggested that subsection (17) be deleted, and the terms "qualifying mediation" and "qualifying mediator" be prescribed by the Minister through subsidiary legislation under Section 7, as presently provided for in the new proposed subsection (16). The initiative to promote Singapore's international commercial mediation sector is a welcome change and it mirrors the policy makers' efforts to promote international arbitration previously when they exempted income derived by a non-tax-resident arbitrator in Singapore (S 13(r) of the Act). In this regard, clarifications are sought on the following: • Whether similar incentives will also be provided to tax-resident mediators to encourage them to persuade their parties to conduct their international mediations in Singapore; and • Whether similar incentives will be extended to local mediations instead of being limited to international mediations only.
6.	Amendment of Sections 13CA and 13R	It is not clear how the definition of "relevant day" in subsection (9) would interact with the practical application of approval for the Enhanced – Tier Fund (ETF) Scheme. It is noted that an ETF application to the Monetary Authority of Singapore (MAS) takes certain amount of time to process, but if approved, can	While no changes are required to the Bill, it is suggested that MAS Circulars could be updated to provide clarity on the practical filing aspects of the "qualifying investor" requirement, where an ETF application is in the process of being reviewed, and if approved, may be backdated to have effect on the application date.

		be backdated to the initial application date.	
7.	Amendment of Section 13X	It is noted that the amendments still contemplate a single master fund, with one or many feeders. On some occasions, foreign investment rules require the creation of more than one master fund. For example, foreign investment rules in India set limits on the levels of certain types of Indian investments that may be held by a single foreign entity (such as a Singapore – incorporated company), and these restrictions necessitate the setting up of more than one master fund, in order for such funds to operate and invest under different Indian regulatory regimes. It is submitted that the overall policy intention for the growth and development of the fund management industry as a whole in Singapore (through the provision of more certain income tax treatment of fund income), may still be achieved even if a "multiple master fund" model is permitted for the purposes of the Section 13X incentive.	Where economic conditions (i.e. the local business spending requirement and fund size) can be met by a fund structure collectively, it is suggested that the Section 13X incentive not be restricted to "single master – one/many feeder"- type fund structures, whether in the context of the new SPV administrative concession, or otherwise.
8.	New Section 14KA	Subsection 2(b) makes reference to the earliest date on which the company acquires any shares in the establishment; where the overseas establishment "is an overseas establishment of an approved company	If the intention is to provide for the enhanced deduction of salary expenditure for employees, on the basis that such employees have been posted to "*overseas establishments*" which are subsidiaries, then a fairer time frame under Subsection 2(b) should be "*no more than 3 years after the date on which the overseas establishment may be deemed to be a subsidiary of the approved company under Section*

		by reason of its being a subsidiary". The term "subsidiary" has a specific definition under Section 5(1)(a) of the Companies Act – put another way, a company does not become a "subsidiary" of another simply by having "any" of its shares acquired. The term "salary expenditure" only includes wages and salary, but it is not clear why other payments such as bonuses etc. are excluded, as such expenditure is typical in employee remuneration structures. On an application of ordinary deduction principles under Sections 14 and 15, these other payments could fairly be said to be expenses incurred in the production of income. It is also not clear if employee provident or pension fund contributions made by employers overseas (whether mandatory or otherwise), would also come within the scope of this enhanced deduction.	*5(1)(a) of the Companies Act*". If the intention is to encourage market expansion and development activities overseas, then it is suggested that employee payments other than wages and salary, and provident/ pension fund contributions borne by the approved company, should also come within the scope of the enhanced deduction.
9.	Amendment of Section 37L	The interpretation and application of subsection (7) is affected by not only subsections (11), (19) and regulations under subsection (24), but also the new draft subsections (11A) and (11B).	It is suggested that the opening line of subsection (7) be amended as follows: "For the purpose of subsection (1) and subject to subsections (11)**, (11A), (11B)** and (19) and the regulations made under subsection (24)…"
10.	Amendment of Section 39	The scope of Subsection 4B is not clear.	It is suggested that the word "*despite*" be replaced with the word "*notwithstanding*", and clarification be provided on what is the meaning of the phrase "*or any two of these paragraphs*". The explanatory note provides that "*the general principle of one type of claim per dependent does not apply to claims under subsections 2(a), (c) and (d), which relate to maintenance of a spouse*". However, the present drafting

			seems to suggest that only two of such claims may be concurrently made. Further, clarifications are also sought on the scope and meaning of the phrase "*or any two of these paragraphs*" and would suggest it be deleted, if the intention is not to restrict concurrent claims to only 2 of subsections 2(a), (c) and (d). Instead, MOF may wish to consider the following language: "*(4B) Notwithstanding subsection (4), for any year of assessment, an individual may be the subject of more than one claim for such individual's maintenance under paragraphs (a), (c) and (d)".* Alternatively, if the intention is to restrict such claims, then the explanatory note should be clarified.
11.	New Section 43ZG	The definition of "fund management company" can be further refined	For the sake of consistency, MOF may wish to consider linking this definition back to the definition of "fund manager" under Section 2 of the Act.
12.	New Section 43ZH	The definition of "international growth company" could be further clarified	It would be good to have some clarification on the extent to which the trade or business of an international growth company is required to be carried on outside Singapore (for example, "*a trade or business which substantially involves*").
13.	New Section 105PA	Subsection (2) refers to "*any rule of professional conduct*" and the general wording in Section 105PA somewhat mirrors that in Section 105L. The term "*any rule of professional conduct*" is wide enough to cover legal professional privilege in solicitor-client relationships.	If the intention is that Foreign Account Tax Compliance Act disclosures are not permitted where such disclosures breach legal professional privilege between solicitors and their clients, then it is suggested that a carve out be included in Section 105PA, as it has been done in Section 105L(5).