SICC Singapore International Chamber of Commerce

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Singapore Budget 2015

Submission by the Singapore International Chamber of Commerce (SICC)

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SICC Budget Wish-List 2015

Section A: Singapore's Overall Tax Regime

(A)	Capital Gains Tax		
No.	Tax Issues	Comments	Proposed Changes
	Extend capital gains tax certainty – Section 13Z	The safe harbor rules introduced during the 2012 Budget stipulate that where investors hold at least 20% of the ordinary shares in an investee company for a continuous period of at least 24 months immediately prior to the sale, they would not be taxable on the gains from the sale of such ordinary shares. This was a much welcome move for investors as there is upfront certainty on the tax treatment of the gains if the conditions under the safe harbor rules are met. Unfortunately, these rules are set to expire on 31 May 2017.	We propose for the Government to consider making the safe harbor rules a permanent feature in Singapore tax legislation or extend for at least another 5 to 10 years. In addition, to simplify compliance, perhaps consideration could be given to remove the requirement for foreign companies to file a tax return in Singapore in order to avail themselves to this certainty.
	Safe harbor rule for gains from disposals of equity instruments	Sunset clauses have been introduced for most tax incentives as they need to remain relevant. However, there may not be a need to introduce sunset clauses for some tax rules. For example, there is a five-year sunset clause for the safe-harbour rule for gains from disposals of equity investments even though it is not a tax incentive. The clause unnecessarily limits the effectiveness of the safe harbour rule - it would be of no use to companies planning to acquire new investments from 1 June 2015 since it would be due to expire before the two year minimum holding period can be met for those investments.	It should be extended or removed, or as a transitional measure, the safe harbour should be extended to investments acquired within the current timeframe as long as the holding requirements are met. Insurance and reinsurance companies are specifically excluded from this safe harbour rule. This exclusion should be removed as it was based on the misconceived notion that insurers cannot derive capital gains. It has been decided by the courts that this is not the case in *BBO v Comptroller of Income Tax*.

(B)	Group Tax Relief		
No.	Tax Issues	Comments	Proposed Changes
	Group tax Relief on Loss Items	Provisions under Sections 37C (14) and (15) of Income Tax Act (Cap. 134) allow companies to transfer only qualifying deductions which comprise unabsorbed capital allowances, trade losses and donations for the current year (collectively known as loss items). Loss items brought forward from prior years and investment allowances are excluded from the definition of qualifying deductions. Business conditions fluctuate and introducing more flexibility to the group relief rules in allowing loss items brought forward from prior years to be included in the definition of qualifying deductions, can help to create more value for businesses and at the same time simplify compliance. Investment allowances which are in essence a further allowance granted by way of a tax incentive scheme, on certain fixed capital expenditure or equipment under Part X, Section 67 of the Economic Expansion Incentives (Relief from Income Tax) Act (EEIA) should also be included as qualifying deductions available for transfer to a Group company under section 37C.	It is proposed that the group relief provisions be relaxed to include(a) loss items brought forward from prior years and (b) investment allowances granted under the EEIA, in the definition of “qualifying deductions” under Section 37C(14). Furthermore, a company benefitting from such an investment allowance incentive should not be excluded (under Section 37C(15)) from the ability to transfer such allowances.

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(C) Singapore Income Tax Act (SITA)			
No.	Tax Issues	Comments	Proposed Changes
	Upfront fees for spectrum capacity	<u>Section 19A of SITA</u> Telecommunications operators ("Telcos") are currently denied tax deduction on upfront fees for spectrum capacity even though such fees are necessary business expenses. Other jurisdictions have specific legislation to deal with similar expenditure to make it clear that such expenditure is deductible, either as revenue expense or capital depreciation. As noted on IRAS' website, "Tax has been used to influence behavior towards desirable social and economic goals. For instance, to encourage mechanization and automation, the government allows accelerated capital allowances for most assets used for businesses. Conversely, denial of tax deduction or relief of any kind may suggest that the business expenditure is not encouraged. Given the government's goal for Singapore to be first in the world in harnessing infocomm to add value to the economy and society, tax policy should complement and be aligned to encourage business expenditure fundamental to infocomm infrastructure.	It is proposed that Rule2(3) of the Income Tax (Automation Equipment) Rules re "data communications and network equipment" be amended to include upfront fees for spectrum capacity necessary for operation of data communications and networking equipment.
	Land Intensification Allowance (LIA)	<u>Section 18C of SITA / Income Tax (Land Intensification Allowance) Regulations 2012</u> Based on EDB's guidelines, LIA incentive is	It is proposed to extend the LIA incentive to the technology, infocomm and digital media industry and data centers.

		targeted to promote the intensification of industrial land use towards "more land-efficient and high value activities" and caters for selected industry clusters primarily involved in manufacturing. The iN2015 report stated that "Growing Storage and Capacity and Sophistication" is a key focus area for Singapore to support the future needs of content owners, IT and Infocomm service providers. IT services such as cloud services, cyber security and other related specified services are typically regarded as high value activities that require sophisticated storage, technology and strict security. To further promote Singapore as an IT hub with sophisticated infrastructure, we propose that the LIA incentive be extended to the technology, infocomm and digital media industry and data centers, so long as the relevant gross plot requirement is met.	
	Donations to approved IPC	Section 37(3) of SITA Qualifying donations made between 2009 to 2015 to approved institutions of a Public Character ("IPC") are allowed a tax deduction of 2.5 times the amount of donation.	To encourage greater charitable giving in Singapore, it is proposed that the 2.5 times tax deduction be extended for another 5 years.
	Medical expenses	Section 14(6) of SITA Tax deduction for medical expenses is capped at **1%** of total employee remuneration accrued for the year. However, the cap on medical expenses is at **2%** of total employee remuneration accrued for the year if the	In view of rising standards of living & healthcare costs, and to encourage companies to provide better medical coverage for employees, propose to raise the current cap to double the existing ones.

		company has implemented any of the following portable medical benefits options: - Portable Medical Benefits Scheme (PMBS); - Transferable Medical Insurance Scheme (TMIS); - Provided employees with inpatient medical insurance benefits in the form of portable medical shield plans (but the additional deduction will exclude premiums for riders that cover deductibles and co-payments); or - Made ad-hoc contributions to employees' Medisave accounts (subject to a cap of $1,500 per employee per year) during the relevant basis period.	
	More flexible conditions for tax exemption under Section 13(12) of the Income Tax Act (for Specified Scenarios)	Where the conditions for Section 13(8) tax exemption cannot be met, it may be possible to apply for tax exemption on foreign-sourced income under Section 13(12) of the Income Tax Act. This tax exemption is available under specified scenarios and subject to meeting certain conditions. Generally, tax exemption may be granted if it can be demonstrated that the foreign-sourced income received in S'pore by companies originate from profits generated from substantive business activities carried out in the foreign country. For investment in real estate, meeting the substantive business activities requirement can be an issue if the overseas property	The separation of ownership of property and its operations are influenced by commercial factors such as containing business operations risks within one company, operational and administrative efficiency in having a centralised hiring arrangement where one company employs all the staff and the staff costs are then charged out to the respective property owning companies, etc. Members request MOF to adopt a more liberal interpretation to the "substantive business activities" condition and allow foreign-sourced income originating from profits generated from the commercial

		owning company does not have any employees of its own and derive rental income from letting out of the property (e.g. under a master lease). The actual operations of the property is handled by a separate operating company where all the staff are employed.	activities of the overseas property owning companies which do not have any employees of its own to be considered for Section 13(12) income tax exemption.
	Exemption of gains derived from disposal of ordinary shares	Regarding section 13Z(8) of the Income Tax Act, for MOF to consider deletion of limb (a) which excludes insurance companies from the benefit of section 13Z exemption of gains derived from disposal of ordinary shares.	The deletion is highly appropriate in light of IRAS' appeal being dismissed by both the High Court and Court of Appeal in *Comptroller of Income Tax v BBO* in April 2013 and February 2014 respectively.
(D)	Global Trader Programme (GTP)		
No.	Tax Issues	Comments	Proposed Changes
	Blending activities performed in Singapore are considered "local value added" activities under the Global Trader Programme ("GTP"). The "value added" amount is subject to tax at 17% (the full corporate tax rate).	Blending has become an increasingly integral part of an oil trader's activity. Oil traders frequently blend components into finished grades in order to meet quality requirements and product specifications required by different markets due to environmental requirements. Given that blending is an essential part of a trader's tool kit for products like fuel oil, mogas and to a lesser extent distillates, Singapore blending margins should be allowed to qualify for the GTP concessionary tax rate. Further, blending in Singapore has significant economic benefits for Singapore's tank farm	It is proposed that all blending margins, regardless of where the blending is performed, qualify for the GTP concessionary tax rate.

		industry. It is therefore counterintuitive for blending activities performed in Singapore to be excluded from the GTP incentive, while blending activities performed outside of Singapore qualify for the incentivized tax rate.	
(E)	Good and Services Tax		
No.	Tax Issues	Comments	Proposed Changes
	Assisted Compliance Assurance Programme ("ACAP") compliance cost of ACAP status holder	GST Act Upon being awarded with the ACAP status, the status holder is still required to perform an annual review to ensure that transactions submitted in the GST returns are accurate. The methodology for the ACAP annual review generally comprises 150 to 300 samples. If a consulting firm is engaged, with the use of analytical tool and applying their professional judgment, the consulting firm could have a lower sample size. Whether done in-house or outsourced, the annual review imposed added compliance costs to businesses.	Propose to reduce the requirements of the annual review to reduce business cost.
	Remission for qualifying Funds and REITs	It is noted that IRAS has recently been considering the treatment of management services to offshore funds, where the fund may have a business establishment or fixed establishment by virtue of its manager in Singapore.	We hope that IRAS can confirm the final position as soon as possible.
	GST remission for qualifying fund	Currently, a qualifying fund is allowed to claim input tax incurred on its set-up as well as business operating expenses. However, a qualifying fund may have multi-tier structure with the overseas investment held by its SPV due to regulatory restriction in the foreign	To further boost Singapore as a hub for fund management, we propose to allow such qualifying fund with multi-tiers structure to claim the input tax under the GST remission in respect of the setting up costs of its various tiers of SPVs that

		jurisdiction (e.g. TMK structure in Japan). The qualifying fund may incur GST on the expenses (e.g. legal fees and other professional charges) relating to the setting up of its various tiers of SPVs that hold overseas investment. These expenses are not recovered from the respective SPVs but booked as the qualifying fund's expenses. While some of these expenses incurred for the SPVs can be identified based on the description reflected on the suppliers' tax invoices, others may not.	hold overseas investment. The request is made on the following grounds: (i) Generally such SPVs were set up for the sole purpose of allowing the qualifying fund to comply with the regulatory requirements in the foreign country so as to enable the fund to indirectly hold the investment in that country and not GST driven; (ii) Apart from the aforementioned purpose, the SPVs do not engage in any other business activities. Hence, all the setting up costs of the SPVs are booked as part of the qualifying fund's business expenses; (iii) It would be administratively cumbersome for the qualifying fund to identify and exclude the portion of the expenses that are attributable to their SPVs in instances where such expenses are not clearly indicated in the suppliers' tax invoices; and (iv) To consolidate Singapore's status as a regional REITs hub, concession has been granted to allow S-REITs to look through the holding structure in which S-REITs are allowed to claim remission for GST incurred on the setting up of their various tiers of SPVs that hold overseas non-residential properties. In the similar vein, to position Singapore as a centre for fund management and administration, such GST remission should also be extended to these qualifying funds.

	Expansion of incidental exempt supplies list to include interest income arising from inter-company loans	Currently, GST-registered businesses are not allowed to treat the provision of inter-company loan as incidental to its taxable business under regulation 33 of the GST (General) Regulations notwithstanding that no special efforts have been expended to carry out these transactions, and as a result, the amount of allowable input tax may be reduced pursuant to the normal input tax claiming conditions. Companies within a corporate group often support each other in terms of operational needs and in this respect, the provision of interest-bearing inter-company loan is a common inter-company transaction. For the borrower company, borrowing from within the corporate group results in a lower interest expense as compared to borrowing from the banks. Besides, as the holding company has a better financial standing with the financial institutions, such borrowings often occur at the holding company level. As for the lender company, given the current low interest rates payable on fixed deposits, lending excess monies to related companies may also translate into a higher interest income receivable. Effectively, this is a win-win scenario for both the lender and borrower companies. The provision of inter-company loan is not actively undertaken by a company for investment purposes and in substance, the interest income arising from inter-company loans is akin to the interest income arising	We propose that the provision of inter-company loan be included in regulation 33 of the GST (General) Regulations as a step towards managing business cost in Singapore and further encourages MNC to set up its head office in Singapore.

		from deposits placed with financial institutions. Moreover, much time and efforts would be required to identify the residual input tax for the purposes of denying a portion of this from input tax claim. Notably, the Malaysian GST legislation, which has similar provision to regulation 33 of the GST (General) Regulations, provides that interest income arising from provision of inter-company loan is regarded as incidental exempt supplies. The position adopted by Malaysia threatens Singapore's competitiveness in attracting MNCs to set up their head or regional offices here.	
	Easing compliance for traders of investment precious metals	To qualify for GST exemption, the precious metals must meet certain criteria prescribed by the IRAS. One of the criteria provides that the precious metal must be traded at a price based on the spot price of the precious metal it contains. However, the IRAS recognizes that an IPM is usually not traded exactly at the spot price, hence to satisfy this criterion, the precious metal should be traded at a price largely determined by reference to the prevailing spot price. As there is an element of subjectivity as to what would be regarded as "largely determined by reference to the prevailing spot price", suppliers of IPM encounter uncertainty in determining whether a precious metal would qualify as an IPM and accordingly be exempt from GST.	For ease of compliance, it is proposed that the IRAS prescribes the list of precious metals that would qualify as IPMs, similar to the prescribed list of IPM coins that qualify for exemption. Alternatively, the IRAS can prescribe a band of prices (e.g. 100% to 150% of prevailing spot rate) within which the precious metals are traded in order to qualify as an IPM.

(F)	Singapore Core		
No.	Tax Issues	Comments	Proposed Changes
	Incentives for overseas training	There is a need to encourage businesses to build a larger base of Singapore talents with the skillsets needed to run global businesses from here. In certain industries, such as financial services, no amount of training can substitute the breadth of experience and exposure to be gained from working in an international hub such as London or New York.	In order to encourage companies to send their Singaporean employees overseas for such secondments, incentives or grants could be offered to subsidise these programmes.

(G)	Retirement and Healthcare plans		
No.	Tax Issues	Comments	Proposed Changes
	Review of retirement and healthcare assistance	The government could consider the following to boost the adequacy of retirement savings:	• Create an environment for alternative private pension schemes, e.g. by simplifying retirement planning by aligning the Supplementary Retirement Scheme (SRS) and section 5 pension schemes to allow tax deductible employee contributions into section 5 plans, as well as employer contributions which are not taxable on the individual and are deductible for the employer. In addition, a 50% tax exemption for withdrawals could be allowed. • Qualifying conditions for section 5 plans should be made transparent to increase the take-up rate for those plans. • Enhance the SRS scheme to encourage more Singaporeans to contribute to the scheme by removing

			the contribution cap or introducing an enhanced deduction for SRS contributions. • Increase the 1%/2% cap on employers' deductions for medical benefits to reflect the increasing cost of healthcare and to encourage employers to provide for their employees' healthcare needs. Alternatively, remove the cap altogether as it is complex and a disproportionately large administrative burden given the revenue it collects. • Individual tax relief for life insurance should also be de-linked from CPF relief to encourage individuals to take up these policies.
(H)	Individual Tax Relief		
No.	Tax Issues	Comments	Proposed Changes
	Taxation of gains from employee share plans	Most countries tax authorities follow the OECD's guidance on sourcing of share-based reward in cross-border situations, i.e. that stock options (and other stock-related awards) should be sourced based on the number of days an individual has spent working in each country during the vesting period. However Singapore does not follow the global norm in this respect. Singapore tax legislation currently defines the country of source of an employee's right to acquire shares based on whether the right or benefit	Sections 10(6) and 10(7) should be amended in line with the OECD's sourcing rules.

		to acquire shares is granted in respect of employment exercised in Singapore. Shares granted to an individual whilst working in Singapore which vest after he has been transferred to an overseas entity will still be considered fully taxable in Singapore, either under sections 10(6) or 10(7). As Singapore would claim primary taxing rights on Singapore sourced income, the IRAS would be within its rights to decline claims for double taxation relief should the individual suffer taxation in the country in which he is resident at the time of vest/exercise. In practice, this gives rise to double taxation without relief.	
(I)	Liberalisation of Rules and Schemes		
No.	Tax Issues	Comments	Proposed Changes
	Liberalise the loss carry back rules	The loss carry-back rules should also be liberalised. This is of particular relevance to insurers with exposure to natural catastrophe risks as they typically find themselves in cycles of profitable years and when a significant disaster hits, in significant loss positions.	The restrictions on the amount of unutilised loss items a company is allowed to carry back should be removed altogether and companies should be allowed to carry back losses. The current carry-back loss relief system is grossly inadequate in view of the cyclical nature of writing natural catastrophe risks.
	Liberalise qualifying debt securities scheme	There is a need to review the Qualifying Debt Securities (QDS) scheme.	This could be liberalised by expanding the types of income qualifying for withholding tax exemption and concessionary tax treatment. For example, the list of qualifying income could be aligned with relevant items in

			the list of prescribed deductible borrowing costs.
(J)	Mergers and Acquisitions (M & A)		
No.	Tax Issues	Comments	Proposed Changes
	Enhancement of M & A scheme	To encourage acquiring groups that have trading operations in Singapore to conduct their M&A from Singapore, the M & A scheme could be further enhanced.	This could be done by allowing waiver of the condition that the ultimate holding company must either be incorporated in Singapore or a company that qualifies for the international headquarters incentive. Companies undertaking M&A should also be given greater flexibility in structuring acquisitions by allowing the M&A allowance to be transferred under the group relief system or given to the target instead of only to the acquiring company.
(K)	Transparency and Administration		
No.	Tax Issues	Comments	Proposed Changes
	Staggered filing deadlines	Currently, companies have until 30 November of the year following their financial close to file their tax returns regardless of their financial year end. In the case of a company with say a March year end, there is a time lag of 20 months between the end of the financial year end and the tax return filing deadline.	The government should consider introducing staggered filing deadlines (e.g. within 12 months of the financial year end). This should facilitate more timely assessment and collection of taxes by the IRAS and the finalisation of tax matters for taxpayers who benefit from certainty of their tax positions.
	Penalty regime	The imposition of penalties for incorrect returns under section 95 is harsh if there is full disclosure, or for human error without *male fide* intent.	As an alternative, perhaps a late payment interest could be charged on the shortfall in tax collected as a result of such errors or mistakes.

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Section B: Sector-Specific Proposals

(A)	Real Estate		
No.	Tax Issues	Comments	Proposed Changes
	The existing income tax, stamp duty and GST concessions for REITs listed on the S'pore Exchange will expire on 31 March 2015	In the Government Budget Speech 2010, the following income tax, stamp duty and GST concessions for listed REITs in S'pore (S-REITs) were renewed and extended to 31 March 2015 : (i) Concessionary income tax rate of 10% for non-resident non-individual investors; (ii) Stamp duty remission on the transfer of a Singapore immovable property to a REIT; (iii) Stamp duty remission on the transfer of 100% of the issued share capital of a Singapore-incorporated company that holds immovable properties situated outside Singapore to a REIT; (iv) GST remission to allow REITs to claim input tax on their business expenses regardless of whether they hold the underlying assets directly or indirectly through multi-tiered structures such as special purpose vehicles or sub-trusts. S-REITs and their wholly-owned Singapore subsidiary companies can enjoy income tax exemption on qualifying	To maintain S'pore as a choice location for the listing of REITs, to continue to promote REIT as an attractive investment option and developing S'pore capital markets further, members request MOF to extend the existing income tax, stamp duty and GST concessions for S-REITs for another 5 years to 31 March 2020. Members also request MOF to extend the FSIE concession to S-REIT foreign income received by the trustee of an S-REIT or its wholly-owned Singapore resident subsidiary in respect of any overseas property which is acquired, directly or indirectly, by the trustee of an S-REIT or its wholly- owned Singapore resident subsidiary on or before 31 March 2020.

		foreign-sourced income (i.e. foreign-sourced dividend income, interest income and trust distributions) under Section 13(12) of the Income Tax Act subject to conditions [“Foreign-Sourced Income Exemption (“FSIE”) for REITs”]. The FSIE concession for S-REITs is also subject to the sunset clause of 31 March 2015. IRAS has subsequently in its e-Tax Guide issued on 30 May 2014 announced that the FSIE will apply to S-REIT foreign income received by the trustee of an S-REIT or its wholly-owned Singapore resident subsidiary in respect of any overseas property which : a. is acquired, directly or indirectly, by the trustee of an S-REIT or its wholly-owned Singapore resident subsidiary on or before 31 March 2015; and b. continues to be beneficially owned, directly or indirectly, by the trustee of the S-REIT or its wholly-owned Singapore resident subsidiary in paragraph (a), after 31 March 2015.	
	Restriction faced by companies when flowing up REIT distributions received to shareholders	In the CDP statements issued to unitholders such as companies who hold the REIT units as long-term investment, if the REIT distributions are classified as return of capital, there is a note in the CDP statements which state that such amount of distribution is treated as a	Members request MOF to lift this restriction imposed on unitholders on flowing up REIT distributions (classified as return on capital) to their shareholders as the restriction creates a cash trap issue for companies when the

		return of capital for Singapore income tax purposes. Therefore, such return of capital cannot be onward distributed as income by unitholders. These unitholders (and each subsequent level of unitholders) cannot also onward distribute such return of capital as income. The companies receiving such REIT distributions have recognised the distributions (that was classified as return on capital) as dividend income in their profit and loss accounts as it was not disallowed under the accounting standards.	funds from such distributions could have been put to more efficient/productive use by the group. If companies are permitted to recognise such distribution as income in their profit and loss accounts and payment of dividends by companies are on the condition of having sufficient revenue reserves, then there should not be separate side rules governing the payment of dividends by companies which create confusion and an increase in compliance time to track such distributions from REITs.
	Allowing Singapore REITs ("S-REITs") to see through their holding structure for the purposes of applying regulations 33(h) and (ha)	Currently, any net gain/loss arising from interest rate swaps undertaken by S-REITs for hedging their interest rate risk arising from loan obtained to make any of the supplies specified in section 20(2) of the GST Act, is considered as a regulation 33 exempt supply. However, if the net gain/loss is derived from swaps which are entered into to hedge the interest rate risk arising from loans obtained to acquire equity holding in their SPCs which in turn use the fund to buy non-residential properties, such supply is regarded as a non-regulation 33 exempt supply. There are instances where S-REITs are unable to hold commercial properties located outside Singapore directly due to the restriction imposed by the overseas	To allow S-REITs to see through their holding structure in applying regulations 33(h) and (ha) in respect of their SPCs incorporated in and/or outside Singapore that hold the non-residential properties. Such concession is in line with the policy intention of allowing S-REITs to recover the GST incurred in the process of acquiring /maintenance of overseas non-residential properties as well as the current concession to encourage the growth of Reits in Singapore.

		authorities. In such cases, an S-REIT would be required to set up its SPC in that country to acquire the assets. Based on the current position of the law, any net gain/loss arising from the hedging activities undertaken by S-REIT (e.g. interest rate swaps) to hedge its interest rate exposure from the funding (e.g. loan) obtained to acquire the equity holding in its SPC would be treated as a non-regulation 33 exempt supplies. As a result, this non-regulation exempt supply will affect S-REIT's input tax claims to the extent that regulation 35 is not satisfied.	
(B)	Insurance		
No.	Tax Issues	Comments	Proposed Changes
	Group Insurance Premiums	Based on the IRAS's website, with effect from YA 2013, group insurance premiums will be exempt from tax in the hands of the employees if the employer elects not to claim a tax deduction for the said group insurance premiums in the corporate/ business tax filing for the relevant year. To exempt employees on the taxability of group insurance premiums only if employers do not claim a tax deduction of the amounts is inequitable to the company concerned. Such expenses are a necessary business cost incurred in the production of a company's income and hence should be allowed tax deduction (and not linked to the taxability of the individual employees concerned).	Tax exemption to employees for group insurance premiums should be de-linked from the deductibility of such expenses to the employing company.