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The following Act was passed by Parliament on 19th October 2009 and assented to by the President on 30th October 2009:—

REPUBLIC OF SINGAPORE

No. 24 of 2009.

I assent.

(LS)

S R NATHAN,
President.
30th October 2009.

An Act to amend the Income Tax Act (Chapter 134 of the 2008 Revised Edition) to facilitate the exchange of information under certain avoidance of double taxation arrangements.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Income Tax (Amendment) (Exchange of Information) Act 2009 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 101

2. Section 101(3) of the Income Tax Act (referred to in this Act as the principal Act) is amended by deleting the words "or 98" and substituting the words ", 98 or 105M".

New Parts XXA and XXB

3. The principal Act is amended by inserting, immediately after section 105, the following Parts:

“PART XXA

EXCHANGE OF INFORMATION UNDER AVOIDANCE
OF DOUBLE TAXATION ARRANGEMENTS

Interpretation of this Part

105A.—(1) In this Part —

“avoidance of double taxation arrangement” means an arrangement having effect under section 49;

“competent authority”, in relation to a prescribed arrangement, means a person or an authority whom the Comptroller is satisfied is authorised under the EOI provision of the arrangement to make a request to the Comptroller for information under that provision;

“exchange of information provision” or “EOI provision”, in relation to an avoidance of double taxation arrangement, means a provision in that arrangement which provides expressly for the exchange of information concerning the tax positions of persons;

“prescribed arrangement” means an avoidance of double taxation arrangement that —

(a) has an EOI provision; and

(b) is declared by the Minister, by an order under section 105C(1), as a prescribed arrangement;

“tax position”, in relation to a person, means the person’s position as regards any tax —

(a) of the country with whose government the avoidance of double taxation arrangement in question was made; and

(b) that is covered by the EOI provision of that arrangement,

including the person’s position as regards —

(i) past, present and future liability to pay any such tax;

(ii) penalties, interest and other amounts that have been paid, or are or may be payable, by or to the person in connection with any such tax; and

(iii) claims, elections, applications and notices that have been or may be made or given in connection with any such tax.

(2) References in this Part to the tax position of a person include the tax position of —

(a) a person (not being an individual) that has ceased to exist; and

(b) an individual who has died.

(3) References in this Part to the tax position of a person are to his tax position at any time or in relation to any period, unless otherwise stated in the prescribed arrangement in question.

Purpose of this Part

105B. The purpose of this Part is to facilitate the disclosure of information to a competent authority under an avoidance of double taxation arrangement prescribed under section 105C in accordance with the EOI provision in that arrangement.

Prescribed arrangement

105C.—(1) The Minister may by order declare an avoidance of double taxation arrangement as a prescribed arrangement for the purposes of this Part.

(2) The Minister may by a subsequent order revoke any order previously made under subsection (1).

Request for information

105D.—(1) The competent authority under a prescribed arrangement may make a request to the Comptroller for information concerning the tax position of any person in accordance with the EOI provision of that arrangement.

(2) Unless the Comptroller otherwise permits, the request must set out the information prescribed in the Eighth Schedule.

(3) Every request shall be subject to and dealt with in accordance with the terms of the prescribed arrangement.

Comptroller to serve notice of request on certain persons

105E.—(1) After receipt of a request under section 105D for any information which, in the opinion of the Comptroller, is information referred to in subsection (2), the Comptroller shall serve notice of the request by ordinary post on —

- (a) the person identified in the request as the person in relation to whom the information is sought; and
- (b) the person identified in the request as the person who is believed to have possession or control of the information.

(2) The information referred to in subsection (1) is information that is protected from unauthorised disclosure under —

- (a) section 47 of the Banking Act (Cap. 19) including any regulations made under subsection (10) of that section; or
- (b) section 49 of the Trust Companies Act (Cap. 336).

(3) Notice under subsection (1) shall be treated as served on the day succeeding the day on which it would have been received in the ordinary course of post if it is addressed —

- (a) in the case of an individual or a body of persons, to the last known business or private address of the individual or body of persons;
- (b) in the case of a company incorporated in Singapore, to its registered office; or
- (c) in the case of a company incorporated outside Singapore, either to the individual authorised to accept service of process under the Companies Act (Cap. 50) at the address filed with the Registrar of Companies, or to the registered office or any place of business of the company wherever it may be situated.

(4) Notice under subsection (1) need not be served on any person —

- (a) if the Comptroller —
 - (i) does not have any information of the person referred to in subsection (3);
 - (ii) is of the opinion that this is likely to prevent or unduly delay the effective exchange of information under the prescribed arrangement; or
 - (iii) is of the opinion that this is likely to prejudice any investigation into any alleged breach of any law relating to tax of the country with whose government the prescribed arrangement in question was made (whether the breach would result in the imposition of a criminal or civil penalty); or
- (b) on such other ground as may be prescribed under section 105H.

(5) Rules made under section 105H may provide for the particulars to be given in a notice under subsection (1).