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INCOME TAX ACT (CHAPTER 134)

INCOME TAX (ADJUSTMENT FOR CHANGE OF BASIS OF COMPUTING PROFIT, LOSS OR EXPENSE OF FINANCIAL INSTRUMENTS RESULTING FROM FRS 109 OR SFRS(I) 9) (AMENDMENT NO. 2) REGULATIONS 2020

In exercise of the powers conferred by sections 14I(2H) and 34AA(13) of the Income Tax Act, the Minister for Finance makes the following Regulations:

Citation and commencement

1. These Regulations are the Income Tax (Adjustment for Change of Basis of Computing Profit, Loss or Expense of Financial Instruments resulting from FRS 109 or SFRS(I) 9) (Amendment No. 2) Regulations 2020 and come into operation on 22 May 2020.

Amendment of regulation 2

2. Regulation 2(1) of the Income Tax (Adjustment for Change of Basis of Computing Profit, Loss or Expense of Financial Instruments resulting from FRS 109 or SFRS(I) 9) Regulations 2020 (G.N. No. S 4/2020) (called in these Regulations the principal Regulations) is amended —

(a) by inserting, immediately after the definition of “date of initial application”, the following definition:

““FRS 12” means the financial reporting standard known as Financial Reporting Standard 12 (Income Taxes) that is made, and amended from time to time, under Part III of the Accounting Standards Act (Cap. 2B);” and

(b) by inserting, immediately after the definition of “qualifying person”, the following definition:

““SFRS(I) 1-12” means the financial reporting standard known as Singapore Financial Reporting Standard (International) 1-12 (Income Taxes) that is made, and amended from time to time, under Part III of the Accounting Standards Act;”.

Amendment of regulation 4

3. Regulation 4 of the principal Regulations is amended by deleting the words “the Schedule” in paragraphs (2) and (2A) and substituting in each case the words “the First Schedule”.

Amendment of regulation 5

4. Regulation 5 of the principal Regulations is amended by deleting paragraph (4).

New regulations 6, 7, 8 and 9

5. The principal Regulations are amended by inserting, immediately after regulation 5, the following regulations:

“Additional amount treated as income under section 34AA(7) of Act or allowable as deduction under section 34AA(10) of Act due to capital loss or gain, where financial instrument had not been disposed of

6.—(1) The purpose of this regulation is to determine the additional amount of any other gain, loss or expense in respect of a financial instrument that is treated as income under section 34AA(7) of the Act or allowable as a deduction under section 34AA(10) of the Act (as the case may be), where the financial instrument had not yet been disposed of by the qualifying person on the last day of the basis period for the year of assessment immediately before the year of assessment in which the Comptroller makes the discovery —

(a) under section 34AA(7) of the Act, that a deduction ought not to have been allowed for a loss or expense

in respect of the financial instrument as it is capital in nature; or

- (b) under section 34AA(10) of the Act, that a gain in respect of the financial instrument ought not to have been charged with tax as it is capital in nature.

(2) The additional amount is computed using the formula specified in the second column of the Second Schedule opposite the description in the first column of that Schedule to which the financial instrument belongs.

Additional amount treated as income under section 34AA(7) of Act or allowable as deduction under section 34AA(10) of Act due to revenue gain or loss, where financial instrument had not been disposed of

7.—(1) The purpose of this regulation is to determine the additional amount of any other gain, loss or expense in respect of a financial instrument that is treated as income under section 34AA(7) of the Act or allowable as a deduction under section 34AA(10) of the Act (as the case may be), where the financial instrument had not yet been disposed of by the qualifying person on the last day of the basis period for the year of assessment immediately before the year of assessment in which the Comptroller makes the discovery —

- (a) under section 34AA(7) of the Act, that a gain in respect of the financial instrument ought to have been charged with tax as it is revenue in nature; or
- (b) under section 34AA(10) of the Act, that a deduction ought to have been allowed for a loss or expense in respect of the financial instrument as it is revenue in nature.

(2) The additional amount is computed using the formula specified in the second column of the Third Schedule opposite the description in the first column of that Schedule to which the financial instrument belongs.

Additional amount treated as income under section 34AA(7) of Act or allowable as deduction under section 34AA(10) of Act due to capital loss or gain, where financial instrument had been disposed of

8.—(1) The purpose of this regulation is to determine the additional amount of any other gain, loss or expense in respect of a financial instrument that is treated as income under section 34AA(7) of the Act or allowable as a deduction under section 34AA(10) of the Act (as the case may be), where the financial instrument —

- (a) had been disposed of by the qualifying person; or
- (b) being a debt instrument, had been disposed of by the qualifying person, had matured or had been redeemed,

on or before the last day of the basis period for the year of assessment immediately before the year of assessment in which the Comptroller makes the discovery —

- (c) under section 34AA(7) of the Act, that a deduction ought not to have been allowed for a loss or expense in respect of the financial instrument as it is capital in nature; or
- (d) under section 34AA(10) of the Act, that a gain in respect of the financial instrument ought not to have been charged with tax as it is capital in nature.

(2) Where the financial instrument (including a debt instrument) had been disposed of by the qualifying person, the additional amount is computed using the formula $B - A$, where —

- (a) A is the consideration received or receivable by the qualifying person from the disposal of the financial instrument; and
- (b) B is the cost incurred by the qualifying person in acquiring the financial instrument.

(3) Where the financial instrument is a debt instrument that had matured or had been redeemed, the additional amount is —

- (a) if the amount received or receivable by the qualifying person on the maturity or redemption of the debt instrument is equal to or greater than the amount for which the debt instrument was first issued — zero; or
- (b) if the amount received or receivable by the qualifying person on the maturity or redemption of the debt instrument is less than the amount for which the debt instrument was first issued — computed using the formula $C - D$, where —
 - (i) C is the amount for which the debt instrument was first issued; and
 - (ii) D is the amount received or receivable by the qualifying person on the maturity or redemption of the debt instrument.

Additional amount treated as income under section 34AA(7) of Act or allowable as deduction under section 34AA(10) of Act due to revenue gain or loss, where financial instrument had been disposed of

9.—(1) The purpose of this regulation is to determine the additional amount of any other gain, loss or expense in respect of a financial instrument that is treated as income under section 34AA(7) of the Act or allowable as a deduction under section 34AA(10) of the Act (as the case may be), where the financial instrument —

- (a) had been disposed of by the qualifying person; or
- (b) being a debt instrument, had been disposed of by the qualifying person, had matured or had been redeemed,

on or before the last day of the basis period for the year of assessment immediately before the year of assessment in which the Comptroller makes the discovery —

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- (c) under section 34AA(7) of the Act, that a gain in respect of the financial instrument ought to have been charged with tax as it is revenue in nature; or
 - (d) under section 34AA(10) of the Act, that a deduction ought to have been allowed for a loss or expense in respect of the financial instrument as it is revenue in nature.
- (2) Where the financial instrument (including a debt instrument) had been disposed of by the qualifying person, the additional amount is computed using the formula $A - B$, where —
- (a) A is the consideration received or receivable by the qualifying person from the disposal of the financial instrument; and
 - (b) B is the cost incurred by the qualifying person in acquiring the financial instrument.
- (3) Where the financial instrument is a debt instrument that had matured or had been redeemed, the additional amount is —
- (a) if the amount received or receivable by the qualifying person on the maturity or redemption of the debt instrument is equal to or greater than the amount for which the debt instrument was first issued — zero; or
 - (b) if the amount received or receivable by the qualifying person on the maturity or redemption of the debt instrument is less than the amount for which the debt instrument was first issued — computed using the formula $D - C$, where —
 - (i) C is the amount for which the debt instrument was first issued; and
 - (ii) D is the amount received or receivable by the qualifying person on the maturity or redemption of the debt instrument.”.

Amendment of Schedule

6. The Schedule to the principal Regulations is amended —
- (a) by deleting paragraph 2 and substituting the following paragraph:
- “2. In this Schedule, “contractual interest rate” has the meaning given by section 34AA(15) of the Act.”; and
- (b) by renaming the existing Schedule as the First Schedule.

New Second and Third Schedules

7. The principal Regulations are amended by inserting, immediately after the First Schedule, the following Schedules:

“SECOND SCHEDULE

Regulation 6(2)

ADDITIONAL AMOUNT TREATED AS INCOME UNDER
SECTION 34AA(7) OF ACT OR ALLOWABLE AS DEDUCTION
UNDER SECTION 34AA(10) OF ACT DUE TO CAPITAL LOSS OR
GAIN, WHERE FINANCIAL INSTRUMENT HAD NOT BEEN
DISPOSED OF

1. The additional amount mentioned in regulation 6(2) of other gain, loss or expense in respect of a financial instrument of a qualifying person is computed in accordance with the following table:

<i>First column</i>	<i>Second column</i>
<i>Classification of financial instrument under FRS 109 or SFRS(I) 9 on the relevant day</i>	<i>Formula for computing additional amount</i>
1. In respect of an equity instrument that is required by FRS 109 or SFRS(I) 9 to be classified as a financial asset at fair value through profit or loss on the relevant day.	B – A where — (a) A is the value of the equity instrument recognised on the relevant day in the qualifying person’s balance sheet for the basis period in which the relevant day falls; and

<i>First column</i>	<i>Second column</i>
<i>Classification of financial instrument under FRS 109 or SFRS(I) 9 on the relevant day</i>	<i>Formula for computing additional amount</i>
	(b) B is the cost incurred by the qualifying person in acquiring the equity instrument.
2. In respect of a debt instrument that is required by FRS 109 or SFRS(I) 9 to be classified as a financial asset at fair value through profit or loss on the relevant day.	$B - A$ <p>where —</p> <p>(a) A is the value of the debt instrument recognised on the relevant day in the qualifying person's balance sheet for the basis period in which the relevant day falls; and</p> <p>(b) B is the cost incurred by the qualifying person in acquiring the debt instrument.</p>
3. In respect of a debt instrument that is required by FRS 109 or SFRS(I) 9 to be classified as a financial asset carried at amortised cost on the relevant day.	$(B - A) + E$ <p>where —</p> <p>(a) A is the gross value (before any deduction is made for expected credit loss) of the debt instrument recognised on the relevant day in the qualifying person's balance sheet for the basis period in which the relevant day falls;</p> <p>(b) B is the cost incurred by the qualifying person in acquiring the debt instrument; and</p> <p>(c) E is the amount of expected credit losses of the debt instrument recognised on the relevant day in the qualifying person's expected credit loss allowance account in the person's financial statements for the basis period in</p>

<i>First column</i>	<i>Second column</i>
<p><i>Classification of financial instrument under FRS 109 or SFRS(I) 9 on the relevant day</i></p>	<p><i>Formula for computing additional amount</i></p>
	<p>which the relevant day falls, to the extent that the amount was previously allowed as a deduction against the person's income.</p>
<p>4. In respect of a debt instrument that is required by FRS 109 or SFRS(I) 9 to be classified as a financial asset at fair value through other comprehensive income on the relevant day.</p>	<p>$(B - A + D) + E$</p> <p>where —</p> <p>(a) A is the gross value (before any deduction is made for expected credit loss) of the debt instrument recognised on the relevant day in the qualifying person's balance sheet for the basis period in which the relevant day falls;</p> <p>(b) B is the cost incurred by the qualifying person in acquiring the debt instrument;</p> <p>(c) D is —</p> <p>(i) where the net amount of the gains or losses (before any deduction for tax is made in accordance with FRS 12 or SFRS(I) 1-12) in respect of the debt instrument recognised on the relevant day in a reserve account of the statement of changes in equity in the qualifying person's financial statements for the basis period in which the relevant day falls is a loss — the amount of the loss expressed as a negative value; or</p>

<i>First column</i>	<i>Second column</i>
<p style="text-align: center;"><i>Classification of financial instrument under FRS 109 or SFRS(I) 9 on the relevant day</i></p>	<p style="text-align: center;"><i>Formula for computing additional amount</i></p>
	<p>(ii) where the net amount of the gains or losses (before any deduction for tax is made in accordance with FRS 12 or SFRS(I) 1-12) in respect of the debt instrument recognised on the relevant day in a reserve account of the statement of changes in equity in the qualifying person's financial statements for the basis period in which the relevant day falls is a gain — the amount of the gain expressed as a positive value; and</p> <p>(d) E is the amount of expected credit losses of the debt instrument recognised on the relevant day in the qualifying person's expected credit loss allowance account in the person's financial statements for the basis period in which the relevant day falls, to the extent that the amount was previously allowed as a deduction against the person's income.</p>

2. In this Schedule, “relevant day” means the last day of the basis period for the year of assessment immediately before the year of assessment in which the Comptroller makes the discovery —

- (a) under section 34AA(10) of the Act, that the gain of the financial instrument of the qualifying person ought not to have been charged with tax as it is capital in nature; or

(b) under section 34AA(7) of the Act, that the deduction ought not to have been allowed for the loss or expense of the financial instrument of the qualifying person as it is capital in nature, as the case may be.

THIRD SCHEDULE

Regulation 7(2)

ADDITIONAL AMOUNT TREATED AS INCOME UNDER SECTION 34AA(7) OF ACT OR ALLOWABLE AS DEDUCTION UNDER SECTION 34AA(10) OF ACT DUE TO REVENUE GAIN OR LOSS, WHERE FINANCIAL INSTRUMENT HAD NOT BEEN DISPOSED OF

1. The additional amount mentioned in regulation 7(2) of other gain, loss or expense in respect of a financial instrument of a qualifying person is computed in accordance with the following table:

<i>First column</i>	<i>Second column</i>
<i>Classification of financial instrument under FRS 109 or SFRS(I) 9 on the relevant day</i>	<i>Formula for computing additional amount</i>
1. In respect of an equity instrument that is required by FRS 109 or SFRS(I) 9 to be classified as a financial asset at fair value through profit or loss on the relevant day.	$A - B$ <p>where —</p> <p>(a) A is the value of the equity instrument recognised on the relevant day in the qualifying person's balance sheet for the basis period in which the relevant day falls; and</p> <p>(b) B is the cost incurred by the qualifying person in acquiring the equity instrument.</p>

<i>First column</i>	<i>Second column</i>
<i>Classification of financial instrument under FRS 109 or SFRS(I) 9 on the relevant day</i>	<i>Formula for computing additional amount</i>
2. In respect of a debt instrument that is required by FRS 109 or SFRS(I) 9 to be classified as a financial asset at fair value through profit or loss on the relevant day.	$A - B$ <p>where —</p> <p>(a) A is the value of the debt instrument recognised on the relevant day in the qualifying person's balance sheet for the basis period in which the relevant day falls; and</p> <p>(b) B is the cost incurred by the qualifying person in acquiring the debt instrument.</p>
3. In respect of a debt instrument that is required by FRS 109 or SFRS(I) 9 to be classified as a financial asset carried at amortised cost on the relevant day.	$(A - B) - E$ <p>where —</p> <p>(a) A is the gross value (before any deduction is made for expected credit loss) of the debt instrument recognised on the relevant day in the qualifying person's balance sheet for the basis period in which the relevant day falls;</p> <p>(b) B is the cost incurred by the qualifying person in acquiring the debt instrument; and</p> <p>(c) E is the amount of expected credit losses of the debt instrument recognised on the relevant day in the qualifying person's expected credit loss allowance account in the person's financial statements for the basis period in which the relevant day falls, to the extent that the debt instrument is credit-impaired in accordance</p>

<i>First column</i>	<i>Second column</i>
<i>Classification of financial instrument under FRS 109 or SFRS(I) 9 on the relevant day</i>	<i>Formula for computing additional amount</i>
	with FRS 109 or SFRS(I) 9, as the case may be.
4. In respect of a debt instrument that is required by FRS 109 or SFRS(I) 9 to be classified as a financial asset at fair value through other comprehensive income on the relevant day.	$(A - B + D) - E$ <p>where —</p> <p>(a) A is the gross value (before any deduction is made for expected credit loss) of the debt instrument recognised on the relevant day in the qualifying person's balance sheet for the basis period in which the relevant day falls;</p> <p>(b) B is the cost incurred by the qualifying person in acquiring the debt instrument;</p> <p>(c) D is —</p> <p>(i) where the net amount of the gains or losses (before any deduction for tax is made in accordance with FRS 12 or SFRS(I) 1-12) in respect of the debt instrument recognised on the relevant day in a reserve account of the statement of changes in equity in the qualifying person's financial statements for the basis period in which the relevant day falls is a loss — the amount of the loss expressed as a positive value; or</p> <p>(ii) where the net amount of the gains or losses (before any</p>

<i>First column</i>	<i>Second column</i>
<i>Classification of financial instrument under FRS 109 or SFRS(I) 9 on the relevant day</i>	<i>Formula for computing additional amount</i>
	<p>deduction for tax is made in accordance with FRS 12 or SFRS(I) 1-12) in respect of the debt instrument recognised on the relevant day in a reserve account of the statement of changes in equity in the qualifying person's financial statements for the basis period in which the relevant day falls is a gain — the amount of the gain expressed as a negative value; and</p> <p>(d) E is the amount of expected credit losses of the debt instrument recognised on the relevant day in the qualifying person's expected credit loss allowance account in the person's financial statements for the basis period in which the relevant day falls, to the extent that the debt instrument is credit-impaired in accordance with FRS 109 or SFRS(I) 9, as the case may be.</p>

2. In this Schedule, “relevant day” means the last day of the basis period for the year of assessment immediately before the year of assessment in which the Comptroller makes the discovery —

- (a) under section 34AA(7) of the Act, that the gain of the financial instrument of the qualifying person ought to have been charged with tax as it is revenue in nature; or

(b) under section 34AA(10) of the Act, that the deduction ought to have been allowed for the loss or expense of the financial instrument of the qualifying person as it is revenue in nature, as the case may be.”.

[G.N. No. S 180/2020]

Made on 18 May 2020.

TAN CHING YEE
*Permanent Secretary,
Ministry of Finance,
Singapore.*

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